

Why Lord Hain's statement on SARS work was hogwash

22 January 2018

Business Day

On 15 January, British parliamentarian Lord Hain raised a number of issues in the UK's House of Lords in relation to our employment-law work concerning Jonas Makwakwa and Kelly-Ann Elskie for the South African Revenue Service (SARS).

This work has been extensively covered in SA's media and I gave evidence about it in December to Parliament's standing committee on finance.

Under the protection of parliamentary privilege, Lord Hain falsely described our work as a "whitewash" and sought to inaccurately portray our firm as a "willingly gullible or malevolent accomplice", allegations I reject without hesitation.

Lord Hain seems to have relied on inaccurate information and did not take up our offer to discuss these issues before his statement to the UK parliament.

He dismissed our efforts to brief other British peers as "a hostile act". His actions seem more like those of a publicist than a parliamentarian.

I thank Lord Hain for his work over many years in support of SA and share his concern regarding corruption and state capture. His dedication to the people of SA is without question. In many ways, Hogan Lovells is his natural ally, not his opponent. We have championed the same causes.

This is what makes his actions and lack of engagement with us doubly disappointing and saddening.

As a firm of solicitors and in my own capacity as an acting judge, we put the rule of law first. U.S. supreme court judge Louis Dembitz Brandeis argued that "sunlight is said to be the best of disinfectants" and that "behind every argument is someone's ignorance".

I am therefore obliged to correct what Lord Hain has publicised. Space here is limited, so I can only answer some of the questions he posed in parliament.

Lord Hain asked why we took on the SARS work. We did it because it has been a client since 2004 and our relationship long predates Tom Moyane's role. Lord Hain characterising our taking

on this matter as being supportive of a "corrupt Zuma/Gupta agenda" stretches the fabric of facts beyond breaking point.

Lord Hain asked why we did not investigate the Financial Intelligence Centre allegations against Makwakwa and Elskie. As I said in my evidence to our own Parliament, the Hawks and PwC were engaged to probe those allegations and the Hawks have better powers to obtain evidence through a criminal investigation than we have. It was thus not part of our brief.

Lord Hain asked why we didn't release our documents to our Parliament. Our work is subject to client-attorney privilege and SARS has not waived privilege.

Client-attorney privilege is one of the fundamental elements of the rule of law. It is surprising that Lord Hain appears to be unaware of this and it would be unedifying if he was suggesting we would break the law. There is a subcommittee of Parliament and SARS looking at this issue now and we will fully comply with its decisions.

Lord Hain asked what we had to hide. The bare truth is, "nothing". Let's be clear: our work for SARS did not exonerate Makwakwa in relation to the issues we were investigating. On the contrary, we recommended that disciplinary actions be taken against him.

Our work does not exonerate Makwakwa from possible charges that could result from the outcome of the investigations into his tax affairs conducted by PwC, as well as the criminal probe conducted by the Hawks. We advised SARS that if those probes revealed that an offence had been committed, SARS would need to bring disciplinary proceedings against Makwakwa.

Lord Hain questioned the relationship between Moyane and myself. That is easy to put straight: there is none. I first met Moyane on 15 September 2016. He left our meeting before it ended. I met him at two further meetings in March and June 2017. I am left with no doubt from the overall tone of Lord Hain's remarks that he suspects I have some form of improper relationship with Moyane.

Lord Hain did say in his closing comments in parliament that "any work for any state agency or state-owned enterprise must be undertaken only with total integrity". On this we agree. We stand by our work as meeting exactly that standard.

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