



## Committee for Section 194 Enquiry

**Chairperson: Mr QR Dyantyi, MP**

Committee Secretary

Mr Thembinkosi Ngoma

[REDACTED]

Email: [tngoma@parliament.gov.za](mailto:tngoma@parliament.gov.za)

Executive Secretary

Mr Khaya Vellem

[REDACTED]

[kvellem@parliament.gov.za](mailto:kvellem@parliament.gov.za)

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12 May 2023

Adv B Mkhwebane

Public Protector

Copy: Seanego Inc.

[REDACTED]

[REDACTED]

Dear Madam Public Protector, Adv. B Mkhwebane

### **RESUMPTION OF THE S194 ENQUIRY FOLLOWING YOUR PRESENTATION TO THE COMMITTEE ON THE ISSUE OF LEGAL REPRESENTATION**

1. It has been 10 days since we have received notice that the PPSA had agreed to fund your legal representation for the remainder of the Enquiry to an amount of R4 Million Rand. This follows an extended break of more than 1 month with our last hearing having taken place in the last financial year, on 31 March 2023.
2. Notwithstanding our intention to resume the hearings on 8 May 2023, your correspondence of 4 May 2023 coupled with your presentation to the Committee on 8 May 2023, meant that this was not possible.

3. I was most concerned by the assertion that you have now found yourself in the position of being without a legal team. Whilst I always appreciated that you may not have been able to give instructions pending the matter of the fees being resolved (whilst still maintaining that you do not enjoy the right to paid legal representation), it has been my understanding that you have always managed the briefing of your legal team. I was thus surprised that you indicated that notwithstanding the go-ahead from the PPSA you would not be in a position to issue further instructions to your legal team, who you have indicated remains your team of choice.
4. Accordingly, I requested the secretariat to address correspondence to the CEO of the PPSA requesting clarity on this matter as, on the one hand, you expressed your eagerness to continue and conclude the process, but on the other indicated that this was not possible and you were relying on the PPSA to take action.
5. I note that following my ruling that the enquiry pause for a period of one week, you also wrote to the Acting Public Protector on matters related to your fees on 10 May 2023. It is not clear why this correspondence was not sent immediately following the letter of the Acting Public Protector to you on 2 May 2023 so that your concerns could be tabled. Instead it appears that you concentrated on instituting urgent proceedings in the Constitutional Court on matters related, amongst others, to your legal representation.
6. The result is that the CEO of the PPSA having been asked to provide the Committee with feedback by Wednesday 10 May 2023, was only able to do so late last night as she felt it important to clarify issues you raised in your correspondence. I attach a copy of this detailed response hereto.
7. It is regrettable that so many days have been lost, but be that as it may, the position is at least now more clear. As you will note, the CEO of the PPSA has confirmed that she, as accounting officer, did not engage the services of Seanego Inc. and that they have no record of a sourcing process in respect of the Enquiry itself. Rather, it is the case that Seanego Inc. was on brief for s194 related litigation, having so been mandated by the former CEO, and that, based on representations you made, it was agreed that a new mandate was not required for them to continue acting on your behalf for purposes of the Enquiry (the parallel litigation processes being subjected to a different regime). This position is supported and captured in the correspondence between Seanego. Inc, yourself and the PPSA.
8. The above position accords to what has always been my understanding- that the Public Protector alone is responsible for providing instructions to her legal team. This was especially clear following

the so called “walk-out” where the issue of a mandate and instructions was only ever raised in the context of yourself personally without any reference to the PPSA.

9. As such, given that you have not terminated the brief of Seanego Inc. or counsel and Seanego Inc. in turn has not indicated that it is no longer your attorney of record or willing to act on your behalf (which I doubt will be the case as it will raise a multitude of ethical dilemmas), I trust that, in light of the clarity you have received, you can now proceed to urgently instruct Seanego Inc. and in turn counsel.
10. I am however concerned that you have not managed to engage Mr Seanego due to his unavailability (as in the past when his clarity was sought in relation to the “walk-out”). However, as he is your attorney of record (having never indicated to the Committee otherwise), I copy him herein in the hope that he will give this matter, which is of national importance, the attention it requires. I trust that Mr Seanego appreciates the importance of this matter and will do everything in his power to assist you in concluding this process- in line with your desire to do so. I also take note that he personally did not attend our hearings save for a handful of times and placed that responsibility on two of his trusted associates. I am sure they too can assist him in extending further urgent instructions to counsel.
11. In light of clarity now being available from the PPSA, I am going to afford you a further period to issue your instructions to your legal team so that hearings can resume on Wednesday, 17 May 2023.
12. I remain of the view that the Committee is only bound to afford you the right to be legally represented but it is your responsibility to ensure that the right is availed and exercised.
13. You have been aware, from the commencement of proceedings, that the PPSA will only avail a reasonable amount and you could never have laboured under the impression that resources are unlimited. As I have previously said, as the Executive Authority you would be well aware of what is and is not reasonable in terms of the budget of the PPSA and it is difficult to justify the time this matter has taken.
14. You were given notice of termination of funding on 1 March 2023, more than 2 months ago, and yet in order to assist you great efforts have been made to secure you further funding especially because you indicated that you have no personal funds for this process. It is unfortunate that you have

managed to secure the services of an attorney and counsel for litigation purposes (whether pro-bono or at your cost) but have not been able to do so for purposes of providing you with the additional support which you feel you require but which the R4 Million will not be sufficient for.

15. Nevertheless, the *status quo* is that only these limited funds are available. It is therefore important that you take the necessary steps to efficiently utilise and maximise these additional resources. I cannot emphasise this enough. Your failure to do so may result in you finding yourself without legal representation because of your own doing and thus I will no longer accept the argument that you are being denied representation. As previously stated I trust that you will exercise austerity for the sake of yourself and the integrity of this process.
16. I intend to continue with the hearings on Wednesday and I would urge you to ensure that your legal team is present. I trust that you will not incur fruitless and wasteful expenditure by attending without your legal team present and ready to proceed.
17. The amended programme is attached.

Yours faithfully



**Mr Qubudile Richard Dyantyi**

**Chairperson: Committee for Section 194 Enquiry**