



## REPORT TO BOARD

### SENIOR LITIGATORS REPORTING RELATIONSHIPS AND JOB CLARIFICATION

26<sup>TH</sup> November 2011

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#### **1. Background**

The senior litigator position was introduced into our organizational structure during the 2009/10 financial year. The key objectives for creating this position were:

- to have an internal group of practitioners who could handle very complex matters
- to provide a second career stream within the organization to focus on legal technical skills.
- to establish legal expertise to handle matters in specialist courts and higher courts such as the SCA and CC.
- to strengthen legal leadership within the organization and develop role models for other legal practitioners.

Nine senior litigator posts were created to cater for the 9 provinces. However, because there were no high court divisions in Mpumalanga and Limpopo, a second senior litigator post was allocated to Gauteng and KZN, with a view to increasing the number of positions to include posts for Mpumalanga and Limpopo at a later stage. The criteria set for the appointment of a senior litigator was set at a level to ensure that only very senior and experienced practitioners were eligible.

A two stage interview process was implemented in order to identify candidates for appointment. Six senior litigators were filled during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.

#### **2. Reporting relationships**

In anticipation of the fact that most of the work allocated to senior litigators would emanate from the high court units where they were based, it was therefore decided that senior litigators should report to the high court unit managers. Whilst this reporting relationship has worked satisfactorily, there has been some concern that this reporting relationship was not appropriate because three of the senior litigators were now reporting to high court managers who previously reported to them when they were high court unit managers. Whilst under normal circumstances such a situation should not pose a problem, there has nevertheless been a concern that the low participation of some senior litigators in SCA cases could arise from the fact that they may be in a position to dictate to their high court unit managers on how cases are allocated in the unit.

It has therefore been agreed that from the beginning of the third quarter of this financial year, all senior litigators will directly report to their ROE. ROEs will therefore be more responsible

for the type of matters undertaken by their senior litigators. Senior litigators will nevertheless be permitted to operate from the Justice Centre where they are currently situated. However, should their relocation to the regional office improve the performance of their function, then this will also be permitted.

### 3. Type of matters to be handled by senior litigators

It was agreed with senior litigators that the following type of matters should ideally be handled by themselves:

- Matters which are regarded as very complex received at HCUs and JCs in the region.
- Matters identified by CCMC as impact litigation matters;
- Matters that are to be heard by a full bench of the HC, the SCA and the CC.
- Matters to be heard at specialist courts such as the commercial crimes court
- High profile matters which could negatively affect our reputation if not handled properly

A very small percentage of their time could also be spent to prepare opinions, assisting other practitioners with the preparations of their heads of arguments as well as training of staff.

An analysis has been done to determine our current coverage of criminal trial matters at both the SCA, as well as full bench appeals done at each HC division with appeal jurisdiction. During the first three terms this year, 49 criminal appeals were done of which 22 (45%) was done by Legal Aid SA. With regards full bench appeals, 206 full bench appeals were done of which 146 (71%) were done by Legal Aid SA. (Refer to Annexure A and B for details)

### 4. Quality reviews of senior litigators

Noting that our senior litigators constitute some of our most senior and experienced lawyers in our organization, it is felt that the current system of evaluating their performance, firstly by their high court unit managers and thereafter by our legal quality assurance unit may not be appropriate. It has therefore been agreed that a national quality review panel will be established that will include a few senior legal executives, as well as someone external to the organization, possibly a retired Judge, who would conduct these reviews.

The terms of reference for these review panels will include:

- an examination of the type of cases handled to determine if it complies with our requirements;
- an examination of the level of preparedness for their cases
- a review of the appropriateness of the legal strategy adopted in their cases
- a determination of whether the most appropriate outcome of the case was achieved.

The review panel will be established during the third quarter of this financial year. All senior litigators will be reviewed by this panel before the end of this financial year.

Submitted for information.

National Operations Department