

To: Provincial Director: Gauteng Legal Practice Council
Mr I Briel

By email: directorgp@lpc.org.za

22 September 2023

Dear Mr Briel

RE: COMPLAINT SUBMITTED TO THE GAUTENG LPC IN TERMS OF RULE 45.2 REGARDING THE CONDUCT OF LAW FIRM MOODIE & ROBERTSON AND/OR ATTORNEY MARK PATTERTON, LEGAL PRACTICE NO. 22252.

1. Open Secrets is a South African non-profit organisation dedicated to investigating and pursuing accountability for economic crimes and related human rights violations. Consequently, an important aspect of our work includes holding private actors accountable for human rights abuses and profiteering from economic crimes.
2. The Sentry is an investigative and policy organization in the United States that seeks to disable multinational predatory networks that benefit from violent conflict, repression, and kleptocracy.
3. On 6 July 2023 Open Secrets and The Sentry jointly published a report titled *Fronts Fakes and Façades* ("the Report"). The Report outlines how various entities and individuals across multiple jurisdictions helped Kudakwashe Regimond Tagwirei ("Tagwirei"), a politically connected Zimbabwean businessman, purchase two mines from the United Kingdom-based company ASA Resource Group Plc, a public limited company incorporated in England and Wales, with company number 02167843 ("ASA"). Through the use of various front companies and opaque financial transactions Tagwirei's identity as the source of funds and the ultimate purchaser was obscured. The findings in the Report are based on primary documents and evidence supplied to Open Secrets and The Sentry by Christopher Fourie ("Fourie"),

a former business associate of Tagwirei turned whistle-blower. A digital copy of the Report is available at <https://www.opensecrets.org.za/report-fronts-fakes-and-facades/>.

4. Moodie & Robertson, a legal firm operating in Gauteng, and in particular employee Mark Patterton, an admitted attorney with legal practice no: 22252 (“Patterton”), provided legal services to Sotic International, a company duly incorporated in Mauritius under the Mauritius Companies Act 2001, bearing company number 135746 GBC (“Sotic”) between 16 May 2019 and 1 March 2020. A copy of the Engagement Letter dated 25 June 2019 attached as Annexure A.
5. This letter, provided in conjunction the prescribed form, serves as a complaint to the Gauteng LPC regarding the conduct of Moodie & Robertson and Patterton in terms of the Legal Practice Act No.28 of 2014 (“LPA”).
6. Open Secrets and The Sentry believe that the actions of Moodie & Robertson and Patterton, as outlined in The Report, may have breached their duties in terms of the Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities GN 168 of 29 March 2019 (“Code of Conduct”).

OVERVIEW OF THE MATTER

7. Tagwirei was appointed as a presidential adviser to current Zimbabwean president Emmerson Mnangagwa in January 2019. Tagwirei owns various companies including Sakunda Holdings (Pvt) Ltd (“Sakunda”) and is affiliated with many more. On 5 August 2020 Tagweiri was sanctioned by the United States of America government for *“for materially assisting senior Zimbabwean government officials involved in public corruption.”* A copy of the media release by the USA State Department is attached as Annexure B. On 22 July 2021 the UK placed Sanctions on Tagwirei for *“profiting from misappropriation of property when his company, Sakunda Holdings, redeemed Government of Zimbabwe Treasury Bills at up to ten times their official value.”* A copy of the media release by the UK Foreign Commonwealth Development Office is attached as Annexure C.
8. Prior to these sanctions there were numerous reports of Tagwirei’s alleged involvement in corruption and ‘state capture’ in Zimbabwe. A list, assembled by Open Secrets and The Sentry, of public reporting on allegations against Tagwirei is

attached as Annexure D. Much of this reporting was available in 2019 - at the time of the ASA transaction.

9. In and around 2019, Zimbabwean Bindura Nickel Mine and Freda Rebecca Gold Mine (“the Mines”) were purchased from ASA through various intermediaries owned or controlled by Tagwirei. At the time of the transaction ASA had been put into liquidation and was being administered by Duff & Phelps, a multinational financial and risk Advisory conglomerate which has since renamed itself Kroll. Duff and Phelps operates in the United Kingdom through D&P International Services (UK) Limited (now Kroll International (UK) Limited), a private company with company no 9897805 (“Duff and Phelps”). Duff and Phelps were appointed as joint administrators of the ASA on the 1 August 2017.
10. The use of the intermediaries to facilitate the purchase had the effect of obscuring Tagwirei’s involvement as both the source of the funds for the purchase of the Mines and as the ultimate purchaser. The primary intermediary vehicle used for the purchase was Sotic. Sotic was established and administered by Capital Horizons Limited (“CHL”) a company services agent headquartered in Mauritius on 16 November 2018. After its incorporation Fourie became a director at Sotic and the sole owner through the Light House Trust, a Mauritian registered Trust, again established by CHL.
11. Another entity involved in the purchase was a subsidiary wholly owned by Sotic, Landela Investments Limited, a private company incorporated in Zimbabwe, with registration number 3335/2019 (“Landela Investments”). While Sotic provided the funding for the purchase, Landela Investments was the entity listed as the purchaser. Landela Investments received hard currency from the Reserve Bank of Zimbabwe (RBZ) at a favourable exchange rate at the time Sotic was getting the funds to pay the deposit for the mines.
12. Sotic’s purchase of the mines was done in three stages, whereby numerous legal vehicles were used to move Tagwirei’s money out of Zimbabwe to Sotic, which ultimately paid the funds to Duff & Phelps. A copy of the Share Purchase Agreement between ASA, Landela Investments and others is attached as Annexure E.

13. As stated above, Moodie & Robertson provided legal services to Sotic from 16 May 2019 to 1 March 2020. The primary point of contact was Patterton.

TAGWIREI'S ROLE IN THE COMPANY

14. Despite having no formal role in Sotic, email correspondence between CHL, employees of Sotic, and/or Tagwirei, clearly demonstrates that Tagwirei was not just the source of Sotic's funds but was actively involved in the financial, business and operational decisions of the company. As will be discussed below, this role was widely recognised by employees and entities with which Sotic did business. It was also discussed in correspondence including Patterton.
15. Open Secrets and The Sentry believe that Tagwirei met the standard of a beneficial owner of Sotic under Mauritian law as he exercised ultimate control over the legal entity. Moodie and Robertson, through Patterton, were aware of this. This knowledge is demonstrated in a number of communications including:
 - 15.1. On 5 July 2019 Patterton, in email correspondence with Ronelle Sinclair, demonstrated his knowledge that Sakunda was the source of funding for a loan agreement between Sotic and Landela Investments. A copy of this communication is attached as Annexure F.
 - 15.2. In July 2019 Patterton, in email correspondence with Behr and others discussing the ASA deal, copied Tagwirei. Examples of these communications are attached as Annexures G and H.
 - 15.3. On 26 July 2019 Patterson indicated in email correspondence to Fourie that he had spoken directly to Tagwirei regarding an intercompany loan agreement between Sotic and Landela Investments. A copy of this communication is attached as Annexure I.
 - 15.4. On 1 August 2019, in email correspondence between Tagwirei, Patterton and others, Tagwirei stated that Fourie controlled the Light House Trust, which owns Sotic, on his behalf. A copy of this communication is attached as Annexure J.

15.5. On 27 August 2019, Patterton communicated directly with Tagwirei via email correspondence. The contents of this email indicated that Patterton took direct instructions from Tagwirei. A copy of this communication is attached as Annexure K.

15.6. Furthermore, as part of Moodie & Robertson's legal assistance to Sotic, Open Secrets and The Sentry believe that Patterton's legal team provided advice that, while arguably legal, would, if implemented, have had the effect of undermining efforts to identify the role of Tagwirei in Sotic and Landela Investments for the purpose of the SPA. An example of these actions include the fact that Patterton was part of discussions, many of which included Tagwirei, and provided legal advice regarding how to establish Sotic (the effect of which would be to disguise Tagwirei and Sakunda's involvement). A copy of such email communication dated 5 July 2019 and 21 August 2019 is attached as Annexures L and M.

LEGAL BASIS OF COMPLAINT

16. Open Secrets and the Sentry lodge a complaint against Moodie & Robertson and/or Patterton on the following bases:

16.1. Moodie & Robertson and/or Patterton may have breached the Code of Conduct; and

16.2. Moodie & Robertson and Patterton may have breached sections of the Financial Intelligence Centre Act no 38 of 2001("FICA").

17. The Code of Conduct must be observed by all legal practitioners, candidate legal practitioners and juristic entities. Failure to abide by the Code of Conduct is considered misconduct in terms of section 36(2) of the LPA. Open Secrets and The Sentry believe Moodie & Robertson and/or Patterton may have breached following sections of the Code of Conduct in relation to the above matter:

17.1. Section 3.3 of the Code of Conduct states that although client's interests should be treated as paramount, these interests will always be subject to a practitioner, candidate practitioner or juristic entities "*duty to the Court, the interests of justice, as well as the observance of law*".

17.2. Section 3.5 states that all legal practitioners, candidate practitioners or juristic entities shall “*refrain from doing anything in a manner prohibited by law*”.

17.3. Section 9.1 states that “*A legal practitioner and a firm shall take reasonable steps to avoid and prevent any reasonable suspicion arising that his, her, or its integrity is compromised in any respect.*”

17.4. Section 9.2 states that “*A legal practitioner shall not, in giving advice to a client, advise conduct that would contravene any law; more particularly, a legal practitioner shall not devise any scheme which involves the commission of any offence.*”

18. In addition Open Secrets and The Sentry believe that further investigation from the relevant authorities will show that Moodie & Robertson and/or Patterson may have breached section 29 of FICA. Section 29 requires, broadly, that a person or a business to which the act is applicable must report transactions that they know or suspect to be suspicious or unusual. While the section lays out various scenarios in which this duty is triggered, the following may be applicable in this matter:

18.1. Section 29(1)(b)(ii) “*[where] a transaction or serious of transactions to which the business is a party [...] has no apparent business or lawful purpose*”;

18.2. Section 29(1)(c) “*[where] the business has been used or is about to be used in any way for money laundering purposes or to facilitate the commission of an offence relating to the financing of terrorist and related activities.*”

18.3. Section 50: “*An accountable institution, reporting institution or person that is required to make a report in terms of section 29 that fails to inform the Centre in accordance with section 27, is guilty of an offence.*”

19. In respect of section 29 of FICA it is important to emphasize that a ‘reporter’ need not have actual proof that the transactions is suspicious. Rather, a ‘reasonable suspicion’ is sufficient to trigger a duty to report. The evaluation of whether an individual or entity should have had a reasonable suspicion is based on their knowledge of all circumstances surrounding the relevant transaction which includes knowledge of the client’s business, financial history, background and behaviour.

20. Further, Moodie & Robertson may have contravened the following sections of FICA:

20.1. Section 46(1) which states that “*an accountable institution that performs any act to give effect to a business relationship or single transaction in contravention of section 21 (1) or (1A) is non-compliant and is subject to an administrative sanction.*”

20.2. Section 46A which states that “*an accountable institution that fails to comply with the duty to perform additional due diligence measures in accordance with section 21A, 21B, 21C, 21D, 21E, 21F, 21G or 21H is non-compliant and is subject to an administrative sanction.*”

21. Open Secrets and the Sentry believe the evidence laid out in this letter and accompanying Schedule 5 complaint warrants a further investigation into Moodie & Robertson and/or Patterson’s conduct, and potential disciplinary proceedings.

22. In response to written questions by Open Secrets and The Sentry, Patterson indicated that in many instances his duty of confidentiality prohibited him from answering. Therefore, due to its powers and authority, it is appropriate that the LPC conduct further investigations to determine whether such reports were submitted to the FIC, and if not, whether any violation took place.

CONCLUSION

23. The harm caused by the actions of Tagwirei and his powerful associates, as well as those that enable them, is most consequentially felt by the people of Zimbabwe. The money that flowed out of Zimbabwe in connection with the ASA deal is an important example of the illicit financial flows out of the country further hampering the Zimbabwean economy and burdening those living within its borders. Fighting illicit financial flows is a transnational responsibility, and it is vital that the South African authorities investigate the role of South African legal practitioners in any conduct linked to these flows. This would send a clear message that South Africa takes these matters seriously.

24. In addition to the clear interests of justice, taking action on this matter will also align with South Africa’s objectives of removing itself from the Financial Action Task Force’s (“FATF”) grey list. FATF has specifically identified that in order to be removed South Africa must demonstrate its ability to investigate and prosecute complex money

laundering cases. Open Secrets and The Sentry believe that investigating this matter would provide an opportunity for the Legal Practice Council to demonstrate its commitment and willingness to ensure that no South African legal practitioners play any role in facilitating such activities.

25. While this letter is a comprehensive summary of the issues dealt with Open Secrets and the Sentry have additional evidence and sources which substantiate these claims. We hope to engage your agency further on this matter and provide any assistance and further information.

Yours faithfully

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