

25 Baker Road  
Prestbury  
Pietermaritzburg  
3200  
12 July 2010

Ms Vidhu Vedalankar  
Chief Executive Officer  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Ms Vedalankar

#### SENIOR LITIGATOR POSITION: PIETERMARITZBURG

1. On 12 November last year I was interviewed for a Senior Litigator position at the Pietermaritzburg Justice Centre.
2. The position had been advertised by Legal Aid South Africa for the second time, and I was one of four applicants shortlisted (a Senior Litigator for Durban was also sought).
3. In view of the seniority of the post and the high-level legal expertise it required, the Executive Board appointed a professional selection board comprising six senior attorneys and advocates, chaired by the regional HR officer, with the delegated power to field and screen applications; to draw a shortlist of the pick of them; to interview the shortlisted candidates; and to select the most suitable candidate for the position, if any.
4. The professional board's selection for the Pietermaritzburg Senior Litigator position was made subject to the approval of Legal Aid South Africa's Chairperson and most

senior lawyer, Supreme Court of Appeal Judge Dunstan Mlambo, consequent on a further confirmatory interview by him.

5. During a lengthy, wide-ranging interview by the professional selection board, I was closely interrogated on my qualifications, my applied legal experience and competence, my knowledge of recent case law, my personal and professional record, and my background and values insofar as they bore on my suitability as a public lawyer serving the poor of our country, as well as all and any other matters considered relevant to the determination of my application for the position.
6. From the range of questions put to me during my interview it was evident to me that the professional selection board had been charged with the responsibility of satisfying itself that the applicants shortlisted met not only the advertised requirements in terms of professional qualifications, experience and expertise, and enjoyed an unblemished record and reputation for personal and professional integrity, but would likely be an asset to Legal Aid South Africa in the discharge of its mandate to provide legal assistance to the poor in the High Court, Supreme Court of Appeal and Constitutional Court.
7. It was a rigorous interview, conducted face to face by a panel of fellow lawyers. I was afforded the opportunity to provide a full account of myself and to answer all and any questions that the professional selection board saw fit to pose concerning my suitability for the position. The professional manner in which the interview was conducted struck me as impeccable, and seemed to me to have been entirely objective. It was open and it was transparent.
8. It goes without saying that as lawyers who respect the Bill of Rights enshrined in Chapter 2 of the Constitution, the professional selection board did not consider it proper or relevant to enquire into whether I follow and observe the dominant Christian religion; subscribe to the dominant ideology of free-market capitalism; believe in the dominant biological theory of Darwinian evolution; accept the dominant theories in physics of Special and General Relativity; support the dominant cosmological Big Bang theory of the origin of the universe; prefer

dominant Western aggressive germ theory and transnational corporate, patent-based, PR marketing-driven, toxic synthetic chemical pharmaceutical medicine over African Traditional, Ayurvedic, Chinese, Herbal, or Homeopathic medical schools, with their radically different theoretical frameworks and diagnostic and healing modalities; and so on\*.

9. Nor did the professional selection board express any interest in my understanding, opinions and beliefs concerning all manner of past and current historical, political and economic matters either; ditto my literary, artistic and musical tastes, and whether they are confined to strictly useful social-realism or run to the decadently abstract.
10. The professional selection board's perfect indifference to these questions sprung of course from the fact that they are all matters of 'conscience, religion, thought, belief and opinion' falling within the purview of Section 15 of the Constitution.
11. Being well acquainted with the Constitution, the professional selection board fully appreciated that the free practice and free pursuit of these matters of 'conscience, religion, thought, belief and opinion' are protected by Section 16 of the Constitution, guaranteeing the 'right to freedom of speech and expression, which includes (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research'.
12. And as lawyers equally familiar with Section 19 of the Constitution, which guarantees 'the right ... to campaign for ... a cause', the professional selection board naturally didn't consider it appropriate to ask me whether I was involved in 'a cause' of any sort.
13. This is because the professional selection board of senior lawyers who interviewed me were fully cognizant of the fact that for the first time in the history of our country since it was invaded and colonized three and a half centuries ago, these basic freedoms, these basic human rights, have been guaranteed by a progressive

Constitution enacted at the commencement of the democratic era following national liberation – marking the clearest juridical break with the apartheid era and the closed, parochial, fearful, stultified, intolerant, and repressive mentality of the former ruling class and its servants, in which oppressive era no such basic freedoms were enjoyed as basic human rights, and critics and opponents of the ruling class and its servants were liable to be punished, neutralized and silenced: prohibited from public speaking; from writing and publishing; from engaging in any kind of political activity; from associating with whom they chose; from entering universities to conduct research; and even, in the case of banned lawyers, from practising their profession.

14. And because such restrictive political measures were decided by administrative officials sitting in their private offices behind closed doors, no recourse to any sort of review or appeal existed in open courts of law. Unlike in the democratic era.
15. It will not surprise you to be apprised, therefore, that I found no indication at the interview that, contemptuous of the Constitution and contemptuous of the basic human rights it guarantees, the professional selection board was fixing to discriminate against me illegally on any of the ‘prohibited grounds’ defined in the Promotion of Equality and Prevention of Discrimination Act 4 of 2000, to wit ‘race, gender,’ through to ‘conscience, belief,’ etc, (which illegal discrimination is actionable in the Equality Court for ‘the payment of damages in respect of any proven financial loss, including future loss’). On the contrary, I was quite satisfied at the time that the interview was conducted properly and I remain so.
16. My impression was that the interview, for which I had prepared thoroughly, went very well, and I left it confident of my prospects – even more so after sizing up two of the three other shortlisted candidates with whom I chatted in the waiting room.
17. Three weeks after the interview I telephoned the regional HR officer for the professional selection board’s decision. His studiously guarded response was that he was not free to divulge this information to me, and that I must just wait to be told.

18. So I waited. I waited for five months.
19. On 14 April I telephoned HR Executive Amanda Clark in Johannesburg Head Office to find out the score. Imagine my amazement to discover that she had never even heard of me and didn't know about the pending recruitment process in question. Nonetheless, in a briskly professional and reassuringly friendly manner, she undertook to enquire for me and revert with advice by email.
20. A couple of hours later she wrote that she had 'looked into this matter and can confirm it is still in progress and has not been concluded. I will endeavour to expedite the process in which I am not directly involved at this stage. ... Thanks for your keen interest. We hope to conclude the matter soon.' She advised me to contact the regional HR officer 'for updates'.
21. I did so a week later, expecting from Ms Clark's undertaking to 'endeavour to expedite the process', that I might at last get some indication of the state of play. But again, despite my 'keen interest' in learning the outcome of my interview, the regional HR officer was as mute as a sphinx, and provided no 'updates'. When I expressed my dismay, for I was most dismayed make no mistake, he volunteered that the professional board's selection was subject to confirmation following 'a final interview by the chairman, a Judge of Appeal' (his words precisely).
22. I then telephoned Ms Clark's office repeatedly over the next few days, but couldn't reach her. My calls were not returned.
23. On 22 April, I emailed Ms Clark, mentioning a particular practical pinch the lack of information and the delay were causing my partner and me, and requesting her to 'establish for me whether the administrative machinery in HQ involved in fixing a date with the judge for the final interviews is indeed turning – and not stalled at the clerical level'.
24. Ms Clark took a week to mull and no doubt confer over my email, and on 30 April she replied. Gone was the friendly, clear and professional tone and style of her previous communications. Her animus was palpably hostile and her now distinctly

unprofessional email was obscure, muddled, irrelevant, contradictory, accusatory, and calculatedly discouraging – although the information she conveyed was most revealing all the same. Obviously something was up.

FF

25. Concerning the personal difficulty I'd mentioned, Ms Clark coolly pronounced her complete unconcern, and stated: '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.'
26. I inferred from this that the professional board had indeed selected me for the position, as I'd believed from the beginning, for had it not done so, and had it scratched me from its shortlist following my interview nearly six months earlier, my application would not still have been in 'process' in Legal Aid South Africa's Head Office. Or put another way: had the professional selection board rejected my application in November and excluded me from the running, I would not have been in a position to 'withdraw' from 'the process' in April, as Ms Clark thoughtfully suggested.
27. I also inferred that no legitimate obstacle to my appointment had turned up, or I would not have been asked to decide whether or not to be more patient in giving Legal Aid South Africa more time, after nearly six months, 'to complete the process': I'd have been forthrightly informed that I'd been disqualified on some or other lawful ground specified.
28. Ms Clark further stated: '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.' You'll readily appreciate, I'm sure, that all this is insupportable both on the facts and at law.
29. Firstly, Ms Clark's statement implied that the professional panel hadn't made a 'clear' selection of a specific candidate for the Pietermaritzburg Senior Litigator position after interviewing those it had shortlisted. We all know this isn't so.

30. Secondly, her statement revealed her misconception that she and other members of the Executive Board ('we') had the prerogative (a) to disregard and over-ride the professional board's selection of a candidate for the Pietermaritzburg Senior Litigator position; (b) to make an independent selection of its own; and (c) to terminate the recruitment process without referring the candidate selected by the professional board for confirmation or otherwise by Judge Mlambo.
31. In other words, Ms Clark imagined that in initiating a recruitment process to engage a suitable candidate for appointment as Pietermaritzburg Senior Litigator, the Executive Board, of which she's a member, is entitled to usurp both the selection function it had delegated to a board of senior legal professionals as well as the veto power it had delegated specifically to the Board's Chairperson, a senior judge.
32. You may be struck, as I certainly was, by the dark implication of her advice to me: '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.' Unpacking this ostensibly neutral, utterly superfluous platitude in the surrounding countryside of her other discouraging messages, including her frank suggestion that I shove off, you may even share my inference that Ms Clark meant to convey that in daring to apply for the position, I'd made an unsuccessful gamble and had lost my bid for it, so why don't I just go away and try somewhere else.
33. She further advised, 'I think you should allow us to complete our process at the pace we have decided.' From enquiries I've made, I've established that the 'pace we have decided' for the administration of my particular application is a special one: eight months have passed since I was interviewed, and I'm still counting.
34. To 'complete our process', all that's required from Ms Clark as HR Executive (or her staff) is to see to it that the candidate selected by the professional board is interviewed by Judge Mlambo, and to strike the necessary practical arrangements.
35. In point of fact, since this is the law, no one besides Judge Mlambo on the Executive Board has any discretion to discharge in this regard, and neither Ms Clark nor any

other member has anything substantial to decide concerning the selection and confirmation process that the Executive Board commenced.

FF

36. Ms Clark concluded, 'If we require further information or follow-up from yourself, our organisation will contact you.' Since no 'further information or follow-up' has been sought from me in the eight months since my interview, including the two and a half months since Ms Clark's specific advice in this regard, I must conclude from her don't call us, we'll call you defensive faux legalese that no 'further information' from me is required by her 'organization', and that any 'follow-up' by myself is undesired. Leaving me wondering whether I'm not perhaps perceived to be an undesirable sort of person, best kept out of 'our organization' – her expression clanging in the context like a castle grate between us.
37. Ms Clark's further accusatory remarks are neither here nor there for immediate purposes.
38. Although in mid-April she'd noted my 'keen interest' in finding out what has become of my application and why it is taking so inordinately long to be finalized – conveying her 'hope to conclude the matter soon' and undertaking to 'expedite the process' – there has been no appreciable movement in 'the process' in the three months that have passed since then. This suggests that Ms Clark is either unable or unwilling to 'expedite the process'.
39. From the invitation she extended me to 'withdraw' my application if I wasn't happy with the exceptionally retarded 'pace we have decided' for dealing with it, and naturally I'm not, I rather gained the impression that she'd be pleased if I did.
40. One might even think, on an objective conspectus of all the foregoing, that for some undisclosed reason they'd rather not state Ms Clark and/or other members of the Executive Board have 'decided' to abort 'the process' by bringing it to a practical standstill, hoping to avoid trouble in court by not actually telling me so.
41. Please be advised that I do not 'wish to withdraw' my application, and that contrariwise I 'wish to wait to allow [Legal Aid South Africa] to complete the

process' lawfully. You'll agree, though, that more than a reasonable time has passed for this.

42. Clearly many hard questions arise from the extraordinary handling of my application. At this stage, however, hoping that everyone has just been terribly busy, I would prefer to put only one question to you: Can you tell me when I might meet Judge Mlambo? I'd be grateful.

Yours sincerely

ANTHONY BRINK

arbrink@iafrica.com

CC: None

\*A couple of weeks ago I was interested to read an interview with you conducted by the Legal Resources Centre on 10 November 2010, just two days before my own, and in an addendum hereto I include some comments that may be pertinent.