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

Case no: 12124/16

In the matter between:

LEGAL AID SOUTH AFRICA Applicant

and

ANTHONY ROBIN BRINK Respondent

ANSWERING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I'm the respondent in this application, identified in paragraph 4 of the founding affidavit. For brevity, I'll refer to the applicant as 'LASA'.

2. In this answering affidavit, I'll show that LASA has made out no case under section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956 ('VPA'), i.e. that I've 'persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court'.

3. I'll show that LASA's application is itself a fantastically egregious 'abuse of the process of the court', in the language of the VPA, brought with the ultimate, corrupt object of:

   (a) smothering or at least seriously hindering my investigation and exposure of systemic institutional corruption at LASA, rampant lawlessness, abuse of power, the breakdown of proper corporate governance and oversight, and unlawful financial irregularity involving many millions of rands; and,

(b) maintaining an ongoing cover-up of recruitment corruption carried out at the highest level of the organisation, progressing from calculated, deceptive silence; to dishonest stonewalling; to lying in correspondence – escalating into repeated and persistent illegal refusal to allow access under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act') to records duly requested to test the said lies; and the crimes of perjury; false and misleading reporting and lying to Parliament; and defeating the ends of justice through improper influence of judicial decision-making.

All in the classic snowballing dynamic of a disintegrating cover-up, and bearing out the adage coined after Watergate, 'The cover-up is always worse than the crime.'

4. Specified below, and vouched by supporting documents annexed or quoted, I speak of:

(a) lies, contradicted by LASA's own records, told to me in correspondence, and falsely verified on affidavit;

(b) different contradictory lies told to LASA's Board in a false report to it;

(c) perjuries committed before, during, and after the trial of a claim I brought against LASA in the Durban Labour Court ('LC') – *rightly dismissed, having been wrongly founded* – in which I sought inter alia my instatement to LASA's top legal professional post in KwaZulu-Natal ('KZN'), its Senior Litigator post at Pietermaritzburg (there's a twin post at Durban), for which I was unanimously recommended by a duly constituted selection panel of LASA's top lawyers in the region in November 2009;

(d) lies told to the Minister of Justice and Constitutional Development (as he was then called; 'the Minister') in a 'Confidential … Report … re: Adv Anthony Brink' ('Confidential Report') to successfully pervert an enquiry he'd instituted at my instance into LASA's (i) repeated, persistent illegal

refusals in 2010 and 2011 to comply with requests for records I'd duly made under PAIA; and (ii) the unlawful, unauthorised, off-the-record abortion of my appointment, and two others, under cover of a manifestly false financial insufficiency excuse eventually manufactured and advanced to me, under rising pressure to account, eleven months after my successful interview;

(e) lies told in a substantially identical report, 'updated' with more lies, covered by a defamatory letter containing further lies, to the Portfolio Committee of the National Assembly for the same Department ('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 – likewise to successfully pervert its enquiry into the same two matters, instituted separately and independently at my instance by its chairperson, with the object of frustrating and defeating the National Assembly's oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution;

(f) false and deceptive reporting to and concealment of material information from the Portfolio Committee in annual and other reports, and again during appearances before it to present these, also crimes under Act 4 of 2004;

(g) wholesale disregard for and contravention of LASA's internal regulations (i) governing recruitment operations, and (ii) delegating approval and appointment authority in recruitment; and, besides this procedural corruption, also:

(h) ethical corruption in the conduct of recruitment and promotion operations;

(i) contravention of section 55 of the Public Finance Management Act 1 of 1999 ('PFMA') 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;

(j) 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 specialist personnel – a contravention of section 52 of the PFMA, which requires LASA to present to the Department of Justice and Correctional Services (as it's now called; 'the Department') 'a corporate plan … covering the financial affairs of the public entity … for the following three years' and, implicitly, to implement the plan by applying budgeted funds voted by the National Assembly and paid by the Department, year after year;

(k) concealment of this said deliberate failure, substantially impeding the delivery of expert legal professional services as planned, by repeated deceptive false reporting to the Minister and the National Assembly in chairperson-, CEO-, and annual performance reports;

(l) freezing of recruitment to vacant posts (off the record, without authority) against the express wish of the Minister stated to the Board chairperson, who disregarded it;

(m) deliberate unauthorised failure to fill critical vacant posts – a specific concern of the National Assembly, repeatedly expressed concerning such vacant posts in the Justice sector;

(n) repeated contravention, year after year, of section 53(4) of the PFMA concerning 'Annual budgets by non-business Schedule 3 public entities', requiring that 'expenditure of that public entity is in accordance with the approved budget', by repeatedly applying for funding for a given cost centre and then deliberately not utilizing it for the stated purpose, without lawful reason and authority;

(o) repeated and consistent illegal refusal to comply with LASA's information transparency obligations imposed by section 32(1)(a) of the Constitution and elaborated by PAIA;

(p) dereliction by the Board of its fiduciary obligation to oversee executive management's compliance with the Constitution and statutes regulating LASA's operations, and its failure to intervene in response to repeated detailed complaints of violations and contraventions of these, and to remedy this;

(q) contravention of section 38(c)(ii) of the PFMA, prohibiting 'irregular and fruitless and wasteful expenditure', defined by section 1 as 'expenditure which was made in vain and would have been avoided had reasonable care been exercised', by indefensibly opposing five applications to court to compel compliance with several duly made PAIA requests, illegally refused, and by hiring junior counsel in private practice to set up several lever-arch files full of wholly spurious defences, and then flying two of them across the country to abandon them all at court before argument, at vast wasted cost in legal fees and travel disbursements;

(r) repeated false, deficient and non-compliant section 32 reporting to the SAHRC on responses to and handling of PAIA requests received, with the ultimate object of misleading the National Assembly via the SAHRC's section 84 reports based on LASA's section 32 reports; and repeated false reporting directly to the Minister and to the National Assembly in its PAIA reports included in its annual reports – in both cases to conceal its repeated, persistent illegal refusal to make its records available upon request under PAIA, with the corrupt object of evading detection and accountability for its failure to do so, and of frustrating and defeating the National Assembly's constitutional oversight function over LASA: all with

the ultimate purpose of concealing and evading detection and accountability for the gross malfeasance described above;

(s) subornation of perjury in an attempt to defeat the ends of justice by improperly influencing a trial judge with poisonously inflammatory, wholly fabricated defamatory accusations of professional misconduct made in an interlocutory affidavit filed in a legal action; and,

(t) successfully defeating the ends of justice by improperly influencing the Judge President ('JP') of the Labour Appeal Court ('LAC') to reject my petition for leave to appeal the dismissal of my claim to my instatement to the said post – prematurely, before all the papers were in – via an anonymous, unsigned, undated note headed 'Memorandum' ('the Memorandum') slipped to him under the counter – it's unstamped by the registrar – denigrating me and lying about the contents of my petition and the issues before the trial court, and strenuously urging the rejection of my petition.

5. The principal miscreants in the gross lawlessness and crimes to be particularised herein are LASA Board chairperson Dunstan Mlambo JP, Chief Executive Officer Vidhu Vedalankar, National Operations Executive Brian Nair and Human Resources Executive Amanda Clark. Chairperson Mlambo JP has been at the centre of it, as I'll show.

6. Chief Operations Officer Jerry Makokoane, Chief Financial Officer Rebecca Hlabatau, and Chief Legal Executive Patrick Hundermark have all turned a blind eye to the corruption and lawlessness of which I've complained to them. Ditto LASA's Board.

7. Legal Executive Thembile Mtati, deponent to the founding affidavit and LASA's lead in-house attorney in its legal conflict with me since 2010, has repeatedly perjured himself in regard to facts within his personal knowledge.

Like Vedalankar's, Nair's and Clark's, some of Mtati's perjuries are treated and exposed below.

8. Through its counsel, LASA stated on the record in the Eshowe Magistrate's Court ('the Magistrate's Court') on 8 September 2016 that this application to shut me up and shut me down had been co-authorised by Vedalankar and Hundermark.

9. In a word, behind its glossy reports and contrary to former Deputy Justice Minister Andries Nel's sunny estimation published in Business Day on 12 January 2011, 'The world would be a better place if it were run by Legal Aid', I'll show that the country's biggest public law firm, generally perceived to be a paragon of good corporate governance and the jewel in the Department's crown, is profoundly corrupt.

10. LASA hopes with this application to smother or hinder my investigation and exposure of its corruption and lawlessness, and to maintain its ongoing criminal cover-up carried out by its highest officers, by restraining me from exercising:

    (a) my fundamental right to information held by the state, a crucial basic civil right in our open society since the end of apartheid, entrenched in the democratic era by section 32(1)(a) of the Bill of Rights contained in chapter 2 of the Constitution, and given effect by PAIA; and,

    (b) my fundamental right to have my several disputes with LASA arising from its failures and refusals to respect this fundamental right to information resolved by a court of law upon application of the provisions of PAIA – my recourse to law being a further basic civil right guaranteed by section 34 of the Bill of Rights and given effect in the context by section 78 of the Act, which provides for the grant by a court of law of 'appropriate relief' where

record requesters like me have been 'aggrieved by the decision of the information officer of a public body … to refuse a request for access'.

11. LASA seeks also to restrain me from exercising my said constitutional right to legal recourse by practically barring me from returning to the LC to have my labour dispute with LASA, i.e. my claim to my appointment to the top legal professional post for which I was duly recommended, retried on:

    (a) newly surfaced, potently relevant and cogent documentary evidence, long illegally suppressed by LASA, which I finally succeeded in clawing out of it in April 2016 at the point of an application to compel compliance with my PAIA request for it; and,

    (b) clear unequivocal evidence of multiple perjuries committed by LASA's single witness Nair at the trial of my labour claim in mid-2013, evidence I flushed out of LASA in November 2013 with a PAIA request made shortly after the trial, with more such evidence forced out of it under legal pressure in April 2016, as said.

12. In limine, I object that this application hasn't been duly authorised, as I'll show. It's therefore been brought unlawfully; isn't properly before this court; and falls to be dismissed for this reason alone.

13. In stating in the Magistrate's Court that Vedalankar and Hundermark had just authorised this application (one or the other was said to have been out of office), LASA's counsel claimed that LASA's Approval Framework required these two executives to approve legal expenditure of R350 000 or more, which sum he stated to be the anticipated cost of this application, and which therefore required this level of authorisation.

14. The Legal Aid Guide, 'ratified [by] both houses of Parliament', identifies the Board's Approval Framework as an internal regulation: 'The Board delegates authority to the CEO, the Management Exco, LSTC [i.e. Legal Services

Technical Committee], other committees and Officials through its Approval Framework.'

15. The Approval Framework is silent on the delegation of authority for litigation at a given anticipated cost, but it does govern increasing levels of litigation 'on behalf of the LAB' (i.e. the Legal Aid Board, LASA's previous name) according to the quantum of a claim.

16. Section 10.3.2 of the Approval Framework prescribes different levels of authority for 'Litigation on behalf of the LAB [LASA] itself' at different monetary scales. And that 'where the matter … (c) involves the prosecution … of a claim for … ≤R500 000':

    (a) 'E/CSE', which, decoded under 'Key to Levels' and 'Key', requires that the Corporate Services Executive (CSE), nowadays called the Legal Executive, i.e. Mtati, 'Originates' the litigation: code 'E'; and,

    (b) the 'COO/NOE' (Chief Operations Officer Makokoane or National Operations Executive Nair) is delegated by the Board to give his 'Final approval': code 'A'.

17. Presumably Mtati originated the litigation. If he had section 10.3 of the Approval Framework in mind, 'Litigation on behalf of the LAB', when waiting for Vedalankar or Hundermark to return to her or his office to co-sign the authority for this application, he's acted unlawfully in obtaining the authority of two management executives with no delegated power in the matter, and in failing to obtain the authority of the duly delegated authority.

18. Other than in committee with the rest of the Management Executive Committee, Hundermark has no power to approve anything at all under the Approval Framework, except in the emergencies enumerated in its Note 15:

    'Notwithstanding anything contained in this paragraph 10.3 the CEO, LDE [Legal Development Executive, now Chief Legal Executive, i.e.

Hundermark], or CSE are authorised to do whatever may be necessary to protect the Board [Legal Aid Board, LASA, to] prevent default judgment, avoid prescription or comply with any statute or Rule of Court pending any necessary decision by Board Exco [or, semble, the executive(s) delegated to approve].'

19. None of these provisional, interim defensive legal steps includes bringing an application to perpetuate a criminal and otherwise unlawful cover-up, and prevent or hinder a corruption investigation and exposé, by restraining someone from exercising his fundamental rights to information and to seek justice from the law courts when treated unlawfully. That's not the sort of 'necessary' defensive emergency thing 'to do' that Note 15 envisages and allows.

20. Since Vedalankar and Hundermark were legally incompetent to authorise this application, it's still-born. In light of their and Mtati's atrocious abuse of court in bringing this application, in all the circumstances discussed below, I submit that a special costs order against them is warranted in the terms stated at the end.

21. Although LASA's chief corporate attorney Mtati is the deponent to the founding affidavit, his affidavit is largely a vehicle for conveying falsehoods originated by other top LASA officers – exposed herein in light of LASA's records annexed, or, in the interests of concision, merely quoted where they're long and I don't anticipate any dispute about their briefly quoted contents (LASA has done the same, 'to avoid prolixity'). For the most part, therefore, I'll refer to LASA's affidavit rather than Mtati's, and will attribute allegations made in it to LASA rather than Mtati. By LASA in this context I mean its top officer(s) who anonymously originated the allegations and instructed Mtati and/or his Corporate Services attorneys and/or counsel (drafting/settling) to make them.

22. Just to be quite clear, I record that my use of inverted commas throughout this affidavit signifies quotation, never irony or derision. If what I'm quoting sounds clownish or cretinous, it's LASA talking not me; I'm not making it up.

23. What provoked this application was an application I'd made in the Magistrate's Court in July 2016 to enforce a settlement agreement LASA signed at court in February 2016, in terms of which it had:

    (a) *reversed* its repeated, persistent illegal refusals to grant me access to records that I'd duly requested under PAIA over the period 2013–15, or to duly certify under section 23 any that didn't exist;

    (b) *abandoned* its justifications for refusing me access – mainly that my requests were frivolous and vexatious under 'section 45 read with section 7' of PAIA – and abandoned its piles of idle, completely meritless defences to my applications to compel; and,

    (c) *finally undertook* to furnish me with all the records I'd requested or to duly certify any that don't exist, which is to say to respect my fundamental right to information and to stop hiding documents from me that I'm entitled to see as a matter of constitutional right, and which I've said I want to pass on to the several high authorities mentioned in my correspondence. Then didn't.

24. More specifically, I'll detail:

    (a) how my five applications in the Magistrate's Court to compel compliance with my PAIA requests over the said two-year period were persistently opposed with innumerable legally ignorant, vacuous defences, so as to continue frustrating my exercise of my fundamental right to information held by the state and to obstruct my access to the records I'd duly requested;

(b) how at court before the argument of my five applications to compel LASA's surrender of the documents I'd requested or certification of those that don't exist under section 23 of PAIA, LASA capitulated, abandoned all its useless defences, and agreed, after years of prevarication and delay, to finally surrender the documents I'd duly requested or where they don't exist duly certify this;

(c) how the settlement agreement specifically provided for a final follow-up PAIA request in the matter of Senior Litigator recruitment that I anticipated needing to make after auditing LASA's eventual responses in April 2016 to my PAIA requests made in 2013–15;

(d) how LASA reneged on its undertakings recorded in the settlement agreement by:

(i) making a desultory show of compliance with it;

(ii) continuing to refuse me access to duly requested records on patently spurious, unlawful grounds;

(iii) transparently falsely denying the existence of several indubitably extant records; and,

(iv) failing to certify non-existent requested records, either at all or in full and proper compliance with the detailed information requirements prescribed by section 23 of the Act, as it had expressly undertaken to do;

(e) how my first appeal for full and proper compliance with the agreement, in which, over many pages, I finely detailed all LASA's breaches, was rejected in a single sentence, and my second and third appeals just ignored;

(f) how I'd been constrained to return to court under the default clause of the settlement agreement to apply for a range of orders compelling LASA's full and proper compliance with its recorded undertakings, in which application I sought inter alia the referral of numerous precisely defined factual disputes, arising from LASA's inadequate and unsatisfactory performance under the settlement agreement, for determination on oral evidence;

(g) how my application to compel and achieve LASA's compliance with my PAIA requests made over the period 2013–15, which it had agreed at last to respond to, was indefensibly opposed, to further frustrate my access to the information to which I was constitutionally entitled and which LASA had formally undertaken on the public record to give me;

(h) how under increasing pressure of my return to court to compel full and proper compliance with the settlement agreement, LASA released further requested records in two batches;

(i) how to again block my access to the remaining outstanding information contemplated in the settlement agreement, LASA tried derailing my application to compel its compliance with its obligations with a demand, made out of time, that I pay security for the costs of my application, followed by an application made to court for an order staying my claim to the information it had undertaken to provide me until I'd paid it;

(j) how on appreciating from my heads of argument showing that its belated security claim was insupportable for the several reasons I contended, LASA didn't proceed with it on the date it was set down (the same date I was to move my application to compel full and proper compliance with the settlement agreement) and switched tactics, now scheming to avoid my claim to this relief, which is to say to avoid delivering all the records it had formally undertaken to hand over and to which I was constitutionally

entitled, and to avoid duly certifying those that don't exist – in short, to continue hiding information and avoiding complying with its constitutional information transparency obligations – by applying for and winning an adjournment for several weeks to apply to this court for an order knocking me out as a vexatious litigant;

(k) how LASA unlawfully refused to respond to the first part of my final PAIA request about its Senior Litigator posts – a final request specifically contemplated in the settlement agreement after all requested documents have been delivered or duly certified where they don't exist – thereby further contemptuously reneging on it; and,

(l) how LASA unlawfully refused to respond to another unrelated request for the records of all legal costs incurred in violating my fundamental right to information by indefensibly refusing my several PAIA requests made over the period 2013–15, and by indefensibly opposing my applications in the Magistrate's Court to compel compliance with them, on wholly spurious grounds, ultimately abandoned – 'fruitless and wasteful' expenditure prohibited by section 38(c)(ii) of the PFMA.

25. LASA's repeated and persistent PAIA delinquency since 2010 and the wanton contempt it's displayed for its constitutional information transparency obligations as a public entity, and its repeated and persistent false reporting to the SAHRC and to the Portfolio Committee to conceal this from the latter, so as to evade detection and accountability, and to frustrate and defeat the National Assembly's constitutional oversight responsibility over LASA, is described in a comprehensive specimen report I prepared and submitted in September 2016 to the chairperson of the SAHRC – outgoing, I then discovered, so again in December to his successor appointed with effect from January 2017 – updated with LASA's latest absolutely false PAIA compliance report in its annual performance report for 2015/16 – entitled:

'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 – A specimen report prepared by Adv AR Brink for the PAIA Unit of the South African Human Rights Commission to assist it perform its monitoring and intervention functions under section 83, and its reporting obligations to the National Assembly imposed by section 84, in regard to public body compliance with the Promotion of Access to Information Act'.

26. A copy of the updated report is annexed marked 'A'. My covering letters in September and December 2016 are annexed marked 'A2' and 'A3', and proof of post of both, 'A4'.

27. I request that this court read my report to the SAHRC as an integral part of this affidavit, because it's not merely a supporting document in the usual sense; rather, it's critically relevant background to fully appreciate the monstrosity and perversity of this application, in which LASA effectively seeks a restraining order to prevent me examining its public records, or obtaining proper sworn confirmation of specified records that don't exist, in the exercise of my constitutional right to do so – the standard last resort in a major, high-level cover-up.

28. Rather than reciting the contents of the report, I'll be referring to material paragraphs of it; and when I do, I respectfully entreat this court to pause to read them as part of the evidence I'm giving, before continuing to read my affidavit any further.

29. As in this answering affidavit, the extraordinarily serious allegations I make in my report, especially where they concern the stunningly dishonest,

impeachable misconduct of LASA Board chairperson Mlambo JP, are all true to the best of my knowledge and belief.

30. The report shows the utter cluelessness and refractory obduracy of LASA's top officers in regard to the organisation's constitutional information transparency obligations, and the dishonest manner in which they've persistently and repeatedly covered up their deliberate failures to comply with them, and concealed this from the National Assembly to evade being held to account for it.

31. I've not annexed all the papers in my original five applications to the Magistrate's Court to compel LASA's compliance with my PAIA requests over the period 2013–15, because they're very voluminous. More to the point, they're insufficiently material to put up, seeing as LASA conceded all my applications at court before argument. But I'll bring them to court for the hearing, or deliver copies to the registrar earlier if directed.

32. Instead of all these papers, I've put up my agenda for the pre-trial conference convened by the magistrate; because in a single document it handily traverses LASA's defences raised against my PAIA applications and comprehensively demolishes them – appreciating which LASA folded at court before argument, a couple of minutes into the conference.

33. For this court's convenience, I've bundled my agenda along with other relevant court processes and documents exchanged between LASA and me and filed at court, subsequent to LASA's concession of my five applications, and have annexed them marked 'B'–'B23':

    (a) My agenda for the pre-trial conference, 1 February 2016: 'B';
    (b) The settlement agreement signed at court, 11 February: 'B2';
    (c) My consolidated list of records requested in 2013–15, provided under clause 2 of the settlement agreement: 'B3';

(d) Mtati's delegation as deputy information officer, provided under clause 3 of the settlement agreement: 'B4';
(e) Mtati's response under clause 4 of the settlement agreement to my consolidated list of records requested, provided on 15 April: 'B5';
(f) Mtati's PAIA section 23 affidavit, 15 April: 'B6';
(g) Mtati's advice to me that his section 23 affidavit was defective, 19 April: 'B7';
(h) My notice to LASA of its breach of the settlement agreement, detailing all breaches, and demanding LASA's full and proper compliance with it, 29 April: 'B8';
(i) Mtati's repudiation of my notice of breach, 9 May: 'B9';
(j) Mtati's supplementary section 23 affidavit, 12 May: 'B10';
(k) My application to clerk of court for new date under the default clause of the settlement agreement, 27 May: 'B11';
(l) The court's allocation of a date for the hearing on 28 July: 'B12';
(m) My second notice of breach, 6 June: 'B13';
(n) My notice of set down for 28 July 2016: 'B14';
(o) My draft order prayed: 'B15';
(p) My schedule of issues and the witnesses to be cross-examined to determine them: 'B16';
(q) My table of witnesses, issues, and anticipated duration of the cross-examinations: 'B17';
(r) My third notice of breach, 14 July: 'B18';
(s) My notice of application and supporting affidavit to compel LASA's full and proper compliance with the settlement agreement, 21 July: 'B19';
(t) My amended draft order prayed (after further records supplied): 'B20';
(u) Mtati's answering affidavit (without its annexures including further records surrendered), 12 August: 'B21';
(v) My replying affidavit: 'B22'; and

(w) My second amended draft order (in light of LASA's answering affidavit and further requested records annexed to it): 'B23'.

34. Some of these documents bundled in annexure 'B' are already annexed to LASA's founding affidavit, but I trust this court will find my complete set of consecutive related documents presented together more convenient to deal with as a combined running series than scattered among the founding and answering affidavits. More especially because they're at the real centre of this case, and sparked it; and what LASA is essentially requiring of this court is that it review my current PAIA litigation against it, especially since its capitulation in February 2016 to my five applications to compel its compliance with my record requests made in 2013–15, in order to decide whether, like my own preceding application to this court launched on 10 October 2016, also to compel compliance with two subsequent PAIA requests, it's vexatious or not. This is the live, pending litigation LASA hopes to kill off. Hence my presentation to this court in one convenient bundle all material documents in the Magistrate's Court matter for perusal and evaluation.

35. The bundled documents are directly material to this application in showing LASA's:

(a) multiple failures to have fully and properly complied with its obligations to lawfully respond to my PAIA requests of 2013–15, as it undertook to do in the settlement agreement made in February 2016; and,

(b) express and tacit dismissals of my repeated pleas that it remedy its breaches – necessitating my return to court under the default clause to compel its compliance with its constitutional obligations that it conceded.

36. This court will readily see from the documents that:

(a) my pending application in the Magistrate's Court to compel LASA's full and proper compliance with the settlement agreement is well-founded;

(b) LASA is indeed in default of full and proper compliance with it in all the respects I've identified in fine detail; and,

(c) my application to enforce the settlement agreement isn't vexatious as LASA falsely claims, having regard to the definition of 'vexatious' by the Oxford English Dictionary: 'Of legal actions: Instituted without sufficient grounds for the purpose of causing trouble or annoyance to the defendant'; and that, in the consonant language of the VPA, I haven't 'persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court', without 'prima facie ground for the proceedings' in 'an abuse of the process of the court'.

37. Two things I should explain:

(a) I twice necessarily amended and reduced my draft order prayed in the Magistrate's Court after LASA twice delivered further documents in response to my return to court to compel full and proper compliance with the settlement agreement, and in light of its answering affidavit to which the second batch of documents were annexed.

(b) The spoon-feeding manner in which I presented my successive draft orders for the magistrate to consider is obviously unusual. Suffice it to say for present purposes that he apologetically confessed on his arrival at court on the first day that his knowledge of PAIA was rusty; and that this was apparent at the hearings.

38. The incidental advantage for this court of my unconventionally elaborated draft orders, however, particularly my final, second amended one, is that it will readily appreciate upon reading them, without recourse to any other papers, LASA's multiple persistent failures to have fully and properly complied with its finally acknowledged obligation recorded in February 2016 to lawfully respond to my PAIA requests made in 2013–15, nearly all illegally refused. (By

the latter rider I mean a trickle of documents were released before I sued, but the vast majority were refused, and none lawfully.)

39. That is, a perusal of my second amended draft order in particular and its schedule alone (annexures 'B23' and 'B16') will decisively put to bed LASA's false, dishonest, and malicious allegation that I'm litigating against it vexatiously in my bid to vindicate my constitutionally guaranteed right to information that it has repeatedly and persistently violated.

40. As said, what triggered LASA's application to this court was my application in the Magistrate's Court in July 2016 to compel its full and proper compliance with its agreement in February to lawfully comply with my PAIA requests made in 2013–15, just about all refused.

41. It was only when I returned to court to enforce the settlement agreement that LASA tried avoiding an order for full and proper compliance with it by all of a sudden characterising my necessarily renewed litigation as vexatious. It hadn't done so before, and its total capitulation to my five applications to compel its compliance with my PAIA requests made in 2013–15, after years of groundless opposition and delay, clearly and incontestably shows that my five applications were serious and well-founded and not frivolous and vexatious, and that LASA well appreciates this.

42. More precisely, the impetus for LASA's application to this court was the failure of its attempts to prevent me arguing and being granted the relief I sought, including a referral of the matter to oral evidence, to achieve full and proper compliance with my PAIA requests that it had finally agreed in February 2016 at court to lawfully respond to: by handing over all the documents I'd asked for or duly certifying those it didn't have.

43. To put a point on it: it was the alarming prospect of being ordered to submit to cross-examination under oath that moved LASA's national executives

Vedalankar, Hundermark and Mtati (named with others in my Table of Witnesses and Issues, annexure 'B17') to try stopping me in this court – instead of arguing before the magistrate through counsel that my application for a referral to oral evidence and the other orders I sought were bad for any reason. I'll state the indications for my surmise about this real motivation below.

44. When this application was launched, I indeed lived at the Eshowe address stated in paragraph 4 of the affidavit. I don't live or work at the different Pietermaritzburg address stated in LASA's notice of motion, nor did I choose it as a domicilium citandi et executandi. In compliance with rule 6(5)(b), I'd provided it as my local service address in my notice of motion in my own preceding application to this court (case 1118/16), issued and served three weeks earlier on 10 October 2016 for orders compelling LASA's compliance with two PAIA requests I made in August 2016 for access to certain specified records, which Mtati illegally refused totally in September. In the interests of expedition, however, I waive the point that LASA's application wasn't properly served on me under rule 4, and record my acceptance of service of the application at the wrong address.

45. Concerning my current professional occupation mentioned in paragraph 4 of LASA's affidavit, it's correct that I don't currently work a nine-to-five. A felicitous change in my situation has enabled me to again concentrate all my time and energy on pursuing my appointment to the post for which I was duly recommended, and on exposing the extensive, pervasive corruption, lawlessness and criminality I've encountered in LASA's highest ranks, to both of which ends my PAIA requests have been directed.

46. As LASA describes, I'm a seasoned lawyer, admitted to the Bar nearly thirty-four years ago in April 1983; and this accounts for why I was selected and recommended for its top legal professional post in this province. I've

extensive applied legal experience from both sides of bar and bench, and in the latter regard have a sterling record on appeal as an accurate arbiter of disputed fact. And a spotless professional ethical record. I'm keenly alive to the difference between truth and lies, facts and allegations, facts and surmises, and lies and mistakes. I mention all this because many of my allegations in this affidavit are extremely serious, more especially where they bear on the integrity of the judiciary. So I don't make them lightly, and never without supporting documents. In other words, I wouldn't fire unless sure of my mark, because I well appreciate that if I miss my shot the personal and professional repercussions for me will likely be calamitous.

47. Material to my defence in this case and to my repudiation of LASA's false charge that I'm litigating to compel its compliance with my PAIA requests without good grounds and only to be annoying, which is to say just for fun, LASA has omitted from the potted, incomplete career résumé that it's provided of me, its acknowledgment in the selection panel's report recommending me for the Pietermaritzburg Senior Litigator post that, besides my 'good grasp of law', I've also 'demonstrated [my] capability to undertake high level research' as 'a prolific writer/author with many commendations cited on [my] CV'.

48. True. The panel was referring to a long list of effusively positive reviews by senior scientists and leading investigative journalists around the world of deeply researched books I wrote (an encyclopaedic opus remains in the works), while at the Pietermaritzburg Bar, on the bench in the Eastern Cape, and then working fulltime in Cape Town as an independent researcher and writer for about seven years on European grant support from two successive funders, during which time I was frequently abroad in Europe and Russia on extended speaking/conference tours for many months at a time as an internationally recognised expert in my subject – my work translated into seven foreign languages, online at www.tig.org.za. The list, which I'd annexed to my CV, is annexed marked 'C'.

49. The relevance of this is that LASA itself recognises that I'm a diligent, thorough and meticulous researcher, and that when I turn to investigating a matter I consider important, especially when in the public interest, I do so with uncommon application and tenacity. I don't scare, and I'm not put off by chest-thumping by anyone, no matter how powerful they think they are.

50. Hence LASA's panicked attempt with this grotesque application to shut down my investigation, using requests under PAIA for access to specified records as my basic tool for this, of the pervasive, systemic administrative and ethical corruption at LASA, including criminal corruption, which I've already uncovered, and the wholesale breakdown of proper corporate governance and the rule of law within the organisation, all of which I'll be detailing and vouching herein.

51. I expect that records LASA is illegally withholding from me will reveal more of this, hence my persistence and determination to access them; because as veteran investigative journalist Andrew Jennings explained after exposing the massive corruption he found at the top of the football body FIFA, resulting in multiple arrests and criminal indictments: '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 Washington Post news report quoting him is annexed marked 'D'.

52. Ad paragraph 3 of the founding affidavit. Although LASA's national office is indeed at the Johannesburg address stated, the different address given in its notice of motion for service of my answering affidavit, namely its Justice Centre at 183 Church Street, Pietermaritzburg, is its principal place of business within this court's jurisdiction. LASA's description of its administrative head office as its 'principal place of business' is consequently misplaced and irrelevant.

53. So is its talk of a 'chosen domicilium citandi et executandi', for the reason that LASA's claim against me doesn't arise from any contract between us containing such a provision. Obviously this court's rules for service can't be and aren't usurped by such a stipulation in its Litigation Guidelines: an internal regulation governing the conduct by LASA's lawyers of legal proceedings for and against it, which incompetently purports to prescribe a 'chosen domicilium citandi et executandi' for actions and applications against LASA that litigants outside the organisation are bound to follow. Of course they aren't.

54. Ad paragraph 5.1. As I'll show, LASA's disparagement of my legitimate pursuit of access to its records in the exercise of my constitutional rights as 'vexatious and frivolous' is not only untrue, it's deliberately false, because LASA well appreciates my several extraordinarily serious purposes in requesting and suing for records illegally denied me. It knows my purposes because I've explicitly stated them: variously in covering correspondence; in explanatory/contextual notes beneath my descriptions of the records I've requested; and in my affidavits in my several applications to compel delivery of the records I've requested or sworn certification of any that don't exist. And LASA quotes several of my serious purposes in its affidavit.

55. Ad 5.2. None of my 'request[s] for information' made to LASA over the years have been 'frivolous', as dishonestly falsely alleged here, and LASA knows this full well, as its dealing with them shows. Concerning my PAIA requests:

    (a) made in 2010–11: LASA made no such allegation at the time, and none of my requests were refused on this basis. That is, LASA never raised section 45 of the Act, barring 'manifestly frivolous or vexatious' requests, as a justification for refusing any of my requests made in those two years. This shows that LASA well understood that my intentions in seeking access to the documents I'd requested were serious.

(b) made in 2013–15: After raising section 45 against me as a justification for refusing nearly all my record requests made in this period, and then persisting with this justification in its answering affidavits when I sued to compel in the Magistrate's Court, LASA reversed itself at court before argument in February 2016, abandoned this false and obviously insupportable justification advanced for refusing me access, and agreed at last to give me copies of all the records it had illegally refused or certify those that don't exist. In April 2016, LASA proceeded to deliver a batch of records under the settlement agreement, and then more in two further batches over the months when I returned to court to compel full and proper compliance with it. Had my PAIA requests made in this period truly been 'frivolous', LASA would had stood on section 45 as a justification for denying me access to the records I'd requested, and not (i) abandoned its claim that my record requests were 'manifestly frivolous or vexatious'; (ii) undertaken to surrender all requested records, or certify those it doesn't have; (iii) supplied some; and (iv) then supplied more under increasing pressure of renewed litigation. That is, LASA implicitly acknowledged that my record requests weren't 'frivolous', as it had previously falsely alleged to justify refusing my requests for the documents I specified, or sworn certification of those that don't exist, and that this false allegation was insupportable.

(c) made in 2016: That my two PAIA requests in August, refused in September, and litigated in this court in October (case 1118/16), aren't 'frivolous', and that contrariwise they're serious, is plain from the requests themselves and from my covering- and further correspondence annexed to my founding affidavit in my application to compel compliance with them. I respectfully request that this court read my application to see this for itself. It's opposed but unanswered, and LASA has told me it won't be.

56. The charge that I've been 'harassing and interfering with the duties and functions of Legal Aid SA, its officials and Board members by making frivolous requests for information and threats' is untrue. I've already refuted the false allegation that my PAIA requests have been 'frivolous'. The seriousness and bona fides of my stated purposes is beyond honest and intelligent contention.

57. LASA's appalling characterization of my duly made requests for access to its records, in the exercise of my constitutionally guaranteed right to sight of them, and my pleas that they be lawfully responded to, as harassment and interference epitomises the backward, authoritarian apartheid mentality of LASA's top 'officials', deprecated in the Preamble to PAIA: 'the secretive and unresponsive culture in public … bodies which often led to an abuse of power and human rights violations.'

58. LASA's false charge against me here reflects its persistent failure to understand and comport itself in step with the new culture of justification and transparency in our democracy, in which the state is required by the Constitution to conduct its business – in polar contradistinction to the culture of authority and opacity in doing official business during apartheid. How LASA has behaved in this regard over the past seven years, like a department of state in the olden days – corrupt, authoritarian, secretive, and contemptuous of basic rights – is stupefying. Annexure 'A' gives the full picture. This is a very sick organisation.

59. Besides filing PAIA requests with LASA's information- and deputy information officers, I've variously copied or separately written to its senior in-house executive attorneys Hundermark and Mtati; CFO Rebecca Hlabatau; Internal Audit Executives Avi Naidoo and Sethopo Mamotheti (then and now); Board Audit and Risk Subcommittee chairperson Nonhlanhla Mgadza; and Board secretary Langa Lethiba, trying to achieve compliance with my requests – all

to no avail. I detail most of this in paragraphs 191, 218–20, and 254–5 of my 'Special Report', annexure 'A'.

60. None of these appeals to these LASA officers can honestly be described as 'harassing and interfering with the duties and functions of Legal Aid SA' and 'its officials'. The charge is a perverse lie.

61. As for allegedly unlawfully hassling LASA's 'Board members', I five years ago quit appealing directly to the Board to see to LASA's management executives' compliance with my illegally refused PAIA requests, because, like the SABC's, it had also proved unconcerned and totally useless at performing its fiduciary obligation to ensure they observed the Constitution and the law in doing their jobs. I detail this in paragraphs 33–51; 55–61; 63; 65–72; 77–85; and 100–110 of annexure 'A'.

62. The reason nothing came of my repeated appeals to chairperson Mlambo JP and the Board in 2010 and 2011 became clear to me in April 2016, on sight of an unredacted record containing long-suppressed information finally surrendered that month at the point of an application to court to compel its surrender. (I'd been given a carefully blacked-out, censored version in 2011.) I deal with this below.

63. All my 'threats' have been to go to higher or other authorities, and/or take legal action, and all of them have been properly made. I've repeatedly stated my intentions to prosecute my corruption and criminal complaints, and I've already commenced doing so in some cases. In others, I've yet to – awaiting full information, and delayed by LASA's illegal refusal of records and compliant section 23 affidavits that I've duly requested and which I'm currently forcing out of it with applications to the Magistrate's Court and this court. To vouch this:

(a) I've already approached two provincial and national deputy directors of prosecution. My letters are annexed marked 'D1' and 'D2'.

(b) I long ago made a report by letter of Mlambo JP's capital misconduct as chairperson of LASA in my matter to the Judicial Service Commission ('JSC'). My letter is annexed marked 'D3' and its secretary's preliminary acknowledgment 'D4'. The JSC's final response (I've mislaid it) was to decline jurisdiction, which is plainly wrong having regard to Articles 5 and 6 of the Code of Judicial Conduct. I've yet to complete my draft affirmed complaint: it's very long and needs revision and division in light of subsequent discoveries I've made. But I expect to have completed and filed my complaints by the time this application comes to argument, in which event I'll have copies of my complaints with me in court to hand up if called for.

(c) My early complaint to the Public Service Commission ('PSC') about the corruption of Senior Litigator recruitment procedure, on the indications then within my knowledge – and, mentioned below, much more damning information has since come to hand – was referred to the Office of the Public Protector, which pended my complaint until the decision of my labour claim. (The judge then failed to address and decide the specifically pleaded issue.) Copies of the PSC's and Public Protector's letters to me about this are annexed marked 'D5' and 'D6'. Once I've forced out of LASA, by orders of court, made here and below, all the documents it's continuing to illegally suppress, I'll revisit, amplify and refile my complaint.

(d) I've filed numerous complaints both with the Public Protector and the SAHRC about LASA's false reporting under section 32 of PAIA and illegal refusal to comply with my PAIA requests. LASA refers to these in its affidavit.

(e) My 'Special Report', annexure 'A', evidences my latest attempt to get the SAHRC to rectify LASA's incorrigible PAIA delinquency, and describes my innumerable appeals since 2010 for its intervention and what it did and didn't do about them. (How the SAHRC allowed the problem to fester to its current gangrenous proportions is beyond the scope of this affidavit, and I've tactfully avoided it in the report.)

(f) The document bundle annexure 'B' evidences my return to the Magistrate's Court, as threatened, to compel LASA's compliance with its undertakings recorded in its February 2016 surrender treaty, conceding my five applications brought to compel its compliance with my PAIA requests made in 2013–15.

(g) I threatened to sue out of this court immediately should my August 2016 PAIA requests be refused, and when they were, promptly did so three weeks later, under case number 1118/16.

My 'threats' have all been lawful and are nothing for LASA to whinge about. And they are no good ground for banning me as a vexatious litigant.

64. Ad 5.3. It's untrue that I've published 'false and derogatory remarks and allegations against Legal Aid SA, its officials and Board members'. Everything I've written in my complaints, and in pursuit of my appointment and access to LASA's public records, has been on the record, for the record, for the true information of the authorities, the courts and the potentially interested parties I've approached; and all of it has been true to the best of my knowledge and belief in light of the available evidence.

65. On the other hand, LASA's false charge well describes its officers' ongoing 'false and derogatory remarks and allegations against' me ever since I began asking in April 2010 about the outcome of the interviews for the

Pietermaritzburg Senior Litigator post held in November 2009, five strangely silent months earlier.

66. LASA Board chairperson Dunstan Mlambo JP, CEO Vedalankar, the deponent Mtati, and other national management executives – some ghost-writing – have themselves made the most despicable 'false and derogatory remarks and allegations' about me in a sustained, lying, ad hominem vilification campaign calculated to discredit me personally and dishonestly put down my repeated pleas for intervention to remedy the lawlessness in LASA's top ranks, of which I'd fairly complained. I catalogued these 'false and derogatory remarks and allegations' made before trial in my heads of argument in the LC in support of a substantial damages claim. I annex a material excerpt marked 'D7'.

67. This lying defamation and denigration that I protested continued unabated, in fact redoubled in Mtati's affidavit opposing my petition for leave to appeal. A sample:

> 'The petitioner as is apparent from his founding affidavit is an advocate of the High Court of South Africa. The Petitioner is bound by the ethics and rules of the profession and the provisions of the Advocates Act. … When admitted as an advocate, you are deemed by the honourable court to be a fit and proper person to practise as such and to conduct your practice with the utmost integrity expected from counsel. … The Petitioner appears to be a person who does not seek to learn from the wrongs of his ways. His vulgarity which has pervaded the record knows no bounds and has now extended to the presiding Judge in this matter. The Respondent's senior counsel warned him that he was a self-promotional, self-centred person who was vertically delusional and who was prepared to malign and sunk people based on his own inferences [all sic]. … His baseless application, his persistence therewith, and his unprofessional and unethical use of language warranted punitive costs, and referral to the relevant

professional body to investigate his conduct arising from his conduct in this litigation.'

68. Reading which, if he did, the JP must have thought I was a complete professional reprobate and mental sicko.

69. Neither the LC nor the LAC agreed that such findings, referral order, and punitive costs order against me were 'warranted'. In fact the LAC made no costs order at all.

70. In an affidavit I made to support my notice of objection to Mtati's hearsay and shocking fundamental misrepresentations of LASA's own case at trial (if LASA disputes this, it can put up his affidavit, and mine enumerating them all), I complained of this continuing extreme ad hominem battery, insinuating, imputing, and charging grave unethical and unprofessional misconduct. But it continued in the Magistrate's Court, and again in this court.

71. By saying 'true to the best of my knowledge and belief in light of the available evidence', I'm alluding to potently relevant and cogent information LASA suppressed and concealed illegally from me between September 2010 and April 2016, of which I'd been unaware until I saw it contained in the complete unredacted recommendation report of the selection panel that interviewed me, finally disgorged when I sued for it and was about to argue for an order that it be surrendered, after it had been illegally refused yet again. Which newly emerged evidence has fundamentally changed my conclusion and belief as to the true most likely reason I wasn't appointed to the top professional post for which I was selected and recommended. I dilate on this in footnote 1 of annexure 'A', and will return to it below.

72. Besides this radical shift in my conclusion as to why my appointment was cancelled, nothing I've said to the high authorities, to the potentially interested

parties, and to the courts that I've approached has been 'false', and certainly not in the sense of deliberately untrue.

73. Nor has it been 'derogatory' in the objectionable and unjustifiable sense implied. To the contrary, I'll show that my extraordinarily serious charges against LASA's top officers, including criminal charges, are supported by documentary evidence already to hand.

74. And that besides lying to me, to the Minister, to the Portfolio Committee, to the SAHRC, and to the courts, one of LASA's top officers crowned this brazen mendacity and corruption by moving behind the scenes to pervert my petition to the JP of the LAC for leave to appeal the dismissal of my labour claim, by slipping him a note under the counter – it's unstamped by the registrar – insulting me in the same language used in the opposing affidavit; lying about the contents of my petition; and lying about the issues tried in my case, so as to improperly influence him to dismiss the petition, prematurely before all the papers were in. (LASA had applied for condonation for opposing my petition out of time, and I'd yet to answer it, still in time to do so, and busy drafting.) A copy of this note titled 'Memorandum' is annexed marked 'E'. The registrar's certification of an inventory of the petition file that I had drawn is annexed marked 'F'.

75. Unfortunately for LASA, but fortunately for me, this criminal Memorandum was inadvertently left in the petition file, where it remains to this day (certainly as recently as August 2016, when I had the file examined again), illustrating the level and the scale of the ethical depravity and criminal corruption in LASA's top ranks.

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.

77. Ad 5.4. LASA's claim for an order restraining me from prosecuting my pending applications in the Magistrate's Court and in this court – i.e. my applications to compel its compliance with my duly made record requests – until such time as I 'pay … outstanding costs orders against [me] in favour of Legal Aid SA and/or provide … security for costs' is bad for the following reasons:

78. First, concerning LASA's claim for an order that I pay the costs of my previous unrelated cases against it before being permitted to proceed with my PAIA claims in the Magistrate's Court and in this court, LASA has no general cause of action in our law for this. If I'm wrong about this as a legal principle, I point out that:

    (a) my claim in the LC to my instatement miscarried thanks to (i) LASA's illegal suppression of crucially relevant, pivotal evidence until long after the trial, leading me to found my claim on the wrong ground; and (ii) its single witness NOE Nair's extensive perjury at trial, which some of my PAIA requests are directed at exposing, and already have exposed; and,

    (b) my attempt in this court to interdict the taxation of LASA's bill of costs in my failed labour case – after discovering that (i) my petition for leave to appeal had been perverted through improper influence (via the Memorandum), and prematurely dismissed before all the papers were in; and (ii) there was no record in the court file to show that Davis and Sutherland JJA had ever considered and decided my petition – which interdict application failed (my attorney reported, and the order 'FA19' annexed to LASA's founding affidavit confirms) not on the merits, but for want of urgency in the court's opinion. That is, my application was not

found to be vexatious; it was held to be not urgent enough to need entertaining and deciding.

79. The failure of these two litigations in the circumstances doesn't qualify me as a vexatious litigant, as contemplated by section 2(1)(b) of the VPA, because:

(a) I haven't 'persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court', much less do I intend arguing my PAIA applications and later returning to the LC without a 'prima facie ground for the proceedings' in 'an abuse of the process of the court'; and,

(b) neither: (i) my labour claim, (ii) my application for leave to appeal, (iii) my petition for leave to appeal, or (iv) my interdict application were found to be vexatious. Neither the LC, nor the LAC, nor this court even suggested that I'd sued without a 'prima facie ground for the proceedings' in 'an abuse of the process of the court'.

80. What LASA neglects to mention is that it conceded my case in the Magistrate's Court for orders compelling its compliance with my PAIA requests, which obviously implies that all five of my applications were well-founded, and that its defences were unsustainable, as my agenda for the pre-trial conference shows.

81. In short, it was LASA's opposition to my applications, and to a condonation application after delivery to the sheriff of one application was delayed by Post Office inefficiency, that lacked any 'prima facie ground'; and its 'proceedings' against me in the form of several lever-arch files of answering affidavits were solely for the purpose of delay, a classic vexatious 'abuse of the process of the court'.

82. Second, as to LASA's alternative claims for the payment of security: Concerning:

(a) my five applications to the Magistrate's Court brought under section 78 of PAIA to compel LASA's compliance with several illegally refused requests for access to records I made in 2013–15, which applications to court LASA conceded at court in February 2016 when it abandoned its defences and its justifications for refusing me access, reversed its refusals, and recorded its agreement to grant all my record requests; and/or,

(b) my application to the same court in July 2016 under the default clause of the settlement agreement to compel LASA's full and proper compliance with its undertakings recorded in the settlement agreement to comply with my PAIA requests at last,

LASA already has a pending application to court for the payment of security, still to be determined, which it brought under rule 62(3) of the Rules of the Magistrates Courts. (LASA confirms this in its founding affidavit.)

83. So whether I should be prevented from holding LASA to its agreement to (a) grant me access to all the records I requested in 2013–15, or (b) to duly certify any records that don't exist, until such time as I've given security, is a live issue in the Magistrate's Court, and LASA is consequently barred by the lis alibi pendens rule from applying again to this different court for the same relief.

84. Concerning my application to this court under case number 1118/10, issued and served on 10 October 2016, LASA's claim for security is irregular and incompetent for non-compliance with this court's rules. These provide:

- Rule 47(1): 'A party entitled and desiring to demand security for costs from another shall, as soon as practicable after the commencement of proceedings, deliver a notice setting forth the grounds upon which such security is claimed, and the amount demanded.'

- Rule 47(3): 'If the party from whom security is demanded contests his liability to give security or if he fails or refuses to furnish security in the amount demanded … the other party may apply to court on notice for an order that such security be given and that the proceedings be stayed until such order be complied with.'

85. I've received no notice under rule 47(1), so LASA's application to this court that I be ordered to pay security for the costs of case 1118/16 is premature and a non-starter, and LASA is out of court.

86. What's more, as this court will appreciate upon reading it, my application (case 1118/16) is unanswerable, at least for the main relief I claim. I believe this is the real reason for LASA's announcement to me on 12 December 2016 that it will not be answering my application – also because I surmise Mtati fears attracting a personal costs order de bonis propriis, as prayed, should my application be indefensibly opposed with another answering affidavit full of legal garbage like those filed in the Magistrate's Court (and picked to pieces in my agenda, annexure 'B'), before LASA eventually dropped them into the trash. LASA is evidently gambling all on knocking me out with the instant application.

87. There's no reason I should put up security for an application to which LASA has no answer: a perfect, bona fide, unanswerable, unanswered claim to vindicate my constitutional right to information held by an organ of state – the costs of which, I wouldn't be liable for anyway, even were I to lose for some unforeseeable reason, having regard to the Biowatch rule.

88. Besides these basic, insuperable obstacles to LASA's application to this court for security, I'll show that in all the circumstances of this case – the quite exceptional, extreme circumstances detailed in this affidavit – it would be inequitable and contrary to the public interest were this court to bar me from enforcing my fundamental right to information and exercising my fundamental

right to approach courts of law for the resolution of my several disputes with LASA merely because my struggle for justice since 2010 has impoverished me. The public interest demands a full and open airing of my extremely serious charges against LASA's top officers, including Board chairperson Mlambo JP, and of their answers to them.

89. Ad 6. My non-appointment to the said post for which I was duly selected and recommended in November 2009 was certainly the start of it all. And my retroactive appointment to it will obviously end all my litigation. The whole thing can be quite simply resolved. But as with Shakespeare's Macbeth, it seems to me that the rogue LASA officers opposed to me feel they're now so deep in the blood that it makes no difference whether they turn back or carry on.

90. Ad 6.1. Correct. I'm now quite satisfied that my claim in the LC was rightly dismissed – albeit for the wrong reasons summarised in my petition for leave to appeal – inasmuch as I now believe in light of recently surfaced evidence, long sedulously concealed from me, that my claim was founded on the wrong grounds. My petition is annexed marked 'G'. (Evidently agreeing that the contents of my petition are relevant to its application, LASA quotes from it extensively, but only the bits that it thinks suit it.)

91. Indeed I'm still pursuing my appointment to the still budgeted, still funded, still vacant top professional post for which I was duly recommended unanimously in November 2009; and once I have all the records I've requested and LASA's proper certification of those that don't exist, I intend applying to the LC for an order setting aside its dismissal of my claim on the grounds that it was achieved by perjury, which is to say by fraud on the court, more evidence of which I got out of LASA after the trial; and that new evidence finally forced out of LASA in April 2016 supports a prima facie complaint that my appointment was blocked on account of cronyism by Board chairperson

Mlambo JP in favour of his former long-time judicial colleague in the Labour Court, Ngcamu AJ (as he used to be for six-and-a-half years), my rival for the post for which I was recommended. The compelling indications are set out below.

92. I'll accordingly be seeking the substitution of the dismissal order with an order for absolution from the instance, allowing me to return to court on fresh pleadings for an order instating me to the post, retroactive to 1 January 2010, the earliest date on which I said I was available to begin should I be recommended, when the selection panel enquired about this.

93. This is no ground for banning me as a vexatious litigant, as contemplated by section 2(1)(b) of the VPA. I've never 'persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court', nor will I be returning to the LC without a 'prima facie ground for the proceedings' in 'an abuse of the process of the court', as the section puts it. I'm confident that the LC will find on all the new evidence come to hand via PAIA, considered with old evidence suddenly hugely significant in light of it, that I was probably the victim of cronyism, as I'll be complaining.

94. Ad 6.2. LASA's false allegation that I'm 'persistently flooding Legal Aid SA with requests for records and information under PAIA and that [my] behaviour [in requesting access to LASA's public records since August 2010] amounts to an abuse of the provisions of PAIA', is refuted by the facts that:

    (a) In April 2011, under renewed SAHRC pressure to comply with them, LASA substantially* reversed its repeated illegal refusals of my PAIA requests made in August and December 2010; dealt with a further PAIA request made in March; and finally supplied a long overdue section 23 affidavit certifying non-existent records requested – such as the records of the decisions allegedly taken to delay and then freeze recruitment to LASA's three remaining Senior Litigator posts at Pietermaritzburg, Durban and

Mthatha, as had been alleged to me. (As I expected, LASA confirmed that no such records exist.) LASA didn't at the time suggest to me or to the SAHRC that my PAIA requests in 2010 and 2011 were 'an abuse of the provisions of PAIA' and accordingly never raised section 45 against me. (*Apropos of records that LASA continued illegally refusing, the SAHRC agreed with me in June 2011: 'A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer is made in your memorandum', complaining of this. This is detailed in paragraphs 103–4 of annexure 'A'. My 'memorandum' is my second to the SAHRC, annexed to LASA's founding affidavit, marked 'FA9'. In the bundle served on me, the pages are out of order.)

(b) On 11 February 2016 in the Magistrate's Court, LASA:

(i) abandoned its main repeated false justification, and others, advanced for refusing my PAIA requests made in 2013–15, namely that they were 'frivolous and vexatious' and therefore hit by section 45 of the Act (per annexure 'B2', clauses 2 and 4);

(ii) reversed its illegal refusal to allow me access to all the records I'd requested, and agreed to supply me with copies or to duly certify under section 23 any that don't exist (annexure 'B2', clause 4) – or where any record belongs to a third party show his attitude to the release of the record (this useless, factually and legally irrelevant clause, with no basis in PAIA, was formulated by LASA and added to the typed settlement agreement in manuscript: annexure 'B2', clause 9); and,

(iii) agreed to respond to a final request for records that I anticipated making in respect of LASA's Senior Litigator posts after delivery of the records I'd requested (annexure 'B2', clause 7).

95. If my PAIA requests had been 'an abuse of the provisions of PAIA', LASA wouldn't have conceded them.

96. Certainly some of my PAIA requests have been extensive and searching. But in many cases I specified records I'm confident don't exist, to force sworn confirmation of this for use in perjury prosecutions, because had the truth been told there'd be supporting records. That is, my lists of specified records have been practically much shorter than they look. But the length of some of my PAIA requests is anyway no lawful cause for complaint because:

    (a) whenever asked, I've always agreed under section 26 to an extension of time to respond; and in one case volunteered twice the normal time because my request was long. Sixty days, the prescribed extended maximum, has always been ample to respond. And,

    (b) section 22 provides for the levying of search fees where searching for and preparing records for delivery is likely to take 'more than the hours prescribed'.

97. So it's incompetent and irrelevant to insinuate that my PAIA requests have specified lots of records (the numbers appear later in LASA's affidavit). As I was perfectly entitled to do, I used PAIA to conduct a thorough interrogation of the lies its officers told me to cover the true reason my appointment was cancelled.

98. LASA's false and deprecatory mischaracterisation of my several PAIA requests duly made since 2010:

    (a) illegally refused then partially granted under renewed SAHRC pressure in April 2011 (described in paragraphs 92–6 of annexure 'A'); and,

    (b) illegally refused then entirely granted, at least in principle, under pressure of litigation to compel in February 2016 (as appears from the settlement agreement, annexure 'B2'),

is no good ground for banning me as a vexatious litigant.

99. To the extent that LASA implies that my PAIA requests since 2010 have been 'manifestly frivolous or vexatious' within the meaning of section 45, its false insinuation is refuted by its own conduct in ultimately conceding all my requests* – besides my most recent August 2016 requests – as described above. (*Refused documents that I'd requested under PAIA were eventually disgorged through demands for pre-trial document discovery, and after judgment through repeated PAIA requests.)

100. LASA's repeated history of eventually complying with my PAIA requests either under SAHRC pressure or legal action predicts that it will eventually concede my August 2016 PAIA requests on the steps of this court as well.

101. Ad 6.3. Correct, except that rather than 'resuscitat[ing]' my applications, which indeed 'settled' when LASA capitulated to all my claims to access to the requested records it had illegally refused me, or to a duly made section 23 affidavit certifying those that don't exist, I applied to compel full and proper compliance with the settlement agreement by seeking a range of orders intended to achieve my access to the records LASA had agreed to give me and the delivery of a compliant section 23 affidavit concerning those it doesn't have.

102. LASA indeed 'did not comply with the provisions of the settlement agreement', just as I'm 'complaining' and the document bundle annexure 'B' bears out. Contrary to the false implication otherwise, my application to compel full and proper compliance with the agreement was quite in order.

103. None of this is any ground for banning me as a vexatious litigant.

104. Ad 6.4. The trial judge's misconduct in my labour claim is detailed in paragraph 47 of annexure 'G'. The misconduct of the JP of the LAC, in prematurely dismissing my petition, on the basis of the lying attack on me and my petition in the Memorandum, is described in my application to this court to

interdict the taxation of LASA's costs of my labour case. As said, there's no record in the court file that the other appeal judges named in the order issued by the registrar in Johannesburg ever considered and decided my petition, which suggests the JP acted on his own, improperly influenced by the Memorandum. The misconduct of Mlambo JP as LASA Board chairperson is described inter alia in pleadings and affidavits I filed in my labour case, and in paragraphs 33–51; 55–61; 63; 65–72; 77–85; and 100–110 of annexure 'A'.

105. My proper, well-founded, exceptionally serious complaints about this are no ground for banning me as a vexatious litigant.

106. Ad 6.5. I've certainly identified the corruption, lawlessness and dishonesty, including criminal dishonesty, that I've encountered at LASA in uncompromising, mordant language. It's been entirely appropriate and I stand by it. I see no need for euphemisms when describing and identifying corruption, lawlessness, lies and liars. (Shakespeare explained my sometimes exasperated, cutting tone: 'The dullness of the fool is the whetstone of the wit.') If any of my sharply-worded allegations in my affidavits were legally objectionable, LASA could have applied to strike them out. It didn't, because they weren't.

107. I've indeed set up a case document repository online for easy access to these public records by interested parties to whom I've referred them, nearly all of whom have been official. There's nothing improper about this, much less is it legally objectionable. LASA's lawyers seem unaware that litigation is conducted openly in our country, and that court records are public documents accessible to anyone interested in reading them.

108. None of this is any ground to ban me as a vexatious litigant.

109. Ad 6.6. This bleating is both inaccurate and pointless. The 'all and sundry' have been legitimately interested parties such as the Minister, the Portfolio

Committee, the SAHRC, the Public Protector, and information transparency NGOs, both here and abroad, whom I've approached, some of whom have responded with interest:

(a) The Africa Freedom of Information Centre in Kampala, Uganda, forwarded my communication to its executive members on 27 July 2016, one of whom, Professor Colin Darch of the University of Cape Town, replied with an offer of support. His observation in his address (it's online), '"A Less than Fertile Environment": Promoting Access to Information in South Africa' delivered at a conference in New Delhi in April 2010, predicted precisely LASA's behaviour in (i) capitulating in the Magistrate's Court before argument in February 2016, a few minutes into the pre-trial conference, as it faced an inevitable judgment against it before the end of the day, and then (ii) refusing my August 2016 PAIA requests on the very grounds it had abandoned in the Magistrate's Court, forcing me to sue again (this court's case 1118/16):

> 'However, the state has lost every PAIA case that has gone as far as a judgement in the High Court … A common government strategy has been to abandon cases by settling out of court just before judgement is handed down (see Paper Wars) … to avoid setting precedents and thus forcing requesters to fight each case through the courts again.'

(b) Transparency International in Berlin, Germany, informed me on 10 August that it had alerted Corruption Watch in Johannesburg to LASA's ongoing illegal refusal to open its books, and to its repeated false reporting to conceal this from the National Assembly.

(c) The Deputy Minister acknowledged receipt of a copy of my report to the SAHRC on 25 October.

(d) The director of the Freedom of Information Programme of the South African History Archive, Toerien van Wyk, did the same on 3 November, asking me for a copy of my founding papers in my recently launched PAIA application against LASA in this court (1118/16), which I also sent her.

(e) The secretary and deputy information officer in the Office of the Chief Justice, Sello Chiloane, asked for the same application papers during his phone call to me on 14 November, and I likewise obliged.

(f) Senior investigator Nditsheni Raedani in the Public Protector's national office phoned me on 17 November about my trouble achieving LASA's compliance with PAIA in recent years and about the Public Protector's KZN office's failure to take up my complaint about it, and told me he's pursuing the latter matter as an instance of service delivery failure, notwithstanding that my PAIA requests have since proceeded to litigation; and as I undertook to do, I provided him with all relevant documents by hyper-linking them to an online index and emailing him the URL and access codes: goo.gl/L5ToQa; username: lasa; password: LASA2010.

110. If LASA has been 'embarrass[ed]' by this, good; so it should be. But its allegation that I've tried to 'harass and coerce Legal Aid SA to appoint' me falsely depicts as unlawful my endeavours to win my appointment to the post for which I was unanimously recommended and my pursuit of access to LASA's records. LASA is foul of the law not me.

111. Since:

(a) LASA's Board has proved useless at performing its oversight role in ensuring that LASA's executives obey the law in conducting LASA's business and duly comply with requests for access to LASA's records made under PAIA; and,

(b) Board chairperson Mlambo JP has repeatedly connived actively in illegally refusing them and covering this up (detailed in paragraphs 33–51; 55–61; 63; 65–72; 77–85; and 100–110 of annexure 'A'),

I've necessarily looked wide of the Board about this and taken my complaints to higher and other authorities, and to likely interested and potentially influential information transparency organisations.

112. My calling attention to LASA's persistent, repeated illegal flouting of its constitutional information transparency obligations since 2010 and concealment of this via false reporting year after year, and my appeals for support in the difficulty I've encountered in accessing LASA's public records, illegally refused me, is further described in annexure 'A'.

113. My conduct in this regard has been irreproachable and is no ground for banning me as a vexatious litigant.

114. Ad 6.7. Despite the repeated lessons I've given LASA and its impenetrably dense and incompetent national office attorneys over the years in my correspondence and in my affidavits in the Magistrate's Court, trying in vain to teach them that:

(a) the only grounds for refusing a public record requested under PAIA are those contained in sections 34 to 45 in Part 4 of Chapter 2 of the Act; and,

(b) the fact that a requested record relates to pending or past litigation is not among these grounds,

LASA persists in ignorantly and irrelevantly complaining that I made PAIA requests for records relating to my labour claim after the trial, before and after judgment.

115. In fact I was perfectly entitled under PAIA to make these requests, and LASA implicitly acknowledged this in:

(a) conceding at court my claims to such records about Senior Litigator posts, in February 2016;

(b) recording its undertaking in the settlement agreement to respond to a further final request that I envisaged, relating to its Senior Litigator posts; and,

(c) supplying me with some records relating to its Senior Litigator posts that I'd requested in 2013–15 and delivering two half-baked, non-compliant section 23 affidavits about them.

116. On 8 September 2016, the magistrate pointed out on the record that LASA's section 23 affidavits were defective, just as I'd complained; and its junior counsel (with Mtati sitting behind him) didn't dispute it, and undertook to see to it that they were fixed. Predictably, reneging on its undertaking to the magistrate, they weren't; instead, LASA came over to this court hoping to avoid doing so.

117. The fact that after the trial of my labour claim, both before and after judgment was delivered, I very properly requested access to records under PAIA relating to issues in my labour case – many of my requests directed at testing the veracity of several novel, unexpected allegations Nair made in evidence, contradicting LASA's correspondence, pleadings and affidavits – is no ground for banning me as a vexatious litigant.

118. The point seems arguable, but when I return to the LC with an application for rescission of judgment and the other orders mentioned above, I may need the court's leave under section 7(2) of PAIA to present in evidence the records I obtained from LASA, using PAIA after trial.

119. Ad 6.8. These are indeed my stated intentions, and as annexures 'D1' and 'D2' vouch, I'm actively preparing to implement them.

120. These stated intentions are no ground for banning me as a vexatious litigant.

121. Ad 6.9. This is absolutely false:

(a) I've repeatedly complained to the Public Protector regarding LASA's illegal refusal to comply with PAIA and its false reporting to conceal this;

(b) I've complained to the PSC regarding the corruption of Senior Litigator recruitment procedure, which complaint was referred to the Public Protector;

(c) I've reported to the JSC Mlambo JP's perversion of the Minister's and Portfolio Committee's separate enquiries into my complaints about LASA's illegal abortion of my appointment and repeated illegal refusals to comply with my PAIA requests probing it.

122. Once I have the records I've requested, I'll be proceeding to act on full information and file all my threatened complaints, in some cases revised and amplified, with all the authorities LASA mentions.

123. LASA well knows, because I've repeatedly demonstrated in the past, that everything I've said I'll do I've gone on to do – save that in 2011, rather than making a threatened application to court under section 78 of PAIA to compel the delivery of illegally withheld documents, I elected to disgorge them via pre-trial document discovery procedure in my labour case instead. And when obstructed both at and after the first pre-trial conference, I determinedly pursued them, by bringing an application to compel discovery and obtaining judicial orders for the convention of not one but two extra pre-trial conferences at court under judicial supervision to force out of LASA documents I needed for trial. The second extra conference ('the third pre-trial conference') was necessitated by LASA's failure to deliver on its minuted undertakings to discover, given at the first ('the second pre-trial conference').

124. Most recently I stated on the record in the Magistrate's Court on 8 September 2016 that if my August 2016 requests were illegally refused, I'd immediately

sue out of this court to compel compliance with them; and when Mtati refused them on 26 September, my application was drawn, issued and served on 10 October, three weeks later.

125. I mention all this to show that I'm neither bluffing nor wasting my and LASA's time, and to underscore my adamantine resolve that every lie told, every act of corruption, and every breach of law by LASA's top officers that I've uncovered will be catalogued with supporting documents for referral to the relevant authorities for prosecution – once I have all the records I've duly requested, or proper sworn certification of any that don't exist (which would exist had the truth been told). I'm working on this virtually full-time – slowed down tremendously by LASA's refusals to open its books; dishonoured undertakings to do so; and all the immensely time and energy consuming litigation I've been forced into to try to achieve its cooperation in complying with its constitutional information transparency obligations. And now my defence against this foul application. (LASA's reluctance since 2010 to show me its records on request, and confirm in some cases that it doesn't have any, is quite understandable; it's like asking a man to hand over the rope for his own hanging.)

126. As said, my detailed complaint about recruitment corruption at LASA, originally submitted to the PSC was forwarded to the Office of the Public Protector.

127. Unfortunately, despite my having specifically pleaded the corruption of Senior Litigator recruitment procedure as an issue for determination by the trial judge; despite my pointed evidence about it with reference to LASA's internal regulations placed before court in my trial document bundles; and despite my extensive treatment of the matter both in my heads of argument and in oral argument, the judge neglected to address in his judgment, given well over a year after trial, the clear case I'd made that on LASA's own showing Senior

Litigator recruitment at LASA is procedurally corrupt. I'll be detailing how and why below.

128. The matter of Senior Litigator recruitment procedure corruption therefore remains live for resolution by the Public Protector, and I intend pursuing it with her office once I have the further documents I've requested. Which LASA is straining to keep from me, as this desperate application shows.

129. I'll prove that not only is Senior Litigator recruitment at LASA procedurally corrupt, it's also been ethically corrupt in at least two other cases besides mine that I've become aware of. I'll further detail other instances of recruitment and promotion corruption I've discovered, both procedural and ethical.

130. Records that LASA continues illegally withholding from me, despite having agreed in February 2016 to hand them over, are likely to provide further instances of recruitment corruption at LASA; and this is why I'm holding out for them, before returning to the Public Protector. (The more determinedly LASA hides it, the more resolute I am to dig the treasure out.)

131. My complaint to the SAHRC in the form of a specimen report detailing LASA's habitual PAIA delinquency since 2010 (annexure 'A') was submitted in September and again in December 2016, as vouched by annexures 'A2' to 'A4'.

132. I'll certainly be reporting LASA's multiple contraventions of the PFMA to the Auditor General ('AG') once I have all the records I've requested that LASA is illegally suppressing; and to this end I've already established the identities of (a) the Senior Manager responsible for LASA at the AG's national office, and (b) the director of the AG's external auditor, PWC, handling the LASA account.

133. I've an extensive complaint to the JSC, vouched by supporting annexures, in an advanced state of preparation, but it needs further work in light of new information come to hand, and I've decided to break it up into separate complaints. My draft complaint has necessarily been on the backburner while

I've been occupied with my PAIA claims. I've also restacked my priorities for the further reason that, as is generally known, the JSC appears practically unable to prosecute and finalise complaints against judges, from the most uncomplicated (Motala J) to the most difficult (Hlophe JP). Frankly, the outcome of a disciplinary enquiry in about ten years time, if ever, is of no practical value to me.

134. Adv Nair's and attorney Mtati's multiple perjuries will indeed be reported to the General Council of the Bar and to the Law Society for the Northern Provinces respectively for the institution of professional strike-off applications against them, and I'll move on this once I have all the information I've duly requested, including section 23 affidavits in due form, unequivocally confirming more of Nair's perjuries committed in the witness stand during the trial of my labour case.

135. Besides lying to the SAHRC in LASA's PAIA section 32 report for 2010/11 that he signed for the ultimate criminal misinformation of the National Assembly ('No decision taken yet on who should be appointed but the decision to freeze the [Pietermaritzburg Senior Litigator] post due to change in business-needs budget'), LASA Corporate Legal Manager Solly Sekgota has also perjured himself by colluding in the concealment of documents that I requested be discovered for use at the trial of my labour case. I detail his perjury in the note to item H6 of annexure 'B3'; and I intend having Sekgota prosecuted and struck off for this too.

136. Sekgota also lied to the judge, to his face, when the third pre-trial conference was called at my request in June 2013 to disgorge documents LASA had undertaken to discover but was persistently withholding, and a couple more I'd requested. Sekgota told him: 'My Lord, I submit we have fully discovered.'

137. When the judge pointed out that my agenda for the third conference identified numerous outstanding records that LASA hadn't discovered, Sekgota

retreated; the conference proceeded; and LASA agreed to release further records, most of which were then surrendered on the eve of trial.

138. Sekgota may answer that he didn't deliberately try misleading the judge, like his colleagues who habitually tell any lie that sound good. His excuse to the Law Society may be that he was too lazy to read my long list of outstanding records in my agenda; found it too complicated to understand; had trouble with his eyesight; had language comprehension problems; or is just utterly incompetent.

139. My repeatedly stated serious intentions here are no ground for banning me as a vexatious litigant.

140. Ad 6.10. Correct, I don't have it. My indefatigable pursuit of justice in my case and my investigation of the criminal corruption in LASA's leadership over the past seven years have financially exhausted me.

141. This is no ground for banning me as a vexatious litigant.

142. Nor is it a ground for ordering me to pay this sum, which LASA knows I don't have, before being allowed to proceed with my unanswerable PAIA applications to this court and to the Magistrate's Court, and to return to the LC with a rescission application.

143. Nor is it a ground for ordering me to pay security for LASA's costs of opposing my applications to enforce my PAIA claims, more especially since:

(a) LASA hasn't complied with this court's rules regarding the provision of security for its costs in my case in this court; and,

(b) it has a pending claim for security in the Magistrate's Court in relation to my application to compel its full and proper compliance with its constitutional obligations conceded in February 2016 to comply at last with my PAIA requests duly made in the period 2013–15.

144. Ad 6.11. I quite agree now that my unfair discrimination claim in the LC was 'unmeritorious'. In light of evidence finally extracted from LASA in April 2016, illegally and deceptively concealed from me since September 2010, I'm now sure that the much more likely reason I wasn't appointed was jobs-for-pals – at least that was the plan, until my unexpected knocking, then banging on the door upset it, and I forced LASA to abandon its silence, then stonewalling strategies to put me off, and forced it to account, whereupon it took the big step into lying about why my appointment had been aborted. With things moving criminally south from that moment on.

145. It's characteristically dishonestly misleading to smugly describe my 'application for a position at Legal Aid SA' as 'failed' when the selection panel's recommendation report shows that my application succeeded.

146. Not expecting me to find out about it, one of LASA's head office liars told the SAHRC the same lie. A PAIA request I addressed to the SAHRC itself turned up a telephone note recording this unidentified liar's lies to it (irrelevant to my PAIA complaints, but calculated to make them look a waste of time) that I'd:

> applied to LASA (Legal Aid) for snr advisory position. 2 were available. One candidate got the Durban post and somehow he [Brink] was of the impression he had gotten the Pietermaritzburg post. … Adv Brink received a letter not explaining why he was rejected.

147. Only, I wasn't 'rejected'. My 'impression' that I'd 'gotten the Pietermaritzburg post' was correct. I did indeed get it. I 'was of the impression [I'd] gotten the Pietermaritzburg post' from how well the interview went, the visible enthusiasm of three of my interviewers, and the panel's enquiry as to how soon I could begin; an early intimation from a panel member; Clark's back-handed confirmation that I'd been selected; and Vedalankar's claim in October that I'd been 'recommended together with other candidates' – before dropping this lie in January 2011 and positively confirming that the selection panel had

recommended me for the post and no one else. The SAHRC's file memo, recording the lies someone at LASA told it, is annexed marked 'H'.

148. In its section 32 report for 2010/11 signed by Sekgota, annexed marked 'J', LASA again felt the guilty need to explain the unlawful abortion of my recruitment to the SAHRC (even if this was irrelevant to the prescribed contents of the report, which were furthermore false: see annexure 'A', paragraph 97; cf. 98), and in so doing told the SAHRC yet another, different new lie:

> 'No decision taken yet on who should be appointed but the decision to freeze the [Pietermaritzburg Senior Litigator] post due to change in business-needs budget.'

149. Tested with PAIA, I found, as expected, that no record exists to support the new claim that there'd been a 'change in business-needs budget' leading to the 'decision to freeze the [Pietermaritzburg Senior Litigator] post'. LASA's nine Senior Litigator posts, three vacant, have always been and remain budgeted and funded posts. Which means LASA again lied to the SAHRC about this.

150. But the unguarded statement, 'No decision taken yet on who should be appointed', inadvertently revealed that LASA was contemplating appointing a rejected candidate instead of me: in every likelihood Mlambo JP's professional colleague of many years, Ngcamu AJ (as he used to be), who very significantly:

(a) wasn't 'informed', as required by section 1.5.1 of LASA's Policies and Procedures on Recruitment, Induction, Probation and Relocation ('Recruitment code'), that he'd been 'unsuccessful'; and more significantly still,

(b) didn't, like the rest of the interviewed candidates, both successful and unsuccessful, get a letter in August 2010 (after I'd asked Vedalankar in July to finalise my appointment) sent on Nair's instructions by the KZN

Regional Operations Executive ('ROE'), telling us 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.'

151. Only, we weren't 'inform[ed] of the outcome of the interview process.' Three of us, but not Mlambo JP's judicial friend Ngcamu AJ (as he used to be), were told only that the recruitment had been cancelled, without telling us who'd been selected, i.e. 'the outcome of the selection process'. I had to very arduously dig that fact out of LASA, which only disclosed it reluctantly much later, with the SAHRC breathing down its neck, after I'd called it in a second time.

152. The fact that in retrospect, having regard to further evidence recently surfaced, my unfair discrimination claim in the LC was 'unmeritorious' because it was wrongly founded due to LASA's illegal suppression of pivotal evidence is no ground for banning me as a vexatious litigant.

153. Ad 6.12. This is empty disparagement. Pending in the Magistrate's Court, and ripe for argument, I've an application to compel LASA's full and proper compliance with its obligations undertaken and recorded in the February settlement agreement to comply with all my PAIA requests made in 2013–15; and I've a pending application in this court to compel LASA's compliance with two PAIA requests I made in August 2016: the one request concerning Senior Litigator recruitment being expressly contemplated in the settlement agreement, and the other being for cost vouchers showing the public revenue squandered by LASA on legal fees (probably in the millions) to violate my fundamental right to information by illegally refusing my PAIA requests made in 2013–15 and then indefensibly opposing my applications to court to compel compliance with them, both before and after the settlement agreement, in contravention of section 38(c)(ii) of the PFMA prohibiting 'fruitless and wasteful expenditure'.

154. My two applications to compel LASA's delivery of documents I've requested, or certification under the Act of any that don't exist, are perfectly legitimate and LASA's allegations about my motives for bringing them are untrue. Certainly Vedalankar, Nair and Clark, inter alia, can expect cross-examination on their credibility when testifying about records not supplied me, seeing that they've previously given radically contradictory evidence under oath in and in the run-up to my labour case – described below.

155. Nothing in law prevents an unsuccessful litigant from returning to court to show fraud in litigation, that is from reagitating a dispute that's been resolved by a judgment obtained through perjury – as in, most famously, the Archer case in England. This is elementary to all lawyers besides LASA's top attorneys.

156. LASA's objection that my purpose in making my PAIA applications is to 're-open and re-try [my] Labour Court action', is:

(a) wrong in that my applications to court are directed at achieving access to duly requested public documents; and,

(b) legally irrelevant, in that a requester's stated or surmised purpose in seeking access to records, and by implication in applying to court to compel access to them when they're refused, is immaterial to his entitlement to them, because section 11(3) of PAIA prescribes:

> 'A requester's right of access … is, subject to this Act, not affected by –
>
> (a) any reasons the requester gives for requesting access; or
>
> (b) the information officer's belief as to what the requester's reasons are for requesting access.'

157. Certainly, as I've said, I intend using the information eventually forced out of LASA by court order in an application to the LC to re-open my labour claim;

but my prosecution of my PAIA applications in the Magistrate's Court and in this court for this purpose, and for several others (all irrelevant under section 11(3)) is no ground for banning me as a vexatious litigant.

158. Ad 6.13. Correct, save that some specified records not delivered haven't been certified at all. Clause 5 of the settlement agreement (annexure 'B2') expressly contemplated that I 'shall be entitled to apply to this court to compel the production of such documents' not delivered, or in respect of which I'm 'not satisfied with Mtati's evidence on affidavit under section 23 that it/they does/do not exist or cannot be found'. So LASA has no cause to complain about my application to court to compel full and proper compliance with the agreement.

159. If my application in the Magistrate's Court was unsound, LASA ought to have argued in that court that it be dismissed. Instead, at the point of being argued, LASA sought to evade addressing the issues I'd precisely defined for decision by the magistrate, by coming over to this court to try swatting me away as a vexatious litigant.

160. My due and proper return to the Magistrate's Court to compel full and proper compliance with the settlement agreement, which is to say full and proper compliance with my PAIA requests made in 2013–15, as contemplated by clause 5 of the settlement agreement, is no ground for banning me as a vexatious litigant.

161. What Mtati 'already stated under oath' was also unsatisfactory in not complying with the detailed information requirements of section 23. That is, he didn't state everything the section required, and didn't state enough. Reading from my second draft order in court, the magistrate pointed this out to LASA on the record. Meaning he agreed with my preamble to prayer 7 on page 10 of the draft order, annexure 'B23'.

162. Ad 7. Contrary to LASA's claim that 'The background to this matter is fairly lengthy but necessary to place the matter in the proper context', the 'proper context' in which LASA made its application is really quite narrow, namely the 'background' to my applications:

(a) to the Magistrate's Court to compel LASA's full and proper compliance with its February 2016 surrender treaty and undertaking to respond lawfully to my PAIA requests of 2013–15; and,

(b) to this court to compel LASA's compliance with my PAIA requests in August 2016 for access to specified records,

and I've entirely disposed of this 'context' above, by showing that both my applications are well-founded.

163. In LASA's different view, however, it's 'necessary' to revisit my core dispute with it about why I wasn't appointed to the top-rung post for which I was unanimously recommended (determined against me by court judgment), and a subsidiary issue, the lawfulness of the procedure LASA uses to recruit Senior Litigators, both at the levels of selection and approval (undetermined by the judgment).

164. The 'background to this matter' alleged in LASA's 'Summary', i.e. the essential, disputed 'BACKGROUND FACTS' and 'material events' that LASA alleges, are mostly readily demonstrable lies, contradicted everywhere by its own records, and even by Nair in his evidence at the trial of my labour claim, as I'll show.

165. It's relevant to mention here that one of my stated reasons for requesting access to LASA's records (LASA cites it) is to present them to the LC in an application to re-open my claim to my appointment on the strength of material evidence obtained from LASA via PAIA requests made after the trial, some in November 2013, more in April 2016, and more in the months afterwards, which various pieces of evidence LASA had illegally concealed and suppressed:

(a) since my first PAIA request for it in August 2010 – persistently opposing my application in the Magistrate's Court to compel its production – before ultimately to surrendering it on the point of being ordered to do so; and,

(b) by way of a perjured discovery affidavit,

and which prove that in the witness stand LASA's single witness Nair lied repeatedly to the judge, inter alia in making several novel unexpected claims, including claims at odds with LASA's pleaded and sworn defence case – claims that I couldn't categorically refute by cross-examination alone, and which required verification or refutation with PAIA requests for supporting records made after the trial.

166. Some of this illegally suppressed new evidence, i.e. the recommendation report, changed the whole picture. Other new evidence shows Nair to have lied so extensively that his central evidence as to why he didn't proceed with finalising my recruitment can't reasonably stand – especially considering that it's unsupported and diametrically contradicted by LASA's own records, correspondence, pleadings, and interlocutory affidavits, which although pertinently argued, his lordship didn't see fit to remark upon.

167. In its 'BACKGROUND FACTS' chapter, LASA has rehashed its main defence version adduced before and at the trial of my labour claim, namely that my appointment was aborted on account of insufficient operating budget received from the Department to hire me (totally different stories were told the Board and the SAHRC); and it has reiterated this story to this court under oath.

168. LASA's extensive restatement of this particular version (among several) in its affidavit as part of its case that I'm a vexatious litigant necessarily requires that I answer it. This will take some paper and ink, because it's a commonplace that it generally takes much longer to refute a lie than it does to tell it.

169. In answering LASA's case in this 'background' chapter, I'm obviously not claiming any relief from this court, because I'm perfectly aware that:

(a) my claim to my appointment has been finally determined against me by the LC (and rightly in the result, if not in the way to it); and,

(b) until such time as the dismissal of my claim has been set aside, the dispute between me and LASA has been finally settled by a binding court judgment.

170. The trial court found I wasn't unfairly discriminated against on the grounds I'd complained of, and since April 2016 I've unreservedly accepted that it was quite right about it. I don't doubt now that my complaint of political prejudice was way off the mark, and that the true reason I wasn't appointed was much more banal, namely cronyism.

171. Rather, my purposes in answering LASA's case in its 'BACKGROUND FACTS' chapter are:

(a) to refute this part of LASA's case advanced against me that I'm a vexatious litigant, to defeat this leg of the application;

(b) to demonstrate that my intended application to the LC for rescission and the retrial of my claim to my appointment on new pleadings and newly surfaced evidence will not be a vexatious proceeding brought 'without any reasonable ground' which this court should pre-emptively ban under the VPA as 'abuse of the process of the court';

(c) to describe what happened in my case after being selected for LASA's top legal professional post in KZN as a signal example of general procedural and ethical recruitment corruption at LASA (some of my knowledge of this only recently acquired, years after the trial and judgment), and the staggering criminality displayed by its highest governing echelons in corruptly covering this up;

(d) to show that, in contempt of this court, LASA persists with its lies about why I wasn't appointed, in the teeth of its own records exposing and refuting them, and of its many different contradictory stories told the Board, the Minister, the Portfolio Committee, the SAHRC, the LC, and the LAC – its lies further exposed by the absence of records that would certainly exist were the basic budgetary insufficiency story true.

172. Procedural and ethical recruitment corruption is endemic at LASA and extends beyond my individual case, as I'll show. My answer to LASA's claims in this chapter will describe other cases I've uncovered, including the corruption involved in the Mahikeng and Mthatha Senior Litigator recruitments (I suspect records LASA is illegally withholding will prove more) and I'll illustrate with many examples the trickle-down culture of corruption and criminal mendacity prevailing in LASA's top ranks.

173. Conforming to this basic ethic of telling lies anywhere and everywhere, LASA's top officers, I'll show, will tell any smooth lie to any authority as long as it sounds good in the moment and is likely to achieve it corrupt purpose, namely to deceive – and never mind whether it's consistent with what they've said before, and consistent with LASA's own records. The truth doesn't even come into it.

174. And in this lying at every turn, in correspondence, in reports, in parleying with the Portfolio Committee, in pleading and in affidavits, LASA's top officers have used, and continue in their founding affidavit to use, all the practised fraudster's stock of standard tricks used to deceive:

- brazen, bare-faced lies told so confidently one would never think to doubt them and act to verify them;
- half-truths, true on their face but false on the full facts deliberately not disclosed;

- lies told in the form of red herrings, i.e. seemingly relevant but actually entirely irrelevant true facts to distract from contradictory, adverse facts being deceptively concealed;
- lies convincingly referenced to records, which, upon reading, don't support and actually refute them;
- lies deceptively conflating seemingly related matters but which are actually entirely unrelated; and, LASA's all-time favourite:
- lies compounded of three-parts-truth-and-one-part lie (this trick worked especially well in the LC) to dishonestly and deceptively manipulate the true facts

– all these different sorts of lies, sometimes in combination in the same sentence, told in different tones, contrived to add persuasive emotive pressure, variously:

- lies told in a magisterially and sternly authoritative manner to discourage the reader from checking the truth of the lie being told;
- lies dressed in the criminal lawyer's superficially impressive professional argot, and delivered in windy patter with legal-sounding phrases thrown in;
- lies told in bumptious and officious bureaucratese and buzzwords, often syntactically garbled;
- lies told in showers of verbiage to befuddle the reader with ostensibly impressive details, discouraging tiresome verification;
- lies told 'of course', when the lies don't follow at all;
- lies told with displays of fulmination and outrage, offence and indignation, feigned to divert and reverse suspicion;
- lies crudely insulting or snidely demeaning to subvert credibility; and,
- lies told to invert the reality and falsely claim or insinuate that the investigator is the criminal malefactor, himself lying and otherwise unethical, not the accused, achieved by making violently aggressive false accusations.

Examples of all these various sorts of lies, by turns deeply cunning and extremely stupid, to follow.

175. In his paragraph 1.2, Mtati claims, 'The facts contained herein are within my personal knowledge unless otherwise stated or contextually indicated.' Mtati was promoted from Eastern Cape ROE to Corporate Services Executive in the national office, i.e. from management of operations to management of litigation for and against LASA on 1 July 2010. Unsupported by any confirmatory affidavits, Mtati's evidence in LASA's affidavit in regard to the alleged major operational decision affecting me, alleged to have been taken by Vedalankar and Nair in July 2010 (no records vouching it; contradicted by the extant records; and repeatedly contradicted by Nair – all canvassed below) as opposed to major operational decisions indeed actually taken (and duly vouched by LASA's records) is consequently inadmissible hearsay.

176. Nowhere is it ever 'otherwise stated' in the founding affidavit that the 'facts contained herein are [not] within [his] personal knowledge'; nor are such alleged facts about which he's giving inadmissible hearsay evidence ever 'contextually indicated'. So the thoughtless incantation of this standard legal boilerplate is useless, and doesn't make Mtati's evidence relevant, admissible, and reliable.

177. But Mtati's evidence is unreliable for a worse reason. Like his national office colleagues (I'll show), Mtati has a history of repeatedly committing perjury, including about facts within his direct personal knowledge.

178. As its witness against me in this application, Mtati's credit calls for some careful preliminary examination accordingly; and in the following paragraphs I'll expose it as worthless. In so doing, I'll expose some lies told by Mlambo JP, Vedalankar, Nair and Clark. (More are exposed later in this affidavit.)

179. Awaiting the delivery of judgment in the LC in September 2014, I amicably cautioned Mtati that his several interlocutory affidavits in my case were replete with perjury, and that he needed 'to work out an exit strategy'. (My thinking then was that he'd been abused by those instructing him to lie for them.) He responded by shrugging, 'I'm only an agent', indicating that:

(a) he considered himself a mere conduit for the claims of others;

(b) whether or not the claims were true or not was a matter of professional indifference to him; and,

(c) he believed himself immune to the criminal penalty for lying under oath for these reasons.

180. For instance, in the answering affidavit Mtati drew on Mlambo JP's behalf in opposition to my application to the LC (he was still its JP at the time) for leave to subpoena him under section 25 of the Supreme Court Act 59 of 1959 ('my subpoena application') for cross-examination inter alia on the many lies he told the Minister and the chairperson of the Portfolio Committee in March and June 2011 respectively in his secretly submitted Confidential Report (dealt with below) to successfully pervert their enquiries into my complaints inter alia that Vedalankar had repeatedly and persistently illegally refused my PAIA requests, Mtati alleged after his 'consultations … with' Mlambo JP, and having been 'authorised' by him to do so (he'd just been appointed JP of the Gauteng Division of the High Court):

> 'The most disturbing, reprehensible, unprofessional and brazen act of disrespect came recently when the Applicant [Brink] left the KZN province and attended unannounced and without warning at the office of the Respondent [Mlambo JP] 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 this amounts to professional misconduct.'

181. In truth and in fact, I don't have the faintest idea where the 'South Gauteng High Court' is, and have never set foot in it. This venomous, convincingly elaborate perjury, accusing me of the most serious professional misconduct and painting me as a nutcase, even reporting Mlambo JP's alleged reaction to the alleged incursion, was pure invention contrived to wreck my credibility in the LC before the trial – i.e. defamation during litigation to prejudice a court in an attempt to defeat the ends of justice: the crime for which former US President Richard Nixon's prodigiously corrupt Special Counsel Charles Colson was jailed: annexure 'K'.

182. The false accusation was drenched in criminal cunning too; for in a contest between Mlambo JP and me as to who was telling the truth and who was telling lies, who'd disbelieve this detailed charge levelled by the head of the biggest division of the High Court in the country, repeated on oath by his attorney, against a mere advocate proffering a bare denial? Especially considering, as Mtati put it in the same affidavit, and bargaining on it, that 'there is a well-founded presumption in law' 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', Mlambo JP 'will always act as Judges do' and not tell blatant criminal lies, animated by fear and loathing as I was closing in on him, to falsely discredit as an unprofessional lunatic an advocate threatening to call him to account like any other public servant, and examine him under oath, on penalty of perjury, about the illegal things he'd said and done.

183. This was the third time Mlambo JP had dishonestly falsely accused me of professional misconduct in this characteristic modus operandi of his to cow me, and discredit me and my gravely serious complaints:

184. The first was in his late-night (23h12) email to me on 24 January 2011, rebuking my second petition earlier that day for Board intervention in Vedalankar's illegal refusal to comply with my first PAIA request in August 2010 and her failure to see to my appointment. It's annexed marked 'L', and is addressed below.

185. The second was in his Confidential Report to the Minister, later 'updated' to the Portfolio Committee, the latter covered by a letter quoting and repeating his false accusation of misconduct in his just-mentioned email.

186. Mlambo JP's false report to the Minister is annexed marked 'M'; the Portfolio Committee chairperson's demand that Mlambo JP, the Board, and Vedalankar all respond to my complaints that Vedalankar had repeatedly illegally refused my PAIA requests and covered the unlawful abortion of my appointment with a lying financial insufficiency excuse, is annexed marked 'N'; Mlambo JP's false 'updated' report to the chairperson of the Portfolio Committee is LASA's annexure 'FA5'; Mlambo JP's false and defamatory covering letter is 'FA6'; and the Portfolio Committee chairperson's letter to me, recording his belief and acceptance of the lies Mlambo JP had told him, is 'FA7'. All these are discussed below. (Under PAIA I've requested from LASA the Minister's demand for an explanation, but to date haven't been able to get it out of them.)

187. The same familiar dishonest ad hominem battery in the same tone would continue in the Memorandum (annexure 'E') surreptitiously passed under the counter to the JP of the LAC to pervert his decision of my petition for leave to appeal and ensure that it failed. It's also dealt with below.

188. I accept that Mtati was just repeating the lie that Mlambo JP had told him to tell about me pitching up uninvited at his chambers to remonstrate with him about my labour case; in other words, that Mtati was innocent of the obscene, vicious perjury to defeat the ends of justice that Mlambo JP had suborned him to commit.

189. I interpose to mention that in the result I decided not to pursue my subpoena application, for several considered reasons.

190. But as said, Mtati has repeatedly perjured himself in his own right. Via a PAIA request made in March 2011, I'd already forced from Vedalankar, Nair and Clark the crucial – and by rights fatal – concession in April 2011 in their PAIA section 23 affidavit and confirmatory affidavits that no record whatsoever existed to vouch Nair's allegation to me in August 2010, repeated and elaborated by Vedalankar in October 2010 and January 2011, and verified on oath by both and by Clark in the said April 2011 affidavits, that 'Due to the recession' (it was over) and a consequent unexpected reduction of LASA's annual 'baseline budget' from the Department (quite the opposite, it increased over the previous year, and at all material times LASA's nine Senior Litigator posts have been fully funded), Vedalankar and Nair had resolved in July 2010 to cancel the appointments of three Senior Litigator candidates recommended by selection panels, and to 'immediately' freeze LASA's three remaining vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha.

191. This strong, tall story, unsupported by any record and contradicted by the extant records, would later change repeatedly. Without Board approval, the alleged decision was anyway unlawful on its own terms, for reasons I'll explain. And it was unlawful for the further reason that section 55 of the PFMA requires record-keeping of all decisions with financial implications.

192. To expose as a lie from a different angle this ostensibly impregnable cover-story for blocking my appointment, it was relevant to show there'd never even been any mention in LASA's national operational engine room, its LSTC (Legal Services Technical Committee), chaired by Nair, of aborting three substantially completed Senior Litigator recruitments and of freezing LASA's three remaining vacant Senior Litigator posts for financial reasons.

193. Or for any other completely different reasons, as very smoothly but falsely alleged by Nair to the Board – after I'd exposed the budgetary insufficiency lie in my original detailed statement of claim in the LC in July 2011 – in his Report to Board on Senior Litigators in November 2011, annexed marked 'O' and canvassed below (the report, radically contradicting the budgetary insufficiency excuse, was leaked to me):

> '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.'

194. There were no 'recruitment challenges': Skibi, recommended for Mthatha, was already a Senior Litigator at Mahikeng; Mngadi, recommended for Durban, was High Court Unit Manager there (later an acting judge); 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. And tested with PAIA, I established that there's no record to vouch that LASA had ever doubted 'that our objectives determined for this position is being achieved by the current incumbents'. Or that they were underperforming. I'll further address this, and the other lies Nair told the Board in his report, below.

195. So after instituting action for my instatement in the LC in July 2011, I again tested this basic lie that LASA had frozen its three remaining Senior Litigator posts for want of budget to fill them (the basic lie would be repeatedly radically contradicted, as I said) during pre-trial discovery, by requesting the minutes of all LSTC meetings in 2010 at which Senior Litigators were discussed in any connection – besides the March minute (annexure 'P') which I already had, recording the LSTC's resolution to (a) abolish the Kimberley Senior Litigator

post, (b) create a new Senior Litigator post at Mthatha, (c) transfer the budget as an 'Immediate' priority, and (d) 'immediately commence recruitment' for a Senior Litigator for the new Mthatha post. Which was done: the post was advertised online the following month in April, and interviewed and selected for on 24 May. And which, by the way, shows that there was no financial impediment to recruiting Senior Litigators, while my recommendation in November 2009 for the Pietermaritzburg post was lying in Nair's bottom drawer.

196. Nor was there any financial impediment to other staff recruitment and new post creation. LASA's First Quarter Report for April to June 2010 shows that LASA 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. But not me.

197. In the 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. (In his asinine, compulsive mendacity (more examples below), Nair perjuriously contradicted this at trial: the 'position never changed in 2010/11; it remained constant. There were no new positions during the year that we created.' (Trial transcript ('Record'), 371:7–8)

198. 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). But I was left out.

199. In the first quarter April to June 2010, 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. But my appointment was put on permanent ice.

200. These figures give the lie, the blatant lie, to LASA's smooth false pleading to mislead and deceive the judge in its answer to my agenda for the first pre-trial conference after its response to my labour claim: 'The prevailing financial uncertainties caused the Respondent [LASA] not to proceed with all the recruitment processes it had already commenced with including for the Senior Litigator positions. This is the reason Mr Brian Nair ("Mr Nair") did not proceed to sign the Regional Panel's recommendation for the second round of interviews.' (Only, Mr Nair gave totally different reasons at trial: he didn't open and read my recommendation and CV because, he said, he was just too busy taking stock of service delivery and preparing for the next Board meeting.)

201. Quite the contrary, as these above-quoted figures show, in the first quarter April to June 2010, despite LASA's 'financial uncertainties' that arose on 10 March 2010 over when its OSD phase 1 allocation would be paid (discussed below), new post creation and new staff recruitment boomed at a massively increased rate. But I was left outside, as I said.

202. Mtati responded in his discovery affidavit to my request for the minutes of all LSTC meetings in 2010, besides the March minute, at which Senior Litigators were discussed: 'No such records exist' – which was to say, other than in March 2010, Senior Litigators were never discussed by the LSTC that year.

203. After judgment dismissing my claim, in a case carried by so many lies – the judge found that I'd shown LASA's single witness Nair to have been 'not generous with the truth' on 'a number' of occasions – I investigated the truth of Mtati's sworn allegation about this, by making a PAIA request in November 2014 for the minutes of all LSTC meetings held in 2010, without my previous qualifying rider about Senior Litigators being discussed.

204. LASA illegally delayed, illegally obstructed and finally in March 2015 illegally refused my request for these minutes; but after I sued for them and was on the point of arguing for an order that they be handed over, it ultimately conceded my claim to them in February 2016 and surrendered them in April.

205. LASA won't dispute that the requested minutes eventually very reluctantly provided me revealed that, contrary to Mtati's perjury about this in his discovery affidavit, in truth and in fact Senior Litigators were repeatedly the subject of discussion by the LSTC: in January, February, March, May, July and October 2010. And that Mtati knows this because, as they show, he attended the January, February, March and May meetings – at the last of which he was thanked for his services as Eastern Cape ROE. (He was on his way up to becoming Corporate Services Executive in July, based at LASA's national office in Braamfontein, Johannesburg.)

206. And as I expected, there was never any suggestion, never any mention by Nair or anyone else at any meeting of the LSTC in 2010 that LASA's remaining three vacant Senior Litigator posts – twice duly described as 'critical' in LASA's original response to my labour claim – were to be or had been frozen. (The basic lie that in July 2010 LASA froze its three remaining vacant Senior Litigator posts for want of sufficient budget to fill them due to the recession and a resulting cut in LASA's baseline budget for that year ('the basic lie'), is further treated and refuted by the evidence of LASA's own records canvassed below.)

207. That is, Mtati's discovery affidavit was perjured to conceal material evidence from me and from the trial judge. And Mtati had direct personal knowledge of the matter he was lying about to conceal highly relevant evidence, because, as said, the minutes recorded his presence at several of the LSTC meetings in question.

208. Other perjuries Mtati casually committed in his discovery affidavit in my labour case, namely that certain important records I'd requested for trial had been 'lost in transit', are exposed in the note to item H6 of annexure 'B3'.

209. Mtati committed worse whopping perjury still in an affidavit he made and submitted to the JP of the LAC, in which he invented a completely false case for condonation for opposing my petition for leave to appeal out of time, to replace the true reason: a simple mistake conveyed to me, and which I'd pointed out, in calculating LASA's time allowed to oppose me.

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 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.

224. Repeatedly disputing my point repeatedly made in my affidavits in the Magistrate's Court in 2014 and 2015 that he wasn't a deputy information officer at LASA, because he didn't hold a written delegation by information officer Vedalankar under section 17(6) of PAIA – I'd even sought a declaritor that for this reason Mtati had acted ultra vires and unlawfully in refusing my PAIA requests – he lied again and again in his answering affidavits, insisting that he was indeed a duly delegated deputy information officer. (Mtati's claims on oath about this are enumerated in paragraph 64 of my pre-trial conference agenda, annexure 'B'.)

225. But when in February 2016 Mtati produced his written delegation (annexure 'B4'), as required of him by clause 3 of the settlement agreement signed a few days earlier (annexure 'B2'), it was dated 11 January 2016 – revealing that in truth and in fact, and contrary to his repeated perjury about this, he held no delegation at the time he swore he did, and was only delegated as a deputy information officer much later.

226. Lying in a discovery affidavit to conceal material documentary evidence from me and from the trial judge; manufacturing two lying excuses given under oath for not complying with the LAC's time limit for filing an affidavit opposing a petition; lying under oath to conceal his failure to have obtained a written delegation as deputy information officer from Vedalankar before responding ultra vires and unlawfully to my PAIA requests addressed to her (more lies of his told under oath below) – LASA's top internal litigation attorney Mtati has repeatedly demonstrated his contempt for the truth, his conformity to the

culture of mendacity in LASA's top ranks, and his dullness to the criminal penalty for giving false evidence on oath, which is going to jail.

227. In sum, nothing Mtati says in his affidavit can be relied upon, unless objectively supported, and everything he says should be weighed in light of this.

228. It's against this background of repeated perjury by Mtati and those he represents that I respectfully entreat this court to determine the issues raised in this answering affidavit with reference to the hard documentary record, and to prefer what the objective records say over Mtati's and his colleagues' say-so where he or they contradict(s) them.

229. Ad 8. Correct, except that the very authoritative, proper-sounding title, 'Regional Executive Selection Panel', with the first letter of each word impressively capitalised, perfumes a gross, unlawful procedural irregularity in Senior Litigator recruitment at LASA, which I'll expose presently.

230. The posts were indeed duly 'advertised in newspapers and other media outlets', and correctly so, as required, having regard to their top-deck seniority as LP10 (formerly 'level 13') legal professional posts. (Equivalent senior level posts are explicitly required to be advertised in this manner by the recruitment chapter of the Public Service Handbook, whose norms LASA's Recruitment code alludes to in its section 1.1.2.)

231. By specially mentioning that it 'advertised [the KZN Senior Litigator posts] in newspapers and other media outlets', LASA signals its appreciation that, as section 1.2.1.5 of LASA's Recruitment code indeed requires: '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.' A material excerpt of the Recruitment code is annexed marked 'T'.

232. Vedalankar acknowledged this obligation to advertise such top posts in the newspapers in her letter to me in January 2011: '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', she attached 'The advertisement for the position of Senior Litigator, KZN (Durban and Pietermaritzburg)' in the press.

233. But the Mthatha Senior Litigator post wasn't advertised in this manner. At the second pre-trial conference in my labour case, I finally forced LASA's minuted admission that 'the advertisement was not placed in the press, but only on [LASA's] website'.

234. Now it's so that section 1.2.1.5 of the Recruitment code allows that 'where an appropriate pool of candidates are available within the organisation, posts may be advertised on an internal basis only', but there's no suggestion in the Mthatha recommendation report (annexure 'B22: K') that only internal candidates were interviewed, and the selection was made from a 'pool of candidates … within the organisation'; and that in the case of the Mthatha Senior Litigator recruitment, the deviation from the ordinary requirement that the top post be advertised in the press was thus justified.

235. In the circumstances, LASA's failure to advertise the Mthatha Senior Litigator post was unlawful.

236. The reason the newly created Mthatha post wasn't duly advertised in the newspapers is that the recruitment process appears from this and several other irregularities to have been a sham, rigged from the start, with Mahikeng Senior Litigator Nzame Skibi's recommendation and transfer 'closer to his family in Bizana' (per the recommendation report) the foregone outcome:

    (a) No properly constituted selection panel was convened for such a senior post, and it comprised only two lawyers (unlike five in my case), namely then

ROE Mtati and Port Elizabeth Justice Centre Executive ('JCE') Lynette Franklin. Section 1.2.2.6 of the Recruitment code requires that '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.' Although there was a third member of the panel, she didn't make it quorate:

(b) On the panel to 'ensure that the interviewing process and the deliberations of the committee take place in a fair manner', this being her sole 'function' prescribed by section 1.2.2.2 of the Recruitment code, was the Regional Human Resources Manager ('RHRM'). Despite having no litigation expertise, being a human resources officer and not a lawyer, and therefore not a 'knowledgeable selection committee/panel' member, as required by the same section, she was allowed in her perfect legal ignorance to score the shortlisted candidates for this most senior legal professional post, and to assess their competence 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 Justice Centres on these matters', as the online advertisement (annexure 'R') put it.

(c) The acting (and later permanently appointed, I believe) Mthatha JCE wasn't on the panel (the JCE had resigned earlier that month), in contravention of section 1.2.2.5 of the Recruitment code, which requires that 'the manager who would manage the incumbent filling the vacant position must also be on the selection committee'.

237. I established all this via round after round after round of persistent pre-trial document discovery processes pressed in my labour case to overcome LASA's unwillingness, refusals and failures to hand over specified documents I needed for trial (a chronicle of my difficulty would fill a book); and then, after trial and

after judgment, via PAIA requests, illegally refused and then partially responded to years later in April 2016, after I'd sued to compel compliance with them.

238. The copy of Skibi's recommendation that LASA finally gave up during my labour case is unsigned. Various contradictory stories under oath were told me about why I wasn't given the signed copy; these are canvassed in the note to item H6 of annexure 'B3'. There's no serious question that Skibi was selected for 'lateral transfer' to the Mthatha post (as Mtati described it in opposition to my subpoena application – confirmed by Nair, but, compulsively mendacious, he contradicted this in court and said it wasn't a transfer), because Skibi told me himself that he'd been informally notified of this, when I phoned him on 28 October 2011, two days after seeing him identified as the Mthatha candidate in LASA's answer to my agenda for the first pre-trial conference in my labour case. (It's universally known that the guilty lying accused (LASA here) characteristically yearns to tell the truth, and under interrogation (as in my extensive agenda for the first pre-trial conference, requiring LASA's admission or denial of numerous carefully established facts) sometimes volunteers bits of it unasked.)

239. The sham selection process seems to have been staged to circumvent section 1.2.3.3 of the Recruitment code: 'An internal candidate who qualifies for the post in terms of the advertised requirements will not automatically be appointed to fill the position but will be selected through the same process as an external candidate.'

240. Just as Skibi's selection for the Mthatha Senior Litigator post was irregular and unlawful, and reeks of ethical corruption to the prejudice of the other applicants, the cancellation of his transfer, completely off the record, was a shambles of totally different, contradictory stories told me, the Board, the SAHRC, and the LC, listed below.

241. Skibi himself wasn't given any reason for the cancellation of his appointment and transfer – so he told me on the phone. This is in itself strikingly strange and irregular. Had any one of the totally different reasons catalogued below been true, LASA would have had no reason not to convey it to him.

242. The only reasonable inference is that the true reason for the cancellation of the Mthatha Senior Litigator recruitment hasn't been told and that it's been covered with lies – different lies told to different people – namely:

(a) *'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.'* – Vedalankar's letter to me, 18 October 2010.

(b) *'the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible … I provide you with further information and reasons that led to the freezing of the Senior Litigator posts in Durban, Pietermaritzburg and Mthatha … I, and the Legal Aid SA under my watch, have never sought to make any decision regarding Senior Litigator posts on any ground other than the budget constraints which you have rejected.'* – Vedalankar's letter to me, 28 January 2011.

(c) After I again 'rejected' the 'budget constraints' excuse in my detailed original statement of claim filed in the LC in late July 2011, in which I showed with reference to LASA's own records that it was a lie, Nair told the

Board two completely different stories a couple of months later, having nothing to do with any budgetary consideration: *'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.'* – Nair's Report to Board, November 2011.

(d) *'when I wrote this report [Report to Board, November 2011] I was cognisant of the fact that these three posts have remained vacant over a long period of time. In fact, from the time we advertised this post [at Pietermaritzburg] I think it was at the end of 2007, up to the time we froze the posts in July 2010. And during that stage, there was various grounds [sic: rounds] of interviews and we failed to attract suitable candidates.'* – Nair's evidence, Record, 360:3–8.

(e) *Q: 'Does the … post remain frozen to this day?' --- 'Yes.' Q: 'And the reason for that is to be found in the report to the Board that you wrote? --- 'Correct.'* – Nair's evidence, Record, 368:21–3.

(f) *Q: 'Vedalankar's version in this letter is that the … Pietermaritzburg, Durban and Umtata senior litigator posts were all frozen in July … On account of the budgetary shortfall.' --- 'Correct.' Q: 'But we have heard from you this morning that the Umtata post fell away for quite different reasons?' --- 'Yes.'* – Nair's evidence, Record, 456:11-17.

(g) *'there was no such funding … to fill the vacant [Senior Litigator] posts … even after the OSD funding was resolved it was still not feasible to fill the Senior Litigator posts. The Respondent [LASA] had to relook at its critical vacant positions and fill them in the best possible and feasible manner.'* – LASA's original response to my labour claim.

(h) *'the recruitment of a Mthatha Senior Litigator also was affected by the lack of funding and was not proceeded with.'* – LASA's original response to my labour claim.

(i) *'it cannot be suggested that the Mthatha, Pietermaritzburg and Durban Senior Litigator posts were not or could not be affected by this urgent need for savings.'* – LASA's original response to my labour claim.

(j) *'[LASA] still asserts that the reasons it stated regarding budgetary uncertainties … remain valid and are the only basis upon which it took the decisions it took in relation to the abortion of [Brink's] and other applicants' applications for positions.'* – Mtati's answering affidavit in my subpoena application, confirmed by Nair.

(k) *'the decision to freeze the [Pietermaritzburg Senior Litigator] post [and the Durban and Mthatha posts, per Vedalankar quoted above was] due to change in business-needs budget.'* – LASA's section 32 report for 2010/11 to the SAHRC. (Tested with PAIA, LASA has confirmed that no records exist to show the 'business needs budget' has ever been changed in regard to Senior Litigator posts, and LASA continues budgeting and applying to the Department for, and being paid, salary budget for the three posts.)

(l) *'[LASA] 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 project.'* – Mtati's answering affidavit in my subpoena application, confirmed by Nair. (Tested with PAIA, LASA has confirmed that no records exist to support this claim: no record of any 'different project', no record that it 'divert[ed] the funds budgeted' for the Mthatha Senior Litigator post to this end.)

(m) Contradicting which sworn allegation by Mtati and Nair, LASA confirmed: *'[There has been] no re-allocation of budget [for any of the allegedly frozen Senior Litigator posts to any] other cost centres'*. – LASA's answer to my agenda for the first pre-trial conference.

(n) *'The Respondent [LASA] avers that it had a valid reason for not proceeding with the recruitment of the Senior Litigator posts, namely that it experienced budgetary shortfalls in respect of the 2009-2010 financial years. In the face of these budgetary shortfalls it would have been ill advised to go ahead with the recruitment of Senior Litigators.'* – LASA's amended response in April 2013 to my amended statement of claim, a brand new reason not previously advanced. In truth and in fact, LASA's miniscule budgetary deficit of R1.8 million for 2009/10 went completely unremarked in LASA's annual report for that financial year, and had no bearing on staff recruitment at any level, as its rocketing recruitment and new post creation statistics in 2010/11 show. In which financial year LASA suffered no 'budgetary shortfall', but rather a R31.7 million surplus – which swelled LASA's accumulated surplus to R194 million.

(o) *'[A] needs analysis' is 'continuously done by the Respondent [LASA] to determine where and when [posts] are required the most'* – LASA's answer to my agenda for the first pre-trial conference, implying that after such a needs analysis had been performed, it has been resolved not to fill LASA's three remaining vacant Senior Litigator posts. But at the third pre-trial conference, LASA admitted that no records exist to support this allegation, which shows that this smooth-sounding claim for the true information of the judge was a lie.

(p) *'The main reason which overtook the consideration of any recruitment was that … the Respondent [LASA] had presented it budget proposal for the*

2010/2011 financial years to the Department'. – LASA's affidavit opposing my petition to the LAC.

(q) Contradicting the original story told by Vedalankar, repeated and verified on oath by Nair, Vedalankar and Clark, that the Mthatha Senior Litigator post was frozen together with the Pietermaritzburg and Durban posts, Nair testified at the trial of my labour claim in mid-2013 that he repeatedly asked Vedalankar to approve the transfer of the Kimberley Senior Litigator post to Mthatha, as resolved by the LSTC in March 2010, and that she'd repeatedly refused, causing the failure of the Mthatha Senior Litigator recruitment: *'on the minutes of the Legal Services, LSTC, a decision was taken to transfer that position from Kimberley to Umtata. However the … LSTC … can only make a recommendation. In terms of the approval framework, I still needed to obtain the consent of the CEO in order to effect that move. And post that meeting, I did have discussions with the CEO who indicated that she would think about it. … to move the post from Kimberley, which would involve the abolition of the post in Kimberley and creating a new post in Umtata. … Which in terms of our approval framework would require the CEO's and my agreement. Whilst I was in support of it, the CEO was not immediately in support. She, whilst we discussed it once or twice she finally decided that she was not happy with the post. … she did not approve of it. So that decision had to be aborted. … I could not persuade her.'* – Record, 365:11–25; 366:1–9. (The LSTC for 2010 minutes are silent about this, and show that Nair never reported that Vedalankar had rejected its March resolution to transfer the post; to the contrary, LASA's June 2010 recruitment statistics reflect the new Mthatha Senior Litigator post as part of LASA's staff establishment, reflected as vacant, which means the transfer must have been approved. Also, in his evidence Nair perjuriously misrepresented the rationale for the transfer of the 'redundant' post to a centre where it was badly needed for several reasons stated in Mtati's

motivation. The Northern Provinces ROE recorded in his motivation for the transfer to another centre: 'In all the time since the allocation of this position there has never been a demand for the services of a senior litigator from (indistinct [any]) justice centres in the Northern Cape.' In court, Nair dishonestly concealed this: 'In the CEO's view, Kimberley, which … also has a High Court, also needed a person. And because we were having recruitment difficulties, it was not a good enough reason to move that post. So she felt that province must not be neglected in terms of taking away budget because we could not find someone at that time who was important.' (Record, 401:18–23)

(r) *'in giving this region the permission to proceed with recruitment, that we will still under the financial constraints that I spoke about earlier. … if the funding was not resolved I would do exactly what I was doing in KZN, and that is to delay the process until certainty was obtained. … I saw that as being facilitative of filling the post because once the funding issue is resolved we did not have to start from the very beginning of advertising. The first round would have been completed, we could then do the second round where the panel could consider both posts at the same time.'* – Nair's evidence, Record, 364:10.

(s) *'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.'* – LASA's answer to my first pre-trial conference agenda.

(t) *'even after the OSD funding was resolved it was still not feasible to fill the Senior Litigator posts'* – LASA's original response to my labour claim. (But Mtati's answering affidavit in my application to compel discovery confirms: 'No such record exists' to support this 'still not feasible' allegation.)

(u) *'It remained Legal Aid SA's intention to recruit the number of employees recorded in Legal Aid SA's annual report.'* – Mtati's answering affidavit in my subpoena application, confirmed by Nair.

243. Ad 9. As this shambles of different, mutually destructive excuses for the off-the-record cancellation of the Mthatha Senior Litigator recruitment shows, the true reason for it hasn't been given. If the 'budgetary constraints' story or any other was true, LASA would have stuck with it and vouched it with a supporting record. But as I show here, LASA's totally different changing excuses for cancelling the Mthatha recruitment are a ridiculous jumble of conflicting story-telling. I'll present below another compilation of yet more abysmal clashing stories – alleged, pleaded, and sworn to.

244. I believed then, as I originally pleaded, and still do, that the most likely reason Skibi's transfer was cancelled at the time I was pounding on Vedalankar's door in July 2010 to finalise my appointment eight months after my successful interview, and after Clark had dishonestly tried batting me away in April (described below), was to create a strong, convincing cover-story for the abortion of my appointment, to conceal the true likely reason (recently discovered), namely that I was the wrong candidate selected, that Mlambo JP wanted his former long-time brother on the bench appointed instead of me.

245. Before identifying and refuting the three perjuries in this paragraph 9, I'll treat LASA's claim that I was recommended 'for the Second Round Interviews by the National Executive Selection Panel' – the words again impressively capitalized to sound all very formal, proper and official, and to gull this court into believing that this arbitrary, unauthorised and unlawful process was legitimate and conformed to the rule of law.

246. I'll show to the contrary that Senior Litigator recruitment practice at LASA is procedurally corrupt and unlawful. Records I've requested under PAIA, which LASA is illegally withholding, and which it hopes to suppress permanently by

dint of this application, are likely to disclose further corruption in Senior Litigator recruitment, for reasons I'll explain. And since I'm conducting a searching corruption investigation, as I said earlier, which LASA is trying to shut down, it's necessary to share with this court the extent of the recruitment corruption I've already uncovered, and to show that my determined pursuit of the records LASA is illegally withholding from me is not an ill-motivated waste of everyone's time by a distracted busybody, as LASA is falsely suggesting.

247. It's true, as alleged in paragraph 9, that my recommendation was cast as a 'RECOMMENDATION FOR NEXT ROUND INTERVIEWS', in the language of the recommendation report, and indeed this expression appears repeatedly in the report.

248. What's more, other applicants for Senior Litigator posts at seats of the High Court elsewhere in the country, who were duly selected by selection panels constituted to conduct interviews for these posts, have also been put through second interviews.

249. LASA made contradictory claims to the LC about whether all Senior Litigators have been put through so-called 'Second Round Interviews by the National Executive Selection Panel', or only some of them. In its response to my original claim in the LC, LASA stated, for the true information of the judge, that 'most of the senior practitioners who were recruited without having undergone a second interview were lacking experience in vital areas like High Court litigation skills'. But also in the same contradictory pleading: 'other senior litigators appointed long before the Applicant's [Brink's] interview all underwent the two-stage recruitment process.'

250. By 'recruited' (in the first version) LASA didn't mean those candidates recommended by selection panels but rejected by Mlambo JP and his so-called second round interview panel, because in his affidavit made on Mlambo JP's behalf in my subpoena application, Mtati claimed, with Nair confirming, that

'many of the senior litigators have failed to live up to the required expectations as they, despite many years in practice, lacked the required Court experience. … [LASA had] conducted a quality assurance in respect of the existing senior litigators and it was out of concern from the results of such exercise that the concerns around these officials were noted.'

251. When after judgment in my labour case I tested these lies (so they smelt to me) with PAIA, I found them unsupported by any record – showing that even as it was manufacturing an ostensibly reasonable but absolutely false, untruthful rationale for holding the so-called second round interviews, anyway unlawful under LASA's Recruitment code and Approval Framework, LASA was lying to me and to the judge in its pleadings and affidavits.

252. LASA has no records showing that any 'quality assurance … exercise' conducted in respect of LASA's 'existing senior litigators', duly described by Nair in his November 2011 Report to Board as 'some of our most senior and experienced lawyers' – namely Pieter Nel in Bloemfontein, Herman Alberts in Pretoria, Mornay Calitz in Cape Town, William Karam in Johannesburg, Nzame Skibi in Mahikeng, and Elizabeth Crouse in Port Elizabeth – has found that they 'have failed to live up to the required expectations as they, despite many years in practice, lacked the required Court experience.'

253. In truth and in fact, no such 'concerns around these officials were noted'. This was pure invention, pure perjury by Mtati deposing on Mlambo JP's behalf, with Nair confirming, wantonly lying about and insulting LASA's Senior Litigators Alberts, Calitz, Crouse, Karam, Nel and Skibi on the way.

254. I've uncovered a case where a recommended Senior Litigator candidate was passed over and a rejected candidate appointed instead. Former Free State and Northern Provinces ROE Nkululeko Mayisela, who was on the selection panel that interviewed shortlisted candidates for the Mahikeng Senior Litigator post, tells me that the candidate recommended by him and his panel wasn't

appointed, and that Nzame Skibi whom they hadn't recommended and had eliminated had been appointed in place of him.

255. The Mahikeng Senior Litigator recommendation report with Mayisela's signature on it will confirm his information to me. I've requested it under PAIA, but LASA illegally refuses to hand it over – understandably, because it will confirm the gross irregularity. This is why LASA is determined to keep it from me: to obstruct my investigation, to suppress further evidence of recruitment corruption.

256. I've discovered that in three cases, duly recommended candidates for Senior Litigator posts were rejected by the so-called second round panel and not appointed (one might have been for Mahikeng). A document entitled 'Summary of the Scoring for Senior Litigator Positions' which I never asked for, but which LASA anyway gave me in April 2016 instead of the six incumbent Senior Litigator recommendations I'd asked for, revealed that three applicants recommended by selection panels for Senior Litigator posts were disapproved by Mlambo JP and his so-called second round interview panel. (I'd already known of one case: Kaloo, recommended for the Pietermaritzburg post.) I annex the 'Summary of the Scoring' marked 'S'.

257. Whatever their motivation, these so-called 'next round of interviews' per the recommendation report, these poshly titled 'Second Round Interviews' per LASA's affidavit, have been unlawful. Here's why:

258. Recruitment at LASA, an organ of state, is very precisely governed by two internal regulations, both approved and promulgated by LASA's Board of Directors. These are its Recruitment code (i.e. Policies and Procedures on Recruitment, Induction, Probation and Relocation: annexure 'T'), which governs recruitment practice and its Approval Framework, which delegates authority to various executing authorities, inter alia, to approve or reject

employment recommendations by selection panels. The Approval Framework is annexed marked 'U'.

259. As I understand it, subject to correction by LASA in reply, the rule of law applies to LASA in the conduct of its business as the country's biggest legal firm (full of lawyers to advise its mostly legally unqualified management executives what the rule of law means) no less than it does to other organs of state, and the prescripts of the above-mentioned two internal regulations are binding on all of LASA's officers.

260. Indeed, in his introduction to the Legal Aid Guide 2012, Mlambo JP explains that it 'ensures that the rule of law is respected which in turn aids good governance' at LASA. Subject to correction in reply, I understand this encouraging remark to mean the rule of law must be respected by everyone at LASA, including by him.

261. Section 1.1.3 of the Recruitment code, adopted by resolution of the Board, is explicit: 'This policy and procedure provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists.'

262. That is, the detailed provisions of the Recruitment code must be observed to the letter by LASA's officers at all times, and can't be disregarded whenever any of them feel like it or one day wake up with another way of doing things that they reckon is better.

263. In his PAIA section 23 affidavit in April 2011, confirmed by Vedalankar and Clark, Nair stated that in 'April 2008', he as:

> 'National Operations Executive, in consultation with both the Chief Executive Officer and the Human Resources Executive agreed that the process of recruitment for Senior Litigators will include a second round of interviews. This decision was taken verbally … The Chairperson of the Board was also invited to participate in this panel.'

264. Then to spice his story, he changed it: 'The second round of interviews is, in fact, the brainchild of the Chairperson together with the executive management', namely Vedalankar, Nair and Clark.

265. According to Nair's second version, Mlambo JP wasn't invited along to their second round panel as a fine afterthought, as Nair claimed in his first version; no, in conceiving their 'brainchild', Mlambo JP, Vedalankar, Nair and Clark all had a simultaneous epiphany.

266. Neither 'the Chairperson', nor 'the executive management', nor the two sitting in irregular committee, off the record, outside LASA's decision-making structures contemplated by the Legal Aid Guide have the power to prescribe or amend recruitment policy and procedure. If 'the Chairperson' and/or 'the executive management' thought holding second round interviews for carefully selected and recommended Senior Litigator candidates was such a swell idea, they should have put it to the Board for consideration and approval. They never did:

267. When on 29 November 2008 – several months after 'the executive management' and/or 'the Chairperson' quietly had their illegitimate 'brainchild' behind the scenes – the Board reconsidered and resolved to amend its Recruitment code, it was not proposed by 'the executive management' and/or 'the Chairperson' that the code include a novel provision for a 'second round of interviews' of a Senior Litigator candidate duly selected and recommended by a selection panel of senior lawyers, after carefully interrogating his/her qualifications, experience, and suitability for appointment, to be conducted, as Nair put it in his said affidavit by 'National Office executives' and 'the Chairperson of the Board'; and accordingly in amending its Recruitment code the Board didn't consider and resolve to include any such novel provision in its 'Version 2_Approved by Board 29 November 2008' – still in force when I was interviewed in November 2009, and when the

Recruitment code was furnished to me in January 2011, which is to say in force at all material times.

268. Neither the expressions 'next round of interviews' nor 'Second Round Interviews', nor anything like them, is found anywhere in the Recruitment code. Mtati conceded this in his answer on Mlambo JP's behalf to my subpoena application: 'On close scrutiny it will be noted that [the Recruitment code] does not provide for the two-stage interview process referred to'. (Until I pointed this out, no one at LASA had ever bothered scrutinizing it before. They just did whatever they felt like in picking and appointing whoever they felt like, and never mind the selection, recommendation and approval procedure precisely prescribed by the Board.)

269. Instead, the Recruitment code provides for the convention of a competent selection panel:

    (a) to interview shortlisted candidates for an advertised post, per section 1.2.2;

    (b) after which to 'identif[y] the most suitable candidate for appointment in a post', per section 1.2.3.4; and,

    (c) to then forward its recommendation of the most suitable candidate to the management executives delegated by the Approval Framework for approval, per:

        (i) section 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';

        (ii) section 1.2.3.7: 'NB Motivation has to be signed off by all 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' (sic: spelling and punctuation errors); and,

(iii) section 1.4.4: 'Once the selection committee/panel has completed this process, an appointment of the most suitable candidate will be made.'

270. Section 8.2.2(b) of the Approval Framework (annexure 'U') governing 'Appointments', read with 'Key' and 'Key to Levels', stipulates that the management executives 'delegated for approval' of 'appointment recommendations' concerning grade LP10 'Senior Professional staff' posts, such as Senior Litigator posts, are CEO Vedalankar, who 'Must agree', and NOE Nair, who has the power of 'Final approval'.

271. There's no second interview under the said regulations. On the contrary, to assist and make sure the legally unlettered persons making appointments understand nicely what's required of them, section 1.4.4 of the Recruitment code insists for the third time: 'Once the selection committee/panel has completed this process an appointment of the most suitable candidate will be made'.

272. And the said regulations give Board chairperson Mlambo JP, *a non-executive member of the Board*, no authority whatsoever to interview and approve or reject an applicant for a Senior Litigator post who's been duly interviewed along with other shortlisted applicants by a panel of LASA's most senior lawyers in the region; identified by the selection panel as the best candidate for the job; and recommended for it accordingly. Mlambo JP has no power to over-ride the decision of a selection panel. Even if he thinks it's a good idea, and wants only people in LASA's Senior Litigator posts that he personally prefers.

273. Under the Approval Framework, Mlambo JP's only power and authority in LASA recruitment matters is in relation to approving the appointments of the CEO and the NOE, in which case he decides in committee with the rest of the Board, per section 8.2.1, and not outside it.

274. In his April 2011 PAIA section 23 affidavit, Nair confirmed very correctly (albeit irrelevantly to the information the section prescribes) that 'The Board's responsibility primarily relates to policy issues and not operations, hence appointments … are dealt with by Executives.' Again, in its response to my original statement of claim, LASA correctly pleaded: 'recruitment … does not fall within the Board's competence. It was and remains an operational matter … dealt with by [LASA's] executive managers.' And it pleaded correctly again in its answer to my agenda for the first pre-trial conference in October 2011: 'recruitment and staff issues do not fall within the realm/jurisdiction of [LASA's] board of directors. They are properly dealt with at [LASA's] management level.' Mtati likewise correctly confirmed on Mlambo JP's behalf in the affidavit he made for him in my subpoena application: 'Staffing of the Respondent [LASA] is an issue that is ordinarily dealt with by the Respondent's executive officials.' All this pleading and evidence accords perfectly with LASA's Recruitment code and Approval Framework.

275. But not this extra bit of squirming casuistry by Mtati in the same affidavit: 'the Board does not ordinarily get involved in the management of Legal Aid SA. The exception being, of course the recruitment of senior litigators.' Because no such 'exception' is provided for anywhere in the Board's Recruitment code, either 'of course' or at all, and it doesn't permit 'the Board' nor any one of its non-executive members to 'get involved' in such operational processes and management decisions as Senior Litigator recruitment.

276. By 'get[ting] involved' in and intruding himself in the selection and/or approval of Senior Litigator candidates, Mlambo JP has incontestibly acted ultra vires and illegally.

277. On the other hand, as legally uneducated persons (Nair graduated years later), it's Vedalankar's, Nair's and Clark's declared understanding and belief (per Vedalankar's January 2011 letter, which the three of them swore in April 2011

contained the perfect truth) that 'Legal Aid SA Executives are not precluded from formulating processes for recruitment', of their own, independently of and without the approval of the Board. And that they are free to deviate from the 'clear guidelines to be followed when a vacancy exists', as the Board puts it in section 1.1.2 and 3 of its Recruitment code, 'aim[ed] at ensuring that appropriate recruitment procedures are followed, in line with statutory legislation and business practices'.

278. In Vedalankar's, Nair's and Clark's legally untutored opinion, they can 'formulat[e] processes for recruitment' as they see fit, and 'may follow recruitment methods that are not specifically provided for in the Recruitment code' (per LASA's amended response to my amended labour claim), such as:

(a) subjecting duly recommended Senior Litigator candidates to a further interview by a non-executive Board member and mostly legally unqualified management executives; and/or,

(b) overlooking duly recommended Senior Litigator candidates and re-interviewing candidates rejected and eliminated by selection panels, and appointing such rejected and eliminated candidates instead (per Clark's email of 30 April 2010 and Nair's oral evidence in mid-2013, quoted below),

as long as, in their opinion (as legal ignoramuses), such unlawful 'processes for recruitment' (per LASA's original response to my labour claim) are:

(i) 'more stringent and thoroughgoing' (per LASA's amended response to my amended labour claim) than those prescribed by the Recruitment code, viz. an interview conducted by a duly constituted selection panel comprised of LASA's most senior lawyers in the region in question, followed by the approval or disapproval of the panel's recommended candidate by the management executives delegated by the Approval Framework to decide, namely Vedalankar and Nair;

(ii) are 'necessary, reasonable and fair, given the seniority of the positions involved herein, to ensure that it [LASA] satisfies itself about the persons to be employed in those positions' (ibid); and,

(iii) are 'rationally connected to the objective sought to be attained by' LASA (ibid) so as to achieve 'fairness and certainty' (per Mtati's highfalutin answer to my subpoena application) and are 'fair, lawful and reasonable and in accordance with acceptable norms and standards commonly associated with high level interviews' (ibid),

notwithstanding the Board's comprehensive, particular, and precise 'clear guidelines to be followed when a vacancy exists', mandated in section 1.1.3 of its Recruitment code, which 'aims at ensuring that appropriate recruitment procedures are followed, in line with statutory legislation and business practices' (per section 1.1.2.) and not ludicrously arbitrary, irrational, unauthorised, grossly irregular and lawful ones.

279. LASA's legally challenged national management executives consider that the 'Recruitment Policy (Version 2) merely provides guidelines within which [LASA] is to conduct itself in recruiting people for its positions. … It is not prescriptive. … The said Policy also makes provision for other methods of assessing a prospective employee i.e. written examinations / assessments, etc. … The Policy does not preclude [LASA] from following or engaging in other different methods of assessing a prospective employee' (per LASA's answer to my agenda after the close of pleadings in my labour case), including a candidate rejected and eliminated by a selection panel, like having such a rejected and eliminated 'prospective employee' interviewed and/or otherwise vetted by the non-executive Board chairperson and mostly legally uneducated management executives – all of them besides Nair having no delegated approval power under the Approval Framework, but even in Nair's case having no power to interview such an already interviewed 'prospective employee' and

not authorised to approve or disapprove him/her in committee with anyone other than Vedalankar, and not without her agreement.

280. Confirmed by Nair before he got his law degree by mail, and speaking for Mlambo JP, authorised by him to do so and after 'consultations … with' him, LASA's second (after Hundermark) most senior attorney Mtati contended in his answer to my subpoena application that 'the Recruitment Guide and Policy is not binding in the sense that they are peremptory. They are guides with which Legal Aid SA is to conduct its recruitment.' The Board's Recruitment code is merely a 'guide … flexible enough to accommodate any variation of interviews and recruitment methods so long as the underlying principles of fairness, transparency and objectivity are observed … What is ultimately required of the process is that the same be objective, fair and lawful'. The Board's Recruitment code 'does not preclude Legal Aid SA from adopting any interview method and procedures it prefers at any given time', i.e. go off the legal rails at will.

281. LASA persisted in its affidavit opposing my petition to the LAC: I'd 'failed to demonstrate', Mtati said, that the 'Recruitment Policy … was binding like law and could not be departed from'.

282. In his evidence at the trial of my labour claim, and leaving me wondering whether he had a matric, Nair insouciantly described the anarchy:

> '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 … so that the second round panellists could consider if there was anyone else they would be interested to interview. … Because in deciding who will be interviewed for the second round, we look at all four again and not only the person that the first round panellists interviewed or recommended.' (1) 'it [the second panel] is free to make the decision it wants to make and to interview whoever it wants to interview.' (2) '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".' (3) 'the panel does not confine itself only to the person that is recommended. The panel, as in the past, requested to see other candidates who were interviewed.' (4) Record: (1) 349:7–23; (2) 350:10–11; (3) 408:24–5; (4) 410:9–12.

283. Besides this dismal, lawless mess in selection, LASA's management executives have also consistently failed to comply with the Approval Framework in regard to its delegation of approval authority for Senior Litigator appointments.

284. In the case of the Mthatha recruitment, the recommendation report (annexure 'B22: K') provided for the approval of Skibi's appointment (no mention of a second interview) by Nair and Clark. But under the Approval Framework Clark has no such approval authority; Nair and Vedalankar share it alone. In recruitment operations, Clark's sole function and responsibility under Note 17 of the Approval Framework is 'to confirm budget and vacancy and EE statistics with regard to a JC/region/dept', which is say, she's required to mind her own business.

285. The recommendation report in my case (annexure 'B22: J') made provision only for Nair's approval – none for Vedalankar's. Consistent with this, Nair's August 2010 letter to me claimed that 'the person responsible for the final approval of the Senior Litigator appointments … is myself', without mentioning Vedalankar's co-authority delegated by the Approval Framework.

286. In his April 2011 PAIA affidavit he stated again, with Vedalankar confirming: 'I am … the person responsible to make all appointments in certain positions in terms of our Approval Framework. The positions referred to herein also include that of Senior Litigator.' Again, no mention of Vedalankar's assent required, as prescribed.

287. Seemingly ignorant of her delegated co-responsibility to approve Senior Litigator recommendations, Vedalankar said the same in her January 2011 letter to me: 'Mr Nair is the line executive/manager responsible for the appointment of Senior Litigators.'

288. In her October 2010 letter to me, Vedalankar did mention herself as an executing authority, but wrongly claimed that the Approval Framework delegates the provincial ROE to approve Senior Litigator appointments, with the three of them deciding in triumvirate: '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.' But that's not what the Approval Framework says.

289. Nair changed this story by suggesting in his April 2011 PAIA affidavit (and removing any doubt, LASA later pleaded this expressly) that the ROE is the ultimate executing authority in making Senior Litigator appointments in KwaZulu-Natal: '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.'

290. In its amended response to my labour claim, LASA pleaded: 'the final person to approve the recommendation for any appointment of a Senior Litigator would be the line Executive responsible for the Senior Litigator positions and only after the CEO and the NOE had agreed with the recommendation. In this instance the line Executive responsible for the Senior Litigator positions applied for by both the Applicant and Mr Mngadi was Mr Vela Mdaka, the Regional Operations Executive.'

291. In his evidence, Nair claimed that after Clark was done 'writing up of whatever recommendations flow out of the [second round interview] panel … the local

people could thereafter continue with that process of finalising it.' (Record, 373:1–3) And again: 'The ROE in this case would have to … implement it. … he does have the final approval.' (Record, 451:24–5)

292. But during cross-examination, when I made him read the Approval Framework, for the first time apparently, Nair conceded this was wrong, and that he and Vedalankar alone must approve or disapprove recommended Senior Litigator candidates, and not the ROE, or anyone else.

293. Despite Nair's forced concession on the record of the correct legal position, to which Mtati was listening in court, the latter persisted in misrepresenting Senior Litigator approval authority to the JP of the LAC in LASA's affidavit opposing my petition for leave to appeal: 'The recommendation for appointment would be effected by the ROE and NOE after agreement by the panel.' Mtati left Vedalankar out of it, and put the ROE back in.

294. The 'Summary of the Scoring' document (annexure 'S') shows that Vedalankar alone approved the appointment of the Senior Litigator candidates whom Mlambo JP and his so-called second round interview panel liked. The Approval Framework required her to agree with Nair, who has final approval. But she's incompetently recorded in the 'Summary of the Scoring' document as the final executing authority – no mention of Nair, who must exercise 'Final approval' power as the delegated executive for this. His abdication or sharing of his power with Mlambo JP and his national executive colleagues was incompetent and unlawful. This means that none of the appointments of LASA's incumbent Senior Litigators have been properly authorised.

295. In the matter of Senior Litigator recruitment at LASA, both at the selection and approval stages, complete legal pandemonium reigns.

296. Ad the first perjury committed in paragraph 9: Contrary to this lie that LASA is so fond of retelling (more instances below), I wasn't 'recommended together

with other candidates' – obviously not, and the recommendation report shows this unequivocally.

297. The whole point of the interview process was to 'identif[y] the most suitable candidate for appointment', as section 1.2.3.4 of the Recruitment code puts it; and duly performing its function prescribed by this section the selection panel chose me as the best man for appointment to the Pietermaritzburg post, with Durban Justice Centre High Court Unit Manager Bongani Mngadi picked for the Durban post.

298. LASA confirmed the truth of it in its answer to my agenda for the first pre-trial conference: Clark was 'made aware that there were two people recommended for the second round of interviews.' One for each post.

299. Which candidate was recommended for which post isn't recorded in the recommendation report (annexure 'B22: J'); but at the second pre-trial conference, now under judicial supervision at court (necessitated by LASA's persistent refusal to discover requested documents), LASA formally admitted that 'the Applicant [Brink] was recommended for the second round of interviews to the Pietermaritzburg senior litigator position.' And Nair confirmed it again in Court.

300. The other two shortlisted and interviewed candidates were positively 'eliminated' from consideration for appointment – LASA's word not mine. Forgetting its earlier lies and occasionally telling the truth by accident, LASA said so in its pleadings in my labour case. Answering my agenda for the first pre-trial conference, LASA frankly admitted: 'The two persons referred to herein [Ngcamu and van Wyk] were eliminated early in the selection process and were not recommended for the second round of interviews.' The uncensored recommendation report (annexure 'B22: J') eventually released to me in April 2016, after long struggle for it, confirmed this.

301. Section 1.5.1 of the Recruitment code required that: 'Unsuccessful short listed candidates should, as far as is reasonably practically [sic], be informed of the fact that they were not successful.' In a selection process that was otherwise immaculately conducted, the irregularities began immediately after my selection. LASA failed to comply with this requirement: it didn't inform Mlambo JP's long-time judicial brother Ngcamu AJ (as he used to be) and the other eliminated candidate van Wyk 'of the fact that they were not successful.'

302. That is, LASA didn't tell former acting judge Ngcamu that he was out of the running. This is because de facto he was still in, the intention being to appoint him instead of me, as in the case of the irregular and unlawful appointment of Skibi to the Mahikeng post, instead of the recommended candidate.

303. Clark betrayed the plan when emailing me on 30 April: 'it is not even clear which candidates will be considered in the second round'. (My very vexing persistence in pursuing my appointment derailed it.) Nair's evidence that a rejected, eliminated candidate was just as eligible for appointment as a selected, recommended one, confirmed it.

304. Besides not 'inform[ing the u]nsuccessful short listed candidates … of the fact that they were not successful,' LASA didn't inform me contrariwise that I had been successful at my interview for the top post – LASA just went strangely dead on me – and when I enquired about the outcome of the interviews five strangely silent months later, Clark rudely and dishonestly tried concealing from me the fact that I'd been selected: 'Being called to an interview is not a guarantee of being appointed to the position'.

305. In truth, much more than 'called to an interview', I'd been recommended, I was the lucky boy. Which she unintentionally confirmed: 'It is your decision as to whether you wish to wait to allow us to complete the process or whether you wish to withdraw' – because obviously had I been eliminated I wouldn't have had a live claim to my appointment to 'withdraw'.

306. There was no suggestion in Clark's late April 2010 email that anything prevented LASA from 'complet[ing] the process' of appointing me. Quite the contrary, the Mthatha Senior Litigator post recruitment was in full swing: advertised that month, and interviewed and selected for the next.

307. In November 2014, I requested under PAIA the complete recommendation report, unredacted and unmutilated, with none of its contents carefully hidden from me with a thick black Koki pen – as had been the case when a thus unlawfully redacted copy had eventually been given me under SAHRC pressure in January 2011 after being requested in August 2010, mutely refused in September, and expressly refused in October. (LASA was plainly very reluctant to tell me I'd been selected.)

308. As usual, my request in 2014 for the uncensored recommendation report was illegally obstructed and finally refused again, and I had to sue for it. Finally at court, LASA reversed itself, agreed to surrender it, and did so in April 2016. And what the full recommendation report revealed is that the reason the other two interviewed candidates were eliminated is that they didn't meet the qualifying criteria.

309. So much for LASA's smooth-sounding lie told to this court in its founding affidavit that I was 'recommended together with other candidates'. I wasn't. But such is the rank mendacity in LASA's head office that I've been faced with from the beginning:

310. Vedalankar (and her ghost-writer(s)) told me this same lie on 18 October 2010 in her letter illegally refusing my first PAIA request in August 2010, inter alia for the selection panel's interview minute: I wanted to see in black and white who'd been selected. Among many other lies she told me (mentioned and exposed below), Vedalankar claimed: 'You were recommended together with other candidates'.

311. Vedalankar or Nair told the same criminal lie to then Justice Portfolio Committee member Debbie Schäfer MP at one of their presentations to the Committee in Cape Town: 'according to LASA, he was not the only candidate.' Her emailed report of this criminal lie to her is annexed marked 'V'.

312. Studiously, sneakily concealing the fact that I'd been selected ('Being called to an interview is not a guarantee of being appointed to the position'), Clark told me an even bigger lie in her email to me of 30 April 2010: 'it is not even clear which candidates will be considered in the second round'.

313. The obvious intention of lying to me in this way was to obfuscate the fact that I'd been picked for the Pietermaritzburg post and no one else, and to put me off pursuing my appointment to it, by falsely implying that after the interviews and the selection panel's decision I had no greater claim to appointment to the post than any of my rival applicants.

314. So the lies began, one added and built on another into an elaborate cover-story – with which LASA perjuriously persists in its founding affidavit – shot through with the most puerile contradictions, which LASA naturally doesn't mention in its affidavit, so I will.

315. Under increasing pressure, three months later – by now I'd filed a second PAIA request and had again called in the SAHRC after Vedalankar now expressly refused my first request in toto – Vedalankar changed her tune. In her letter to me of 28 January 2011, in order 'To demonstrate' her various contentions – and not to satisfy my PAIA request: she even rejected and returned my cheque covering the request fee prescribed by section 22(1) – she furnished me with the 'edited/blacked out recommendation' report.

316. Even heavily redacted (unjustifiably under PAIA, and therefore unlawfully), the report refuted her lie to me in October 2010 that I'd been 'recommended together with other candidates', and it showed that Mngadi and I had been

recommended for the two posts for which we'd respectively applied, and no one else.

317. Cornered by the contents of this record, she now told the different truth in her January letter: 'there were two candidates recommended', namely me and Mngadi for the Pietermaritzburg and Durban posts.

318. Now in its affidavit before this court LASA revives its lie told me in October 2010 but dropped in January 2011, being categorically contradicted and refuted by the record of the selection panel's recommendation, that the 'selection panel recommended Brink together with other candidates'.

319. As I warned at the start of my answer to LASA's 'BACKGROUND' chapter, the lies and perjuries gush from LASA's head office in all directions at once. But always smooth-sounding, being manufactured by head office lawyers covering for their bosses, all telling lies as a matter of routine.

320. Ad the second perjury, 'Legal Aid SA however, subsequently aborted the filling of the remaining vacant Senior Litigator posts due to budgetary constraints'. This claim is the basic lie in my original labour dispute with LASA. It comprises two parts: the first that LASA as an organisation duly 'aborted the filling of the remaining vacant Senior Litigator posts' as opposed to some rogues, and the second that this was 'due to budgetary constraints'. (Nair repeatedly contradicted this, before and during trial.)

321. First, it's common cause that no record whatsoever exists of this alleged decision by 'Legal Aid SA'. Had such a decision indeed been taken by 'Legal Aid SA', i.e. by executive management duly deciding under a delegated power, there'd obviously have been a record of it.

322. This is because, as it impressively demonstrated in July 2010, the very month in which Vedalankar alleged to me that she and Nair had frozen LASA's vacant Senior Litigator posts at Durban, Pietermaritzburg and Mthatha, LASA

is not 'a glorified spaza shop', in the words of Cachalia JA during the debate of the Mail & Guardian's PAIA case against the Presidency in the Supreme Court of Appeal ('SCA'; per the newspaper's report on 26 November 2010, 'State grilled over "secret" Zimbabwe report' (annexure 'W'):

> '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 [officials in the Presidency] are people of standing and they will never mislead, just like [US Secretary of State] Colin Powell never misled the Security Council?' (With fake evidence presented to support the US Administration's lying claim that Iraq had 'Weapons of Mass Destruction' to falsely justify invading the country for its oil.)

323. Not being 'a glorified spaza shop', LASA does not operate without keeping records of major decisions it makes with financial implications running into many millions of rands. Quite the contrary, its records show that it's commendably meticulous about record-keeping, and that the decisions it's taken are recorded – as opposed to those falsely alleged to have been taken, or irregularly taken without authority, for improper reasons. And where Board approval is required, LASA's records show that it's duly sought and obtained.

324. Since a decision to 'abort… the filling of the remaining vacant Senior Litigator posts' – at Durban, Pietermaritzburg and Mthatha, per Vedalankar's letters to me of October 2010 and January 2011 – had serious financial implications, section 55 of the PFMA required that it be recorded.

325. According to the Legal Aid Guide, 'The Board delegates authority to the CEO, the Management Exco, LSTC, other committees and officials through its Approval Framework.' The 'collective responsibility' of the LSTC 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'.

326. Vedalankar and Nair didn't have the power to usurp the LSTC's delegated power, and to interfere with 'the execution of all Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa' by taking major decisions in this regard as a duo, between themselves, off the record.

327. Any decision to 'abort … the filling of the remaining vacant Senior Litigator posts' would have required Board approval, for the reason that employing Senior Litigators was part of LASA's Strategic Plan 2009–12, and, as discussed below, only the Board can change a Strategic Plan. The posts are not explicitly mentioned in it, but the said plan repeatedly discusses capacitating LASA to deliver the specialist functions of Senior Litigators. And there's no question about this:

328. In her CEO report for 2011/12, discussing 'the completion of our three-year Strategic Plan period 2009–12', Vedalankar twice reported the employment of Senior Litigators as one of LASA's achievements in implementing it: '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. … Senior Litigators employed are working on complex matters in the higher courts.' The claim is made a third time in the main body of the 'Report on completion of Strategic Plan 2009–2012' included in LASA's Annual Performance Report 2011/12: 'Senior Litigators employed are working on complex matters and matters in higher courts'.

329. Vedalankar dishonestly reinforced her deceptively misleading claim, 'Senior Litigators employed are working on complex matters in the higher courts' – having been party to the illegal, off-the-record abortion of three Senior Litigator appointments – with her immediately preceding 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.'

330. Such training is among Senior Litigators' responsibilities according to LASA's advertisements for the posts (for example, annexure 'R').

331. Contrary to Vedalankar's lie in her report to the Minister and the National Assembly about this (a crime under Act 4 of 2004), in truth and in fact such 'specialist capacity' wasn't 'in place' in accordance with the Strategic Plan. It was short at the eastern end of the vast Eastern Cape with its four high courts, LC and LAC. And in KZN with its two high courts, LC and LAC, it wasn't 'in place' at all; it was completely absent.

332. Board approval would have been required for any decision by executive management to abort three substantially completed recruitments to LASA's remaining three critical vacant Senior Litigator posts and to indefinitely/ permanently freeze recruitment to the posts for the following reason:

333. Section 1.1 of the Approval Framework permits only the Board to change its Strategic Plan. The Strategic Plan 2009–12 itself explains that it 'informs the preparation of our Business Plans which will expand the strategies into programmes and projects.' LASA's annual Business Plan (also referred to as the Annual Performance Plan) for implementation by the LSTC is based on the Strategic Plan; and section 1.2 of the Approval Framework permits the Business Plan to be changed (by the LSTC), provided that (a) the Board 'Must be consulted (before)' any such change, and (b) the full Management Executive Committee gives its 'Final approval'. (The LSTC Terms of Reference prescribe likewise: 'Any decision taken by LSTC that is of a policy nature and impacts on the Business Plan must be referred to m/exco for approval.')

334. As shown by the decision in March 2010 to abolish the Kimberley Senior Litigator post and to create a new such post at Mthatha, LASA's decisions

regarding the employment of Senior Litigators are made by the LSTC. (Nair testified that he repeatedly sought Vedalankar's agreement under the Approval Framework to this LSTC resolution to move the establishment post from where it wasn't needed to where it was, but that she refused to give it.)

335. Section 1.2 of the Approval Framework requires that 'All Committees' 'Must be informed (after)' a change to the Business Plan, such as 'to terminate the recruitment of Senior Litigator positions in Pietermaritzburg, Durban and Mthatha' (as the amended response to my labour claim put it).

336. A decision to 'terminate' three substantially completed Senior Litigator recruitments and to indefinitely freeze recruitment to one third (3/9) of LASA's critical, top-level legal professional Senior Litigator posts, and to completely deprive KZN, the country's second largest province in population, of the kind of expert litigation expertise the Senior Litigator advertisement describes (e.g. annexure 'R') – the exceptional need for which is indicated by the creation of two such posts, as in Gauteng – is a decision to change the Business Plan very substantially.

337. No record exists to show that the Board was 'consulted (before)' such alleged decision was taken, as it 'Must be.' To the contrary, Nair, Vedalankar and Clark all confirmed on affidavit in April 2011: 'The Board was … not informed of the decision.'

338. No record exists 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, as required. LASA confirms that COO Makokoane wasn't even consulted. In its original response to my labour claim, LASA pertinently confirmed that 'the COO was deliberately left out of the decision to abort the vacant [Senior Litigator] posts', for the reason Vedalankar ignorantly claimed in her January 2011 letter to me: 'the concurrence of the COO is not required for these posts.'

339. No record exists to show that 'All Committees' were 'informed (after)', as they 'Must be.' They weren't. The abortion was kept secret.

340. And Vedalankar, Nair and LASA's other top management executives know this requirement perfectly well, because when in July 2010 they decided to *temporarily* freeze recruitment to some entry-level lower criminal court public defender posts to spur the Department into paying LASA its OSD phase 1 allocation for salary increases, as Nair explained in his evidence in my labour case, they duly sought and obtained Board approval for this temporary deviation from the Strategic Plan and Business Plan – an *actual* decision with *temporary* effect and much lighter impact than the *alleged* decision to abort three substantially completed Senior Litigator recruitments and *indefinitely / permanently* freeze recruitment to LASA's three remaining critical Senior Litigator posts, leaving KwaZulu-Natal without any specialised high-level litigation capacity at all, and the Eastern Cape badly stretched with only one Senior Litigator servicing all four of its far-flung High Courts – so then Eastern Cape ROE Mtati lamented in his motivation for the creation of the Mthatha post.

341. Annexed marked 'X1-6', and identified below, are the records Vedalankar put up in January 2011 trying to make me believe her lie told me in October 2010 that LASA just didn't have the cash to hire more Senior Litigators and that she and Nair had frozen the Pietermaritzburg, Durban and Mthatha posts accordingly. I later sourced the final two in the series, annexures 'X7' and 'X8':

    (a) 'X1': Vedalankar's letter of 10 March 2010 to the Director General reporting LASA's disappointment that contrary to repeatedly confirmed reports, funding for OSD phase 1 hadn't been included in its baseline budget for 2010/11, and asking for confirmation that OSD phase 1 and 2 funding would be included in the national mid-term budget (it later was);

(b) 'X2': her reminder of 13 April 2010, warning that unless the funding came through, LASA would have to 'reduc[e] the number of practitioners we can make available at courts' (i.e. lower criminal court public defenders, see next).

(c) 'X3': Nair's proposal on 15 July 2010 to his national executive colleagues that 56 such lower criminal court posts be frozen, more if necessary and/or some even lighter paralegal and administration posts;

(d) 'X4': Makokoane's Report to Board on 16 July 2010 recommending the temporary freezing of recruitment to some of these lower criminal court posts for the rest of the year until resolution of the OSD uncertainty;

(e) 'X5': the Board's approval on 31 July 2010;

(f) 'X6: Vedalankar's information to the Portfolio Committee on 11 October 2010 that LASA's OSD funding had been provided for in the mid-term budget;

(g) 'X7': Finance Minister Gordhan's announcement of this on 27 October 2010;

(h) 'X8': the Department's payment voucher, reflecting payment of LASA's OSD allocation, on 15 December 2010.

342. So it's idle and foolish to go on pretending, as Nair, Vedalankar and Clark did on affidavit in April 2011, that 'There is no need, in terms of the [Approval] Framework, for the executive to refer to the Board in this regard' to freeze three Senior Litigator posts off the record to save costs.

343. Especially because in its response in September 2011 to my original statement of claim in July, LASA pleaded its very correct understanding that a management decision to freeze recruitment to vacant budgeted, funded posts – even at the bottom of its professional ranks – needs to be approved and authorized by the Board: 'the Board [gave its] approval to go ahead and

implement such … cost-cutting measures, the specific measures that could be adopted'. And Nair very correctly testified consistently: 'implementation [of the Strategic/Business Plan] continues until the Board revisits that issue.' (Record, 424:25; 426:1)

344. The 'specific measures that could be adopted', with Board approval, were the temporary freezing of some bottom-rung public defender posts and the application of unspent budget savings, as stipulated by Makokoane in his July 2010 Report to Board. Not the indefinite, and in the result, permanent freezing of appointments of selected candidates to LASA's top-ranking Senior Litigator posts.

345. Another thing. Makokoane was appointed COO in June 2007 with the job function described in a 'Media Release' on the 13th of 'assuming responsibility for the operations of the Legal Aid Board [and to] guide the team of executives in the effective and efficient execution of their responsibilities.' The power relationship (per the organograms in LASA's annual reports) later changed to parity, but as at mid-2010 NOE Nair was still Makokoane's subordinate.

346. Performing his just-described responsibility, LASA's just-mentioned records show that Makokoane had been centrally involved in deciding and proposing to the Board measures such as executive management's 'mitigating action or plan' (per LASA's amended response) to temporarily freeze recruitment to 56 vacant practitioner posts serving the lower criminal courts, until the OSD payment uncertainty had been resolved.

347. Yet according to Vedalankar, in her October 2010 letter to me, when 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen', they didn't consult COO Makokoane, for the reason alleged in her January 2011 letter that 'the concurrence of the COO is not required for these posts' at the top of LASA's

legal professional ranks – implying only for LASA's bottom-ranking legal posts, a foolish proposition.

348. Consistent with Vedalankar's claim that Makokoane wasn't involved in the off-the-record decision to abort the Senior Litigator appointments, Nair stated in his April 2011 PAIA affidavit, confirmed by Vedalankar and Clark: 'The decision was taken by me in consultation with the Chief Executive Officer and the Human Resources Executive' – omitting any mention of COO Makokoane.

349. In its original response to my labour claim, LASA pertinently confirmed that 'the COO was deliberately left out of the decision to abort the vacant [Senior Litigator] posts'.

350. Then flatly contradicting Vedalankar's and Nair's sworn claims to me, as well as its own original averment to court in September 2011, LASA alleged a month later, for the true information of the judge, in its answer to my agenda for the first pre-trial conference: 'Nair consulted with the Respondent's CEO; COO and other Executives before terminating the Applicant's [Brink's] and other Senior Litigator applicants' recruitment processes.' And 'the final decision to abort the recruitment processes underway was taken with the knowledge of all the executives'.

351. The liars running LASA don't even bother telling the same lies in their correspondence to me, in their PAIA affidavits under penalty of perjury, and in their pleadings for the true information of a judge.

352. Ad the third perjury: After three shortlisted and interviewed candidates had been recommended for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts, LASA aborted these recruitments 'due to budgetary constraints'. As said, there's no record of any such decision duly taken by LASA (by executive management, with Board approval), and the 'budgetary

constraints' story with which it's iced is easily refuted by the objective facts supported by LASA's records.

353. The story is also contradicted by the admission I forced from LASA during discovery in my labour case that there's no record of any mention of Senior Litigators and/or budgetary problems in any minutes of KZN regional management committee meetings over the period 2009–2011. Had the province's two Senior Litigator posts in truth been frozen for budgetary reasons there'd certainly have been some discussion of this noted for the information of the affected JCEs at Pietermaritzburg and Durban. But there was nothing minuted about it, nothing even said.

354. Indeed, when I interviewed the just-retired Pietermaritzburg JCE during my investigation of the irregular abortion of my appointment, he informed me that he'd repeatedly enquired of the ROE at these meetings as to when he could expect his Senior Litigator, but could never get an answer or reason for the delay.

355. In her letter of 18 October 2010 illegally refusing my entire August 2010 PAIA request, in which I was thoroughly probing the circumstances in which my appointment had been cancelled, Vedalankar alleged for the first time, eleven months after my successful interview, greased with lots of convincing-sounding detail:

> '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.'

356. It was an audacious, mellifluous, cunningly elaborated lie (almost certainly wholly or partially originated by Nair ghost-writing, with his tell-tale stylistic idiosyncrasies and history of ghost-writing, as for Mlambo JP). Upon investigation I found that every sentence was demonstrably untrue. The recession had nothing to do with it: LASA's management executives were taking home home massive, unprecedented bonuses (detailed in paragraphs 196–214 of my first petition to the Board, LASA's annexure 'FA1'). LASA's baseline budget from the Department was not cut but actually increased 11.8% over the previous year, rising from R895.8 million in 2009/10 to R1001.4 million in 2010/11. And LASA enjoyed a large surplus of R31.7 million in 2010/11, unlike the R1.8 million deficit the previous year.

357. There've never been 'budgetary constraints' in relation to the Senior Litigator posts, which have always been and remain budgeted by LASA and funded by the Department.

358. How some transient budgetary uncertainty arising in March 2010 was handled in July, and completely resolved two months later in September, is fully documented by LASA's own records (annexures 'X1–6'), and they show that this passing uncertainty about when LASA's OSD phase 1 funding of R23.8 million for salary increases would be paid (R23 million was paid for this the year before, also separately from the baseline budget transfer) had no bearing on Senior Litigator recruitment or on recruitment to any other posts, save that a few entry-level public defender posts serving the lower criminal courts were briefly frozen for two months, in August and September.

359. Even after the Board's resolution on 31 July 2010 to temporarily freeze recruitment to 56 lower criminal court public defender posts, recruitment for other posts continued apace:

360. Vedalankar informed the Access to Justice Conference in her presentation on 9 July 2011 that LASA had recruited 2489 staff including 1932 lawyers, whereas the First Quarter Report (1 April–30 June 2010) shows 2434 staff including 1855 lawyers, a difference of 77 more. The same figures appear in LASA's annual report for 2010/11. That is, in the nine months following its duly taken decision in July 2010 to temporarily freeze recruitment to some practitioner posts serving the lower criminal courts LASA recruited 77 more lawyers. But not me; my appointment had been permanently 'frozen'.

361. As Vedalankar was telling me her lies on 18 October 2010, namely that LASA couldn't afford to employ me, and that she and Nair had 'immediately' frozen LASA's Durban, Pietermaritzburg and Mthatha posts, she'd just told the Portfolio Committee a week earlier on the 11th that LASA's OSD funding uncertainty had been completely resolved with the assistance of the Minister by inclusion of the funding in the national mid-term budget – exactly the assurance she requested in paragraph 12 of her March 2010 letter to the Director General (annexure 'X1'). Annexure 'X6' is the minute of her address to the Committee announcing this.

362. Indeed nine days later on 27 October 2010, Finance Minister Gordhan confirmed in his 'Medium Term Budget Policy Statement 2010': 'unforeseeable expenditure adjustments recommended by the Treasury Committee this year, including … R320 million for occupation-specific dispensation salary adjustment in the Department of Justice and Constitutional Development, the National Prosecuting Authority and Legal Aid South Africa.' (Annexure 'X7')

363. In dishonestly pleading poverty at me in October 2010, Vedalankar naturally didn't mention that LASA's uncertainty about when its OSD phase 1 allocation would be paid was completely over. She made sure to conceal that piece of hot information from me.

364. According to LASA's annual report for 2010/11, 'A Strategic Plan Annual Review 2011–12 workshop and Board meeting was held on 18 September 2010'. Neither Nair, nor Vedalankar, nor any other management executive informed the Board at this Strategic Plan review workshop that they had, off the record, aborted three Senior Litigator appointments and indefinitely/ permanently frozen the posts, substantially impacting on the implementation of the Board's Strategic Plan. Nair, Vedalankar and Clark later all confirmed on oath in April 2011: 'The Board was … not informed of the decision.'

365. In the third quarter October to December 2010, following Vedalankar's information to the Portfolio Committee on 11 October 2010 that the Minister was 'involved and he had assisted' with the delayed payment of LASA's OSD funding allocation which 'we are in the process of fixing', LASA resumed filling the lower criminal court public defender posts that it had frozen with Board approval, and legal staff recruitment then sharply increased from 1193 to 1223, peaking for the year at 2.5% more lawyers hired.

366. This massive increase in legal staff recruitment inexplicably didn't include the finalisation of my appointment, nor of Mngadi's promotion, nor of Skibi's transfer.

367. In its answer to my agenda for the first pre-trial conference, LASA pleaded that the reason for the delay in finalising my appointment was that it 'still had to finally determine its position arising from the financial uncertainties presented by the 2010/2011 budget deficit. … [LASA] has explained why the Applicant [Brink] had to wait for such a long period before his application could be finalised.' (Contradicting this pleading, Vedalankar denied in her January 2011 letter that there was any 'what you refer to as "the delay". I reject that there were any delays in dealing with any post.')

368. But after a 'wait for such a long period' – nearly a year since my successful interview, now that the 'financial uncertainties' had been resolved, and LASA

had been able to 'determine its position' that no financial worry prevented it filling all its vacant posts in completion of its Strategic Plan 2009–12, it failed to appoint me, promote Mngadi and transfer Skibi, because, according to LASA's amended response to my labour claim, LASA 'had long decided to terminate the recruitment of Senior Litigator positions in Pietermaritzburg, Durban and Mthatha'. Only, it hadn't. LASA hadn't decided this as an organisation at all. The unauthorised, unapproved, unrecorded decision was illegal.

369. LASA's 'Budget 2011/12 Executive Summary' document records that 'The Board approved Legal Aid South Africa's 2011/12 Budget at its 26 November 2010 meeting.' This included the 'R42 million once off backlog funding for OSD Phase 2, which has been included in the 2010/11 budget … The Budget allocation of R1,169,772,000 for 2011/12 includes … R30,000,000 OSD Phase II funding'.

370. Even as LASA now had the funding not only to employ me at the budgeted salary scale, which cash it always had, but even to pay me extra under both phase 1 and 2 of the Occupation Special Dispensation (OSD) scheme to attract experienced lawyers, and even as I was pressing for my appointment, LASA kept me shut me out.

371. LASA's 'Recruitment Stats – National Summary – December 2010' reflect that the Pietermaritzburg and Durban Senior Litigator posts remained budgeted vacant posts, and not 'frozen', as Vedalankar falsely alleged to me on 18 October 2010.

372. In her letter of 28 January 2011, again refusing my August 2010 PAIA request, now for quite different reasons, and also refusing my second December 2010 request as a mere repetition of the first (it wasn't), Vedalankar huffily reiterated her October 2010 story:

'the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible … I provide you with further information and reasons that led to the freezing of the Senior Litigator posts in Durban, Pietermaritzburg and Mthatha … I, and the Legal Aid SA under my watch, have never sought to make any decision regarding Senior Litigator posts on any ground other than the budget constraints which you have rejected.'

373. In dishonestly continuing to plead poverty at me again in January 2011 – '[LASA] has always had financial difficulties … 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' – just as she'd done in October 2010 – 'Due to the effects of the recession, anticipated funding did not materialise … cutting our baseline budget by a significant amount' – so as to keep up the pretence that LASA couldn't afford to employ me, Vedalankar naturally didn't mention that LASA had just received its OSD- and other funding from the Department six weeks earlier on 15 December 2010, and was now so flush with cash after this payment that it enjoyed a massive R31.7 million surplus that year. Vedalankar made sure to deceptively conceal that crucially relevant information from me as well. (I later forced the payment voucher out of LASA through pre-trial discovery process in my labour case: annexure 'X8'.)

374. As indicated, Vedalankar wasn't just deceptively silent about the payment, she positively lied to me about it: 'Obviously by November 2010, after the Memorandum from the COO [on 30 September, inviting belt-tightening proposals to reduce unnecessary expenditure, as requested by government across all state departments], it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected up to 2012.'

375. Vedalankar's lie to me was contradicted by her information to the Portfolio Committee on 11 October 2010 that the Minister had intervened to resolve the

outstanding OSD funding issue and that this funding was assured by inclusion in the mid-term budget. After which staff recruitment at LASA soared in the October to December 2010 third quarter, and peaked for the year.

376. Which funding was paid to LASA on 15 December 2010, a few weeks before Vedalankar told me the lie that 'by November 2010 … it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected'.

377. The different truth of it, which Vedalankar should have told me, had she been an honest person, is that 'by [early October] 2010 … it was evident that there would be' whole truckloads full of 'funding coming from the DoJ. In fact' a huge surplus 'was expected.'

378. In her January 2011 letter, Vedalankar told me that Clark, '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.' The statement was another oily lie, implying that 'finalising the recruitment processes' for filling the Senior Litigator posts had been frozen. It hadn't. Quite irrespective of the OSD phase 1 uncertainty that arose on 10 March 2010 (annexure 'X1'), recruitment and new post creation rocketed. Vedalankar didn't just imply it in her letter, she expressly lied about it: 'the drive to secure funding took priority', she said, over 'the recruitment drives'.

379. It didn't. In truth and in fact, and contrary to Vedalankar's lie to me, recruitment was completely unaffected by LASA's discovery on 10 March 2010 that it's OSD phase 1 funding allocation hadn't been included in its baseline budget – as LASA's recruitment statistics for the first quarter April to June 2010 show.

380. In other words, Clark didn't 'wait and see'. And when the 'budget' for OSD phase 1 and 2 was allocated in the mid-term budget in October 2010 and paid

in December, nothing was done about 'finalising the recruitment processes' to appoint Senior Litigators to LASA's Pietermaritzburg, Durban and Mthatha posts – even as other legal recruitment peaked for the year in the third quarter October to December 2010: 2.5% more lawyers were employed. But leaving me out.

381. Among the records specified in my PAIA request of August 2010 were:

- '33. All and any records, including internal email, founding Nair's statement: "I can now confirm that we will not be proceeding with the filling of any of these posts", i.e. "all vacant Senior Litigator posts" (– per Nair's letter to Brink).

- '34. Any record identifying other "vacant Senior Litigator posts" besides those in Durban and Pietermaritzburg … for which selections for appointment by regional selection boards had been made (– per Nair's letter to Brink).'

382. Instead of (a) certifying under section 23 that no record existed to support Nair's claim that 'we will not be proceeding with the filling of any of these posts', i.e. 'all vacant Senior Litigator posts', and (b) giving me Skibi's recommendation for the Mthatha post, Vedalankar eventually answered in January 2011 with a show of the sort of sleazy, carefully twisted dishonesty in fancy syntactically incoherent English that I got to know so well and to expect from LASA:

> 'As for your requests 33; and 34: Your attention is drawn 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 at 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.'

383. First, none of the 'costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc', to which Vedalankar referred, as 'part of the Executive's mandate at the time', mentioned Senior Litigator posts: only some non-critical practitioner posts serving the lower criminal courts.

384. Second, the fully documented 'costs-cutting discussions/processes including identifying the areas that could be sacrificed to keep Legal Aid SA in budget' never contemplated cutting or freezing critical Senior Litigator posts. The 'costs-cutting measures correspondence' was in no wise responsive to my said PAIA requests, and was completely irrelevant.

385. All this 'costs-cutting measures correspondence' clearly had no bearing on the abortion of my appointment, but Vedalankar brazenly lied that it did.

386. And third, the COO's 'memo' was emailed out in September, three months after Vedalankar and Nair had allegedly frozen the Senior Litigator posts, so it was equally irrelevant – both with respect to its much later date and its effect on recruitment: none at all. Quite the contrary, legal recruitment hugely increased in the third quarter October to December 2010, going up from 1193 posts filled to 1223, and peaking for the year at 2.5%. (But the Senior Litigator posts remained 'frozen', off the record, and unreported.) I annex a copy of this totally irrelevant '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', marked 'Y'.

387. Set up as the second game leg of the bogus financial excuse for aborting my appointment, the COO's 'memo' clearly had nothing to do with it whatsoever. In pretending otherwise, Vedalankar shamelessly lied about this too.

388. Mlambo JP was aware of all Vedalankar's lies to me in her January 2011 letter because she copied him in on her covering email to me; but he did nothing

about them. Mlambo JP was very happy with all the lies Vedalankar told me to cover the true reason my recruitment had been cancelled.

389. On 17 February 2011, a couple of weeks after Vedalankar's January letter to me, repeating her lie told me in October 2010 that LASA lacked the budget to appoint me, the Department's Chief Director: Third Party Funds, Johan Johnson, informed the Portfolio Committee that 'The Legal Aid budget would be increased to R1.3 billion. … An additional staff budget of R40 million in 2012/13 would allow the appointment of an additional 60 Legal Aid practitioners.'

390. The minute of the presentation records that the Department's representative on the Board, 'Adv Du Rand added that … The National Treasury had made additional funds available to address the backlog in appointments.' Still, the three vacant Senior Litigator appointments remained frozen off the books.

391. Two months after Vedalankar's second lying letter to me of January 2011, the minute of LASA's presentation of its 'Strategic Plan and budget 2011' to the Portfolio Committee on 31 March 2011 records that it:

> 'enquired about the vacancy rate, generally, and at a 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.'

392. Vedalankar did not allege to the Committee, as she'd alleged to me in October 2010, reiterated in January 2011, and verified under oath in April 2011 on pain of being jailed for perjury, that 'In July 2010 the NOE and CEO took the

decision that all senior litigator posts that were vacant would be immediately frozen', and that even after 'the uncertainty of obtaining OSD funding in Phase 1' had been 'resolved' in principle by early October 2010 and in fact with payment two months later in December, the posts remained frozen and the vacancies for these critical positions were not being filled to save costs or for any other reason.

393. In speaking this way, Vedalankar deceptively concealed from the Portfolio Committee this matter of expressly stated specific interest to it. And the reason she dishonestly concealed her and Nair's off-the-record indefinite/ permanent freezing of recruitment to LASA's three remaining vacant Senior Litigator posts is because she appreciated that their conduct was unlawful. She knew she couldn't properly and truthfully answer any questions by the Portfolio Committee about it. By her deliberate silence, she misled it: a crime under Act 4 of 2004.

394. In an affidavit Vedalankar made confirming Nair's PAIA section 23 affidavit on 8 April 2011, she verified on oath the basic lie she'd repeatedly told me. She confirmed Nair's statement:

> '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 the 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.'

395. Only, the 'attachments' claimed under oath 'clearly [to] indicat[e] that the reason to freeze the positions of Senior Litigator was due to fiscal pressures' didn't; they showed LASA's concern about payment of its OSD phase 1 allocation for salary increases, and the steps it took to spur the Department

into paying it over (as Nair explained in his evidence). Which steps had no bearing on Senior Litigator recruitment at all. The 'attachments' are annexures 'U', 'X1–6' and 'Y' hereto.

396. After I'd thoroughly dismantled the 'fiscal pressures' lie covering the abortion of my recruitment in my original very detailed statement of claim in July 2011, Nair, evidently appreciating the implosion of this basic lie, changed the story completely. In his Report to Board about Senior Litigators in November 2011 (annexure 'O', which he admitted having written at trial), he cooked up totally different reasons for the off-the-record cancellation of my appointment to the Pietermaritzburg post, Mngadi's promotion to the Durban post, and Skibi's transfer to the Mthatha post, having nothing to do with any budgetary considerations:

> '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.'

397. In truth and in fact, there were no 'recruitment challenges' holding up the filling of LASA's three remaining Senior Litigator posts, as shown by the fact that selection panels had recommended three eminently qualified candidates for the Pietermaritzburg, Durban and Mthatha posts.

398. In his address to the Portfolio Committee on 11 October 2010 (per the minute published by the Parliamentary Monitoring Group), Nair himself directly contradicted his 'recruitment challenges' lie told to the Board: 'LASA had no problems with regards to recruiting lawyers'.

399. Which means Nair lied to the Board in claiming the contrary, his lie refuted by the concrete fact of the three selections of three well qualified candidates. And

in truth and in fact, no doubt was ever expressed about the value and performance of LASA's incumbent Senior Litigators. Tested with a PAIA request, I established that no record exists to show this alleged concern was ever suggested by anyone. Which means Nair lied to the Board about this too.

400. I've combed LASA's reports and the minutes of its presentations to the Portfolio Committee, and what they all tell, over and over, is that LASA is quite satisfied with the professional performance of its lawyers, which, it says, it systematically monitors and audits. LASA's consistent statements about this are too many and lengthy to recite here.

401. 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].'

402. 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 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, 'The panel has not been constituted and terms of reference are still under consideration.'

403. In truth and in fact, the 'terms of reference' of the alleged 'panel', falsely and dishonestly alleged by Mtati under oath to be 'still under consideration', had already been comprehensively invented and stated by Nair in his 'Report to Board':

> '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.'

404. Cross-examining Nair at trial, I tested Mtati's slippery 'terms of reference are still under consideration' story told me 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 seemingly 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.

405. Nair tried slipping out the noose by claiming that he'd 'allocated the responsibility' to 'the Chief Legal Executive, the then Legal Development Executive' 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'. (Record, 397–8)

406. After judgment, I tested this evidence – these easy lies Nair told the judge – 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, indentify 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 slithering out of the trap he and Mtati had talked themselves into.

407. The real reason nothing has ever been 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;

    (b) Nair accordingly never had any genuine intention of establishing any such panel; and,

    (c) Nair was scrambling to fabricate new cover-stories for his failure to approve and finalise my appointment, after I refuted his lying logistical and budgetary explanations in my original statement of claim in July 2011 and further interrogated and blew them in my lengthy agenda filed on 26 September 2011 for the first pre-trial conference held a month later on 26 October 2011.

408. 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'.

409. 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. For as Sir Walter Scott pointed out: 'Oh, what a tangled web we weave. When first we practise to deceive!' (And what an excellent weapon PAIA is to untangle it.)

410. In January 2012, two months after Nair alleged to the Board that it had been decided not to fill the vacant Pietermaritzburg Senior Litigator post and two other such posts, 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 (as opposed to by some rogues) to indefinitely/ permanently freeze the Pietermaritzburg Senior Litigator post I'd been picked for. As Vedalankar insolently put it in her 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 these positions.' Talking like a functionary of the apartheid regime: making a show of legality while dishonestly contemptuous of it.

411. In the following month, February 2012, LASA advertised to recruit an advocate for 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. So much for Nair's lie to the Board that 'we' had decided not to hire any more Senior Litigators for all the phoney reasons he made up.

412. As said, Nair's Report to Board on Senior Litigators in November 2011, in which he repeatedly lied to the Board, was leaked to me by a sympathetic high-ranking LASA insider on 8 October 2012, emailing me from a private account to avoid detection and reprisal. I'd otherwise not have found out about

it and seen the radically different new lies Nair told the Board about why the three candidates recommended for the Pietermaritzburg, Durban and Mthatha posts weren't appointed and why recruitment to the three critical posts was permanently frozen, off the record – lies totally different from those Vedalankar had told me, which lies Nair, Vedalankar and Clark had confirmed on oath earlier in the year in their PAIA section 23- and confirmatory affidavits in April 2011.

413. And which new lies to the Board that I'd just learned about – diametrically contradicting the basic lie about insufficient budget available to fill the three remaining Senior Litigator posts – I pleaded in my amended statement of claim in my labour case; testified about; cross-examined Nair on; and argued, but which surprisingly didn't feature anywhere in the judgment. The judge just said Nair was 'not generous with the truth', but took him at his word and believed him anyway, even where his evidence was radically contradictory, and further contradicted by LASA's records, pleadings, and affidavits.

414. Committed to its basic 'fiscal pressures … due to the recession' lie told me repeatedly, LASA stuck to the budgetary insufficiency excuse in its original plea filed in October 2011, defending my claim to my appointment, and again in its plea 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 whether LASA was getting its money's worth from its incumbent six Senior Litigators were the two reasons the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments had been aborted.

415. But in his evidence claimed that the Pietermaritzburg post remains frozen for these different reasons (not 'fiscal pressures') alleged to the Board: Q: 'And the reason for that is to be found in the report to the Board that you wrote?' --- 'Correct.' (Record, 368:21–3)

416. I interpose to highlight the deceptively soporific title Nair gave his November 2011 'Report to Board': 'Senior Litigators Reporting Relationships and Job Clarification' – contrived to guarantee that no one on the Board would read to the end of such an unimportant-sounding document and spot Nair's claims that 'we' had been unable to fill LASA's three remaining Senior Litigator posts due to 'recruitment challenges' and that 'we' had then decided not to fill the posts until assured the incumbent Senior Litigators were fit for their posts, to ascertain which they were to be urgently professionally audited. All humbug and lies.

417. At trial in mid-2013, Nair unexpectedly changed the previously sworn and pleaded story that the three Senior Litigator posts had been frozen for budgetary reasons, and reduced it to two, Pietermaritzburg and Durban only, now alleging that, contrary to what Vedalankar had repeatedly alleged to me in October 2010 and January 2011, and what Nair himself had confirmed on oath on 8 April 2011, the cancellation of the Mthatha recruitment had nothing to do with any financial consideration: it was, he said, because Vedalankar refused to approve his LSTC's decision to abolish the Kimberley Senior Litigator post, create a new such post at Mthatha and to transfer the budget.

418. Ad 10. It's dishonestly false and misleading to claim to this court that I was 'not … satisfied with Legal Aid SA's decision to abort further appointments to the Senior Litigator posts', because LASA knows perfectly well this wasn't what dissatisfied me. My complaint from early on has been that LASA never took any such decision as an organisation functioning legally in accordance and compliance with (a) its internal regulations delegating decision-making and approval power, and (b) national law requiring all public entity operational decision-making with financial implications to be recorded – as opposed to some rogues acting illegally, off the record, in contravention of the Approval Framework and PFMA.

419. In August 2010 I used PAIA to test Nair's claim to me made earlier that month that LASA had decided 'to abort further appointments to the Senior Litigator posts' as alleged in paragraph 10, namely his claim to me in his own words that 'the recruitment process to finalize 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', that is, to abort the appointment process for the candidates recommended for the posts.

420. After much illegal obstruction and delay, I eventually forced the sworn admission by way of a section 23 affidavit he made in April 2011, confirmed by Vedalankar and Clark, that no record whatsoever exists of any such decision alleged to 'put on hold … the recruitment process to finalize the appointments for all vacant Senior Litigator posts' nor the decision alleged 'that we will not be proceeding with the filling of any of these posts' – neither by any competent authority at LASA, nor by anyone at all:

> '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.'

421. As said, (a) the legal specialist capacitation of LASA by employing Senior Litigators was a specially noteworthy part of LASA's Strategic Plan 2009–12, its 'corporate plan' for those years, in the language of section 52 of the PFMA prescribing that public entities like LASA are required to present 'a corporate plan … covering the financial affairs of the public entity … for the following three years'; and (b) in her CEO report for 2011/12, presented to the Portfolio

Committee on 9 October 2012, Vedalankar twice reported the employment of Senior Litigators as part of LASA's completion of its Strategic Plan. And this is repeated in the main report on it.

422. By repeatedly uttering the half-truth in her CEO report that LASA had employed Senior Litigators in fulfilment of its Strategic Plan 2009–12, Vedalankar deceptively concealed from the Portfolio Committee that a third of LASA's Senior Litigator posts had irregularly been frozen off the record, without a resolution of the LSTC, without Board approval, and despite the selection of suitable candidates for appointment. (In the half-truth is the whole lie.)

423. In her entry in LASA's 'Business Plan 2011/12' in section P26-10 under the heading, 'Talent acquisition and retention', Clark ('Responsible Executive': 'HRE') lied to the Board, to the Minister and to the Portfolio Committee (a crime under Act 4 of 2004) in reporting 'No longstanding vacancies'. In truth and in fact, first advertised in October 2007 but unlawfully intentionally never filled, LASA's Senior Litigator posts in KZN had long stood vacant, for about five years. (And still are, coming up for 10 years now.)

424. In this criminally dishonest manner, Clark participated in covering up the fact that three of LASA's critical Senior Litigator posts, budgeted by LASA, their salary budget voted by the National Assembly, and funded by the Department, year after year, had long deliberately been kept vacant, off the record, irregularly, without a resolution of the LSTC and without Board approval, despite the selection of suitable candidates for appointment to the posts.

425. In thus reporting 'We employed Senior Litigators who are working on complex matters and matters in higher courts' and that LASA had 'No longstanding vacancies', Vedalankar and Clark both reported falsely and deceptively to create the impression that LASA had filled its Senior Litigator posts. But according to Vedalankar's letters to me of October 2010 and January 2011,

verified on oath by her, Nair and Clark in April 2011, she and Nair in consultation with Clark had decided to cancel three appointments of recommended candidates to a third of the said posts. Off the record, without an LSTC resolution, and without Board approval, and thus irregularly and illegally, as I said.

426. In his chairman's report to the Minister and to the National Assembly at the start of LASA's annual report for 2012/13, Mlambo JP failed to contradict and correct the false information twice given by Vedalankar in her CEO report immediately following his, that in the completed implementation of LASA's Strategic Plan 2009–12, Senior Litigators had been employed – thus also concealing from the Minister and from the National Assembly with this half-truth the fact that for whatever reason (several completely different reasons were advanced over time as I progressively nailed the lies originally told to me, to the Minister and to the Portfolio Committee, and to the SAHRC), LASA management executives had, off the record, without a resolution of the LSTC and without Board approval, irregularly and unlawfully frozen recruitment to three of its Senior Litigator posts, a third of the total number of these top specialist professional, fully budgeted and funded posts, leaving KZN without any specialist litigation capacity at all and the Eastern Cape's four distant High Courts severely under-serviced, with only one Senior Litigator at Port Elizabeth serving all four distant High Courts in the Eastern Cape – so Mtati, then Eastern Cape ROE, implored in his motivation for the creation of a second such post.

427. To repeat: A decision to indefinitely/permanently freeze recruitment to a third of these critical budgeted and funded posts is a deviation from LASA's Strategic Plan and its Business/Performance Plan based on it, requiring Board Approval. The Board never approved. In fact it wasn't even told; Nair confirmed on oath in April 2011, Vedalankar and Clark too, that the Board 'was … not informed of this decision.'

428. And the reason the Board was never asked to approve the freezing of recruitment to LASA's three vacant Senior Litigator posts, and the cancellation of the appointments of three recommended candidates for them for the reason falsely claimed to me that LASA didn't have the money to fill the posts, is that it wasn't true; there was no shortage of salary budget to fill the posts: they were all fully funded. (That's why Nair told the Board a totally different bunch of lying stories.)

429. LASA's records show that at no stage was indefinitely/permanently freezing the posts even contemplated – rather, the temporary freezing of some entry-level public defender posts serving the lower criminal courts was: Vedalankar raised it as a possibility in her letter to the Department's Director General in April 2010 (annexure 'X2'), referring to her March letter (annexure 'X1'); and in July, Nair proposed it to top members of the management executive committee; the management executive committee agreed to take this measure; COO Makokoane put it to the Board for approval; and the Board approved it. All this is fully documented in annexures 'X3' to 'X5'.

430. And, as said, section 55 of the PFMA requires that decisions with significant financial implications be recorded. The freezing of three of LASA's Senior Litigator posts is a decision with financial implications running into many millions of rands, year after year. There isn't any record of this alleged decision, so it's unlawful for that reason too.

431. Unfortunately the pivotal fact that no record whatsoever exists to vouch the basic lie that LASA froze its Pietermaritzburg, Durban and Mthatha Senior Litigator posts in 'July 2010' for lack of budget to fill them made no impression on the judge in my labour case.

432. I'm confident, on the other hand, that since LASA isn't 'a glorified spaza shop', in the words of Cachalia JA quoted above, this court will easily see the basic lie laid bare by Nair's, Vedalankar's and Clark's finally forced concession in April

2011 that no record exists to vouch the alleged big decision. (This is after I'd asked for the record of the decision in August 2010, and my request was ignored and then repeatedly refused, and I'd twice had to call the SAHRC in to assist me.)

433. Nor, in his judgment given well over a year after trial, did the trial judge pay any heed to Nair's new radical contradiction of the basic lie, this three-Senior-Litigator-posts-frozen-for-want-of-budget-to-fill-them story repeated in his evidence, in suddenly claiming – contrary to what had been repeatedly alleged in correspondence, pleadings and affidavits before – that the Mthatha post was never frozen, and that what had happened was that Vedalankar had repeatedly refused to approve the LSTC's decision to abolish the Kimberley Senior Litigator post, which the ROE for the region had earlier reported wasn't needed (annexure 'AA'); to create a new one at Mthatha, where the ROE for the region craved it for several good reasons (annexure 'BB'); and to transfer the budget for the old post to the new one (annexure 'P').

434. That is, according to Nair's brand new story at trial – contradicting his, Vedalankar's and Clark's story on affidavit (referencing Vedalankar's correspondence with me) and repeated in LASA's pleadings – the cancellation of the Mthatha Senior Litigator recruitment was due to Vedalankar's irrational obstinacy (Nair testified that he asked her to approve the relocation of the post repeatedly) to the detriment of specialist legal professional service delivery in the Eastern Cape and not due to budgetary insufficiency causing the post to be frozen.

435. Nair's new perjury in court, contradicting his old before I sued, is refuted by Vedalankar's presentation to the Portfolio Committee on 11 October 2011, during which she twice emphasised that LASA was concerned not to 'jeopardise our service delivery'. So one thing's for sure: Vedalankar won't be putting up an affidavit in reply supporting Nair's new story at trial about her

allegedly refusing to approve the LASTC resolution to abolish the Kimberley post and create a new one at Mthatha – having told me a very different story in her October 2010 and January 2011 letters, verified on oath in April 2011. She's unlikely to want to commit the further crime under section 319(3) of the Criminal Procedure Act 56 of 1955, still in force, of making contradictory affidavits.

436. At the meeting, Hundermark (then 'Legal Development Executive') conceded the Portfolio Committee's point that LASA was not 'spending its money allocated to impact litigation', mentioning 'our senior litigators' performing it. He dishonestly concealed from the Portfolio Committee the irregular, illegal abortion of three Senior Litigator appointments and indefinite/permanent freezing of recruitment to the Pietermaritzburg, Durban and Mthatha posts, off the record, and without Board approval. (I'd copied Hundermark my letter to Makokoane about this in September 2010: annexure 'CC'.) Hundermark didn't tell the Committee about that. Perhaps because he knew Mlambo JP was behind it. His CV online proudly declaims that he once won the 'Rusty Wilmot Trophy for Loyalty'. Mlambo JP later appointed him an acting judge on the South Gauteng High Court bench.

437. The minute of the October 2011 meeting records that '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'. Having regard to the Portfolio Committee's just-stated concerns, the abortion of the appointments of three recommended candidates to LASA's remaining three Senior Litigator posts would have been of burning interest to it. But addressing the Portfolio Committee on 11 October 2011, Vedalankar, Nair and Hundermark all dishonestly concealed this.

438. Contrary to LASA's false allegation in this paragraph, in truth and in fact, as appears from the record of my correspondence, my affidavits, my oral evidence

at trial, and from my heads of argument after it, what I was 'not … satisfied with' was that my appointment to LASA's top legal job had been illegally blocked off the record under cover of any number of changing, contradictory excuses, zigzagging chaotically like a drunk at the wheel.

439. Here are some more abysmally unintelligent, blatantly lying excuses, variously given under oath, pleaded for the true information of the judge, and otherwise alleged:

(a) *'the drive to secure funding took priority over … these recruitment processes'* – Vedalankar's letter to me, 28 January 2011.

In truth and in fact, and contrary to her lie to me about this, which she perjuriously verified on affidavit on 8 April 2011, along with Nair and Clark, LASA's recruitment processes were completely unaffected by the discovery on 10 March 2010 – *many months after my successful interview* – that LASA's OSD phase 1 allocation hadn't been included in its baseline budget. Quite the opposite, LASA's 'recruitment drives' to hire new legal staff sharply accelerated, increasing from 1147 to 1173, a spike of 2.3% more lawyers employed relative to the preceding quarter. These energetic 'recruitment drives' included urgently recruiting for a Senior Litigator for Mthatha. While I was left in the cold. Vedalankar's unequivocal implication that its 'recruitment processes' were put on hold as she and her executive management colleagues went about pursuing payment of LASA's OSD allocation was an outright lie.

(b) *'it was, for example, financially strategic, and in accordance with the Respondent's [LASA's] mandate from the COO and the Board, to have one or two senior junior professional assistant(s) who cost less, in terms of the costs-to company, with right of appearance in the High Court than to have one high earning Senior Litigator who would, in the main, have to also appear in the High Court. … The aforegoing exercise ensures that (i) the critical*

position of High Court litigator [sic] is not abandoned and (ii) yet the costs involved in that process are dramatically saved.' – LASA's original defence statement.

(i) In truth and in fact, and contrary to this false pleading to deceive the judge, LASA was required by the PFMA (i) to implement its Strategic Plan 2009–12, which included employing Senior Litigators, and (ii) to apply the Senior Litigator salary funding that it had budgeted and applied for, and which the National Assembly had voted and the Department paid, on the budgeted item, not some other.

(ii) Any deviation from the plan to employ Senior Litigators required Board approval under section 1.1 of the Approval Framework. None was sought.

(iii) There was no such 'exercise' or 'process' to decide to rather employ 'one or two senior junior professional assistant(s)' rather than a Senior Litigator, budgeted by the Department. Nor are 'costs-to company … saved', either 'dramatically' or at all by paying two such 'senior junior professional assistant' salaries rather than one budgeted, approved Senior Litigator salary.

(iv) Finally, a 'senior junior professional assistant' isn't competent to perform the high-end specialist litigation that Senior Litigators are exceptionally qualified for, namely, to act 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', per the advertisement.

(c) *'despite the Minister's assurance that he would intervene to ensure that the Respondent [LASA] received the said funding, same did not materialise and the impending further budget cut for the 2012/2013 financial year referred*

to above meant that the Respondent had to be practical about the financial position it found itself in and act accordingly.' – LASA's original defence statement.

(i) In truth and in fact, and contrary to this shameful lie told in the pleadings to mislead and deceive the judge about the Minister not seeing through his promises, the OSD 'funding' for salary increases did indeed 'materialise': it was paid on 15 December 2010, as shown by the payment voucher I eventually forced out of LASA through persistent pre-trial discovery process (annexure 'X8').

(ii) Diametrically contradicting this lie told in the pleadings, Mtati (confirmed by Nair) stated on oath in his answer to my subpoena application that 'Legal Aid SA's pleas to the Department were … ultimately answered after eight (8) months.'

(iii) Nor was there any 'budget cut for the 2012/2013 financial year' – another lie to the judge. Quite the opposite, LASA's annual reports show its baseline budget allocation steadily increased from R1001 million in 2010/11, to R1105 million in 2011/12, to R1223 million in 2012/13 – amounting to rising increases year-on-year of 10.3% and 10.6%.

(d) *'there was no such funding … to fill the vacant [Senior Litigator] posts.'* – LASA's original defence statement.

(i) In truth and in fact, and contrary to this lie in the pleadings told to mislead and deceive the judge, the posts have always been and remain fully funded by the Department. In November 2014 I requested under PAIA one of LASA's budget applications for Senior Litigator posts, but as usual it was illegally refused. So I turned to the Department and under PAIA asked for several consecutive years of LASA's budget

applications for the posts. It referred my request to LASA, which produced its said budget applications, refuting this lie. (They're appended to annexure 'B'.) LASA's budget applications to the Department for nine Senior Litigator salaries have never been refused. Contrary to its lie to the judge that 'there was no such funding … to fill the vacant [Senior Litigator] posts', LASA has always had 'funding' from the Department 'to fill the vacant [Senior Litigator] posts'.

(e) *'The respondent [LASA] had, by then, taken a number of internal measures to limit the budgetary deficit it faced and these included: to review all its recruitment processes, to reduce the Respondent's Court presence by a certain percentage, and to freeze all vacant posts.'* – Mtati's answering affidavit opposing my interlocutory application to compel document discovery in the LC.

(i) In truth and in fact, and contrary to this ever-so-smooth perjury to mislead and deceive the judge, annexures 'X1'–'X5' show that the only 'internal measures … taken … to limit the budgetary deficit it faced' on account of the Department's slow payment of LASA's OSD phase 1 allocation of R23.8 million (R23 million was paid the previous year) were executive management's recommended proposals (annexure 'X4') approved by the Board (annexure 'X5') 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 R16 million to cover the shortfall.'

(ii) Indeed, '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' – like priority Senior Litigator posts, according to LASA's original response to my labour claim (i.e. defence statement/plea), twice duly describing them as 'critical'. LASA annually reports its critical post occupancy specifically and separately – a tiny fraction of LASA's total staff establishment, mainly of public defenders in the lower criminal courts. Examples of this critical post occupancy reporting appear in annexure 'B3: J'.

(iii) The just cited records (annexures 'X4' and 'X5') refute the lie told the judge under oath that the 'internal measures … included: … to freeze all vacant posts.' Quite the contrary, LASA continued recruiting new staff after the Board approved the 'internal measures' to freeze recruitment to some lower criminal court public defender posts. In the second quarter July to September 2010, recruitment to other posts continued normally. The effect of the approved freeze was only to dampen the overall increase in staff recruitment, as compared with the preceding and succeeding operating quarters.

(f) *'Legal Aid SA had decided to abort substantially all the recruitment processes it had embarked upon in reliance on the Department's timeous payment of the budgeted funds.'* – Mtati's answering affidavit, confirmed by Nair, in my subpoena application.

(i) This perjury committed by Mtati and Nair is exposed and refuted by (a) the records of LASA's response to the problem, namely to reduce lower criminal court public defender coverage, and to prioritise recruitment to critical posts; and (b) LASA's recruitment statistics, which show that it continued recruiting even after the July resolution,

and that its recruitment figures soared once the OSD funding had been included in the mid-term budget in October 2010:

(ii) In the third quarter October to December 2010, following Vedalankar's information to the Portfolio Committee on 11 October 2010 that the Minister was 'involved and he had assisted' with the delayed payment of LASA's OSD funding allocation which 'we are in the process of fixing', LASA's legal staff recruitment sharply increased by 2.5%, going up energetically over the previous quarter from 1193 to 1223 posts filled, a peak in such recruitment for the year. (But the Senior Litigator posts remained 'frozen', off the record, and unreported.)

(g) *'Legal Aid aborted all and any recruitment to any vacant positions during the relevant time herein. It was not certain as to whether there would be monies for the OSD funding and it would have been risky to make appointments when there was no money budgeted for such vacancies.'* – Mtati's answering affidavit in my subpoena application, confirmed by Nair.

This outright perjury committed by Mtati and Nair is refuted by the records quoted above. In truth and in fact, from the time the Senior Litigator posts were created, 'money' has always been 'budgeted' for them, and still is to this day. On 27 February 2010, for instance, while my recommendation was lying in the deep freeze, 'The budget 2010/11 was approved by the Board', according to LASA's annual report for 2009/10; and it included 'Budget' for salaries for nine Senior Litigator posts, including two noted as 'Vacant' at Pietermaritzburg and Durban.

(h) *'The Board accepted a resolution that all recruitment to vacant posts be frozen. This by extension must have extended to the posts of Senior Litigator including others that were vacant.'* – Mtati's answering affidavit in my subpoena application, confirmed by Nair.

This further outright perjury committed by Mtati and Nair is refuted by the record quoted above. There was never any such resolution, and the Board never accepted any such.

(i) *'Email from Brian Nair (NOE) dated 15 July 2010 to Executives': 'to show that not only the Senior Litigators' posts were identified for freezing'.* – Vedalankar's January 2011 letter (annexure 'DD') confirmed on affidavit by her, Nair and Clark in April 2011. Their bundled affidavits are annexed marked 'EE'. Nair's email is annexure 'X3'.

In truth and in fact, and contrary to this lie told to me, and perjuriously verified by Vedalankar, Nair and Clark, Nair's email reflects that the only 'posts … identified for freezing' were:

> '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 [district courts] 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 positions, then we will need to agree to lower coverage levels for District and Regional courts'

– showing, that in truth and in fact, contrary to Vedalankar's lie told to me, and perjuriously verified by her, Nair and Clark, 'Senior Litigators' posts were [never] identified for freezing'; rather, some lower criminal court public defender posts were, and 'If we need to find more savings from practitioner positions' more of them and/or some even lighter 'paralegal and admin positions'. Not critical Senior Litigator posts. COO Makokoane echoed this in his 'Report to Board' (annexure 'X4'), approved by the Board (annexure 'X5'):

> 'Any further reduction on filled legal practitioner positions will result in a further percentage reduction in court coverage [of the 'District Court' and 'Regional Court'] … The recruitment process will be reviewed … with due regard to the need to prioritise critical positions.'

LASA's records show that contrary to Vedalankar's lie to me, perjuriously verified by her, Nair and Clark, there was never at any time any question of freezing recruitment to LASA's three remaining Senior Litigator posts for which suitable candidates had been recommended. (At trial, contradicting his own story to which he'd repeatedly previously sworn, and contradicting LASA's pleaded defence version, Nair testified that only two Senior Litigator posts had been frozen for budgetary reasons, not three as originally and repeatedly alleged.)

(j) *'No decision taken yet on who should be appointed but the decision to freeze the [Pietermaritzburg Senior Litigator] post due to change in business-needs budget.'* – LASA's PAIA section 32 report to SAHRC, 8 April 2011.

In truth and in fact, there's never been a 'change in business-needs budget' concerning LASA's Senior Litigator posts, and no records exist to support this false allegation. They've been budgeted and funded from the start, and remain so.

(k) *'[The Pietermaritzburg Senior Litigator] post was aborted due to operational reasons.'* – Nair's answering affidavit, application in the Magistrate's Court to compel his compliance with PAIA.

In truth and in fact, contrary to this perjury by Nair, no such decision by LASA was taken 'due to operational reasons'. There's never been an 'operational reason' not to apply LASA's Senior Litigator salary budget, voted by the National Assembly and paid by the Department, to its approved purpose; and for about the past ten years, the Pietermaritzburg

Senior Litigator post has been a vacant, budgeted, funded post in LASA's senior professional staff establishment.

440. Normally when an accused keeps changing his basic story, contradicts his plea, and gives evidence contradicted by the objective records, he's not believed. But not in my labour case. I pertinently pleaded the destructive contradiction between what Vedalankar and Nair told me, including under oath, about budgetary insufficiency being the reason for not finalising my appointment, as opposed to the completely different reasons Nair gave the Board about not being able to attract suitable candidates ('recruitment challenges') and uncertainty that LASA's incumbent Senior Litigators are professionally up to scratch; and I pertinently argued the destructive contradiction between the pleaded and sworn defence version and LASA's single witness Nair's radical change of it in claiming the cancellation of the Mthatha recruitment post was not for budgetary reasons. But unfortunately in his judgment given well after a year after trial the judge neglected to deal with these most basic contradictions, and after finding that I'd shown Nair to be 'not generous with the truth' on 'a number' of aspects of his evidence, he nonetheless swallowed it whole, contradictions and all.

441. As for 'not being satisfied', nobody else with any brains would have been 'satisfied' by LASA's pathetically inconsistent, childish tergiversation either.

442. Its top officers evidently took me for a dullard who'd never find out and test and expose all their chopping and changing different lies about why I wasn't appointed, told variously to me and behind my back, in cold print for me to find later, to the several high authorities to whom I appealed: the Minister, the Portfolio Committee, the SAHRC, and the LAC.

443. In three cases I found these lies out by sheer good fortune: Mlambo JP's lies to the Minister and to the Portfolio Committee came to light when the chairperson sent me the Confidential Report he'd just received, along with his

demand for an explanation and Mlambo JP's defamatory covering letter. Nair's lying November 2011 Report to Board was leaked to me. And a PAIA request addressed to the SAHRC turned up the telephone note recording some LASA officer's lies (a) that my belief that I'd been recommended by the selection panel was a mistake, and (b) that actually it had rejected me. (I was rejected alright, but not under any due process, instead in a furtive, lawless abuse of power.)

444. After I exposed and refuted it, one of the lies, originated by Nair ghost-writing it, and told by Mlambo JP to the Minister and the Portfolio Committee to falsely explain away the initial reason my appointment wasn't proceeded with ('delays in coordinating a meeting time suitable for all members of the panel') was recanted on oath as 'an error', 'palpably an error', with Nair supporting this with a confirmatory affidavit. I deal with this below.

445. Ad 10.1. Correct. I acted squarely within my constitutionally guaranteed right to information in making these PAIA requests in 2010–11. How Vedalankar and Nair illegally refused them is comprehensively described in the first half of of annexure 'A'.

446. Ad 10.2. Correct. The 'budgetary constraints reason' (the basic lie) was indeed advanced 'purely as camouflage' for the true reason my appointment was aborted. After I'd exposed as a lie the 'budgetary constraints reason' given me for not appointing me, political prejudice (of which I'd experienced a lot; some mentioned in the judgment) looked to me on the available evidence at the time to have been the most likely real reason I wasn't appointed.

447. But I'm now sure that my surmise about this at the time was wrong, and that cronyism was the real reason. I changed my mind about why my appointment was blocked on learning from the full, unredacted recommendation report, surrendered at last in April 2016, that one of my rivals at the interviews in November 2009 was a long-time judicial colleague of Mlambo JP's.

448. Ad 10.3. Correct, save that it was the information officer and two regional deputy information officers. At trial in July-August 2013, Nair changed the story told me in August 2010, elaborated in October 2010, reiterated in January 2011, and again in April 2011 under oath (only to tell the Board totally different stories a few months later in November 2011), namely that LASA had frozen its three vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha for financial reasons. Now at trial he testified differently, also under oath, that Mthatha wasn't part of it, and that the post there wasn't frozen for budgetary reasons, but because Vedalankar had repeatedly refused to approve the transfer of the post from Kimberley.

449. Had this new story been true, there'd obviously have been some record of it – of the decision, communication of it, and discussion of it – hence my PAIA requests for these records in October 2013, shortly after I'd filed my heads of argument after trial. How my requests were illegally refused; how I was forced to sue for them; how LASA eventually in February 2016 reversed its refusal and agreed at court to respond within sixty days; and how it did so, in unsatisfactory, non-compliant fashion, in April 2016, two-and-a-half years after I first requested these records, is detailed in paragraphs 177ff of annexure 'A'.

450. LASA's eventual response in April 2016 to my PAIA request for them confirmed that no records whatsoever exist to vouch Nair's brand new story told in court about the reason for the cancellation of the Mthatha Senior Litigator recruitment, namely Vedalankar's alleged irrational obstinacy.

451. In sum, by 'testing the veracity of the evidence which was adduced during the Labour Court trial' via three sharply focused, searching PAIA requests made a couple of months after it, I established, as expected, that 'the evidence which was adduced during the Labour Court trial' by Nair was perjured. For which I intend seeing him prosecuted, jailed, sacked and struck off. (He graduated with

an LLB and was admitted as an advocate a few months after committing his free-flowing perjuries in the LC.)

452. Ad 10.4. Correct, save that it was the information officer and two regional deputy information officers. After opposing my applications to court, LASA eventually conceded them, and agreed to surrender all the documents I'd requested or to certify under section 23 of PAIA those records I specified that don't exist, and proceeded to make partial performance under its surrender treaty. This appears from the document bundle annexure 'B'.

453. The fact that my application was made 'before judgment was delivered in the Labour Court action' is immaterial. LASA falsely insinuates here that there was something funny about my timing. Section 78 of PAIA gave me 180 days to bring it. Besides that constraint, I was free to bring it whenever I felt like it.

454. Ad 10.5. Correct, save that LASA never 'aborted … the Senior Litigator posts' as an organisation, as its records contradicting this, and its lack of supporting records, show.

455. (The essential malaise at LASA is that its top officers, far too long in their posts, too unhealthily long, seem to think, like France's Louis XIV: 'I am the state.' That's to say, in their opinion, whatever they do, LASA does, and that LASA is their personal fiefdom. They constantly claim LASA did this or that, when it never did – instead, they did, unlawfully, without the power, without authorisation, off the record and unreported. And not accustomed to being challenged, they get apoplectic when questioned about this, call you vexatious when you press them, and try shutting you down with a vexatious litigant application.)

456. Indeed, one of the objects of my PAIA requests was 'to test the veracity of the evidence' given by Nair at trial, during which he diverged from LASA's pleaded

case and made several novel unanticipated allegations. This object succeeded, in that LASA's responses proved he perjured himself repeatedly.

457. The fact that I made my PAIA requests 'after [my] Labour Court action was dismissed with costs in September 2014 and while [my] application for leave to appeal was pending' is irrelevant; yet again LASA crows over this timing as if it has some negative legal significance for me. When it's of no legal interest at all.

458. It turned out that two alleged deputy information officers – Mtati and Hundermark – alleged by LASA's PAIA manual to hold these offices didn't. Mtati was only delegated as such on 11 January 2016 (annexure 'B4'). And despite my request for it under PAIA, and my insistent reminders, Hundermark's delegation has never been produced. Which suggests he's not a deputy information officer of LASA at all. (Section 17(6) of PAIA requires that such delegations be in writing.)

459. Also, not 'all' the records requested were 'directly or indirectly relating to the Senior Litigator posts'; I also sought information about other posts. LASA describes the subject of most of my record requests in this way as if to suggest there was something untoward about them for this reason. There wasn't; and as mentioned below, it eventually conceded my claims to the records I'd requested, 'directly or indirectly relating to the Senior Litigator posts' and others – an irrelevant consideration ultimately abandoned, because section 11(3) holds my purposes stated by me or surmised by LASA in requesting these records immaterial to my entitlement to them. What my PAIA requests were 'relating to' was none of LASA's business.

460. Ad 10.6. Correct. I requested a few more and these requests were partially responded to. This time I wasn't fobbed off with the usual story that my record requests were just a waste of time.

461. Ad 10.7. Correct. Again, after opposing my applications, LASA eventually conceded them, and agreed to surrender all the documents I'd requested or to certify under section 23 of PAIA those records I specified that don't exist; and it proceeded to make partial performance under the surrender treaty. This is documented in the bundle annexure 'B'.

462. Ad 10.8. Correct. I'd discovered that the decision of my petition had been perverted by the lying, defamatory Memorandum, inadvertently left in the petition file. And I'd ascertained that no record whatsoever exists to show that Davis and Sutherland JJA, whose names appear on the order signed by the Johannesburg registrar dismissing my petition allegedly decided in Durban, ever actually considered and decided it. I also established for a fact that they weren't in Durban on the date of the alleged decision there. In the situation, I applied to interdict the imminent taxation of LASA's bill, but my papers, emailed to the respondents the moment they were ready, so as to afford them maximum notice, and then couriered in good time to the sheriff's office in Durban for service, stalled there unserved, because, he only said afterwards, he wanted pre-payment of his service fee.

463. My attorney reported that the judge wasn't satisfied with emailed notice of the application, and that it hadn't been dismissed on its merits, but for want of urgency (LASA confirms this).

464. In retrospect, my mistake was not putting up with my interdict application the lying, defamatory Memorandum in the petition file, because I think the judge might have ruled differently on sight of that real criminal evidence of defeating the end of justice in the LAC. (I was reluctant to disseminate the defamation and lies; I feared they might prejudice the court against me.)

465. Ad 10.9. Correct, besides the basic false allegation that LASA 'performed under the settlement agreement', which lie on oath to this court the document bundle annexure 'B' refutes.

466. Ad 10.10. Correct. The insinuation that I acted improperly in applying to this court to compel LASA's compliance with my August 2016 PAIA requests is false. My application (1118/16) was brought impeccably properly. This court's perusal of my application will satisfy it, I'm sure, that I've a perfect claim to access all the requested records in question as a matter of fundamental right. Indeed, LASA hasn't filed any answer to my case, and has recorded that it doesn't intend doing so.

467. Ad 'Brink's conduct prior to litigation': By implying misconduct on my part, yet alleging none in this chapter, the title dishonestly seeks to prejudice this court against me. On the other hand, LASA's 'conduct prior to [my] litigation', described above and further below, discloses multiples crimes and other unlawful and unethical conduct by Board chairperson Mlambo JP, CEO Vedalankar, NOE Nair, and HRE Clark.

468. The sweet-sounding narrative presented in the chapter contains many lies, which I'll refute in light of LASA's own records, and critical omissions, which I'll identify.

469. Ad 11. Setting the scene, and epitomising the compulsive casual mendacity of its top officers, LASA begins its story here with the smooth-sounding but clear-cut lie that I was 'recommended together with other candidates … for Legal Aid South Africa's Senior Litigator post at Pietermaritzburg' – a lie first told me in October 2010 in Vedalankar's letter illegally denying me access to the record of the selection that would instantly have refuted it.

470. In truth and in fact, even in the heavily redacted form supplied to me in January 2011, the recommendation report shows I was the only candidate recommended for the post. Bongani Mngadi in LASA's Durban office was recommended for promotion to a different post, at Durban.

471. The unredacted recommendation report, which I forced out of LASA in April 2016, by suing for it, shows that the other two shortlisted candidates who were interviewed, including Mlambo JP's long-time judicial colleague on the LC bench, Ngcamu AJ (as he used to be), were totally eliminated from eligibility for appointment because they didn't meet the qualifying criteria.

472. In Ngcamu's case, he didn't have right of appearance in the High Court as an attorney. Which means he'd never litigated a case on his feet at the bar there. In other words, the former long-term acting judge had no experience as a litigator in the High Court, and as a Senior Litigator there he'd have been a complete novice.

473. (To the extent that the recommendation report records that I fell short in the prescribed minimum years of experience, this was factually wrong in overlooking and not counting my 'litigation in the Cape High Court' (several major opposed applications, huge papers) after I left the Pietermaritzburg Bar, mentioned in my CV and detailed at my interview. It was also irrelevant: the qualifying criteria were arbitrarily increased when the KZN posts were re-advertised, without authority for this change: LASA formally admitted before the trial of my labour claim that no record exists of the decision to increase the years of High Court experience required – higher than those required for all other Senior Litigator posts advertised both before *and after* the KZN recruitment process in 2009. The unauthorised increase in the qualifying criteria for these particular posts appears to have been crooked gerrymandering to shut out LASA attorney Ashok Kaloo, after Mlambo JP rejected him for the post, following his selection for it at the original interviews in 2008 or early 2009.)

474. Now LASA coins a fancy new title for the selection panel that recommended me: 'Regional Executive Selection Panel'. LASA's Recruitment code, however,

knows only one sort of selection panel: a 'selection panel' or 'selection committee'.

475. Ad 12. Correct, save that the selection panel's recommendation of me 'cast as a "Recommendation for Next Round Interviews"' was incompetent and severable from its recordal of my selection, because LASA's Recruitment code doesn't provide for, and therefore doesn't permit, any further interview of a duly selected and recommended job applicant – not at any employment level.

476. The Recruitment code, quoted above, repeatedly provides for the recommendation of the selected candidate to be forwarded by the selection panel to the executing officers delegated for approval – in the case of Senior Litigators, under section 8.2.2(b) of the Approval Framework applicable, Vedalankar and Nair. And that's it. Nothing else.

477. Ad 13. It's correct that the recommendation was forwarded to Nair, on 26 November 2009, three days after the last signature applied to it. In my labour case, LASA pleaded that Nair had phoned for it, along with, very tellingly, all the CVs of the shortlisted and interviewed candidates, including those of the two rejected, eliminated candidates, in whom he ought to have had no interest. Evidently the recommendations by the selection panel in Pinetown didn't go as hoped and expected in Johannesburg. The wrong person got selected. Me.

478. Quoted above, at trial Nair testified very frankly that over at LASA, where anything goes, even rejected, eliminated candidates are eligible for so-called second round interviews, and can be appointed instead of selected, recommended candidates.

479. When I heard him say this, I thought at the time that he was lying foolishly to justify his peculiar, obviously irregular request for the CVs of the rejected, eliminated candidates to be sent to him as well. Because it was a ridiculous

thing to say: that candidates rejected and eliminated by selection panels were as eligible for appointment as, and in place of, the selected and recommended candidate.

480. In her email to me of 30 April 2010, HRE Clark made a similar seemingly foolishly dishonest claim: 'it is not even clear which candidates will be considered in the second round'. *Legally and factually*, it was perfectly clear: it was Mngadi and me for the Durban and Pietermaritzburg posts respectively for which we'd been selected by the selection panel, and no one else. *Illegally*, according to the corrupt way things work at LASA, any of the interviewed candidates could be 'considered in the second round'.

481. In fact, Nair was being quite serious and for once was telling the perfect truth. So was Clark. I later learned from former Free State and Northern Provinces ROE Mayisela, who'd interviewed shortlisted candidates for the Mahikeng Senior Litigator post, that the candidate recommended by him and his selection panel hadn't been appointed, and that Nzame Skibi, a candidate who'd not been recommended and had been eliminated, had been appointed instead.

482. The fact that Nair asked for all the CVs, including those of Mlambo JP's former long-term professional friend Ncgamu AJ (as he used to be), who'd been rejected by the selection panel, suggests that the same trick had been planned in my case.

483. Except that I boggled the plan by persistently pressing for my appointment, once HRE Clark had inadvertently and back-handedly confirmed in April 2010 that I'd been selected, by rudely suggesting after five silent months that I 'withdraw' my application for the post and push off if I didn't like 'the pace we have decided'. Because had I been eliminated by the panel, I'd have had no live application to 'withdraw'.

484. I've duly requested under PAIA all the Senior Litigator selection panel recommendations; but anxious that I shouldn't see them and in contempt of its constitutional information transparency obligations, LASA is illegally refusing to let me see them.

485. When eventually surrendered under court order, the recommendations may disclose further instances of LASA having appointed rejected candidates instead of those selected and recommended. I have the names of the six incumbent Senior Litigators (mentioned above), so it will be a simple matter of comparing them with the names of the candidates recommended by the selection panels.

486. A document I never asked for, which LASA gave me anyway, entitled 'Summary of Scoring for Senior Litigator Positions' (annexure 'S') shows that three applicants recommended by selection panels for Senior Litigator posts were disapproved by the so-called second round interview panel.

487. The document reflects that the so-called second round interview panel comprised Mlambo JP, Nair, Makokoane, Hundermark and Clark. But only Vedalankar and Nair have approval power under the Approval Framework, delegated to them by section 8.2.2(b); no one else.

488. Furthermore, these two executing authorities are required to decide whether or not to make an appointment – by recording their approval or disapproval of a selected candidate recommended – upon a perusal and maybe discussion of the recommendation report and his CV, and not following another interview.

489. The 'Summary of the Scoring' record reflects that Vedalankar signed in the 'Recommendation Accepted' box to approve the so-called second round interview panel's (legally incompetent and redundant) recommendations of Alberts, Crouse, Calitz and Karam, and (unlawful) rejections of Rambau, Loots and Kaloo. Nair's signature as executing officer with 'Final approval' is

missing. (He may answer, irrelevantly, that he asked the chairperson and his colleagues to help him discharge this responsibility by sharing his discretion and helping him to decide – unlawfully under section 8.2.2(b) of the Approval Framework, because he had no power to further delegate the power delegated to him as LASA's 2IC.)

490. Incontestably, all members of the so-called second round interview panel have acted ultra vires and illegally in approving and disapproving recommended candidates.

491. This includes Nair, who – like HRE Clark and COO Makokoane on the panel – wasn't even legally qualified at the time. As a law student doing a correspondence course, Nair had neither the professional competence nor the authority under the Recruitment code and the Approval Framework to interview experienced lawyers recommended by duly constituted selection panels comprised of LASA's top lawyers in the regions for its most senior legal professional posts.

492. Also on the so-called second round interview panel, Legal Development Executive Hundermark (he now calls himself Chief Legal Executive) was and still is an attorney, but he has no approval power under the Approval Framework regarding Senior Litigator appointments whatsoever. His participation in the so-called second round interviews has been illegal.

493. Most seriously, Board chairperson Mlambo JP's participation in the so-called second round interviews has been illegal too. As a non-executive Board member, he has no authority to intrude himself into LASA's recruitment operations. His only power in recruitment matters is to approve the appointment of the CEO and the NOE, and decide this in committee with the rest of the Board. Full stop.

494. The 'Summary of Scoring' record is also fake to the extent that it claims that Pietermaritzburg LASA attorney Kaloo, originally recommended by a selection panel for the Pietermaritzburg Senior Litigator post when it was first advertised, was assessed by the entire so-called second round panel. At a chance meeting in 2010 or 2011, he told me that he and the female candidate (it was Crouse) selected for the Senior Litigator post at Port Elizabeth were interviewed by a troika of Mlambo JP, Nair and Clark only, and no one else – contrary to this record claiming others decided too. He was rejected, she was approved.

495. Kaloo complained to me that he'd been tested with an instruction to draft and present a moot legal process in an unfairly short time, and that his experience of the whole thing was that it was peremptory, not genuine. As LASA's corresponding attorney in this application, he can confirm this.

496. Unlawful as it was, a further unlawful aspect of Kaloo's so-called second round interview by Mlambo JP, Nair and Clark is that it was conducted off the record. When under PAIA I requested the minute of it, LASA responded that no such record exists (not that it's been lost). It looks like Kaloo was rejected from the start, and that his second interview was a sham.

497. Since Mlambo JP's 'brainchild' second interview scheme for Senior Litigators has been unlawful, it seems superfluous to make the point that LASA can't even get its story straight about who's on the so-called second round interview panel. But anyway:

498. According to Vedalankar, alleging this in her October 2010 letter, 'The second stage comprises an interview process by a national office panel, including the Chairperson of the Board, National Operations Executive (NOE), Legal Development Executive, Human Resources Executive and the Chief Operations Officer'. LASA pleaded the same in its original response to my labour claim: 'The second stage of the interview process was to be conducted by a panel

including the Chairperson, the National Operations Executive, the Legal Development Executive, the Human Resource Executive and the Chief Operations Officer.' But under oath the LAC was told a different story: 'The second round panel comprised of the Respondent's Chief Operating Officer Mr J Makokoane ("the COO"), the National Operations Executive Mr Brian Nair ("the NOE"), the CEO Ms Vidhu Vedalankar, and Mlambo JP.' Suddenly Vedalankar's now on it and Clark's off.

499. The first false excuse (later retracted on oath, as just 'an error', 'palpably an error', after I'd exposed it as a lie) given to explain away Nair's inaction on receiving my recommendation and all the CVs for which he'd specifically phoned was that he did try arranging the so-called second round interviews, but had had difficulty 'co-ordinating a date suitable to all members of the so-called second-round panel, of which the chairperson is one.' (LASA's annexure 'FA1')

500. Nair was the original author of this lie told the Minister and then the chairperson of the Portfolio Committee in the Confidential Report signed and given to them by Mlambo JP. At trial, cornered by his electronic fingerprints 'Briann' left in the PDF Author properties folder, he eventually admitted having drafted the report to the Minister, but denied amending and amplifying it for the Portfolio Committee:

> 'I confirm that I did the initial draft [of the Confidential Report]'. (1) '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 [changed]) it, but it certainly was not me.' (2) 'I can only assume the Judge personally wrote that' [the phrase in the Confidential Report to the Portfolio Committee, 'of which the Chairperson of the Board of Directors is one', and other changes and additions]. (3)
> Record, (1): 353:4; (2) 354:1–3; (3) 355:1.

501. According to Vedalankar in her January 2011 letter to me, HRE Clark was 'the person in charge of or managing the process of recruiting a Senior Litigator' and therefore the 'second round interviews were … to be coordinated and managed by the HRE'. She 'prepares the second panel of interviews', LASA originally pleaded; it was her 'normal... responsibility … to arrange' them.

502. But when I phoned her on 22 April 2010 five months after my interview, she'd never heard of me, had no idea what was happening with the KZN Senior Litigator recruitment, and, unable to tell me, undertook to find out. She confirmed this in her email later in the day. This reveals that she'd never been approached about the second interviews. The first person Nair would have contacted about setting them up was Clark. But he didn't. Nor did he contact Mlambo JP. And the reason is this:

503. Occasionally telling the truth and letting it slip out by accident, attorney Mtati admitted on affidavit, with Nair confirming it, that my 'recruitment was aborted immediately after the first round of interviews.' Because the wrong man was chosen for the plumb, big-ticket job: namely me, not Mlambo JP's long-time former judicial colleague Ngcamu AJ (as he used to be) – so I learned in April 2016 after suing for the complete, unredacted recommendation report that LASA had strained to keep from me and had illegally suppressed since September 2010, when the month before I first requested the record of the selections under PAIA.

504. Unless Mlambo JP on two occasions covered his eyes with one hand while signing the Confidential Report with his other, LASA's Board chairperson and a senior judge deliberately subscribed this lie (this alleged 'error') to deceive the Minister and the Portfolio Committee.

505. Nair's evidence that he 'sent it [the Confidential Report] to the CEO for her to discuss further with our Chairperson' militates against this feeble possibility.

506. Mlambo JP well knew it was a lie he was telling to explain why nothing was done to conclude the recruitment process and appoint me, namely 'difficulty coordinating a meeting time suitable for all members of the panel, of which the chairperson is one', because Clark, who's job it was to arrange the second interviews, never contacted him to arrange the so-called second round interviews.

507. At trial I was pressed under cross-examination on why I hadn't concluded from the long silence that I'd been unsuccessful and just walked away. This spectacularly maladroit backfiring question revealed the intention behind keeping me in the dark: that I should draw this wrong conclusion and walk away.

508. When I didn't, and I started pressing for information about the outcome of the interviews after being kept waiting in silence for approaching half a year, Clark expressly suggested in her email on 30 April 2010 that I do so: '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. … I think you should allow us to complete the process at the pace we have decided', falsely signifying that the finalisation of the recruitment process was still on the go, whereas in truth my 'recruitment was aborted immediately after the first round of interviews' (per Mtati, confirmed by Nair, answering my subpoena application).

509. Whereas on 14 April 2010 Clark had pleasantly encouraged me to contact the KZN RHRM 'for updates', things had changed in her second communication with me two weeks later on 30 April, after learning that my 'recruitment was aborted immediately after the first round of interviews'. She now pointedly discouraged me from contacting her again: 'If we require further information or follow-up from yourself, our organisation will contact you.'

510. She then took no steps 'to complete the process at the pace we have decided', and didn't 'contact' me again – not requiring 'further … follow-up' from me, and wishing I'd go away.

511. Thus did Clark contravene section 15.1.5 of LASA's Code of Conduct and Ethics, requiring her to 'act honestly and in good faith'.

512. The unmistakeable stench of Clark's dishonesty in April 2010 ignited my determination to expose the corruption I'd run into. What I couldn't imagine then was that it ran so deep that it would end up with lying to the Minister and to the National Assembly, and finally with perversion of judicial decision-making to defeat the ends of justice through prevailing on the JP of the LAC to summarily toss my case before all the papers were in.

513. In response to my persistent enquiries to Clark (after 14 April 2010, she avoided my many calls and failed to return them when I left messages) and while the Mthatha Senior Litigator recruitment was underway, LASA took the 'decision to inform Mr B Mngadi who was an internal candidate [for the Durban Senior Litigator post] of the Respondent's [LASA's] decision not to proceed with the filling in of the Senior Litigator posts instead of the Applicant [Brink]'. So it pleaded in its original response to my labour claim.

514. In its answer to my agenda for the first pre-trial conference, LASA admitted that Nair instructed the ROE to allege this to Mngadi; and 'in April/May' 2010 Mngadi was told this – so Mngadi informed me on the phone, and LASA admitted it in its said answer. Because Mngadi was told this off the record, LASA claimed in answering my application to compel discovery of the record of this communication: 'No such record exists.'

515. In striking contradistinction, I was told nothing at all. Confirmed by Nair, Mtati said on Mlambo JP's behalf in answering my subpoena application that the reason that Mngadi was informed 'of the Respondent's [LASA's] decision

not to proceed with the filling in of the Senior Litigator posts instead of' me, despite my repeated pleas for information about the upshot of the interviews held five silent months earlier, is that: 'For Mr Mngadi, his appointment as a Senior Litigator was going to result as [sic] 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.' (Actually, Mtati and Nair swore, 'the recruitment process' was 'aborted immediately after the first round of interviews.')

516. They didn't say what the 'problem' was also telling me 'well in time of Legal Aid South Africa's decision to freeze the recruitment process' off the record, even as I was craving for information about the outcome of the interviews, many months later.

517. Some weeks after Mngadi was informally verbally told 'in April/May' 2010 (his words to me on the phone, admitted by LASA) – 'instead of' me – that the Senior Litigator recruitment was off, and following the online advertisement of the Mthatha Senior Litigator post in early April and interviews of the four shortlisted candidates on or about 24 May, Mahikeng Senior Litigator Nzame Skibi was selected and recommended for internal lateral transfer and appointment to the post.

518. This proves unequivocally that no financial or any other proper reason prevented Senior Litigator recruitment, as later falsely alleged to me for the first time in October 2010 in the cover-up.

519. As said, when in my subpoena application I exposed the lie Mlambo JP told the Minister and the Portfolio Committee that unsuccessful attempts had been made to arrange the so-called second round interviews, the lie was repeatedly retracted in answering affidavits by Mtati and Nair, claiming the lie told to the Minister and the Portfolio Committee was told by mistake.

520. Ad 14. Correct, except that:

(a) this pleasant, brisk sentence conceals (i) LASA's persistently strange, illegal reluctance to open with me, and (ii) the tremendous trouble I had getting out of LASA the simple information I wanted about the outcome of and progress in the KZN Senior Litigator recruitment process, to which I was obviously entitled; and,

(b) out of historical sequence the sentence is untrue. Despite my repeated enquiries – by phone to Brijlal in December 2009; by phone and then by email to Clark in April 2010, after she started avoiding my calls and not returning them as requested in messages left for her; and by letter to Vedalankar in July – I wasn't 'informed of the reasons why the Senior Litigator position was not filled.' On the contrary, in his letter of 3 August 2010, responding to mine to Vedalankar in July, Nair was studiedly vague and unforthcoming about the 'various reasons' the cancellation of my appointment was 'due to'.

521. It was only when I hit Vedalankar with a PAIA request testing this story of his three weeks later, inter alia for:

> 'All and any records, including internal email, founding Nair's statement: "I can now confirm that we will not be proceeding with the filling of any of these posts" i.e. "all vacant Senior Litigator posts" (– per Nair's letter to Brink)'

that Vedalankar tried putting me off, eventually, nearly three months later in October, even as she was illegally refusing this just-cited record request and every single other one, with the smooth, audacious lie (later repeated, then verified on oath, and then repeatedly contradicted) 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.'

522. To support its neat story told in this chapter, LASA has cherry-picked from the correspondence and kept from this court what it would prefer it didn't see.

523. Annexure 'FF' hereto is my letter to Vedalankar in July 2010, now eight months after my interview and no action taken to finalise my appointment, no reason given me. Importantly, it reports the radical change between Clark's initial professional, helpful, friendly tone and approach to me when I first called her (Nair was out of office addressing the Portfolio Committee in Cape Town), and then her disgracefully unprofessional, hostile, transparently dishonest, evasive and deliberately opaque and discouraging second communication with me (after Nair had returned).

524. My July letter to Vedalankar contains my first recorded statement of my mistaken surmise, having regard to the transparent bad faith in which Clark had communicated with me for the second time, that my appointment had been blocked on account of political prejudice. (The trial judge later had no difficulty finding that I'm indeed a politically unpopular person, as I'd testified with supporting documents; and international labour jurisprudence recognises that unlawful prejudice in recruitment may properly be inferred from membership of a constitutionally protected minority; bad faith in communications; and irregularities surrounding an adverse employment decision.)

525. My letter also records, at the end, my mistaken understanding – based on a report I'd received in Cape Town from my brother in Pietermaritzburg about the reason for the failure of an earlier recruitment process for the same post – that my appointment was subject to Mlambo JP's approval. Actually it was, de facto, but certainly not de jure; and LASA's Recruitment code and Approval Framework, which I later obtained and studied, would disabuse me of my mistake about this.

526. Annexure 'GG' is Nair's deliberately vague and strikingly unconvincing response on 3 August 2010 to my letter to Vedalankar. As I was later to establish, Nair's claim to me that 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were put on hold due to various reasons' was a lie (a) unsupported by any record whatsoever of this alleged decision, and (b) contradicted by the facts on the ground: Nair received my (and Mngadi's) recommendation in November 2010, but did nothing to act on it. *Legally*, the Approval Framework required that he and Vedalankar jointly approve or reject the recommendation. *Illegally*, a second round interview was supposed to be held. Nair did nothing either way.

527. But while my recommendation lay unattended in Nair's bottom drawer, so to say, Nair and the LSTC that he chaired resolved on 24 March 2010 to (a) abolish the long vacant, unneeded Kimberley Senior Litigator post – described as 'redundant' by the ROE for the region; (b) create a new, badly needed one at Mthatha – as Mtati, then ROE for the region pleaded; (c) transfer the budget; and (d) 'immediately' recruit for the new post – which was indeed immediately advertised on LASA's website in April, and short-listed, interviewed for, and selected for in May.

528. During my phone call to him in October 2011, Mahikeng Senior Litigator Skibi confessed that he'd been informally told that he'd been selected for appointment and transfer to the Mthatha post, after which he'd been told his

appointment had been cancelled – no reason given. The acting JCE at Mthatha told me, also on the phone, that he and his colleagues ('we') had been awaiting Skibi's arrival, when his transfer was cancelled – no reason given.

529. This proves that the Mthatha Justice Centre had been informed that Skibi had been selected and approved for the post, and was on his way over, when his transfer was suddenly nixed.

530. There's no record of any decision taken to cancel Skibi's appointment and transfer (as I was pressing for my own appointment), which is to say it was cancelled off the record; and several totally different reasons for the cancellation were later given to me, to the Board, to the SAHRC, and to the LC, including contradictory reasons alleged under oath. I listed them earlier.

531. Nor, according to LASA's minuted response to my demand for it at the third pre-trial conference can any written notice to Skibi of the cancellation 'be located'. But 'Skibi was definitely orally informed that [LASA] had decided not to fill the Mthatha Senior Litigator post, and that his recommendation for the second round of interviews for the appointment to that position, would not occur.'

532. Two lies told to mislead the judge leap off the page. First, that LASA 'had decided not to fill the Mthatha Senior Litigator post': no record of such a decision exists; and this pleading contradicts Nair's newly improvised evidence at trial that there was no post at Mthatha to fill, because Vedalankar had very stubbornly repeatedly refused to approve the abolition of the redundant Kimberley post, the creation of the sorely needed Mthatha post, and the transfer of the budget from the unnecessary old post to the very necessary new one.

533. The second lie to the judge in this pleading is that Skibi's 'recommendation for the second round of interviews for the appointment to that position, would not

occur.' In truth and in fact, Skibi wasn't 'recommend[ed] for the second round of interviews for the appointment to that position'. The selection panel's recommendation report (annexure 'B22: K') shows that he was recommended directly for appointment (in compliance with section 1.2.3.4 of the Recruitment code (annexure 'T')), not for any second interview as falsely alleged.

534. Whether Skibi was put through a so-called second round interview for the Mahikeng Senior Litigator post he occupies is unknown to me. His name doesn't appear on the 'Summary of Scoring' document (annexure 'S'); and LASA is illegally withholding his recommendation report among others that I've requested under PAIA, so I can't see for myself whether Skibi was recommended – for a second interview or just the post. But former ROE Mayisela, who was on the selection panel, tells me he wasn't recommended; someone else was.

535. The second lie Nair told me in his letter is that 'I can now confirm that we will not be proceeding with the filling of any of these posts.' Three weeks later I requested under PAIA the record of this decision. After first ignoring my request in September, which is to say mutely refusing it under section 26 of PAIA, then, when I called the SAHRC in, expressly refusing it in October, then refusing it again in January 2011, then under renewed SAHRC pressure eventually reluctantly responding to it properly in April, Vedalankar and Nair repeatedly confirmed in PAIA section 23- and confirmatory affidavits that no record whatsoever exists to vouch that any such decision was taken.

536. By 'we', Nair implied that two or more officers with the delegated power to take such a major decision, had taken this decision to abort LASA's substantially completed recruitments to three of its most senior legal professional posts in the provinces, later duly described in LASA's original plea to my claim in the LC to my appointment as 'critical'. In her CEO report for 2012/13, Vedalankar

repeatedly vaunted the employment of Senior Litigators as one of LASA's achievements in the implementation of its Strategic Plan 2009–12.

537. A decision massively impacting on service delivery – and in a particular respect the National Assembly has over the years repeatedly been vocally concerned about: that LASA should employ Senior Litigators to redeem its general reputation, acknowledged by Mlambo JP and Hundermark, for sub-standard legal professional expertise.

538. Section 1.1 of the Approval Framework required Board approval and the prior consultation of 'All committees', including 'Man/Exco' i.e. the Management Executive Committee, for such a major decision to deviate from LASA's Strategic Plan 2009–12, and its Business Plan based on it.

539. But Nair, Vedalankar and Clark all later repeatedly confirmed in April 2011, under SAHRC pressure to respond to my PAIA request for it, that no record whatsoever exists of any such decision to indefinitely and practically permanently freeze recruitment to the three top posts – posts that have always been and remain budgeted and funded by the Department to this day, the many millions of rands in funding allocated for salaries for these posts approved year after year by vote of the National Assembly.

540. In short, on LASA's own showing, Vedalankar's story to me (later radically contradicted repeatedly) discloses multiple unlawful contraventions of the Approval Framework and the PFMA.

541. Ad 15. Correct. Annexure 'Z' is my list of the records sought, annexed to my Form A request. This court will see from it that nothing about my request was frivolous and/or vexatious, as LASA now falsely claims, generally disparaging in its paragraph 6.2 all the PAIA requests I've made to date.

542. My PAIA request in August 2010 was manifestly serious, quite properly 'related to the abortion of the recruitment process for the Senior Litigator post',

and obviously directed at testing the truth of what Nair had just told me in his letter of the 3rd. And LASA didn't suggest it was frivolous and vexatious at the time.

543. Ad 16. This paragraph is dishonest distortion. First, my letter was addressed to the COO, copied to Hundermark and the CFO, indeed seeking the COO's intervention – all of whom turned Nelson's eye.

544. Second, it's a multiplex lie that I 'further intimidated the officials that [I] will be reporting them, including Mlambo JP, for the alleged illegal suppression of records and the abortion of the recruitment process for the Senior Litigator position.' What I actually said, very politely, was:

> '1. I write to petition your intervention as Chief Operations Officer in a serious illegal development at Legal Aid South Africa ('LASA'), and to appeal to you to remedy it before it escalates, to the considerable embarrassment and undeserved public discredit of LASA's Management Board and Board of Directors. … 71. You will appreciate that this letter is a bona fide endeavour to achieve a solution, to unblock the pipe as it were, without having to resort to litigation to vindicate my rights: I am progressively "exhausting all available remedies", as the courts require before intervening. … 74. Every approach I have made in this matter has been consistent with my wish that the delay in the Management Board's recruitment of a Senior Litigator for Pietermaritzburg be resolved discreetly, and that the process be continued to its lawful conclusion. I record here that my determination to achieve this is implacable. … 75. All that remains to remedy my problem is to arrange a date, place, and time for LASA Chairperson Supreme Court of Appeal Judge Dunstan Mlambo to interview me and thereafter confirm or disconfirm my selection by the KwaZulu-Natal regional professional selection board. It's that simple. [Not yet having seen and read the Recruitment code and Approval

Framework, I still thought he had to interview and approve me.] … 76. I truly hope you can fix this without the necessity of going to the Board of Directors, to Parliament, to Court. I think Judge Mlambo and the Board of Directors would be appalled, more especially if, apprised of all the facts of the matter, the Parliamentary Safety and Security Select Committee [later the Justice Portfolio Committee] – which is concerned that Senior Litigators should be engaged, and which has raised this with Judge Mlambo – calls upon Judge Mlambo to explain Nair's unlawful conduct in depriving the Pietermaritzburg Justice Centre of the amply qualified, extensively experienced, and unusually socially committed Senior Litigator Legal Aid South Africa successfully recruited. [I didn't yet know that in my pursuit of my appointment Mlambo JP was my prime opponent.]

545. So much for LASA's lying allegation to this court that I 'intimidated the officials that [I] will be reporting them, including Mlambo JP'. That they felt 'intimidated' by my announcement that I intended working my way up the levels of authority and oversight over LASA to vindicate my rights is not my problem. They certainly had a lot to worry about.

546. Second, by talking of 'the alleged illegal suppression of records', LASA dishonestly falsely implies that Vedalankar's blanket refusal of my entire August 2010 PAIA request, justified with a fake quotation from a reported judgment, in which the judge said completely the opposite of what was falsely ascribed to her, was lawful. (I discuss the attempted fraud on me in paragraphs 17–43 of my first petition to the Board, LASA's annexure 'FA1'.) Contrary to this sneaky false implication, Vedalankar's suppression of all the records I'd requested in August 2010 was indeed illegal, and the grounds advanced in October for refusing it were abandoned and replaced in January 2011 by other grounds to continue refusing it. In April, LASA finally responded properly to a reduced list. (After LASA committed to its false budgetary

explanation in October 2010, I reduced my original list to the bare minimum of records I absolutely needed for my intended referral to the LC, hoping this reduction might facilitate LASA's cooperation in responding.)

547. Ad 17. Correct. First, the total refusal of my PAIA request was illegal; LASA doesn't mention this here. Had it been been lawful, LASA wouldn't have reversed itself, under SAHRC pressure, and ultimately responded in April 2011.

548. Second, the 'detailed explanation' that LASA didn't have the funds to employ me was bogus, and plainly so on the information I already had to hand. I traversed this in my petition to Mlambo JP and the Board, mentioned in LASA's next paragraph 18, and annexed to its affidavit marked 'FA1'. This is why the 'explanation from the CEO clearly did not convince [me as I] continued to seek further records to test the truthfulness of the CEO's explanation.' Vedalankar's explanation was obviously untrue, in light of the objective facts already known to me, and more later came to light.

549. Contrary to LASA's false implication, there was nothing improper at all about my next records request in December 2010, testing Vedalankar's obviously false 'detailed explanation on what led to the discontinuation of the recruitment process', in which she alleged budgetary insufficiency; and LASA eventually dealt with it in April 2011.

550. Ad 18. Correct. I respectfully request that this court read through my 'lengthy 59 page letter to Mlambo JP' and 'the Board of Legal Aid South Africa', copied to the SAHRC. All things being equal, Mlambo JP should have been appalled by it; instead, being precisely at the centre of the abortion of my appointment, he connived with Vedalankar in dismissing it in two dishonest sentences, written on Vedalankar's computer, with a scanned image of his signature pasted in, 'with his knowledge and consent' (LASA actually pleaded this in

answering my agenda for the first pre-trial conference) to make it look like he'd written it. I detail this in paragraphs 33–47 of annexure 'A'.

551. This is when I realised that Mlambo JP was in on the cover-up. Only in April 2016, on seeing the unredacted recommendation report, did I realise that more than that, he was behind the abortion of my appointment.

552. Ad 19. My letter put up by LASA as annexure 'FA1' speaks for itself. It was clearly 'serious', not 'malicious'. But this paragraph is basically on point. I now believe, however, that I was barking up the wrong tree in concluding that unfair discrimination against me was the reason my appointment had been blocked; it seems much more likely now, in light of the recommendation report finally surrendered in April 2016, that cronyism was the reason: that Mlambo JP wanted his former long-time judicial colleague Ngcamu in, not me.

553. Mlambo JP's shocking indifference to my petition to him and the Board, and his subsequent repeated grave misconduct described herein, is otherwise completely incomprehensible to me, and I submit to any intelligent and reasonable observer. And I'm sure this court will agree.

554. Ad 20. Correct. The first part of my petition to Mlambo JP and the Board – paragraphs 17–43 – detailed the fraudulent manner in which Vedalankar had illegally refused my entire PAIA request, on the basis of a fake quotation from a reported judgment claimed to support her refusal. But Mlambo JP wasn't interested in this extraordinarily serious complaint.

555. Mlambo knew full well that the budgetary insufficiency excuse fed me for the abortion of my appointment was false, for the reasons mentioned in my petition. He and the rest of the Board had never been asked to approve, much less had the Board approved, the cancellation of the appointments of three recommended candidates to LASA's three remaining vacant Senior Litigator posts and the indefinite/permanent freezing of the posts for budgetary or any

other reasons – as the Approval Framework required of them in regard to such a major deviation from the Strategic Plan 2009–12.

556. Ad 21. Correct. Inter alia, my second PAIA request tested the budgetary insufficiency excuse given me. I annex the list of records I requested marked 'HH'. As this court can see from it, there's nothing frivolous and/or vexatious about it, as LASA now falsely alleges.

557. Ad 22. This is inaccurate. Actually, Mlambo JP was responding to my second petition to him and the rest of the Board, LASA's annexure 'FA3', which I individually emailed to as many of them as I could find email addresses for. Again, I request that this court read it.

558. My letter to Board member du Rand is treated in paragraphs 48–50 of annexure 'A'.

559. The meeting between Rawlins and Board member Gandhi at her home was at her invitation, as she'll confirm. They're both anti-apartheid struggle veterans of similar vintage.

560. Ad 23. Board chairperson Mlambo JP's strange, late-night (11h12) email response to my second petition to him and the Board about Vedalankar's illegal refusal to comply with my August 2010 PAIA request under cover of a fake quotation from a reported judgment and her failure to see to my appointment under cover of a transparently false budgetary insufficiency excuse was not only scurrilous and disgraceful, it was grossly dishonest.

561. Mlambo JP knew full well that no lawful decision had been taken to cancel my recruitment.

562. Another thing: When Mlambo JP emailed me, the Department had recently paid LASA its OSD funding for the year. So LASA now had no financial issues of any description to justify keeping me out. Nothing prevented my

appointment to the budgeted, fully funded, long vacant, critical post for which I'd been recommended. Except that I wasn't wanted.

563. Mlambo JP concluded his email with an outright lie: 'I have, in turn, requested Board members to ignore all communications from you and/or on your behalf.' Since the allegation was incredible, I didn't believe it. Also I'd come to recognise Mlambo JP's overworked, fussy writing style when telling studied lies. I didn't believe it, because such a 'request' by him would have been outrageous: the chairperson, a senior judge, asking the other members of the Board to disregard their fiduciary obligation to ensure LASA's compliance with the law and the Constitution in the conduct of its business, and to ignore any more complaints from me, clearly substantiated with evidence presented, that my fundamental rights to information and equal employment opportunity had been violated in the most dishonest way.

564. So under PAIA I asked for the record of Mlambo JP's alleged 'request' to the other members of the Board that they 'ignore' my fundamental rights violation complaints. And found, as expected, that there isn't any.

565. Mlambo JP's charge that in pressing the Board to remedy my complaints and see to Vedalankar's lawful compliance with my August 2010 PAIA request and my appointment to the top post for which I'd been duly recommended, my 'conduct is unbecoming to say the least and borders on harassment' – which is unlawful – was scandalous, absolutely false, and corruptly contrived to intimidate me into backing off and abandoning my pursuit of my fundamental rights.

566. So was his dissembling that he 'could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view.' This court will readily appreciate from my first petition (LASA's annexure 'FA1') that Mlambo JP could not in good faith have held such a 'view' and that he was lying to me in pretending that he did.

567. Ad 24. It's untrue in several respects that 'on 28 January 2011' Vedalankar 'partially complied with the request' I made under PAIA in August 2010 and that she 'provided Brink with 12 of the records he requested'.

568. In a couple of cases, records that Vedalankar put up for her own purposes to support her allegations more or less coincidentally met, or partially met, some of my requests. So it's false and misleading to claim she 'provided Brink with 12 of the records he requested.'

569. Most of the records Vedalankar provided I hadn't asked for. Five of them I already had, one of which I'd generated myself: my transcription of the audio recording of Vedalankar's address to the Portfolio Committee on 11 October 2011.

570. The paragraph omits to mention that Vedalankar refused my entire second request made in December 2010 on the false basis alleged that it just 'repeated' my first in August, in other words that she refused it illegally on false grounds.

571. It fails to mention that in again refusing my first request in August 2010, she rejected and returned the cheque I'd sent her to cover the request fee prescribed by section 22(1) of PAIA.

572. It doesn't mention that she failed to certify non-existent records on affidavit as required by section 23.

573. The truth of it is that the '12 … records' Vedalankar 'provided' weren't to comply with my August 2010 PAIA request that she'd already illegally refused in October. They were intended, she explained, 'To demonstrate', i.e. support, aspects of her 'detailed explanation … on why the recruitment process for the Senior Litigator position was aborted', namely her lying budgetary insufficiency alibi.

574. Only, the 'relevant documents' she put up flatly contradicted her basic lie to me, first told in October 2010 and repeated in January 2011, by showing that

LASA's vacant Senior Litigator posts were never contemplated for freezing – let alone frozen 'In July 2010' as she claimed in her lying letter to me.

575. Instead, what the documents she put up show unequivocally is that in July 2010 fifty-six public defender posts serving the lower criminal courts were temporarily frozen, with Board approval. Vedalankar had contemplated this in her letter to the Director General in April (annexure 'X2'), and in July it was suggested by Nair to his fellow management executives, accepted and proposed by them to the Board, and approved by the Board (annexures 'X3'–'X5').

576. My PAIA request was for access to specified records, or sworn confirmation where any didn't exist. I didn't ask Vedalankar for 'a detailed explanation' given with a lot of meretricious, high-toned, and indignant huffing and puffing. Vedalankar's 'detailed explanation' – clearly false from a glance at the records she claimed demonstrated it – was no answer to my PAIA request, illegally refused again, now on a new set of different grounds, also later abandoned.

577. Former Public Protector Thuli Madonsela encountered the same chicanery at PRASA. During her summary presentation of her corruption report 'Derailed' on national radio, I was struck by her mention of documents put up, claimed to show one thing but which she'd found showed another. As this court can see from the documents Vedalankar gave me (annexures 'X1'–'X6'), she tried the same crooked stunt on me.

578. How the documents Vedalankar put up didn't support, and contradicted and refuted her 'detailed explanation together with relevant documents on why the recruitment for the Senior Litigator position was aborted' is treated above.

579. The claim 'Where records were refused it was done so on the basis of section 44(1) and (2) of PAIA as the records sought related to deliberative processes of Legal SA with third parties' is a characteristic stew of lies, deceptive

half-truth, high-sounding gibberish, and contemptible legal ignorance exhibited by LASA's pitifully useless head office lawyers.

580. Section 44 makes no mention of 'third parties' at all. It was invoked to refuse my requests for items '8 and 9', '16; 19; 20; 21; 22; 23; 24; 26; and 27' and '25' on Part A of my list and '1; 2; 28; 29; 31; and 32' of Part B. To read the provisions of section 44 and my specification of these requested records on my list (annexure 'Z') is to appreciate that this phoney justification for refusing them had no application at all.

581. LASA's unapologetic invocation of section 44 again in its affidavit well illustrates the kind of dishonesty, invincible stupidity and pathetic legal incompetence I've been up against from the start, as LASA has determinedly suppressed duly requested records to hamper my exposé of its lying budgetary insufficiency excuse for blocking my appointment.

582. When I continued pursuing access to them during document discovery before the trial of my labour case, LASA eventually surrendered many of these records, after protracted resistance.

583. Items 1 and 26 of Part B of my list of requested records was for 'The minutes of the KwaZulu-Natal regional professional selection board's interview with Brink on 12 November 2009' and 'the "regret letters" sent' after cancellation of the recruitment.

584. The first was refused; instead I was given a copy of the selection panel's recommendation report, heavily 'edited and blacked out'. The second was refused outright.

585. The dishonest reasons for this concealment emerged later on, during pre-trial discovery process after I'd launched my claim to my instatement and after judgment in response to another PAIA request. In both cases, LASA persisted

in illegally withholding the documents after I'd requested them again, and surrendered them only under pressure of applications to compel.

586. Finally disgorged at the point of legal compulsion in April 2016, long after judgment in my labour case, the complete, unredacted recommendation report revealed that one of my rivals for the Pietermaritzburg Senior Litigator post, Ngcamu AJ (as he used to be) had been a long-time judicial colleague of Board chairperson Mlambo JP in the LC, which suddenly made sense to me of the latter's amazing, shocking misconduct in repeatedly dismissing my petitions for Board intervention in Vedalankar's illegal refusal of my PAIA requests, and her failure to see to my appointment under cover of an obviously untrue financial insufficiency excuse, and his perversion of both the Minister's and Portfolio Committee's independent enquiries into this by way of secretly submitted false Confidential Reports full of lies.

587. Finally disgorged through protracted, determinedly resisted pre-trial discovery process in my labour case, the 'regret letters' sent the interviewed candidates in August 2010 notifying the cancellation of the recruitment, as I was pressing in July for my appointment, revealed that only three of the four of us were sent them, and that the interviewed candidate who wasn't sent a 'CONFIDENTIAL' Dear John letter telling him the recruitment had been cancelled, was none other than Mlambo JP's former judicial brother Ngcamu AJ (as he used to be). Ngcamu wasn't also told that tall story.

588. Straining to conceal the fact that Ngcamu wasn't also put off like the rest of us with a 'regret letter', LASA did it's best to prevent me finding this critically relevant information out. When I requested all the 'regret letters' (implicitly including Ngcamu's) in August 2010, my request for it was ignored (i.e. mutely refused) in September, then expressly refused in October 2010, then again in January, and then again in April 2011 on the false basis that his permission was required to release it.

589. When I asked for it in my agenda for the first pre-trial conference, it was again refused on the false basis that it had been properly and lawfully refused under PAIA.

590. Then – on LASA's counsel (now Constitutional Court judge) Madlanga SC's openly expressed advice that the documents I wanted were indeed discoverable – LASA promised it along with the rest; then refused it again after the conference on the basis that the 'Regret Letters to Van Wyk and Ngcamu … are irrelevant for the purposes of determining the issues between the parties.'

591. LASA thus dishonestly and deceptively implied that Ngcamu was sent a 'regret letter' like the rest of us, telling him the recruitment was off.

592. Finally under further pressure of an application to compel, van Wyk's and Mngadi's letters were produced. Since Nair had confirmed in April 2011 in his PAIA section 23 affidavit that 'regret letters were sent to two other applicants for the senior litigator positions' (I wrongly believed at the time that this excluded Mngadi) I realised at last from this belated forced discovery, persistently long resisted with false and misleading information given me on the way, that Ngcamu wasn't also sent a 'regret letter' telling him the Senior Litigator recruitment had been cancelled.

593. Since LASA had concealed Ngcamu's long professional relationship with Mlambo JP from me, I didn't twig at the time to the potent significance of this finally forced admitted fact – not until years later in April 2016 when I learned of this relationship.

594. In his affidavit opposing my petition for leave to appeal, Mtati told the JP of the LAC, under oath: 'I have demonstrated that by 23 August 2010, regret letters had been sent out to all the applicants of those posts.' First he hadn't. Second, they hadn't. In the case of the KZN posts, Mlambo JP's long-time judicial colleague Ngcamu wasn't sent a regret letter. In the case of the

Mthatha post, no regret letters were sent to anyone, neither to Skibi nor to the unsuccessful applicants.

595. Mtati lied under oath about this to conceal from the LAC:

(a) the striking fact that Ngcamu wasn't told the recruitment was off, like the rest of us; and,

(b) the similarly striking irregularity that the Mthatha recruitment was cancelled wholly off the record.

596. Mtati and those instructing him were concerned the JP shouldn't know these facts, which I'd established with great difficulty, so he simply lied about them, knowing I didn't have the right of reply in a petition case to identify and expose his perjuries.

597. LASA doesn't mention in its paragraph 24 that Vedalankar also invoked section 43(1) against me to refuse Part B items '16; 19; 20; 21; 22; 23; 24; 26; and 27 … as it relates to confidential correspondence with third parties.' The reason it concealed this from this court may be because section 43(1) protects 'research information', and obviously had no relevance whatsoever to these records, because none of them could possibly have contained it, and didn't.

598. If 'section 43(1)' was a dyslexic switch, and LASA maybe meant section 34(1) instead, the fact that none of these records contained 'personal information about a third party' protected by the section is apparent from a glance at my specification of these records.

599. Maybe this is why LASA is silent on its reliance also on section 43 or 34 and doesn't tell this court about it.

600. Vedalankar copied Mlambo JP in on her January 2011 letter again refusing my PAIA requests and even spitting back my request fee. Mlambo JP evidently thought this illegal obstruction of my constitutional right of access to LASA's

public records, on the basis of sections of the Act raised against me that had no bearing on my requests, was just fine.

601. The Judge President heading the country's biggest law firm was quite happy with Vedalankar's persistent violation of my fundamental right to information as I was testing the basic lie she'd told me about why I hadn't been appointed, which he knew to be a lie. Just as he wasn't bothered by her refusal of my August 2010 PAIA request on the basis of a forged misquotation from a reported judgment, of which I'd complained in my November petition to him and the Board.

602. Required by section 32 of PAIA to report its multiple refusals of my requests and the sections of the Act it relied on to justify them, LASA failed to do so. When again it failed to report its further refusals of my PAIA requests in the following reporting cycle, the SAHRC reported LASA's repeated failure to comply with section 32 to Parliament. I deal with this in paragraphs 161–7 of annexure 'A', describing also how Vedalankar lied her way out of it.

603. Ad 25. Correct.

604. Ad 26. Correct, except that Mlambo JP's Confidential Report was full of lies. Concerning:

(a) LASA's illegal non-compliance with my PAIA requests made in August and December 2010, I canvass all the lies in the Confidential Report covering this up by falsely pretending that LASA had duly complied with my requests, in paragraphs 15–82 of annexure 'A'; and,

(b) the abortion of my appointment under the false financial insufficiency excuse fed me in October 2010, I treat this above and in my petition for leave to appeal, annexure 'G'.

605. In his Confidential Report, Mlambo JP alleged:

'Whilst the initial reason for this ['nationally constituted'] 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 … 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.'

606. According to Nair in evidence, the claim 'of which the Chairperson of the Board of Directors is one' was added to the 'updated' report to the chairperson of the Portfolio Committee by Mlambo JP: 'I can only assume the Judge personally wrote that.' (Record, 355:1)

607. As mentioned above, the excuse about 'delays in coordinating a meeting time' was retracted under oath as 'an error', after I exposed it as a lie.

608. Mlambo JP knew full well that the second part of the story, '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' was a lie too. He was aware that no such decision was duly taken by LASA, and that 'the decisions we took on this matter' which 'made good business sense and were in the best interests of our organization at the time' didn't involve the indefinite/ permanent freezing of three Senior Litigator appointments. They didn't involve Senior Litigator recruitment at all. This was all criminal deception of the Portfolio Committee.

609. Ad 27. Correct. I annex the list of records I requested in March 2011, my third PAIA request, marked 'JJ'. As this court can see, there's nothing frivolous and/or vexatious about it, and nor did LASA think so, because it didn't treat it as such and didn't raise section 45 to justify any refusals.

610. Ad 28. Newly appointed deputy information officer Nair indeed 'deal[t] with each and every question raised', i.e. the records I'd requested, and proceeded to illegally refuse numerous duly requested records. I annex his response marked 'KK'.

611. Nair also had a third, actually fourth, go at dealing with my August 2010 PAIA request mutely refused by Vedalankar in September, expressly refused in October 2010 and again in January 2011. And he had a second go at my PAIA request of December 2010, refused in January 2011.

612. In a memorandum addressed to the SAHRC on 3 March 2011, making my case for my entitlement to the records requested in August and December 2010 that had been illegally refused, I'd reduced the number of documents requested to the barest essential minimum documents absolutely needed to plead my envisaged labour action. It's 'FA4' to the founding affidavit, in the series but not marked as such.

613. Nair responded to this reduced list, and his repeated confirmation that no record whatsoever existed to vouch his and Vedalankar's claim that they'd decided to delay and freeze the Senior Litigator posts entirely satisfied me. As this court will see, he told various stories and gave various explanations superfluous to the prescribed information requirements of a section 23 affidavit.

614. Nair's claims in paragraphs 15 and 36 of his affidavit, namely that 'The decision ['to delay and eventually freeze the recruitment of certain positions including the vacant senior litigator positions'] taken by me, in consultation with the Chief Executive Officer and Human Resources Executive, is in accordance with the Approval Framework and with the powers delegated to the executive. There is no need, in terms of the [Approval] Framework, for the executive to refer to the Board in this regard', betrays both the dishonesty and ignorance of this top management executive, previously a schoolteacher, second

only to the CEO, previously a town planner, both of the provisions of the Approval Framework and of the PFMA.

615. The minute of the LSTC meeting of 24 March 2011 (annexure 'P') shows that decisions to fill or not to fill, to abolish and to create new Senior Litigator posts is the prerogative of the LSTC, which Nair chairs. And that such decisions are minuted. Naturally.

616. Contrary to Nair's falsely claimed opinion about this, on oath, the alleged decision to freeze the Durban, Pietermaritzburg and Mthatha posts – a major deviation from the Strategic Plan 2009–12 – certainly needed to be referred to the Board for approval for the reason stated above.

617. And Nair knew this full well, because when in July 2010 he and other management executives wanted to spur the Department into paying over its OSD phase 1 funding allocation to LASA for salary increases (so Nair testified), he motivated for the freezing of some vacant entry-level public defender posts serving the lower criminal courts (annexure 'X3'); and this was put to the Board for approval (annexure 'X4'), which it granted (annexure 'X5').

618. Of course any management decision to freeze recruitment to three top-echelon, critical legal professional posts – recruitment to which Vedalankar repeatedly reported was part of LASA's Strategic Plan – required Board approval. And the PFMA required any such decision to be recorded.

619. In his section 23 affidavit Nair claimed falsely, '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.'

620. That is, Nair falsely verified on oath Vedalankar's multiple lies, exposed and refuted by LASA's own records, that she told me in giving her false explanation in her October 2010 letter 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 thee decision that all senior litigator posts that were vacant would be immediately frozen. … Therefore, the three vacant Senior Litigator posts for Durban, Pietermaritzburg and Mthatha have been frozen.'

621. On which explanation she insisted in her January 2011 letter:

> 'the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible … I provide you with further information and reasons that led to the freezing of the Senior Litigator posts in Durban, Pietermaritzburg and Mthatha … I, and the Legal Aid SA under my watch, have never sought to make any decision regarding Senior Litigator posts on any ground other than the budget constraints which you have rejected.'

622. In November 2011, Nair gave the Board two totally different reasons why the vacant Senior Litigator posts weren't being filled. In court in mid-2013 he went back to Vedalankar's story to me, but radically changed it by dropping the Mthatha part from it. At the same time also standing by his different stories that he told the Board. The trial judge didn't find this mess of radical contradictions remarkable in the least, because he didn't remark on it.

623. Anyway, Nair's perjured evidence that he repeatedly asked Vedalankar to approve the transfer of the Kimberley Senior Litigator post to Mthatha reveals his correct appreciation that there's (a) operational decision-making by the LSTC, and then (b) approval of such decisions by executing authorities

delegated by the Approval Framework. And that he and Vedalankar can't go lawfully freezing recruitment to three critical top-rank legal professional posts on their own. Much less off the record, without Board approval, and without notifying the affected committees specified by the Approval Framework.

624. In a second memorandum I submitted to the SAHRC, again appealing for its intervention under section 83 to assist me access the many records listed in my third PAIA request in March 2011 that Nair had refused, I demonstrated the illegality of his refusals on the grounds variously of sections 44(1) and 34(1) and on the further ground that, in his opinion as law student, my requests were 'irrelevant' and 'not relevant'. My second memorandum stating the factual and legal irrelevance and incompetence of Nair's refusals is annexure 'FA9' to the founding affidavit (LASA has mixed up the pages in my copy, and maybe the court's too).

625. Pleading inadequate resources the SAHRC declined to come in, but in June 2011 agreed: 'A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer is made in your memorandum.' Exactly, and the documents I wanted were ultimately surrendered, forced out of LASA by pre-trial discovery process or with PAIA requests made after judgment, in both cases persistently resisted but more persistently pursued with applications to compel and repeated pre-trial conferences held under judicial supervision.

626. Ad 29. In his evidence at the trial of my labour claim, Nair eventually admitted that he ghost-wrote the original Confidential Report to the Minister (LASA's annexure 'FA5') – I'd found proof of this in the 'Author' properties of the PDF of the document sent me a couple of weeks before trial: 'Briann' (annexure 'LL'). But not before falsely denying this through LASA's counsel: In his cross-examination of me he persistently disputed my claim that Nair wrote it.

627. But Nair denied having 'updated' it for the Portfolio Committee ('FA6') and testified that Mlambo JP or Vedalankar must have done so. That is, Nair

practically accused Mlambo JP (twice) or Vedalankar (once) of adding the new lies told in the Confidential Report to the Portfolio Committee, inter alia,
(a) falsely describing my claim to my appointment as a mere money claim, and
(b) massively understating LASA's exposure in damages liability for lost income.

628. Ad 29.1. Mlambo JP's allegation in the Confidential Report that, as it's put in this subparagraph, 'As far as legally permissible and where records were available, such records were given to Brink', was an outright lie. I quote the many specific lies told to this effect, to cover LASA's persistent ongoing illegal refusal of access to its duly requested records, and refute them in paragraphs 67–82 and 100–10 of annexure 'A'.

629. Ad 29.2. The false financial reporting detailed in my first petition to the Board (annexure 'FA1' to the founding affidavit) was not 'incorrect'. To the contrary, it was conceded in the Confidential Report, but attributed to a mistake. I've detailed other serious contraventions of the PFMA above.

630. Ad 29.3. As I've said above, I now accept in light of the unredacted recommendation report which I finally forced out of LASA in April 2016, that my surmise at the time that political discrimination was the reason I wasn't appointed was probably wrong, and that cronyism now looks the much more likely reason.

631. But absolutely false was the basic lie: the claim to the Minister, forged by Nair and uttered by Mlambo JP, after discussion with Vedalankar (according to Nair in evidence), and again to the Portfolio Committee – a crime under Act 4 of 2004 – that 'budget constraints' caused the abortion of my and two other appointments to the Pietermaritzburg, Durban and Mthatha Senior Litigator posts (per Vedalankar in her letters of October 2010 and January 2011; and per Nair, Vedalankar and Clark on affidavit in April 2011).

632. If budget constraints had been the reason, Nair wouldn't have invented two totally different reasons for not finalizing the appointments of the three candidates recommended for the Pietermaritzburg, Durban and Mthatha posts in his 'Report to Board' in November 2011, a couple of months after I'd exploded the basic lie in my original detailed statement of claim in the LC.

633. Because the bogus financial excuse for Nair's inaction on receiving the recommendation report couldn't stretch as far back and cover the several months between receiving it on 26 November 2009 and LASA's discovery on 10 March 2010 that its OSD phase 1 allocation hadn't been included in the baseline budget as expected, Nair improvised a nice supplementary lie for Mlambo JP to tell the Minister and later the Portfolio Committee: 'the initial reason for this ['nationally constituted'] 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.'

634. The trouble for this story is that it was contradicted and refuted by the facts on the ground. In my application for leave to subpoena Mlambo JP to cross-examine him on his lies in the Confidential Report about me, and about his peculiar indifference to my first petitions to the Board protesting the most serious wrongdoing and violation of the Constitution, I presented the evidence that in truth and in fact, nothing had been done to 'coordinat[e] a meeting time suitable for all members of the panel', because as LASA pleaded in its original response to my labour claim, Nair 'did not sign the said recommendation thus rendering the said recommendation ineffective. … once the decision was taken not to proceed with the second round of interviews, that was the end of the process.' Clark 'would not have known the result of the Regional Selection Panel as the process was terminated at the first round of interviews. She would normally be involved if the second round of interviews has been approved. Her responsibility would then be to arrange for the [so-called second round interview] process to be undertaken as per her programme and interviewees to

be informed accordingly. … there was no need to pass the Regional Panel's unsigned or unapproved recommendation to anyone as that process would only be applicable if and when one intended to proceed.' Clearly 'one' didn't.

635. Cornered by my clear refutation of the lie, Mtati, supported by Nair with a confirmatory affidavit, responded by repeatedly recanting the lie as 'an error', 'palpably an error … because there was never a second round of interviews for the Senior Litigator position arising from the 2009 recruitment process.' (Like calling a lying flat-tyre excuse given a judge for coming to court late, when exposed by the judge as an outright lie, 'an error', 'palpably an error', sorry.)

636. Whatever; the supplementary lie that Nair and Mlambo JP told the Minister and the Portfolio Committee was retracted on oath. (Confronted by this in cross-examination, Nair said the retraction was itself an error. Only, he'd confirmed it.) And Mlambo JP knew it was a lie, because no one had contacted him about setting up the so-called second round interviews.

637. Having especially phoned the KZN regional office for the recommendation report and all CVs to be sent up to him (so LASA pleaded in its answer to my agenda for the first pre-trial conference), Nair testified that he didn't open these attached documents emailed to him – not until more than a year after receiving them, when inspired by a sudden fit of curiosity he read them for the first time.

638. The judge had no difficulty believing this moronic story told by a witness I'd shown 'a number' of times during the trial to be 'not generous with the truth' in giving his evidence (and, thanks to PAIA, 'a number' of times more after trial and after judgment).

639. Opposing my petition for leave to appeal, Mtati flatly lied about this in his affidavit: 'The Petitioner seeks to mislead this honourable court with his selective quotation of the record [sic: the judgment, paragraph 67, last

sentence]. There is nowhere where Cele J found Mr Nair was not generous with the truth. This court is invited to peruse the relevant paragraph herein.'

640. Mtati lied again to the LAC in claiming for the first time that when in November 2009 he received my recommendation and the CVs, 'At the same time, Mr Nair testified that … he was preoccupied by a sudden emergency that had confronted [LASA].'

641. It was never LASA's case that 'a sudden emergency … confronted' LASA in November 2009 when Nair received my recommendation. Nair never claimed this in evidence, as Mtati falsely alleged. Quite the contrary, Nair truthfully admitted that no financial issue existed at that time to 'preoccup[y]' him and prevent him proceeding with my appointment. And indeed, LASA's records confirm this.

642. It was only on 10 March 2010, three-and-a-half months after my successful interview in November 2009, that LASA was 'suddenly confronted' by 'budgetary issues' (as it originally pleaded, and specifically confirmed in its response to my agenda for the first pre-trial conference, in which I sought admissions), when it learned that its OSD phase 1 funding allocation hadn't been included in its baseline budget for 2010/11. But which anyway made zero difference to staff recruitment – contrariwise, it actually spiked in the next quarter – until July 2010 when Nair recommended to COO Makokoane and other management executives that recruitment to 56 non-critical lower criminal court public defender posts be temporarily frozen until the OSD phase 1 funding question was resolved. Which Makokoane put to the Board for approval, and which it gave.

643. Mtati's new allegation that Nair 'was preoccupied by a sudden emergency' in November 2010 when he got my recommendation is a blatant new lie. Nair admitted in evidence that there were no financial issues facing LASA 'At the same time' he received my recommendation.

644. Furthermore, LASA's records contradict Mtati's false implication that LASA interrupted its recruitment of staff to fill its vacant posts while it 'presented its budget proposal for the 2010/2011 financial years to the Department'. They show that recruitment never paused or slowed until August 2010, and then only for two months.

645. Nair's evidence as to his indifference to the identities and professional backgrounds of the recommended candidates, false as it obviously was, confirmed he did nothing to arrange the so-called second round interviews, which is why he encountered no trouble 'coordinating a meeting time suitable for all members of the panel, of which the chairperson is one.' He hadn't contacted Clark – since, as LASA originally pleaded to my labour claim, 'the HRE would not have known the result of the Regional Selection Panel as the process was terminated at the first round of interviews' – and he or Clark hadn't contacted Mlambo JP.

646. It follows that Mlambo JP uttered this lie – 'the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel' – in full knowledge that it was a lie, and that he told it to deceive the Minister and the Portfolio Committee and pervert their independent investigations as to (a) why I hadn't been appointed to the post for which I'd been recommended, and (b) Vedalankar's repeated, persistent illegal refusals to comply with my PAIA requests probing the true reason.

647. Annexure 'O' is Nair's 'Report to Board' on Senior Litigators in November 2011, and to read it, after reading the Confidential Report he ghost-wrote for Mlambo JP, is to recall Oscar Wilde: 'As one knows the poet by his fine music, so one can recognise 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.'

648. As discussed above, I used PAIA to test (a) Nair's claims in the report; (b) Mtati's excuse for why the promised professional performance audit of Senior Litigators hadn't been conducted; and (c) Nair's evidence about this at trial, and established that they'd all lied: to the Board, to me, and to court.

649. Ad 30. Correct. The chairperson of the Portfolio Committee took Mlambo JP at his word – since it was unimaginable to him that the then JP of the LC would tell him a heap of lies in criminal contravention of sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 – and quite understandably advised me: 'In view of Justice Mlambo's response, I consider the matter closed.' That is, Mlambo JP's Confidential Report successfully perverted his enquiry.

650. Ad 31. Correct, especially because the 'detailed explanation' given by Vedalankar was unsupported by any record and were contradicted by the extant records, and Nair gave a totally different 'detailed explanation' to the Board after I'd refuted Vedalankar's 'detailed explanation' in my original statement of claim:

651. Nair's Report to Board, giving totally different (also false) explanations for not filling LASA's remaining vacant Senior Litigator posts was leaked to me by a senior LASA staffer (outside KZN) concerned about the corruption I'd related, or I'd never have found out about it. Of course I've no intention of betraying and exposing my source to retaliation. For sharing Nair's lies to the Board with me.

652. It bears mentioning that the Board merely 'noted' Nair's report; it didn't resolve to approve his deviation from LASA's Strategic Plan 2009–12 to hire Senior Litigators at all main seats of the High Court, and this is why LASA has continued applying to the Department and being paid for salary budget for the three Senior Litigator posts Nair was referring to in his report, the Pietermaritzburg post I was recommended for included.

653. Ad 32. Correct, save that strictly speaking, one was a formal complaint, the other a request for assistance under PAIA section 83(3)(c).

654. Ad 33. This is inaccurate. The SAHRC's Gauteng Office – not its PAIA Unit in its head office – made several excuses for not assisting me, as section 83 of the Act empowered it to do, and as appears from annexure 'FA10' none of them was that 'the issues complained of were best suited to be ventilated before a court of law' or anything like it.

655. Ad 34. This is inaccurate. When in my notice of appeal I knocked down all the excuses given me by the Gauteng office for not assisting me, a brand new reason was given me to justify dismissing my appeal: that my complaint about LASA's illegal refusals to comply with my PAIA requests was headed for court. Only, it wasn't; my labour claim was.

656. Ad 35. Correct.

657. Ad 36. Correct. For the reason given above, I'm now satisfied that my claim based on unfair discrimination against me personally was bad.

658. Ad 37. Correct, substantially, besides one misrepresentation. After investigating and refuting the basic lie Vedalankar told me for not appointing me (in her letter of October 2010: annexure 'MM'), unfair political discrimination looked to me the most likely true reason that the KZN Senior Litigator recruitment process was cancelled (LASA wouldn't have been able to explain appointing Mngadi to the Durban post, and not me to the Pietermaritzburg post). Copying and pasting wholesale from my heads, in which I made the case that I'm politically unpopular, referenced to supporting documents, the judge had no trouble finding that I'm indeed a politically unpopular person for contradicting a highly charged propaganda-consensus.

659. Unfair political discrimination was my main cause of action in my original statement of claim, with race discrimination pleaded in the alternative. I can't

recall what new information tipped the balance at the time, but when my amended statement of claim was drawn, I suspected race prejudice more strongly, and reversed the order of my main and alternative claims. I reverted to the original order of claims in my second amended statement of claim served on LASA just before the trial, refreshed to plead some new facts disclosed by documents LASA had just discovered. But LASA petulantly objected, and my second amended statement of claim was disallowed. Still, I made clear during the argument about this that political prejudice was my main claim. And that's what was tried. Only I was wrong: discrimination against me personally probably had nothing to do with it; it was just that someone else was favoured for appointment to the top post.

660. LASA prevented me realigning my pleadings before court with my case for trial, so it's LASA's fault, not mine, that my case at trial was 'in contrast with [my] pleaded case'. My second amended statement of claim, which LASA pointlessly blocked, pleaded my case precisely in conformity with my case on trial.

661. There was no 'lack of funding' to fill the vacant Senior Litigator posts – the basic lie told in the case, and again repeated on oath to this court.

662. In November 2014, after judgment, I requested under PAIA LASA's budget application to the Department for Senior Litigator salaries in 2013/14 (item 17 of annexure 'B3: H'). As usual my request for this record was illegally refused in March 2015. So in November 2015 I requested it under PAIA again, this time from the Department, along with LASA's Senior Litigator salary budget applications over the five years 2010/11–2014/15. The Department referred my request to LASA under section 20 of PAIA. Only because the Department was watching, LASA now complied with my request and gave me these records. They're annexed to annexure 'B16: C'.

663. What these budget applications to the Department year after year for nine Senior Litigator salaries show is that all nine such posts have always been fully budgeted, fully funded posts. (Strictly, the records don't show actual payment; but LASA won't dispute that its Senior Litigator salary budget has always been accepted by the Department and voted by the National Assembly, and that the money has been paid to it year after year.)

664. Obviously, had LASA's three remaining vacant Senior Litigator posts truly been frozen indefinitely/permanently by any competent authority at LASA, LASA wouldn't have applied and wouldn't still be applying to the Department for funding for salaries for these posts in contravention of section 53(4) of the PFMA.

665. The truth of it is that, contrary to the lie told to this court, under oath, there's never been a 'lack of funding' for my post, or the other two. LASA's own records refute this perjury.

666. As I show in this affidavit, when it comes to evidence at trial 'in contrast to' its pleaded case, previously sworn to as well, LASA takes the cake.

667. Ad 'Brink's conduct during litigation before the Labour Court including towards judicial officers'. This chapter title implying vexatious misconduct is dishonestly misleading and maliciously calculated to prejudice this court against me because:

    (a) there's nothing about 'Brink's conduct' described in this chapter that qualifies me as a vexatious litigant, and none of it supports LASA's cause of action in this regard. I made the most serious allegations in my original statement of claim for determination by the LC; and was fully within my rights to do so. My charges against Mlambo JP in particular arose from the real evidence of his stunning responses to my petitions to him and the

Board and his defamation of me and lies told to the Minister and Portfolio Committee to pervert their enquiries; and,

(b) the only 'judicial officer' LASA mentions in this chapter is Mlambo JP, and nowhere do any of my allegations concern him as a judge; they concern his capital misconduct as the chairperson of LASA's Board.

668. I record that, on account of LASA's endless personal attacks on me, later catalogued in my heads in support of damages, I pertinently asked the trial judge during oral argument whether he had in mind to fault anything about the way I'd prosecuted my case so that I might defend myself before he made any adverse finding against me. He waved me away, and made no such finding. Yet LASA dishonestly persists in pretending that my 'conduct during litigation before the Labour Court' was reprehensible.

669. Ad 38. Correct. My original statement of claim was indeed unusually long and detailed, for the reason I explained at trial: it was tactically contrived to draw LASA out in making its plea, to keep it talking for as long as possible, saying as much on paper as possible, in the same way that a police interrogator tries keeping a lying criminal talking in an interrogation cell. Sooner or later the peripheral then central contradictions and concessions begin. And they did, as LASA tied itself up in knots.

670. My other motivation in pleading so unusually extensively was to completely demolish and lay bare the basic lie, hoping it might induce LASA to settle. It didn't, but it did have the effect of causing Nair to appreciate that the basic lie was untenable, with the result that he dropped it like a hot plate and invented two completely different stories told to the Board a couple of months later in November 2011, as to why the vacant Senior Litigator posts weren't being filled.

671. Ad 39 and 40. My statement of claim disclosed the most serious imaginable malfeasance by the officers mentioned in LASA's paragraph 38, involving inter alia multiple crimes committed. Hence my resolve to ventilate my complaints as widely as possible.

672. Ad 41. None of what I pleaded in my original statement of claim was found and held to be objectionable by the trial judge, and none of it was found and held to be evidence that I'm a vexatious litigant. So everything LASA complains about in its subparagraphs 41.1–13 is irrelevant to its case that I'm a vexatious litigant. Still, I'll answer it.

673. Ad 41.1. As I'll show, each and every one of these pleaded allegations is perfectly true, except in regard to the motive I pleaded for LASA blocking my appointment, which, in light of the unredacted recommendation report I obtained in April 2016, I now believe to have been incorrect, inasmuch as the much more likely reason was cronyism; that is, 'political (alternatively racial) prejudice' that I pleaded was not the reason I was blocked, but rather that Mlambo JP wanted his former brother on the LC bench in instead of me.

674. Indeed, as I pleaded, my appointment was aborted off the record; this is common cause. Vedalankar, Nair and Clark all confirmed on oath in April 2011, and Nair repeated in his evidence at trial, that no record whatsoever exists to vouch that any decision was taken by any competent authority, or indeed by anyone at all, to cancel the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, for any reason.

675. Indeed, as I pleaded, my recruitment was immediately cancelled (after word reached the centre that I'd been recommended instead of Mlambo JP's former brother Ngcamu AJ (as he used to be)). And this is not just my conclusion, it's LASA's own sworn account of what happened. Letting the truth slip out and telling it by accident, attorney Mtati confirmed in the affidavit he made on Mlambo JP's behalf to answer my subpoena application that my 'recruitment,

together with the other candidates recommended for the second round of interviews was aborted immediately after the first round of interviews.' Exactly. Nair confirmed this by way of a confirmatory affidavit.

676. (As I've shown – and in January 2011 Vedalankar was forced by the recommendation report to admit – there were no 'other candidates' recommended for the Pietermaritzburg post; the sole other candidate recommended was Mngadi, but for a different post at Durban. It's a lie that 'other candidates [were] recommended'; to the contrary, they were eliminated for not meeting the qualifying criteria.)

677. It was 'immediately after the first round of interviews' (per Mtati's affidavit quoted above, confirmed by Nair) that 'the decision to abort the Applicant's [my] application' was made (per LASA's original response to my statement of claim) – i.e. 'the decision to abort the recruitment of the Senior Litigator, Pietermaritzburg' (ibid).

678. Indeed, as I pleaded, it was 'many months later, under pressure to account' for LASA's strangely silent failure to finalise my appointment after my successful interview in November 2009, and as I was pressing Vedalankar to see to it, first with my letter to her seven months later in July 2010, and then with a PAIA request the following month in August, testing Nair's response to it earlier that month, that the basic lie was told me, namely (I'm quoting from my original statement of claim, which LASA quotes in its affidavit; and I've inserted bracketed reference numbers for comment below, showing everything that I pleaded was absolutely true and is supported by the record):

> 'a cover story [that Vedalankar and Nair had frozen LASA's three vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha] … based on a fake financial justification – unsupported and contradicted by [LASA's] business records [1]; conflicting with Vedalankar's CEO report for 2009/10 [2]; conflicting with deliberately misleading statements

Vedalankar made on two occasions to the Portfolio Committee … [3]; and contradicting the express wishes of the Minister … [4] known both to Mlambo and Vedalankar [5].

679. Ad my averment 1: '*a cover story [that Vedalankar and Nair had frozen LASA's three vacant Senior Litigator posts] … based on a fake financial justification – unsupported and contradicted by [LASA's] business records*':

LASA's business records put up under further 'pressure to account' in January 2011 (I'd had to call the SAHRC in again when in October Vedalankar now expressly refused my August 2010 PAIA in toto, having ignored and mutely refused it in September) and other records independently sourced by me, exposed Vedalankar's opening lie to me in October 2010 that, 'Due to the recession' the Department had short-paid LASA's baseline budget.

(a) The global recession of 2008 was already history – especially for LASA. I canvassed the evidence of this in paragraphs 196–214 of my first petition to the Board in November 2011 (LASA's annexure 'FA1').

(b) There was no reduction in LASA's baseline budget for 2010/11. Its annual report for the financial year, published in 2011, shows that its baseline budget actually increased by 11.8%, and that LASA enjoyed a substantial surplus of R31.7 million in 2010/11.

(c) It's true that LASA experienced some transient financial uncertainty from 10 March 2010, arising from the Department's failure to include its OSD phase 1 allocation for salary increases in LASA's baseline budget, as had been expected – a problem, because LASA had already implemented OSD phase 1 and was paying salary increases accordingly. But this financial uncertainty:

(i) arose three and a half months after I'd been selected and recommended in November 2010, with nothing done to finalise my recruitment (a

lying excuse to patch this time-gap concocted by Nair for Mlambo JP to knowingly tell the Minister and the Portfolio Committee was later retracted by Mtati on affidavit, confirmed by Nair on affidavit, as 'an error', 'palpably an error' when I exposed it as a lie);

(ii) had no bearing on Senior Litigator recruitment, as unequivocally shown by (a) the resolution of the LSTC, chaired by Nair, two weeks later on 24 March 2010 to urgently recruit a Senior Litigator for Mthatha; (b) the advertisement of the post in April; and (c) interviews held, and a selection and recommendation for it on 24 May;

(iii) had no bearing on recruitment and new post creation at all – to the contrary, as detailed in my evidence at trial and again in my petition for leave to appeal (annexure 'G'), these figures shot up – not until July 2010, when (a) Nair recommended to his fellow management executives the freezing of recruitment to some entry-level lower criminal court public defender posts – to spur the Department into paying, he explained at trial – more of such posts if needs be, and some even lighter administrative posts if still necessary after that (annexure 'X3'); (b) COO Makokoane proposed to the Board this temporary freezing of these entry-level public defender posts, and the *prioritizing of recruitment to critical posts* (annexure 'X4'); and (c) the Board approved (annexure 'X5'); and,

(iv) was totally resolved two months later by the inclusion of the outstanding OSD funding in the mid-term budget (annexure 'X7'), as reported by Vedalankar to the Portfolio Committee on 11 October 2010 (annexure 'X6') which funds were paid over to LASA on 15 December 2010 (annexure 'X8').

680. Also, LASA's uncertainty was not about *whether* the OSD phase 1 funding of R23.8 million would be paid, it was about *when* it would be paid during the

year. There was no question that it would be paid because it had been paid the year before (R28 million), also separately and after the transfer of LASA's main baseline budget.

681. Ad my averment 2: '*a cover story [that Vedalankar and Nair had frozen LASA's three vacant Senior Litigator posts] … based on a fake financial justification … conflicting with Vedalankar's CEO report for 2009/10*':

(a) In her CEO report signed on 19 August 2010, a couple of weeks after allegedly freezing three critical Senior Litigator posts totally off the record 'In July 2010' (per her October 2010 letter to me), the only mention of 'the impact' of 'The non-implementation of Phase 2 of the Occupation Specific Dispensation for our legal professionals due to a lack of funds' was that this 'continues to impact negatively on staff morale.' Nothing about OSD phase 1. She didn't mention executive management's decision, approved by the Board – all duly minuted – to temporarily freeze recruitment to some entry-level public defender posts, and to prioritize recruitment to critical posts, until resolution of the OSD phase 1 uncertainty, much less that the appointments to three critical Senior Litigator posts had been aborted off the record without Board approval and the posts indefinitely and effectively permanently frozen.

(b) The temporary freezing of recruitment to 56 practitioner posts proposed by executive management to the Board and approved by the Board in July 2010 was indeed mentioned elsewhere in the Annual Report 2010/11 under 'Programme O1-S7-P1: Increased people capacity to deliver … Recruitment and retention of competent staff for legal services delivery … Increased recruitment levels … Recruitment was held back during a large part of the year [sic: for two months only, August and September] due to uncertainty with regards OSD funding.' The clear implication in the report was that LASA's brake on recruitment was a thing of the past, and that it had been released. Naturally there's no mention anywhere in the report of an

indefinite/permanent freezing of LASA's three remaining vacant critical Senior Litigator posts for want of budget to fill them. Because this was a lie, the basic lie.

(c) The claim about 'Increased recruitment levels' was true, and pertinent too: In the 2010/11 financial year, total permanent legal recruitment increased by 4.7% (1033 to 1082) – higher than the 4% in 2009/10 (993 to 1033). But LASA's three critical vacant Senior Litigator posts for which suitable candidates had been selected remained unfilled.

(d) Nor did LASA report indefinitely/permanently freezing its three remaining vacant critical Senior Litigator posts in the same Annual Report 2010/11. Under 'Programme O1-S6: review legal staffing/business models', in the 'Review Staffing for delivery' section, the corresponding 'Performance' entry is blank.

(e) Echoing, albeit less precisely, the information given in the Annual Report 2010/11 that 'Recruitment was held back during a large part of the year due to uncertainty with regards OSD funding' (in fact for a couple of months only, in August and September 2010), LASA's Annual Report 2011/12 states similarly under 'Programme P25: Increased support capacity to deliver': 'Recruitment for some positions were [sic] put on hold owing to uncertainty with regard to funding for the backlog courts project.' The 'backlog courts project' entails the provision of public defenders to the lower criminal courts; 'Recruitment for some' of these 'positions' – 56 of them – were indeed 'put on hold' with Board approval in July 2010 'owing to uncertainty with regard to funding'. Which 'uncertainty with regard to funding' had passed within a couple of months, thanks to the Minister's intervention and assistance, according to Vedalankar's information to the Portfolio Committee on 11 October 2010. With the result that 'Recruitment for some positions', i.e. 56 non-critical practitioner posts serving the lower criminal courts, 'were put on

hold' only during August and September 2010, after which the 'hold' on 'Recruitment' to the posts was lifted and recruitment of lawyers to fill them resumed (per Vedalankar's information to the Access to Justice Conference on 9 July 2011): 'We have increased access to clients through 100% coverage of all criminal courts in the country.'

(f) Not just 'coverage of all criminal courts': According to LASA's 'Budget 2011/12' report dated 1 April 2011, 'The recruitment rate was increased to 100% in the 2011/12 financial year. … The recruitment level was also increased from 97% in the 2010/11 financial year to 100% in 2011/12.' Of course, the report is deceptively silent in regard to the respondent's still vacant three critical Senior Litigator posts, frozen off the record. It doesn't talk about that, knowing very well that both the Minister and the Portfolio Committee have expressly stated that they don't want recruitment to any of LASA's vacant posts frozen: 'the Minister didn't want that' (as Vedalankar told the Portfolio Committee on 11 October 2011) and in its 'Budgetary Review and Recommendation Report' of 26 October 2010, 'The [Portfolio] Committee recommends that … OSD funding is included in baseline to prevent LASA from having to freeze posts.' And, as LASA admitted in its answer to my agenda for the first pre-trial conference, the National Assembly is specifically concerned that 'Senior Litigators' be 'appointed' in view of public perceptions of inadequate professional expertise among the respondent's lawyers, a concern raised in May 2007, again in October 2010, and again in November 2010; and to cure a problem LASA itself confessed in its response to my original statement of claim in September 2011: its 'public image … has, for the most part, been negative due to a perception of incompetence and lack of vital court skills.' (LASA's handling of my applications to compel compliance with my PAIA requests (reviewed in annexure 'A' and in my pre-trial conference agenda, annexure 'B') and this application to ban me as a vexatious litigant for suing to vindicate my

fundamental right to information resoundingly evinces the correctness of this perception: how professionally mediocre and incompetent LASA's top executive attorneys are.)

682. Ad my averment 3: '*a cover story [that Vedalankar and Nair had frozen LASA's three vacant Senior Litigator posts] … based on a fake financial justification … conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee*':

(a) In her address to the Portfolio Committee on 11 October 2010, concerning LASA's outstanding OSD funding, Vedalankar informed it that the Minister had intervened in 'fixing it': he 'did get involved and he had assisted … 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.' Vedalankar didn't claim to the Portfolio Committee that LASA wouldn't be able to 'deliver' on its Business Plan to employ Senior Litigators; that LASA wasn't 'on track' with this particular 'component' of the Business Plan; and that this was a 'problem area' that needed 'fixing'. The implication of Vedalankar's address to the Portfolio Committee was that recruitment to fill vacant posts in LASA's budgeted staff establishment in the implementation of the Strategic Plan 2009–12 was now proceeding apace. In claiming, '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', Vedalankar deceptively concealed from the Portfolio Committee the fact that, according to her October letter to me a week later, 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be frozen. … Therefore all three vacant

Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.' Vedalankar thus deceptively concealed the unlawful abortion of LASA's three remaining Senor Litigator recruitments from the Portfolio Committee.

(b) Two months after Vedalankar's letter to me of January 2011, reiterating her lie that LASA couldn't afford to employ me, and that consequently she and Nair in consultation with Clark had frozen all its vacant Senior Litigator posts, the minute of LASA's presentation of its 'Strategic Plan and budget 2011' to the Portfolio Committee on 31 March 2011 records that it:

> 'enquired about the vacancy rate, generally, and at a 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.'

For the reasons explained in paragraphs 390–2 above, these statements deceptively concealed from the Portfolio Committee her and Nair's alleged decision to abort three substantially completed Senior Litigator recruitments and to indefinitely/permanently freeze the critical posts.

683. Ad my averment 4: '*a cover story [that Vedalankar and Nair had frozen LASA's three vacant Senior Litigator posts] … based on a fake financial justification … contradicting the express wishes of the Minister*':

(a) When in her address to the Portfolio Committee on 11 October 2010, Vedalankar 'mentioned challenges that may face Legal Aid SA should OSD

funding not be fixed' and 'that if funding does not come through "we would have to freeze posts"', she didn't claim to the Portfolio Committee, as she claimed to me a week later on the 18th, that 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen. … Therefore all three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.' Vedalankar said 'we would have to freeze posts' as a contingent future possibility, 'but the Minister didn't want that and said we needed to continue with the business'; she didn't state that she'd frozen LASA's three vacant Senior Litigator posts as an extant fact. So on her own showing Vedalankar was well aware that the Minister didn't want LASA to freeze recruitment to any of its vacant posts. And Mlambo JP was the source of this information to her, about the Minister specifically not wanting posts frozen at LASA, and knew it just as well, because, according to LASA, the Minister had communicated this to him personally (annexure 'X4', paragraph 1.3).

(b) Nor at subsequent meetings with the Portfolio Committee on 31 March and 12 October 2011 did Vedalankar make this claim, which she'd made to me, that for want of sufficient budget she'd been forced 'In July 2010' to 'immediately' abort the recruitments of three candidates who'd been 'identified' by selection panels as 'the most suitable candidate[s] for appointment' (per section 1.2.3.4. of the Recruitment code) to three critical vacant Senior Litigator posts, and that she'd indefinitely/permanently 'frozen' the posts. At her presentation to the Portfolio Committee on 12 October 2011, Vedalankar twice emphasised that LASA was concerned not to 'jeopardise our service delivery'. LDE Hundermark conceded the Committee's point that LASA was not 'spending its money allocated to impact litigation' – mentioning 'our senior litigators' performing it, without disclosing that Vedalankar and Nair had aborted three Senior Litigator

appointments and frozen recruitment to the posts, off the record, without Board approval. Nor was Vedalankar's allegation to me that 'In July 2010' she'd 'immediately frozen … all senior litigator posts that were vacant' ('after the Board meeting' on the 31st, on the same day, per LASA's pleading in its answer to my agenda for the first pre-trial conference) made anywhere in either of LASA's 2009/10 or 2010/11 annual reports presented to the Portfolio Committee on 11 October 2010 and 11 October 2011 respectively: neither in Vedalankar's CEO reports, nor anywhere else in the reports.

684. Ad my averment 5: '*a cover story [that Vedalankar and Nair had frozen LASA's three vacant Senior Litigator posts] … based on a fake financial justification … contradicting the express wishes of the Minister … known both to Mlambo and Vedalankar':*

Mlambo JP was Vedalankar's source for this information. On 11 October 2010 Vedalankar told the Portfolio Committee: 'In fact the minister has been involved in that which relates to 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.' Regarding the future possibility that 'we would have to freeze posts', Vedalankar said: 'the Minister didn't want that and said we needed to continue with the business'. The Minister communication of this to Mlambo JP is recorded in paragraph 1.2 of annexure 'X4'.

685. Ad 41.2. This is exactly my complaint; and besides my changed conviction in light of recently obtained evidence as to the reason my appointment was aborted, every word of it stands.

686. Concerning my complaints about Vedalankar's repeated and persistent illegal failure to comply with my PAIA requests made in August and December 2010, paragraphs 33–51; 55–61; 63; 65–72; 77–85; and 100–110 of annexure 'A'

canvass and refute all the lies told the Minister and the Portfolio Committee by Mlambo JP in his Confidential Report.

687. The first *new* lie (later recanted) told in the report about why my appointment wasn't proceeded with was that:

> 'Adv Brink … 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. … the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel'.

688. In my application for leave to subpoena Mlambo JP for cross-examination on this criminal lie, among others, that he told the Portfolio Committee, and before that to the Minister, I showed it was a lie, in that Clark on the panel and responsible for arranging the second interview wasn't even aware of the recruitment and hadn't been asked to arrange the panel. This was at all times common cause in the case.

689. After 'consultations … with' Mlambo JP and 'authorised' by him to do so, Mtati retracted this criminal lie as 'an error', 'palpably an error'.

690. Nair supported this retraction with a confirmatory affidavit. And Nair knew very well it was a lie, this lie he told when ghost-writing the report for Mlambo JP to repeat to the Minister and to the Portfolio Committee, because on his own version at court, he'd done nothing with the recommendation and CVs when he got them by email from the ROE, and only opened and read these attachments a year or more later. He took no steps towards holding second interviews.

691. The second *old* lie was 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.' Very smooth, very criminally dishonest. No such decision was taken by 'Legal Aid SA' as implied. I've disposed of this above.

692. Ad 41.3. Mlambo JP's 'subsequent recorded conduct' was:

(a) his disgraceful dismissal of my first extensive petition to him and the Board (LASA's annexure 'FA1') seeking his intervention in Vedalankar's illegal refusal to comply with my first PAIA request, and her unlawful failure to see to my appointment, as required of her by the Approval Framework as a delegated authority, under cover of an elaborate, bogus financial insufficiency pretext, by conniving with her in the shocking manner detailed in paragraphs 38–47 of annexure 'A';

(b) his disgraceful, aggressive, insulting dismissal (annexure 'L') of my second petition to him and the Board (LASA's annexure 'FA3'), reiterating my said complaints and again appealing for Board intervention to remedy the illegality complained of on the clear evidence I presented;

(c) his perversion, by means of dishonestly false reporting, of the Minister's enquiry into my said complaints (annexure 'M'); and,

(d) his perversion, by means of dishonestly false reporting (LASA's annexure 'FA5'), of the Portfolio Committee's enquiry into the same (annexure 'N'), and a defamatory covering letter (LASA's annexure 'FA6') to discredit me and my duly made, entirely justified complaints.

693. Ad 41.4. This averment is true. On 3 April 2007, 'Justice Dunstan Mlambo … on the Court of Appeals of South Africa … also the Chairman of the Board for the Legal Aid Society' was flown over to New York by the Women's Foreign Policy Group as its special guest to listen to a 'really informative and stimulating' presentation, the minute recorded, entitled 'The Fight Against

HIV/AIDS in South Africa'. Unlike then President Mbeki, 'Justice Dunstan Mlambo' didn't stand up to identify the whole thing as a money-making scam by the multinational pharmaceutical industry running the medical industrial complex, based on the most risible junk medical science piled on profoundly racist ideological foundations. He went along with it.

694. Ad 41.5. This averment is true. Past annual reports record the hundreds of thousands of rands LASA has spent year after year on its 'HIV/AIDS Programme'. Its most recent annual report for 2015/16 is still full of 'HIV/AIDS'. There's no question that LASA is big into the contemporary AIDS cult.

695. Ad 41.6. As said, I now believe I was wrong about this surmise. Lest this court be unfamiliar with this, international labour law recognises that since unfair discrimination in labour practice is rarely announced, it must be inferred from all the circumstances of a case: inter alia, the grievant belonging to a protected minority, irregularities in the recruitment, displays of bad faith, false pretext shown for the adverse employment decision, etc.

696. Ad 41.7 and 8. These averments are true, and are born out by the backfiring question I was asked under cross-examination, namely why hadn't I concluded from the long silence that I'd been unsuccessful at the interviews and not walked away – thus confirming that the very intention of keeping me in the dark was to deceive and defraud me into believing I'd not been selected, and into abandoning my pursuit of the post to which I was entitled to be appointed.

697. Ad 41.9. This averment is correct, save that I now believe I wasn't directly discriminated against personally, but indirectly, in that I was the victim of cronyism, with Mlambo JP's former judicial colleague favoured for the post. Except that the plan to eventually slip him into the post, after obtaining the right of appearance in the High Court he lacked, failed when I began pressing determinedly that my appointment be finalised.

698. My information from former Free State and Northern Provinces ROE Nkululeko Mayisela is that the best applicant whom he and the selection panel recommended after the interviews of all shortlisted applicants was passed over, and that Skibi, whom they hadn't recommended, was appointed instead. (LASA is illegally withholding from me the Kimberley Senior Litigator recommendation report that I requested under PAIA.)

699. Ad 41.10. Other than about 'unfair discrimination', qualified above, this averment is quite correct. Vedalankar and Nair have given completely different explanations under oath about why the Mthatha appointment was cancelled. I've listed above all the other different, contradictory false explanations that have been given, including by Mtati under oath, confirmed by Nair.

700. Ad 41.11. This averment was founded on Mlambo JP's collusion with Vedalankar in dismissing my first two complaints to him and the Board about her repeated and persistent violation of my fundamental right to information and her illegal suppression of public records I'd duly requested in the course of my investigation of the veracity of the story Nair had told me in August 2010, elaborated by Vedalankar in October, after the SAHRC had obtained LASA's assurance that it would respond in October to my first PAIA request made in August 2010. Welshing on which promise, it didn't respond by allowing me access to the records I'd asked for, and gave me a cock-and-bull story instead, along with a fraudulently fabricated quotation claimed to be from a reported judgment and another vacuous reason claimed to justify refusing my record requests. All this is detailed in the first half of annexure 'A'.

701. I allow that my inference which I averred, quoted here – based on Mlambo JP's collusion with Vedalankar's illegal obstruction of my fundamental right of access to LASA's records – that he was 'probabl[y] … the author of the false and misleading statement of law concerning [my] right to information' might

be wrong and that it was one of LASA's legal executives who was the 'the author of the false and misleading statement of law concerning [my] right to information'. As non-legal civil servants, it seems unlikely that Vedalankar or Nair came up with it. (During trial, Nair told the judge that the law course he was doing by correspondence didn't include a PAIA module.)

702. This is perfectly true. And when in my original statement of claim, and again in my application for leave to subpoena Mlambo JP to be cross-examined on this lie told the Minister and the Portfolio Committee, I categorically exposed this lie, Mtati insistently retracted it on Mlambo JP's behalf as an 'error', 'palpably an error'. Nair, who I discovered on the eve of trial had ghost-written the report to the Minister and to the Portfolio Committee, and was therefore the original author of this lie, put up a confirmatory affidavit. When I exposed the blatant lie, he tried scuttling away from it as a mere mistake.

703. Ad 41.12. LASA's ellipses in quoting me make nonsense of what I said. What I was referring to here was the new lie told in the Confidential Report, forged by Nair and uttered by Mlambo JP, that difficulty coordinating a date for the so-called second interviews was the initial reason I wasn't called to the second interview. When I proved unequivocally that this excuse was a lie, it was retracted on oath as 'an error', 'palpably an error', and never again featured in any subsequent pleading, interlocutory affidavit, or Nair's evidence in court – until I cross-examined him and he tried evading the point by claiming his retraction was itself an error – or in LASA's opposing affidavit in my petition for leave to appeal.

704. Ad 41.13. This is very correct; it was indeed horrifying. Even after Mlambo JP left the LC and LAC, my senior counsel friend who assisted me pro amico in my case for a while insisted very vehemently, 'You've got to get your case out of the Labour Court.' If I'd seen any way to, I'd certainly have done so.

705. The end point of my labour litigation was that my petition for leave to appeal was perverted by the Memorandum slipped to the LAC JP. Who threw my petition out before all the papers were in: my answer and LASA's reply to its condonation application for opposing me late. Which shows my learned friend's apprehensions were spot on.

706. Ad 42. It's untrue that 'It was only … under cross-examination, that Brink exonerated Mlambo JP and the CEO and shifted his focus to the National Operations Executive.' The record vouches that right at the outset of the trial, I stated from the bar, before giving evidence and before I was cross-examined, that I held Mlambo JP and Vedalankar clear. The word 'exonerated' was LASA's counsel's, not mine, the word he repeatedly put to me in cross-examination. From the beginning and throughout the case I repeatedly employed the expression 'hold clear'.

707. The reason is that there's a fundamental difference in a civil case between holding someone clear and exonerating him. To inform the court that you're holding someone clear, someone you've previously charged, is to indicate that you're no longer seeking any adverse liability or culpability finding against him; whereas to say you're exonerating him is to absolutely absolve him of such liability or culpability that you've previously charged.

708. What caused me to change the focus of my complaint in the LC and to lower my sights from a head- to a leg shot was this. About two weeks before the trial in July 2013, I'd eventually succeeded, after long struggle, in forcing out of LASA the Confidential Report that had perverted my complaint to the Minister. I'd chanced to spot it in a folder on Mtati's laptop computer as we were looking together for something else at the third pre-trial conference at court in June 2013, the month before trial. As agreed, he emailed it to me as an attachment after the conference. Opening it and examining its 'Author'

properties (annexure 'LL'), I was amazed to discover that Nair had ghost-written it (as he eventually admitted at trial).

709. During an internet search a few days before trial I stumbled on the text of a talk Nair had just given to an international Legal Aid conference at The Hague. I was struck by the same idiosyncratic, syntactically awkward way he opened his sentences, 'Noting' this and 'Noting' that, which I'd seen three times in Vedalankar's letter to me in October 2010. I concluded from these peculiar traces that Nair had ghost-written Vedalankar's October letter. (At trial, Nair gave evidence in the same awkward way, 'Noting' this and 'Noting' that, before carrying on. He didn't deny and he owned this peculiar way of expressing himself, which he apparently thought made him sound erudite. But he denied, under oath, having ghost-written Vedalankar's October letter. Just as he perjuriously denied other things, canvassed above.)

710. Wrongly, I'm now certain in hindsight, I concluded from Nair's lies to me told in Vedalankar's October 2010 letter; his lies to the Minister and to the Portfolio Committee told in the Confidential Report in March and June 2011, and his lies to the Board in November 2011, that Nair was my principle opponent, and that he was responsible for blocking me – rather than used by Mlambo JP in the cover-up. As I testified, a LASA attorney had privately complained to me that 'Brian Nair just does whatever he wants.'

711. This caused me to think Nair had used Vedalankar and Mlambo JP in covering up his illegal abortion of my appointment, by telling lies in their name. And that Nair had very cunningly cancelled two other appointments to support the cover-story he'd invented, that budgetary insufficiency prevented our appointments, since, as I'd been told, 'Brian Nair just does whatever he wants.'

712. With this in mind, I narrowed the spray of my complaint and limited my personal targets to the minimum I thought necessary to carry my case, and focused on Nair alone, holding Mlambo JP and Vedalankar clear.

713. The judge seemed to like this, and to be concerned that I should stay my course announced at the start of the case to hold Mlambo JP clear and not to implicate him in my evidence; because when after presenting my Timeline we adjourned to his chambers and I mentioned that I had a lot more evidence to give, he discouraged me from doing so by saying, '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.'

714. Mtati was there and doesn't deny it; in his affidavit opposing my petition for leave to appeal he frothed that it was 'unethical' of me to have quoted the judge making this sinister admonition.

715. Which was unmistakeably that if I disregarded the judge's warning and proceeded to lay a net of further evidence so wide that it netted bigger fish than I'd already netted, it would capsize and sink my case. Big fish, it seemed to me, like Mlambo JP. Who else?

716. A final note about this. I hardly need spell out that successful trial strategy generally entails alleging and proving the minimum necessary to succeed with a particular cause of action or defence. That is, it's not necessary to bowl down all the skittles, not necessary to prove all the actual facts of a matter if proving some of them will be enough. As I newly perceived it in light of my above-mentioned discoveries just before trial, I didn't need to implicate Mlambo JP and Vedalankar any longer, and elected to gun for Nair, the actual lying author of the three key lying documents in my case: Vedalankar's lying letter to me in October 2010; Mlambo JP's lying Confidential Report to the Minister and to the Portfolio Committee in March and June 2011; and Nair's lying Report to Board in November 2011.

717. At trial Nair twice insisted that Mlambo JP (or maybe Vedalankar) updated the Confidential Report for the Portfolio Committee by adding new lies to it; and very interestingly said: 'my role in this entire process was really small.'

(Record, 390:21–3) Now that Mlambo JP's long professional relationship with my rival for the Senior Litigator post has come to light since April 2016, after being assiduously concealed from me since September 2010, I'm now inclined to believe him. I now believe Nair was Mlambo JP's tool in the cover-up.

718. Ad 46. Correct. It's useless insinuating that the number of documents I wanted was untoward, for three reasons:

719. First, because I believed many of them didn't exist, and wanted LASA's sworn confirmation of this. LASA knew exactly what documents didn't exist (had the truth been told, they would have existed) and could have certified this under section 23 of PAIA in no time.

720. Second, whenever I was asked under section 26 to consent to an extension of the 30 calendar day time limit prescribed by section 25 for a response to my PAIA requests I readily agreed to an extra 30 days, the maximum allowed for a response, and in one case even volunteered an extension. Sixty calendar days was ample time to gather and furnish the many records I wanted or to certify those that didn't exist.

721. Third, section 22 of the Act make provision for the payment of search fees where finding documents will take inordinately long, and I was never asked to pay these. (The very different fees – misnamed 'search fees' – that LASA tried charging me, but which it subsequently abandoned when I showed they were incompetent and unlawful, and the SAHRC agreed, are dealt with in paragraphs 194–6 of annexure 'A'.)

722. Ad 47. Correct. This accurate description of my October 2013 PAIA requests, made immediately after I'd completed and filed my heads of argument, insinuates they were irregular. They weren't; and as I've tried explaining to LASA many times, my purpose in making a PAIA request is irrelevant under section 11(3) of the Act. The SAHRC has also tried explaining this

unsuccessfully to LASA (Adeleke to Mtati, email August 2012). As is again evident here, our lessons have failed. There appears to be a learning difficulty.

723. As expected and intended, my PAIA requests and the responses they drew did indeed 'refute the evidence which was already led at trial', during which Nair made many novel improbable allegations that I decided to test. I was sure they were perjured and my intention was to see him prosecuted for them. I thought it was important for him to learn that when you tell lies under oath you go to jail.

724. The most important of these new allegations was Nair's brand new, completely different explanation for why the Mthatha Senior Litigator appointment was cancelled. At the centre of the basic lie, LASA's story all along, since October 2010, was that the Pietermaritzburg, Durban, and Mthatha posts had been frozen simultaneously 'In July' for lack of budget to fill them, 'Due to the effects of the recession'. Nair, Vedalankar and Clark all verified this story under oath in their April 2011 affidavits.

725. In his evidence at trial in mid-2013, however, Nair changed a basic plank of this story (the basic lie) and said the cancellation of the Mthatha appointment had nothing to do with any financial consideration; it was because Vedalankar repeatedly refused his repeated requests to approve the transfer of the vacant Kimberley post (where the Free State and Northern Provinces ROE said it wasn't needed) to Mthatha (where, for several stated reasons, the Eastern Cape ROE said it was sorely needed).

726. The LTSC's decision was eminently reasonable. On Nair's new version in court, Vedalankar's decision was entirely irrational and seriously prejudiced service delivery. Besides contradicting the basic lie, Nair's evidence about this made no sense.

727. Had Nair's new story about the cancellation of the Mthatha recruitment been true, there'd obviously have been some record of it. Hence my requests listed in annexure 'B3: A–C'. But as expected, my PAIA requests established that there're no records at all. There's not a single record concerning the cancellation of the Mthatha recruitment for any reason, be it the old story (insufficient budget to fill the post) or the new one (Vedalankar's refusal to approve moving the Kimberley post to Mthatha). Or the different stories told the Board. And the more different stories told the SAHRC. And the even more different stories told the LC. All catalogued above.

728. In his evidence, Nair claimed not to know that the SAHRC had held a special PAIA training workshop for LASA's head office staff, following my repeated complaints about its illegal refusals of my record requests and its false reporting to conceal this (dealt with in paragraphs 120–47, of annexure 'A'); and that the SAHRC then conducted a PAIA audit of LASA (dealt with in paragraphs 152, 160 and 168–9 of annexure 'A'):

> Q: '… arising from your refusal of records, on April, allowing some but refusing others, do you confirm that the Human Rights Commission stepped in, held a special training workshop to teach you guys how the law here works? You confirm that? You got a special lesson in October 2011, right?' --- (No audible reply) … '… it is not part of my portfolio … whether the HR, the Human Rights Commission was happy or unhappy or advanced training or not, I cannot confirm that.' Q: 'But you are … deputy information officer, of course it is your portfolio, and you handled my second, my third PAIA request'. … --- I am one of the few people in the organisation that has the responsibility so if it was brought to my attention I would have known, it was not brought to my attention.' Q: 'Do you mean the PAIA training workshop was conducted at LASA's headquarters … in Braamfontein without your knowledge?' --- 'I do not have any recollection of it, which possibly it was there.' (Record, 470:4–25;

471:1–2) Q: 'My information is that the respondent [LASA] was indeed sent an audit questionnaire early this year (indistinct [to ascertain]) its compliance.' --- 'That is not in my knowledge.' (Record, 474:25; 475:1–2)

729. As deputy information officer in LASA's head office, Nair must have known of these things and therefore must have lied to the judge in denying his knowledge of them. So I asked for all records concerning the training workshop, warning that to ensure that the records LASA gave me were complete I'd apply to the SAHRC for the same. Refusing all my other requests, LASA gave me these records, only because I'd said I'd ask the SAHRC for them too; and what the internal emails among these records show is that, contrary to his compulsively committed perjuries, Nair knew full well about both the workshop and audit. I annex them marked 'NN' and 'OO'. (The workshop emails ('NN') reflect the SAHRC's serious and urgent concern about LASA's illegal refusals of my PAIA requests, and they mention its reporting of LASA to the National Assembly for false section 32 reporting.)

730. Nair's other perjuries at trial, proved by later PAIA requests I made and the responses they elicited, will be dealt with below.

731. Lying freely in the standard LASA manner of telling any lie as long as it sounds good, to make me look bad, Mtati perjured himself in his affidavit opposing my petition to the JP of the LAC for leave to appeal:

> 'The Petitioner unsuccessfully sought to appeal the decision of the court *a quo* and sought leave to lead further evidence based on information he was yet to receive from his equally vulgarised requests for information. In other words, the Petitioner banked on information yet to be received in order to support his application to lead further new evidence.'

732. Mtati signed the response in November 2013 to my 'vulgarised requests for information' in October – how they're 'vulgarised' he doesn't say – to which he

attached the 'further evidence' of internal emails proving that Nair knew all about the SAHRC's PAIA training workshop for and PAIA audit of LASA. So the 'information' wasn't 'yet to be received in order to support [my] application to lead further new evidence', when about a year later on 3 October 2014 I applied for leave to lead this new evidence on appeal. I had indeed 'received' it.

733. Ad 48. On the point of being argued in court, after I'd I sued for these records, LASA abandoned these incompetent and indefensible justifications for refusing my PAIA requests (taken apart in annexure 'B') and agreed to respond to them, more than two years later (annexure 'B2').

734. The way Mtati lays them out, one would think these justifications for refusing my PAIA requests were valid, and not complete legal drivel:

735. Ad 48.1. Whether or not the records I requested from Bambiso in October 2013 were 'already dealt with during the discovery process in the Labour Court' is immaterial under PAIA; and even if true didn't afford a justification for totally refusing my PAIA request for these records.

736. In fact, my PAIA request addressed to Bambiso was directed at testing Nair's new lie at trial, itself contradicting the basic budgetary insufficiency lie, that the Mthatha Senior Litigator recruitment had been aborted because Vedalankar refused to approve the LSTC's resolution in March 2010 to abolish the Kimberley post, create a new post at Mthatha, and transfer the budget. The only grounds for refusing a PAIA request for public records are those enumerated in Part 4 of Chapter 2 of the Act. This incompetent and illegal ground for refusing my request was eventually abandoned.

737. Ad 48.2. Section 7 is not among sections 34–45 in Part 4 of Chapter 2 of the Act, and doesn't afford a justification for refusing a PAIA request; and LASA eventually abandoned it.

738. Ad 48.3. There was nothing 'manifestly frivolous or vexatious' or unreasonably time-consuming about my requests; and LASA eventually abandoned this false allegation and justification for refusing them.

739. Ad 49. These allegations are mostly untrue. CEO and information officer Vedalankar didn't respond to my PAIA request addressed to her (in October 2013), Mtati did – alleging that he was a deputy information officer. He wasn't. In my application to compel Vedalankar's compliance with my PAIA request that Mtati had almost totally refused, I sought a declaritor that he'd acted ultra vires and unlawfully, but LASA threw in the towel before argument and agreed to allow me access to all the documents I'd requested. Mtati's delegation produced in February 2016, shortly after LASA's surrender at court on the 11th, confirmed he wasn't a deputy information officer at the time he responded to and refused nearly all my record requests in 2013–15, because it was recently dated 11 January 2016. Which means he indeed acted ultra vires and unlawfully in handling and refusing my requests.

740. The allegation that Vedalankar made a PAIA section 23 affidavit is absolutely false; she never did. And Mtati knows very well that this claim to this court is perjured, because in November 2013 he himself responded to my PAIA request addressed to Vedalankar in October and refused nearly all of it, without taking from Vedalankar, or himself making, any section 23 affidavit. It's really very difficult keeping up with the geyser of lies and casually committed perjury gushing out of LASA.

741. Ad 50. Correct. These grounds were eventually abandoned at court when I sued to compel access to the records she'd refused. Actually, like Eastern Cape ROE and deputy information officer Bambiso, Free State and Northern Provinces ROE and deputy information officer Msweli didn't consider and refuse my requests; they were refused by Mtati and his colleagues in LASA's head office. Mtati won't deny it: traversed in my affidavits in my applications to compel,

the evidence, immaterial to recite here, is ample. Point is, LASA refused me access to records to which I was constitutionally entitled, and it later conceded this by agreeing to my access to every record I asked for, or to a sworn declaration of records it didn't have.

742. Ad 51. Correct.

743. Ad 52. This is inaccurate. Indeed the argument of my case was set down by the registrar for the three days mentioned. The trial had spanned most of two weeks; I'd referred to masses of documents in a trial bundle of more than 1000 pages; and my heads of argument, in which I covered and argued the evidence, were very long and closely referenced to the trial documents, pleadings and interlocutory affidavits with 857 footnotes. With more in my reply to LASA's heads. The three-day allocation for argument wasn't at my instance, it was at the judge's.

744. This court can imagine my disgust then when the judge flippantly confessed in his chambers before argument on 28 May 2014 that he hadn't even read the heads – even trying making a joke of it: 'I'm sure you can assume I'm literate and will read your heads.'

745. That is, for the argument of a long and complex, factually dense case, founded on masses of documents, heard nine months earlier, the judge hadn't even bothered to prepare himself: a sickening and disgraceful display of judicial indolence.

746. My disappointment was doubled by his request that we confine our argument to 'the main points' – which in court I had to urge him to note, when I noticed he wasn't even recording my 'main points' with the references I was stating to my heads, footnoted to the key documents I was referring to. As if he'd already made up his mind; the argument was just a charade; and I was wasting my time and energy, being put through the motions.

747. It's a hard fact that the judge was communicating with LASA after the trial without my knowledge: LASA told me he'd suggested to it that I be given an 'electronic copy' (audio recording) of the trial transcript, instead of the extra hard copy LASA had printed for me with all its page and line numbers to refer to in argument. I'd requested a directive from him that LASA share the record with me. The audio recording I was given instead was useless to me.

748. Ad 53. Correct. Only, it's irrelevant to my entitlement to access the records I'd requested, and LASA implicitly conceded this in February 2016 when reversing its refusal of my requests and then responding, after a fashion, in April.

749. Ad 'Brink's conduct after the Labour Court judgment and towards judicial officers': Calculated to prejudice this court against me, the title of this chapter, implying vexatious misconduct, is dishonestly misleading.

750. Ad 54. Indeed my claim failed; and since April 2016, when I learned of the long-term collegial relationship between LASA Board chairperson Mlambo JP and one of my rivals for the post that I'd been recommended for, I accept that it properly failed, for the reason that my cause of action was wrong.

751. Ad 55. The judge's findings quoted here are obviously completely irrelevant to LASA's case that I'm a vexatious litigant and don't support it.

752. Ad 55.1. The judge indeed upheld LASA's defence 'based on Mr Nair's evidence' without any effort to evaluate it in light of the documentary record that I pertinently brought to his attention, besides commenting vaguely that Nair had been 'not generous with the truth' on 'a number' of occasions, before nonetheless accepting his evidence wholesale. LASA pleaded that Nair had phoned for the recommendation and CVs. In court he testified that he didn't open and read the recommendation and CVs until a year or more after receiving them, the better to maintain his pretence that he didn't know who I was. I declared my political history when applying for the job, anticipating that

LASA might later pretend it didn't know it. Still Nair pretended this, and the judge believed him, except that he allows that Nair 'possibly' lied in claiming not to have 'read the CV of the applicant', which is to say lied when claiming he only read the recommendation and CV a year or more after receiving them. Such was the judge's defective logic.

753. Ad 55.2. The judge found perfectly convincing Nair's 'adamant' evidence that he didn't read my CV emailed him by KZN ROE Mdaka – nor the recommendation; the judge overlooked that bit of Nair's evidence – until a year or more later, when he opened and read them out of simple curiosity, he said. The judge found that just because Nair stood on his ridiculous lie when challenged under cross-examination, 'it was left intact'; and never mind that in the Confidential Report Nair drew for Mlambo JP, Nair claimed differently that 'the first time' he and his fellow executives 'came across' my 'name' was when I wrote to Vedalankar in July 2010 – a half as tall story about when Nair knew who I was, but a different one nonetheless.

754. Ad 55.3. As this court will readily appreciate from this finding, the judge imposed on me a ludicrous evidential onus I couldn't possibly have discharged, without being a monkey sitting on Nair's shoulder all day, watching what email attachments he opened and read or didn't. As appears from the dicta quoted in the next paragraph, the judge dismissed my case on the basis that I failed to discharge this absurd evidential onus, which I obviously didn't bear. Not only did he get this wrong, the judge also misallocated the overall onus of proof – which is reversed in unfair discrimination complaints in labour cases. I deal with this in my petition annexure 'G'. This was a fatal root error, vitiating the whole judgement, and eminently fit for argument on appeal. But not in the opinion of the judge, who summarily dismissed my appeal application.

755. Ad 55.4. I now accept that my cause of action – political or racial prejudice – was bad, and that my complaint of this was correctly dismissed. Not knowing

of Mlambo JP's and Ngcamu's professional relationship – sedulously concealed from me illegally, I couldn't imagine what other reason besides political or racial prejudice there might have been for the abortion of my appointment, once I'd found Vedalankar's budgetary insufficiency cover-story to have been a lie.

756. As said above, on his own contradictory half-as-false version given in the Confidential Report, Nair indeed had 'prior knowledge of' who I was by July 2010 (in truth much earlier when he received my recommendation and CV in November 2009) – and not at the end of 2010 or early 2011, when, he alleged in evidence, he decided out of curiosity to open and read the recommendation and CVs Mdaka had emailed him a year earlier. I pertinently argued this in my heads; but the judge either didn't read it, or didn't get it, and he proceeded to misdirect himself in finding, as Nair claimed in evidence, that he didn't know who I was until he read my CV more than a year after receiving it – contradicted by the Special Report he wrote. Except that Nair 'possibly' lied about this.

757. Ad 56. Correct. I used the old word 'nepotism' in the modern broad sense; the American expression 'cronyism' is more accurate.

758. My request, annexure 'B3: E', was quite properly made, and after protracted resistance, LASA eventually fully complied with it.

759. The reason I made my request was this. I'd been amazed to see on a notice served on me that the corresponding attorney in LASA's Durban Justice Centre appointed by LASA in my case on petition was none other than my rival for the Senior Litigator post, Ngcamu, also interviewed for it but eliminated for not meeting the qualifying criteria. With a Google search I found he was LASA's Children's Court practitioner in Durban. Hence my PAIA request for the history of his employment by LASA. The records LASA produced show that after being rejected by the selection panel, he'd first been employed by LASA at

its Empangeni Justice Centre before getting his next job with LASA back home in Durban.

760. In striking contradistinction to which: When invited to apply in 2010 for a temporary legal post on a year's contract (while pursuing the big one, anticipating which I was reluctant to rejoin the Bar for what I expected would be a short while only), I received a letter after my interview for it informing me (like before) that it had been decided not to fill the post.

761. The response to a PAIA request addressed to the KZN ROE and regional deputy information officer revealed (a) that I'd been selected for the post, and (b) that there was no record of any such decision not to fill the post at that time.

762. In a file kept in an unrelated case that I was examining – the Morris and Fourie case against LASA, which they won in the LC – I chanced to find an emailed instruction by the ROE to the Pietermaritzburg Justice Centre ordering him to 'redo the interviews' because, he claimed, I was unqualified for the post. (Just a year before, he'd voted me best qualified for LASA's most senior legal professional post in the province.)

763. And when after my contract as magistrate at the Inkanyezi Magistrate's Court in Eshowe (not the Eshowe Magistrate's Court) ended and I applied for a civil practitioner post at Empangeni, I didn't even crack the shortlist. I've tried probing the integrity of the recruitment with PAIA, but again LASA has illegally refused to allow me access to its records and to make its process transparent, as required of it. It doesn't want me nosing about there.

764. Responses to my PAIA requests addressed to this same regional deputy information officer confirmed information I'd received that several of LASA's attorneys employed in similar contract posts to the one I'd applied for had been employed without being interviewed at all.

765. In one case, an attorney employed without having been interviewed along with any other applicants to assess his suitability for his post, had his contract renewed, at the ROE's insistence, despite repeated complaints against him, both by the prosecutors at the court he served and by his own supervisor at LASA.

766. The ROE and RHRM will confirm all this. If they dispute it, I'll name the names and present the documentary proof.

767. Such is the lawlessness and corruption of recruitment practice at LASA in KZN.

768. Not only in KZN. Former Free State and North West ROE Mayisela tells me that sometime in 2009/10, he, Nair and Mlambo JP addressed the Mahikeng Justice Centre. After the meeting, Mlambo JP instructed him to promote a certain female Supervisory Professional Assistant (I have her first name) to Principal Attorney there. The Justice Centre didn't have such a position. Mayisela told me he reported this gross irregularity (Mlambo JP doling out jobs to people he likes) to Nair, who said he'd take it up with Vedalankar, and that Nair reported back that Vedalankar had undertaken to raise it with Mlambo JP. Nothing came of his complaint. (Vedalankar and/or Nair can confirm or dispute this very carefully in reply on oath.)

769. I have it from a former national management executive, who prefers to remain anonymous, that it was common knowledge among the staff both at a certain Justice Centre and in LASA's national office – he discussed it with Clark – that a top-ranking LASA officer was carrying on an adulterous affair with a certain female JCE; and that after she resigned one step ahead of a disciplinary enquiry for gross dishonesty, this adulterous top-ranking officer appears to have been instrumental in the appointment of his said mistress in February 2013 to a tribunal convened by the JSC to try a well-known complaint against a senior judge. (Further embarrassing specification here seems unnecessary.)

But that when this accused judge's attorney protested her unfitness and unsuitability for the appointment, very obviously lacking the necessary personal and professional integrity for it, she withdrew from the tribunal and resigned from it.

770. I don't expect Vedalankar, Clark and other national management executives to deny their knowledge of the said adulterous relationship. They all know exactly who I'm talking about. If they do falsely deny it in reply, under oath, I call this court's attention to the fact that they've all lied under oath before. And I'll add it to the long list of perjuries by LASA officers that I'm cataloguing for their prosecution.

771. I've already pointed out how to the Board, and in court, Nair radically and contradicted Vedalankar's story to me in October 2010, repeated in January 2011, and verified by both on affidavit in April 2011, also by Clark – also confirmed by Mtati on affidavit in my subpoena application, confirmed by Nair, and repeatedly pleaded in my labour case – that the Mthatha Senior Litigator recruitment was cancelled due to budgetary insufficiency. A lie, perjury, and false pleading contradicted by LASA's records.

772. In July 2013, Clark submitted an affidavit during my labour case in which she testified very truthfully that she couldn't 'recall' any meeting with Nair and Vedalankar in July 2010 at which they discussed and agreed the cancellation of the Pietermaritzburg, Durban and Mthatha appointments.

773. The reason she couldn't recall it is that there was no meeting with her to recall – contradicting her false sworn verification, in her confirmatory affidavit made in April 2011, of Nair's story that the three posts were frozen by 'the NOE in consultation with the CEO and HRE to freeze the senior litigator post … The decision was taken by me in consultation with the Chief Executive Officer and the Human Resources Executive. … the consultation with the HRE on the matter was done verbally.'

774. Clark knew full well that such a decision taken off the record without Board approval would have been an unlawful contravention of the Approval Framework; and this is why (a) she didn't agree to it, and (b) she can't 'recall' ever having done so at any meeting to decide this.

775. On 14 November 2016, JSC secretary and deputy information officer Sello Chiloane phoned me to convey his view that my PAIA request for (a) the said mistress's written appointment to the tribunal; (b) any and all commendations of her for appointment; (c) the complaint(s) against her appointment; (d) her response, if any; and (e) the record of her dismissal or resignation from the tribunal, was hit by section 12 of PAIA, so the records aren't discoverable; but he confirmed that he remembered the matter, and that as he recalled it she'd indeed resigned to avoid an unseemly controversy.

776. Such is the corrupt jobs-for-pals routine at the highest level of LASA, where connections not qualifications rule.

777. Ad 57. Correct. The records I requested are listed in annexure 'B3: F'. As is plain from my contextual notes beneath each request, what I was really after was sworn certification that no such records exist, proving Nair perjured himself at the trial of my labour claim. LASA has confirmed that there are no such records, which indeed proves that Nair perjured himself in giving the evidence I quote in the request.

778. Ad 58. Correct. My request is annexure 'B3: G'. Again, as is apparent from my contextual notes beneath each request, what I really wanted was a sworn declaration that LASA has no such records, proving Nair's further perjuries at trial.

779. It was immaterial to my entitlement to the records that they 'relate directly or indirectly to the Senior Litigator positions and/or the evidence which was led during the trial.' What a requested public record might 'relate to' whether

'directly or indirectly' is irrelevant, unless it's for information protected by sections 34–45. But LASA ignorantly trumpets what my PAIA request related to, as if it was objectionable for this reason.

780. In the result, although its section 23 affidavit eventually made is deficient for lack of full and proper compliance with the detailed information requirements of the section, and the magistrate even said so on the record on 8 September 2016, LASA has confirmed that no such records exist. Which confirms that Nair perjured himself in the LC on the aspects of his evidence I was testing.

781. Ad 59. Correct.

782. Ad 60. The judgment dismissing my application for leave to appeal has no relevance to and in no wise supports its claim that I'm a vexatious litigant. The judge didn't think this or he'd have said so and made a costs order against me, which he didn't. That is, the judge appreciated that my application was serious.

783. My petition for leave to appeal, annexure 'G', addresses the main failures of the judgment and identifies some of the basic factual and legal errors it's riddled with.

784. In dismissing my application for leave to appeal, the judge avoided engaging with my many grounds for appeal. But he was right about my core complaint, and that it was bad: I'm now satisfied that I wasn't discriminated against because I'm a politically unpopular person, of the kind (mentioned in the main judgment) topping a public enemies list published by the Democratic Alliance, and republished by nelsonmandela.org, 'so dangerous' with my 'false and dangerous views' that 'professional organisations … wherever possible [should] exclude these individuals from positions of authority' like a listed communist lawyer during apartheid.

785. As said, I agree that my 'speculation' was off the mark, but it was proper and legitimate in all the circumstances of the case, on the facts then known to me and presented to court – the crucial central fact illegally concealed from me: that my rival for the post had been a long-time judicial colleague of Board chairperson Mlambo JP. I handed in a hefty Law and Case Bundle inter alia on the reversed onus of proof and what inferences may properly be drawn from different kinds of evidence in a covert unfair discrimination claim, but evidently it went unread.

786. In its affidavit opposing my petition, LASA conceded that indeed 'the onus … legally rested on it' to 'demonstrate … that there was no unlawful discrimination', just as I contended. That being the case, it's common cause the judge fundamentally misdirected himself in placing the final overall onus on me.

787. The further evidence I wanted to lead was the evidence, obtained via PAIA in November 2013, was that Nair had lied to the judge in denying his knowledge of the SAHRC's PAIA training workshop and audit. This was material because Nair had also denied knowing who I was when my appointment was aborted, so his false denials about the SAHRC's interventions in LASA's repeated illegal refusals of my PAIA requests was relevant to the credibility of his false denial that he knew who I was – not until a year or more after receiving the recommendation report and CVs, when he opened and read these attachments out of curiosity, he said. But the judge wasn't interested.

788. Ad 61. This money demand was not contemplated by PAIA and was illegal. In response to my complaint to the SAHRC about this, the latter told LASA so, and the demand was eventually abandoned. Yet in its section 32 report to the SAHRC for the year, LASA persisted in falsely claiming, for the ultimate misinformation of the Portfolio Committee, that it had duly refused to respond to my request because I'd refused to pay search fees. One lie on top of another.

789. Worse: when under PAIA I asked for the record of the time spent reading my PAIA requests, on background reading and on briefing sessions, for which LASA wanted my money, I found there isn't any, which means the payment demand was an attempt at extorting a thumb-suck amount from me. This is how the country's biggest public law firm does its crooked business. (It would have been useless complaining to LASA Board chairperson Mlambo JP about this, because he would have told me again that he saw nothing wrong and that I'm an invasive, vulgar and unprofessional sort of person harassing him about it.)

790. Ad 63. My petition is annexure 'G' hereto. Besides LASA's many transcription errors, what I 'had … to say about Mlambo JP, Cele J, the CEO and the NOE' in my petition quoted here is quite correct and I stand by every word.

791. As for 'unanimously dismissed by the Labour Appeal Court', I had the file examined and inventoried (annexure 'F'), and found (a) that it contains no record that anyone other that the JP to whom I address my petition dismissed it, and (b) that it was perverted before the case was ripe for decision by an anonymous Memorandum gutting me and my case with lies to improperly influence the JP against me (annexure 'E').

792. Ad 64. It's true that Mlambo JP's conduct in my matter has left me with 'little regard for' him as the chairperson of the Board of a major public entity – but not as 'a sitting judge', about which other office I've no opinion. Whereas the recently resigned chairperson of the SABC also proved ineffectual at stopping the notorious rot in executive management there, what greatly compounds Mlambo JP's extraordinarily serious wilful dereliction and capital misconduct as LASA Board chairperson is precisely that he's 'a sitting judge'. LASA suggests that because he's 'a sitting judge', his conduct in his capacity as a public businessman should be above criticism. My different understanding is that we're all equal before the law.

793. As for how I allegedly 'turned coat' in the LAC 'and accused the CEO and Mlambo JP of unbecoming conduct notwithstanding the fact that [I] had withdrawn these allegations under cross-examination': in the first place, it was not 'under cross-examination', it was at the very outset of the trial, and again 'under cross-examination', that I stated to the judge that I 'held' Vedalankar and Mlambo JP 'clear'. I explained why in my answer to LASA's paragraph 43.

794. Ad 'Brink's conduct after the Labour Appeal Court judgment and the costs orders and his conduct towards judicial officers':

795. Ad 65. The demand was illegal, not contemplated by any provision of PAIA, and eventually abandoned. A substantially similar demand from Hundermark is annexure 'FA15' to the founding affidavit. In both cases, my PAIA requests for records showing how the demands were computed established that there are no such records. Such is LASA's 'conduct after the Labour Appeal Court judgment' in trying to cheat me out of my money.

796. Ad 66. Correct. Concerning the illegal money demands made of me, I call this court's attention to paragraphs 2ff of my letter showing with reference to section 22 of the Act, under which they were purportedly made, that the demands were incompetent and illegal. LASA still doesn't get it.

797. Ad 67.1. My claim that Nair repeatedly lied at trial was not unfounded. The judge himself found he'd been 'not generous with the truth … a number' of times, without saying about what. Besides the basic lie which Nair repeated, but contradicted as regards Mthatha, he babbled the most foolish, dull-witted lies on innumerable other scores, some mentioned and shown above. Here's another:

798. In his proposal to the Board in July 2010 that some public defender posts serving the lower criminal courts be frozen temporarily until the OSD payment uncertainty had been resolved, the COO informed the Board that recruitment

to critical posts would be prioritized (annexure 'X4'), thus distinguishing lower criminal court posts from critical posts. In its original response to my labour claim, LASA twice described its Senior Litigator posts as 'critical'. LASA's critical post occupancy is reported annually as a separate item: a small number of posts relative to its vast public defender ('practitioner') staff establishment (examples in annexure 'B3: J'). But at trial, Nair said no, I had it upside down, it was the other way round:

> Q: '… in this letter you refer to 56 practitioner posts …' --- 'These were our critical posts; there was nothing more important than these posts. (1) … I described the critical positions as being those very same lower court positions ... The practitioner positions who serve the lower courts per district, so those were the critical positions.' (2)
> – Record: (1) 373:11–25; 374:1; (2) 480:19–24.

799. That is, contradicting LASA's pleaded case Nair dully told the judge that LASA's most junior entry-level lower criminal court public defender posts are critical, not its most senior specialist litigator posts at the apex of the respondent's regional professional staff establishment, created in response to the National Assembly's repeated minuted concern about adequacy of legal professional expertise at LASA and public perceptions in this regard – repeatedly acknowledged by Mlambo JP and by Hundermark inter alia at presentations on 30 May 2007, 5 August 2009, 11 October 2010, and 3 November 2010. In its response to my original statement of claim in September 2011, LASA again conceded that its 'public image … has, for the most part, been negative due to a perception of incompetence and lack of vital court skills.' (One of the objectives of the Strategic Plan 2009–12 was to fix this. Mlambo JP, Vedalankar, Nair and Clark all acted deliberately and unlawfully to frustrate it.)

800. Ad 67.1. When in the witness stand Nair raised his right hand in the air and promised the judge to 'tell the truth, the whole truth, and nothing but the truth, so help me God', he swore an oath not to tell him lies and conceal from him his knowledge of anything being asked about. The judge found Nair to have been 'not generous with the truth' on 'a number' of occasions, which is to say repeatedly withheld the true facts from him and didn't fully disclose them. This is perjury.

801. Nair couldn't even stick to the concocted cover-story. In deciding in court to suddenly drop the Mthatha leg of it, Nair's evidence radically deviated from the basic lie told me in Vedalankar's October 2010 letter and repeated in January 2011, and verified on oath by Nair, Vedalankar and Clark, that for lack of sufficient budget to fill them, Vedalankar and Nair had frozen the Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

802. It's not hard to understand why Nair dropped Mthatha from the basic lie: it didn't fit, didn't make any sense. Skibi's 'lateral transfer' from the Mahikeng Senior Litigator post to the Mthatha one would have had zero salary cost implications. So the cancellation of Skibi's 'lateral transfer' from the Mahikeng Senior Litigator post to the Mthatha one likewise had zero cost-saving value.

803. Even a child can see that Nair's evidence was unsupported and contradicted by the documentary record, and that this documentary record contradicted the basic lie, alleged to me in correspondence, affidavits and pleadings. PAIA requests made after the trial proved more of his perjuries, canvassed above. He lied under oath alright, and I'm coming after him for it.

804. Ad 67.2. There's no question that 'the CEO and other Legal Aid SA officials lied to [me], the Board of Legal Aid SA and others', and many of the lies they told are ridiculously divergent and contradictory. I've canvassed them above.

805. Ad 68. Correct. I didn't believe I was out of time and that condonation was 'needed' in the circumstances of the case and I explained why. The commissioner disagreed, but I didn't bother quarrelling on review, because my claim was very small beer relative to the main one I was pursuing.

806. What LASA leaves out of its account here is that once again I was selected and recommended for appointment to the post, but not told this. Instead what I was told is that it had been decided not to fill the post, the old familiar story to shut me out.

807. When I tested this with PAIA, I found, as expected, that there's no record of any such decision taken at the time. It was taken later.

808. As said, what I chanced upon in a file kept in an unrelated matter, shared with me by the former Pietermaritzburg JCE, was the contradictory email record of the ROE's instruction to him a couple of weeks before I got this sorry letter, to 'redo the interviews', on the basis, the ROE alleged, that I wasn't sufficiently qualified for the temporary junior post – a year after he'd voted me the best man for permanent appointment to the Senior Litigator post at the top of the province's legal professional ranks to handle its most complex criminal and civil litigation. Which only goes to show: they sure didn't want me. Such is the ethical climate in which LASA conducts its recruitment operations.

809. Ad 69. Correct. I've never refused a request by LASA for more time for anything.

810. My courtesy hasn't been reciprocated – at considerable waste of public revenue. The Post Office's overnight courier service, to whom I'd paid its premium fee for express delivery, inexplicably took two weeks to deliver to the sheriff for Johannesburg North my application to compel Nair's compliance with my PAIA request that I'd addressed to him. The result was that Nair was served two weeks outside my 180 days allowed by section 78 to enforce a PAIA

request. I explained the hiccup by letter, with annexures fully vouching it. To be as obstructive and uncooperative as possible, LASA insisted I bring a condonation application under section 82(e), which I did, and then wasted a fortune on briefing junior counsel to oppose me by drawing a phonebook full of completely irrelevant answering papers, and charging accordingly. At court on 11 February 2016, on the morning the application was to be argued, LASA silently dropped its opposition and totally surrendered to my claim to the requested documents.

811. Ad 70. The effect of Mtati's letter was to refuse me nearly all the records I'd requested, on grounds ultimately abandoned when I sued for them. The false impression created by this paragraph is that Mtati's refusals were legal. They weren't, and were reversed at court in February 2016.

812. Mtati didn't 'respond… on behalf of the CEO' as attorney, but as a deputy information officer, which he held himself out to be – when he wasn't at the time. In other words he was faking it, like those rogues who show up in court from time to time pretending to be attorneys.

813. Ad 71. Correct. Mtati ought to confess that, as just mentioned, he reversed his illegal refusal at court in February 2016, after I sued Vedalankar for the records and was on the point of arguing for an order that she hand them over. I'd sued Vedalankar because contrary to his masquerading as one, Mtati was not a deputy information officer at the time he refused my requests. He was only delegated later on in January 2016, as his delegation provided me in February shows.

814. Ad 72. Correct. The 'NOE's response' was a blanket denial of access to any of the records I'd requested from him, on various inapplicable and unlawful grounds. I was quite right to be 'not … satisfied' with this, as borne out by the fact that the several justifications NOE Nair gave for totally refusing my PAIA request were ultimately abandoned when I sued him for delivery of the

requested documents or sworn certification that they didn't exist, and in February 2016 was about to move my application against him.

815. Ad 73. Correct.

816. Ad 74. Correct. But as mentioned above, with all due respect to the judge, my application was indeed urgent, and what I said I feared came to pass exactly as I anticipated.

817. Ad 75. My complaint in the first quoted paragraph is supported by the objective facts, namely (a) my petition was indeed dismissed before I'd answered (still in time) Mtati's perjured explanations in LASA's condonation application for opposing my petition out of time; and (b) there's no record in the court file that besides Waglay JP the other judges whose names appear on the order ever considered and decided my petition. I'm certain they never did.

818. Researching the reported cases, I found Waglay JP ordinarily takes condonation applications seriously and scrutinizes carefully the explanation given him for filing out of time. But not in my matter. This can only be because my petition was perverted by the Memorandum found in the file (annexure 'E'). I can't imagine any other reason.

819. Concerning my second and third quoted paragraphs, my language reflects how bitterly angry I was at the time – still am – about the corruption I'd uncovered in the disposal of my petition, and how I'd been denied due process through a criminal act of defeating the ends of justice through improper influence of a judge.

820. Ad 76. In hindsight, my decision not to put up that lying defamatory Memorandum was a mistake. I think the judge would have responded differently had she seen it.

821. Ad 77. 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 capture report. (I don't mean to be rude; I wish my Zulu were as strong as his English.)

822. The suggestion that the Memorandum was written by one of 'their researchers' has only to be stated to be rejected. Other petition files that I've had examined at the Durban LAC contain no such memoranda.

823. The rules of the LAC provide that the JP must delegate three appeal judges to consider a petition – on its merits, not on the basis of a single-page note by some 'researcher' doing their judicial work for them by reading and assessing it for them.

824. The language of the Memorandum is remarkably strident and hostile to me and my case. No 'researcher' had any reason to be so prejudiced towards me, so clearly anxious that my petition should fail.

825. The Memorandum undoubtedly emanated from LASA. Like the affidavit supporting its condonation application, it takes the same approach in smearing me as a vulgarian (for not affecting a parvenu, faux patrician manner of speech when telling lies, and preferring to tell the truth in plain English). The author evidently fancied that by painting me as a low-class sort of person, and by implying that he enjoys a higher status than I do, my extraordinarily serious complaints will be made less worthy of credence.

826. Ad 78. First, LASA's bill presented for taxation in my labour case was for nearly R3 million. Mero motu (I wasn't there) the taxing master reduced it by half, which speaks to how exorbitantly inflated it was.

827. Second, I've never received a notice of taxation of LASA's bill for my interdict case, so the bill couldn't have been taxed. Going by what happened before, on taxation LASA's bill for that stands to be cut in half too.

828. Ad 79. Correct. I haven't seen it, but I don't dispute that the sheriff returned a nulla bona.

829. Ad 79.1. He found my cottage in Eshowe, rented for the duration of my temporary contract post, too Spartan to excuss, and told me so.

830. Ad 79.2. What cash I had available in my bank account I paid over to the sheriff by EFT.

831. Ad 79.3. In fact, my sports-car had been pinched in mid-2012, right in the middle of my labour case, and I'd replaced it with an old runner for the time being, which the sheriff opined wasn't worth the time and trouble to auction.

832. Ad 79.4. In all good faith, I made this substantial offer, only to learn a day or so later that my contract hadn't been renewed – on account of a policy rule, I was told, limiting contract appointments like mine to two years.

833. Ad 80. The cheap insinuation of impropriety, even unethical conduct by the sheriff, is unwarranted. (LASA recklessly besmirched the integrity of the Eshowe Chief Magistrate too: see annexure 'B', paragraph 1.)

834. Indeed I paid the sheriff all the cash I had on call in my bank account, going into overdraft to do so. (I wouldn't have done so, had I known my contract was about to expire.) I didn't do so 'purportedly'; I did it as a fact, by EFT, and have the proof.

835. Ad 81 and 82. Correct. I sold my house in Pietermaritzburg in 2001 when heading for the Cape.

836. Ad 83. Sure I'm poor again, if only for now, because my damages claim for lost income from the date I should have been appointed, 1 January 2010, is now

around R7 million, give or take a couple. My current personal economy is irrelevant to this case, however, because there's no prospect of being ordered to pay costs orders in any of my PAIA litigation for the reasons that:

(a) Annexures 'B1–23' show clearly that LASA is in default of full and proper performance of its obligations under the settlement agreement it signed in February 2016, and that my application to compel full and proper performance is unanswerable.

(b) My application to this court (case 1118/16) to compel LASA's compliance with my August 2016 PAIA requests is likewise unanswerable, and indeed is unanswered.

837. As this court will readily appreciate reading them, my above-mentioned two applications in this court and in the Magistrate's Court are not 'frivolous' as falsely alleged.

838. None of my 'litigation' against LASA has been 'frivolous', and none of it has been pronounced, or been suggested to be, 'frivolous' by any court: not by the LC, by the LAC, by this High Court, nor by the Magistrate's Court.

839. I'll file my complaints with all the authorities I've mentioned once I have the records I need to fully support them and sworn certification in the prescribed form where they don't exist. LASA is illegally withholding evidence I need for most of my complaints.

840. LASA is surely not contending that only the rich should be permitted to sue it.

841. Ad 84. Correct. This is the waffle set in half-educated legalese that I was given by the young woman running LASA's PAIA Unit at the time, since quit. Confirming my suspicion about this, because it kept showing, she told me she held no qualifications in constitutional information law and hadn't received any training in it.

842. None of this stuff justified the SAHRC not taking the simple step under its section 83 powers of just telling LASA that the several reasons it had given me for refusing my PAIA requests were junk – as LASA eventually implicitly conceded at court a couple of months later in February 2016.

843. Ad 85. The head of the PAIA Unit responded to my 'highhanded … scolding' letter by phoning me very anxiously to assure me of the SAHRC's concern and support.

844. Ad 86. Correct.

845. Ad 87. This is inaccurate on two counts:

(a) First, a couple of minutes into the pre-trial conference, held before the magistrate in open court and on the record at my request, LASA's junior counsel asked whether I had any settlement proposals. I responded, 'Sure I do, I just want the records I asked for.' The conference was then adjourned; LASA agreed to hand them over; and a settlement agreement was hammered out (annexure 'B2'), in which LASA recorded its undertaking to (i) give me all the records I'd requested between 2013 and 2015, that were the subject of my applications to compel; (ii) certify under section 23 any that didn't exist; and (iii) report the attitude of any other person owning any record I'd requested to its release to me. (This extra clause LASA wanted added in manuscript to the agreement I'd typed had no basis in PAIA and showed that LASA's lawyers didn't have any idea of what they were doing.)

(b) Second, the settlement agreement wasn't made an order of court; it was merely handed into court to form part of the case record as a public document. By consent, my five applications were then adjourned sine die, no order as to costs.

846. Ad 88. Correct, basically. I wasn't interested in LASA formally 'admitting any wrongdoing', because its 'wrongdoing' in illegally refusing my PAIA requests on obviously spurious grounds was beyond issue. I just wanted the records I'd been trying to access since October 2013 or to get sworn certification of those that didn't exist, and LASA had finally agreed at legal gunpoint to surrender them or certify those it didn't have.

847. LASA never 'in essence undertook to provide the documents that Brink sought'; it unequivocally agreed to hand them over or certify those that didn't exist. LASA's verbal faffing here obscures its total surrender to my PAIA claims on the day I set my applications down and was poised to argue them.

848. Experience had taught me that records elicited from LASA with PAIA sometimes contained surprising information generating new lines of enquiry, so I anticipated needing to make one more PAIA request after auditing the records LASA agreed to deliver. For this reason I agreed to limit my PAIA requests probing the corruption of Senior Litigator recruitment to a single final one, to be made within two months.

849. Ad 89. LASA's claim that its 'major consideration' was 'to stop the constant requests for records from Brink' – all duly made under PAIA – betrays its motivation for bringing this application: to keep my nose out of its books. As my specimen report drawn for the SAHRC (annexure 'A') and my agenda for the pre-trial conference (annexure 'B') show, LASA has no conception of its information transparency obligations in the constitutional era. This includes especially its top attorneys Chief Legal Executive Hundermark, Legal Executive Mtati, and Corporate Legal Manager Sekgota.

850. If in truth LASA wanted to 'stop' me requesting access to its records, all it had to do was argue before the magistrate that its justifications given me for refusing my requests were sound; and if they were, I'd have been stopped for

good. Instead, appreciating the hopelessness of its position, LASA gave up before the fight.

851. It's mindless nonsense for LASA to jabber that had its justifications for refusing me access been upheld, I'd have 'again request[ed] the very same documents'. Of course not.

852. Section 7 raised here is a red herring that again reveals the incompetence and professional mediocrity of LASA's head office attorneys and the junior advocates it's hired to try preventing me from accessing LASA's records. The section doesn't afford a ground to 'refuse any records on the basis of a pending case (section 7 of PAIA) when the records are available'. I've explained this to them over and over, but my lesson just won't sink in.

853. Mtati never himself 'decided to settle the matter on the basis we did', i.e. by totally capitulating. I witnessed LASA's top internal litigation attorney constantly taking instructions on his cellphone on the terms of LASA's surrender. He was being told what to do and did what he was told – probably by Hundermark, who, in the legally degenerate milieu in LASA's head office, holds himself out as LASA's ultimate authority in PAIA disputes, superior even to information officer Vedalankar, despite having zero legal authority in such matters, as I show in paragraphs 184 and 190 of annexure 'A'.

854. In dissembling that he was 'maybe being overly optimistic' when he thought that conceding my applications to compel compliance with my PAIA requests made in 2013–15 would 'somehow stop the constant requests for records received from Brink', Mtati's unctuous dishonesty is transparent.

855. The reason my applications were conceded is because LASA's defences were insupportable, as my agenda for the pre-trial conference (annexure 'B') incontestably shows.

856. My next request about the Senior Litigator posts was precisely contemplated in the settlement agreement.

857. Another request, unrelated, was for cost vouchers showing the total amount LASA has wasted – surely millions of rands – on refusing my PAIA requests and on opposing my applications to compel, in the period November 2013 to August 2016. (I want to pass these on to the Auditor General for personal recovery from the delinquent officers responsible for this huge waste.)

858. These two PAIA requests are the subject of my application to this court to compel LASA's compliance with them: case 1118/16.

859. There are two simple answers to LASA's specious and irrelevant complaint that my PAIA requests have been 'diverting the time and resources of [LASA's] officials away from their core functions':

(a) If locating and copying the documents I'd requested was inordinately time-consuming, section 22(2) allowed LASA compensation for this in the form of 'search fees'.

(b) At the special PAIA training workshop the SAHRC held for LASA on 6 October 2011, directly on account of its repeated illegal refusals of my PAIA requests in 2010–11 and false reporting afterwards (discussed in annexure 'NN' and annexure 'A', paragraphs 120ff), LASA undertook to create dedicated, specialist PAIA request handling capacity in its head office to prevent a recurrence of its failure to respond properly to my PAIA requests and its false reporting of this afterwards. Paragraph 129 of annexure 'A' details this. The problem is that LASA welshed on its minuted undertaking in this regard. Annexure 'A' details this in paragraphs 135–6. Had LASA honoured its promise to the SAHRC, it wouldn't be moaning in this manner. Dedicated, specialist PAIA personnel would have been in place

to perform their 'core functions' of responding to all and any PAIA requests coming in. Like mine.

860. So LASA's complaint here is no basis for accusing me of being a vexatious litigant, as contemplated by the VPA.

861. Ad 90. Correct.

862. Ad 91. Mtati (on behalf of the information officer and deputy information officers I'd sued) didn't fully and properly comply with the settlement agreement; that's the whole trouble. This is why I went back to court under its default clause.

863. Mtati's defective performance under the settlement agreement is precisely detailed in my notice of breach and demand for full and proper compliance with it: annexure 'B8'. Which he arrogantly rejected: annexure 'B9'. His breaches are further detailed in my second and third requests for compliance: annexures 'B13' and 'B18', which he just ignored. Hence my second amended draft order prayed and its schedule: annexures 'B23' and 'B16'.

864. Ad 92. Correct. The 'draft report in terms of section 32 of PAIA' that I annexed to my letter to Vedalankar is annexed marked 'PP'. This court will see that it contains all the information the section prescribes. LASA disregarded it, and falsely and deceptively reported to the SAHRC once again. Paragraphs 254ff of annexure 'A' deal with this.

865. LASA had indeed 'for the past four years [with a year's break after the first two] submitted false reports to the SAHRC'. LASA dishonestly implies that it hadn't, that its section 32 reports were complete, truthful and compliant. They weren't. The SAHRC actually reported LASA to the National Assembly for its first two false section 32 reports that I'd brought to its attention: annexure 'A', paragraphs 160–8.

866. Ad 92.1–2. Correct.

867. Ad 92.3. Correct. In the result I sent it to the Minister, the Deputy Minister, the Portfolio Committee, the Chief Justice, and several information transparency NGOs.

868. Ad 93. Correct. It seems to me that Mtati didn't bother himself to even read my notice. When back in court in July I showed him the records he'd supplied me, which I'd brought along to court so he could examine them and see for himself what was missing, he displayed the same attitude. I made a contemporaneous record of his contemptuous rebuff of my offer to show him; it's annexure 'B22: C'. Such is the arrogance and indifference of LASA's management executives to LASA's constitutional information transparency obligations, and to their solemn agreement to perform under them in the manner recorded in the settlement agreement.

869. Ad 94. Correct. Only, if Mtati didn't 'agree with [my] contention that Legal Aid SA is in breach of the Settlement Agreement', LASA wouldn't have delivered further records in two batches when I returned to court to compel. Which shows he did 'agree' after all.

870. Had Mtati's section 23 affidavits contained all the information the section prescribed, which prescribed information he explicitly agreed to supply in the last sentence of clause 4 of the settlement agreement, the magistrate wouldn't have pointed out on 8 September 2016 that they didn't. Or to put it another way, Mtati would have instructed LASA's junior counsel seated in front of him to take issue with the magistrate and argue that he was wrong, and would have rebuked him for undertaking to the magistrate that LASA would fix the affidavits he'd conceded were defective.

871. Ad 95. Correct.

872. Ad 96. Mtati's false denials that he 'did not comply with the Settlement Agreement, that the section 23 affidavits do not comply with PAIA or that [he]

failed to provide [me] with all the records [he] could find' is contradicted by (a) my three detailed demands for full and proper compliance with the settlement agreement (annexures 'B8', 'B13' and 'B18'), (b) my successive three draft orders prayed – amended as more and more documents trickled in (annexures 'B15', 'B20' and 'B23'), and (c) my schedule of issues and the witnesses to be cross-examined to determine them (annexure 'B16').

873. Ad 97. First, immediately after falsely denying, under oath, that LASA failed to comply with the settlement agreement in April 2016 Mtati now concedes LASA's 'noncompliance', and blames 'human error', without saying whose.

874. Second, Mtati volunteered nothing; this is dishonest waffle. Besides a second supplementary section 23 affidavit he made (annexure 'B10'), like the first also defective, the magistrate noted, the further documents he supplied me were in response to my demands for them, under pressure of renewed legal action. He never 'personally volunteered the information', as he falsely alleges. Whatever he did or didn't do, it wasn't 'personal', it was official. Nor was it voluntary; it was always forced. He just blathers whatever he thinks sounds good.

875. Third, Mtati's unbelievably ignorant statement, 'Where I was of the view that the information that was previously refused on the basis of pending litigation but the litigation has been finalised and there is good reason to volunteer the information in terms of PAIA, I had volunteered the information', shows that when it comes to applying the Act to requests for information made under it, Mtati doesn't know whether he's coming or going.

876. I've explained over and over to LASA's top internal litigation attorney that the fact that a requested document in some manner relates to 'pending litigation' is no ground for withholding it under the Act, but my special tutorials for him on this simple point are apparently too complicated for him to understand. As said, the only lawful grounds for refusing a record are those provided in Part 4 of Chapter 2 of the Act, namely the closed list of justifications enumerated in

sections 34–45; and the fact that a requested record relates to 'pending litigation' isn't one of them. Whether the 'litigation has been finalised' subsequent to the request is completely irrelevant to my entitlement to the specified record.

877. I was and I remain entitled to all the records I've asked for, or to sworn certification under section 23 where any don't exist. Mtati's use of the word 'volunteer' falsely implies he was granting me an indulgence, allowing me access to LASA's records that I was otherwise not entitled to under PAIA.

878. Besides the irrelevant nonsense about records belonging to other people, added by LASA in manuscript at the end of the typed settlement agreement, the February agreement recorded unequivocally and unambiguously that in April 2016 LASA would give me all the documents I'd requested since 2013 or duly certify under section 23 any that didn't exist. LASA failed to do so. It's performance was grossly defective. When I applied the legal squeeze over this, LASA came running over to this court to knock me down as a vexatious litigant.

879. Ad 98 and 98.1. Correct. I detail the falsity of LASA's section 32 report in paragraphs 255ff of annexure 'A'. It's beyond serious dispute that LASA filed false section 32 reports for 2010/11 and 2011/12, because the SAHRC reported it to the National Assembly for this.

880. Ad 98.2. Correct. Although under section 11(3) of PAIA I'm not required to give a reason for requesting a public record, the reason I requested LASA's claims on its insurer for the cost of maintaining its defence to my labour claim is that I suspect they'll disclose insurance fraud, as I said. I expect they'll show that LASA claimed to the insurer that it aborted my appointment on financial grounds – the basic lie, repeated to the insurer. And since LASA's insurer spent well over two-and-a-half million rands on counsels' fees (per the bill sent me), which it certainly won't be recovering from me, the insurer will likely be

interested in getting its money back from LASA. Armed with evidence of insurance fraud, I intend calling the insurer's fraud hotline and claiming the R5000 reward it offers for reporting this. And then going to the police.

881. Ad 98.3. Correct. I detail this in paragraphs 161ff of annexure 'A'.

882. Ad 98.4–11. Correct, save that my remarks directed at Mtati were quite apposite.

883. Ad 99. This epicene false accusation dishonestly masks the enormity of LASA's repeated, persistent refusals to open its books on request under PAIA, and its repeated, persistent false reporting to the SAHRC to conceal this from the National Assembly, so as to evade detection and accountability, prevent the National Assembly exercising its constitutional oversight authority over LASA, and prevent it remedying LASA's contemptuous, repeated, persistent failures to comply with its constitutional information transparency obligations. The better to hinder my ventilation and prosecution of the corruption, lawlessness and criminality in its top ranks.

884. Under section 84 of the Act, the SAHRC is required to report annually to the National Assembly inter alia the number of PAIA requests received by a public body; the number of times it has refused a request for access; and the section of the Act relied on to refuse it.

885. The Act intends the SAHRC to source this information from public bodies stated in their section 32 reports declaring it.

886. By failing to comply with the detailed reporting provisions of section 32, truthfully or at all, LASA has consistently since 2010/11 falsely reported to the SAHRC its illegal refusals of my PAIA requests and thereby concealed this. Concerning my illegally refused PAIA requests, LASA has never come close to complying with the detailed reporting provisions, truthfully or at all. The SAHRC calls this kind of fraud 'malicious reporting'.

887. The result of this is that the Portfolio Committee has been kept in the dark; and to this day it thinks LASA has duly complied with requests it's received under PAIA for access to its records.

888. I was determined that LASA comply with section 32 for 2015/16, so that the SAHRC and the National Assembly be properly and truthfully informed about how LASA had illegally obstructed and refused my PAIA requests in the reporting cycle, and I went to a lot of trouble to ensure this, but in vain. LASA disregarded my draft report and proceeded to falsely report once again under section 32, and again in its PAIA report in its annual report for the year. I detail this in paragraphs 254ff of annexure 'A'.

889. Ad 100 and 101. Correct. It's perfectly irrelevant that 'Many [of the witnesses] were not deponents to any of the affidavits before the Eshowe Magistrate's Court.' What's relevant is that they're likely to give useful evidence to enable the court to determine the issues arising from LASA's defective performance under the settlement agreement, ameliorated slightly by its provision of further records under pressure of renewed litigation, hence my successive amended draft orders prayed to cater for this.

890. If LASA doesn't like my second draft order prayed, it must oppose it in the Magistrate's Court, and persuade the magistrate not to grant it.

891. Ad 102. I didn't accept that I needed a notice of motion and supporting affidavit for my motion from the bar for an order referring the matter to oral evidence. Everything the court needed to consider and decide the matter was already before it.

892. Ad 103. I didn't act to circumvent anything. I acted out of an abundance of caution to defang LASA's argument, and to avoid a dispute that might stall and delay my case. I wanted to be sure we got on with it.

893. Ad 104–6. Correct. When I refuted LASA's case for security in heads of argument filed on the point, it didn't persist with the application on the day it was set down, 8 September 2016, and instead applied for an adjournment to apply to this court to have me banned as a vexatious litigant.

894. I'm only 'factually insolvent' to the extent that I can't pay LASA's legal bills, the big one obtained by fraud on the court.

895. Ad 107. Correct, and when these duly made PAIA requests were illegally totally refused, I sued to compel compliance with them in this court under case number 1118/16.

896. By stating 'once again' that my first PAIA request in August 'relate[s] directly to [my] non appointment as Senior Litigator', LASA implies there was 'once again' something improper about it. But it was properly made in the exercise of my fundamental right to information, and explicitly contemplated in the settlement agreement.

897. My other unrelated PAIA request for vouchers reflecting the legal costs to LASA of refusing and opposing my PAIA requests in 2013–15 and applications to compel them was entirely proper. I don't need to declare a reason, but anyway, as I've said, I want to share these cost vouchers with the Auditor General for the personal recovery of the 'fruitless and wasteful expenditure' prohibited by the PFMA.

898. Both PAIA requests are before this court in my application under case number 1118/16.

899. Whatever PAIA requests 'relate … to' is irrelevant under section 11(3), and whether they're 'directly' or indirectly related to anything makes no difference.

900. Ad 108. Correct.

901. Ad 109. My 'conduct' in the Magistrate's Court has not been 'frivolous and vexatious'; and the magistrate has never found or suggested this.

902. The document bundle annexure 'B' vouches the seriousness of my intentions. I'm trying to vindicate my fundamental right to information. LASA's charge here is perverse.

903. I will have the documents LASA agreed in February to give me, to which I'm constitutionally entitled under section 32(1)(a) of the Bill of Rights and PAIA, or proper sworn certification in an affidavit complying with the detailed information requirements of section 23 of PAIA; and I'll not be put off.

904. Mtati's false and dishonest claim that he 'complied with the settlement agreement' is refuted by a glance at the terms of my second amended draft order prayed (annexure 'B23') and its schedule of issues and witnesses (annexure 'B16').

905. Ad 109. All these contentions must be argued by LASA in the Magistrate's Court seized with the matter. It's incompetent for LASA to go forum hopping in the middle of the case and present 'legal argument' in this court that 'there are no prospects of success with [my] current application before the Eshowe magistrate's Court' to enforce full and proper compliance with the settlement agreement. LASA must persuade the magistrate about this, if it can. Who's already pointed out LASA's section 23 affidavits are defective. That my case for the relief I seek in my second amended draft order prayed (annexure 'B23') is well founded, and that it's LASA which has 'no prospects of success' in opposing it, is plain from the terms of the eight prayers in the order.

906. Except by telling the bovine lie that it has 'complied with the Settlement Agreement' – laid bare by my second amended draft order, as said – LASA presents no facts to support its baseless insult that in moving to compel compliance with it, by seeking the array of orders sought in the eight detailed

prayers in my second amended draft order (annexure 'B23'), and the schedule of issues and witnesses (annexure 'B16'), I've engaged in 'frivolous and vexatious conduct'.

907. The settlement agreement specifically reserved my right to return to court if I wasn't satisfied with LASA's performance under it, which was to give me the documents I asked for or duly certify any that don't exist. Doing so was not 'frivolous and vexatious conduct' on my part. Obviously not.

908. It's clear that what particularly appalled LASA's national management executives was the prospect of being cross-examined about records not supplied and not duly certified under section 23, as undertaken in the settlement agreement, because it's the only part of my second draft order that LASA fusses over in its founding affidavit in this application, the first of my eight prayers – the rest not dealt with.

909. The same fear of being cross-examined on their basic lie that LASA didn't have the budget ('due to the recession') to appoint me after I'd been recommended for its Pietermaritzburg Senior Litigator post in November 2009 and that eight months later 'in July 2010' Vedalankar and Nair had 'immediately' frozen recruitment to LASA's Pietermaritzburg, Durban and Mthatha posts – off the record, unsupported by any record, and contradicted by the extant records, and repeatedly contradicted by Nair – sparked an application on the first day of trial in the LC to quash my subpoenas of them. It failed.

910. Besides Nair, my subpoenaed witnesses Vedalankar, Clark and Board member du Rand then all returned to Johannesburg and Pretoria without being excused by court and before I could call them. I didn't insist on their return, because one of the many basic mistakes the trial judge made in the case was his pre-emptive ruling that I couldn't cross examine them, thereby defeating the very object of my subpoenas.

911. Ad 109.1. This fatuous hot-air, these bits of legalese strung together bear no relation to the situation, as an examination of the just-mentioned documents will show.

912. This court will have noticed how LASA silently glides past and studiously avoids dealing with prayers 2–8 of my second amended draft order. Concerning which:

(a) I'd hardly be pursuing documents identified in paragraphs 2 and 3 of my second amended draft order (annexure 'B23') if they'd already been supplied me.

(b) The unlawfulness of LASA's persistent refusals to allow me access to documents it undertook in February 2016 to provide is clearly evident from paragraphs 4 and 5 of this draft order.

(c) Paragraph 6 of this draft order is incontestably proper and its preamble justifies my prayer for a judicial examination of a disputed document under section 80(1) of PAIA.

(d) Paragraph 7 of this draft order identifies the defects of LASA's section 23 affidavits and how they fail to comply with the detailed information reporting requirements of the section, and the magistrate agreed on the record.

(e) Paragraph 8 of this draft order seeks a de bonis propriis costs order, competent generally, but also under section 82 of PAIA, which provides that a 'court hearing an application' to compel compliance with PAIA 'may grant any order that is just and equitable, including orders … as to costs'. There's no reason the state should be saddled with the massive wasted costs occasioned by Vedalankar's, Nair's and Mtati's incorrigibly delinquent conduct in persistently illegally obstructing my access to LASA's records

duly requested under PAIA and thus violating section 32(1)(a) of the Constitution.

913. Ad 109.2. This is nonsense. The relief I claim in these paragraphs of my second amended draft order is specifically contemplated by rule 55(1)(k) of the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa. Furthermore, as said, section 82 of PAIA provides that a 'court hearing an application' to compel compliance with PAIA 'may grant any order that is just and equitable'.

914. I might mention that to minimise the disruption of LASA's national administration by the time demands of the trial, I thoughtfully drew a table of witnesses, issues, and the expected duration of the cross-examinations (annexure 'B17'), providing for the witnesses' separate appearances for cross-examination on specified issues in each case, staggered over time.

915. Ad 109.2.2. This is wrong, but in any event it must be contended in the court to which I've made my application, not here. The disputes of fact are precisely enumerated in the schedule to my second amended draft order (annexure 'B23').

916. The 'affidavits' now in contention are Mtati's section 23 affidavits, and the issue is whether they comply with the section or not. Mtati claims they do; I claim they don't, for the reasons stated in my first notice of breach (annexure 'B8') and again in paragraph 7 of the second amended draft order (annexure 'B23') – reading which the magistrate agreed.

917. Ad 109.2.2.1. It's irrelevant nonsense to claim 'the factual disputes in relation to the 5 PAIA applications have been resolved by the settlement agreement', (a) because there were no significant factual disputes on the original papers, and (b) because the factual disputes enumerated in the schedule (annexure

'B16') to my now second amended draft order prayed arose from LASA's performance under the settlement agreement, which is to say after it.

918. Nor did 'the settlement agreement … impose… new obligations upon' LASA in any fundamental sense. LASA's 'obligations' all along – imposed on it by PAIA, giving effect to my fundamental right to information held by the state, guaranteed by section 32(1)(a) of the Bill of Rights in the Constitution – have been to grant me access to the records I'd duly requested or to duly certify any that don't exist.

919. These were the same old 'obligations' on LASA both before and after it capitulated to my applications to compel compliance with my PAIA requests of 2013–15 and signed the settlement agreement in February 2016, in terms of which it agreed at last to respond to them properly.

920. Ad 109.2.2.2. LASA must be talking here about the papers in my five original applications. In all cases, what the court had to decide was whether LASA was justified in refusing my PAIA requests on the grounds advanced: mostly on the basis of section 7 and section 45, and no significant disputes of fact needed resolving to decide that. This was before LASA's capitulation to my applications, after which a profusion of 'factual dispute[s arose] between the parties in [my] application' to compel LASA's full and proper compliance with the settlement agreement, all precisely specified in the schedule to the second amended draft order (annexure 'B16').

921. Ad 109.2.3. This is nonsense, but anyway a matter for argument in the Magistrate's Court. The 'respondents' are the information- and deputy information officers sued in my five original applications. In the settlement agreement, Mtati undertook to respond to my PAIA requests on their behalf. Any of them wanting to file an answering affidavit dealing with any aspect of my application to compel compliance with the settlement agreement could have done so. Mtati, acting on their behalf, had only to ask them.

922. Ad 109.3. This is nonsense, but anyway a matter for argument in the Magistrate's Court. I didn't have to ask them for an affidavit, nor show they refused to make one, before seeking an order that they appear for examination in regard to documents they're likely to know about. I don't want their affidavits. I want to question them under oath.

923. Ad 110–113. Had LASA established a dedicated office with specialised staff to handle PAIA requests, as it promised the SAHRC back in October 2011 it would do, so as to avoid further mishandling and false reporting of these, LASA's 'Corporate Legal Division' wouldn't be under any strain and crying about it.

924. Had LASA duly responded to my PAIA requests as and when they were filed, the burden of doing so wouldn't have piled up.

925. Ad 114. Every word of my letters complaining of LASA's persistent, repeated illegal refusal to comply with my PAIA requests; obstruction of my requests with unlawful money demands; and persistent, repeated false reporting to the SAHRC and to the Minister and the Portfolio Committee has been justified, and the charge that they've been demeaning, insulting and defamatory is false.

926. In fact, my letters have indeed gone 'unattended and have [never been] responded to' properly by remedying the extremely serious illegality I've complained of. The problem I've been up against is a stew of hopeless professional incompetence and determined dishonest suppression of evidence.

927. Ad 115. Correct. These are exactly my intentions.

928. In November 2009 I was duly recommended for LASA's top legal professional post in this province. My appointment was silently aborted, behind the scenes, off the record, under cover of any number of radically different excuses, all of which I've shown to be lies, in light of records disgorged from LASA after intense protracted struggle, and independently sourced, and the confirmed

non-existence of records which would have existed had the stories told been true. When in 2010 I established that Clark then Nair then Vedalankar had all lied to me, unfair political or race discrimination looked the most likely true reason my appointment had been aborted, and I based my claim on it. (My 'mere speculation', as the judge shot it down in his dismissal of my application for leave to appeal, was entirely proper under international labour law principles.)

929. In light of pivotal information LASA had determinedly concealed from me since September 2010 when I first asked for it the month before, and which information I finally obtained in April 2016, I now believe I was barking up the wrong tree, and that the trial judge was right about one thing: no unfair discrimination had been directed against me personally in the abortion of my appointment. Rather, the unfair discrimination was indirect: the problem with me as recommended candidate was not my controversial public participation (or ethnic origins); it was that I stood in the way of a candidate who'd been improperly favoured and expected to be selected instead of me.

930. The top critical post for which I was recommended has always been and remains vacant, budgeted and fully funded, and I will have it.

931. I don't expect this court will have any trouble seeing through the basic lie that due to the recession and a consequent cut in its baseline budget LASA indefinitely and in effect permanently froze recruitment to its remaining vacant Pietermaritzburg, Durban and Mthatha Senior Litigator posts in July 2010. The story's a joke.

932. Except that Vedalankar, Nair and Clark told it under oath, and Mlambo JP told it to the Portfolio Committee, which in criminal law terms, is basically the same thing.

933. The reason I'm pursuing this matter with such determination is because even though I'm up against gargantuan institutional power, I'm confident that the truth like a helicopter must eventually land, somewhere. After which, all things being equal, I anticipate a lot of sacking, striking off, impeachment and jailing at LASA.

934. Ad 116.1. Correct, basically, save that my threats have been to go to the authorities and to law; and not all my PAIA applications have been directed at exposing the corruption involved in Senior Litigator recruitment and the perjury committed to cover up the unlawful abortion of my appointment. One has gone to the money irregularly spent on violating my fundamental right to information.

935. This court will note how LASA still can't bear admitting frankly that I was selected and recommended for the post, and says here that I merely 'applied for' it. The same gut-churning dishonesty, very characteristic of LASA's top executives, was exhibited by Clark in her extraordinarily rude email to me on 30 April 2010, calculated to put me off my enquiry as to the result of the interviews, five silent months later: '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.' And: '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.' Only, I hadn't just been interviewed, I'd been selected and recommended for the post. Contrary to Clark's lie to me, it was perfectly clear who'd been recommended and who'd been rejected. There was no question of not finalising my appointment for any legitimate reason: the Mthatha post had just been advertised that month, and interviews for it were held the next, on 24 May 2010.

936. Of course my claim was 'fully and finally determined' by the judgment of the LC; and since April 2016 I've accepted that it was rightly dismissed, because my unfair discrimination complaint was completely wrong.

937. Had LASA not illegally concealed my rival's long professional relationship with its Board chairperson, I'd have pleaded this as the most likely reason my appointment was silently aborted – behind the scenes, off the record, under cover of any number of radically different changing excuses, all of which I've shown to be lies, as I said.

938. To the extent that my claim was 'fully and finally determined' by the LAC's dismissal of my petition for leave to appeal, the fact is I was denied due process by the JP and my petition was perverted through improper influence. I've dealt with this above.

939. The reason I didn't take the matter on review by the SCA is that I began to doubt the correctness of my cause of action in the LC when I discovered from his appointment as local correspondent in my application for leave to appeal that my erstwhile rival for the Pietermaritzburg Senior Litigator post was working in LASA's Durban Justice Centre.

940. My PAIA request in November 2014 for the records of his employment by LASA was obstructed by Hundermark with an incompetent and illegal money demand and finally illegally refused by Mtati in May 2015 (both were masquerading as deputy information officers, without delegations as such), before being forced out of LASA in April 2016, at the point of being ordered by court to hand them over.

941. Seeing his appointment as local correspondent, I began to wonder whether cronyism wasn't possibly my real problem; and the uncensored recommendation report, disgorged from LASA in April 2016, revealing my

rival's long professional relationship with Mlambo JP as a fellow judge of the LC, clinched my suspicion.

942. Ad 116.2. The 'various baseless applications in Courts and different forums' to which LASA neurotically refers, will be one: an application to the LC to reopen my case, as correctly described in LASA's paragraph 115. Nor will it be 'baseless'. It will be based on new potently cogent evidence long illegally suppressed by LASA, and on new evidence of free-flowing perjury by LASA's single witness at trial, Nair, established by meticulously and systematically testing with PAIA his new unexpected evidence at trial, which (a) contradicted LASA's pleadings, (b) contradicted Vedalankar's correspondence with me telling me the basic lie, (c) contradicted his and her affidavits confirming it under oath, and (d) contradicted Mtati's answering affidavit in my subpoena application, confirmed by Nair. Which means Nair told many different stories under oath (besides the further different stories he told the Board, repeated under oath in court), in itself a crime.

943. It's elementary that a judgment obtained by fraud on the court can be rescinded at any time, so my 'sole intent' of 'reviving [my] initial court application in the Labour Court' by bringing such a rescission application would not be 'impermissibl[e]'.

944. It's also elementary that under section 11(3) of PAIA, a requester's stated or surmised purpose in seeking access to public body records is irrelevant to his entitlement to them. Yet LASA ignorantly and irrelevantly touts here my purpose (one of them) in seeking access to the records I've requested, namely for further future litigation against LASA, and specifically an application to set aside the dismissal of my labour claim on the ground that it was achieved by fraud on the court, as a basis for claiming my purpose is vexatious.

945. What LASA is required to do is argue the merits of my PAIA requests in the Magistrate's Court and in this court in which my applications to compel them

are pending, and to try satisfying both courts under section 81, setting the burden of proof on LASA, that my requests are 'manifestly frivolous and vexatious' and thus barred by section 45. After already abandoning this stuporous defence in the Magistrate's Court.

946. Ad 116.3. This is untrue. As said in the beginning, what sparked this panicked strike against me was my application to enforce the settlement agreement on 11 February 2016, that is to compel LASA to fully and properly comply with its agreement to give me all the records I'd requested or to duly certify under section 23 those that don't exist.

947. It's the instant application that 'amounts to frivolous and malicious litigation', not mine in the Magistrate's Court. As the terms of my second amended draft order and its schedule (annexures 'B23' and 'B16') bear out, in no wise can my application to enforce the settlement agreement amount to 'unwarranted harassment and embarrassment of Legal Aid SA as an institution and its officials, including its Board members'. None of the witnesses I want to examine regarding documents not supplied me are Board members; this is hysterical false exaggeration.

948. Ad 116.4. When in February 2016 LASA capitulated to my five applications to compel its compliance with my several PAIA requests that it had illegally refused in order to suppress evidence I was collecting for criminal prosecutions and the other serious purposes I'd declared, and it recorded its total surrender in the treaty it signed, it did not suggest that my 'conduct' up to that point had been 'frivolous and vexatious'.

949. It was only when pressed by renewed legal action to fully and properly comply with its obligations under PAIA and section 32(1)(a) of the Constitution, at last accepted and recorded in the settlement agreement, that LASA eventually came up with the brainwave of disparaging my 'conduct' in bringing my

application to compel full and proper compliance with the settlement agreement as 'frivolous and vexatious'. The charge is manifestly vacant.

950. In this affidavit I've presented evidence of the most serious misconduct by the judicial officers.

951. Annexure 'B' deals with LASA's 'disrespect' for and its scurrilous 'unwarranted attacks' on Eshowe Chief Magistrate Leon Venter, who was completely uninvolved in my applications handled by an outside magistrate, trained, designated and listed under section 91A of PAIA, and specially appointed to try my matter.

952. Ad 116.5. My temporary penury on account of LASA's illegal abortion of my appointment, and its criminal and otherwise unlawful cover-up of this, is no bar to my exercise of my fundamental rights to information and legal recourse guaranteed to me by sections 32(1)(b) and 34 of the Constitution. (But for this illegal conduct on LASA's part, I'd be up several millions by now.)

953. The 'demands for information' that I 'persist … with' are for:

(a) information LASA undertook on the record in February 2016 to give me two months later in April, including an affidavit conforming to the detailed information requirements prescribed by section 23;

(b) further information in relation to LASA's Senior Litigator posts, another request for which was expressly contemplated by clause 7 of the settlement agreement; and,

(c) a request for all cost vouchers reflecting the public money LASA has squandered on legal fees in illegally and indefensibly blocking my access to its records duly requested under PAIA, which is to say on violating my fundamental right to information, which records showing this colossal 'irregular and fruitless and wasteful expenditure' I intend reporting to the Auditor General, for its personal recovery from the delinquent officers

responsible for it – in preparation for which, I've obtained and made a study of the Treasury's 'Guideline on Fruitless and Wasteful Expenditure' published in May 2014.

954. My 'threats of further litigation against Legal Aid SA' translate to my assurance to LASA, which I repeat here, that I'll not give up my pursuit through the courts of my appointment to LASA's top legal professional post in this province, for which I was duly unanimously recommended, for as long as I'm alive.

955. Ad 116.6. Even though the judgment dismissing my claim was obtained by fraud, and my petition for leave to appeal was perverted through improper influence, 'the dispute between [me] and Legal Aid SA has finally and definitively been adjudicated upon', no doubt about it – until such time as the dismissal of my claim has been set aside and substituted with an order of absolution from the instance, enabling me to return to court on fresh pleadings armed with a stack of new evidence that LASA's second-in-command, Brian Nair, now an advocate of this court, gushed lies in the LC under oath like a burst sewer and that the probabilities now support cronyism as the true reason I wasn't appointed.

956. It's incorrect that I'm looking to 'revive the same complaint'. I accept now that my complaint of unfair political or racial discrimination against LASA was bad. My 'cause of action against Legal Aid SA' will consequently not be the 'same', it will be different.

957. Ad 116.7. The Oxford English Dictionary defines 'vexatious' as 'Of legal actions: Instituted without sufficient grounds for the purpose of causing trouble or annoyance to the defendant.' This isn't my purpose. I've stated my serious intentions many times, and LASA has no reasonable grounds for doubting them.

958. From what I've stated and vouched above, my probabilis causa litigandi in relation to my pending PAIA applications and intention to return to the LC with a rescission application is plain.

959. LASA has no proper bona fide basis for suggesting that my litigation against it has been 'an abuse of the process of the court', in the language of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956 and that I've 'persistently and without any reasonable ground' brought 'legal proceedings' against it.

960. In conclusion, some notes on the orders LASA seeks in its notice of motion:

    1. I've refuted the false charge that my 'conduct towards [LASA], its officials and board members' has been 'vexatious and frivolous'. The accusation is dishonestly false. The gravity of my stated purposes in vindicating through the courts my fundamental rights to information and to due process and equal employment opportunity is beyond serious question. In her presentation to the National Anti-Corruption Forum in 2011, Gabriella Razzano of the Open Democracy Advice Centre (ODAC) in Cape Town emphasised in her very first sentence: 'Access to information is a fundamental tool in the fight against corruption. A simple definition of corruption can be stated as "the abuse of power for the private benefit of a small constituency".' (Judge Dennis Davis's definition in 'Corruption and Transparency' (2010).) Recruitment and other corruption is what this case is basically about, and this is why LASA is trying to restrain me from using PAIA to fully expose it. Since LASA has conceded my five applications in the Magistrate's Court, there's no reason why my application to enforce compliance with its constitutional obligations recorded in the settlement agreement should be stayed.

    2. I've shown that LASA has no general cause of action for its claim that I first pay the costs of previous unrelated litigation (it knows I can't) before being permitted to move for my second amended draft order prayed in the

Magistrate's Court, and for default judgment in my unanswered application to this court, applications to compel LASA's compliance with its obligations to allow me access to its records that I've duly requested under PAIA. And I've shown that its security claims are bad.

3. I've shown that LASA has made out no case that I'm a vexatious litigant as contemplated by section 2(1)(b) of the VPA, namely that I've 'persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court', without 'prima facie ground for the proceedings' in 'an abuse of the process of the court'. There's consequently no reason I should be hindered in exercising my fundamental right of recourse to courts of law guaranteed by section 34 of the Constitution, by being required to obtain the leave of the High Court to do so or first pay security for costs (LASA, a billion-and-a-half-rand-a-year public entity knows I can't; I'm down to my wits). The reason I'm saddled with LASA's costs bill is that (a) it illegally withheld pivotal evidence from me until long after the trial of my claim, causing me to found it on the wrong ground, and (b) its defence was a pack of lies told to defraud the judge. The reason my petition for leave to appeal failed is that it was perverted by the Memorandum. But for this, I wouldn't have been put to the substantial cost I incurred of trying to interdict the taxation of LASA's bill.

4. LASA has no ground for claiming this order. Anticipating that I'd need to make one final PAIA request about LASA's Senior Litigator posts after LASA had delivered all the records I'd requested in the period 2013–15, I agreed to waive my right to make more than one such request. Having waived my right to make any further such requests, there's no basis for LASA to fear that I'm going to disregard my waiver and make another one anyway. I've shown I do what I say, which equally means LASA can confidently count on my not doing what I say I won't do.

5. LASA has no ground for claiming this order, because there's no dispute that 'the issue relating to [my] non-appointment to the position of senior litigator' has been finally determined by a binding court judgment. Obviously, until the dismissal of my claim has been rescinded it stands. LASA's claim for a declaritor is unwarranted. But at all events, nothing prevents me from returning to the LC with an application for a rescission order, based on all the new evidence come to hand since trial and judgment, and demonstrating that the judge was defrauded with perjury.

6. There's a malapropism or syntactical error in this order. But to the extent that LASA appears to be seeking an order relieving it of its constitutional obligation to allow me access to records I've already requested, and which it (a) agreed in February 2016 to give me, but then refused to or failed to; and (b) implicitly agreed to allow me access to (my final agreed request for records concerning Senior Litigator posts) then refused to, LASA has made out no case for this extraordinary claim.

7. I've shown that LASA's false charge that I've been 'making frivolous requests for information or threats', i.e. improper and unlawful threats, is groundless; that all my 'requests for information' have been serious, and have ultimately been treated as such; and that my 'threats' have been to go to higher and other authorities and to law, and have been quite proper and lawful. I've never made a frivolous request, and LASA doesn't cite a single example of one, as alleged. Should I ever do so in the future, LASA has section 45 to raise against me. So there's no basis for this order.

8. I've shown that LASA's charge that I've been 'publishing … false and derogatory remarks and allegations against [LASA], its officials and Board members and any judicial officer' is untrue. In this affidavit, I've repeated, and substantiated, my serious complaints of corruption and dishonesty, and I intend to prosecute them all, once I have all the records LASA is illegally

suppressing and duly made section 23 affidavits where any requested record doesn't exist, forced out of LASA by orders made by this court and the Magistrate's Court.

9. As I pointed out at the beginning, this outrageous application to ban me as a vexatious litigant was brought unlawfully without authority by Hundermark, Vedalankar and Mtati in a flagrant abuse of court to try preventing me from accessing LASA's records and claiming relief from the courts in the ordinary exercise of my constitutionally guaranteed rights in the democratic era, by stripping me of basic civil rights, like a banned person under apartheid. Since Hundermark, Vedalankar and Mtati have abused LASA's financial resources for this most nefarious improper purpose, there's no good reason why LASA as a public entity should bear the costs of this application. What I contended on costs at the end of my application to this court to compel LASA's compliance with my August 2016 PAIA requests (case 1118/16), quoting the SCA in *Gauteng Gambling Board*, counts equally for this application. Hundermark, Vedalankar and Mtati have 'attempted to turn turpitude into rectitude' by representing their deplorable, illegal, unconstitutional violation of my fundamental right to information as the justified repulsion of a time-wasting mischief maker; 'appeared indignant and played the victim' of harassment; and exhibited a 'flagrant disregard of constitutional norms … It is time for courts to seriously consider holding officials who behave in the high-handed manner described above, personally liable for costs. This might have a sobering effect on truant office bearers.'

961. In the situation, I claim an order dismissing the application with costs in the special terms provided in paragraphs 1 and 2 following – alternatively for the issue of a rule nisi to the same effect – and, if the judgment traverses matters of interest to the authorities mentioned in paragraph 3, an additional order in its terms:

1. All costs of this application incurred by the applicant, Legal Aid South Africa, shall be shared equally and paid jointly on the attorney and own client scale de bonis propriis by Chief Executive Officer Vidhu Vedalankar, Chief Legal Executive Patrick Hundermark, and Legal Executive Thembile Mtati.

2. In the event that Chief Operations Officer Jerry Makokoane or National Operations Executive Brian Nair retroactively ratifies the decision to bring this application, the executive(s) ratifying it shall be included among the executives personally liable for the applicant's costs, named in paragraph 1.

3. The Registrar is directed to furnish a copy of the judgment in this case to the Minister of Justice and Correctional Services; to the Chairperson of the Portfolio Committee on Justice and Correctional Services in the National Assembly; to the National Director of Public Prosecutions; to the Judicial Service Commission; to the South African Human Rights Commission; to the Public Protector; to the Auditor General; to the General Council of the Bar; and to the Law Society for the Northern Provinces.

Signed at Mtunzini on 12 February 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 12 February 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: