



**KWAZULU-NATAL
ASSOCIATION
OF
PUBLIC SECTOR LAWYERS**

uMthetho ungaphezu kwakho konke
The Law reigns supreme
Die oppergesag van die Reg

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RESOLUTION No. 2 of 2010

A. BACKGROUND:

It has come to the attention of **KwaZulu-Natal Association of Public Sector Lawyers (KAPSL)** that certain Departments in the KwaZulu-Natal Provincial Government and certain public entities in the Province, when advertising certain legal posts, wittingly or unwittingly, exclude certain members of the legal profession, public sector lawyers and members of KAPSL from applying for those posts by the minimum requirements set in the advertisements.

The advertisements limit applicants to *admitted Attorneys* or *Conveyancers* with experience of having practiced as an Attorney in the private sector, as a minimum requirement for the posts.

The effect of such potential applicants (public sector lawyers, especially members of the **KwaZulu-Natal Public Sector Lawyers' Forum (KZN PSLF)** and members of **KAPSL**) being summarily excluded could cause possible resentment, lower morale in the Legal Services components in Departments and public entities in the Province and may give rise to possible grievances which the relevant HoDs and CEOs would have to spend time and effort dealing with.

Another angle, which should not be overlooked, is possible action by those who may feel aggrieved by their summary exclusion, in terms of the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA).

The decision to exclude a great number of persons with similar legal qualifications, experience and training, in both the private and public sector, including not only many legal personnel working for government, but also admitted Advocates (both practicing and non-practicing), constitutes administrative action as contemplated in PAJA.

Those who may feel aggrieved would be entitled, in terms of PAJA, to request written reasons from the Department for restricting and limiting applications in the manner reflected in the published advertisement. If the reasons do not satisfy, there is a real risk that the Department would face the possibility of review proceedings in terms of PAJA or other legal action which would add to the workload and stress of the HoD. If such proceedings are successful, the Department and the Provincial Government would, of course, be embarrassed.

KAPSL, consequently, cannot allow its members –

- (a) to become a party to such consequences highlighted above; or
- (b) to participate, or continue to participate, in any Short-listing or Interviewing process as a panelist which may have the effect of lending tacit approval or legitimacy to a potentially unlawful or flawed process which may later be challenged, bringing its members and **KAPSL** into disrepute.

B. EXTRACT of Minutes of a Meeting of the Plenary Council the KwaZulu-Natal Association of Public Sector Lawyers (KAPSL) held on 3 December 2010 at PIETERMARITZBURG:

Resolved:

(1) That, no members of KAPSL may participate as members of Short-listing and Interviewing Panels in Departments and public entities where the advertisement excludes a wide range of potential candidates with similar legal qualifications, experience and training, in both the private and public sector, including admitted Advocates and Attorneys and members of our Association (KAPSL).

(2) That, where a member of KAPSL is approached to participate as a panelist in any interviewing process in a Department or a public entity, the KAPSL member may only participate on the condition that he or she is a panelist on both the Short-listing Panel and the Interviewing Panel.

(3) That, a member of KAPSL may not participate, or continue to participate, in any Short-listing or Interviewing process as a panelist which may have the effect of lending tacit approval or legitimacy to a potentially unlawful or flawed process which may later be challenged, bringing that member or our Association (KAPSL) into disrepute.

SIGNED on the 3rd day of December 2010 at PIETERMARITZBURG

MR SIFISO CHILI
CHAIRPERSON

ADV CATHY DALBY
DEPUTY CHAIRPERSON

MS TASHINI NAIDOO
SECRETARY

MR MARK SERFONTEIN
TREASURER