

**CLOSING REPORT IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**Report No. 68 of 2021/22  
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**CLOSING REPORT ON ALLEGATIONS THE DEPUTY MINISTER OF FINANCE, DR DAVID MASONDO, MP VIOLATED THE EXECUTIVE ETHICS CODE WHEN HE REPORTED AN ALLEGED EXTORTION CASE DIRECTLY TO THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION WHICH RESULTED IN THE ARREST OF MS X BY THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION.**

## 1. INTRODUCTION

- 1.1 This is a closing report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 [Act No. 23 of 1994] (Public Protector Act).
- 1.2 The investigation relates to allegations that the Deputy Minister of Finance, Dr David Masondo, MP, (the Deputy Minister) violated of the Executive Ethics Code, 2000 published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853 in terms of section 2(1) of Executive Members' Ethics Act, 1998 (Executive Ethics Code) when he reported an alleged extortion case which resulted in the arrest of Ms X by the Directorate for Priority Crime Investigation (DPCI / Hawks)
- 1.3 The report is submitted to His Excellency, President Matamela Cyril Ramaphosa (the President) in terms of section 3(2)(a) read with section 3(3) of Executive Members' Ethics Act, 82 of 1998 (EMEA).
- 1.4 The report is also submitted to the Democratic Alliance Deputy Shadow: Finance, Dr Dion George, MP (the Complainant) in terms of section 8(1) read with section 8(3) of the Public Protector Act.
- 1.5 The report is also submitted to the Deputy Minister of Finance, Dr David Masondo, MP (Deputy Minister) in terms of section 8(1) read with section 8(3) of the Public Protector Act.
- 1.6 The report is also submitted to the Ms X (whose identity has been concealed for her protection) in terms of section 8(1) read with section 8(3) of the Public Protector Act.

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## 2. THE COMPLAINT

2.1 The complaint to the Public Protector was lodged by the Complainant in terms of section 4(1) of EMEA through a letter dated 23 September 2019.

2.2 In essence, the Complainant relied on the veracity of the newspaper articles in pursuit of his complaint. The said articles appeared on News24 and the Times Live dated 15 September 2019 and one dated 20 September 2019 respectively, wherein it was alleged *inter alia* that:

2.1.1 The Deputy Minister used his influence and state resources to settle a personal score with a former lover (hereinafter referred to as Ms X in order to protect her identity) by having her arrested for extortion; and

2.1.2 The Deputy Minister achieved this by approaching the DPCI with a false complaint which culminated in the setting up an unlawful undercover operation that led to Ms X's arrest.

## 3. Based on analysis of the complaint, the following issue was identified to inform and focus the investigation:

3.1 Whether the Deputy Minister of Finance violated the Executive Ethics Code when he reported an alleged extortion case directly to the Directorate for Priority Crime Investigation which resulted in the arrest of Ms X.

## 4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

4.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

4.2 Section 182(1) of the Constitution provides that:

*“The Public Protector has power as regulated by national legislation –*

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,*
- (b) to report on that conduct ; and*
- (c) to take appropriate remedial action”.*

4.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

4.4 Section 4(1)(a) of EMEA, provides *inter alia* that, the Public Protector “...*must investigate in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister...*”

4.5 This complaint was lodged by a Member of the National Assembly against a Cabinet Member and therefore the complaint fell within the purview and jurisdiction of matters that should be investigated by the Public Protector.

4.6 In terms of section 3 of EMEA, the Public Protector must submit a report on the alleged breach of the Executive Ethics Code by a Cabinet Member within 30 days of the receipt of the complaint. If the Public Protector reports at the end of this period that the investigation has not yet been completed, she must submit another report when the investigation has been completed.

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## **5. THE INVESTIGATION**

### **5.1 Methodology**

5.1.1 The investigation into the complaint is conducted in accordance with section 182(1) of the Constitution, read with sections 3 and 4 of EMA and section 7 of the Public Protector Act.

5.1.2 In terms of section 4(1)(a) of EMEA, the Public Protector must investigate an alleged breach of the code of ethics on receipt of a complaint from the President, a Member of the National Assembly and a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister.

### **5.2 Approach to the investigation**

5.2.1 The approach to the investigation included analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

5.2.2 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

- (a) What happened?
- (b) What should have happened? vested
- (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to a violation of the Executive Ethics Code?
- (d) In the event of a violation, what action should be taken?

- 5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct of the Deputy Minister constitutes violation of the Constitution and/or the Executive Ethics Code.
- 5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Deputy Minister to prevent violation of the Constitution and/or the Executive Ethics Code.
- 5.2.5 The President was informed about the investigation and that it might not be concluded within the thirty (30) day period as prescribed by 3(2)(a) of EMEA through a letter dated 9 December 2019. Consequently, the Public Protector undertook to submit the report as envisaged in section 3(3) of EMEA.
- 5.2.6 A Discretionary Notice in terms of Rule 42(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 (the Public Protector Rules), as promulgated under section 7(11) of the Public Protector Act, was issued to the Complainant and Ms X on 20 July 2021. However, there was no further submission made by the Complainant in response to the preliminary findings. It was only Ms X who made an extensive submission in response to the Notice on 1 August 2021.

## **6. KEY SOURCES OF INFORMATION**

### **6.1 Correspondence and documents**

- 6.1.1 Complaint letter of Dr Dion George, MP dated 23 September 2019.
- 6.1.2 Letter from the Public Protector to Dr Dion George, MP dated 21 October 2019.
- 6.1.3 Response from Dr Dion George, MP to the Public Protector dated 24 October 2019.

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- 6.1.4 Letter from the Public Protector to His Excellency, President MC Ramaphosa dated 9 December 2019.
  - 6.1.5 Letter from the Public Protector to Dr David Masondo, MP dated 9 December 2019.
  - 6.1.6 Letter from the Public Protector to Lt. Gen Lebeya dated 20 May 2020.
  - 6.1.7 Response from Lt. Gen Lebeya to the Public Protector dated 10 June 2020.
  - 6.1.8 Affidavit of Ms X to the Public Protector date 21 January 2021.
  - 6.1.9 Letter from the Public Protector to Lt. Gen Lebeya dated 13 May 2021.
  - 6.1.10 Response from Lt. Gen Lebeya to the Public Protector dated 14 June 2021.
  - 6.1.11 Letter to Commission on Gender Equality (CGE) from the Public Protector dated 16 June 2021.
  - 6.1.12 Copy of the CGE Report dated 10 March 2021.
  - 6.1.13 Submission from Ms X received by Public Protector on 1 August 2021.
  - 6.1.14 Letter from the National Prosecuting Authority dated 11 August 2021.

## **6.2 Legislation**

- 6.2.1 Constitution of the Republic of South Africa, 1996.
- 6.2.2 The Executive Members' Ethics Act, 82 of 1998.
- 6.2.3 The Executive Ethics Code
- 6.2.4 The Public Protector Act, 23 of 1994.
- 6.2.5 Prevention and Combating of Corrupt Activities Act, 12 of 2004 (PRECCA).

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**7. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS.**

**7.1 Regarding whether the Deputy Minister of Finance violated the Executive Ethics Code when he reported an alleged extortion case directly to the Directorate for Priority Crime Investigation.**

***Common cause issues***

7.1.1 The Deputy Minister approached the Hawks to institute a criminal charge of extortion against Ms X as per Douglasdale Cas 472/08/2019.

7.1.2 The A1 affidavit of the Deputy Minister is dated 15 August 2019 and the preamble to the statement show that the aforementioned case was registered on 17 August 2019.

***Issues in dispute***

7.1.3 The Complainant relied on the veracity of the newspaper articles when lodging his complaint with the Public Protector. The said articles appeared on News24 and the Times Live dated 15 September 2019 and on dated 20 September 2019 respectively, wherein it was alleged *inter alia* that:

7.1.3.1 The Deputy Minister used his influence and state resources to settle a personal score with Ms X;

7.1.3.2 The Deputy Minister did so by approaching the Hawks with a false complaint which culminated in the setting up of an undercover operation that led to Ms X's arrest;



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- 7.1.3.3 The WhatsApp messages between the Deputy Minister and Ms X suggest that it was the former who offered Ms X money because he '*wanted peace*' and the fighting between them to stop;
- 7.1.3.4 The messages dating from August 2019 show Ms X rejecting the offer of money several times;
- 7.1.3.5 It appears from the messages that the acrimony was mainly about Ms X accusing the Deputy Minister of bullying her to have an abortion and wanting the two families to discuss the issue of damages. However, the Deputy Minister, who is married and a father of two, did not want his relatives to be involved, or for Ms X to contact his wife;
- 7.1.3.6 "*The messages show that Ms X was relentless. As the dispute escalated, she bombarded*" the Deputy Minister with messages daily, including about dreams of his and his wife's death. The Deputy Minister appears to have viewed this as intimidation and harassment;
- 7.1.3.7 It is not clear exactly when the Deputy Minister reported the matter to the police and on what basis, but his complaint appears to have received a swift attention from the Hawks;
- 7.1.3.8 Ms X was arrested outside her home on the 17 of August 2019 and spent a weekend in detention, but she was released without appearing before a Magistrate;
- 7.1.3.9 According to the WhatsApp messages on 3 August 2019 at 10:11, the Deputy Minister told Ms X that: "*I was worried (still worried) about the continuous harassment of my family. And I was pleading that I can pay you whatever amount is required to stop this fight.*"(sic);

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- 7.1.3.10 Ms X took offence and responded at 10:19: *“Had I knew that you wanted to insult me I wouldn’t have unblocked you. It will be a full on war. You don’t know my family... My family is concerned for my wellbeing. Taking over damages is the start, they want to deal with this, so I no longer deal with you. But you wouldn’t understand that”*;
- 7.1.3.11 The Deputy Minister wrote: *“I’m pleading once: leave my family out of this. They have nothing to do with this”*;
- 7.1.3.12 Ms X wrote: *“Families have always sought dialogue in situations like this. Today it’s harassment?”* of which he responded: *“Let’s us not abuse culture. This is harassment”*(sic);
- 7.1.3.13 At 11:03, the Deputy Minister asked Ms X to tell him *“exactly what to do to make peace, I am willing to take any price to make peace”* of which she responded *“You care for nobody but yourself, Continue to did your own hole. Did it and bury yourself in it...why are so obsessed with money? I don’t want your money. I’m doing fine”*;
- 7.1.3.14 At 11:33, Ms X wrote: *“You were paying for my psychological care, and you abruptly stopped. Even when people fight, they don’t stop doing what they committed to doing. It was dear wrong showed your lack of remorse”* (sic); and
- 7.1.3.15 According to Ms X, the Deputy Minister was paying for her counselling sessions after she suffered severe depression because of the abortion.
- 7.1.4 The Public Protector, through a letter dated 21 October 2019, requested the Complainant to indicate the specific clause allegedly breached by the Deputy Minister. In his response dated 24 October 2019, the Complainant submitted that the alleged conduct of the Deputy Minister breached of clauses 2.1(a-d) and 2.3(c) & (f) of the Code.

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## **The Deputy Minister's response to the allegations**

- 7.1.5 A letter of inquiry dated 9 December 2019 was sent to the Deputy Minister by my office inviting his response and comments to the allegations by the Complainant. In his submission to my office dated 31 January 2020, the Deputy Minister attached the A1 affidavit and supplementary affidavit that were filed under Douglasdale CAS 472/08/2019, the contents of which are discussed in this report.
- 7.1.6 The Deputy Minister vehemently denied that he used his influence and state resources to settle a personal score with Ms X. He also rejected the allegation that he approached the Hawks with a false complaint in order to set up an unlawful undercover operation.
- 7.1.7 He submitted that his office did not play any role in the decision to report the complaint to the Hawks. He did not lodge the complaint on a letterhead of his office of the Deputy Minister, nor did he utilise any resources available to him as a Deputy Minister, such as his Personal Assistance, Secretary, and VIP Protectors, etc. to lodge a complaint to the Hawks.
- 7.1.8 On the contrary, he lodged the complaint as an aggrieved citizen of the Republic, who had the right to do so in terms of the South African laws and the Constitution.
- 7.1.9 He attended to the office of the Hawks to lodge a complaint and did not ask and/or request them to attend to his office or home to record his complaint as the Deputy Minister.
- 7.1.10 The Deputy Minister stated that when he sought legal advice, he was informed that extortion falls within the mandate of the Hawks and that it would be the appropriate institution to report his complaint. He further submitted that:

*“With regard to approaching the Hawks, I am not employed within the criminal justice cluster and am not conversant with its dynamics. Very few people in our society, myself included, know the difference between SAPS [the South African Police Services] and the Hawks. Safe to say that the Hawks is regarded as an effective component of SAPS and accessible to all members of the public (including Deputy Ministers)”(sic).*

- 7.1.11 He argued that it was unclear what “*influence*” he allegedly used when he lodged a criminal case against Ms X as no substantiation was provided by the Complainant in this regard.
- 7.1.12 He submitted that the Constitution guaranteed human dignity, equality and freedom to everyone. In particular, section 9(1) of the Constitution provides that “*Everyone is equal before the law and has the right to equal protection and benefit from the law.*” Therefore, he was and still is “*entitled to all the rights and protection accorded to all persons in the Republic by the Constitution.*”
- 7.1.13 The Deputy Minister further submitted that he did not understand how exercising his constitutional right to institute a criminal charge can possibly amount to contravention of the Executive Ethics Code as alleged.
- 7.1.14 He contended that he could not be blamed nor take responsibility for how the Hawks or the National Prosecuting Authority (NPA) conducted their businesses. His understanding was that it was the constitutional mandate of the SAPS as envisaged in section 205(3) of the Constitution was “*to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.*”

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- 7.1.15 On the other hand, the NPA was empowered to institute criminal proceedings on behalf of the state and to carry out any necessary function incidental thereto as contemplated in section 179(2) of the Constitution.
- 7.1.16 The Deputy Minister rejected the allegation that he influenced Ms X's arrest. He contended that he did not know why the Hawks opted to conduct an undercover operation before arresting Ms X. He also did not know, at the time, the process which they would follow in that regard, as this was purely outside of his purview and entirely within the Hawks' prerogative.
- 7.1.17 According to him, the allegations against him would have borne some merits had he opted to use his VIP Protectors who are members of the SAPS, to effect Ms X's arrest.
- 7.1.18 He further intimated that there appears to have been no objections raised when Ms X laid criminal charges against him (Douglasdale CAS 432/09/2019) and have the said charges investigated by the Gauteng Provincial Organised Crime Unit of the SAPS despite not mandated to investigate charges of assault and malicious damage to property.
- 7.1.19 In this regard, no one accused Ms X of abuse of resources or influence she may have wielded as a journalist. This, he submitted, was consistent with section 34 of the Constitution which guarantees everyone the right "*to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court...*"
- 7.1.20 The Deputy Minister also reported that the NPA, through the office of the Director of Public Prosecutions (DPP) in Johannesburg declined to prosecute the cases laid against each other. In this regard, in its letter to the Deputy Minister's legal representatives dated 20 January 2020, the DPP, regarding Douglasdale CAS 472/08/2019 wrote that:

“After perusal of your representations, the docket and the report from the Senior Public Prosecutor, it has been decided that no criminal prosecution will be instituted against [REDACTED] and David Masondo.”

### **Hawks response dated 10 June 2020 and 16 June 2021**

- 7.1.21 In response to the Public Protector’s letter of inquiry dated 20 May 2020, the Hawks explained that the Deputy Minister approached the Gauteng Serious Corruption Investigation Unit and reported a case of extortion. Upon evaluation of the case, it was established that the case reported by the Deputy Minister is a corruption related case which falls within the mandate of the Hawks. The Deputy Minister was not given any preferential treatment when reporting the case. It is normal to receive complaints directly from the public especially extortion cases.
- 7.1.22 The Hawks further explained that the statement of the Deputy Minister was obtained and DCPI Enquiry CAS 05/08/2019 was registered before it was converted into a case docket. In terms of his statement, Ms X demanded an amount of three hundred thousand rand (R300 0000.00) to stop her from harassing him and his family.
- 7.1.23 On 15 August 2019, an application for a police action (entrapment application) in terms of section 252A of the Criminal Procedure Act, 51 of 1977 (CPA) was made to the Director of Public Prosecutions (DPP) in respect to the alleged extortion. The aforesaid application was granted and executed, leading to Ms X being arrested after she received an amount of forty thousand rand (R40 000.00) from the member of the Hawks.
- 7.1.24 Ms X subsequently appeared at the Randburg Magistrate Court on 19 August 2019. The Prosecutor requested further investigation to be conducted which *inter alia* required additional statement to be obtained from the Deputy Minister.

- 7.1.25 The Hawks also submitted that they did not consider the complaint to be false and considered the monies to be received as gratification. It further submitted that matters that require unconventional methods of investigation can be directly reported to the Hawks.
- 7.1.26 In a letter to the Public Protector dated 11 August 2021, the Deputy National Director of Public Prosecutions, Adv R de Kock, submitted that Douglasdale Cas 654/08/2019 which was reported by Ms X was under review. Further that, the aforesaid matter had to be considered in conjunction with the matter registered by the Deputy Minister, as the matters were interrelated.

#### **Douglasdale Cas 472/08/2019**

- 7.1.27 The copies of the above-mentioned docket were availed to the Public Protector during this investigation.
- 7.1.28 In the A1 statement (affidavit) made by the Deputy Minister commissioned on 15 August 2019, the Deputy Minister made several allegations which can be summarised as follows:
- 7.1.28.1 In paragraphs 3-9, the Deputy Minister intimated how he met Ms X and how he reluctantly had sexual intercourse with Ms X.
- 7.1.28.2 In paragraphs 10-11, Ms X informed him three days after their sexual encounter that she was pregnant, but in August 2018, this was confirmed not to be the case.
- 7.1.28.3 In paragraphs 12-13, the Deputy Minister told Ms X that they were not in a relationship but Ms X declared her love for him. However, he told her that a

romantic relationship between them would not be possible because he had no such interest.

7.1.28.4 In paragraphs 14, the Deputy Minister indicated that he continued to receive text messages and he responded to some of the texts messages and telephonic calls from Ms X, but ignored others. In April 2019, Ms X also confirmed to him that he contacted his wife using a false name, Lerato.

7.1.28.5 In paragraph 15, the Deputy Minister indicated that Ms X demanded that he should have sex, a relationship and a child with her, but he refused. Ms X started calling him and his wife using different numbers. During those calls, Ms X threatened to destroy both his marriage and his career because he had just been appointed as the Deputy Minister of Finance.

7.1.28.6 In paragraph 16, the Deputy Minister declared that:

*“I started to become very afraid for my family because she [Ms X] was now calling almost every two days, sending text messages, voice notes to both me and my wife. I felt that she was now blackmailing me until I asked her how much money did, she want in order to stop this harassment and torment to me and my family. She then responded by text in which she had made her calculations for an amount of R300,000.00 in which she stated that she wanted the said funds for her psychological treatment. I then requested her to give me an undertaking that she will stop all the torment and harassment to my family to my family if I paid this money. She responded in a text by saying ‘I promise David’.” (sic)*

7.1.28.7 In paragraph 17, the Deputy Minister stated that due to the fact that all the torment and harassment by Ms X could be characterised as an extortion, he elected to approach the Hawks for assistance. In the same paragraph he also wrote:



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*“However, it is important to add that between the period 07 August to 12 August 2019 she [Ms X] has already made approximately five demands and six life threats to my family and in-laws if she does not get her R300, 000.00 in cash immediately. I am really petrified and not just for me but for my family members as well.”(sic).*

- 7.1.28.8 In paragraph 18, the Deputy Minister indicated that he desired “*police investigations into this matter and the arrest and the prosecution of [REDACTED]*” [Ms X].
- 7.1.29 The Deputy Minister also submitted an 18 pages supplementary affidavit which was commissioned in Germiston but without a date recorded thereto, the Deputy Minister made several allegations which can be summarised as follows:
- 7.1.29.1 The cordial relationship he had with Ms X can be divided into two phases, viz, pre-termination of pregnancy period (i.e. from July 2018 until mid-January 2019) and post-termination of pregnancy period (i.e. from mid-January 2019 until April 2019).
- 7.1.29.2 The first phase was largely characterised by discussions on the termination of her alleged pregnancy, including his continued rejection of a love relationship. Ms X lied twice about having terminated her pregnancy and used the pregnancy to demand money under the pretext that she would use it for the termination procedure.
- 7.1.29.3 He also stopped the cordial relationship around October 2018 when he demanded paternity testing. During November and December 2018, he also blocked Ms X, but she used different phone numbers to get through to him.

This she did in order to seek an audience with him to discuss the termination of her alleged pregnancy.

7.1.29.4 The second phase was largely dominated by his cordial rejection of Ms X's unreasonable and extortive financial demands. These included demands for a car and payment of the monthly rental of her apartment.

7.1.29.5 Ms X disguised her demands by claiming that the funds were intended either for medical or psychological treatment. He stopped his cordial approach in dealing with Ms X towards the end of January and beginning of February 2019. In March 2019, she started accusing him of acting out' because it had dawned on her that he was no longer cordial with her.

7.1.29.6 In response, Ms X contacted his wife in April 2019. The Deputy Minister reiterated his position that he had ended the cordial relationship with her. He responded to her text messages in an attempt to state his position with regards to her demands. However, she continued harassing his wife through endless phone calls.

7.1.29.7 In paragraph 47 of the affidavit, the Deputy Minister wrote:

*"When I continued to refuse to accede to her demands, she unleashed a plan in a concerted effort to consistently blackmail, harass, intimidate, threaten and extort money from me. The harassment, threats and intimidation were further extended towards my family, focussing on my wife. When I refused to her endless phone calls or to attend meetings with her, she directed her anger towards my wife and called her continuously and endlessly."*

7.1.29.8 The Deputy Minister also referenced two other matters involving Ms X wherein she reported a case of rape and the second being a case of harassment against her. The Deputy Minister alleged that the former bore startling similarities to his case.

7.1.30 The docket also contained the motivation for the entrapment application was stated in the application as:

*“The suspect is soliciting money (sic) an amount of Three hundred thousand rand (R300, 000.00) from the complainant in order to stop blackmailing him and contacting his wife and intimidating her.”*

7.1.31 It was further stated in the entrapment application that the amount of R40 000.00 would be used because it was the only amount the Deputy Minister could raise.

7.1.32 The entrapment application identified contravention of section 3 and 4 of POCA and extortion and bribery as the possible offences.

### **Evidence of Ms X**

7.1.33 In her affidavit dated 21 January 2021, submitted to the Public Protector, Ms X indicated that she was a journalist by profession and detailed how she was unlawfully arrested by members of the Hawks on 17 August 2019.

7.1.34 She also detailed how she was introduced to the Deputy Minister during the course of January and February 2018 whilst she was working on a piece in relation to women in the automotive industry. The Deputy Minister was at the time in the employ of Automotive Industry Development Centre (AIDC).

7.1.35 The Deputy Minister took interest in the article she was writing and when the article was published in May 2018, he invited her for coffee. When they met for coffee, the Deputy Minister informed her that he had left the employ of AIDC and had just been appointed as the head of the African National Congress’s

political school. One thing led to the other and they struck a romantic relationship.

- 7.1.36 Shortly after becoming romantically involved, she fell pregnant around September 2018, the Deputy Minister forced her to terminate the pregnancy on 17 January 2019.
- 7.1.37 After the termination of the pregnancy, she suffered depression and struggled to cope thereafter. She wanted to have another baby with the Deputy Minister who initially agreed before reneging.
- 7.1.38 She effectively terminated their relationship in April 2019. However, when she conveyed her decision to him, he became violent and broke her phone. Two days after the incident, the Deputy Minister gave her R20 000.00 as a peace offering.
- 7.1.39 Following the termination of her pregnancy, she confided in her family around July 2019. Her family sought to engage with the Deputy Minister's family for the purposes of seeking payment for damages. Although the Deputy Minister initially agreed to two families meeting, this did not materialise.
- 7.1.40 On 3 August 2019, after unblocking the Deputy Minister, he explicitly made an offer to her saying "*I was pleading that I can pay whatever amount*"(sic) in order to avoid their families meeting, but she rejected the offer.
- 7.1.41 In paragraph 30 of her affidavit, Ms X indicated that "*at no stage whatsoever did I demand any money from Masondo; in fact, he was the one who mentioned the payment of money and, also, suggested that I calculate an amount...*

*He has previously given me R20, 000.00, in addition to the payment of the medical expenses as aforementioned, and when he offered me R40, 000.00 in cash. The amount was offered on or about 16 August 2019, Masondo*

*offered the R40,000.00 as a down payment on the R300,000.00 which we agreed earlier on 3 August 2019, I agreed to accept such payment. Bear in mind that Masondo had undertook to pay for my medical expenses since the abortion, and he stopped making payment by July 2019. On 3 August 2019, Masondo wrote 'I don't want to pay perpetually. I need an overall figure so that I can pay once and for all'. Masondo was referring to the psychological care because I had reminded him that he had stopped making payment, so it was strange that he now talking about paying me again. To be sure, I did ask if he was indeed referring to the psychological care and he confirmed, and I said 'That's if you want. If you don't want, that's fine. He agreed and asked me to 'help with him with the math'. My family seeking damages is not harassment. I did not harass his family or wife. His wife lodged a defective and malicious complaint against me to the Commission of Gender Equality, which cleared me. His wife harassed me and Masondo was aware of her harassment and committed to 'sorting out' (recordings have been retained). Furthermore, the money that we agreed on (300K) was for psychological care which he had in any case been paying for, he no longer wanted to pay 'perpetually' as he stated (sic).*

- 7.1.42 Ms X further submitted that the Deputy Minister opted to approach the Hawks and not the SAPS in order to elevate the crime and abuse of his power through certain legislation.
- 7.1.43 She stated that not only did the Deputy Minister approach the Hawks on a false complaint, but he also approached it under the guise of section 34 of PRECCA.
- 7.1.44 Ms X contended that section 34 of PRECCA places a duty on 'any person who holds a position of authority' to report any knowledge of certain offences, including extortion. However, the Deputy Minister held no such duty in terms of the aforesaid section because the alleged extortion was not related to corruption or corruption-related activities.

- 7.1.45 Ms X further argued that the Deputy Minister who was legally represented at all times, was well aware that the complaint he lodged with the Hawks fell under common law extortion. Therefore he chose to abuse section 34 by elevating the crime and involving the Hawks when they had no mandate thereto.
- 7.1.46 Ms X also availed to the investigation team, copies of the screenshots of the WhatsApp messages from 3 August to 13 August 2019 at 9:26am -between her and the Deputy Minister (DM). Some of the texts that documented the following:
- 7.1.46.1 At 11:45 on 3 August 2019, the DM wrote: *“You say I stopped making payment for what we agreed upon. So I’m simply saying just give the overall figure so that I can pay”* of which she responded: *“You owe, 2k for each week, over a period of about 5 weeks. You are owing 10k.”*
- 7.1.46.2 At 11:48, the DM wrote *“Okay, I will pay. I need an overall price. So that I can pay it once and for all. I really need peace”* of which she responded: *“You will pay that amount which is owing and continue to pay that amount which is owing and continue 2k if you wish as per our agreement. Only if you wish. I don’t need it.”*
- 7.1.46.3 At 11:51 the DM wrote: *“It would work well for me if you give me (sic) if I get an overall price. So that we deal with this once and for all”* of which she responded: *“Money would not make this go away. Will it buy me a baby? Stop insulting me, I will say for the last time.”*
- 7.1.46.4 The DM repeatedly spoke about the fact that he did not want his family involved nor invoke culture in the matter whereas Ms X wanted the issue be dealt with culturally.

- 7.1.46.5 At 12:11 the DM wrote: *“You said I don’t have remorse because I didn’t pay. And I asked you to give me (sic) give the price so that I settle it”* of which she responded by saying: *“Pay what you owe if you wish. For the psychological care, that is.”*
- 7.1.46.6 At 12:12 the DM wrote *“I don’t want to pay perpetually. I need an overall figure so that I pay once and for all”* of which her response was *“For the psychological care. Well calculate 8k/ month over three years. Do the math, I’m tired. That’s if you want. If you don’t want, that’s fine”* (sic).
- 7.1.46.7 At 12:17 the DM wrote: *“I want peace. So I will do it. Do me (sic) favour. I can sort it out by Thursday (half or full)”* of which she responded: *“8k/ month over a year is 98K. 98k over three years is almost 300k. Only if you want sir. Psychological care is extensive, usually effective over 3 years”*(sic).
- 7.1.46.8 At 12:19 the DM wrote: *“Okay. I will do it. Guarantee one thing: will this fight stop?”* Ms X responded by saying: *“What will you expect, that my family no longer deal with our issues culturally”*. He then wrote *“Because I don’t agree with your views on culture, yes.”* Ms X wrote *“its not (sic) you Xitsonga culture, but it’s the Tswana culture. I don’t like to fight.”*
- 7.1.46.9 At 12:14 the DM wrote: *“Me neither. So I take it this will stop the fight”* after which she wrote: *“OK”*. The DM then wrote: *‘Thanks. We will sort out the logistics.’*
- 7.1.46.10 At 12:26 Ms X wrote: *“So you have 300k lying around”* of which the DM responded: *“I will raise it. We need peace.”*
- 7.1.46.11 At 12:34 Ms X wrote: *“Other monies as well. But anyway. It’s fine. I want all of it, at one go. But you don’t have to. I repeat”* of which his response was: *“I will.”*

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- 7.1.46.12 Around 17:00, the DM indicated that he could only do it on Thursday whereas Ms X was saying she had been summoned home and also said Thursday was too far.
- 7.1.46.13 There were several other texts messages and voice notes mainly from Ms X which did not draw any response from the DM.
- 7.1.46.14 On 4 August 2019 at 7:35 Ms X told the DM that he has been ignoring her.
- 7.1.46.15 At 7:35 the DM then wrote: *“Look, I will try to deliver on Wednesday. Since you say Thursday is too far”* of which she responded by saying *“Indeed it’s far. Can you also treat me with respect and kindness? That’s all I ask from this peace accord. It’s more important than any money amount of money.”*
- 7.1.46.16 The DM and Ms X locked horns on the issue of culture once again.
- 7.1.46.17 At 8:12 the DM wrote: *“Can we please go back to yesterday’s agreement? I can sort it Wednesday”* of which she responded by saying *“Ok. Call me first. We must talk. No, I do not seek to talk because I miss you. Such agreements cannot be concluded on WhatsApp. Be an adult.”*
- 7.1.46.18 However, at 8:16 the DM wrote: *“I’m still worried about you recording me”* of which Ms X responded by saying: *“No App can record WhatsApp calls. And I deleted my recorder.”*
- 7.1.46.19 At 9:46 the DM wrote: *“please assure me that once I do the payment on Wednesday, the fight will stop. I really need peace”* and Ms X responded by saying: *“I promised David.”*
- 7.1.46.20 At 17:23 Ms X wrote: *“Tell me, you were so quick to hang up, what you expect me to tell my family who are genuinely concerned for me?”*



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- 7.1.46.21 At 19:12 Ms X wrote: *“Do you want only to settle my psychological care as you had done previously or is it more”*. At 21:13 *“Are you hoping that making payments will cleanse your sins and crimes against me.”* At 21:14 *“It would have been better if you honoured to pay for my psychological care, only because you seek that I heal emotionally.”* At 21:18 *“This is too much pressure for me. I must say.”*
- 7.1.46.22 At 19:44 Ms X wrote: *“A genuine apology will do just fine. My family will pay for my psychological care. I just want things to be done correctly. No more doting and (sic) corners”*.
- 7.1.46.23 On 5 August 2019, the issue of culture was again raised but the two would not agree on it.
- 7.1.46.24 On 6 August 2019, the DM indicated that he had successfully raised the money with the funders and agreed to finalise the logistics the morning of the following day, being Wednesday.
- 7.1.46.25 However, at 21:22 Ms X wrote *“Let’s leave the whole thing. Also don’t know where money will be coming from. Makes me uncomfortable. And sort that sort of handover, logistics cannot be last minute”* of which the DM responded by saying: *“I’m not sure what are your concerns or worries.”* Ms X also expressed her dissatisfaction that the logistics were not settled.
- 7.1.46.26 On 7 August 2019, there was no exchange of monies as agreed by the parties.
- 7.1.46.27 On 8 August 2019, Ms X spoke about getting threatening calls from the Nigerians and the DM’s wife. The DM requested Ms X to leave his wife out of the issue and undertook to get *“the cash”*.

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- 7.1.46.28 At 10:01 Ms X wrote: *“Don’t want money from you. I will get justice instead. How about that”* and the DM wrote: *“I just want peace. The torment has been too much. Hence, I’m prepared to pay.”* In response Ms X expressed her displeasure at the fact that the DM was quiet the previous day.
- 7.1.46.29 At 10:12 Ms X wrote: *“Where is the money”* to which the DM responded: *“I’m doing my best to get it. I’ve not yet succeeded.”*
- 7.1.46.30 When Ms X asked how much the DM had, he responded by saying he was broke but undertook to get the R300 000.00. However, by the end of the day the money had not been secured.
- 7.1.46.31 On 9 August 2019, the DM was still promising to get money. While Ms X spoke about not wanting to keep her family hanging, the DM was still appealing for the two families not to be involved.
- 7.1.46.32 Ms X accused the DM of buying time but the latter said he could not buy time on the matter as he had enough of the *“torment”*.
- 7.1.46.33 On 10 August 2019 the DM was still communicating that he did not have the money and that Ms X would have it when she returned from her trip to Singapore. At 13:49 the DM wrote: *“To be safe, let me say, earliest Friday and latest Saturday”* to which Ms X responded: *“No ways.”*
- 7.1.46.34 When Ms X later said she no longer wanted the money, the DM undertook to give her money on Tuesday.
- 7.1.46.35 Whereas there were several text messages from Ms X including those of a sexual nature, the DM insisted that they should focus on their agreement and did not respond to the sexual messages.

- 7.1.46.36 On 11 August 2019, Ms X apologised about the texts she had sent the previous day and she wanted the DM to assure her that he will give her R20 000.00 before 9am the following day.
- 7.1.46.37 At 15:55 the DM wrote: *“In fact, I may have the whole amount. All I need is reassurance that you will stop all what you have been doing to me and my family”* and her response was: *“I have done nothing to you and your family. But, all communication will end.”* She also requested him to deposit the money into her business account because she could not take R300k in cash.
- 7.1.46.38 The conversation between the DM and Ms X deteriorated once again when he requested for reassurance that Ms X would leave his wife and family out of the fight.
- 7.1.46.39 At 18:50 Ms X wrote: *“You have convinced yourself that I am a terrible person, who deserves all I have endured. One things about (sic) out conversation today: you clearly don’t care for me as a person. Which is fine. I think we must stop talking. I was better when we blocked each other”.*
- 7.1.46.40 At 18:51 the DM wrote: *“I hear you. Let’s stick to the agreement. I will pay tomorrow and we close this matter”* of which she responded: *“You obviously want to do that so badly, yet you have no respect for the process. If you want deposit it.”*
- 7.1.46.41 Ms X wrote: *“It’s like you want me to incriminate myself to say I want money to stop ‘harassing’, that’s extortion. I won’t do that.”* The DM wrote: *“I honestly want peace.”*
- 7.1.46.42 Ms X said referred to a message that she said she sent to a friend that reads *“First he threatened my career, now he wants to set a trap for me.”* At 19:01 referring to this text wrote: *“I sent this to my friend last. You only want to set*

*some trap for me. I'm not stupid, David" to which he replied: "I have always been clear on what I don't want: baby, relationship, etc. Since the harassment of my family started, I persistently asked to stop it."*

- 7.1.46.43 At 19:07 Ms X wrote: *"You did threaten my career. You did smash my phone, you did kill my baby, you were nasty, (sic) to did cause me depression. Now you want to trap me as an extortionist?"* His reply was: *"I don't know why you tell so much lies. You know you are lying."*
- 7.1.46.44 The parties went back and forth on who was lying and who was telling the truth. Ms X sent numerous unanswered texts until the DM asked what she wanted from him.
- 7.1.46.45 On 12 August 2019, Ms X said that she wanted the R20 000.00 and the DM said he will give her at 15:30.
- 7.1.46.46 The DM told Ms X that he was on his way to Benoni but she indicated that she was coming to meet him in Pretoria despite him telling her that it would not help. At around 11:57 Ms X told him he will regret and accused him of not wanting to compromise.
- 7.1.46.47 At 11:59 the DM wrote: *"Please don't bully me for money. We can solve this issue with ease."* Ms X wrote: *"I'm warning you. Don't mess with my emotions. We will never do it the way you want. Never. If you can't compromise it's your own demise. Ima most in Pretoria will have lunch and I'll call you, you will tell me where he is, if not forthcoming I will leave and you will regret"(sic).* The DM reply: *"Please don't bully and intimidate me over money. I'll sort it out. I don't understand why you (sic) being so aggressive"*.
- 7.1.46.48 Ms X asked the DM to meet her halfway in order to give her the R20 000.00 which money he had, but said he could not meet her.

- 7.1.46.49 On 13 August 2019 at 09:12 Ms X wrote: *“I will no longer care to discuss further with you. I will have to cut communications as my family requested. You’ve again caused me anxiety and pain over nothing.”* Again at 09:26 she wrote: *“Kindly do not contact me ever again please”*(sic).
- 7.1.46.50 Although the text messages submitted by Ms X were ongoing until 13 August 2019, the printout of her WhatsApp texts contained in Douglasdale Cas 472/08/2019 were up to the 17 August 2019.
- 7.1.46.51 The text messages from Ms X reveals that the DM had not made the payment that they had been discussing for days.
- 7.1.47 Ms X also reported to the Public Protector that this matter is the subject of civil litigation against the Minister of Police, Lt Gen Lebeya, the Deputy Minister and Dr Meshack Mbokoto, in the High Court of South Africa (Gauteng Division, Pretoria) under Case No. 62129/20.
- 7.1.48 In the aforesaid litigation, Ms X has raised the issue of unlawful arrest and detention against the Hawks, malicious proceedings against the Deputy Minister and assault against Mr Mbokoto.
- 7.1.49 On 14 June 2021, the office of the DPCI Judge also confirmed that it is investigating a complaint relating to allegations of unlawful infringement of Ms X’s rights by members of the Hawks. In essence, its investigation seeks to establish whether or not the rights of Ms X were illegally violated by the Hawks during the investigation of the case.
- 7.1.50 The Public Protector through a letter dated 16 June 2021 requested the Commission to confirm the issues it was investigating based on the complaint by Ms X. In its response dated 25 June 2021, the Commission indicated that it had finalised its investigation and provided the copy of its investigation thereto.

- 7.1.51 It terms of the report, it is noted that on 10 October 2019, Ms X reported a complaint to the Commission, an institution established in terms of Section 187 of the Constitution. Ms X alleged that the Deputy Minister, abused his powers and used the Hawks to arrest her on charges of extortion.
- 7.1.52 In terms of Section 187(1) of the Constitution, the Commission is specifically mandated to:
- (a) *Promote respect for gender equality and the protection, development and attainment of gender equality,*
  - (b) *Monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality and*
  - (c) *Assess the observance of gender equality.*
- 7.1.53 The Commission also dealt with Ms X's allegation that the arrest by the Hawks constituted a violation of her constitutional rights because she is a woman.
- 7.1.54 The Commission found that it did not have powers to investigate abuse of powers by the Deputy Minister, the state or state organs and same could be referred to the Public Protector under section 6(4) of the Public Protector Act. However, it remarked that "*Abuse of power or abuse of authority in the form of "malfeasance in office" or "official misconduct" is the commission of an unlawful act, done in official capacity, which affects the performance of official duties.*"
- 7.1.55 The Commission's findings were that:
- (a) *"The arrest of the complainant was authorised. The arrest of the complainant was conducted in terms of Section 40(1)(b) of the Criminal Procedure Act.*

- (b) *The Commission received evidence that the respondent acted in terms of the powers it derived from South African Police Act. The mandate of the respondent is “responsible for combating, investigation and prevention of national priority crimes such as serious organised crime, serious commercial crime and serious corruption in terms of Sections 17B and 17D of the South African Police Services Act, as amended.*
- (c) *The Commission did not receive evidence that the arrest of the complainant by the respondent was conducted unlawfully or was unauthorised. The Commission cannot draw a conclusion and is not persuaded that complainant’s arrest was the result of gender discrimination.”*

#### **Further submission made by Ms X**

- 7.1.56 Ms X submitted that it was improbable that the DM did not know the difference between the mandate of the Hawks and the SAPS and that the Hawks dealt with serious priority crimes.
- 7.1.57 The ANC Integrity Committee rejected the DM’s submission and held that he had brought the organisation into disrepute for approaching the Hawks and that he ought to have known that the Hawks dealt only with priority crimes.
- 7.1.58 Ms X submitted that the DM’s conduct was actuated by malice and therefore, even if he had approached the SAPS, the outcome would be the same because it was false. The DM elevated his liability when he approached the Hawks instead of the SAPS.

- 7.1.59 Ms X indicated that the dockets she had opened were transferred to the Hawks without her knowledge.
- 7.1.60 She contended that the case reported by the DM to the DPCI was not a corruption related case which fell within its mandate. Unless such an evaluation was premised on the fact that the DM was a person in authority as envisaged in section 34 of PRECCA. The failure to inform the DM to approach the SAPS to report the matter in terms of common law indicates abuse of power and/or preferential/ special treatment by the DPCI.
- 7.1.61 She disputed that the DM reluctantly had sex with him and submitted that he invited her on 9 July 2018 to an event at the University of Johannesburg scheduled for 12 July 2018.
- 7.1.62 She only found that she was pregnant on 4 November 2018 and her doctor confirmed her pregnancy at 10 weeks.
- 7.1.63 Ms X indicated that the DM failed to indicate that she had blocked him and only unblocked him on 3 August 2019 after a request came through his friend. Therefore, it is strange that the person that felt so threatened and harassed would request to be in touch with their tormentor.
- 7.1.64 In a letter dated 31 July 2020 to the Chairperson of the ANC Integrity Commission, Cde. George Mashamba, the Deputy Minister wrote that:

*“As indicated in my submission to the ANC Integrity Commission, it was not an easy decision for me to report the matter to the police, but acted on the advice of my lawyer that the Hawks is the legally appropriate institution responsible for crimes such as extortion.*

*My lawyer’s advice was that, I should report the crime of extortion in my personal capacity, which I did. He further advised that, as a public official, I*



*also have more responsibility as I am enjoined by Section 43(1) of the Prevention and Combatting of Corrupt Activities Act 12 of 2004(the Act) to report such a crime to the Directorate for Priority Crime Investigation (DPCI) if I bear knowledge of its committal and the perpetrator(s) thereof. Additionally, the lawyer also advised that in terms of Section 34(2) of the Act, my failure to report Ms Lebitse while knowing if the unlawful action, I would be guilty of an offence."*

### ***Application of the relevant law***

7.1.65 Section 96 of the Constitution provides that:

- (1) *Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.*
- (2) *Members of the Cabinet and Deputy Ministers may not—*
  - (a) *...;*
  - (b) ***act in any way that is inconsistent with their office***, or expose themselves to any situation involving the risk of a conflict between their ***official responsibilities*** and private interests; or
  - (c) *...."*

7.1.66 The complaint to the Public Protector was premised on the fact that the conduct in question is attributed to the Deputy Minister of Finance who is enjoined to abide by the above provisions of the Constitution.

7.1.67 EMEA is the national legislation referenced in section 96(1) of the Constitution and the bedrock of the Executive Ethics Code.

7.1.68 Section 2(1) of EMEA read thus:

*“The President must, after consultation with Parliament, by proclamation in the Gazette, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECS must comply in performing their official responsibilities.*

7.1.69 The general standards which the members of the Executives<sup>1</sup> must comply with are contained in clause 2.1 of the Executive Ethics Code which states that:

2.1 *“Members of the Executive must to the satisfaction of the President or the Premier, as the case may be-*

- (a) perform their duties and exercise their powers diligently and honestly;*
- (b) fulfill all the obligations imposed upon them by the Constitution and law;*
- (c) act in good faith and in the best interest of good governance;*
- (d) act in all respects in a manner that is consistent with the integrity of their office or the government.”*

7.1.70 Clause 2.2 provides that *“In deciding whether members of the Executive complied with the provisions of clause 2.1, the President or Premier, as the case may be, must take into account the promotion of an open, democratic and accountable government.*

7.1.71 Clause 2.3 of the Executive Ethics Code provides that:

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<sup>1</sup> Member of the Executives' means a Cabinet member, a Deputy Minister or a Member of a Provincial Executive Committee, and "member' and 'Executive' have corresponding meanings.

2.3 *“Members of the Executive may not-*

- (c) *act in a way that is inconsistent with their position;*
- (f) *expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests.”*

7.1.72 In the case of **Public Protector and Others v President of the Republic of South Africa and Others (CCT 62/20) [2021] ZACC 19 (1 July 2021)** (*the President case*). In par 11, the court denoted that:

*“Section 3 empowers the Public Protector to investigate any breach of the code. The scheme that emerges from the reading of this provision is that the Public Protector’s power to investigate is subject to a formal complaint. This suggests that the scope of an investigation is determined by the breach of the code contained in the complaint. It is important to note that section 3 does not authorise the Public Protector to investigate a violation of the Act itself but limits her authority to investigating a breach of the code.”*

7.1.73 The general standard imposed by paragraph 2.1(d) of the Code appears to extend the operations of section 96(2)(b) by requiring a Member to act in a manner that is consistent with the integrity of their office or the government.

7.1.74 The word integrity is not defined in either the Executive Ethics Code or EMEA. However, some definitions may be able to shed light in this regard.

7.1.75 The Random House Dictionary defines integrity as: *“Adherence to moral and ethical principles; soundness of moral character; honesty. The state of being whole, entire or undiminished. A sound, unimpaired or perfect condition”*

7.1.76 The Merriam-Webster Dictionary defines integrity as *“firm adherence to a code of especially moral or artistic values : incorruptibility; an unimpaired condition: soundness ; the quality or state of being complete or undivided : completeness”*

- 7.1.77 The word integrity “As occasionally used in statutes prescribing the qualifications of public officers, trustees, etc., this term means soundness of moral principle and character, as shown by one person dealing with others in the making and performance of contracts, and fidelity and honesty in the discharge of trusts.<sup>2</sup>
- 7.1.78 The Constitution and the Executive Ethics Code therefore require of members of the executive to conform to the prescribed ethical standards at all times, when performing their official functions. This is so because the conduct under scrutiny by the Public Protector should be a conduct in state affairs as envisaged in section 182(1)(a) of the Constitution.
- 7.1.79 Section 2(1) of EMEA explicitly mandated the President to publish the code of ethics that the members of the executive must comply with “**when performing their official duties.**”
- 7.1.80 It should be noted that the anecdotal evidence of this particular matter impugns on the character of the Deputy Minister with regard to his involvement with Ms X. Although his involvement with Ms X albeit being a married man may give rise to questions of integrity, this conduct was not the subject of this investigation as it was not conduct in state affairs.
- 7.1.81 However, the standard that is imposed to members of the executive is one that requires one to act with integrity when discharging the duties associated with his office or government. In this regard, although desirable, it is difficult to conceive that the legislature intended to empower the Public Protector to investigate compliance with general morality by the members of the executive in respect to their private lives.

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<sup>2</sup> <http://www.thelawdictionary.org>integrity>

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- 7.1.82 The Deputy Minister's integrity was further called into question when he decided to report a case of extortion against Ms X. The Complainant submitted that the Deputy Minister approached the DPCI with a false case in order to set up an unlawful undercover operation to have Ms X arrested.
- 7.1.83 Although the Complainant classified the case the Deputy Minister reported to the DPCI's as a "*false complaint*", the Public Protector's investigation could not reclassify a matter registered as a criminal case as per Douglasdale Cas 872/08/2019, to a false complaint because the criminal justice system was already enjoined to deal with matter.
- 7.1.84 The Complainant also submitted that the Deputy Minister used his influence and state resources to settle a personal score, by having Ms X arrested for extortion. There was no evidence showing that the Deputy Minister used his influence and/or instructed the DPCI on how they should deal with the complainant. On the contrary, the DPCI submitted that Ms X was arrested after receiving an amount of Forty Thousand Rand Only (R40 000.00) from a police agent following the entrapment application that was granted accordingly.
- 7.1.85 Whereas the use of state resources came with the investigation of the case reported by the Deputy Minister, there was no evidence that he used his influence in respect of the registration and the subsequent approach taken by the DPCI to investigate the matter.
- 7.1.86 The Deputy Minister denied that he abused state resources when he elected to report to the Hawks a case of extortion against Ms X and argued that he was within his rights as a citizen to take the matter to the police.
- 7.1.87 In *Gigaba v Minister of Police and Others (43469/2020) [2021] ZAGPPHC 55 (11 February 2021) (Gigaba case)*, the court raised the principle of *in fraudem legis*. The court denoted that:

[76] *In fraud of the law; “A transaction is in fraudem legis when it is designedly disguised so as to escape the provisions of the law, but falls in truth within these provisions<sup>3</sup>”. In such cases the important point is “not the interpretation of the law as the interpretation of the transaction<sup>4</sup>”*

[77] *It appears in this matter that the arresting officers abused their powers and position as members of the Hawks presumably to avenge a wrong or perceived wrong as complained and alleged by Mr Gigaba and not for any lawful purpose and was accordingly in fraudem legis. The warrant was obtained for an ulterior motive. The argument of the respondents that they were investigating a conspiracy to commit murder against Mr Gigaba is not sustainable in light of the fact they have alluded to no further information on this alleged conspiracy or how the charges against the applicant are connected to it. There is also no evidence of this in the docket and takes the matter no further. It is clear that this is in fact a domestic dispute between two prominent members of society, however the offences are not deserving of the high priority of the Hawks and the involvement of the Hawks itself speaks to the abuse of power by Mr Gigaba as a former Minister in using the State administrations for his own personal benefit with an intention to intimidate his wife in a domestic spat. The scourge and dominance of patriarchy in our society must be pierced and women’s right to fair and equal treatment must be protected.*

7.1.88 While noting the *obiter dicta* in the *Gigaba* case, the current case is distinguishable because the *Gigaba* case was around malicious damage to property and *crimen injuria* whereas this case was concerned with the alleged extortion involving an amount of more than One Hundred Thousand Rand Only (R100 000.00).

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<sup>3</sup> *Dadoo Ltd v Krugersdorp Municipal* 1920 AD 547

<sup>4</sup> *ibid* 544

- 7.1.89 The court *supra* also indicated that some of the members of the Hawks were in contact with Mr Gigaba<sup>5</sup>, whereas in this case, there is no evidence of unwarranted contact between the Deputy Minister and the investigators save for reporting the case and for submitting a supplementary affidavit.
- 7.1.90 However, it is noted that the court was satisfied that the members of the Hawks “acted with malice, in that their actions appeared to have been motivated by an abuse of power by a former minister and member of the Executive” There is no evidence that an investigation was conducted regarding a conspiracy to commit murder of Mr Gigaba and the respondents have failed to give any evidence to gainsay the applicant’s version<sup>6</sup>.
- 7.1.91 Ms X contended, as in the Gigaba case, that the reporting of the case by the Deputy Minister to the Hawks was with the intention to elevate the nature of the alleged crime and to intimidate her.
- 7.1.92 Although the court *supra* remarked that Mr Gigaba had abused his power, his conduct was not scrutinised within the strict confines of EMEA as it is required in this case.
- 7.1.93 In par 91 of the *President* case, the court reiterated that:
- “In the first place, the Code does not apply to matters which are not state affairs like internal party elections. According to section 2 of the Members Act, the objective of the Code is the promotion of an open, democratic and accountable government. And members of Cabinet are obliged to comply with the Code when performing their official responsibilities...”*

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<sup>5</sup> See par. 78

<sup>6</sup> Par 88

7.1.94 The court in par 106 also stated that:

*“Although the Constitution does not define “state”, it does define “organ of state” as any department of state or administration in all spheres of government, or any functionary or institution exercising a public power or performing a public function in terms of the Constitution or legislation<sup>7</sup>. It is explicit from the definition that organ of state is a concept that extends beyond what the state as an institution means. **An organ of state can be a private company or an individual exercising public powers or performing public functions in terms of the Constitution or legislation. What is crucial is that the entity must exercise a public power or perform a public function.**”*  
(Own emphasis)

7.1.95 It went on to state that “...*There can be no state affair without the exercise of public power or the performance of a public function. This is the dividing line between state affairs and private affairs....*”

7.1.96 It was the Complainant’s submission that the Deputy Minister approached the Hawks with a false case in order to have Ms X arrested for extortion, whereas the Deputy Minister perceived the conduct of Ms X as constituting a blackmail. In fact, in his affidavit to the Hawks, the Deputy Minister characterised his conversation around the payment for Ms X’s psychological treatment to an

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<sup>7</sup> Section 239 of the Constitution states:

“‘organ of state’ means—

- (a) *any department of state or administration in the national, provincial or local sphere of government; or*
- (b) *any other functionary or institution—*
  - (i) *exercising a power or performing a function in terms of the Constitution or a provincial constitution; or*
  - (ii) *exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.”*



amount of about Three Hundred Thousand Rand Only (R300.000.00) as *'torment and harassment'* translating to an extortion.

- 7.1.97 In his submission to the Public Protector, the Deputy Minister contended that the Constitution guaranteed human dignity, equality and freedom to everyone. In particular, section 9(1) of the Constitution which provides that *"Everyone is equal before the law and has the right to equal protection and benefit from the law."* Therefore, he was and still is *"entitled to all the rights and protection accorded to all persons in the Republic by the Constitution."*
- 7.1.98 There was no evidence showing that the Deputy Minister sought to pursue this matter in his official capacity or exercised his public powers or function as the Deputy Minister of Finance or member of the Executive.
- 7.1.99 The evidence traversed herein clearly shows that the Deputy Minister sought to have the dispute he had with Ms X investigated and ultimately decided in a court of law as envisaged in section 34 of the Constitution.

#### *The mandate of the DPCI*

- 7.1.100 As already alluded to above, this investigation was conceived within the strict confines of EMEA, therefore the conduct of the DPCI officials was not considered as they are not members of the Executive. In this regard, this investigation did not concern the question whether or not the DPCI acted within its mandate when it elected to register and investigate the alleged extortion case.
- 7.1.101 It was however noted that it would have been incumbent upon the DPCI to advise anyone approaching its offices whether a matter reported falls within the purview of its mandate or not.

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- 7.1.102 It should be noted that the Hawks has been established as an independent directorate within the South African Police Service in terms of Section 17C of the South African Police Service Act, 1995 as amended by the South African Police Service Amendment Act, 57 of 2008.
- 7.1.103 The Hawks is responsible for the combating, investigation and prevention of national priority crimes such as serious organized crime, serious commercial crime and serious corruption in terms of Section 17B and 17D of the SAPS Act.
- 7.1.104 Section 34 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (PRECCA) provides thus:
- (1) *Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed-*
    - (a) ...
    - (b) *the offence of theft, fraud, **extortion**, forgery or uttering a forged document, involving an amount of **R100 000** or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.*
  
  - (4) *For purposes of subsection (1) the following persons hold a position of authority, namely-*
    - (a) *the Director-General or head, or equivalent officer, of a national or provincial department:*
    - (b) *in the case of a municipality, the municipal manager appointed in terms of 45 section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);*
    - (c) *the aforementioned offences) of Chapter 2; or*

- (d) *any public officer in the Senior Management Service of a public body; any head, rector or principal of a tertiary institution;*
- (e) *the manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1981);*
- (f) *the executive manager of any bank or other financial institution;*
- (g) *any partner in a partnership;*
- (h) *any person who has been appointed as chief executive officer or an equivalent 5 officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;*
- (i) *any other person who is responsible for the overall management and control of 10 the business of an employer; or*
- (j) *any person contemplated in paragraphs (a) to (i), who has been appointed in an acting or temporary capacity.*

7.1.105 According to section 34(1) of PRECCA, any person who holds a position of authority as envisaged in section 34(4), who knows or ought reasonably to have known or suspected that any other person has committed an offence (of corruption) in terms of sections 3 to 16 or 20 to 21 of PRECCA, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.

7.1.106 According to the information that appears on the SAPS website<sup>8</sup>, it is stated that :

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<sup>8</sup> <https://www.saps.gov.za/dpci/index.php>

*“The Directorate for Priority Crime Investigation has been established as an independent directorate within the South African Police Service in terms of Section 17C of the South African Police Service Act, 1995 as amended by the South African Police Service Amendment Act, 2008 (Act 57 of 2008).*

*The Directorate for Priority Crime Investigation is now responsible for the combating, investigation and prevention of national priority crimes such as serious organized crime, serious commercial crime and serious corruption in terms of Section 17B and 17D of the South African Police Service Act, 1995 as amended.*

*The South African Police Service Amendment Act, 10 of 2012 introduced the reporting procedures as provided in Section 34(1) of PRECCA which stipulates that reporting should be made to any police officer. In terms of the latest amendment, all such offences must now be reported to a member of the Directorate of Priority Crime Investigation”*

- 7.1.107 In the *Sec 34 Reporting Guide (the Guide)* approved by the former National Head of the DPCI, General Anwar Dramat, it is stated that when reporting acts of corruption under section 34 of PRECCA one can *“Go to or contact the Directorate for Priority Crime Investigation (“DPCI”) office through the Email or Fax number provided on the website.”*
- 7.1.108 In terms of the Guide, common law offences under section 34 of the PRECCA included theft, fraud, extortion, forgery, and uttering of forged document involving an amount of One Hundred Thousand Rand Only **(R100, 000.00) or more.**
- 7.1.109 In the Guide, extortion is defined as:

*“It consists of taking from another some patrimonial or non-patrimonial advantage by intentionally and unlawfully subjecting that person to pressure which induces him or her to submit to the taking.”*

- 7.1.110 Upon close scrutiny of the Deputy Minister’s affidavits, no averments could be found that that he reported the alleged extortion under section 34 of PRECCA, save for the description of the offence on the cover of the docket which was indicated as *“Extortion and Corruption Act 12 of 2004.”* In this regard, the DPCI appeared to have accepted his complaint as falling under the purview of section 34 of PRECCA.

*Allegations of wrongful arrest and false complaint.*

- 7.1.111 This investigation also did not deal with the issue of whether or not the DPCI wrongfully arrested Ms X on the same basis that this investigation was purely focussed on the conduct of the Deputy Minister as contemplated in the Executive Ethics Code.
- 7.1.112 The Public Protector is satisfied that the issues pertaining to Ms X’s arrest would be properly ventilated under Cas No. 62129/20 as it was the case in the *Gigaba* case. It is further noted that Ms X has also reported a complaint to the Office of the DPCI Judge who is mandated to investigate complaints from members of the public in respect to serious and unlawful infringement of their rights caused by the DPCI’s officials.
- 7.1.113 The court in the *Gigaba* case also warned against permitting parallel proceedings stating that *“Generally permitting parallel proceedings and risking inconsistent decisions in multiple forums on substantially the same dispute is undesirable even where a single event triggered the actions. The ultimate*

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*question in both these proceedings is whether the arrest and prosecution was lawful and constitutional.”<sup>9</sup>*

- 7.1.114 As already alluded to, the Complainant classified the case reported by the Deputy Minister to the DPCI’s as a “*false complaint*”. However, the Public Protector’s investigation could not reclassify a matter registered as a criminal case as per Douglasdale Cas 872/08/2019 as a false complaint because the criminal justice system was already enjoined to deal with matter, as envisaged in sections 205(3) and 179(2) of the Constitution which empowers the police and the prosecution authority to deal with criminal matters.
- 7.1.115 Section 6(4)(c)(i) of the Public Protector provides that the where the facts disclose the commission of an offence, the Public Protector can bring to the matter to the notice of the relevant prosecutions authority.
- 7.1.116 It is however noted that the NPA was already aware of issues regarding Douglasdale Cas 472/08/2019 and other dockets relating to the Deputy Minister and Ms X, and was therefore positioned to decide whether there are charges which can be preferred against the Deputy Minister and/or any other persons involved therein. Further thereto, Ms X can also report the complaint of perjury should she wish to do so.

### **Conclusion**

- 7.1.117 In view of the foregoing, it is evident that the Deputy Minister approached the DPCI and submitted an affidavit alleging a case of extortion against Ms X. The Deputy Minister’s affidavits did not make any averments or references to section 34 of PRECCA or his capacity as the person holding a position of authority as envisaged in the aforesaid section.

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<sup>9</sup> See par. 50

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- 7.1.118 There is no evidence showing that the Deputy Minister either gave specific instructions or directed the DPCI as to how it should handle the complaint.
- 7.1.119 The DPCI submitted that upon the evaluation of the case reported by the Deputy Minister, it was established that it was corruption related case that falls within its mandate. Reference to PRECCA was made on the docket cover of Douglasdale Cas 472/08/2019.
- 7.1.120 Save for the state resources that are ordinarily deployed in pursuit of any investigations, there was no evidence that the Deputy Minister used his influence or state resources to pursue the alleged extortion case against Ms X in contravention of the Executive Ethics Code.
- 7.1.121 In view of the aforesaid, the Deputy Minister's submission that in reporting the case to the Hawks he was acting in his capacity as a private citizen and exercising his constitutionally enshrined rights, is corroborated and plausible.

## 8. FINDINGS

- 8.1 Having regard to the evidence, the regulatory framework determining the standard that the Deputy Minister should have complied with and the impact thereof on good administration, the Public Protector makes the following findings:
- 8.1.1 **Regarding whether the Deputy Minister of Finance violated the Executive Ethics Code when he reported an alleged extortion case directly to the Directorate for Priority Crime Investigation which resulted in the arrest of Ms X.**
- 8.1.1.1 The allegations that the Deputy Minister of Finance violated the Executive Ethics Code when he reported an alleged extortion case directly to the DPCI which resulted in the arrest of Ms X could not be corroborated.

- 8.1.1.2 There was no evidence to support the allegation that the Deputy Minister used his influence and state resources to settle a personal score with Ms X. Further that, the Deputy Minister did not influence the manner in which the DPCI registered and investigated the alleged extortion case.
- 8.1.1.3 The Deputy Minister reported the case to the DPCI in his private capacity and not as the Deputy Minister of Finance or member of the Executive. His conduct was consistent with section 34 of the Constitution which guarantees everyone the right “*to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court...*”
- 8.1.1.4 When reporting an alleged case of extortion against Ms X, the Deputy Minister was not exercising public power or performing of a public function as underscored in the *President case* and section 239 of the Constitution.
- 8.1.1.5 The conduct of the Deputy Minister did not fall within the ambit of the state affairs as envisaged in section 182 of the Constitution and official responsibility as envisaged in section 2(1) of EMEA and therefore could not be subjected to the ethical standard contained in the Executive Ethics Code.
- 8.1.1.6 Therefore, the conduct of the Deputy Minister was not in breach of clause 2.1(d) and 2.3(c), and (f) of the Executive Code of Ethics

## **9. REASON (S) FOR CLOSURE**

- 9.1 The reasons for closing this matter is based on the following:
- 9.1.1 The findings as contained paragraph 8 above.



- 9.1.2 The Complainant did not make further submission in response to the Discretionary notice that was issued to him on 20 July 2021 in terms of rule 42(1) of the Public Protector Rules. He therefore did not dispute nor challenge the findings and conclusion of this matter.
- 9.1.3 In terms of Rule 42(2) of the Public Protector Investigation Rules the Public Protector may, if the Complainant has not responded within the prescribed time frame of fourteen (14) days, proceed with the closing of the file.
- 9.1.4 This matter is also the subject of civil litigation by Ms X against the Minister of Police, Lt Gen Lebeya, the Deputy Minister and Dr Meshack Mbokoto, in the High Court of South Africa (Gauteng Division, Pretoria) under Case No. 62129/20 wherein she seeks redress for unlawful arrest and detention against the Hawks, malicious proceedings against the Deputy Minister and assault against Mr Mbokoto.



**ADV BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:** 26/10/2021

Assisted By: Chief Investigator - Mr Rodney Mataboge  
and Senior Investigator - Adv. Arius Dathi