



**Legal Aid South Africa (LASA): PAIA Training
06 October 2011: SAHRC Training Centre
Attendance Register**

NAME & SURNAME	EMAIL ADDRESS	DEPARTMENT	SIGNATURE
1. Carelse Christopher	christopherc@legal-aid.co.za	INTERNAL AUDIT (LQAU)	
2. Khumalo Bafana	BafanaK@legal-aid.co.za	Internal Audit (LQAU)	
3. Labe Tilly	tillyl@legal-aid.co.za	National operations	
4. Lefopane Hezekiel	Hezekiel@legal-aid.co.za	NATIONAL OPERATIONS Call Centre	



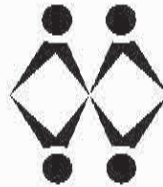
Open Democracy Advice Centre

	EMAIL	DEPARTMENT	SIGNATURE
5. Mazizi Mangaliso	MangalisoM@legal-aid.co.za	National operations	
6. Mtati Thembile			
7. Nkgapele Magate	MagateN@legal-aid.co.za	Corporate Services	
8. Nthebe Andries	AndriesN@legal-aid.co.za	National Ops	
9. Phetoe Kenosi	KenosiP@legal-aid.co.za	INTERNAL AFFAIRS (LBAU)	
10. Pillay Varian	ON LEAVE		
11. Prinsloo Nico	nicop@legal-aid.co.za	CALL CENTRES	
12. Risiba Siphosiso	siphosiso@legal-aid.co.za	Corporate Services	
13. Sekgota Solly	SollyS@legal-aid.co.za	Corporate Services	



Open Democracy Advice Centre

	EMAIL	DEPARTMENT	SIGNATURE
14. Sihadi Ntuweleni	NtuweleniS@legal-aid.co.za	National operations	
15. Tauatswala Bawinile	BawinileT@legal-aid.co.za	NATIONAL OPERATIONS	
16. Tito Franky	FrankyT@legal-aid.co.za	NATIONAL OPERATIONS	
17. Van Rooyen Sonia	Soniv@legal-aid.co.za	LEGAL QUALITY ASSURANCE UNIT	
18. E. van Rensburg	svanrensburg@saahrc.org.za	SAHRC	
19. S-D Malesa	smalesa@saahrc.org.za	SAHRC: PAIA	
20. F. Moolah	fmoolah@saahrc.org.za	SAHRC: PAIA UNIT	



Legal Aid
South Africa



18 October 2010.

Adv Anthony Brink
25 Baker Road
Prestbury
Pietermaritzburg 3200

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

by Fax: 0866720776

Dear Advocate Brink,

Re: Promotion of Access to Information Act: Request for Records: Senior Litigator Position, Pietermaritzburg

I acknowledge receipt of your letters addressed to the CEO and COO dated 26 August and 1st September respectively. Whilst not responding to each and every allegation contained therein, an omission to address any aspect should not be construed as an admission of the correctness on our part, and we reserve our rights to respond to any such allegation should the need arise.

1

The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, Kwazulu-Natal and Another (D38/08) [2008] ZALC 18*, is as follows:

- a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

2

In considering your request for information we were guided by this principle, together with Section 32 of the Constitution and the relevant provisions of the PAIA.

Section 32 of the constitution grants access to information in the following terms:

“(1) *Everyone has the right of access to:-*

Noting the above and without waiver of any of our rights, the following explanation is provided in so far as it relates to your individual application for the senior litigator position and the circumstances that followed.

- 7.1 You were interviewed together with other candidates in the first round of interviews.
- 7.2 You were recommended together with other candidates, for the second round of interviews. As explained above that however was not a guarantee that you would get the position. We have instances in the past when our nationally constituted panel has not recommended for appointment any of the recommended candidates from the first phase interviews conducted by the region.
- 7.3 The NOE and CEO took the decision that all senior litigator posts that were vacant would be frozen. Therefore, the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.
- 7.4 You were sent a final letter of regret from our Regional Operations Executive dated 23 August 2010 indicating that Legal Aid SA will not be proceeding with the filling of the Senior Litigator post. A copy of the aforementioned letter is also attached for your reference.
- 7.5 Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions.

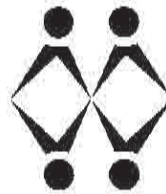
The above information is provided to clarify the position and to definitively address your suspicion that your right to a fair administrative process is threatened, breached or may be rendered unenforceable. Accordingly your request for the detailed information requested in your letter, other than the information and explanation provided above, is declined as it is not relevant to you exercising any right you may have in law.

Yours faithfully,

N. N. Vedalankar

Ms Vidhu Vedalankar

CEO & Information Officer



Legal Aid
South Africa

C

By Email

28 January 2011

Adv A Brink

25 Baker Road

Prestbury

Pietermaritzburg, 3201

Email: arbrink@iafrica.com

29 De Beer Street

Braamfontein

Johannesburg 2017

Private Box X76

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www.legal-aid.co.za

Dear Adv. Anthony Brink,

**REQUEST FOR INFORMATION IN TERMS OF PROMOTION OF ACCESS
TO INFORMATION ACT 2 OF 2000**

1. I acknowledge your letter of 15 December 2010 in which you request access to information in Legal Aid SA's possession in terms of the Promotion of Access to Information Act, Act 2 of 2000 ("PAIA"). I have also considered your recent letters dated 30 November 2010 sent to the Chairperson of the Board of Legal Aid SA, Judge President Dunstan Mlambo ("Mlambo JP") and to the Board of Directors ("Board") dated 24 January 2011.
2. Legal Aid SA promotes and complies with the constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession. This recognition should set the tone for the answer that follows herein below.

C

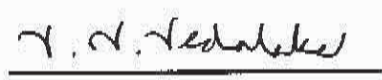
- 41. In conclusion, I note your threats of court actions cross examining me; officials of Legal Aid SA; now the Board members; and their secretary. Your threats of *mandamus* against the Legal Aid SA; of using independent judges; of probing our executives' affidavits; of your draft notice of motion and an accompanying founding affidavit, are unnecessary. Please refrain from your disparaging attacks on people's dignity on baseless assumptions.

- 42. Be advised that the Legal Aid SA will defend itself against any of the threats that you have made against its officials and Board members.

- 43. The Legal Aid SA's Board of Directors; its Executives and all of its staff country-wide are committed to complying with the laws and statutes of the country most importantly the Constitution of the country and its values of accountability and transparency. It is in that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB.

- 44. We have exhausted our explanations to you and trust that this final letter to you shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to. Your cheque will be returned to you with the original of this letter.

Yours faithfully,



Vidhu Vedalankar

CEO: Legal Aid South Africa

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

2nd Floor
33 Hoofd Street
Braampark, Forum 3
Braamfontein
2017

Private Bag X 2700
Houghton
2041

Tel.: 011 877 3750
Fax: 011 403 0668



12 October 2015

Ref: PAIA/GP/1516/0395

Legal Aid South Africa

Mr Thembile Mtati

Per email: tembilem@legal-aid.co.za

CC: sollys@legal-aid.co.za

Dear Sirs

RE: COMPLAINTS LODGED WITH THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The complaints lodged with the South African Human Rights Commission (the Commission) against Legal Aid South Africa (LASA) in August 2015, refers.

The Commission has received the following complaint from Advocate Anthony Brink (the Complainant) against LASA:

1. The Complainant lodged PAIA requests with LASA. In response, LASA requested payment of certain fees in terms of Section 22 of PAIA;
2. Pursuant thereto, the Complainant requested the intervention of the Chief Executive Officer, of LASA, Ms Vedalankar, in terms of Section 17 of PAIA. On 26 May 2015, Ms Vedalankar, through Mr Thembile Mtati, confirmed the refusal of the Complainant's PAIA requests and again requested payment of certain fees in terms of PAIA. As LASA is a type B public body for the purposes of PAIA, no internal appeal process is available to the Complainant should he be dissatisfied with this decision;
3. In the circumstances, kindly confirm whether LASA would be amenable to participating in an alternative dispute resolution (ADR) process facilitated by the Commission in an attempt to amicably resolve this complaint.

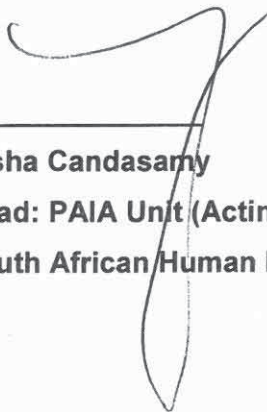
Transforming society. Securing rights. Restoring dignity.

Chairperson: M L Mushwana; **Deputy Chairperson:** P Govender; **Commissioners (Full-Time):** B Malatji, L Mokate; M S Ameerma
Commissioners (Part-Time): J Love, D Titus;
Chief Executive Officer: L Khumalo

The Commission looks forward to receiving your response within 7 (seven) days from date of receipt hereof.

D

Yours faithfully,



Kisha Candasamy
Head: PAIA Unit (Acting)
South African Human Rights Commission

2013/2014

South African Human Rights Commission Report 2013/14 Financial Year									
List of matters in which information was requested in terms of Promotion Access to Information Act 2 of 2000									
No.	Name of requester	Type of request	Outcome of the request	Comments	Date when request made.	Date when the request responded to.	Region	Justice Centre/Department	Who responded
1	Mr. Leslon Sampson	Requesting the reasons and information or reply on the decision not to provide legal representation or assistance to prosecute a civil case to be heard on 25 October 2013	The reasons were given to the requester on the 27 May 2013.	The requester was not happy with the reply and appealed on the decision to refuse legal aid and the reasons furnished thereof.	5-Apr-13	27-May-13	Western and Northern Cape	Athlone	ROE-Western and Northern Cape
2	Mr. Leslon Sampson	An appeal against the decision of the Designated Deputy Information Officer to reply or provide information relating to the refusal of legal aid assistance.	On appeal, the CLE confirmed the decision of the Designated Deputy Information Officer for Western Cape and Northern Cape and further the merit report was given to the requester and all questions or clarifications sought were attended to in the reply to the appeal.	Upon consideration of the reply to appeal, the requester brought an application to compel which was opposed. The requester had since not proceeded with the application.	30-May-13	12-Sep-13	Chief Legal Executive	Legal Development	Chief Legal Executive
3	Jane Harley	Records for funding in the RTI Commission of Enquiry	The information was granted.	The information was requested in her personal capacity as the citizen of the Republic of South Africa and all the information requested granted.	16-Sep-13	4-Oct-13	RO-KZN	RO-KZN	ROE-KZN
4	Anthony Brink	Request for information/records relating to the recruitment for Senior Litigation Position with specific attention to the Free State North West Regional Office dated 1 October 2013 but received 13 November 2013.	The records and information denied in its entirety.	The information or records requested were denied in its entirety as they relate to issues before court under case D529_2011	13-Nov-13	18-Oct-13	RO-FS/NW	RO-FS/NW	RO-FS/NW
5	Mr. Anthony Brink	Request for information/records relating to the recruitment for Senior Litigation Position with specific attention to the National Operations Executive's involvement in the matter. The request dated 1 October 2013 but only received on 8 October 2013	Some of the records and information granted. The other records or information denied as they relate to issues before court.	The information or records requested were granted partially and some information or records denied as they relate to issues before court under case D529_2011	8-Oct-13	6-Nov-13	RO_KZN	RO-KZN	CSE on behalf of CEO
6	Mr. Anthony Brink	Request for information/records relating to the recruitment for Senior Litigation Position with specific attention to the Eastern Cape Regional Office dated 1 October 2013 but received 7 October 2013.	This relates to the matter already before court and the requester was referred to part of the records already placed before court in the pleadings and where applicable it was stated that such records were found not available.	The information or records requested were denied in its entirety as they relate to issues before court under case D529_2011 and where applicable no such records were found.	7-Oct-13	6-Nov-13	ROE-EC	RO-EC	ROE-EC


SOUTH AFRICAN HUMAN RIGHTS COMMISSION
 PRIVATE BAG 1700 HOUGHTON 2041
 TEL: (011) 404-4300 FAX: (011) 404-4143


IN THE MATTER BETWEEN :

CASE NO :1432/15

ANTHONY ROBIN BRINK

PLAINTIFF

and
VIDHU VEDALANKAR NO
INFORMATION OFFICER
LEGAL AID SOUTH AFRICA

DEFENDANT

F

T.A.X. I N V O I C E

(REG.NO. 4250141902)

RETURN OF SERVICE

The NOTICE OF MOTION

was served on the RESPONDENT at

LEGAL AID SOUTH AFRICA, 29 DE BEER STREET, BRAAMFONTEIN, JHB

by exhibiting the original and handing over a copy thereof to

ME TINY IN RECEPTION who is authorised to accept all legal

documents who is apparently over the age of 16 years and in a position of
authority at the RESPONDENT'S PRINCIPAL PLACE OF BUSINESS.

and at the same time explaining the nature and contents thereof.

Service was effected in terms of RULE 9(3)(i).

DATE OF SERVICE: 24/11/2015 AT 13H10

Fees set out as follows:

Service	55.00	Urgent Fee	55.00
Registration	8.00		
Return	14.00		
Travelling	20.00		
Post	22.30	= R174.30 + R24.40 Vat = R198.70	



N132A

Attorneys : ANTHONY BRINK
THE COTTAGE
1 BOAST STREET
ESHOWE 3815

INVOICE NO: 529505
SHERIFF JHB. NORTH - UNIT B1
51/61 ROSETTENVILLE ROAD
VILLAGE MAIN OFFICE PARK
P.O. BOX 9025 JHB 2000

Your ref.: NOREF

Our ref.: 005/821229/XYZ

Tel (011) 334-4397/98

Fees :R .00 R Vat = R

Fax (011) 334-4320

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

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33 Hoofd Street
Braampark, Forum 3
Braamfontein
2017

Private Bag X 2700
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2041

Tel.: 011 877 3750
Fax: 011 403 0668



24 November 2015
Refs: GP/1516/0395 &
18/5/BRINK

Advocate Brink

Per email: abrink@iafrica.com

Dear Advocate Brink

RE: BRINK / LEGAL AID SOUTH AFRICA // SAHRC

The above refers.

1. Re: PAIA request lodged with the Commission (as amended in terms of letter dated 23 November 2015)

- 1.1. *Request fee of R35 is waived.*
- 1.2. *Response will follow within the 30 (thirty) day period prescribed in terms of PAIA.*

2. Re: Complaint registered under reference number GP1516/0395

- 2.1. *We are engaging with LASA regarding your complaint. Our further advices in this respect will follow in due course.*

Yours faithfully,



Kisha Candasamy

Head: PAIA Unit (Acting)

South African Human Rights Commission

Transforming society. Securing rights. Restoring dignity.

Chairperson: M L Mushwana; **Deputy Chairperson:** P Govender; **Commissioners (Full-Time):** B Malatji, L Mokate; M S Ameeria
Commissioners (Part-Time): J Love, D Titus;
Chief Executive Officer: L Khumalo

1 Boast Street
Eshowe
KwaZulu-Natal
26 November 2015



Kisha Candasamy
Director: PAIA Unit
South African Human Rights Commission
Braampark Forum 3
33 Hoofd Street Braamfontein
Johannesburg

Per email: kcandasamy@sahrc.org.za

Dear Ms Candasamy

BRINK/LASA: PAIA COMPLAINT

I refer to your letter yesterday recording your reversal of your refusal – for the manifestly spurious and insupportable reasons, now abandoned, set out in your letter of the 11th – to deal with and determine my complaint that LASA CEO and information officer Vidhu Vedalankar has violated my fundamental right to information guaranteed by section 32 of the Constitution in refusing my PAIA requests of November 2014 and March 2015, and your decision to engage with LASA after all – even though I specifically asked you to just determine my complaint under the Commission’s Complaints Handling Procedures, and to stick with your earlier decision not to engage with LASA any further, since I never asked you to and they’re clearly not going to surrender the records I’ve requested without judicial compulsion.

For the same reason that US President Richard Nixon wasn’t going to obey a subpoena to surrender his Oval Office tapes recording his orchestration of the Watergate cover-up without the judicial compulsion of the US Supreme Court.

For my part, I reiterate and record here my verbal undertaking given to you on the telephone not to post copies of my protest to you the following day (about your now refusal to determine my complaint, now reversed) to your chairperson, CEO, and audit committee chairperson, who reported the unsatisfactory performance of your PAIA Unit in the Commission’s last annual report on multiple scores. I reiterate and record here also my further verbal undertaking given you not to report your now reversed refusal to handle my fundamental rights violation complaint to the Justice Portfolio Committee, as contemplated in my letter to your CEO on the 23rd.

These undertakings that I gave you are naturally contingent on your performance of your extraordinarily responsible and important function, with which section 83(3) of PAIA charges you, namely to ensure public body compliance with section 32 of the Bill of Rights in the democratic era, after the apartheid one.



The Commission's past mishandling of my fundamental rights violation complaint has cost me several wasted months, as a result of which I've been forced into court: With my dies about to expire, I was constrained last week to issue an application to compel Vedalankar's compliance with my PAIA requests refused by her on 26 May, which, the sheriff told me yesterday, was served on her on Tuesday the 24th, just in time. My case is based squarely on my complaint to the Commission, annexed to my founding affidavit.

Under Article 4.1 of the Commission's Complaint's Handling Procedures (quoted to me in 2011), the Commission 'may reject any complaint' concerning 'a dispute before a court of law'. Not *must*. In the exercise of your discretion here, four considerations:

First, as is obvious from my complaint, there's no bona fide 'dispute'. Vedalankar's refusals of my requests for access to the records I've specified are manifestly illegal. Nair's too. So are Vedalankar's money demands. You know this perfectly well. They're illegal, and the object of Vedalankar's inevitable opposition to my application, like Nair's, will be dilatory – the object being to hold me off for as long as possible to prevent me accessing documents that will make 2016 LASA's year in the newspaper headlines, as 2015 was PRASA's, in an expose of massive corruption, maladministration, and so forth in its top ranks.

Second, my complaint was made long before the Commission's inaction and flip-flopping forced me to sue for relief.

Third, section 83(3) of PAIA requires the Commission to 'monitor the implementation of this Act'; 'if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act'; 'recommend a public ... body make such changes in the manner in which it administers the Act as the Commission considers advisable'; and 'train information officers and deputy information officers of public bodies' in how to apply the Act properly so as to give effect to it and thereby respect record requesters' fundamental right to information. Which LASA hasn't been doing.

Fourth, it's eminently in the public interest that the Commission act to correct all LASA's basic legal mistakes and its inability (unwillingness) to apply PAIA, evident from its various dull reasons given for refusing to comply with my PAIA requests year after year and from its dull defences to my applications to compel it to do so year after year.

The legal junk LASA spews to justify suppressing duly requested records and to avoid making section 23 affidavits regarding non-existent documents, and the further legal junk it spews in its answering papers when sued to comply with its PAIA obligations, is certain to be repeated so as to obstruct other record requesters besides me.

As you proceed to engage with LASA again, the following problems need resolving under your section 83(3) powers:

1. Section 17(6)(a) requires that Vedalankar's designation of deputy information officers must be in writing. Nair's is; I have a copy. Revised in 2010, LASA's PAIA manual currently claims that CLE Mtati, COO Makokoane, and CLE Hundermark are DIOs too. For several reasons not necessary to recount here, I doubt that they are. When in Eshowe Magistrate's Court case 258/14 I disputed that Mtati has a written delegation, he failed to meet and refute my point in his answering affidavit by putting up his delegation. Requested under PAIA, Vedalankar has refused me Makokoane's and Hundermark's delegations. So for these and other reasons, I doubt they exist.

Please call for Mtati's, Makokoane's and Hundermark's delegations to be emailed to you to verify the claim in LASA's PAIA manual that they are indeed DIOs. If the delegations exist and are supplied, the electronic document properties will tell us whether they've been backdated, which is to say forged (I've come to expect absolutely anything from LASA: perjury and lying to Parliament as a matter of routine, etc – since over at LASA, I've discovered, anything goes).

If it turns out that Mtati, Makokoane and Hundermark don't hold written delegations, then they have no authority to deal with PAIA requests and they illegally handled my PAIA requests filed in November 2013 and November 2014; and LASA's PAIA manual is giving the public false information as to who LASA's DIOs are. The PAIA manual will either need amending to remove Mtati, Makokoane and Hundermark, or they will need delegating in writing now.

Please advise me whether Mtati, Makokoane and Hundermark currently hold (unforged) written DIO delegations. Please forward me the electronic documents, if supplied, so I can investigate whether they've been forged or tampered with. Do not disclose your reason for requesting the documents in electronic form; this will encourage the just-mentioned crimes (as said, over at LASA anything goes).

2. Trying to sound clever, some foolish LASA lawyer has amended LASA's PAIA manual to distinguish between 'deputy information officers' in the national office and 'designated



deputy information officers' in the regional offices. Section 17 of PAIA makes no such distinction, even if this sounds very fancy and impressive to legally unlettered persons. Either you've been designated a deputy information by written delegation or you haven't – period.

Please let me have LASA's response to your official expert advice under section 83(3) to amend its PAIA manual to remove the legally spurious distinction.

3. Vedalankar's – and before her, Hundermark's and Makokoane's – money demands made against me are illegal. No search fees may be charged before the decision of a request, and no search fees may be charged for refused records. No reading and briefing fees may be charged ever.

Please let me have LASA's response to your official expert advice under section 83(3) about this, and whether in light of it LASA will abandon its illegal money demands made against me.

4. The only grounds PAIA allows for refusing access to a requested public record are those contained in Chapter 4 of Part 2. The fact that a record requested is 'relate[d] to and [is] ancillary to' past, pending or future litigation in some manner is not a lawful ground for refusing access to it. Nor is the fact that the record 'relates to the evidence in the matter pending before Court'. Nor the fact that it was previously 'requested during the discovery process in the trial court ... Therefore it is excluded in terms of section 7 of the Act' (which section isn't even included in Chapter 4 of Part 2).

Yet Vedalankar and Nair have refused my record requests on these legally irrelevant grounds.

Please let me know Vedalankar's and Nair's responses to your official expert advice given them under section 83(3) that their refusals of my record requests on these just-quoted grounds are incompetent and illegal, and whether they're willing to reverse their illegal refusals and now comply with my requests for access. Or whether they've decided to disregard your official expert advice about this, and continue violating my fundamental right to information guaranteed by the Constitution that you're trying under section 83(3) to ensure is respected by them.

5. Since LASA has itself repeatedly conceded its knowledge of my intention to use the documents I'm requesting for multiple extremely serious legal purposes – and it actually advances this stated intention as a reason to refuse my requests – and it furthermore admits that my requests 'incorporate allegations that have far reaching implications on [sic]

the officials of Legal Aid South Africa', my requests can't possibly be 'manifestly frivolous or vexatious' under section 45. Yet manifestly spuriously and dishonestly LASA claims they are.

Please let me know what LASA's response is to your official expert advice about this given under section 83(3), and whether it will be abandoning this dishonest defence or persisting with it in its obstruction of my claims to access to its public records I've specified.

6. LASA's PAIA manual revised by the above-mentioned ignorant LASA lawyer has also been changed to provide that refusals of PAIA requests must be appealed to information officer Vedalankar. And in LASA's answering affidavits in my pending applications to compel its compliance with my PAIA requests, the point is taken again and again that I failed to first appeal to Vedalankar before applying to court. The PAIA manual is wrong, and the point is bad; for as your predecessor Chantal Kisoona correctly stated me on the telephone in late 2010, there's no appeal against the refusal of a PAIA request by a LASA information- or deputy information officer, only a direct approach to court. This is because, as the Commission tried unsuccessfully teaching LASA at the special PAIA training workshop it held for it on 6 November 2012, 'LASA falls under the type "B" category of public bodies in terms of PAIA', being an 'institution ... performing a public function in terms of any legislation' namely the Legal Aid South Africa Act 39 of 2014, against whose refusals of PAIA requests no appeal lies. The heading of Chapter 1 of Part 4 of the Act ('INTERNAL APPEALS AGAINST DECISIONS') namely 'INTERNAL APPEALS AGAINST DECISIONS OF INFORMATION OFFICERS OF CERTAIN PUBLIC BODIES' (my emphasis) points up the distinctions that PAIA makes between different kinds of public bodies in its definition of 'public body' in section 1 – which is to say, they aren't all the same under PAIA. And LASA isn't one of the 'certain public bodies' against whose information officers' refusal of access to requested records an internal appeal must be pursued before an application to court to compel, because section 78(2)(c)(i) of this chapter provides that 'a requester ... aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of "public body" in section 1 ... may, by way of an application, within 180 days, apply to court for appropriate relief in terms of section 82.' LASA is precisely such a public body 'performing a public function in terms of any legislation', namely the Legal Aid South Africa Act 39 of 2014, as section 1 of PAIA defines it.

Please advise me what LASA's response is to your official expert advice given under section 83(3) that its wrong and misleading PAIA manual on first appealing to Vedalankar before applying to court needs correcting without delay, and that the point in its answering affidavits to my several PAIA applications that I should first have appealed the refusal of my

PAIA requests to Vedalankar is wrong, and whether LASA will be abandoning this bad point or persisting with it, and thereby disregarding your official expert advice on the matter.

7. In its answering affidavits in my pending applications to compel its compliance with PAIA, LASA repeatedly disputes that I was entitled to sue out of the magistrate's court in whose area of jurisdiction I'm ordinarily resident (Eshowe, KZN), and ignorantly claims that I should have sued out the Johannesburg Magistrate's Court or High Court.

Please inform me what LASA's response is to your official expert advice under section 83(3) that its contention about this is wrong, and whether it will be abandoning this pathetically wrong contention. Or persisting with it.

Along with this letter, I intend annexing your report to me on these matters to a supplementary affidavit I'll be making and filing in my PAIA applications pending in the Eshowe Magistrate's Court. (So for the court's benefit, please strive to express yourself clearly with a minimum of shifty legal-sounding jargon: I find that honest plain speech creates an impression of competence, confidence, intelligence and integrity.) If LASA's information and deputy information officers disregard your official expert advice given them under section 83(3), and persist with their obvious errors, I'll be seeking costs from them personally de bonis propriis. Tell them.

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. Brink', with a stylized, cursive script.

ADV ANTHONY BRINK

1 Boast Street
Eshowe
KwaZulu-Natal
12 January 2016



Your reference: GP/1516/0395

PAIA Unit Director Kisha Candasamy
South African Human Rights Commission
Braampark Forum 3
33 Hoofd Street Braamfontein
Johannesburg
Per email: kcandasamy@sahrc.org.za

Cc: SAHRC deputy chairperson and PAIA commissioner Dr Pregaluxmi Govender
Per email: pgovender@sahrc.org.za

Dear Ms Candasamy

LASA AND PAIA
MORE SERIOUS IMPLEMENTATION PROBLEMS RECENTLY TURNED UP
A REQUEST FOR REMEDIATION UNDER SECTION 83

Thanks for your email yesterday confirming that the Commission's response to my letter of 29 December 2015 about LASA's interminable refusals and other failures to comply with PAIA is on its way. Before you finalise it, more of the same sort of trouble has just shown up for the Commission's remediation under section 83 please.

In my application to compel LASA information officer Vidhu Vedalankar's compliance with my PAIA requests addressed to Hundermark, Makokoane and her (annexed to my fundamental rights violation complaint), an answering affidavit made by Corporate Services Executive Thembile Mtati discloses several serious ongoing fundamental problems with LASA's understanding and implementation of PAIA.

And unless you move to fix these most basic misconceptions and mistakes under your section 83 powers and responsibilities, other records requesters will inevitably be running into

the same illegal obstruction and violation of their fundamental right to information entrenched by section 32 of the Constitution.

The problems that LASA's head office lawyers have in understanding and applying PAIA, despite the extra special tuition the Commission gave them on 6 November 2012, at which lesson they repeatedly admitted they didn't know what they were doing, are identified in the following numbered sections, including material excerpts from Mtati's affidavit (the whole of which is online at: <http://goo.gl/c0eDON>).

1.

As recently as 12 October 2015, you told Mtati that:

As LASA is a type B public body for the purposes of PAIA, no internal appeal process is available to the Complainant should he be dissatisfied with this decision.

Your very correct advice to him went in one ear and out the other. In his affidavit made two months later on 15 December (emailed to me last week), Mtati said in his paragraph 10 that Vedalankar 'must deal with appeals relating to my refusal to grant access to information' and for this reason 'has not read [my] request'.

(I'll advert at the end to Mtati's seriously mistaken belief that he's a deputy information officer ('DIO') with the power to 'grant [or refuse me] access to information' contained in LASA's records.)

When engaging with LASA, as undertaken to me in paragraph 2 of your letter of 25 November, please correct this grave misconception of its head office lawyers, and include in your report their attitude to the Commission's attempt to correct their misconception on this critical point, now for the third time.

(The Commission's first try was at its PAIA training workshop, where, according to its report afterwards, it taught them that 'LASA falls under the type "B" category of public bodies in terms of PAIA' – meaning there's no internal appeal procedure available at LASA for record requesters to pursue against the illegal refusal of a PAIA request.)

As I've said before, I intend putting your report before court, and it will indicate whether, after being repeated yet again, the Commission's lesson to LASA about this has at last finally sunk in. Or whether its head office lawyers are either indifferent to the Commission's advice given them under section 83 or just incapable of learning.

2.

Mtati reckons in paragraph 126 of his affidavit (my italics added for emphasis):

section 22(5) authorises the Information Officer (including Deputy Information Officer(s)) to *withhold her decision making process* including procuring the information until a demanded access fee is paid.

This very wrong opinion is irreconcilable with the clear language of section 22(5) which reads (my italics added for emphasis):

The information officer of a public body must *withhold a record* until the requester concerned has paid the applicable fees (if any)

– which provision requires the withholding of *a record to which access has been granted*, until ‘the applicable fees (if any)’ have been paid (I deal with this italicised point in my complaint).

Section 22(5) doesn’t permit an information officer to withhold his/her *decision* whether or not to grant access to a record.

To the contrary, section 25 requires him/her to notify his/her decision of a request for access within 30 days, or 60 days if this period is extended under section 26.

(How the Act defines ‘access fees’ is a separate matter, dealt with in my complaint.)

Please correct LASA’s serious misunderstanding that (in contravention of section 25) its information officer and DIOs are entitled to withhold their decision of a PAIA request until their demands for ‘access fees’ have been paid; and include in your report LASA’s attitude to the Commission’s attempt to instruct it and remedy its mistake about this.

3.

Mtati contends in paragraph 24 of his affidavit that I ought to have sued Vedalankar out the court where she has her ‘principal or employment address’. In his affidavit he disputes again and again that I was entitled to sue Vedalankar out of the Eshowe Magistrate’s Court.

The definition of ‘court’ in section 1 of PAIA, and more particularly subsection (b)(ii)(cc), vests ‘a Magistrate’s Court ... within whose area of jurisdiction ... the requester ... ordinarily resides’ with jurisdiction to try an application to compel compliance with an unlawfully refused PAIA request. (As I stated in paragraph 1 of my founding affidavit, I’m ordinarily resident in Eshowe so the Eshowe Magistrate’s Court indeed has jurisdiction over my claim.)

Please correct Mtati's basic mistake that when suing to compel Vedalankar's compliance with LASA, records requesters like me have to sue her where she works, which is to say in Johannesburg, and report his reaction to your special remedial education given him about forum jurisdiction under PAIA.

4.

Challenged in my founding affidavit to produce his, Hundermark's and Makokoane's written delegations by information officer Vedalankar as DIOs – such delegations 'must be in writing' per section 17(6)(a) – Mtati fails to do so; instead he splutters in his paragraph 8 that he's 'without question' a LASA DIO.

Evidently he's not: he holds no written delegation to show us; and he doesn't even allege that he, Hundermark and Makokoane hold written delegations.

So notwithstanding the false claim made in LASA's current PAIA manual (which Mtati says he revised, to include and declare himself, Hundermark and Makoane as DIOs), he had no power to handle and refuse my PAIA requests addressed to Hundermark, Makokoane and Vedalankar.

And for the same reason Hundermark and Makokoane had no power to deal with my PAIA requests addressed to them, such as by reading them, by reading background documents, being briefed about my requests, and demanding fees from me for their time spent doing this.

So for that reason alone – the three of them aren't DIOs – in dealing with my PAIA requests, variously in refusing them, in granting some of them, and in demanding access fees from me, Mtati, Hundermark and Makokoane all acted ultra vires and unlawfully.

(In his affidavit Mtati foolishly denies that he decided my requests on 26 May 2015, right after:

- raising sections 7 and 45 against me, by clear allusion to the sections in dealing with my Hundermark and Makokoane requests; and,
- allowing some requests addressed to Vedalankar and refusing others.

But you needn't concern yourself with this, because it's disposed of in my replying affidavit.)

Under section 83, please advise Vedalankar to either deputise Mtati, Hundermark and Makokoane as DIOs in writing, in compliance with section 17(6)(a), or to direct that their names be struck from LASA's PAIA current manual, which falsely claims they're DIOs; and include in your report her response to your expert official advice about this. (Watch out for fraudulent backdating; I've discovered these people are capable of absolutely anything.)

Which report by the Commission, as I said before, will be filed at court for the information of the PAIA-specialist magistrate specially appointed to hear my applications on 11 February, a month from now.

I look forward then to reading LASA's responses to your various advices given its top employees under section 83 recorded in it.

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. Brink', written in a cursive style.

ADV ANTHONY BRINK
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083 779 41 74

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MEMORANDUM

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**TO: ATTORNEYS CHANTAL KISOON AND MOIPONE
BOKABA, PAIA UNIT, THE SOUTH AFRICAN HUMAN
RIGHTS COMMISSION**

**IN RE: ADV ANTHONY BRINK AND LEGAL AID SOUTH
AFRICA**

**A CRITICAL ANALYSIS DEMONSTRATING THE LEGAL
IRRELEVANCE OR INSUFFICIENCY OF THE VARIOUS
CHANGING REASONS GIVEN BY LEGAL AID SOUTH
AFRICA INFORMATION OFFICER AND CEO VIDHU
VEDALANKAR FOR TWICE REFUSING ACCESS TO 69
SPECIFIED RECORDS DULY REQUESTED UNDER
SECTION 11 OF THE PROMOTION OF ACCESS TO
INFORMATION ACT 2 OF 2000**

On 30 August 2010 a request for access to 51 specified records was submitted to Legal Aid South Africa's information officer, CEO Vidhu Vedalankar, by the records requester Adv Anthony Brink under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act').

LASA is a 'public body' in terms of the 'Definitions' in section 1 of the Act, in that it's an 'institution ... performing a public function in terms of any legislation', namely the Legal Aid Act 22 of 1969, and its CEO Vedalankar is its information officer ex officio in terms of the 'Definitions': "information officer" ... means the chief executive officer ... in the case of any other public body' such as LASA.

Section 11(1) of the Act stipulates that ‘A requester must be given access to a record of a public body if – (a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and (b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.’

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The request conformed to the procedural requirements of PAIA, in that it comprised a Form A application with an annexure listing the records sought. LASA had not at that stage published a mandatory PAIA manual under section 14 of the Act indicating its request fee and access charges, so the records requester asked what they were in his covering letter and tendered to pay them (no response received).

The information officer responded by ignoring the records request. Only with the intervention of the PAIA Unit of the South African Human Rights Commission (‘SAHRC’) did LASA undertake to deal with the request, as the Act required.

On 18 October 2010 the information officer refused the records request in its entirety.

Numbered paragraph 1 of her letter commenced by alleging the law applicable to the decision of such requests:

The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, KwaZulu-Natal and Another (D38/08) [2008] ZALC 18*, is as follows:

- a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

(There is no paragraph ‘b’) and the phrase ‘*is as follows*’ is italicized in the original.)

The use of indented block paragraphs is a universal writing convention to distinguish quoted text from the writer's own prose. One understands, therefore, that the indented block quote is an excerpt from the judgment. This impression is further emphasized by the use of distinguishing italics in the indented paragraph. Indeed, the indented, italicized block paragraph is preceded by the explicit claim that the 'test to be applied ... as laid down by the court ... is as follows:'

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In truth, no such 'test to be applied' was 'laid down by the court' in the National Teachers Union case, and the information officer's statement in this regard was both false and deceptive. To the contrary, Pillay J pertinently noted in paragraph 32 of his judgment: 'Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the exercise or protection of any rights.' (The judgment is online at <http://j.mp/dxh3sZ>. All shortened internet URLs in this memorandum will henceforth be given simply as 'j.mp [.....]'.)

The information officer thereupon proceeded to apply this false test to the records request. Paragraph 2 commenced: 'In considering your request for information we were guided by this principle, together with Section 32 of the Constitution and the relevant provisions of the PAIA.'

Citing 'Section 32 of the Constitution' and what she considered to be 'the relevant provisions of the PAIA', the information officer then concluded by refusing the records request on wholly unrelated grounds, namely '(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above'.

Of course, this reason given had nothing to do with her bogus 'test' or 'principle' that the records requester would only be entitled to the records requested if 'the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure'.

And nowhere in PAIA does one find entitlement to records of a public body excluded by reason of being ‘beyond [the requestor’s] personal circumstances’.



The so-called ‘principle’ by which ‘we were guided’ bobs up at the very end of the letter refusing the records request, after a lengthy and irrelevant argumentative excursus into the underlying dispute. Final paragraph 8 notes that the request for records is ‘declined’ for the further reason given that ‘it is not relevant to you exercising any right you may have in law’ – only it’s a ‘test’, a ‘principle’ that has no bearing on a request for records from a public body, as PAIA makes clear, and the court in the National Teachers Union case plainly stated.

And as the Supreme Court of Appeal underscored in *Mittalsteel SA Ltd v Hlatshwayo* [2006] SCA 94 (RSA) (j.mp/bKUmCW):

The issue before us is ... whether the appellant at the relevant time and in creating the requested documents was a “public body” as that term is to be understood in PAIA. If it was then the respondent is entitled to the documents requested by it in terms of s 11 of PAIA. The section is headed “Right of access to records of public bodies”. Subsection 11(1) provides that a “requester *must* be given access to a record of a public body if” (emphasis added [in the judgment]) (a) the requester complies with all the procedural requirements of the Act and (b) access to the record is not refused in terms of any ground set out in the provisions of PAIA dealing with the records of public bodies. None of these provisions is applicable to the respondent’s request, and compliance with procedural requirements is not in issue.

As to the first reason stated for not complying with the Act – ‘(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above’ – a glance at the list of records sought shows that the records requester wasn’t seeking ‘information on third parties’. A relatively small part of the request identified records of communications with certain third parties or sworn confirmation, as section 23 of PAIA requires, that

such records don't exist, showing that contrary to what had been alleged or suggested, in truth such communications never took place.

To protect their privacy – if privacy really was a genuine consideration – records of communications to and from third parties have only to 'be edited by blanking out the name of any third party whose privacy would otherwise be infringed by disclosure', as Brand JA put it in *Unitas Hospital v Van Wyk* [2006] SCA 32 (RSA). (j.mp/cHDY5D)

However, the fact that privacy issues were not a genuine concern, but rather a false covering pretext for not complying with the Act, is revealed by the fact that the information officer provided the records requester with all the names of the third parties concerned in a record she later put up for her own purposes in January 2011.

Since the information officer's provision of the records requested could not conceivably 'involve the unreasonable disclosure of personal information about a third party', as Section 34 (1) of PAIA puts it, the provisos in Section 46 cited and discussed in paragraph 3 of her letter are perfectly irrelevant.

But even if it were relevant, Section 46 would anyway require access to the records for the reasons that '(a) the disclosure of the record would reveal evidence of ... a substantial contravention, or failure to comply with, the law ... and (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question'.

Though in terms of section 11(3) of the Act, the intention or premise animating a request for the records of a public body is strictly immaterial to the decision of the request, the then available and now conclusive new evidence to hand supports the case that the disclosure of the records would indeed reveal further documentary 'evidence of ... a substantial contravention of, or failure to comply with, the law' – namely the Constitution and the Acts enforcing it, prohibiting discrimination on unlawful grounds in the democratic era, including by reason of 'conscience and belief' and because, motivated by these, the records requester has 'campaign[ed] for ... a cause' and participated in the public policy debates of the day, as expressly 'encouraged' by Section 195(1)(e)

in Chapter 10 of the Constitution. And by reason of race, unless justified by the provisions of the Employment Equity Act 55 of 1998 and the reported cases elucidating its practical application. Also the Acts and regulations governing the operation and financial management of public bodies.



As for ‘the public interest’ – proviso (b) of Section 46 – the public have a clear interest in the disclosure of the records in the case, because they have a fundamental interest in having the certain assurance that they will not be subject to illegal discrimination of any form when applying for employment with a public entity responsible through Parliament to the people of South Africa. It’s clearly in the public interest that any breach of constitutional rights by publicly accountable institutions, especially those within the sphere of justice and constitutional development, be exposed. The hard won political gains of justice and human rights for all citizens of our country, including liberty of opinion and expression, are jeopardized if a major public entity whose very purpose is to secure justice for those citizens can subvert and undermine those principles of justice and human rights without being held accountable.

In sum, the information officer’s reasons for refusing the request are idle in law. Having duly complied ‘with all the procedural requirements of the Act’ (as the Mittalsteel judgment put it), the records requester was and remains accordingly entitled to the records requested.

On 15 December 2010 the records requester filed a second records request with LASA, and prompted by another letter from the SAHRC the information officer responded, with allowance for Christmas break, on 28 January 2011.

Although the first paragraph of her letter referred to ‘your letter of 15 December 2010 in which you request access to information in Legal Aid South Africa’s possession in terms of the Promotion of Access to Information Act’, the information officer entirely failed to deal with this second records request. Instead she revisited the records requester’s first records request in August which she’d already refused in October.

Her reason for neglecting to deal specifically with the second records request in December appears from paragraph 10 of her January letter, in

which she claims that the December records request ‘repeated’ the August 2010 one. This is incorrect, as a cursory comparison of the two Form A annexures in the August and December requests for records reveals.



There is some partial overlap between the two requests in August and December to the extent that NOE Nair’s allegations in his 3 August 2010 letter and the information officer’s allegations in her 18 October 2010 letter qua CEO have a similar thrust – except that where Nair was vague the information officer qua CEO is specific; and the records request in December was plainly directed at testing the veracity of her specific allegations.

Together with her January letter, the information officer put up twelve records, four of which the records requester already had: a third copy of a letter sent him in August, a copy of which the information officer had already sent him in October; part of the Approval Framework she had also already sent him in October; an email exchange with the records requester and the Human Resources Executive in April; and two documents the records requester had himself generated and sent to the information officer: a scanned copy of the newspaper advertisement for the Pietermaritzburg Senior Litigator post and a transcription of an oral presentation the information officer made to the Portfolio Committee on Justice and Constitutional Development in October 2010.

The information officer’s purpose in providing these records was not to comply with the records requests; it was to support her defensive allegations concerning the core dispute made in her October letter and repeated in her January letter. Concerning each of the twelve records the information officer noted in her ‘Aim of the Document’ column: ‘To demonstrate ...’ her contentions.

Nonetheless, four of the records provided by the information officer happened more or less to meet some of the requests for records in the August and December lists. Apart from these few records requests coincidentally met to the records requester’s satisfaction in this manner, the rest of the unanswered December request is deemed refused by section 27 of the Act.

The net result of the information officer's second go at the August request was the same. Again she refused it, this time on a variety of different grounds – tacitly abandoning her first set of spurious reasons for refusing it. And as just mentioned, she failed to specifically deal with the December records request.

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This memorandum will demonstrate that like her October reasons, the information officer's new reasons given in January are equally vacant and indefensible under PAIA, and that the records that she has unlawfully refused are compellable by way of a High Court mandamus.

In the light of the information officer's allegations qua CEO in her October and January letters, and the evidence of the hard documentary information annexed to her January letter contradicting these allegations, the facts concerning the underlying cause of action in this matter have at last become clear, to the extent that it is now plain on the evidence of the available records that the records requester's appointment was unlawfully aborted off the record and behind the scenes and that a false justification was advanced to cover the true reason for it. In the interests of expedition, therefore, a number of records refused by the information officer, though clearly compellable under PAIA, will not be pursued.

In his letter covering his August request the records requester pointed up the information officer's obligations under section 23 of the Act to notify the records requester on affidavit where specified records requested do not exist. Notwithstanding this advice on the operation of the Act, the information officer failed to comply. A draft affidavit concerning non-existent records is accordingly annexed hereto for the information officer to sign under oath or affirmation, as section 23 requires.

In terms of section 74(2)(b) of the Act, no internal appeal lies against the refusal of a request for access to the records of a public body such as LASA. Under section 83(3)(c) of the Act, however, 'The Human Rights Commission may ... if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act'.

The records requester seeks the assistance of the SAHRC's PAIA Unit in (a) impressing on the information officer the extraordinary

seriousness of her violation of the records requester's constitutionally guaranteed right to public documentary information, and (b) urging the information officer's compliance with the Act, to avert (i) mandatory interdict proceedings in the South Gauteng High Court (Johannesburg) for an order compelling the information officer's compliance with the Act (draft papers are ready) and (b) being reported under section 84 of the Act as a PAIA delinquent in the SAHRC's next annual report to Parliament. Both events set to bring LASA into grave disrepute.

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The judgment in *The President of RSA v M & G Media* (570/10) [2010] ZASCA 177 delivered recently by the Supreme Court of Appeal points up the enormous gravity and implications of the information officer's apparent contempt for what are rightly described as the 'founding values ... of accountability, responsiveness and openness' in our new constitutional democracy (j.mp/fgVErS):

[1] Open and transparent government and a free flow of information concerning the affairs of the state is the lifeblood of democracy. That is why the Bill of Rights guarantees to everyone the right of access to 'any information that is held by the state',¹ of which Ngcobo J said the following in *Brümmer v Minister for Social Development*:² 'The importance of this right ... in a country which is founded on values of accountability, responsiveness and openness, cannot be gainsaid. To give effect to these founding values, the public must have access to information held by the State. Indeed one of the basic values and principles governing public administration is transparency. And the Constitution demands that transparency 'must be fostered by providing the public with timely, accessible and accurate information.'

Paragraphs 9–11 of the judgment emphasize this:

[9] The Constitution – and consequently the legislation that it has spawned – signals a decided rejection of past odious laws, policies and practices. In *Shabalala v Attorney-General of Transvaal*⁷ Mahomed DP expressed that trenchantly in relation to the Interim Constitution (it applies as much to the present Constitution) when he called it a 'radical and decisive break from that part of the past which is unacceptable'. He went on to say: 'There is a stark and

dramatic contrast between the past in which South Africans were trapped and the future on which the Constitution is premised. The past was pervaded by inequality, authoritarianism and repression. The aspiration of the future is based on what is “justifiable in an open and democratic society based on freedom and equality”. It is premised on a legal culture of accountability and transparency. The relevant provisions of the Constitution must therefore be interpreted so as to give effect to the purposes sought to be advanced by their enactment’.

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[10] Etienne Mureinik⁸ captured the essence of the Bill of Rights⁹ when he described it as a ‘bridge from a culture of authority ... to a culture of justification’ – what he called ‘a culture in which every exercise of power is expected to be justified.’ The Bill of Rights, he continued¹⁰ ‘is a compendium of values empowering citizens affected by laws or decisions to demand justification. If it is ineffective in requiring governors to account to people governed by their decisions, the remainder of the Constitution is unlikely to be very successful. The point of the Bill of Rights is consequently to spearhead the effort to bring about a culture of justification. That idea offers both a standard against which to evaluate [the Bill of Rights] and a resource with which to resolve the interpretive questions that it raises’.

[11] The ‘culture of justification’ referred to by Mureinik permeates the Act. No more than a request for information that is held by a public body obliges the information officer to produce it unless he or she can justify withholding it. And if he or she refuses a request then ‘adequate reasons for the refusal’ must be stated (with a reference to the provisions of the Act that are relied upon to refuse the request).¹¹ And in court proceedings under s 78(2) proof that a record has been requested and declined is enough to oblige the public body to justify its refusal.¹²

Footnotes:

1. Section 32(1)(a): ‘Everyone has the right of access to any information that is held by the state...’.

Section 31(1)(b) confers a right of access to information held by other persons in certain circumstances but that is not relevant for present purposes.



2. 2009 (6) SA 323 (CC) para 62.
7. 1996 (1) SA 725 (CC) para 26.
8. Etienne Mureinik 'A Bridge to Where? Introducing the Interim Bill of Rights' 1994 (10) SALJ 31.
9. Once more with reference to the Interim Constitution.
10. Page 32.
11. Section 25(3)(a).
12. Section 81(3)(a): 'The burden of establishing that...the refusal of a request for access ... complies with the provisions of this Act rests on the party claiming that it so applies'.

A critical analysis and refutation of the information officer's new reasons given in January for refusing the August records request follows below, with an identification of the unanswered December requests for records still required. The analysis is divided into twenty parts.

FIRST RECORDS REQUEST, AUGUST 2010

PART 1

Record:

A: Relevant excerpts from the minutes of meetings of the Management Board [Executive Committee] of Legal Aid South Africa, and its resolutions, concerning:

2. – the procedural mechanism adopted for the recruitment of suitably qualified and experienced Senior Litigators, and specifically the selection, confirmation, and appointment process.

Response:

11. As to your requests 1 and 2: I wish to refer you to the Legal Aid SA's Policy Document read with the Approval Framework.

Critical analysis and comment:

Paragraph 11 is no adequate response to request A2. Neither the 'Approval Framework' nor the 'Recruitment' ('Policy Document') protocol (the part of it provided) say anything about any confirmation process following the regional professional selection board's selection

and recommendation of a candidate for appointment. The part (it seems) of the ‘Recruitment’ protocol supplied makes no provision for any second interview. If the information officer can’t produce any resolution supporting her allegations qua CEO in paragraphs 6.2–4 of her October letter, section 23 of the Act requires her to confirm on affidavit that no such record exists.

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PART 2

Records:

A: Relevant excerpts from the minutes of meetings of the Management Board [Executive Committee] of Legal Aid South Africa, and its resolutions, concerning:

9. – the two issues: ‘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’ (– per Clark in her email to Brink on 30 April 2010, quoted in paragraph 28 of Brink’s letter to Vedalankar).

Response:

16. As to requests 8 and 9: I refuse to grant you access to this information on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA’s Policy on Recruitment Checks.)

Critical analysis and comment:

Paragraph 16 is no proper answer to request A9. It appears from the information officer’s response here that enquiries were made and information was gathered purportedly in terms of the ‘Recruitment Checks’ provisions of the ‘RECRUITMENT’ protocol (V2).

In her letter of 18 October 2010, the information officer qua CEO alleged that the Pietermaritzburg Senior Litigator post and two others had been frozen for budgetary reasons, and stated, ‘Should we decide to unfreeze these positions in the future, the positions will be duly

advertised and you will be at liberty to submit your application for any of the positions.’ Which means – in her opinion – the records requester’s successful application for the post is now dead and buried, and not merely hibernating until better days.

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This absolutely excludes the possibility envisaged by section 44(1)(b) of the Act that the ‘the disclosure of the record could possibly be expected to frustrate the deliberative process’ – namely the records ‘containing personal information about’ the records requester to which he’s entitled to access in terms of the express provisions of section 11(2) of the Act: ‘A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester.’

In short, the records requester is entitled to copies of all and any records containing personal information and opinions about him that LASA has gathered.

If no minutes exist of any discussion of what applicants would be interviewed for a second time, and whether or not such second interviews would be held, the information officer is required by section 23 of the Act to state on affidavit that there is no record of any discussion ever having taken place of these two issues that Clark alleged to have arisen.

PART 3

Record:

A: Relevant excerpts from the minutes of meetings of the Management Board [Executive Committee] of Legal Aid South Africa, and its resolutions, concerning:

10 – the particular ‘pace we have decided ... to complete our process’ to recruit and appoint a Senior Litigator for Pietermaritzburg – which remaining ‘process’ entailed arranging an interview of the selected candidate by Judge Mlambo (– per Clark in her email to Brink on 30 April 2010, nearly six months after the professional selection board had interviewed the shortlisted candidates and made its selection, quoted in paragraph 33 of Brink’s letter to Vedalankar; and per KwaZulu-Natal Regional HR Officer Baboo Brijlal’s (‘Brijlal’)

telephonic advice to Brink, quoted in paragraph 21 of Brink's letter to Vedalankar).

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Response:

17. As to request 10: No time limit was set to finalise the recruitment process.

Critical analysis and comment:

Paragraph 17: Ad request A10: If contrary to what Clark claimed to the records requester – six months after his successful interview and no feedback from LASA whatsoever – no decision on the record was taken as to the 'pace we have decided ... to complete our process' to appoint him Senior Litigator at Pietermaritzburg, after his selection and recommendation, section 23 of the Act requires the information officer to confirm this on affidavit.

PART 4

Records:

A: Relevant excerpts from the minutes of meetings of the Management Board [Executive Committee] of Legal Aid South Africa, and its resolutions, concerning:

11. – the decision to 'put on hold ... the recruitment process to finalize the appointments for all vacant Senior Litigator posts' (– per Nair in his letter to Brink).
12. – the decision by the Management Board thereafter that 'we will not be proceeding with the filling of any of these posts due to various reasons' – and the excerpt of the minutes relating to this resolution will enumerate and detail all of these 'various reasons' for aborting the recruitment process in respect of the Pietermaritzburg Senior Litigator position, and of the other Senior Litigator posts referred to, after the Pietermaritzburg Senior Litigator post had promptly been nationally re-advertised following Judge Mlambo's disapproval of the first applicant selected; after shortlisted candidates had been interviewed; and after the professional selection board had assessed, selected and recommended a suitably qualified and experienced

senior legal professional for the Pietermaritzburg Senior litigator post (– per Nair in his letter to Brink).

K

Response:

19. For your requests 11; 12: 13 (PART A); 13 (PART B); 14 (PART A); 14 (PART B); 15 (PART B): please refer to the correspondence on costs cutting measures, read with the Legal Aid SA's Approval Framework.

Critical analysis and comment:

It is no sufficient answer to requests A11 and A12 to 'refer to the correspondence on costs-cutting measures, read with the Legal Aid SA's Approval Framework'. These records do not reflect either of the alleged two decisions specified in requests A11 and A12. The records to which the information officer refers don't even mention Senior Litigators, let alone any decision-making to first 'put on hold' their recruitment and then 'freeze' the vacant posts for which they were selected and recommended. If no records of these two alleged decisions exist, section 23 of the Act requires the information officer to confirm this on affidavit.

PART 5

Record:

A: Relevant excerpts from the minutes of meetings of the Management Board [Executive Committee] of Legal Aid South Africa, and its resolutions, concerning:

16 – any other matters discussed by the Management Board concerning Brink and/or the Pietermaritzburg Senior Litigator post, after the re-advertisement of the post in August 2009.

Response

21. As for your request 16: I am not aware of any of the Executives discussing you and/or your candidacy for the above-mentioned post save the edited and blacked out recommendation for the next

round of interviews. This is attached hereto as part of the bundle in the table above.

22. As to the regional panel members' individual assessment notes; scores; deliberations; submissions and assessment reports on you, I, having considered your request, refuse to grant you access thereto as these documents and information relating thereto were compiled from the Legal Aid SA's panel's deliberative process of decision-making in the assessment and interview of candidates, including you, for vacant posts in the Legal Aid SA. I am entitled to refuse to grant you this information in terms of section 44(1) and (2) of PAIA.

Critical analysis and comment:

Ad paragraph 21: If no records exist of any discussion of the records requester or of the Pietermaritzburg Senior Litigator post by members of the management executive after August 2009, section 23 of the Act requires the information officer to confirm this on affidavit.

Ad paragraph 22: Not having been asked for access to 'the regional panel members' individual assessment notes; scores; deliberations; submissions; and assessment reports', the information officer's announcement of her decision to retain these records is irrelevant. (Had they been sought, the information officer would have been required to produce them under section 11(3) of the Act.)

PART 6

B: Other records

Records:

1. The minutes of the KwaZulu-Natal regional professional selection board's interview with ... Brink on 12 November 2009.

28. The instruction issued to Mdaka to send Brink a 'regret letter'.

32. The Management Board's, alternatively Nair's, alternatively, Mdaka's, alternatively any other officer's notifications of the Principals of the Pietermaritzburg and Durban Justice Centres (and of any other Justice

Centres affected) that the Management Board, alternatively Nair, would ‘not be proceeding with the filling any of these posts’ for Senior Litigators which had been nationally advertised for a second time, and for which suitably qualified and experienced senior legal professionals had been shortlisted, interviewed, assessed and selected by the KwaZulu-Natal (and any other) regional professional selection board(s) (–per Nair’s letter to Brink).

K

Response:

23. I have decided, notwithstanding the above position, and after I have exercised my discretion, to grant you access to an edited/blacked out version of the final recommendation of the panel to show you what its decision was.

24. As for your requests 1; 2; 28; 29; 30; 31; and 32: Except for annexures “V7” and “V9” (attached), I have exercised my discretion against granting you access thereto. I refuse to grant you access thereto in terms of section 44(1) and (2) of PAIA. My reason therefore is that this information was generated and compiled as a result of the Legal Aid SA’s panel’s deliberative process of decision-making in the assessment and interview of candidates, including you, for the vacant posts in the Legal Aid SA.

Critical analysis and comment:

Ad paragraph 23: The ‘final recommendation of the panel’ (V7) in its edited form sufficiently meets requests B1 and B2 for the records requester’s purposes. (Having supplied the record, the question becomes academic, but the Act affords the information officer no ‘discretion’ to withhold such personal information about the records requester following the conclusion of the selection process.)

Ad paragraph 24: Request B28 for “The instruction issued to Mdaka to send Brink a “regret letter”” is not satisfied by providing the records requester with a third copy of the letter itself (V9).

The request for a copy of the simple instruction is manifestly not hit by ‘section 44(1) and (2) of PAIA’, having nothing to do with ‘Legal Aid SA’s panel’s deliberative process of decision-making in the assessment

and interview of candidates, including you, for the vacant posts in the Legal Aid SA' as the information officer wrongly alleges.

For the same reason, request B32 for copies of the written 'notifications of the Principals of the Pietermaritzburg and Durban Justice Centres (and of any other Justice Centres affected) that the Management Board, alternatively Nair, would "not be proceeding with the filling any of these posts" for Senior Litigators' is plainly not hit by 'section 44(1) and (2) of PAIA' either.

PART 7

Records:

3. All written communications, including email, between Brijlal and Nair, and/or other members of the Management Board, concerning the Durban and Pietermaritzburg Senior Litigator posts, subsequent to the re-advertisement of these posts in August 2009.
4. All written communications, including email, between members of the KwaZulu-Natal regional professional selection board and Nair, and/or other members of the Management Board, concerning the Durban and Pietermaritzburg Senior Litigator posts, subsequent to the re-advertisement of the posts in August 2009.

Responses:

18. As to requests 3 and 4 (both in Part A and B of the request document): there are no such communications that I am aware of. I am willing to provide you with an email from Ms Clark dated 30 April 2010 which you already have in your possession and which you have referred to in your letter to Mlambo JP on or about 30 November 2010. This was blind copied to the ROE of KZN Mr Mdaka and Brijal.

25. As to requests 3: and 4: Please refer to above. [paragraph 24 quoted in Part 6 above]

Critical analysis and comment:

In her paragraph 18, the information officer incorrectly suggests that requests A3 and A4 are the same as B3 and B4. In fact they are quite different – the former are clearly not for records of ‘communications’. If, other than Clark’s email to the records requester blind-copied to Mdaka and Brijlal, no records exist of ‘written communications’ between the parties described over the period defined in these requests, the information officer is required to confirm this on affidavit under section 23 of the Act.

K

PART 8

Record:

13. All records, including but not limited to email, reports and notes, pertaining to the decision to ‘put on hold ... the recruitment process to finalize the appointments for all vacant Senior Litigator posts’ (– per Nair’s letter to Brink).
14. All records, including but not limited to email, reports and notes, pertaining to the decision to finally abort the ‘recruitment process’ and ‘not be proceeding with the filling of any of these posts’ (– per Nair’s letter to Brink).
15. All records, including but not limited to email, reports and notes, canvassing the ‘various reasons’ that the alleged decision to abort the ‘recruitment process’ was allegedly ‘due to’ (– per Nair’s letter to Brink).

Response:

19. For your requests 11; 12: 13 (PART A); 13 (PART B); 14 (PART A); 14 (PART B); 15 (PART B): please refer to the correspondence on costs cutting measures, read with the Legal Aid SA’s Approval Framework.

29. As to requests 13, 14 and 15: The decision to create or abolish a post is derived from the Approval Framework which is annexed herewith. All communication relating thereto is also attached. If for any reason, the e-mail or any form of communication is not

attached, it would have been verbal, the authority of which derives from the aforementioned Approval Framework.

K

Critical analysis and comment:

Ad paragraph 29: Section 23 of the Act requires the information officer to confirm on affidavit that no records exist to support Nair’s allegations quoted in requests B13, B14, and B15.

PART 9

Record:

16. All and any email or other written correspondence with third parties concerning Brink and/or his selection by the KwaZulu-Natal regional professional selection board for appointment to the Pietermaritzburg Senior Litigator post, including but not limited to email or other correspondence with members of the following email group to which Vedalankar and Nair belong (– see <http://j.mp/9Iipxr>):



26. Excluding the ‘regret letter’ to Brink from KwaZulu-Natal Regional Operations Executive Vela Mdaka (‘Mdaka’) on 23 August 2010 and emailed to Brink by Brijlal by way of an email attachment on the same day, the ‘regret letters’ sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009 – following the decision made not to ‘be

proceeding with the filling of any of these posts’, i.e. ‘all vacant Senior Litigator posts’ (– per Nair’s letter to Brink).

K

Response:

30. As to your requests 16; 19; 20; 21; 22; 23; 24; 26; and 27: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.

31. I further refuse to grant you access on the same information and documents on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA’s Policy on Recruitment Checks). I also refuse to provide access to this record as it relates to research or information gathering by third parties on behalf of Legal Aid SA as contemplated in section 43(1) and (2). It seems apparent to me that you already have document(s) that you seek in this regard.

Critical analysis and comment:

Section 43(1) of the Act doesn’t provide that ‘confidential correspondence with third parties’ (the information officer’s homebrewed faux legal phrase) is excluded from access by a records requester. The section provides (in the heading) for the ‘Mandatory protection of research information of third party and protection of research information of public body’.

The information officer hasn’t made a case that any ‘research information’ is contained in the correspondence records identified in request B16 – nor, even if it did contain ‘research information’, that ‘serious disadvantage’ would ensue from disclosing it.

Section 43(1) obviously has no application to request B16, and the information officer is not justified in denying the records requester access to the records of LASA’s ‘correspondence with third parties’ about him and the post he was duly selected and recommended for.

Section 11(2) of the Act explicitly entitles the records requester to access records of ‘correspondence with third parties concerning Brink and/or his selection by the KwaZulu-Natal regional professional selection board for appointment to the Pietermaritzburg Senior Litigator post’.

Request B26 manifestly has nothing whatsoever to do with ‘research information of third party [or] public body’ nor with ‘Operations of public bodies’. It is a request for copies of the ‘regret letters’ allegedly ‘sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009’. Copies of these letters are required, and any confidential information (addresses, telephone numbers) may be blacked out. If no such letters were sent, and no copies of them exist in LASA’s records accordingly, the information officer is required by section 23 of the Act to confirm this on affidavit.

Section 43(1) and (2) of the Act (‘Mandatory protection of research information of third party, and protection of research information of public body’) and/or section 44(1) and (2) (‘Operations of public bodies’) do not preclude access to these records.

In stating her impression in her paragraph 31 that the records requester ‘already ha[s]’ the records mentioned in her paragraph 30, the information officer is mistaken.

PART 10

Record:

17. Vedalankar’s ‘referr[al]’ to Nair of Brink’s letter to her, ‘to provide a response’ to it on her behalf (– per Nair’s letter to Brink).
18. Any further correspondence between Vedalankar and Nair by email or otherwise concerning Brink, and/or his letter to Vedalankar.

Response:

32. As for your requests 17 and 18: There is no such discussion other than the documents provided to you.

Critical analysis and comment:

None of the ‘documents provided’ by the information officer correspond with these requests. Section 23 of the Act requires the information officer to confirm on affidavit that the records identified in requests B17 and B18 don’t exist.

K

Part 11

Record:

25. Nair’s ‘request’ issued to the ‘HR department’ in accordance with his stated intention to ‘request our HR department to send out regret letters to all persons who were interviewed during the first round of interviews’ on 12 November 2009 (– per Nair’s letter to Brink).

Response:

33. As for your request 25: As this information would relate to the internal deliberations; opinions and views intended for Legal Aid SA to take certain decisions as contemplated in section 44(1) and (2), I have exercised my discretion against granting you access thereto. I therefore refuse to grant you access to this information or document.

Critical analysis and comment:

A simple instruction of the sort identified in request B25 is manifestly not hit by section 44(1) and (2), because it does not reflect ‘deliberations; opinions and views intended for Legal Aid SA to take certain decisions’. The information officer has no ‘discretion’ under the Act to refuse this record and the records requester is entitled to it. If this record doesn’t exist, section 23 of the Act requires the information officer to confirm this on affidavit.

PART 12

Record:

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).

K

Response:

As for your requests 33; and 34: Your attention is referred to the costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc. This was part of the Executive’s mandate around that time. See especially the email and memo from COO to all Executives: ROES; JCEs and ‘All Staff’ herein above wherein Cabinet also propagated the same mechanisms as Legal Aid SA.

Critical analysis and comment:

None of the ‘costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc’ makes any mention of any decision to ‘not be proceeding with the filling of any of these posts’, i.e. ‘all vacant Senior Litigator posts’. The ‘correspondence ... referred to’ is accordingly irrelevant. If no records exist concerning the alleged decision not to ‘be proceeding with the filling of any of these posts’, i.e. ‘all vacant Senior Litigator posts’, section 23 of the Act requires the information officer to confirm it on affidavit.

PART 13

Record:

35. All and any other electronic records, including internal email, in which the word ‘Brink’ features, where it clearly or possibly refers to the records requester Adv Anthony Brink (– conduct a search on the word ‘Brink’ of the computer server at LASA’s national office on which all computer files, documents, and email are archived).

Response:

35. As for request 35: To the best of knowledge there are no other electronic records relating to you.

Critical analysis and comment:

Section 23 of the Act requires the information officer to confirm her allegation on affidavit, noting the steps she's taken to enquire and make sure.

K

SECOND PAIA RECORDS REQUEST, 15 DECEMBER 2010:

Note: All text quoted below originates from paragraphs 6.6 and 6.7 of the CEO and information officer's letter to the records requester on 18 October 2010.

PART 14

Records:

1. Records/relevant excerpt(s) from records reflecting the quantum of LASA's 'anticipated funding for the 2010/11 financial year'.
2. Records/relevant excerpt(s) from records reflecting the quantum of the lower 'funding' that 'materialise[d]'.
3. Records/relevant excerpt(s) from records reflecting the quantum of the 'funding ... shortfall ... cutting our baseline funding by a significant amount'.

Response:

None.

Comment:

Even if unintentionally, the records V3 and V4 provided by the information officer satisfactorily meet requests 2.1–3.

PART 15

Record:

4. Minutes reflecting NOE Nair's 'motivat[ion of] a change in the organizational structure', namely 'a reduction to our staff

establishment in the 2010/11 financial year in order to meet this shortfall', alternatively the mere 'freezing of positions' without an actual 'reduction to our staff establishment to meet this shortfall'.

K

Response:

None.

Comment:

It's plain from paragraph 29 of the information officer's letter that no record exists to support her clear implication qua CEO in her October letter that Nair 'motivate[d] a change in the organizational structure' apropos of Senior Litigator posts, namely 'a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall' by abolishing vacant Senior Litigator posts, alternatively by the 'freezing of positions'.

The only record that exists of a 'change in the organizational structure' that Nair 'motivate[d]' in 2010 was his proposal on 15 July that 56 vacant junior criminal defence practitioner posts be abolished, with more if necessary, and possibly some paralegal and administrative posts too, in 'reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall'.

The information officer's statements quoted in record request 2.4 were made in the context of her allegations that Senior Litigator posts had been frozen to meet LASA's budgetary 'shortfall' (paragraphs 6.6–7 of her October letter).

Section 23 requires the information officer to confirm on affidavit that no record exists of Nair having 'motivate[d]' for 'a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall' by abolishing vacant Senior Litigator posts, alternatively by the 'freezing of [such] positions'.

PART 16

Record:

5. Minutes reflecting NOE Nair's consultation with HRE Clark and noting her views, in terms of section 8.1.2 (b) of the Approval Framework, concerning his intended 'decision that all vacant senior litigator posts that were vacant would be immediately frozen'.

K

Response:

None.

Comment:

It further appears from paragraph 29 of the information officer's January letter that no record as identified in request 2.5 exists, and if this is correct section 23 requires her to confirm this on affidavit.

PART 17

Records:

6. Minutes of 'management' meetings held 'Since early this year' recording its discussion that 'a reduction to our staff establishment' was 'required ... in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.
7. Minutes of 'management' meetings held 'Since early this year' recording the work 'management ... had' to perform 'to identify positions which could be frozen ... in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.
8. Minutes and/or notes kept/made 'Since early this year' in which the 'positions which could be frozen' were 'identif[ied]' by 'management'.

Response:

None.

Comment:

193. Though not exactly so, requests 2.6–8 are substantially met by records V4 and V5, and these records suffice.

PART 18

K

Record:

9. The resolution passed by ‘management’ in terms of section 8.1.2 (b) of the Approval Framework, following consultation with HRE Clark and with COO Makokoane’s agreement, in relation to the claim: ‘In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.’

Response:

None.

Comment:

It also appears from paragraph 29 that no record exists of the decision mentioned in request 2.10, and if so section 23 of the Act requires the information officer to confirm this on affidavit – namely that no record whatsoever exists of any decision by member of the management executive taken ‘In July 2010 ... that all senior litigator posts that were vacant would be immediately frozen.’

PART 19

Record:

10. Written notification of the Board Executive Committee of the ‘decision ... the NOE and CEO took ... In July 2010 ... that all senior litigator posts that were vacant would immediately be frozen’.

Response:

None.

Comment:

It appears from paragraph 34 of the information officer’s letter that no record exists of any notification of the Board of Directors of the alleged decision that ‘the NOE and CEO took’ as alleged by the information officer in her October letter ‘that all senior litigator posts that were

vacant would be immediately frozen'; and if so, section 23 of the Act requires the information officer to confirm this on affidavit.

K

PART 20

Record:

11. Email to Durban Justice Centre attorney Bongani Mngadi (he says 'in April/May') notifying him that the Durban Senior Litigator post for which he'd applied wasn't going to be filled.

Response:

None.

Comment:

According to Mngadi's information to the records requester on 12 November 2010, this record must exist and the records requester requires it.



ADV ANTHONY BRINK

3 March 2011

arbrink@iafrica.com

033 344 2420

083 779 4174

25 Baker Road
Prestbury
Pietermaritzburg 3201
9 March 2011



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

Dear Ms Vedalankar

PROMOTION OF ACCESS TO INFORMATION ACT
THIRD REQUEST FOR RECORDS
SENIOR LITIGATOR POSITION, PIETERMARITZBURG

I enclose a third request for further records under the Promotion of Access to Information Act ('PAIA' or 'the Act'). As before, it comprises a Form A request with an annexure listing the records I want.

In your letter of 28 January 2011 you stated you'd returned my cheque for the mandatory R35 request fee. This fee is not refundable under the Act, so I didn't collect it, and it will have been returned to you by the Post Office. But if it's been discarded, please let me have LASA's bank account details and I'll make a direct deposit. And again, once it's been computed, please inform me of your access fee.

A week ago, on the 3rd, I copied you in on my memorandum to the PAIA Unit of the SAHRC, in which I identified the records I'm still seeking and which PAIA requires you to surrender. I also prepared a draft affidavit concerning non-existent records for you to sign, to comply with your hitherto unmet obligations under section 23 of the Act.

In addition to my third records request herewith, please address your attention to these unattended other matters, including my (remaining) unanswered records requests of 15 December 2010, which, as I pointed out, you'd neglected to deal with by mistake. Your full and proper compliance with PAIA is a matter of the first importance under section 32(1)(a) of the Constitution.

K

Apropos of the status of the records identified in my new record requests 14 and 15, the Sarah Palin Yahoo email scandal in the US is instructive. In September 2008 the Governor of Alaska and Vice Presidential candidate was found to have been using a private email account to discuss government business. An article in *iTwire* pointed up the issue involved: 'Personal emails are not part of the public record. That's the general state of play when it comes to politics in the good ol' USA. It is why there are official public email accounts which are designed for official business use and which become part of the official public record.'

(<http://bit.ly/hnyXO8>)

Your reciprocal communications with Judge Mlambo concerning my letter to him and the Board on 30 November 2010 while he was abroad in the US are public records, and I require them. Likewise the record of Judge Mlambo's request to the Board of Directors to ignore my correspondence to the Board concerning the breakdown of lawful governance at LASA; your and LASA's contraventions of the PFMA; and your failure, citing wholly bogus reasons, to comply with your constitutional obligations under PAIA – none of which, he told me to my considerable surprise, was any of the Board's business.

Yours sincerely



ADV ANTHONY BRINK

CC: Attorneys Chantal Kisoona and Nokwanda Molefe: PAIA Unit, SAHRC



Third PAIA Request

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).

Request fee (if any): R

Deposit (if any): R

Access fee: R

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Information Officer

CEO Ms Vidhu Vedalankar

Legal Aid South Africa

Private Bag X76

Braamfontein 2017

Johannesburg

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be recorded below.

(b) Furnish an address and/or fax number in the Republic to which information must be sent.

(c) Proof of the capacity in which the request is made, if applicable, must be attached.



Full names and surname : **Anthony Robin Brink**
Identity number : **590225 5116 081**
Postal address : **25 Baker Road, Prestbury, Pietermaritzburg 3201**
Fax number : **086 672 0776**
Telephone number : **033 344 2420**
E-mail address : **arbrink@iafrica.com**

Capacity in which request is made, when made on behalf of another person:

N/A

C. Particulars of person on whose behalf request is made

This section must be completed only if a request for information is made on behalf of another person.

Full names and surname : N/A

Identity number : N/A

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.

*(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Description of record or relevant part of the record:
2. Reference number, if available:
3. Any further particulars of record:

See annexure headed ‘THIRD PAIA RECORDS REQUEST: ANNEXURE TO FORM A’

E. Fees

<p>(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.</p> <p>(b) You will be notified of the amount required to be paid as the request fee.</p> <p>(c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.</p> <p>(d) If you qualify for exemption of the payment of any fee, please state the reason therefor.</p>
--

Reason for exemption from payment of fees:

N/A

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: N/A		Form in which record is required:	
<p>Mark the appropriate box with an "X".</p> <p>NOTES:</p> <p>(a) Your indication as to the required form of access depends on the form in which the record is available.</p> <p>(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</p> <p>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</p>			
1. If the record is in written or printed form -			
X	copy of record*		inspection of record

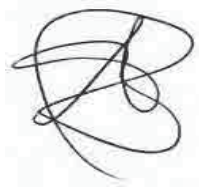
2. If record consists of visual images - (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)				
	view the images	X	copy of the images*	transcription of the images*
3. If record consists of recorded words or information which can be reproduced in sound -				
	listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)	
4. If record is held on computer or in an electronic or machine-readable form -				
	printed copy of record*		printed copy of information derived from the record*	X copy in computer readable form* (on compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? A postal fee is payable.				YES
<i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i>				
In which language would you prefer the record? English				

G. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record? **By email**

Signed at Pietermaritzburg on this 9th day of March 2011.



.....
SIGNATURE OF REQUESTER

SECOND MEMORANDUM

TO: ATTORNEYS CHANTAL KISOON AND NOKWANDA MOLEFE, PAIA UNIT, THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

IN RE: ADV ANTHONY BRINK AND LEGAL AID SOUTH AFRICA

A CRITICAL ANALYSIS DEMONSTRATING THE FACTUAL AND LEGAL IRRELEVANCE OF THE REASONS ADVANCED BY BRIAN NAIR, DEPUTY INFORMATION OFFICER OF LEGAL AID SOUTH AFRICA, FOR REFUSING ACCESS TO CERTAIN SPECIFIED RECORDS DULY REQUESTED UNDER SECTION 11 OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

This Second Memorandum comprises two sections.

Section 1 deals with newly appointed LASA deputy information officer Brian Nair's response to Parts 9 and 20 of my First Memorandum of 3 March 2011, in which I identified the records I still require but which LASA information officer Vedalankar has unlawfully withheld and which records Nair persists in unlawfully withholding.

Section 2 deals with Nair's unlawful refusal of records specified in my third records request of 9 March 2011.

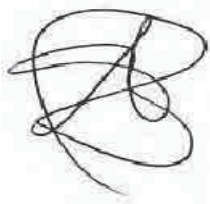
For ease of reference, Parts 9 and 20 of my First Memorandum are recited in Section 1 below, detailing the records I need that Vedalankar and Nair have unlawfully withheld. Likewise, the records specified in my third records request that Nair has unlawfully refused are recited in Section 2.

In each case, I will analyse and demonstrate the obvious factual and legal vacancy of the reasons Nair advances for unlawfully refusing me access

to the records I need, in violation of my constitutional right to information.

I have made provision for the SAHRC's PAIA Unit to record its opinion regarding Nair's reasons for concealing from me and from the Labour Court the evidence of the records I seek and which I now urgently require for the preparation of my case against LASA in that court.

I respectfully request this matter be given priority attention: the outcome of my referral of my unfair discrimination complaint to the CCMA was the issue of a non-resolution certificate, as expected, following a conciliation hearing on 20 April, and I am required to launch my case in the Labour Court within six weeks of that date.



ADV ANTHONY BRINK

28 April 2011

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033 344 2420

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SECTION 1

First Memorandum

PART 9

26. Excluding the ‘regret letter’ to Brink from KwaZulu-Natal Regional Operations Executive Vela Mdaka (‘Mdaka’) on 23 August 2010 and emailed to Brink by Brijlal by way of an email attachment on the same day, the ‘regret letters’ sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009 – following the decision made not to ‘be proceeding with the filling of any of these posts’, i.e. ‘all vacant Senior Litigator posts’ (– per Nair’s letter to Brink).

Information officer’s response on 28 January 2011:

30. As to your request.. ... 26 ...: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.

Requester’s critical analysis and comment in First Memorandum on 3 March 2011:

Section 43(1) of the Act doesn’t provide that ‘confidential correspondence with third parties’ (the information officer’s homebrewed faux legal phrase) is excluded from access by a records requester. The section provides (in the heading) for the ‘Mandatory protection of research information of third party and protection of research information of public body’. ...

Request B26 manifestly has nothing whatsoever to do with ‘research information of third party [or] public body’ nor with ‘Operations of public bodies’. It is a request for copies of the ‘regret letters’ allegedly ‘sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009’. Copies of these letters are required, and any confidential information (addresses, telephone numbers) may be blacked out. ...

Deputy information officer's response on 8 April 2011:

I confirm that regret letters were sent to two other applicants for the senior litigator positions. However such information cannot be disclosed to third parties without their consent.

Requester's further comment:

The term 'personal information' defined in section 1 of PAIA 'means information about an identifiable individual, including, but not limited to ... (f) correspondence sent by the individual that is implicitly or explicitly of private or confidential nature or further correspondence that would reveal the contents of the original correspondence'.

Section 34(1) of PAIA provides that 'the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party'.

Section 34(2) provides: 'A record may not be refused in terms of subsection (1) insofar as it consists of information – (a) about an individual who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned'.

I am not seeking any 'personal information about a third party' or 'about an individual' or 'correspondence sent by' him.

I am seeking copies of formal 'regret letters' sent to the other shortlisted applicants interviewed for the vacant Pietermaritzburg and Durban Senior Litigator posts. Four were interviewed, including me. Our names are no secret and appear on KZN Regional Operations Executive Vela Mdaka's Motivation form, signed off by the selection panel in November 2009.

This Motivation form, supplied to me by the information officer on 28 January 2011, well over a year after my successful interview, shows that indeed I was selected and recommended for appointment to the Pietermaritzburg Senior Litigator post for which I had applied (as Bongani Mngadi was chosen for Durban).

Mngadi's information to me on the telephone on 12 November 2010 was that he'd already been notified 'in April/May' 2010 that the Durban

post wasn't going to be filled. (In contradistinction, despite my persistent appeals for information, I was deliberately kept waiting in the dark.)

Mngadi told me he never got any 'regret letter' in August 2010, like I did.

The deputy information officer appears to confirm this in his reasons for refusing me copies of the other 'regret letters': 'I confirm that regret letters were sent to two other applicants' – not three.

As mentioned, I have the other candidates' names. Their addresses are 'publicly available', as section 34(2)(c) puts it, kept on register by the Law Society. The names and addresses on the 'regret letters' are accordingly not 'personal information about a third party' or 'about an individual'.

Bald 'regret letters' from LASA, such as the one I received, giving no reasons and containing no 'personal information about a third party' or 'about an individual', are manifestly not hit by section 34 of PAIA and are therefore compellable and must be disclosed.

No consent by the addressees is required under section 34(2) of PAIA, and the deputy information officer ignorantly misstates the law in alleging it is.

The deputy information officer's refusal to disclose these records is incompetent and unlawful.

The record is compellable and it must be disclosed.

SAHRC PAIA Unit's comment:

We agree/We disagree because

SECTION 2

Third records request on 9 March 2011

Record 3.2

LASA's complete Recruitment protocol if it extends beyond nine pages. (Record V2 annexed to Vedalankar's letter ends abruptly on page 9 and appears to be incomplete. (Bundle, pages 228–34))

Deputy information officer's response on 8 April 2011:

The policy deals with Recruitment, Induction, Probation and Relocation. You have been provided with the entire extract of the policy as far as it relates to the recruitment aspect. The remaining part of the policy does not deal with recruitment issues and is therefore irrelevant.

Requester's comment:

It makes no intelligent sense for the information officer to claim that only part of a document entitled 'Recruitment' deals with recruitment, and that the section dealing with e.g. 'Induction' is not a recruitment matter.

In terms of section 11(3) of PAIA, an information officer's opinion as to what he thinks the requester's purpose is in requesting a record is irrelevant.

PAIA does not require that a record of a public body be relevant to anything for it to be compellable.

'Relevance' is not a criterion for the discoverability of a public record.

No discretionary or mandatory grounds exist for refusing me the complete 'Recruitment' protocol, only some of which has been provided.

I have requested the complete record and PAIA entitles me to access and read it.

See further the dicta of the Supreme Court of Appeal judgment in the Mittalsteel case quoted in the introduction to my First Memorandum.

The deputy information officer's refusal to grant me access to the complete Recruitment protocol is unlawful.

He is required by PAIA to disclose the complete record.

PAIA Unit comment:

We agree that PAIA entitles the records requester to access the complete record. / In our opinion the records requester is not entitled to access the complete record because

Records 3.6–9

6. The minutes of the Board meeting held on 29 May 2010.
7. The minutes of the Board meeting held on 30 October 2010.
8. The agenda of the Board meeting held on 26 February 2011.
9. The minutes of the Board meeting held on 26 February 2011.

The deputy information officer's response on 8 April 2011:

I can confirm that no item relating to you was either on the agenda or tabled at any of the Board meetings. ... Your request for information is refused in terms of section 44(1)(a) of the Promotion of Access to Information Act 2 of 2000 as amended.

Requester's comment:

The deputy information officer's response reveals his entire lack of understanding of how section 44(1)(a) applies to records requests of this nature.

He appears to think that section 44(1)(a) veils all agendas and minutes of public body Board meetings from access by the public. Certainly he thinks that all he has to do is invoke the sub-section against my request and that is the end of it; he doesn't even need to apply his mind to each record and exercise a discretion whether or not to refuse access to them, much less does he need to provide a full statement of his reasons, sufficient for a court to interrogate their reasonableness and their validity.

The Supreme Court of Appeal recently considered and rejected this approach in *The President of the Republic of South Africa and Others v*

M & G Media Ltd (570/2010) [2010] ZASCA 177; 2011 (2) SA 1 (SCA) (14 December 2010), likening it to that of apartheid officials.

The court noted in paragraph 19 of the judgment that ‘The affidavits that have been filed by the appellants are reminiscent of affidavits that were customarily filed in cases of that kind [tried under apartheid legislation, discussed]. In the main they assert conclusions that have been reached by the deponents, with no evidential basis to support them, in the apparent expectation that their conclusions put an end to the matter. That is not how things work under the Act. The Act requires a court to be satisfied that secrecy is justified and that calls for a proper evidential basis to justify the secrecy.’

As the court put it in the following paragraph: ‘What the appellants’ case amounts to is little more than rote recitation of the relevant sections and bald assertions that the report falls within their terms. That is not the “stark and dramatic contrast” with the past that was referred to by Mahomed DP. Nor does it reflect the “culture of justification” that was referred to by Mureinik and which is imbedded in the Act.’

The apartheid ‘past’ to which the court referred was (per paragraph 18) ‘another time [when] courts were regularly confronted with laws that precluded them from going behind conclusions and opinions formed by public officials’. (In the instant case, the deputy information officer hasn’t even got as far as expressing an opinion and conclusion.)

The court noted in paragraph 22: ‘Some provisions of the Act make secrecy mandatory and others make it discretionary. The sections with which we are concerned are both discretionary. ... Section 44 allows access to a record to be refused “if the record contains an opinion, advice, report or recommendation obtained or prepared ... or an account of a consultation, discussion or deliberation that has occurred ... for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law.”’ (ellipsis in the judgment)

The deputy information officer doesn’t even think about whether I’m seeking a record of that nature: he just sees the words ‘including, but not limited to, minutes of a meeting’ and reckons that permits him, without

more, to bar me from accessing and reading the agendas and minutes of LASA Board's meetings.

It's notable that information officer Vedalankar takes a different view of the matter. On 28 January 2011 she gave me the minutes of the Board meeting of 31 July 2010 as well as the 'Report to Board' on 16 July from herself and her fellow executive managers – concerning a policy proposal and resolution. Unlike the deputy information officer, Vedalankar appreciates that such records are not ipso facto secret, to be concealed from the public under section 44(1)(a).

In *Minister for Provincial and Local Government v Unrecognised Traditional Leaders, Limpopo Province (Sekhukhuneland)* 2005 (2) SA 110 (SCA), the Supreme Court of Appeal held: 'It is clear that s 44(1)(a) limits the right of access to information and s 36 of the Constitution requires that the scope of such a provision be restricted only to an extent which is reasonable and justifiable. Section 39(2) obliges every court to promote "the spirit, purport and objects of the Bill of Rights" when interpreting any legislation. It must also be borne in mind that the Act was enacted in order to give effect to access to information and promote the values of openness, transparency and accountability which are foundational to the Constitution.'

These values are not exhibited by the deputy information officer in concealing the evidence of the records I require for trial.

And in *CCII Systems (Proprietary) Ltd v Fakie NO and Others* 2002 JDR 0897 (T) the Hartzenburg J held obiter in paragraph 18 of the judgment: 'The applicant argues that if he was de-selected as supplier due to political pressure or some impropriety a comparison between draft reports and the final one may indicate that that is what happened. Conversely if there was no impropriety the very same comparison will prove that. That raises the question what the object of section 44 is. It was submitted that it is not to hamper a public body in its administration and formulation of policy and to guard against the supply of confidential information prematurely. Senior and junior officials must be able to talk freely about the development of policy matters and their interaction at a stage before finalisation should not at that stage be accessible. Opportunistic entrepreneurs should not be allowed to obtain information along this route which give them an unfair advantage over

their rivals. In my view it does not deal with historic situations. The joint report has been finalized and accepted by Parliament. At this stage the draft reports are only of historic importance and cannot obstruct the joint commission in its work. In my view they are no longer protected by the provisions of section 44.’

This is to say, on Hartzenburg J’s construction of section 44, the minutes of LASA board meetings held in the past in regard to settled policy matters ‘are no longer protected by the provisions of section 44’, even if such minutes were hit by section 44 in the first place.

Nair’s statement that ‘no item relating to you was either on the agenda or tabled at any of the Board meetings’ does not count as a legitimate reason for refusal. He did not know my purpose in seeking the records, and his opinion as to what it might be is irrelevant under section 11(3) and is no valid basis to refuse my requests.

Although it’s irrelevant to the decision of my request, I record that my purpose in seeking these records is to determine whether at any of the Board meetings whose agenda and minutes I requested, the Board (a) resolved to abolish or freeze posts to resolve funding problems, and (b) even discussed the abolition or freezing of posts to this end.

In other words, besides the Board’s resolution to abolish 56 junior practitioner posts, and none other, taken at its meeting on 31 July 2010 on Vedalankar’s, Nair’s and other executive managers’ recommendation, the Board has never discussed, much less resolved to abolish or freeze any other posts, including critical Senior Litigator posts.

I also wish to establish whether the Board discussed funding issues at the meetings in question.

My main discrimination case is founded on Vedalankar’s and Nair’s gravely unlawful conduct: their violation of my constitutional rights to equality and not to be unfairly discriminated against on prohibited unconstitutional grounds and their breach of the provisions of the Employment Equity Act in this regard. This is to say, their ‘substantial contravention of, or failure to comply with, the law’ as contemplated by the overriding provisions of section 46 of PAIA under the heading ‘Mandatory disclosure in the public interest’.

PAIA entitles me to all these records and the deputy information officer is withholding them unlawfully.

PAIA Unit comment:

We agree that PAIA entitles the records requester to access these records, absent a statement of reasons supported by evidence that the refusal of access to these records is reasonably justified under section 44(1)(a). / In our opinion the records requester is not entitled to access these records because

Record 3.12

The ‘regret letter’ sent in 2010 to the candidate selected and recommended for appointment as Senior Litigator, Mthatha, conveying that LASA executive management had resolved not to fill the post; personal information may be blacked out. (Per Nair’s letter to Brink on 3 August 2010 read with Vedalankar’s letter to Brink on 18 October 2010. (Bundle, page 19; and page 104, paragraph 7.3))

Deputy information officer’s response on 8 April 2011:

The communication that the position was not going to be filled was conveyed to the relevant candidate by the Regional Operations Executive of the Eastern Cape. The information requested is refused and cannot be provided as it relates to third parties as envisaged in terms of section 34(1) of the Promotion of Access to Information Act 2 of 2000 as amended.

Requester’s comment:

Section 34(1) of PAIA does not bar the disclosure of a record by reason of the fact merely that it ‘relates to third parties’; and the deputy information officer’s stated reason for refusing this record is irrelevant and bad in law.

The point is addressed at length in Section 1 above.

I require the record and PAIA entitles me to it.

I mentioned in my request that ‘personal information may be blacked out’. This excludes the successful Mthatha applicant’s name and professional contact particulars, which I require.

Although section 11(3) of PAIA stipulates that my purpose in seeking any record of a public body is immaterial, I record here that I wish to consult the successful Mthatha applicant with a view to calling him as a possible witness to testify in my impending case in the Labour Court.

I also propose advising him of his rights that Vedalankar and Nair, as CEO and NOE, have violated, and to offer to assist him pro bono to vindicate them.

PAIA Unit comment:

We agree that PAIA entitles the records requester to access this record with the name and professional contact particulars visible and not blacked out. / In our opinion the records requester is not entitled to access this record/is not entitled to know the name and professional contact particulars of the successful Mthatha candidate because

Record 3.13

The instruction issued to Board Secretary Bee-Mari Schoeman not to circulate Brink’s 30 November 2010 petition addressed to the Chairperson and the Board of Directors to all Board members and not to put it on the agenda of the next Board meeting for discussion, as Brink had requested, and furthermore not to respond to Brink’s correspondence to her. (Bundle, page 198, paragraph 6; and page 207, first paragraph)

Record 3.14

All email communications between Judge Mlambo and Vedalankar concerning Brink’s petition to Judge Mlambo and the Board of Directors on 30 November 2010.

Record 3.15

LASA Chairperson Judge Dunstan Mlambo's 'request..' to the Board of Directors 'to ignore all communications from' Brink. (Per Judge Mlambo's email to Brink on 24 January 2011. (Bundle, page 209))

Deputy information officer's response on 8 April 2011 regarding requests 3.13–15:

The information requested is refused as it is not relevant because it is after you were informed that we are not proceeding to fill the Senior Litigator position.

Requester's comment:

As mentioned above with reference to section 11(3) of PAIA, an information officer's opinion as to the relevance or otherwise to any fact or issue of a public body's record is itself legally irrelevant.

The deputy information officer's refusal to provide access to the records described in items 3.13–15 above, on the ground that in his opinion these records are 'not relevant', is unlawful.

The records are all discoverable and compellable under PAIA and must be provided.

For easy reference, I quote below from my letter to information officer Vedalankar on 9 March 2011 covering my third PAIA request and dealing with the principle applicable to requests 3.14 and 3.15:

Apropos of the status of the records identified in my new record requests 14 and 15, the Sarah Palin Yahoo email scandal in the US is instructive. In September 2008 the Governor of Alaska and Vice Presidential candidate was found to have been using a private email account to discuss government business. An article in *iTwire* pointed up the issue involved: 'Personal emails are not part of the public record. That's the general state of play when it comes to politics in the good ol' USA. It is why there are official public email accounts which are designed for official business use and which become part of the official public record.' (<http://bit.ly/hnyXO8>)

Your reciprocal communications with Judge Mlambo concerning my letter to him and the Board on 30 November 2010 while he was

abroad in the US are public records, and I require them. Likewise the record of Judge Mlambo's request to the Board of Directors to ignore my correspondence to the Board concerning the breakdown of lawful governance at LASA; your and LASA's contraventions of the PFMA; and your failure, citing wholly bogus reasons, to comply with your constitutional obligations under PAIA ...

PAIA Unit comment:

We agree that PAIA entitles the records requester to access all these records. / In our opinion the records requester is not entitled to access these records because



FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).

Request fee (if any): R

Deposit (if any): R

Access fee: R

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Information Officer

Department of Justice and Correctional Services

329 Pretorius St

Pretoria

Private Bag X81

Pretoria 001

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be recorded below.

(b) Furnish an address and/or fax number in the Republic to which information must be sent.

(c) Proof of the capacity in which the request is made, if applicable, must be attached.



Full names and surname : **Anthony Robin Brink**
Identity number : **590225 5116 081**
Postal address : **1 Boast Street, Eshowe 3815, KwaZulu-Natal**
Fax number : **086 672 0776**
Telephone number : **035 474 0145**
E-mail address : **arbrink@iafrica.com**

Capacity in which request is made, when made on behalf of another person:

N/A

C. Particulars of person on whose behalf request is made

This section must be completed only if a request for information is made on behalf of another person.

Full names and surname : **N/A**
Identity number : **N/A**

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.

*(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

Description of record or relevant part of the record:

I request access to five public records in the possession of the Department of Justice and Correctional Services (previously the Department of Justice and Constitutional Development) namely Legal Aid South Africa's annual budget applications submitted to it for the following financial years:

1. 2010/11

- 2. 2011/12
- 3. 2012/13
- 4. 2013/14
- 5. 2014/15

My requests for access to these records will be satisfied by the provision of excerpts from them, comprising only:

- (a) the first identifying page(s) of each annual budget indicating the financial year; and,
- (b) the pages in the budgets providing for Senior Litigator salaries.

E. Fees

(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.

(b) You will be notified of the amount required to be paid as the request fee.

(c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.

(d) If you qualify for exemption of the payment of any fee, please state the reason therefor.

Kindly email the Department’s bank details for payment of the request fee by EFT.

Reason for exemption from payment of fees:

N/A

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: N/A	Form in which record is required:
-----------------	-----------------------------------

Mark the appropriate box with an "X".

NOTES:

(a) Your indication as to the required form of access depends on the form in which the record is available.

(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.

(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form -

X	copy of record*		inspection of record
----------	-----------------	--	----------------------

2. If record consists of visual images - N/A

(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)

	view the images		copy of the images*		transcription of the images*
--	-----------------	--	---------------------	--	------------------------------

3. If record consists of recorded words or information which can be reproduced in sound - N/A

	listen to the soundtrack (audio cassette)		transcription of soundtrack* (written or printed document)
--	--	--	---

4. If record is held on computer or in an electronic or machine-readable form -

	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form* (by email)
--	-------------------------	--	--	----------	---

<p>*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? N/A</p> <p>A postal fee is payable.</p>		
<p><i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i></p>		
<p>In which language would you prefer the record? English</p>		

G. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record? **By email**

Signed at Eshowe on 25 November 2015



SIGNATURE OF REQUESTER



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

N

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, PRETORIA, 0001
Tel: (012) 315 1730, Fax: (012) 357 8004

Please quote our full reference number in all correspondence

Our reference: 7/6/9 Brink A R
Enquiries: Ms MM Raswiswi
E-mail: MRaswiswi@justice.gov.za

27 November 2015

Ms Vidhu Vedalankar
Chief Executive Officer
Legal Aid South Africa
29 De Beer Street
Braamfontein
JOHANNESBURG
2000

Tel: 011 877 2000

Dear Ms Vedalankar

NOTICE OF TRANSFER OF A REQUEST FOR ACCESS TO INFORMATION IN TERMS OF SECTION 20 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).

I am hereby transferring a request to access information to your institution in terms of section 20 of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000). The details of the request are hereby attached for your ease of reference.

Annexure A

Your co-operation in this matter is highly appreciated.

Regards

A handwritten signature in black ink, appearing to be 'M M Raswiswi', written over a circular stamp or seal.

**M M RASWISWI (Ms)
DEPUTY INFORMATION OFFICER**



14 December 2015

Department of Justice and Constitutional Development

Private Bag X81

Pretoria

0001

Per e-mail: MRaswiswi@justice.gov.za

29 De Beer Street

Braamfontein

Johannesburg 2017

Private Box X76

Braamfontein 2017

Tel: 011 877 2000

Fax: 011 877 2222

www.legal-aid.co.za

Dear Ms Raswiswi,

**NOTICE OF TRANSFER OF A REQUEST FOR ACCESS TO INFORMATION IN
TERMS OF PAIA**

We acknowledge receipt of your letter dated 27 November 2015 received by us on the 4th instant.

Kindly note that our Chief Executive Officer is currently not available and writer hereof is acting in her stead.

Below we quote the exact request from the Requester and thereafter provide our response. The request from the Requester is as follows:

"I request access to five public records in the possession of the Department of Justice and Correctional Services (previously the Department of Justice and Constitutional Development) namely Legal Aid South Africa's annual budget applications submitted to it for the following financial years:

1. 2010/11

2. 2011/12

3. 2012/13

4. 2013/14

5. 2014/15



My requests for access to these records will be satisfied by the provision of excerpts from them, comprising only:

(a) the first identifying page(s) of each annual budget indicating the financial year; and,

(b) the pages in the budgets providing for Senior Litigator salaries.”

It is worth noting that the budgets requested are a consolidation of all salaries and these are not categorized per each employee level. We attach the consolidated budgets for each of the years requested with each identifying page.

Further, we also attach a spreadsheet containing budgeted salaries for Senior Litigators for each of the years as per request. These salaries are included in the consolidated budgets referred to above under “Direct Costs”.

We are simultaneously sending the information to the Requester as well.

We trust you will find the above in order.

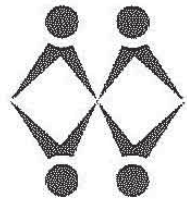
Yours faithfully,

Brian Nair

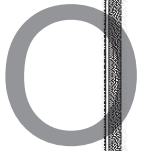
Acting Chief Executive Officer

Cc: Anthony Robin Brink

Per e-mail: arbrink@iafrica.com



Legal Aid
South Africa

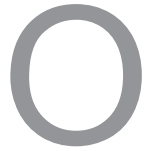


LEGAL AID SOUTH AFRICA BUDGET 2010/11

**Office of the CFO
February 2010**

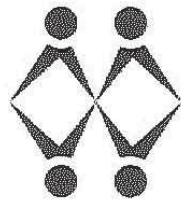
**LEGAL AID SOUTH AFRICA
2010/2011 BUDGET - NATIONAL CONSOLIDATED**

GL Code	Board Secretary	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development	National Operations	Payment Processing Unit	Eastern Cape Region	Free State North West Region	Gauteng Region	Western Cape (Northern Cape)	Kwazulu Natal Region	Mpumalanga Limpopo Region	Total 2010/11	2009/10	Variance		
DIRECT COSTS																							
1 Basic Salary	1 895 277																			400 195 458	58 818 422	15%	
2 Bonuses	9 820																			26 828 855	-1 313 823	-5%	
3 Housing Allowance	20 185																			7 441 655	-3 483 924	-47%	
4 Medical Aid Contribution	232 682																			7 369 338	63 304	1%	
5 Motor Car Allowance	309 500																			2 066 516	1 101 395	53%	
6 Pension Contribution	5 878																			31 801 855	-31 484 258	-98%	
7 UIF Contribution																				2 440 187	2 128 070	15%	
8 Increasing paralegal capacity																				2 036 715	-2 036 715	-100%	
9 Review of CA model																				5 118 109	-5 118 109	-100%	
10 OSD Additional Funding																				30 000 000			
																				563 470 665	485 679 381	10%	
ADMIN SUPPORT COST																							
11 Basic Salary	922 087	2 523 053	1 070 623	2 008 042	3 508 248	19 628 887	34 235 748	4 885 235	6 784 830	1 511 316	2 355 516	4 108 011	12 784 846	10 911 252	162 338 001	143 481 598	18 855 002						
12 Bonuses	24 557	16 765				390 953	238 798	277 674	317 653	107 387	137 622	228 415	914 871	1 049 691	1 051 113	1 050 289	507 898	8 244 022	6 593 815	1 250 206	15%		
13 Housing Allowance	12 000	6 000	40 648	36 007	147 697	94 994	67 982	73 458	156 124	18 000	30 000	420 000	514 440	577 680	569 652	603 437	469 200	4 058 650	4 153 183	-94 634	-2%		
14 Medical Aid Contribution	40 200	36 504	12 168	12 168	273 527	289 775	131 157	127 764	177 246	48 872	72 036	240 812	642 769	697 481	1 017 113	807 625	619 259	6 373 028	6 068 080	304 948	5%		
15 Motor Car Allowance	40 450	55 553	88 072	148 633	342 696	313 934	592 131	598 553	177 108	117 108	40 320	177 616	89 101	95 593	32 519	2 785 089	2 285 519	499 570					
16 Pension Contribution	40 650	35 362	24 143	144 321	448 501	670 631	915 043	282 875	329 457	81 666	252 582	330 357	1 341 324	1 592 815	1 661 914	1 579 093	1 510 266	1 306 548	11 951 014	10 237 132	17%		
17 UIF Contribution	4 464	4 467	1 489	9 344	35 141	49 666	23 763	27 368	31 249	7 440	10 963	27 641	116 670	123 894	130 638	260 065	118 426	103 115	1 074 693	743 862	330 741	44%	
	1 090 526	2 488 597	1 226 648	2 636 319	5 225 082	21 438 802	36 539 425	6 217 706	8 305 161	1 911 779	2 976 827	5 056 336	16 457 646	17 371 745	19 119 860	17 828 915	18 972 419	14 439 173	186 838 507	174 030 358	22 808 109	13%	
OTHER DIRECT EXPENDITURE																							
18 Indicate	35260																			74 107 584	78 266 121	6%	
19 Disbursements	35950																			1 330 925	657 550	59%	
20 Expert Witness	35150																			2 163 596	2 193 596	0%	
21 Co-operation Agreements	35950																			7 153 756	4 208 004	70%	
22 Inmate Litigation	35200																			5 260 000	3 156 000	68%	
23 Travelling and Subsistence-Circuit	38076																			603 612	603 612	0%	
24 N/rotpinal Expansion Program	38076																			8 000 000	11 581 019	-31%	
25 Case Backlog	35900																			25 000 000	5 000 000	20%	
26 Increase in legal capacity																				20 139 988	20 139 988	100%	
27 Children's matters																				1 600 000	-1 600 000	-100%	
																				143 788 381	122 416 823	17%	
OPERATING BUDGET																							
28 Achiever Awards	41050																			216 712	210 000	6 312	
29 Advertising	41100																			2 169 328	2 106 144	63 184	3%
30 Annual Report	41250																			257 500	250 000	7 500	3%
31 Audit Fees	41250																			2 348 365	1 711 532	636 733	37%
32 Bank Charges	41350																			597 384	579 884	17 400	3%
33 Board Fees	41450																			898 813	872 634	26 179	3%
34 Change Management & Services	41500																			544 520	528 660	15 860	3%
35 Clearing Materials & Services	41600																			3 696 553	3 950 866	-254 313	-6%
36 Communication	41650																			2 479 787	2 407 560	72 227	3%
37 Computers/Disaster Recovery	41700																			589 029	589 328	-299	0%
38 Computers-Maintenance	41750																			172 863	179 036	-6 273	-3%
39 Computers-Software Licenses	41800																			6 958 456	6 046 296	910 200	15%
40 Conferences & Seminars	41850																			2 145 074	2 663 179	-79 695	-3%
41 Conferences	41900																			58 893	55 236	3 657	7%
42 Corporate Governance Training	42000																			20 414 810	18 902 587	1 512 223	8%
43 Depreciation	42050																			2 473 620	2 473 620	0%	
44 Document Exchange	42100																			801 143	801 143	0%	
45 Education & Training	42150																			5 849 432	5 883 778	-35 347	-1%
46 Employee Assist/Counseling/CHS	42200																			210 377	204 250	6 127	3%
47 Employment Relations	42250																			208 374	208 374	0%	
48 Employment Equity	42300																			89 968	81 346	8 622	10%
49 Forensic Investigations	42350																			41 458	40 250	1 208	3%
50 HW/Atts Management	42400																			206 000	200 000	6 000	3%
51 Implementation & Training - SAP	42450																			4 949 231	50 420	4 898 811	100%
52 Insurance Short Term	42500																			4 871 809	4 871 809	0%	
53 Internal Audit Support	43200																			1 712 166	1 712 166	0%	
54 IT Support	43250																			1 192 592	1 192 592	0%	

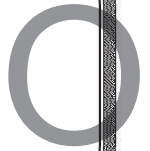


LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2010/2011

Pers. No	Employee Group	New levels 10/11	Position	Total CTC
Filled	Permanent Employees	LP-10-5	Senior Litigator	704 008.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00



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LEGAL AID SOUTH AFRICA BUDGET 2011/12

**Office of the CFO
February 2012**

**LEGAL AID SOUTH AFRICA
2011/2012 BUDGET - NATIONAL CONSOLIDATED**

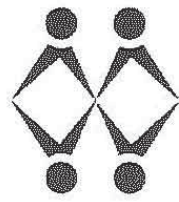
GL Code	Board Secretary	CEO 3 Office	CEO 2 Office	COO 3 Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development	National Services	Operations	Payment Processing Unit	Eastern Cape Region	Free State/North West Region	Gauteng Region	Western Cape/Northern Cape Region	Kwazulu Natal Region	Mpumalanga Region	Total 2011/12	Total 2010/11	Variance		
56 Legal Fees	43400	4 759	4 759	4 759	4 759	4 759	4 759	10 076	4 759	4 759	2 627 461	4 759	4 759	4 759	68 000	76 500	69 000	79 000	79 000	59 000	402 700	380 975	21 725	6%	
57 Library & Publications	43450	4 759	4 759	4 759	4 759	4 759	4 759	10 076	4 759	4 759	2 627 461	4 759	4 759	4 759	68 000	76 500	69 000	79 000	79 000	59 000	402 700	380 975	21 725	6%	
58 Maintenance - Buildings	43500					734 518									85 554	84 834	94 560	84 834	84 834	46 277	1 175 276	1 105 247	70 029	6%	
59 Maintenance - Office Equipment	43550					97 533					7 278				101 484	165 350	285 795	500 085	500 085	207 095	1 595 579	1 559 579	36 000	3%	
60 Management Fees - Travel	43600					597 338															587 338	569 881	17 457	4%	
61 Moving costs	43650																				57 055	57 055		-100%	
62 Municipal Services	43700					1 118 040									680 600	747 793	1 431 979	1 118 057	1 118 057	971 553	7 451 067	6 320 222	1 130 865	18%	
63 Office Rental & Operating costs	43850														6 133 928	4 950 651	5 427 229	6 740 546	4 031 014	4 601 032	32 004 397	29 116 355	2 888 042	12%	
64 Postage & Courier	44000					32 357									90 862	87 860	96 105	111 691	111 691	81 165	1 081 577	1 017 636	63 941	6%	
65 Printing & Stationery	44100					29 395									678 123	607 371	798 403	864 448	704 971	625 321	5 078 938	5 218 319	-139 381	-3%	
66 Professional Services	44150					696 943															1 292 628	1 218 319	74 310	6%	
67 Public Relations	44200					3 360									36 960	47 040	30 240	43 690	36 960	33 600	369 799	340 406	29 393	6%	
68 Recruitment	44350																				922 812	870 577	52 235	6%	
69 Redevelopment of Staff	44400																					26 123	-100%	-100%	
70 Retirement - Board	44450																				46 323	38 007	8 316	6%	
71 Retirement - Staff	44500																				879 656	924 107	-44 451	-5%	
72 Rental - Office Equipment	44550					418 069									251 760	404 411	637 274	477 631	289 123	194 596	2 088 430	1 815 676	272 754	37%	
73 Security Costs	44600																				1 537 677	1 274 845	262 832	21%	
74 Signage & Branding	44700					730 140															88 775	143 455	-54 680	-38%	
75 Skills Development Levy	44800					649 845															0	658 302	658 302	0	0%
76 Software Maintenance	44850					740															0	658 302	658 302	0	0%
77 Staff Bursar	44900					3 617															516 856	516 856	0	0%	
78 Stakeholders Forum	44950																				546 806	516 806	30 000	6%	
79 Storage Costs	45000					168 873															99 302	99 302	0	0%	
80 Subscription and Members fees	45050					17 196															57 000	57 000	0	0%	
81 System Support	45060					30 000															98 554	902 240	803 686	6%	
82 Telephone & Fax	45200					1 768 174															30 000	30 000	0	0%	
83 Tools & Equipment	45250					5 000															58 000	58 000	0	0%	
84 Travel and other - Committees	45300																				344 651	1 556 448	-1 211 797	-78%	
85 Travel and other - Committees	45350																				325 142	325 142	0	0%	
86 Vehicle - Fuel	45400					57 293															581 335	1 288 317	-706 982	-55%	
87 Vehicle - Licences	45500					44 350															1 605 103	6 764 102	-5 158 999	-76%	
88 Vehicle - Maintenance	45550					80 516															1 605 103	6 764 102	-5 158 999	-76%	
89 Vehicle - Tracking	45600					1 350															156 420	146 878	9 542	6%	
90 Wide Area Network	45650					1 409 592															357 455	2 133 462	-1 775 967	-82%	
91 Workmen Compensation	45700																				1 409 562	1 274 159	135 403	11%	
92 Workshops	45750					677 918															9 601 139	7 681 600	1 919 539	28%	
Operating Budget		2 035 680	1 451 651	1 591 991	5 822 949	8 634 810	17 220 588	6 398 906	1 587 811	21 318 601	5 672 895	3 974 831	135 289	135 289	19 111 110	18 697 046	21 794 994	22 829 306	19 180 311	18 841 832	195 925 608	163 088 297	30 757 351	19%	
Total Operating Budget		2 880 185	4 042 368	1 468 887	8 511 453	16 542 485	26 169 261	61 165 779	13 675 766	31 175 874	18 875 032	89 484 863	2 772 466	2 772 466	150 813 738	140 895 550	187 685 080	178 536 050	162 983 138	118 723 592	1 204 110 201	1 141 733 749	62 376 452	5%	
CAPITAL BUDGET																									
83 Computer Hardware	10100																				5 533 141	22 083 966	-16 550 825	-75%	
84 Corporate IT	10150																				1 821 554	1 846 517	-24 963	-1%	
85 Computer Software	10200																				171 000	508 043	-337 043	-66%	
86 Furniture & Equipment	10300																				595 526	995 526	-399 999	-40%	
87 Leasehold Improvements	10400																				5 427 865	5 289 407	138 458	3%	
88 Motor vehicles	10500																				5 335 300	4 768 187	567 113	12%	
Total Capital Budget		0	10 956	0	10 956	0	1 076 620	85 880	84 246	254 136	53 222	46 094	32 989	32 989	2 706 316	1 078 512	2 732 731	3 048 688	2 033 874	1 447 248	17 741 747	37 516 932	-19 775 185	-55%	
Total Budget		2 880 185	4 053 364	1 468 887	8 511 453	17 619 105	26 291 431	61 250 125	14 129 921	33 325 959	18 929 154	89 530 979	2 805 445	2 805 445	152 720 055	142 274 062	190 417 811	181 564 748	155 017 012	120 170 841	1 221 851 946	1 179 260 881	42 626 230	4%	





**LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2011/2012**

Pers. No	Employee Group	New Level 2011/2012	Position	Total CTC
Filled	Permanent Employees	LP-10-10	Senior Litigator	850 465.64
Filled	Permanent Employees	LP-10-7	Senior Litigator	813 378.17
Filled	Permanent Employees	LP-10-6	Senior Litigator	801 377.91
Filled	Permanent Employees	LP-10-7	Senior Litigator	813 378.17
Filled	Permanent Employees	LP-10-2	Senior Litigator	755 129.51
Filled	Permanent Employees	LP-10-7	Senior Litigator	813 378.17
Vacant	Permanent Employees	LP-10-1	Senior Litigator	746 624.88
Vacant	Permanent Employees	LP-10-1	Senior Litigator	746 624.88
Vacant	Permanent Employees	LP-10-1	Senior Litigator	746 624.88



Legal Aid
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LEGAL AID SOUTH AFRICA BUDGET 2012/13

**Office of the CFO
05 March 2012**

LEGAL AID SOUTH AFRICA
2012/2013 BUDGET - NATIONAL CONSOLIDATED

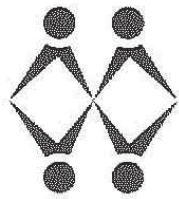
BL Code	Board Secretary	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State/North West Region	Gauteng Region	KwaZulu Natal Region	Limpopo Region	Western Cape/Northern Cape Region	Total 2012/13	Total 2011/12	Variance		
64 Public Relations	44100	3 350	3 350	3 350	3 350	3 350	3 350	3 350	3 350	24 000	3 350	38 950	42 000	42 950	38 950	38 950	31 600	42 950	387 113	357 017	30 092	8%	
65 Recruitment	44350						872 841													872 841	1 010 487	-137 646	-16%
66 Replenishment of staff	44400																			24 914	24 914	-24 914	-100%
67 Refreshment - Board	44450	40 322																		40 322	917 055	876 733	6%
68 Refreshment - Staff	44500	788	28 226	10 493	8 765	23 076	14 481	10 752	11 327	9 000	40 698	10 093	144 554	141 505	118 247	87 822	82 186	173 495	977 055	917 055	59 977	6%	
69 Rental - Office Equipment	44550										4 110									4 110	2 861 934	2 857 824	20%
70 Rental - Office Equipment	44600																			95 535	1 754 543	1 658 998	10%
71 Security Costs	44650																			180 370	1 591 063	1 410 693	10%
72 Signage & Branding	44700																			658 868	1 319 108	722 222	52%
73 Skills Development Levy	44800	782	2 465	1 157	2 423	9 216	5 703	11 075	7 840	6 319	9 831	1 986	112 058	100 422	128 467	107 066	88 987	133 008	735 735	831 350	95 615	12%	
74 Software Maintenance	44850						308 544		287 820											586 364	587 895	1 531	1%
75 Staff Bursary	44900						548 806													548 806	275 959	272 847	98%
76 Stakeholders Forum	44950										32 832		82 279	75 453	88 164	83 543	99 302	118 084	300 327	384 426	-84 101	-1%	
77 Storage Costs	45000												51 843	15 345	284 588	177 305	81 970	197 055	977 098	995 791	-18 693	-2%	
78 Subscription and Members fees	45050	44 139	19 920	3 775	7 724	16 927	29 304	21 800	11 000	18 800	17 898		199 261	301 190	295 188	277 228	199 030	283 007	1 741 787	1 850 065	-108 278	-6%	
79 Stationery Support	45100																			30 000	30 000	0	0%
80 Telephone & Fax	45200																			469 932	2 658 040	-2 488 108	-66%
81 Tools & Equipment	45250	5 000	5 000	5 000	5 000	5 009	5 000	5 000	5 000	5 000	5 000									544 551	424 534	119 998	28%
82 Travel and other - Committees	45300	344 651																		7 507 087	7 781 835	-284 748	-4%
83 Travel & Subsistence - Staff	45400	10 000	88 220	90 775	57 293	57 292	57 292	1 188 856	44 095	120 000	150 295		603 291	1 121 276	655 248	579 572	981 335	1 487 957	7 507 087	7 781 835	-284 748	-4%	
84 Vehicle - Fuel	45500																			7 080 953	7 556 571	-475 618	-6%
85 Vehicle - Licences	45550																			183 043	188 654	-5 611	-3%
86 Vehicle - Maintenance	45600																			2 129 118	2 483 248	-354 130	-14%
87 Vehicle - Trading	45650																			1 307 778	1 683 925	-386 146	-23%
88 Wide Area Network	45700																			11 002 536	9 603 619	1 398 917	14%
89 Workshops	45750	119 928	69 819	11 315	14 870	677 918														677 918	677 918	0	0%
Operating Budget	2 110 394	1 455 717	160 104	5 616 810	9 321 808	18 282 530	6 390 393	1 984 334	29 688 691	5 887 731	2 540 037	60 159	21 128 452	22 385 154	29 055 006	28 462 362	23 939 006	208 604 830	208 604 830	208 604 830	-660 302	0%	
Total Operating Budget	3 085 748	4 184 864	1 526 440	8 431 343	17 559 742	83 387 233	13 553 093	15 398 323	34 255 241	18 841 318	48 865 101	2 738 207	168 690 139	182 149 741	204 274 714	166 151 233	129 331 416	191 757 258	1 283 298 851	1 174 892 689	89 206 276	8%	
CAPITAL BUDGET																							
90 Computer Hardware	10100	18 316				18 316	10 548	18 316	84 223		266 753		274 659	515 381	515 381	175 804	226 984	344 093	2 288 422	7 721 188	-5 432 767	-70%	
91 Computer IT																				3 056 951	1 237 407	1 819 544	100%
92 Computer Software	10400								3 058 951											831 887	831 887	0	0%
93 Building Improvement	10170																			816 865	1 951 473	-1 134 608	-58%
94 Furniture & Equipment	10300																			1 404 008	1 850 291	-446 283	-24%
95 Leasehold Improvements	10200																			8 472 357	8 614 772	-142 415	-2%
96 Motor vehicles	10950																			8 842 616	4 439 684	4 402 932	99%
Total Capital Budget	18 316	0	0	0	47 665	18 316	10 958	10 316	3 143 844	0	266 753	0	3 015 207	3 232 870	3 018 624	3 035 225	2 921 010	3 581 126	23 479 231	22 430 880	1 048 351	5%	
Total Budget	3 104 064	4 184 864	1 526 440	8 479 008	18 607 407	83 405 549	13 564 051	15 441 539	37 399 085	18 841 318	50 231 854	2 738 207	169 705 346	185 382 711	207 293 339	169 266 057	132 292 426	195 339 884	1 286 778 091	1 196 523 439	90 254 652	8%	





LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2012/2013

Pers. No	Employee Group	New level 2012/2013	Position	Total CTC
Filled	Permanent	LP-10-18	Senior Litigator	1 037 404.43
Filled	Permanent	LP-10-12	Senior Litigator	948 871.53
Filled	Permanent	LP-10-8	Senior Litigator	894 092.07
Filled	Permanent	LP-10-15	Senior Litigator	992 148.36
Filled	Permanent	LP-10-3	Senior Litigator	830 056.60
Filled	Permanent	LP-10-8	Senior Litigator	894 092.07
Vacant	Permanent	LP-10-1	Senior Litigator	808 726.61
Vacant	Permanent	LP-10-1	Senior Litigator	808 726.61
Vacant	Permanent	LP-10-1	Senior Litigator	808 726.61



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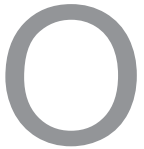
LEGAL AID SOUTH AFRICA BUDGET 2013/14

**Office of the CFO
March 2013**

**LEGAL AID SOUTH AFRICA
2013/2014 BUDGET - NATIONAL CONSOLIDATED**

GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development	National Operations	Payment Processing Unit	Eastern Cape Region	Free State/North West Region	Gauteng Region	Kwazulu Natal Region	Limpopo Region	Western Cape/Northern Cape Region	Total 2013/14	Total 2012/13	Variance	%	
66 Security Costs					1 983 923								97 448	100 519	196 774	191 384	229 621	75 917	1 855 487	1 754 949	100 538	6%	
67 Staff Development				625 855	6 755															630 610	556 806	-73 776	-12%
68 Staff Development Levy			1 227	2 568	8 817	9 765	6 045	11 739	8 417	6 719	10 421	2 105	120 300	106 448	137 019	113 491	84 306	141 411	789 230	735 735	48 535	6%	
69 Software Maintenance							308 544		287 920										598 464	556 464	42 000	8%	
70 Staff Bursary							546 808												546 808	546 808		0%	
71 Stakeholders Forum											33 713								607 576	580 327	27 249	5%	
72 Storage Costs					168 873														104 420	124 768	-20 348	-16%	
73 Subscription and Members fees					17 540		29 800	22 236	11 893	19 320	12 240								161 002	107 066	53 936	41%	
74 Systra Support			3 851	7 876															203 890	174 149	29 741	17%	
75 Telephones & Fax					30 000														30 000	30 000		0%	
76 Tools & Equipment					1 803 537														1 911 028	1 887 259	23 769	1%	
77 Travel and other - Committees					5 000														5 000	5 000		0%	
78 Travel & Subsistence - Staff					45 237		58 438	1 212 776	47 876	101 786	153 301								984 094	1 501 889	-517 795	-34%	
79 Vehicle - Fuel					90 163														1 537 684	1 343 361	194 323	14%	
80 Vehicle - Licences					3 500														24 000	20 776	3 224	15%	
81 Vehicle - Maintenance					29 804														313 368	420 173	-106 805	-25%	
82 Vehicle - Leasing					1 386 246														1 386 246	1 386 246		0%	
83 Wide Area Network									11 662 688										11 662 688	11 662 688		0%	
84 Workshops Compensation					677 918														677 918	677 918		0%	
85 Workshops					37 290		21 382	33 810	29 785	3 413	1 158 915	14 436							532 551	639 537	-106 986	-17%	
Operating Budget	2 185 665	1 469 460	182 935	5 512 838	9 719 263	19 029 833	6 478 593	2 639 343	24 959 838	5 750 080	7 769 219	124 331	22 051 500	20 826 683	24 963 066	21 482 328	21 839 319	26 379 514	218 349 656	206 604 650	11 745 006	6%	
Total Operating Budget	3 199 923	4 464 788	1 890 037	8 969 050	18 635 239	47 246 939	66 924 119	16 670 173	37 333 353	20 438 300	70 171 871	2 764 636	165 538 644	158 852 307	216 910 493	180 738 928	140 214 023	210 036 966	1 387 733 995	1 288 840 880	99 093 115	8%	
CAPITAL BUDGET																							
86 Computer Hardware																							
87 Corporate IT																							
88 Computer Software (All Projects)	10109																						
89 Building Improvements																							
90 Leased Improvements																							
91 Motor vehicles																							
Total Capital Budget	14 971																						
Total Budget	3 214 924	4 479 788	1 890 037	8 984 050	18 635 239	47 246 939	66 924 119	16 670 173	37 333 353	20 438 300	70 216 784	2 860 119	168 852 307	158 852 307	220 449 107	184 240 393	144 333 131	212 877 418	1 418 645 632	1 313 874 190	104 821 442	8%	

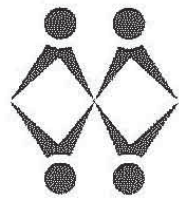




LEGAL AID SOUTH AFRICA

2013 2014 SALARIES BUDGET

Pers no.	Employee Group	New level 2013/2014	Position	Total CTC
Filled	Permanent Employees	LP-10-19	Senior Litigator	1 132 911.37
Filled	Permanent Employees	LP-10-13	Senior Litigator	1 036 217.16
Filled	Permanent Employees	LP-10-9	Senior Litigator	976 385.55
Filled	Permanent Employees	LP-10-16	Senior Litigator	1 083 487.45
Filled	Permanent Employees	LP-10-4	Senior Litigator	906 448.30
Filled	Permanent Employees	LP-10-9	Senior Litigator	976 385.55
Vacant	Permanent Employees	LP-10-1	Senior Litigator	870 121.72
Vacant	Permanent Employees	LP-10-1	Senior Litigator	870 121.72
Vacant	Permanent Employees	LP-10-1	Senior Litigator	870 121.72



Legal Aid
South Africa

LEGAL AID SOUTH AFRICA BUDGET 2014/15

**Office of the CFO
30 October 2013**

**LEGAL AID SOUTH AFRICA
2014/2015 BUDGET - NATIONAL CONSOLIDATED**

GL Code	Board Secretaries	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State/North West Region	Gauteng Region	KwaZulu Natal Region	Mpumalanga/Limpopo Region	Western Cape/Northern Cape Region	Total 2014/2015	Total 2013/14	Variance	%
DIRECT COSTS																						
1 Basic Salary	30650				2 487 791	9 092 861	7 021 326			117 103 526	110 739 222	141 104 258	117 619 976	87 681 332	141 207 443	731 359 446	678 409 077	52 949 369				
2 Housing Allowance	30150				35 116	243 714	503 893			7 289 574	7 389 558	6 036 640	6 877 594	6 877 594	7 289 574	40 547 824	37 628 227	2 919 597				
3 Medical Aid Contribution	30350				24 118	6 000	31 200			1 129 425	1 254 659	1 061 148	1 097 179	1 514 006	1 368 471	7 742 510	9 500 920	-1 758 410				
4 Motor Car Allowance	30450				171 126	73 009	314 769			2 233 958	1 691 743	2 093 882	1 924 406	1 988 332	1 931 976	12 255 109	12 087 692	167 417				
5 Pension Contribution	30550				113 116	492 547	726 356			80 615	499 233	1 057 002	126 247	696 137	448 502	3 081 179	3 077 147	4 034 032				
6 Life Contribution	30650				8 749	48 915	14 277			10 341 241	9 529 034	11 757 885	10 039 653	8 135 769	11 489 548	62 694 541	57 357 113	5 337 428				
7 Cell Phone Allowance	30750				28 600	78 000	36 400			578 499	559 045	607 065	592 826	491 347	692 060	3 673 913	3 117 052	556 861				
8 Increase in legal capacity	30710					7 533 471				468 192	582 424	528 128	496 192	467 528	3 310 980	3 310 980						
ADMIN SUPPORT COST					2 833 873	8 889 286	19 539 492			0	138 347 375	130 595 697	185 697 183	108 050 748	165 089 774	872 107 137	600 317 216	171 789 919				
ADMIN SUPPORT COST																						
10 Basic Salary	40550	3 042 822	1 385 686	3 244 736	5 729 740	11 207 550	7 010 453	13 158 991	12 399 513	1 967 664	4 712 636	2 171 438	13 009 107	10 256 000	15 490 441	147 970 693	138 265 005	9 705 688				
11 Housing Allowance	40150	37 747	22 847	0	118 157	403 644	259 064	586 002	391 621	1 382 220	982 081	1 80 553	1 016 542	781 136	1 178 118	9 157 840	8 970 050	187 790				
12 Medical Aid Contribution	40350	10 800	39 000	0	47 352	194 400	230 952	120 461	109 681	43 200	97 200	109 000	109 991	518 253	781 074	4 483 580	5 494 707	-1 011 127				
13 Motor Car Allowance	40250	23 634	12 168	0	63 772	314 966	169 650	389 948	293 550	55 158	133 846	121 689	453 920	626 056	5 420 335	5 085 707	-364 628					
14 Pension Contribution	40550	83 156	38 913	0	108 000	303 290	292 491	150 098	349 200	72 000	102 000	0	42 534	42 534	78 877	1 880 001	2 158 137	-276 136				
15 Life Contribution	40650	3 888	1 808	0	89 899	931 173	448 753	719 778	541 081	199 037	503 341	268 573	1 497 643	1 125 412	1 631 759	13 616 327	12 582 069	1 034 258				
16 Cell phone Allowance	40750	3 289	5 354	0	12 829	38 143	30 622	48 529	48 185	8 848	21 282	17 676	105 572	81 602	128 560	946 991	939 771	107 220				
17 Incentive payments - Staff	40760	28 492	28 400	36 000	36 000	105 200	64 900	141 600	129 600	18 800	36 000	9 600	128 824	117 600	145 271	1 450 822	1 450 822					
18 Green Life	43650					41 827 961										41 827 961	37 093 238	4 734 723				
19 Rent service Awards	40750					97 500										97 500	15 659 870	1 320 023				
20 Annual Leave Provision	21750					5 308 958										5 308 958	65 000	-60 691				
21 Annual Leave Provision	40550					9 692 768										9 692 768	5 005 110	4 687 658				
22 Other improvement in conditions of ser																9 692 768	8 351 757	1 341 011				
OTHER DIRECT EXPENDITURE					8 712 366	27 857 731	9 817 307	17 138 013	17 442 228	2 606 700	5 917 307	2 889 920	17 926 220	18 723 347	20 056 656	260 663 517	241 665 895	19 000 622				
23 Judgments	35250																					
24 Debtors/creditors	35350																					
25 Event/Witness	35150																					
26 Co-opted Members	35950																					
27 Insurance/Subsistence-Circuit	32950																					
28 Travel/Board/Child Justice Act	35950																					
29 Child Act & Child Justice Act	35950																					
OPERATING BUDGET					1 116 403	3 202 740	1 542 239	3 909 365	15 081 600	14 442 228	2 606 700	2 889 920	17 926 220	18 723 347	20 056 656	260 663 517	241 665 895	19 000 622				
31 Answer Awards	41050																					
32 Advertising	41100						229 082															
33 Annual Report	41150				200 496																	
34 Audit Fees	41250				3 668 812																	
35 Bank Charges	41350				161 604																	
36 Board fees	41450																					
37 Call Centre Support	41510																					
38 Call Centre Maintenance Equipment	41620																					
39 Change Management	41850																					
40 Cleaning Materials	41850																					
41 Communication	41650				2 864 165																	
42 Computer - Disaster Recovery	41700																					
43 Computer - Maintenance	41750																					
44 Computer - Software Licences	41800																					
45 Congress & Seminar	41850																					
46 Contingencies	41900																					
47 Corporate Governance Training	42100																					
48 Deputation	42200																					
49 Document Exchange	42550																					
50 Education & Training	42600																					
51 Employee Assistance(Counseling/OHS)	42650																					
52 Employment Relations	42700																					
53 Forensic Investigations	42800																					
54 HIV/AIDS Management	42900																					
55 Insurance Short-Term	43100																					
56 IT Support	43250																					
57 Partnership Programs	43450																					
58 Legal Fees	43450																					
59 Library & Publications	43450																					
60 Maintenance - Buildings	43500																					
61 Maintenance - Office Equipment	43500																					
62 Management Fees - Travel	43500																					
64 Moving/lofts	43500																					



LEGAL AID SOUTH AFRICA

2014 2015 SALARIES BUDGET

Pers. No	Employee Group	New level (2014/2015)	Position	Total CTC
Filled	Permanent Employees	LP-10-20	Senior Litigator	1 223 669.12
Filled	Permanent Employees	LP-10-14	Senior Litigator	1 119 243.17
Filled	Permanent Employees	LP-10-10	Senior Litigator	1 054 629.67
Filled	Permanent Employees	LP-10-17	Senior Litigator	1 170 290.72
Filled	Permanent Employees	LP-10-5	Senior Litigator	979 094.84
Filled	Permanent Employees	LP-10-10	Senior Litigator	1 054 629.67
Vacant	Permanent Employees	LP-10-1	Senior Litigator	926 000.96
Vacant	Permanent Employees	LP-10-1	Senior Litigator	926 000.96
Vacant	Permanent Employees	LP-10-1	Senior Litigator	926 000.96

1 Boast Street
Eshowe
25 November 2015

P

Mr Leon Venter,
Chief Magistrate
Eshowe Magistrate's Court

Dear Mr Venter

BRINK'S PAIA APPLICATIONS AGAINST LASA
CASE NUMBERS 257-9/14; 1005/15; AND 1034/15

I refer to Legal Aid South Africa's local attorney Mr Malcolm Munro's communications with me last week, copies of which I enclose, conveying your advice to him that the PAIA-specialist magistrate, Mr van Rooyen, will be available to try my PAIA application(s) on 3, 4, 8 and 10 December; and then informing me the next day that these dates didn't suit LASA.

Although the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa don't afford an opposing party the prerogative to reject a date or dates for the hearing of an application provided by a court at the instance of the party applying for them, I didn't object to LASA delaying the hearing of my cases until next year – even though as mentioned in my last letter to you of 27 October, I'm anxious that my claims be tried as soon as possible – because on 19 November, the very day Mr Munro mentioned the dates, I launched another application out of your court under case number 1432/15 to compel LASA CEO and information officer Vidhu Vedalankar's compliance with four more PAIA requests unlawfully refused by her in May.

Since LASA's defences (such as they are) raised in their answering affidavits opposing all my PAIA applications to date are likely to be copied and pasted into Vedalankar's answering affidavit as well, it would seem eminently convenient and expedient were all my cases to be tried together early next year, by which time my recently launched fifth PAIA application will be ripe for hearing too.

It's for this reason that I didn't disregard LASA's rejection of the December dates offered by Mr van Rooyen, select one of them, and serve a notice of set-down on LASA – as I was entitled to do: Rule 55(1)(j)(ii) provides that 'the applicant may apply for an allocation of the date for the hearing of the application within 5 days of the delivery of his or her replying affidavit'. And subsection (iv): 'Notice in writing of the date allocated by the registrar or clerk of the court shall

be delivered by applicant ... to the opposite party not less than 10 days before the date allocated for the hearing.’)

When I file my replying affidavit in my latest application in a few weeks time, I'll simultaneously apply for a new date for the hearing of all my applications together.

And when I do, I'd appreciate it if, after obtaining one or more new dates from Mr van Rooyen, you or your Clerk of Court would communicate it/these directly to me, rather than via my opponent LASA's local attorney, so that I can serve a set-down notice on LASA under rule 55(1)(j)(iv) – irrespective of whether LASA and/or its junior counsel like the date(s) or not, since under the rules this will be of zero legal interest, and LASA has already had one indulgence from me in agreeing to delay of the hearing of my first four claims until next year, albeit that this suits me, and I'm sure Mr van Rooyen, in making possible the hearing of all five of my claims, including my latest, together.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style with several loops and a long tail.

ANTHONY BRINK

Email: arbrink@iafrica.com

Telefax: 0866720776

Cc: Malcolm Munro,

WE White Attorneys and Conveyancers

Anthony Brink

From: Malcolm Munro [wewmfm@telkomsa.net]
Sent: Thursday, November 19, 2015 8:03 AM
To: arbrink@iafrica.com
Subject: FW: brink / LASA NAIR and OTHERS
Attachments: BRINK v nair.doc

P

Dear Mr Brink,

Further to our letter to you of yesterday I have to advise that those who instruct me have informed me that the dates mentioned are unsuitable.

The matter will have to be heard next year, I suppose.

I presume you will attend to setting the matter down?

Yours faithfully

M Munro

From: Malcolm Munro [<mailto:wewmfm@telkomsa.net>]
Sent: 18 November 2015 12:26 PM
To: 'arbrink@iafrica.com' <arbrink@iafrica.com>
Subject: brink / LASA NAIR and OTHERS

OUR REF: MFM17L012009

YOUR REF:

18 November 2015

per telefax
per e-mail: arbrink@iafrica.com

FOR ATTENTION MR A R BRINK

Dear Mr Brink

RE: A R BRINK / NAIR N O (ESHOWE CASE NUMBER 1005/2015)

We refer to the above matter. The Magistrate informs us that the specialised judicial officer is available on the following days:-

3rd December 2015
4th December 2015
8th December 2015
10th December 2015

We realise this is short notice. We are communicating with those who instruct us and are awaiting their reply. Failing these dates we will have to proceed to next year

Finally, it occurs to us that the other matters could be heard also. Is this doable? .

YOURS FAITHFULLY
W E WHITE

P

1 Boast Street
Eshowe
2 December 2015



Mr Leon Venter,
Chief Magistrate
Eshowe Magistrate's Court

Dear Mr Venter

BRINK'S PAIA APPLICATIONS AGAINST LASA
CASE NUMBERS 257-9/14; 1005/15; AND 1034/15

Thanks for your phone call yesterday advising me of the three dates in February 2016 that Mr van Rooyen said he'll be available to try my cases. I was delighted to receive your news of these early dates.

To play safe, and to ensure that my cases are indeed argued to their conclusion in February, and not delayed by gales of hot air (as in the answering affidavits) blown by LASA's junior counsel for hours to force an adjournment to some time later in the year, I've set my cases down on all three dates.

I annex an extra copy of my notice of set-down showing this.

Many thanks again for your assistance in arranging for the hearing of my matters so early next year.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', is located below the 'Yours sincerely' text. The signature is fluid and somewhat abstract, with several loops and a long horizontal stroke.

ANTHONY BRINK
Email: arbrink@iafrica.com
Telefax: 086 672 0776
Cell: 083 779 4174

Cc: Malcolm Munro,
WE White Attorneys and Conveyancers

1 Boast Road
Eshowe 3815
~~29 December 2014~~
2 July 2015

R

The Clerk of Civil Court
Eshowe Magistrate's Court

Dear Sir/Madam

PAIA APPLICATIONS
PRE-TRIAL CONFERENCE IN CHAMBERS
BRINK V BAMBISO, VEDALANKAR AND MSWELI
CASE NUMBERS 257-, 258- and 259/14

On 29 December 2014 I requested a pre-trial conference in the above matters having regard to what appeared to be LASA's implicit abandonment of its reliance on PAIA sections 7 and 45 to refuse my PAIA requests. The reason for my conclusion is set out in my request.

I was wrong. LASA is still relying on sections 7 and 45 to refuse my PAIA requests. In late May 2015 it finally refused the three PAIA requests in respect of which it had demanded background reading and other fees (not permitted by the Act), and justified its blanket refusals by alluding to the said sections, without specifying them, in alleging that my requests were 'related to' past and current litigation and maliciously intended to divert LASA's resources.

In the situation, unless the magistrate considers it desirable that the pre-trial conference should proceed, perhaps to ask LASA's very junior counsel whether he's read the Act (see annexed news report), I would prefer it were the applications to be set down for argument as soon as possible.

Yours sincerely



ANTHONY BRINK
APPLICANT



Judge tells City Power: You f****d up!

May 23 2015 at 09:15am
By Thabiso Thakali

[Comment on this story](#)

Johannesburg - A Joburg High Court judge has launched a scathing attack on the City of Joburg and its power utility City Power, calling them “idiots” and accusing them of “f****ing up” over their reluctance to reveal information about a R800-million solar geyser deal.

In a Promotion of Access to Information case brought by Numsa, the metal workers union, against City Power, Judge Kathy Satchwell accused the utility’s officials of “covering up fraud and corruption” over its refusal to hand over documents relating to the contract on solar geyser heaters.

Judge Satchwell was unimpressed with City Power’s failure to respond to Numsa’s requests for information since 2013. She said that City Power had replaced the Road Accident Fund “in so far as incompetence and fraud is concerned”.

Lawyers representing City Power argued that the judge was “biased” after she had ordered that legal costs be paid by the utility’s officials responsible for the litigation out of their own pockets, and not the ratepayers’. The lawyers argued that Satchwell had used “profanities” in her chambers against the utility’s attorneys by calling them “idiots” and remarking that someone had “f****ed up”.

“Some person” within City Power, she remarked, was “lazy, covering up, hiding things, and idiots and the like” and the “knowledge of such things comes to one like a dagger in the night”.

“The learned judge stated that the City... only uses young incompetent black attorneys or little grey old white men sucking up to the black people in the city,” read the application by City Power’s lawyers.

City Power said that the judge had suggested that these attorneys were used in order to cover up fraud and corruption. “The learned judge stated that the city believes that it is a tail wagging the dog and that ‘I should decide whether or not I am going to allow this’.”

The utility’s lawyers said this was an indication of bias because the judge had not heard the merits of the case.

The utterances were apparently made in April in Judge Satchwell’s chambers when she granted an order of costs to Numsa.

At the heart of the matter is Numsa’s request for information on an R800-million contract for the supply and installation of solar geysers in 2012.

Numsa had sought the court’s intervention after its requests for information in August 2014 had been ignored.

The union previously alleged that the contract was awarded to companies that imported the geysers from



Joburg High Court Judge Kathy Satchwell. Photo: Sharon Seretlo

China while the same were made in the East Rand. According to the recusal application by City Power, Judge Satchwell also stated that, by not disclosing the documents sought by Numsa, "You are being tarred by the tar of President (Jacob) Zuma. Go think about this".

But on Friday Satchwell was unapologetic as she refused the application to recuse herself. She told the defence lawyers she was only prepared to amend patent errors in her judgement. The City Power attorney, she remarked, had tried to set her up but "I don't care".

City Power has people "who don't know how to do their job. That sounds like incompetence – so my 'bias' remains".

Satchwell added that profanities she was accused of using "would worry my mother but not my father".

She said that her order for costs to be paid by officials of City Power was meant to "look to see if anybody has placed City Power in the dwang".

"City Power might have been badly done by its staff," she said. "Look to see if there should be any employees held responsible." She dismissed the application for her recusal but the order for City Power to pay the legal costs remained.

Judge Satchwell instructed the attorneys to write to Sicelo Xulu, City Power's managing director, to put his house in order. She said that City Power's refusal to disclose information was made without reading the relevant provisions of the Promotion of Access to Information Act.

Judge Satchwell said City Power's information officer had refused Numsa's request in 2013 and 2014 unprocedurally and without full information before him. The utility had been "contemptuous" to the court, she said. Judge Satchwell said Numsa may appeal the refusal through internal processes before turning to the court for assistance.

In 2001, Satchwell, a lesbian, won the right for her partner to enjoy the same benefits as those previously reserved for spouses of married heterosexual judges, a right confirmed by the Constitutional Court the following year.

Saturday Star

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374



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1 Boast Road
Eshowe 3815
29 December 2014



The Clerk of Civil Court
Eshowe Magistrate's Court

Dear Sir/Madam

PAIA APPLICATIONS
REQUEST FOR PRE-TRIAL CONFERENCE IN CHAMBERS
BRINK V BAMBISO, VEDALANKAR AND MSWELI
CASE NUMBERS 257-, 258- and 259/14

Under section 54(1) of the Magistrates' Courts Act 32 of 1944, I write to request the convention of a pre-trial conference in chambers for the purpose envisaged in subsection (a), namely 'the simplification of the issues' in the above-mentioned three applications in which I'm the applicant.

As required of you by rule 25(1), please place this request before the magistrate for decision.

My applications are for orders, elaborated as necessary, compelling Legal Aid South Africa's information officer and two provincial deputy information officers to comply with the Promotion of Access to Information Act 2 of 2000 ('PAIA'). The affidavits are all in, but the issues for determination are unclear.

In a bid to obviate the need for the conference, I wrote to the respondents' local correspondent on 12 November 2014, (annexure 'A'; delivery receipt: annexure 'B'), identifying all the grounds on which the respondents and their in-house attorneys, LASA Corporate Service Executive Thembile Mtati and Corporate Legal Manager Solly Sekgota, had in mind to oppose my applications on their very junior counsel's advice, reflected in the answering affidavits he drew, and enquiring what they intended persisting with.

I received no reply; but now that Mtati and Sekgota have read my replying affidavits, pointing up the legal and factual vacancy of all the points taken in opposition to my applications, I see they've changed their tune:

Subsequent to judgment in my unfair discrimination complaint at the bottom of it all – the matter is currently before the Labour Appeal court on petition (annexure 'C') –

I filed four further PAIA requests, also directed inter alia at exposing LASA National Operations Executive Brian Nair's prolific perjuries at trial.



On 11 December 2014, Mtati asked for another month within which to comply:

The basis for the request for the extension is that firstly, all your requests are voluminous and incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa.

Indeed they do. Although my purposes for requesting public documents are immaterial under section 11(3) of the Act, I mentioned in my founding affidavits that I require the specified records, or sworn certification where they don't exist, for perjury and other civil and disciplinary prosecutions of 'the officials of Legal Aid South Africa'. I've since discovered that Nair has been admitted as an advocate in the past few months; and I intend lodging a sworn complaint with the General Council of the Bar cataloguing and documenting his many perjuries in my labour case, to found an application that he be struck off the roll (such as is imminent, per GCB resolution of 15 November 2014, against National Deputy Director of Prosecutions Nomgcobo Jiba, Special Director and head of the Specialised Commercial Crimes Unit Sthembiso Mrwebi, and North Gauteng Director of Public Prosecutions Sibongile Mzinyathi, for their perjuries in other litigation to mislead and defraud the court so as to defeat the ends of justice, all of whom the NPA charged with perjury in August).

Mtati's request for more time to comply on the basis that my latest 'requests are voluminous' and that the ordinary 30 calendar days prescribed by the Act to search for and supply them to me isn't enough, suggests that LASA's lawyers have advised the deputy information officers concerned to comply with my latest requests, having finally grasped and understood the rudimentary lessons that the SAHRC tried teaching them more than two years ago by email on 22 August 2012 followed by a special remedial training workshop held for them on 6 October 2012, namely that a requester's stated or assumed purpose in requesting access to public records is irrelevant, and that section 7 does not afford an information officer a justification for refusing it. (The section ordinarily prevents the use of documents obtained via PAIA in legal proceedings after they've commenced, without the court's leave, which section the respondents incompetently and unlawfully relied on to refuse my PAIA requests before this court and continued incompetently and unlawfully doing so in their answering affidavits.)

Mtati's appreciation that my latest 'requests ... incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa', such as getting

sacked, struck off, and jailed, naturally eliminates section 45 from bona fide contention in the matter. (The section bars obviously frivolous and time-wasting requests, which section the respondents also incompetently and unlawfully relied on to refuse my PAIA requests before this court and continued incompetently and unlawfully doing so in their answering affidavits.)

S

With sections 7 and 45 as their basic grounds for refusing my PAIA requests before this court now implicitly abandoned, and their other excuses not being contemplated in Chapter 4 ('Grounds for Refusal of Access to records') and therefore of zero legal interest, it remains to be seen what's left of the respondents' opposition to my applications against them to enforce my fundamental right to information that they've violated.

A pre-trial conference for 'the simplification of the issues' will clarify what's to be argued when the cases are set down, and will 'aid in the disposal of the action in the most expeditious and least costly manner', as envisaged by section 54(1)(e). (Section 54(1) governs pre-trial conferences 'in any proceedings', and not only actions.)

There's some urgency to the matter. Besides requiring them for the criminal, civil and disciplinary purposes I've mentioned, Nair's strike-off included, the documents I've requested, or sworn confirmation in some cases that they don't exist, will be highly material in my appeal: I'm seeking the Labour Appeal Court's leave to present further evidence on appeal, and the few records released to me in response to my PAIA requests before this court have already revealed two distinct, clear-cut and undisputed instances of Nair's lies to the trial judge on oath. I expect that other records disgorged by my PAIA requests filed after trial will yield further evidence in cold print of Nair's manifold perjuries on various aspects and consequently the unreliability of his false claims at the centre of the case.

I also require the documents for an investigation by the Public Protector inter alia into the gross breakdown of proper corporate governance and management at LASA, and a parliamentary enquiry inter alia into my charge that by dint of secret false reports ghost-written by Nair in March and June 2011 (initially denied, he eventually admitted his authorship at trial), LASA Board chairperson Mlambo JP perverted separate ministerial and parliamentary enquiries I'd initiated into (a) information officer Vidhu Vedalankar's persistent, repeated illegal blanket refusal to comply with my first and second PAIA requests filed in August and December 2010 in which I was testing the justification advanced to me (budgetary insufficiency, she said (Nair

ghost-writing), later exposed as a lie) for the abortion of my appointment to LASA's most senior specialist legal professional position in this province after I was unanimously recommended for it by a selection panel of LASA's top lawyers in the region; and (b) the true reason for the abortion of my appointment, having regard to the early indications then already within my knowledge, and conveyed to Mlambo JP, that it had been unlawfully motivated under cover of a financial pretext. Which lie was repeated to the Minister and to Parliament – with another story concocted to patch a hole in it, retracted by Nair on affidavit before trial as a mistake after I exposed it as another lie, then revived by him at trial on the basis that the retraction was a mistake, then contradicted by him with yet another story.

S

Such is the extraordinary gravity of this matter.

In the situation, if my request for a pre-trial conference is granted, please set it down as soon as possible after the first week of January next year. LASA has closed for the Christmas season and reopens on the 5th.

I enclose draft orders drawn in conformity with prescribed Form 20 for signature, and for service by hand or registered post at least ten days before the conference, as stipulated by rule 25(3).

To expedite the matter, I'd be glad to uplift the orders immediately once they're signed, retain copies for myself, hand-deliver the others to the respondent's local correspondent, and file proof at court once I've done so. My number's below.

Yours sincerely



ANTHONY BRINK
083 779 4174

Cc: E. W. White and Co
12 Osborn Road
Eshowe
(Mr Munro)

1 Boast Street
Eshowe
12 November 2014



WE White Attorneys
12 Osborn Road
Eshowe
Ref: Mr M Munro

Dear Mr Munro

BRINK/LASA: PAIA APPLICATIONS: ESHOWE MAGISTRATES COURT

Subject to your principals' response to my alternative suggestion mentioned below, I propose applying under section 54 of the Magistrates' Court Act 32 of 1944 for the convening of a pre-trial conference in chambers for the purpose envisaged in subsection 1(a): 'the simplification of the issues' in my three PAIA applications against LASA's information officers, now that the papers are all in.

Opposing my applications, the respondents have raised issues:– about section 7 of PAIA justifying the refusal of my requests for access to its records; about section 45 doing likewise; about my not first appealing to the CEO and/or to the Board; about whether my time to appeal lapsed; about whether I wish to usurp the function of the Legislature; about this court not having jurisdiction; about defective service of the applications; about this court being biased; about whether the matter is too convoluted to decide on the papers; about whether my claims in this court were intended to deliberately disadvantage the respondents; about whether I've placed this court in a trap to rule differently from the Labour Court; about there being a deep-seated dispute of fact requiring oral evidence or a trial to determine; about whether CSE Mtati is a duly delegated deputy information officer; about the matters being sub judice; about my applications offending against the precedence rule and creating unnecessary confusion; about my waiver of my right to request the documents I've requested under PAIA; about my delay in requesting the documents; about my not joining other parties; about my previously requesting certain of the records for trial in my labour case; about the requested documents relating to my labour case; about the requested documents being improperly requested for the purposes of future criminal, civil, and disciplinary proceedings; about my claims being an abuse of court; about whether I'm ordinarily resident in the court's area of jurisdiction; about whether I ought to have made one not three PAIA requests; about the court not having the power to grant the orders I've sought; about the orders being too convoluted and incoherent to be granted; about the orders being too vague; about whether I should have sought the documents I requested via

a different mechanism, and not PAIA; about whether it's an abuse to collect evidence for this or that litigation; about my allegations being scandalous, irrelevant and a gross abuse of court and of my power as a magistrate; about whether I'm entitled to apply for an order making provision for returning to court on amplified papers for a further order; about the orders being insufficiently precise; about whether the court needs sight of the thousands of pages in my labour case to decide my claims; about whether the court has the power to find the CEO in contempt; about whether my behaviour is strange and unethical; about whether my provision of copies of the papers to the persons mentioned in my notices of motion are calculated to generate friction and discord amongst LASA's staff and undermine the operation of LASA; about whether sections 7 and 45 of PAIA complement each other; about whether any of my evidence should be struck out; about whether I'm guilty of gross misconduct; about whether my conduct is deplorable and deserves the dimmest view a court can give a person; about whether I've failed to comply with the Act; whether my claims are scandalous, vexatious and a flagrant disregard of the law and the processes of court; about the Minister's Notice concerning jurisdiction not having any force and effect; about whether other persons not cited need to give oral evidence; and about whether my claims should be dismissed with punitive costs because of the aggravating, defamatory, unethical facts before court.

As I show in my replying affidavits, all this is very junior counsel's laughable poppycock.

It may be, however, that on the advice of very junior counsel who drew their papers, and who thinks all these points of his are tremendous, the respondents wish to continue resisting my claim to access to the public documents under their control in the exercise of my fundamental rights.

At the conference I will seek the court's directive that the respondents identify and define precisely:

- o on what grounds they will be persisting in opposing my applications at the hearing;
- o what grounds in their answering affidavits they will be abandoning; and,
- o whether they will be opposing my applications on any other ground(s) not presaged in the papers, and if so what they'll be.

The considerable cost to LASA of attending such a conference across the country may be averted if we simply agree the issues for decision between ourselves. All I require is a memorandum, signed by CSE Mtati, under the heading, '**Draft Consent Order under section 54(2) of the Magistrates' Court Act 32 of 1944: Issues for Decision**', enumerating the points the three respondents intend taking against me at the hearing of my applications.

On receipt of the memorandum in good shape, I'll (i) counter-sign it, (ii) file it at court under a pre-trial conference notice prescribed by rule 25, and ask for the issue of a Consent Order

recording the 'agreement made by the parties' which 'limits the issues for trial', as envisaged by section 54(2), (iii) collect and give you a copy of the court's Consent Order made, and (iv) send a copy up to the SAHRC for its information to enable it to 'monitor the implementation of this Act' by LASA, as provided by Section 83(3)(b) of PAIA, and note for its next section 84 report to the National Assembly the basis on which LASA's information officers propose continuing to resist my court applications to compel their provision of the records I've duly requested.

If the respondents are disposed to taking up my suggestion, then before Mr Mtati signs the Draft Consent Order, he would be well advised to consult the SAHRC's PAIA Unit for its expert advice as to the availability in law and fact of the above-stated defences that he or his very junior counsel intend relying on.

Section 83(3) of PAIA very pertinently empowers the SAHRC to '(d) recommend a public or private body that the body make such changes in the manner in which it administers this Act as the Commission deems advisable', and '(e) train information officer and deputy information officers of public bodies' on the operation of PAIA when they demonstrate themselves to be pathetically ignorant of its provisions.

I recommend this having regard to the SAHRC's report after its special remedial PAIA training workshop for more than a dozen of LASA's pathetically ignorant Corporate Services lawyers in head office on 6 October 2012, held on account of LASA's previous persistent, repeated, illegal refusals of my PAIA requests in 2010/11 in which I was interrogating the budgetary insufficiency explanation given me for the off-the-record, illegal abortion of my appointment to its Senior Litigator post at Pietermaritzburg, which report recorded LASA's very obvious 'challenges [in] complying with PAIA'; its 'lack of application based knowledge'; 'the fact that they had previously been misapplying the provisions of PAIA'; that this 'misinterpretation and misapplication was identified as high risk to LASA'; 'LASA compliance history was flagged with participants and most reacted to the reporting of LASA as non-compliant to Parliament with concern'; 'Most participants were a little overwhelmed by the requirements of the legislation'; 'personnel from the Legal Department were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA and to create guidelines within the organisation to ensure misapplication does not recur;' and 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation'.

(Needless to say, in breach of these solemn undertakings, LASA failed to 'review decisions which may not have had justification in terms of PAIA and to create guidelines within the organisation to ensure misapplication does not recur' and failed to allocate 'a clear budget dedicated to PAIA compliance and implementation' – which goes some way to explaining why we're in court.)

Mr Mtati will appreciate from my replying affidavits that his very junior counsel in my three matters is clueless, so it will be useless looking to and relying on him for advice on what defences to persist with, rather than the PAIA experts of the SAHRC's PAIA Unit.

I write to you directly in this matter, requesting that you take instructions and revert to me, because my experience of LASA's Corporate Services lawyers is that important correspondence gets ignored, and nothing ever moves before trial unless forced by court.

If my practical suggestion is rejected, perhaps because LASA's lawyers fancy a nice free holiday at a guesthouse in the heart of lovely Zululand, I'll place this letter before court at the conference if needs be and move that LASA pay the entirely avoidable wasted costs of it under section 54(5), and that the waste of LASA's public funds in this manner be referred to the Board for their recovery from the employee who occasioned them.

I look forward to your principals' response to my proposal within 10 court days. If in this time I haven't received a Draft Consent Order as described above, I'll take it that it's not coming, and will proceed with my original intention to apply to court under section 54 for the convention of a pre-trial conference in chambers to simplify the issues in the manner mentioned. But if more time is needed to settle the terms of the Order, no problem; just let me know before I head for court.

Yours sincerely



ANTHONY BRINK

APPLICANT

Cell: 083 779 4174

Email: arbrink@iafrica.com

Cc: Nokwanda Molefe, SAHRC PAIA Unit.

Lesleigh Timothy, LASA Board Secretary

Patrick Hundermark, Legal Development Executive

All papers in my three PAIA applications are accessible at the case archive online:
www.tig.org.za/LASA username: lasa password: LASA2010.

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1 Boast Street
Eshowe
12 November 2014

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WE White Attorneys
12 Osborn Road
Eshowe
Ref: Mr M Munro

Dear Mr Munro

BRINK/LASA: PAIA APPLICATIONS: ESHOWE MAGISTRATES COURT

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Received by WE White Attorney
Without Prejudice.

Date: 12.11.14

Time: 12:12

Signature: 

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK

and

LEGAL AID SOUTH AFRICA

Petitioner

Respondent

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK

and

LEGAL AID SOUTH AFRICA

Petitioner

Respondent

PETITION FOR LEAVE TO APPEAL AND TO LEAD NEW EVIDENCE ON APPEAL

To: Judge President Basheer Waglay, Labour and Labour Appeal Courts of South Africa, and to the judges designated to consider this petition.

And to: Legal Aid South Africa
c/o Durban Justice Centre

332 Anton Lembede Street

Durban

(Mr Ngcamu)

The petitioner, Anthony Robin Brink, applies for an order granting him leave (i) to appeal to the Labour Appeal Court against the dismissal of his unfair discrimination claim with costs by Cele J in the Durban Labour Court on 18 September 2014, his application for leave to appeal and to present further new evidence on appeal having been refused on 27 November 2014, and (ii) to present further new evidence on appeal.

The petitioner's supporting affidavit under rule 4(1) of the Labour Appeal Court Rules is annexed hereto.

Signed at Eshowe on 7 December 2013

ANTHONY ROBIN BRINK
APPLICANT

1 Boast Street, Eshowe, KwaZulu-Natal
Telefax: 086 672 0776

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK

and

LEGAL AID SOUTH AFRICA

Petitioner

Respondent

SUPPORTING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I am an adult male, 55, an advocate of the High Court of South Africa of three decades standing, currently resident at 1 Boast Street, Eshowe, KwaZulu-Natal, where I'm based as an acting magistrate on short-term renewable contracts pending the correct decision of this most important case; and I am your petitioner. This affidavit sets out my case for your leave to appeal, and present further new evidence on appeal, in the form prescribed by LAC rule 4(1). To comply with the stricture imposed by rule 4(3), I've limited it to just 50 paragraphs, so it can't be and isn't exhaustive. For concision, I'll refer to the respondent as 'LASA'; to my main heads of argument as 'my heads'; to the judgment in the case as 'the judgment'; to my application for leave to appeal as 'my application'; and to the judgment refusing it as 'the refusal'. These documents will be bundled with this petition. My considered specific approach in preparing this affidavit has been dictated by the wider public dimensions of the case to be mentioned.

2. As I'll show, this is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its just resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told variously to me, to the LASA Board, to the SAHRC, and to court (different lies told in the pleadings and interlocutory affidavits, and

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then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude, and perfunctory judgment, riddled with the most basic legal and factual misdirections, omissions and non-sequiturs, and characterised by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair.

3. I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try.
4. In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects.¹ To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence. Your lordships can hardly agree.
5. The judge elliptically conceded² his fundamental legal misdirection, identified in my application,³ that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me⁴ instead of on LASA. He then sought to avoid the fatal ramifications of this radical error by two means:
6. First by stating that the Employment Equity Amendment Act, which reversed the onus of proof in unfair discrimination claims by legislation, was only proclaimed in August 2014, after the trial and argument of the case, and didn't have retrospective effect – failing to note that the amendment merely codified the international jurisprudence on the point, supported by the International Labour Organisation and therefore prescriptive and binding on him.⁵ That is, the onus was reversed and lay on LASA, even before the amendment of the Employment Equity Act. I treated this crucial, foundational aspect

¹ Application for leave to lead further evidence (Part One of the application). I'm confident that several pending PAIA requests that I filed after the case, testing novel, surprising claims Nair made at trial – unanticipated by the correspondence, reports, pleadings and interlocutory affidavits, and at odds with them – will yield further cold print evidence of Nair's prolific perjuries at trial, and of his successful fraud on the judge. I'll seek leave to lead this new evidence on appeal, once it's to hand.

² Refusal, paragraph 5.

³ Application, paragraphs 191–211.

⁴ Judgment, paragraphs 65 and 67.

⁵ EEA, section 3, law and case bundle, pages 16–17.

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extensively in my application, quoting the authorities chapter and verse.⁶ The judge's response was to silently look away.

7. And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different – notwithstanding that LASA relied entirely on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth'⁷ on numerous scores.⁸ Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word,⁹ mechanically reciting his evidence as gospel, without any endeavour to assay its veracity. It seems to have been inconceivable to the judge that such a high public officer could be a practised, confident, spontaneously inventive, unctuous, bare-faced, abject liar.
8. In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose,¹⁰ thus depriving me of some major artillery I'd lined up; and he swept the whole thing – all 59 pages and 323 paragraphs – off the table in a single dismissive paragraph.¹¹

⁶ Application, paragraphs 204–11.

⁷ Judgment, paragraph 67. I'm currently preparing perjury charges for the criminal prosecution of Nair and other officers for their numerous lies told under oath in this matter to date, and collecting further evidence for this purpose using PAIA. Predictably, nearly all my first three PAIA requests filed after trial were illegally refused on legally spurious grounds, and three applications I've brought to compel are currently pending. I'm awaiting responses to four subsequently filed further requests. I've just discovered from the SAHRC that LASA has once again failed to report its refusals in its 2013/14 report as required by section 32 of the Act, and has concealed its reliance on entirely irrelevant and incompetent sections of it. Despite having been previously censured by the SARHC and taken to task by the Portfolio Committee for this (record, page 472, lines 4–25 to page 477, lines 1–7), it's now the third time that LASA has falsely and deceptively reported to the SAHRC for the misinformation of the National Assembly in turn, to conceal its illegal refusal of my PAIA requests to suppress documentary evidence of corruption in executive management.

⁸ Ibid.

⁹ Judgment, paragraph 69, last sentence for instance. (By the way, contrary to the judge's misdirected and irrelevant finding here, it was not my case that Nair knew of my background other than from my CV, and later my letter to Vedalankar in July 2010 detailing it further – the first he pretended not to have read until more than a year after receiving it (record, page 416, lines 19–25 to page 417 lines 1–2), and the second he pretended to have stopped reading at precisely the point it began dilating on my political background (record, page 460, lines 3–25 to page 461, lines 1–5); but this latter lie is exposed by his different story to the Minister and to Parliament in the reports to them that he wrote for Mlambo JP to sign and submit to them, which he later repeated even more precisely on affidavit: heads, paragraphs 153–7.)

¹⁰ Application, paragraphs 317–322.

¹¹ Refusal, paragraph 5.

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9. My contentions on the law of costs in unsuccessful constitutional litigation brought to vindicate a fundamental right likewise went completely ignored. That matter alone is eminently fit for appeal, particularly because the judge gave no reasons for condemning me in costs.¹² Which is to say to penury for the rest of my life.

10. Notwithstanding the mountain of papers¹³ and the duration of the trial,¹⁴ the case was really quite simple to anyone paying attention.¹⁵ Pared to the bone, here it is:

11. In November 2009 I was interviewed for LASA's top professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg (there's a twin post at Durban) – repeatedly advertised, and twice in the year that I applied for it. Five strangely silent and glaringly unprofessional months later, I telephoned LASA's national Human Resources Executive Amanda Clark to ask the result. (Nair was out of head office the day I phoned.) She replied she knew nothing about me or the recruitment, helpfully undertook to expedite it, and cheerfully encouraged me to contact the provincial HR manager for updates. I did, but on later finding him no wiser, I reverted to Clark. (Nair was now back.) This time she avoided and didn't return my repeated calls made over several days, with messages left for her. So at last I emailed her, pleading for information about the upshot of the interviews one way or the other, as I needed to settle my plans. She answered stunningly rudely¹⁶ and with studied disingenuity and opacity, and in as many words told me to get lost and not to contact LASA again. Her insolent proposal that I withdraw my application for the post back-handedly confirmed to me that I'd been selected for it, but announced

¹² In view of his criticism of Morris and Fourie in their case against LASA he'd recently decided (law and case bundle, pages 94–7), in which he'd deprived them of part of their damages, I pertinently enquired of the judge during oral argument whether there was anything about my conduct in the litigation that he thought remiss, so that I might address it and defend myself before he made any possible adverse finding about it. There was nothing. In awarding costs against me, seemingly in line with the general rule that costs ordinarily follow the result, the judge parroted the language of the costs order made in the Germishuys case (Case 10 in LASA's List of Authorities, and cited in footnote 15 of the judgment) – a very different case from mine, in which some disgruntled white woman thinking herself better than a black candidate selected for a post complained of unfair race discrimination without any evidence of it at all. In contradistinction, the judge extensively enumerated (his paragraphs 30–41) all the objective indicia pointing to unfair discrimination in my case – in the absence of a convincing non-discriminatory reason proved by LASA for aborting my appointment. He accepted I'd made out a prima facie case for such a finding, which is why he dismissed LASA's application for absolution after my evidence. See further, record: page 480, lines 1–25 to page 482, lines 1–22 (Nair clearly dissembling in reply).

¹³ Heads, paragraph 6: all the papers in the case are described and catalogued here.

¹⁴ Nine days, 23 July to 2 August 2013.

¹⁵ See paragraph 47 below.

¹⁶ The redacted excerpts quoted in the judgment don't fully convey her snarling tone. The full email is included in my trial document bundle, at page 256.

that I wasn't wanted – especially in light of the exceedingly unpleasant tone of her email, a total reversal of her initial open, impeccably professional, friendly one. Plainly, something seriously improper was afoot.

12. After three further strangely silent months I wrote to CEO Vedalankar, pressing for the finalization of my appointment. Nair answered on her behalf, baldly alleging that it had been decided not to fill LASA's Senior Litigator posts. Now naturally, had LASA duly taken this decision – not to fill one third, 3/9, of LASA's most senior specialist professional positions – there'd have been a record of this, for as Cachalia JA has pithily observed:

'Surely there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop ... In the absence of any paper trail must we just accept that [officials in the Presidency] are people of standing and they will never mislead, just like [then US Secretary of State] Colin Powell never misled the Security Council [over Iraq's alleged possession of "Weapons of Mass Destruction"]?' – 'State grilled over "secret" Zimbabwe report', *Mail & Guardian*, 26 November 2010.

13. So I tested Nair's claim with a comprehensive request for records under PAIA. It was refused in toto, under cover of a fake misquotation from a reported judgment claimed to justify this, and another bogus ground, later abandoned. And here we reach the point:

14. In her letter illegally refusing my request, Vedalankar justified the cancellation of my recruitment on the basis that:

'Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise. This had the effect of cutting our baseline funding by a significant amount. It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen. ... Therefore the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.'

15. Advanced to me nearly a year after my interview, as I was closing in with PAIA, this was LASA's forced justification for aborting my appointment: budgetary insufficiency, affecting not just mine, but two other equivalent posts.

16. It was an audaciously grand, impressively detailed and ostensibly convincing story. And uttered by none other than the CEO, who would disbelieve it? Again I tested it with another searching PAIA request. Again it was illegally refused: Vedalankar even rejected

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my prescribed request fee. But annexed to her letter refusing my second request, she put up some documents claimed 'to demonstrate' her story, and intended to put me off for keeps. Only, they didn't. They flatly contradicted it. This is what they revealed:

17. In January 2010 the Department of Justice and Constitutional Development (as it was then called) had confirmed to LASA that funding for phase 1 of the OSD scheme for professional staff salary increases would be included in its baseline budget for 2010/11. The Treasury confirmed it too. But on 10 March LASA learned that it hadn't been. So Vedalankar wrote to the Department a week later, raising LASA's concern about this and noting that since it had already commenced implementing OSD phase 1, LASA would be running an unbalanced budget without this funding: R23.8 million in the red – prohibited by the PFMA. She sent a reminder the following month, warning that unless the money was paid, LASA would have to reduce court coverage, causing backlogs and delays.

18. Vedalankar was referring to LASA's public defender posts serving the lower criminal courts at the bottom of LASA's professional staff establishment – not any other higher professional posts and certainly not Senior Litigator posts at the very top of it – and she and other management executives, Nair included, were explicit about this later on. (She meant reduce in the sense of not fill all the budgeted lower court posts; it's common cause no posts were ever cut.)

19. To interpose: LASA's annual and performance reports to Parliament which I independently sourced and analysed showed that its concern about when its OSD phase 1 funding for the year would be paid made zero difference to its recruitment of legal and other staff. Quite the contrary, this spiked in the April to June 2010 first quarter,¹⁷ and masses of new posts were created.¹⁸ And the reason this boom in new staff recruitment and new post creation occurred in the implementation of the Strategic Plan was because, contrary to Nair's lie in court about it¹⁹ – he later reversed himself²⁰ and then again²¹ (the judge didn't notice) – there was never any question that LASA's OSD phase 1 funding would be paid; the only question was *when* – because it had been paid in the previous financial year, also separately from the main budget transfer, and

¹⁷ Record, page 423, lines 3 – 25 to page 425, lines 1–9. Nair waffles uselessly trying to evade the sharp point.
¹⁸ Record, page 370, lines 17–18 and page 371, lines 6–8. Lying stupidly in the teeth of LASA's own statistics, confirmed and admitted by LASA before trial, which showed that in the first quarter alone almost as many new posts were created as in the whole of the previous year, Nair repeatedly denied that LASA's staff establishment had increased during the year, and claimed it hadn't changed.

¹⁹ Record, page 344, lines 14–16.

²⁰ Record, page 420, lines 23–5 to page 421, lines 1–3.

²¹ Record, page 464, lines 17–20.

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afterwards. And the Minister had assured LASA that it would be provided for in the mid-term national budget later in the year, as indeed it was. That is, the money was on its way, and no doubt about it.

20. The OSD uncertainty arising on 10 March 2010 made zero difference to Senior Litigator recruitment specifically: I later found out that two weeks later, while my appointment lay in the deep-freeze, Nair and his Legal Services Technical Committee (LASA's operational engine-room)²² resolved to recruit a Senior Litigator for Mthatha, and ordered that the budget for it be transferred from Kimberly and that the new post be advertised immediately. As it was:²³ the post was advertised in April, and a recommendation was made in late May – six months after my recommendation the year before and nothing done to finalise my appointment.

21. As the records Vedalankar supplied me show, by July 2010 the OSD phase 1 money wasn't yet in, so Nair suggested to her, the COO, CFO and HRE that recruitment to 56 lower criminal court public defender posts be frozen, more of them if necessary and some even lighter paralegal and administration posts if still necessary after that to meet the shortfall. Not any senior posts. They agreed, and proposed to the Board via the COO²⁴ that public defender coverage of the lower criminal courts be temporarily limited, in other words that recruitment to some of these vacant posts be frozen – but not any other posts, and certainly not any critical ones. Quite the opposite: they specifically proposed to the Board that as a cost-saving measure the filling of critical posts be prioritized.²⁵

22. To interpose again: Contrary to the judge's flat wrong finding that I hadn't shown Senior Litigator posts were critical,²⁶ this was common cause on the pleadings.²⁷ Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial – he was a pathetic liar²⁸ – contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top

²² Record, page 334, lines 5–16.

²³ Record, page 456, lines 4–6.

²⁴ Record, page 383, line 19.

²⁵ Record, page 375, lines 1–4.

²⁶ Judgment, paragraph 74. C.f. record, page 481

²⁷ Pleadings bundle, original response, page 170, paragraph 48.9 and pre-trial conference bundle, answer to agenda, page 57, paragraph 43.1, and page 58, paragraph 52.1. (The respondent then contradicts itself in the same pleading: page 63, paragraph 79.1.)

²⁸ The judge, formerly a criminal court magistrate, didn't remark generally on Nair's repeated immaterial and redundant loquacity as a device to avoid answering my questions, and his constant evasiveness throughout my cross-examination of him.

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professional echelon specialist Senior Litigator posts,²⁹ I showed at trial³⁰ and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't.³¹ The judge evidently didn't read that far.

23. At its meeting at the end of July 2010, the Board approved national executive management's proposal to temporarily freeze recruitment to some lower criminal court practitioner posts until the end of the year, and to make up the balance of the deficit at that time (arising from the delayed transfer of LASA's OSD phase 1 funding) from unspent savings. I later discovered that recruitment to other posts continued normally in the second quarter July to September 2010; and that the effect of the approved freeze was to dampen the overall increase in staff recruitment, as compared with the preceding and succeeding operating quarters.

24. All this is fully and comprehensively documented in the records Vedalankar supplied me in January 2011. And what they unequivocally show is that she lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded. But as I probed and tested it relentlessly, it came undone in light of the extant documentary record and the non-existence of records that would have existed had the budgetary story given me been true. The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up.³²

25. At trial I mentioned my conclusions from the evidence I'd just found of this³³ that Nair had ghost-written Vedalankar's letters,³⁴ and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my

²⁹ Record, page 373, lines 21–5 to page 374, line 1; page 375, lines 10–11; and page 480, lines 19–24.

³⁰ Record, page 481, lines 2–22.

³¹ Heads, paragraphs 229 and 160. A pending PAIA request I've filed for a list of all LASA's critical posts, both filled and vacant, the sum of which (there are only about two hundred or so) LASA reports annually to the Minister and to Parliament, will further clinch the issue and expose yet another of Nair's obvious lies on oath at trial, which the judge accepted and believed.

³² Heads, paragraphs 142 and paragraphs 205–6; and record, page 502, lines 11–24. After trial, Nair's confirmatory affidavit surfaced, in which he'd confirmed the lie told by Corporate Services Executive Thembele Mlati on his instructions: application, paragraph 227; and record, page 393, lines 18–25 to 394, lines 1–22.

³³ Heads, paragraphs 233–4.

³⁴ After trial, I noticed the evidence that junior counsel drafted Vedalankar's second letter, having been briefed to deal with my PAIA requests (per Mlati on affidavit, confirmed by Nair). I've PAIA'd his fee-notes and expect they'll confirm it. But there's little doubt on the evidence that Nair ghostwrote Vedalankar's first letter, and lied to the judge in denying it, just as he eventually admitted (initially disputed) ghostwriting Mlambo JP's reports to the Minister and to Parliament.

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complaints, and that for this reason I held them both clear. But in his evidence, Nair denied any hand in Vedalankar's letters to me,³⁵ and although in evidence he ultimately admitted³⁶ writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that'³⁷ (having first insinuated it might have been Vedalankar³⁸ and then again)³⁹ i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation.⁴⁰ (It's quite clear that Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.)⁴¹ This is to say, after I'd told the judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament.

26. True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th – but not me, from whom she concealed this hotly material fact in her letter to me six days later, the better to maintain her pretence that LASA was still too skint to hire me.

27. Recruitment to the limited number of temporarily frozen lower criminal court posts then resumed in the third quarter October to December 2010, and all 100% of the posts were filled; and the increase in new staff recruitment generally then peaked for the year. But my appointment remained permanently frozen off the record, as well as the two other vacant Senior Litigator posts at Durban and Mthatha – although the irregular circumstances in which the appointments to these posts were aborted, also off the record, were quite different.⁴²

28. LASA received its OSD money on 15 December 2010. In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam.⁴³ In fact, with

³⁵ Record, page 442, lines 5–25 to page 445, lines 1–24.

³⁶ Cross-examining me, LASA's counsel persistently disputed Nair's authorship of the false reports signed and submitted by Mlambo JP. I don't yet have the complete record to refer to herein, only a photocopy of Nair's evidence made for me as a favour by the registrar. I've now applied for a copy of it under PAIA.

³⁷ Record, page 355, line 1.

³⁸ Record, page 354, lines 1–3.

³⁹ Record, page 482, lines 18 – 25 to page 483, lines 1–21.

⁴⁰ Heads, paragraph 234.

⁴¹ Heads, paragraph 235.

⁴² Heads, paragraphs 178–9 and 188–204.

⁴³ Heads, paragraph 29.

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the payment of its OSD allocation, LASA enjoyed a very substantial budgetary surplus that year.⁴⁴ (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)

29. In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE and HRE all swore the lie was true.

30. Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalising my appointment in the initial three-and-a-half month period between the date he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story – later twice retracted by him on affidavit⁴⁵ as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit,⁴⁶ then revived by him in court on the basis that his sworn retraction had been a mistake,⁴⁷ then contradicted with a different story he told the judge.⁴⁸ Who didn't think to note any of this dismal shambles in his judgment.

31. Repeatedly pleading for the Board's intervention in Vedalankar's persistent illegal refusal to comply with my PAIA requests, and the then already clear indications that my appointment had been aborted irregularly, I copied my third petition to the Board in February 2011 to the Minister and to Parliament. Both the Minister and the chairperson of the Portfolio Committee demanded explanations from chairperson Mlambo JP. He referred the matter to Vedalankar, who passed it to Nair. In his reports written for Mlambo JP to sign and submit to pervert the ministerial and parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment – a so-called second round interview – was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error ... palpably an error' that

⁴⁴ Heads, paragraph 30.

⁴⁵ By way of a confirmatory affidavit supporting Mtati's affidavit claiming this on his instructions.

⁴⁶ LASA's several interlocutory affidavits all essayed into the merits of the main case.

⁴⁷ Record, page 477, lines 23–5 to page 478, lines 1–6.

⁴⁸ Record, page 339, lines 18–25 to page 341, lines 1–25.

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Mlambo JP had made.⁴⁹ Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.⁵⁰

32. But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads.⁵¹ The judge didn't note this, and accepted and believed⁵² Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)

33. Fact is, Nair took no steps to set up the so-called second round interview. So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because no attempt was ever made to do so. As said, when I telephoned Clark, also a member of the so-called second round interview panel, in April 2010, five months after my successful interview, she still knew nothing of me and my recommendation or of the KZN Senior Litigator recruitment process. Which means, like Mlambo JP, Nair hadn't approached her for a date either. So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection.

34. Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only. Not about three substantially concluded Senior Litigator recruitments and permanently freeze the

⁴⁹ See footnote 37, and the footnote below for particulars.

⁵⁰ Heads, paragraphs 143–4.

⁵¹ Heads, paragraphs 153–7.

⁵² Judgment, paragraphs 67 and 70–2.

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budgeted, funded posts. Mlambo JP knew full well that the Approval Framework required Board approval for any change to the Business Plan, which is why Board approval had been sought to temporarily freeze recruitment to some lower criminal court posts. He knew full well that no lawful decision had been taken to permanently freeze three Senior Litigator posts for budgetary reasons, because the Board he chaired would have had to approve this. It's common cause on the pleadings that it never did, and that the Board has never even been informed that LASA's three remaining vacant Senior Litigator posts, for whose budgeted salaries LASA applies to the Department and is granted funding every year, have been frozen by Vedalankar and Nair for alleged financial reasons. It's common cause that there's no record of this major alleged decision by executive management whatsoever.⁵³ Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly.⁵⁴

35. My discovery on the eve of trial of the evidence that Nair had ghost-written Vedalankar's October 2010 letter to me and Mlambo JP's reports to the Minister and to Parliament⁵⁵ felt like a condemned man's reprieve: having to implicate Mlambo JP in my evidence at trial was a mortifying prospect.⁵⁶ My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained.⁵⁷

36. In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so, this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear

⁵³ Record, page 427, lines 6-14; page 433, lines 2-9; and page 433, lines 2-25 to page 434, lines 1-2.

⁵⁴ Heads, paragraph 84.

⁵⁵ Application, paragraph 229; heads, paragraphs 223-4.

⁵⁶ See paragraph 48.

⁵⁷ Application, paragraph 230.

to me that the judge wanted the evidence contained. He did not want me to lead more evidence pointing beyond the smaller fry. But as said, Nair himself went on to directly implicate his bosses. He dropped them right in the middle of it.

37. Besides the false claim that LASA didn't have the budget to employ me, Vedalankar, Nair and LASA's Corporate Services Executive and lead in-house attorney Mtati (on instructions) told a colourful variety of other different stories about why my appointment wasn't proceeded with.⁵⁸ Among these:

38. After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch.⁵⁹ Both lies.⁶⁰ Waffling feebly,⁶¹ Nair was unable to support his first new story⁶² and radically changed his second,⁶³ before which it was repeatedly exposed as a lie by LASA's records.⁶⁴

39. The judge didn't see any significance in all the chopping and changing stories advanced for not finalizing my appointment, to which I called his attention in my heads, for he didn't note them in his judgment. The Labour Appeal Court is sure to.

40. Unlike the judge who didn't note this either, the LAC is likewise certain to point up the destructive implications for LASA's pleaded defence of Nair's abandonment of a major leg of the story initially fed me; confirmed in his, Vedalankar's, and Clark's PAIA affidavits; and repeated in the pleadings and interlocutory affidavits in the case, namely that for budgetary reasons the Mthatha Senior Litigator post was frozen simultaneously with the

⁵⁸ Heads, paragraphs 142, 205 and 206; and record, page 502, lines 11-24. But in his confirmatory affidavit surfaced after trial, Nair had confirmed the lie.

⁵⁹ Record, page 359, lines 17-25.

⁶⁰ Heads, paragraphs 213-15 and 224-5.

⁶¹ Record, page 360, lines 1-15.

⁶² Record, page 398, lines 11-25 to page 399, lines 1-22. And there's never been any suggestion anywhere at any time that the internal candidate selected for promotion to the Durban post wasn't qualified and a good fit for it. As for my qualifications for the post (not a pleaded issue for trial), Nair first dishonestly pretended I'm under-qualified, then dishonestly pretended I'm over-qualified: heads, paragraphs 99-101 and 221; record, page 360, lines 16-25 to 361, lines 1-22. The judge didn't note this.

⁶³ Record, page 435, lines 9-19. Changing it to pretending that he and the ROEs were concerned that 'we are achieving out purpose with that position' - but being untrue, naturally 'No ... record of this'.

⁶⁴ Record, page

Pietermaritzburg one.⁶⁵ In court Nair told a completely different story, namely that despite his repeated attempts to persuade her, Vedalankar refused to approve the creation of the post at Mthatha,⁶⁶ where it was reportedly sorely needed,⁶⁷ after the entire LSTC had unanimously resolved to create it and to transfer the budget from Kimberly, where there was reportedly no need for it,⁶⁸ and after the new Mthatha post had been advertised, interviewed for, and a candidate selected for it. It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record,⁶⁹ not alleged in any affidavit or pleading,⁷⁰ and contradicted by LASA's recruitment/vacancy statistics for June 2010.⁷¹ But Nair's new lie in evidence made no impression on the judge; as said, he didn't mention it.

41. The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge⁷² (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment),⁷³ namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates – unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework.⁷⁴ Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice.⁷⁵

⁶⁵ Heads, paragraphs 188–193.

⁶⁶ Record, page 365, lines 10–25 to page 366, lines 1–9.

⁶⁷ Record, page 401, lines 7–12.

⁶⁸ Record, page 363, lines 8–25 to page 364, lines 1–9 and page 402, lines 3–9.

⁶⁹ Record, page 436, lines 8–19 and page 490, lines 6–24.

⁷⁰ Record, page 490, line 25 to page 491, lines 1–8.

⁷¹ Record, page 399, lines 9–21.

⁷² Judgment, paragraphs 73–4.

⁷³ Law and case bundle, pages 94–7.

⁷⁴ Heads, paragraphs 90–8.

⁷⁵ The LAC is also likely to remark on the shocking irregularity of Mlambo JP allowing Vedalankar, the very subject of my complaint to him and the Board about her illegal refusal to comply with my first PAIA request and the indications that her budgetary pretext was false, to fake a letter from him on her own computer while he was abroad, dismissing my 59-page petition in a single sentence, with an scanned image of his signature pasted below it (with his consent, LASA pleaded). Looking the other way as I protested and showed my fundamental rights were being violated. Then, when I petitioned the Board again, insultingly showing me the road and telling the rest of the Board to ignore my further communications. Then defaming me to the chairperson of the Portfolio Committee, in his letter covering his lying report, when I petitioned the Board for the third time, now copying the Minister and Parliament.

42. His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to – a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits.⁷⁶ The judge didn't note this; again the LAC is sure to.

43. Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits,⁷⁷ that all candidates interviewed by the selection panel were eligible for interviews by his so-called second round interview panel, including those rejected and eliminated by the selection panel, and that a candidate rejected by the selection panel could properly have been appointed instead of me⁷⁸ – stultifying the whole purpose of the selection process by the selection panel comprised of LASA's most senior lawyers in the region: to identify the most suitable candidate for appointment, as the Recruitment code puts it.⁷⁹

44. The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth. On a proper allocation of the final burden of persuasion to LASA, therefore, the LAC is certain to find that LASA failed to justify its abortion of my appointment to the Pietermaritzburg Senior Litigator post for which I'd been unanimously recommended. It failed to do so, because its various explanations given were obviously untrue. So what?

45. Pioneered by the U.S. Supreme Court, there's a finely developed body of international labour jurisprudence, supported by the ILO, and therefore binding on our labour tribunals, regarding what inference may properly be drawn where it's been shown that an employer has lied (or its explanation is not worthy of credence) about its reason given for not hiring a job applicant belonging to a constitutionally protected class (racial, political, etc). Copying and pasting from my heads, the judge very ably set this law out in his

⁷⁶ Record, page 502, line 25 to page 503, lines 1–25; heads, paragraphs 146–7.

⁷⁷ Heads, paragraph 148.

⁷⁸ My manuscript note of Nair's evidence on which I relied for the above-mentioned paragraph of my heads was off; Nair alleged that all candidates were eligible for his so-called second round interviews, not that all would necessarily be interviewed again; record, page 349, lines 7–15 and 21–3; page 350, lines 10–11; page 407, lines 13–17; page 408, line 25 to page 409, lines 1–25 to page 410, lines 1–2 and 10–12; and page 450, lines 7–10.

⁷⁹ Heads, paragraphs 90–8.

judgment.⁸⁰ Doing the same, he also accurately set out the facts I presented placing me in such a class.⁸¹ He didn't demur at my evidence that in applying for the post I'd been vulnerable to unfair political discrimination.

46. But instead of applying the law that he'd enunciated, and proceeding to draw the due inference indicated by the evidence – the known facts and the exposed and obvious lies – the judge dismissed my claim to have been unfairly discriminated against on political grounds as 'mere speculation'.⁸² As if I'd not set up a plausible, prima facie case for it – all I was required to do under international and local unfair discrimination law – answered with one lie after another. Yet during oral argument, the judge took my point and taxed LASA's counsel with it: that an employer's mental prejudice against a job applicant is rarely announced, precisely because it's unconstitutional and therefore gravely illegal, and must therefore invariably be inferred from a conspectus of all the available evidence, weighed with the probabilities.⁸³ Besides the pivotal evidence I presented that the various justifications advanced for not appointing me were false and pretextual, the judge entirely failed to consider all the other evidence indicating unfair discrimination reviewed in my heads.⁸⁴

47. To conclude: in bringing my claim against LASA I was aware I was breaking three basic rules: never sue a corporation, never represent yourself, and never sue from principle. But I thought the principle extremely important in our post-apartheid order – that a job applicant should not be prejudiced by his political activism, driven by his moral and social conscience, no matter how opprobrious his cause is generally perceived to be – and that my case was so clear that any attentive judge would grasp it. I did not expect the judge to

⁸⁰ Judgment, paragraph 66.

⁸¹ Judgment, paragraphs 30–41.

⁸² Refusal, paragraph 5.

⁸³ I should disclose that documents that came to hand after the trial, considered with others I already had, point at possible corruption in the selection process; in that although I'd been formally, unanimously 'identified' in the recommendation as 'the most suitable candidate for appointment', as the Recruitment code puts it, it may have been intended to appoint a rejected candidate instead: a former Labour Court judge. And this is why my appointment was quietly iced, until I walked away, making way for his appointment in my place. (Recruitment corruption at LASA is commonplace: the previous recruitment for the same post had also been irregularly aborted off the record after the due selection of a suitable candidate by the selection panel; and I've uncovered corruption in other recruitments I've looked at, including the Mthatha Senior Litigator one, a sham for the books.) I'm investigating this possibility with a pending PAIA request, but I'm not optimistic that the records it will elicit will be decisive. So I'm not charging that the selection process was corrupt, and that my appointment wasn't proceeded with for the reason that the said rejected candidate had been favoured for appointment behind the scenes instead of me, because the evidence I have suggesting this is currently too light. If this changes, the LAC will certainly be told.

⁸⁴ Heads, paragraphs 246–7.

be nodding off during the afternoon sessions,⁸⁵ and finally claiming perversely, but revealingly as to his negative animus, that I ought rather to have taken LASA's abortion of my appointment 'on review'.⁸⁶ As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way,⁸⁷ viciously defamed all the while, contemptuously redoubled when I complained of it.⁸⁸ In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages',⁸⁹ suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument,⁹⁰ the judge hadn't even troubled himself to read our heads,⁹¹ and was hearing our oral

⁸⁵ I have an audio recording of the trial on DVD, capturing my repeated unnatural pauses as I waited, horrified, for the judge to reopen his eyes and come to. He was literally half-asleep at times. I dared not risk offending him by asking him to take a coffee break to wake up.

⁸⁶ Judgment, paragraph 74. I had no cause of action for any review, and duly referred my complaint to the CCMA and then the Labour Court in compliance with the procedural prescripts of the EEA.

⁸⁷ Heads, paragraph 256.

⁸⁸ Heads, paragraphs 260–5; record, page 485, lines 4–23. Reckless of their professional obligations as officers of court, LASA's counsel themselves put the boot in, wantonly lying to the judge in their answering heads that my precisely accurate CV was 'grossly inflated', which is to say I'm a liar guilty of CV fraud. (Mokoena SC, who argued the case in court, came into the matter after all heads had been filed, and did not draw the answering heads; and he's consequently innocent of this final defamation of me by LASA's counsel, calculated to defeat the ends of justice by prejudicing the judge against me with more lies to make me appear dishonest and therefore an unreliable witness.)

⁸⁹ At the end of the trial, the judge asked for heads of argument comprising four sections, 'background, evidence, analysis and conclusion', i.e. in the form of a draft judgment, so he could 'copy and paste from them', 'to expedite judgment production': a fine idea. But he stipulated not more than 15–20 pages: a hopelessly inadequate, improper and prejudicial limitation imposed on me after such a long and important trial with so much oral and documentary evidence and local and international unfair discrimination jurisprudence to canvass and discuss. Unpicking and refuting LASA's many outright lies and tricky half-truths and cataloguing all the contradictions was an immense job, as will be apparent from a look at my heads. After drawing them, as finely detailed as necessary, comprehensively and meticulously referenced to the documentary record, pleadings, affidavits, to the evidence (my notes), and to my law and case bundle, I prepared an unreferences summary of 20-pages as directed; but I emphasized both in its head-note and at the oral argument that it was no substitute for my heads. From his several mistakes in the judgment identified in my application in regard to several simple facts dealt with in my heads, it seems the judge didn't read them through.

⁹⁰ On or about 6 December 2013 (date of signature).

⁹¹ In his chambers before oral argument on 28 May 2014, the judge said jocosely: 'I think you can assume I'm literate and will read your heads.' The oral argument was set down for three days, 28–30 May, but on the basis just quoted the judge asked us to merely outline our main points; and in the result the oral argument wasn't

argument without having prepared for it⁹², ten months after the evidence, and relying only on his fading and defective memory of it⁹³ presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter,⁹⁴ and portray as maladroitness and whimsical my precisely considered tactical and strategic decisions taken,⁹⁵ wrongly forced by him on the record⁹⁶ and improperly pressed by him off it.⁹⁷ I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down.⁹⁸ And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged.⁹⁹ And finally after the trial trucking with LASA without my knowledge in unfavourably disposing of my plea for his directive that it hand over the extra copy of the trial record transcript it had printed for me.¹⁰⁰

48. As said in the beginning, the stakes in this case are massive, and the implications vast. Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most

long. I repeatedly emphasized during argument that my case was made in my heads, drawn in the form of a draft judgment, as he'd unambiguously implied after the trial he'd wanted. And that my barest sketch of it in oral argument was no substitute. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246-7 of my heads, wasn't recited in the judgment. Its paragraph 46 sets out a wrong, crude mishmash instead.

⁹² At the end of the trial, the judge asked us to file written argument, saying that once it was in, he would want to ask us questions. I understood him to mean he'd read our heads, and question us on them. This didn't happen at all.

⁹³ As evidenced by the judge's many basic factual mistakes, identified in my application.

⁹⁴ Judgment, paragraph 46. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246-7 of my heads, wasn't recited in the judgment; its paragraph 46 sets out a wrong, crude mishmash instead.

⁹⁵ Judgment, paragraphs 29 and 68.

⁹⁶ His refusal to allow me to cross-examine Vedalankar, Clark and Board member du Rand, stated during the debate of LASA's failed applications on the first day to quash my subpoenas of them. On why I ultimately elected not to call Vedalankar, Clark and du Rand, and settled for affidavits by the latter two in lieu of their oral evidence, see heads, paragraphs 103-4.

⁹⁷ His veiled warning in chambers not to go after the big fish (paragraph 36 above).

⁹⁸ Application, paragraphs 269-72 and 262-7.

⁹⁹ Application, paragraphs 273-82; judgment, paragraph 67.

¹⁰⁰ Per Mtati's wrongly dated letter in October 2014, received on the 13th: 'Cele J, through his office, suggested that the Respondent accommodate the Applicant by providing him with the electronic copy of the record which the Respondent did.'

important high court in the country, and thereby trigger a gargantuan scandal. But the truth must out, and justice needs doing fearlessly.

49. The Judicial Services Commission's response to my complaint about Mlambo JP's perversion of Ministerial and Parliamentary enquiries into my complaints was that it was no concern of theirs, on the technical basis that it didn't involve judicial misconduct per se. My complaints to the Public Service Commission were passed on to the Public Protector, but in view of the then approaching trial my file was closed; and with the dismissal of my claim, there's small chance of it being reopened. These official doors having closed on me for setting matters to rights, your lordships' correct decision of this petition is tremendously important for the ventilation of the truth, and for law and justice in our country. An unattended¹⁰¹ splinter, so easily removed,¹⁰² has led to widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance. The matter has reached a pivotal moment.

50. Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it – successfully so far, like Nixon nearly did after Watergate – your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instructions¹⁰³ can offer you no more than hearsay about the case,¹⁰⁴ and hasn't stunted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial,¹⁰⁵ and since the judge found Nair to have

¹⁰¹ I petitioned the Board five times in all, plus individual members, plus the Board secretary, all to no avail.

¹⁰² I repeatedly pleaded for a timely, conciliatory resolution before the thing escalated unnecessarily.

¹⁰³ Record, page 390, lines 16-21; heads, paragraph 135. When conversing amicably at court before the delivery of judgment, I urged Mtati to seek a personal exit strategy in view of the several false interlocutory affidavits he'd made on Nair's instructions, replete with lies, he shrugged: 'I'm only an agent.'

¹⁰⁴ Record, page 390, lines 6-11. Mtati was appointed Corporate Services Executive in LASA's national office as from 1 July 2010. It's common cause he wasn't party to any decision-making about the abortion of my appointment, and has no direct knowledge of it.

¹⁰⁵ Heads, paragraph 268. Mtati: 'The most disturbing, reprehensible, unprofessional and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of [Mlambo JP] at the South Gauteng High Court. [He] did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented this amounts to professional misconduct.' This lying defamation of me was the pure invention of a deeply cunning criminal mind, contrived to poison the court against me, in a bid to defeat the ends of justice (see further: application, paragraph 312). Which foul lie Nair supported with a confirmatory affidavit, surfaced after trial, only to meekly retreat from it



been untruthful under oath on any number of scores,¹⁰⁶ I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal. At the centre of the case is the truth or otherwise of the budgetary insufficiency justification¹⁰⁷ for the abortion of my appointment to LASA's most senior professional position in KwaZulu-Natal, and it was Vedalankar who twice advanced it to me in her letters.¹⁰⁸ The prospect of being jailed for perjury may chill any inclination she might have to repeat under oath to your lordships the lies she told me. Like a helicopter, the unwelcome truth must eventually land, somewhere; and if you'll allow it, the proper place for it will be the Labour Appeal Court.

Dated at Eshowe on 7 December 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 7 December 2014 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he affirms its contents to be true to the best of his knowledge and belief.



Commissioner of Oaths

Name: Tolson Denis

Address: Eshowe SAPS

Capacity: Porceman 1. KT: 0613427-1

¹⁰⁶ In court when I disputed it, pointing out that I'd never seen or met Mlambo JP, had never set foot in the South Gauteng High Court, and didn't even know where it was: record, page 485, lines 20–25 to page 486, lines 1–17.

¹⁰⁷ Judgment, paragraph 67.

¹⁰⁸ Heads, paragraph 5.

¹⁰⁹ In her letters of 18 October 2010 and 28 January 2011 (trial document bundle, pages 101–7 and 210–58). Vedalankar is also well placed to deal with Nair's new story in evidence blaming her for aborting the Mithatha Senior Litigator recruitment, diametrically contradicting the reason she gave me in her letters and later confirmed on affidavit. She can also deal with Nair's denial in court that he was responsible for authoring her letters to me (writing or instructing), and his claim that he had no hand in them, despite all indications to the contrary. And that she or Mlambo JP, not him (Nair), added the further new lies inserted into the report to the Minister before it was submitted in 'updated' form to the chairperson of the Portfolio Committee some months later. The look of it is that Nair used Vedalankar in his cover-up. The time's arrived for a division, and the isolation of the rogue(s).