



PSiRA
Private Security Industry Regulatory Authority



THE PRIVATE EYE UNDER THE MICROSCOPE

Towards the Effective Regulations of
the Private Investigation Industry
within the South African Private
Security Industry

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This work is dedicated to all the men and women in the private investigation industry, whose work is more than just taking pictures on top of trees in very cold mornings but extends to seeking the truth and nothing but the truth. As Sherlock Holmes said, "When you have eliminated the impossible whatever remains, however improbable, must be the truth." The author takes off her hat for these truth-seekers!

EXECUTIVE SUMMARY

As at 22nd September 2017, 546 private investigators were registered with the Private Security Industry Regulatory Authority (PSiRA). PSiRA's role is to regulate the private security industry and to exercise effective control over the practice of occupation of security service provider in the public and national interest and in the interest of the industry. This study shows that the South African private security industry is evolving as private investigators are gaining recognition in the industry. Previously there was a misconception that private investigators were specifically known for doing surveillances for spouses who suspected their partners of cheating. Although this is part of the work that private investigators do, people now hire them for other reasons for example corporate cases.

The growth of private investigation industry in South Africa has led to certain individuals taking advantage of this by posing as private investigators and defrauding people of their money. By law, practitioners trading as private investigators must register with PSiRA. The findings of the study show that many registered private investigators were displeased with rogue private investigators that were defrauding clients of their money. This reflects negatively on the private investigation industry and legitimate private investigators which are labelled as fraudsters. The general public does not know of the requirements that private investigators must have in order to practice as private investigators. This can be linked to the fact that PSiRA arguably has not been very active in regulating the private investigation industry.

The report looks at the need of how PSiRA can actively take part in the growth of the private security industry and how to better monitor private investigators who are practicing in South Africa. The report also makes recommendations on how departments within PSiRA can actively take part in the monitoring and regulation of private investigators. In doing so it decreases the chances of having rogue private investigators claiming to be private investigators defraud people of their money. In turn this brings dignity to the industry of private investigators and public trust to legitimate private investigators. The report also looks at the need to have rogue private investigators brought to book because all too often nothing happens to them once they have been reported.

Recommendations have been made in this report on how to effectively regulate the private investigation industry especially with regards to consumers right and the PSiRA code of conduct. This is vital because it will protect vulnerable people from falling victim to people who want to defraud them of their money. It will also prevent emotional turmoil whereby people's money will not be wrongfully taken from them. Finances have a huge impact on people's lives taking into consideration that life mostly revolves around money. The report also makes recommendations on the standards of private investigation training. All too often people think they can be private investigators because the public does not know that there are requirements that need to be met before becoming a private investigator. There also needs to be constant monitoring by PSiRA inspectors on private investigators in order to establish if they are still complying with the laws of regulations of private investigators.

ACRONYMS

CBI	Criminal Bureau of Investigation
DMV	Department of Motor Vehicles
DTI	Detective Training Institute
FOI	Freedom of Information Act
IMEI	International Mobile Equipment Identity
PIs	Private Investigators
PSiRA	Private Security Industry Regulatory Authority
PWC	PriceWaterhouseCoopers
SAPS	South African Police Services
USA	United States of America

THE PRIVATE EYE UNDER THE MICROSCOPE

1. Introduction

The Private Security Industry Regulatory Authority's (PSiRA) primary objectives are to regulate the private security industry, to exercise effective control on the role of the security service provider, and to encourage equal opportunity employment practices in the industry.¹ Successful fulfilment of PSiRA's vision is to be judged by its impact on society and more specifically, ensuring that all people in South Africa are safe, and feel safe.²

The role which private investigators play in society is to protect a client through gathering information; search public or court records to uncover clues; conduct surveillance; collect evidence to present in court or to a client; verify employment and income; check for civil judgements and criminal history and investigate computer crimes and information theft.³ A private investigator must have multi-functional skills in order to survive and thrive within the industry. Private investigators are expected to be discreet to protect their clients, and alert to dangers that could affect them.

The purpose of the research report is to explore the intricate activities in the specialised field of private investigation in South Africa. This is critical when considering the growth of the industry over the years and its recognition as a specialised field within the private security sector.

2. Background

A private investigator is a professional hired by law firms, corporations, insurance agencies, private individuals or other entities to gather intelligence and confirm or disprove information.⁴ Private investigation is all about searching for information about

legal, financial and personal matters. Private investigators are able to offer many services such as verifying people's backgrounds and statements, finding missing persons and investigating computer crimes.⁵ Private investigation in South Africa is quite small as there are only 546 private investigators registered with PSiRA.⁶ It is not an industry that is popular compared to the United States of America (USA) with 60 000 private investigators registered.⁷ The industry needs to be filtered as there may be companies that are operating illegally or PSiRA may not be aware of the part that it could play in ensuring the industry is regulated effectively.

A private investigator is a person who, in a private capacity and for the benefit of another person, investigates the identity, actions, character, background or property of another person, without the consent of such person.⁸ The definition which the PSiR Act provides is limited on what private investigation entail. Since the establishment of PSiRA in 2001, private investigation regulations have been put into place. Their effectiveness is largely unknown, as no study has been conducted. Private investigation is one of the specialised sub-sectors in the private security industry, although PSiRA and other service providers know little about the industry.

The role in which private investigators play within society is to protect a client through gathering information; search public or court records to uncover clues; conduct surveillance; collect evidence to present in court or to a client; verify employment and income; check for civil judgements and criminal history and investigate computer crimes and information theft.⁹ A private investigator is expected to play a lot of roles

¹ Section 3 of the Private Security Industry Regulatory Act, Act 56 of 2001.

² PSiRA Annual Report 2015/2016.

³ U.S Bureau of Labor Statistics. Occupational Outlook Handbook: Private Detectives and Investigators. <https://www.bls.gov/ooh/protective-service/private-detectives-and-investigators.htm>. Accessed 30 June 2017.

⁴ Staff, P. 2011. What is a Private Investigator. <https://www.pinow.com/articles/259/what-is-a-private-investigator>. Accessed 02 July 2017.

⁵ Note 3 above.

⁶ PSiRA Database 2017.

⁷ Cusanelli, N & Nanos, J. 2015. Professional Investigator Magazine; Private Investigator Statistics and Facts. <https://www.pimagazine.com/faq-how-many-women-are-private-investigators-in-the-us/>. Accessed 13 September 2017.

⁸ Section 1 of the Private Security Industry Regulation Act, 2001.

⁹ Note 3 above.

in order to thrive within the industry. Private investigators are expected to be discreet in their line of work, as they need to protect their client as themselves.

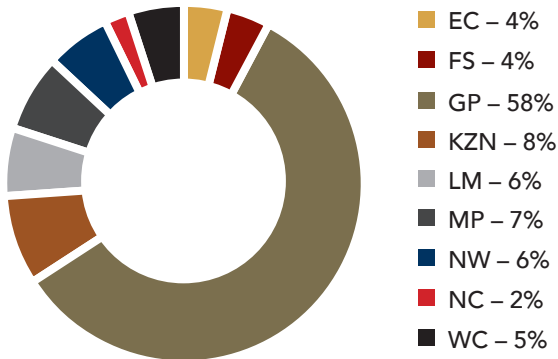


Figure 1. Number of registered private investigators

3. Rationale

The private investigation sector has not been given professional recognition over the years. There are major gaps in the industry due to this fact, as the Authority has arguably not played an effective role as a regulator. The public is not well educated on private investigation, as they do not know what private investigation is all about and what it entails. A quick internet search shows that there are a number of private investigators claiming registration with PSiRA. However, many are not actually registered with the Authority. There are regulations that relate to the mandatory training of private security providers specialising in private investigation. The introduction of new regulations is required with acceptably high training standards tailored to the specialised nature of private investigation. It is for these reasons therefore, that it is a matter of priority to conduct a study on private investigation.

4. Research objective

The study explores the specialised field of private investigation in the private security sector in South Africa. It considers the extent of the sector in order to understand its demands. It interrogates whether the current training standards for private

investigation are adequate in ensuring professionalism. The study also considers whether PSiRA is adequately equipped to effectively regulate and control this specialised field. The research findings seek to enable PSiRA to understand private investigation as a sub-sector which will inform policy and regulation development relating to private investigation.

5. Research hypothesis and question

The hypothesis for this study is as follows:

The private security industry has grown significantly over the years and this has necessitated the increased role of PSiRA in regulating and controlling the provision of private investigation services in South Africa.

The research question for the study is as follows:

What role should PSiRA play in regulating the ever-growing private investigation sub-sector and exercising effective control over the practice of the occupation of private investigation in the public and national interest and the interest of the private security industry in South Africa?

6. Research methodology

This research was exploratory in nature involving both desktop and field research. In order to gather information that would provide deeper insights into private investigation, qualitative methodology was chosen. Structured and unstructured interviews with service providers were conducted. Where the targeted service providers were willing to introduce us to their clients, a questionnaire was circulated to participating clients to determine their satisfaction or otherwise of the service provided by private investigators. A validation workshop was also held with the aim of validating the research findings and to solicit more views from the service providers.

7. Literature review

Private investigators have been around for more than 300 years, the idea originating from Paris, France around 1833, when a French soldier who was also a criminal and privateer, started the first private investigation agency called 'Le bureau des Reassignments' or Office of Intelligence.¹⁰

Private investigation is a specialised field within the private security industry. In South Africa, there are 546 private investigators registered with the Authority. There is a dearth of literature regarding private investigation. Anthony Manley published a book in 2010 entitled *The elements of private investigation: An introduction to the law, techniques, and procedures*. A journal article by Martin Gill and Jerry Hart was published in 1997 entitled *Exploring Investigative Policing: A study of Private Detectives in Britain*.

Manley (2010) mentions that the birth of private investigation in the United States included private police or bounty hunters employed by large businesses that had money or resources worth protecting. The private investigation industry grew rapidly due to increased client demand and escalating security requirements around the world. The world has become advanced compared to industrial revolution times, where crime has increased and the justice system keeps failing individuals. Therefore, individuals resort to private investigators for assistance in solving their cases.

Manley states that there is no formal education for private investigators as most individuals in the industry are either former police officers and ex-military, although there are investigators who have a bachelor's degree in criminal justice or similar.¹¹ Acquiring formal education or training from a police or military academy is beneficial because there are different skills which can be learnt and used to become a good private investigator.

There are a number of private investigators who, in the field, think that they hold an important position or authority. Manley mentions that the position and authority of a private investigator is no more than that of a citizen.¹² A private investigator should abide by the laws of the country and needs to practise compliance and integrity while on a job. There are investigators that insist on breaking the law, who are not registered and do not comply with the strict code of conduct. It is not advisable for a client to employ the services of such an individual.

Rick Crouch is a South African private investigator with international recognition who has written on his experience as a private investigator in South Africa and the United States of America. Crouch (2015) wrote an article entitled *Why Is It Important to only Hire a Registered or Licensed Private Investigator*.¹² The article warns that individuals hiring unregistered private investigators could encounter challenges such as possible fines; held responsible for their actions; discredited in court and evidence could be deemed illegal and thrown out of court with chances of losing the case.¹³ Individuals needing private investigators should do a background check and verify their qualifications and registrations in order to avoid facing the above challenges.

This report seeks to fill in a glaring research gap in the provision of regulation and control of private investigation in South Africa.

8. Intelligence vs Investigation

In 2013, Buch wrote an article titled "Intelligence vs Investigation, OBI vs IS". The article links and separates intelligence and investigation yet showing their dependence on each other.

"The world of investigation is aimed at bringing into sharp focus facts which can be proved in a court of law, to create a realistic image of a criminal, bring the criminal to

¹⁰ eInvestigator.com.2017. <https://www.einvestigator.com/the-history-of-private-investigators/>. Accessed 23 May 2017.

¹¹ Manley, A. 2010. *The elements of private investigation: An introduction to the law; techniques and procedures*.

¹² Crouch, R. 2015. *Why is it important to only hire a registered or licensed private investigator*. <http://rickcrouch.co.za/wp/why-its-important-to-only-hire-a-licensed-registered-private-investigator/>. Accessed 27 June 2017.

¹³ As above.

justice and by presenting proof of guilt, obtain a conviction". The relationship between intelligence and crime could be very confusing yet so prevalent. In most cases, crime is dependent on intelligence. Investigation assists private investigators to have the ability to be able to solve cases and get justice for their clients (Buch. 2013).

This is so vastly different from the world of investigation that the two must be kept resolutely and definitively apart. Investigation has to live in a glare of public scrutiny in order to prove its credibility, but intelligence must at all times be anonymous and secretive.¹⁴ The purpose of an investigation is to compile evidence in order for a case to be proven guilty or not. Intelligence may be a state of mind or the ability to 'think out of the box'.

Buch (2013) argues that "Intelligence is a matter of probabilities based on such information inputs as are available. An intelligence agency has to sift the probable options, but cannot ignore them, however outlandish. Because intelligence officers work in a grey area, because their identity and outline must be hazy so that individuals are not compromised, all intelligence agencies work in the background and try and merge into it". Intelligence agencies are there to solve cases as they protect the interest of the country against any threats. Agents that work in the intelligence work undercover to be able to protect their identity.

The police and Criminal Bureau of Investigation seem to delight in discussing in public every stage of investigation (Buch. 2013). An intelligence agency by definition must remain in the dark, must not discuss its operations and must pass on information which can be acted upon. An intelligence agency works on the twin premise of "need to know" and "deniability" (Buch. 2013).

This means that only those who need to know should be privy to information and at all times intelligence operatives and agencies should be in a position to credibly deny any statement attributed to them (Buch. 2013). Any of the information or knowledge that the agents may have, it needs to be kept confidential in the interest of national security.

Under no circumstance should an intelligence agency or an individual officer reveal sources because a compromised source in the world of intelligence is as good as a dead source (Buch. 2013). That is why no intelligence agency ever acknowledges as its own any of its agents who have been caught and charged with espionage. This is a part of the doctrine of deniability and it must be respected."¹⁵

9. Limitations

There were a number of constraints which limited the research work.

There is little literature on the South African industry as most private investigators would rather not discuss their experience. They prefer being discreet about their work. Thus it is difficult to gather information and to understand the dynamics of private investigation. There is a limitation with regards to the literature to the role played by private investigators and the competencies required or the techniques used.

It was challenging to secure meetings or interviews as some individuals were not willing to be interviewed either as a result of their experiences with PSiRA or because the job they do is discreet and they could not divulge any information that would put the professionalism or integrity of themselves or their companies at risk. The other reason that some interviews could not be secured was that some external stakeholders felt that there was no reason to contribute to the research because PSiRA does not play an effective role as a regulator.

¹⁴ Buch, N.2013. *Intelligence vs Investigation, OBI vs IS*. <http://www.vifindia.org/article/2013/july/08/intelligence-vs-investigation-or-cbi-vs-ib>. Accessed 25 August 2017.

¹⁵ As note 4 above.

9. Limitations (continued)

One participant argued that PSiRA has not done anything to regulate the private investigation industry or encourage professionalism. Another challenge facing service providers is the ineffective registration processes and long queues.

White, male individuals dominate the private investigation industry. The database had few black private investigators registered. It was difficult to secure interviews with most of the black private investigators, as most did not respond or were not interested in participating in the research study. Female private investigators are even discreet compared to their male counterparts. The majority of the women do not advertise their companies publicly as men do. It was difficult finding female private investigators. The research was further limited in that women did not respond to the interview request.

The challenge with the PSiRA database is that the available information on private investigators was incorrect and not up-to-date. It was a challenge getting hold of a majority of private investigators who are doing the job properly and who are still registered with PSiRA. The information on the database reflected that some individuals are private investigators whereas in reality the security providers focused on guarding. In order to locate the appropriate individuals, it is necessary to cross-reference the information on the database by searching on the internet. This, to some extent, assists in determining whether companies actually exist.

10. Research findings

10.1 Definition

The Authority provides a definition which is basic. Section 1(f) (a) of the Private Security Industry Regulation Act, 2001 (Act No.56 of 2001) defines private investigation as¹⁶ *a person who, in a private capacity and for*

the benefit of another person, investigates the identity, actions, character, background or property of another person, without the consent of such a person, but does not include:

- (a) auditors, accountants, attorneys, advocates or forensic scientists conducting investigations, which fall within the normal and reasonable course and scope of their professional functions;
- (b) internal investigators conducting normal and reasonable investigations into employee misconduct;
- (c) internal investigators conducting investigations which a business, other than an investigating business, may undertake in the course and scope of its normal and reasonable endeavours to safeguard its security, strategic, operational or business interests:

If no person is excluded from the definition of a private investigator if he or she conducts any investigation, which falls within the exclusive function of the State, "private security industry" means the industry conducted by security service property.

A private investigator is a professional hired by law firms, corporations, insurance agencies, private individuals or other entities to gather intelligence and confirm or disprove information.¹⁶ Private Investigation is all about searching for information about legal; financial and personal matters. Private investigators are able to offer many services such as verifying people's backgrounds and statements, finding missing persons and investigating computer crimes.¹⁷ The private investigation industry in South Africa is quite small as there are 564 private investigators registered with PSiRA.¹⁸ Private investigation in South Africa is not an industry that is popular compared to the USA. The industry needs filter out companies, which are operating illegally.

¹⁶ As mentioned above.

¹⁷ Note 4 above.

¹⁸ Note 3 above.

The study revealed that a private investigator could be an individual or organisation that undertakes an investigation. An investigator is expected to gather; analyse and follow leads on any matter according to a research participant. The private investigation sub-sector could be also seen as a specialised service offering which focuses on the full spectrum of crime and betrayal investigations with the objective of exposing crime, fraud, theft and personal betrayal.

Private investigation is a sector that provides investigative services to collect information, and to analyse this, thereby solving mysteries and uncover facts according to a research participant. Private detectives and investigators offer protection services to their clients, which include screening, and investigate people's backgrounds. Private investigation is able to link clues together and discover facts about personal, financial or legal matters.

Manley describes investigation as an art or applied art and not science; he therefore states that a private investigator should consider perception, precepts and parameters rather than rigid theories.¹⁹ A private investigator in many instances is seen as 'problem solvers' in any case. PI's need to be creative; come up with ideas and think outside the box in order to solve a case. The art of a Private Investigator could be seen as one having instinct which at times it looks like the art of magic.

There is a divergence between the two definitions of private investigation. The first definition discusses private investigation generally and second definition describes on what private investigation is and what it takes for an individual to be a good private investigator.

10.2 Background of private investigators

The study of private investigation highlighted the fact that majority of individuals in this sector have a police and military background. There are many police and SANDF members that left their former profession post 1994 in order to be part of private security industry. They are other individuals, which are from other backgrounds such as law and the business sector. The participants argued that it does not matter which background one has, the most important is knowing the principles of being an investigator. Private investigation is a sub sector in which many individuals are led by their passion, without passion one will not excel in the industry.

Private investigation is not a "television show" but a reality. A private investigator needs to be committed and be there to assist the public. Private investigation has no shortcuts meaning that as a private investigator you cannot partake in shady investigations such as tapping on someone's phone and bugging someone's office. Individuals should remember that being a private investigator is not a spy though about helping someone.

¹⁹ PSIRA Database.

10. Research findings (continued)

10.3 Types of private investigation

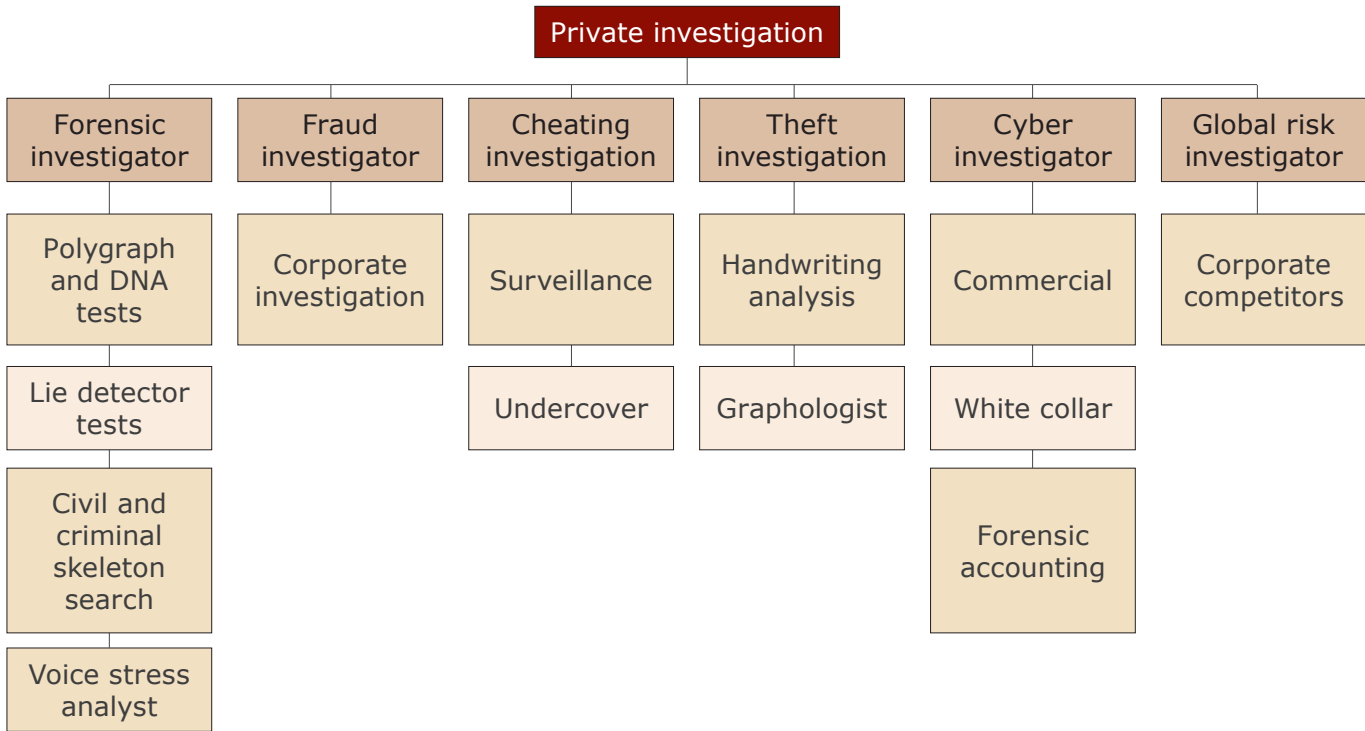


Figure 2: How private investigation links with other sub-sectors

Private investigation is a diverse sector as there are many sub-sectors that fall under it. Figure 2 above identifies the different sub-sectors and how they link to each other. It is perhaps true to say that the grading system utilised by the Authority is arguably ineffective when applied to compulsory registration for private investigators. Private investigation is a field that is viewed as art, as individuals need to have developed skills and be driven by focus in order to get the job done and for justice to be served. As a private investigator, you need to be highly skilled and have a good instinct. The various categories in which private investigators can participate are listed below.²⁰ Herein below are summaries of the various categories.

10.3.1 Criminal investigations

According to McMahon (2001), private investigators work either for the victim or for the defendant or his attorney in criminal proceedings. In this case, the investigator

is confined to solving a criminal case. There are serious crimes, which may result in the arrest or conviction of a person. In this case the arrest or conviction will be as a result of the work of a criminal investigator. In the South African context, criminal investigations may be undertaken in cases involving burglary, theft, murder, fraud, auto accidents, arson, kidnapping, to name but a few. The cases are classified according to Schedules of the Criminal Procedure Act 51 of 1997.

10.3.2 Civil investigations

Civil Investigations are the complete opposite of criminal investigations and are in cases which involve lawsuits which question the issues of money or property which are meant to be settled according to (McMahon.2001). Examples of civil cases include divorce, bankruptcy, personal injury and negligence cases, to name but a few.

²⁰ McMahon, R.2001. *Practical Handbook for Private Investigators*. Available at https://archive.org/stream/Practical_Handbook_for_Private_Investigators/Practical_Handbook_for_Private_Investigators_djvu.txt. Accessed 1 July 2017.

10.3.3 Negligence investigations

Negligence cases can only be solved through investigation. It has been observed that “negligence investigation is conducted when a victim’s attorney needs to prove that the accused is responsible or for the victim’s company or business to prove the absence of liability or absence of a permanent serious injury”.²¹ The process of undertaking negligence investigation could involve the use of surveillance, locating and interviewing witness, or trying to prove that the accused is guilty for a negligence case.²²

10.3.4 Corporate investigation

Investigations go beyond individuals but also extends to companies. Investigation linked to companies is known as corporate investigation and involved the monitoring

of what goes on in a business. Examples include the investigation of fraud within or outside the company, the provision of diligence investigations or pre-employment screening.²³

10.3.5 General investigation

As in other professional occupations, private investigation also includes general practitioners or operatives who undertake, as the name suggests, general investigation. General investigation very broad in its focus as it involves, among other things, the location of witness and missing persons, serving of legal process, skip-tracing, checks on employee’s dishonesty and fraud, security surveys, bodyguard work, surveillances.²⁴

10.4 Assignments performed by a private investigator

The following refers to the assignments performed by a private investigator.²⁵



Figure 3. Assignments done by a private investigator

²¹ As above.

²² As above.

²³ As above.

²⁴ As above.

²⁵ As above.

10. Research findings (continued)

10.4 Assignments performed by a private investigator (continued)

That the assignments undertaken by private investigators are varied is not in dispute. It has been argued that insurance claims is arguably the largest category which is investigated as it "includes inflated claims on vehicular accidents, phony claims by individuals and organized fraud rings, hit and phantom vehicle liability, staged accidents, phony and exaggerated personal injury claims, fraudulent income or untruthful witness."²⁶ Majority of the individuals that hire private investigators, in this instance, are predominantly victims of insurance claims. Insurance companies have insurance investigators who are hired to investigate cases of claims submitted by clients for purposes of proving or disproving statements submitted as part of the claims.

Within the private investigation subsector, there are those who are involved in the so-called witness location, which involves conducting or undertaking research on public records.²⁷ These could involve the use of telephone books, records, listings, to name but a few. These investigators make use of any documentation in order to cross-reference to make their case stronger.

As McMahon argues that,

...investigators go further by checking postal records, Freedom of Information Act (FOIA), public records, including search of microfiche; voter registration lists; birth, death, and marriage records; real property records; fictitious business files; municipal, county, state, and federal civil court records; state and federal criminal records; corporate and partnership filings. Department of Motor Vehicle (DMV), records; church, medical, and dental records; credit history records; union records; state licensing boards; and law enforcement agencies are also considered to check because at times they are helpful. Trash (dumpster diving) sometimes the best source of information about a person is found in the trash.²⁸

²⁶ As above.

²⁷ As above.

²⁸ As above.

²⁹ As above.

³⁰ As above.

³¹ As above.

Of interest, McMahon avers that it is legal to take the trash once it is put out on the street for pick-up. In the South African context, there seems to be no law which makes it illegal for private investigators to take the trash once it is put out on the street for pick-up. In fact, this is the most effective way of locating someone.

Private investigators also conduct interviews and record statements in order to obtain additional information from a witnesses, victims, and defendants. They draw up reports, statements and declarations. The interviews are undertaken for purposes of building strong cases or to have substantiate evidence that will assist them in solving a specific case.

Other private investigators undertake what is known as malpractice investigation, which entail investigation for medical, dental, and legal malpractice cases. Usually, this takes place when clients felt that they have wronged by a medical practitioner. Other private investigators conduct bank investigations, which involves unearthing information relating to all aspects of bank fraud cases.

Private investigators also undertake employment investigations, which involves the conducting of pre-employment screening, business partner thefts and fraud, employee theft, and business and industrial espionage, among other things.²⁹ There are also instances where workers' compensation claims are investigated by private investigators and these include neighbourhood and employment canvas, medical background and previous claims history, as well as surveillance and photography/videotaping.³⁰

Another category of investigation is known as private family investigation, where in private investigators assist in solving cases involving theft and embezzlement of family funds, theft and embezzlement of trust and estates, and the location of missing persons and runaways.³¹

The collection of life insurance benefits usually drives people to kill their loved ones. Private investigators maybe called upon to investigate murders, suicides as well as missing persons. These investigators are referred to as death investigators and their focus is to determine how a death occurred, that is whether it was natural or otherwise.

Within the private investigation sector, there are the so-called drug investigators, who focus on the transportation, purchase, and sale of illegal drugs using business and employment channels.³² Private investigators are further also involved in the reconstruction of accidents; vehicular and personal injury in order to determine the occurrence of events leading to deaths or personal injuries, among other things.³³

10.5 Regulatory aspects

The study has already highlighted the fact that the Authority's regulatory framework arguably focused on guarding and did not focus specifically on the other sectors including private investigation.

10.5.1 Professionalise industry

The Authority needs to professionalise the industry in terms of the registration process. Service providers face a challenge when it comes to the registration process; individuals endure long queues and a registration process which is not effective as many investigators describe it as difficult.

The Authority could professionalise the industry by dealing with rogue private investigators. Service providers mentioned that PSiRA is focused on inspecting registered private investigators rather than investigating rogue private investigators. A concern was raised on PSiRA's inability to address rogue private investigators which consequently compromises the private investigation industry.

10.5.2 Private investigators monopolising industry

There are private investigators who are tainting the sector. These 'investigators' who are not registered, are tainting the industry

by putting up false advertisements on sites like OLX and Gumtree. The "investigators" swindle clients by overcharging clients though do not render the services in which they promised. Service providers argued that the fraudsters degrade the industry. Clients may not know how to differentiate between fraudsters and real private investigators as they are not aware that PSiRA exists.

10.5.3 Registered private investigators vs rogue investigators

Registered private investigators face a challenge of having to compete with rogue private investigators. Registered private investigators usually whistle blow the individuals who are rendering security services illegally to the Authority though the Authority is apparently not doing anything about the unregistered individuals. Consequently, the unregistered individuals keep on rendering a security service to clients.

10.5.4 Inspections

It was found that inspections would only be conducted when a service provider opens up a business or in the case of a business relocating. The main concern relates to businesses not being compliant if they are not being inspected on a year basis. Service providers argued that inspections have been conducted once or twice when they started their businesses. The research also picked up that the Authority has not been visible in certain provinces and cities. Service providers complained that the Authority had not communicated with them as expected, and they would have preferred the Authority to play an active role.

Service providers mentioned that PSiRA inspectors are not knowledgeable in the private investigation industry. The inspections focused on registered private investigators rather than rogue private investigators. Service providers mentioned that the inspections are not effective because the type of questions that are being asked during inspections are irrelevant to their trade. For this reason, the Authority should strengthen its inspectorate.

³² As above.

³³ As above.

10. Research findings (continued)

10.5 Regulatory aspects (continued)

10.5.5 Leaverships and internships

Emphasis was made that better regulations need to be in place for private investigators and for people to qualify to be private investigators.³⁴ The participants stated that people who want to be private investigators need formal education and training as well as experience. It was emphasised that private investigation is not only a skill you acquire through studying, but one needs to acquire the practical know how over a period of time.³⁵

Another participant suggested that there be an apprenticeship of a certain period, after the aspiring private investigator completes his or her studies. The apprenticeship will ensure that they are able to utilise their newly acquired knowledge under the guidance of an expert. The trainee will write a test, which he/she will be expected to receive an average of 90%. Another participant was argue that every retired white person thinks they can be a private investigator while they know nothing about the profession.³⁶ This statement shows that there is a huge problem when it comes to obtaining the relevant skills and knowledge about private investigation in South Africa. Anybody can become a private investigator in order to generate an income for themselves.

The research study revealed that there are companies that provide internship programmes to graduates/diplomates who come from institutions of higher learning. Internships are highly important, as individuals that have completed their studies do not have any practical experience. Therefore, internships would assist individuals to gain practical knowledge in the private investigation field.

10.5.6 Safety of clients

For any profession to be held in high esteem, it needs to be seen by the public as being professional. Two of the participants stressed the issue that it should become a requirement

that private investigators operate in an office space and not in their own homes. Also, not have to meet clients in public areas. People's confidentiality should be priority taking into consideration that clients come to an investigator because they need help and allow the investigator to invade their private lives. Conducting meetings in public spaces compromises confidentiality and it is offensive to the client to have to talk over people, and limits the amount of information they can give due to fear of being overheard.

The client's best interests need to be protected at all times and their vulnerability not to be abused. Batho Pele principles do not only apply to public servants but also apply in the private sector, meaning that the needs of the client must always come first and the service they get must be of top quality.³⁷

10.5.7 Certification of private investigators

The participants did not view the grade certificates useful as whether having a grade A or grade E certificate, an investigator could nevertheless work. It was suggested that a specialised licence be issued, taking to consideration that private investigation is a specialised field on its own. To address the issue of rogue investigators, it was suggested that PSiRA inspectors should have an assigned sector on which they focus.³⁸ This would ensure that no illegitimate private investigators start illegal businesses. It would help the public identify private investigators who are registered with PSiRA and abide by the Code of Conduct. This in turn, would bring dignity to the profession.

10.6 Transformation

10.6.1 Gender aspect

In the private investigation sub sector, there has not been much transformation in the sector as it is still a vastly white and male dominated industry. Service providers argued that women are better private investigators than men in highlighting that woman are more trusted and are a better fit where there is surveillance. Woman at times

³⁴ Contribution by service providers during a Validation Workshop, 26 October, 2017.

³⁵ Contribution by a service provider during a Validation Workshop, 26 October, 2017.

³⁶ Interview with a service provider, 4 May, 2017.

³⁷ Batho Pele - "People First" White Paper of Transforming Service Delivery. <http://www.dpsa.gov.za/dpsa2g/documents/acts®ulations/frameworks/white-papers/transform.pdf> Accessed 18 August 2017.

³⁸ Note 35 above.

may be disadvantaged as they may not have knowledge and may lack confidence to get into the industry. The other factor, which may lead women to be scarce in the industry, is that it is seen as a 'male dominated industry' and may be intimidated by men and the amount of work that has to do with private investigation.

However, as private investigation is a growing profession not only in the world but also in South Africa. Despite being considered as male dominated, women are beginning to join. The Detective Training Institute (DTI) based in the USA states that private investigation may have been male dominated in the past but this is changing because women are now joining the field, although they are still fewer females than males but their number is increasing.³⁹ The DTI encourages male trainees to team up with women when they start working because this increases their chances of successfully investigating cases. One service provider spoke highly about having a woman work with him, especially when it comes to surveillance.⁴⁰ He further added that his partner does not stick out in a crowd as opposed to him and people tend to ignore the fact that a woman is following them but become suspicious when a man follows them.⁴¹ Some of the most important traits of a successful investigator are professional anonymity and the ability to put others at ease in their presence.⁴² People under surveillance should not notice that they are being observed because this disrupts their normal behaviour and lowers the investigator's chances of obtaining any information.

The service provider⁴³ also stated that having a woman partner with him has not only been beneficial in the administration of his business but it also helped with gathering information for cases, especially when the client is a woman. His female counterpart attested to this by stating that since she is a woman she is able to understand where the women come from and clients feel more comfortable

sharing certain information with her.⁴⁴ It was added that women are very detail orientated and most make better private investigators than men.⁴⁵ For example, a woman could ask questions that men cannot and it would not raise suspicions.

Despite women investigators being highly spoken of, it was mentioned that cases with high risk tend to pose a challenge and they do not want to be involved in them. A service provider indicated that when they received a tip-off from the client about an illegal deal that was to happen in a township, which is notorious for being dangerous, the woman private investigator was too scared to go there.⁴⁶ The service provider said that this also applied to cases such as sexual abuse and fraud.⁴⁷

10.6.2 Historically disadvantaged individuals

The industry still faces a gap caused by historically disadvantaged individuals, as they are not involved in the specialised sector. The lack of adequate training, skills, lack of clients and capital could refrain historically disadvantaged to enter the industry. Historically disadvantaged individuals may be in need of incubator assistance to start their businesses or they may want to enrol in a mentorship programme, which will assist them to prosper in the industry.

10.7 Ways of advertising

The methods of advertising in the private investigation sub-sector include service providers advertising online on OLX, Gumtree and newspapers. The study revealed that most private investigators get business from referrals from clients and investigators who they have worked with before. Service providers said that rogue private investigators advertise on Gumtree or OLX to lure desperate clients. Clients such as these are often wealthy enough to use the rogue services, only to find out that they have been swindled their money.

³⁹ Kassel, A and DTI (n.d). 'The world of the private investigator' <http://www.detectivetraining.com/lesson.asp> Accessed 18 August 2017.

⁴⁰ Note 35 above.

⁴¹ As above.

⁴² See, for example, NA (2017). Female Private Investigator <http://www.private-investigator-info.org/female-private-investigator.html> Accessed 18 August 2017.

⁴³ Note 28 above.

⁴⁴ As above.

⁴⁵ Note 35 above.

⁴⁶ Interview with a service provider, 15 August, 2017.

⁴⁷ As above.

10. Research findings (continued)

10.7 Ways of advertising (continued)

Service providers⁴⁸ expressed a concern that PSiRA does not play an effective role in regulating the advertisements of private investigators. They believed that if PSiRA was effective in this regard, it would minimise the number of rogue private investigators.

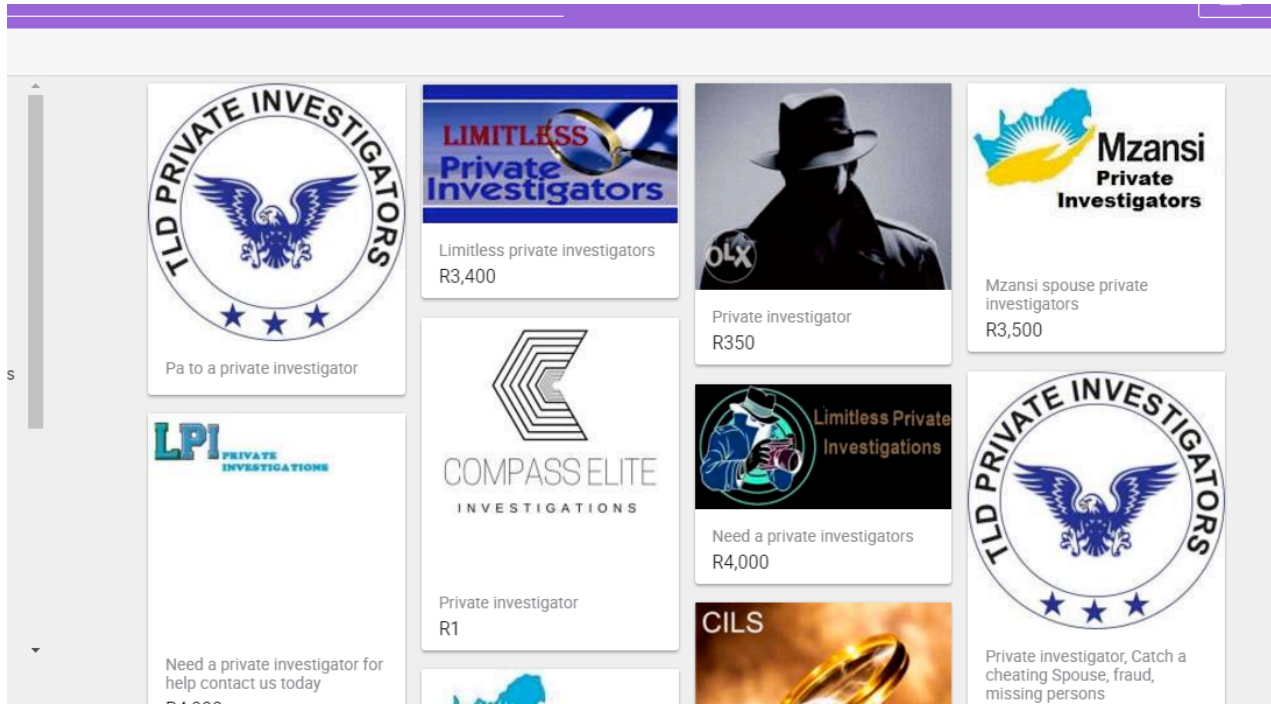


Figure 4⁴⁹

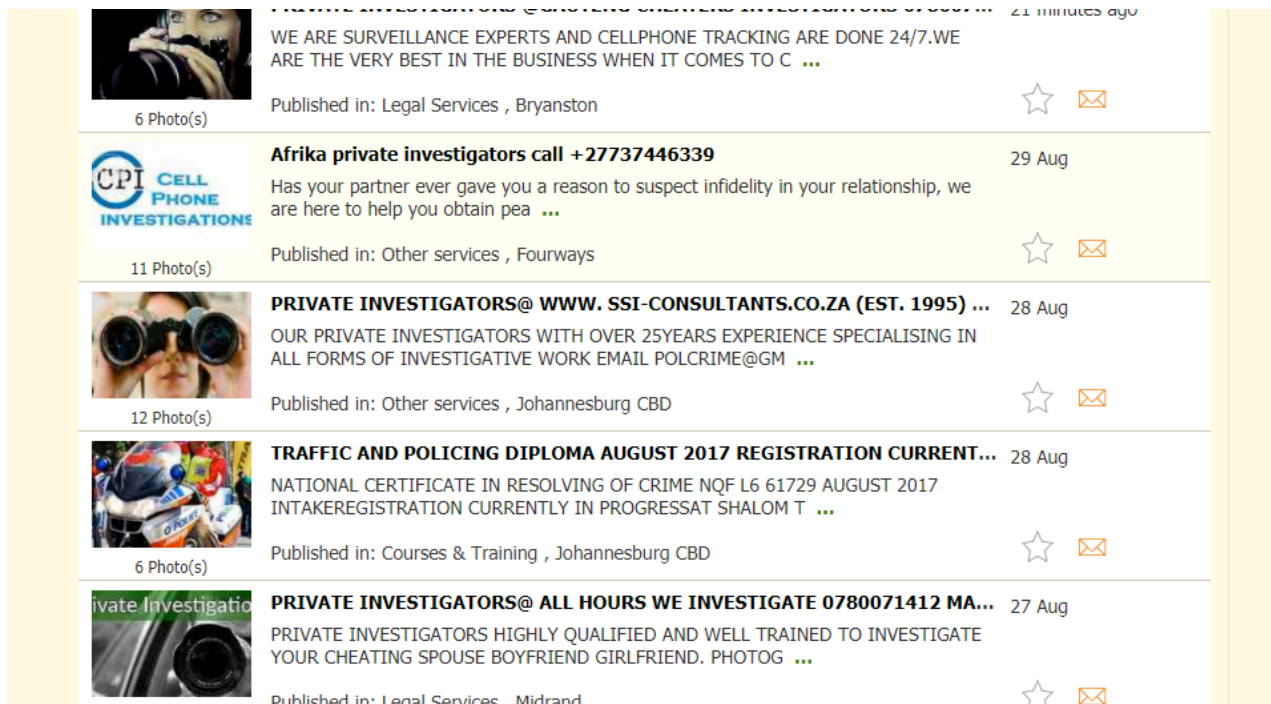


Figure 5⁵⁰

⁴⁸ Contribution by service providers during a Validation Workshop, 26 October, 2017.

⁴⁹ See for example, <https://www.olx.co.za/item/affairs-private-investigators-iid-1004215350>. Accessed 29 August 2017.

⁵⁰ As above.

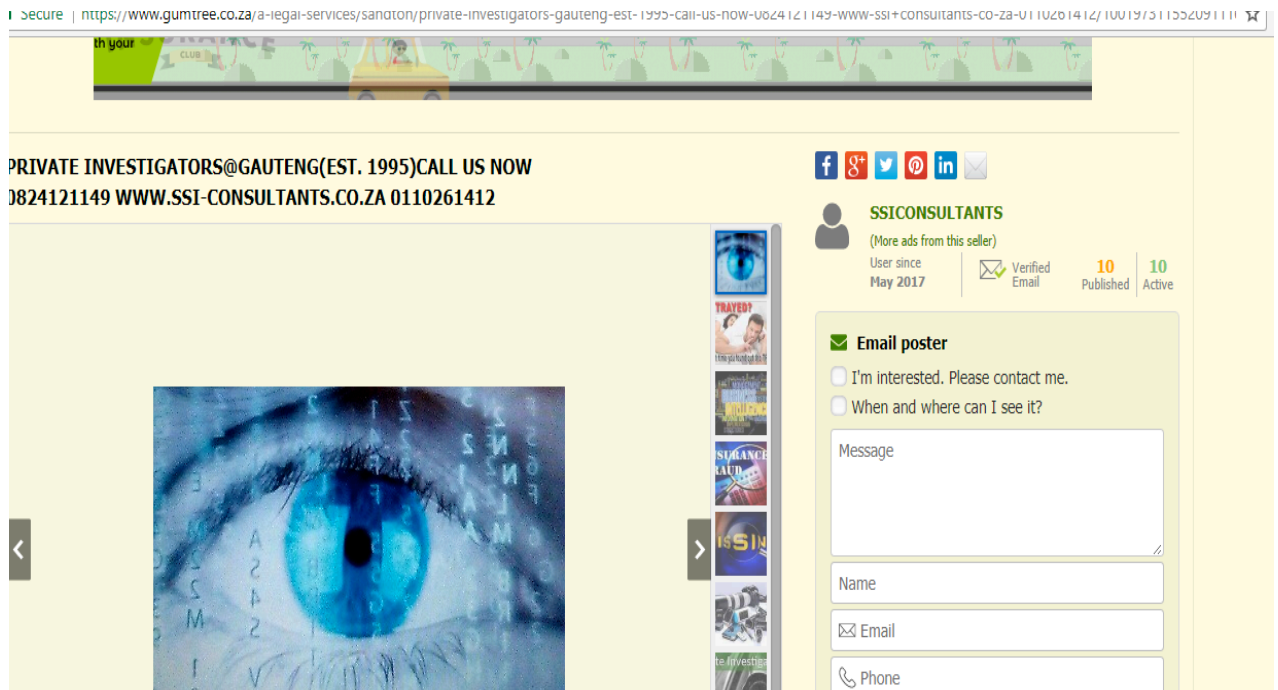


Figure 6⁵¹

10.8 Training in private investigation

The study found that training standards for private investigation are not adequate.⁵² A private investigator needs extensive training that often equates to the training of police. They said that it did not make sense for an investigator to have the same training as a patrol guard. Private investigator training is far more dynamic and complex than the training of a patrol guard. A good private investigator needs to have an investigative plan and a scope of work before starting fieldwork. Regrettably, the grading system introduced by the Authority does not cover even a quarter of the issues, which define the field of private investigation.

It was also mentioned that the Authority does not understand and does not recognise private investigation; consequently, the grading system is ineffective.⁵³ A revision and re-classification of the grading system is required to provide effective training and skills development. Only after this is formally adopted can the grading system be effective. Service providers agreed that grade A and the unit standards are acceptable as a

training directive as they incorporate basic techniques of private investigation.

Training of private investigation and basic policing share common ground, although basic policing is broader and private investigation is more focused and specialised. Private investigation and policing may be similar depending on the private investigator specialisation. Private investigators at times assist police in criminal investigations when they find it difficult to further, pursue a case. It was felt that not having the same powers as police is challenging because it is difficult and expensive to access information.⁵⁴

A concern was raised by some service providers that were unaware of the training schools in which they need to enrol for the necessary training, and whether these were accredited with the Authority.⁵⁵ Private investigators needed to keep up-to-date with new training methodology on an annual basis as the industry evolves. For investigators to prosper in the industry, they must equip themselves with the necessary skills.

⁵¹ GIAC. 2017. <https://www.giac.org/certification/certified-forensic-examiner-gcfe>. Accessed 24 August 2017.

⁵² Note 34 above.

⁵³ As above.

⁵⁴ As above.

⁵⁵ As above.

10. Research findings (continued)

10.8 Training in private investigation (continued)

At present, five years of experience is required before an investigator can set up a legitimate business. Service providers advised that on completion of a practical course, which is yet to be compiled, an individual should be able to enter the marketplace without this barrier. Previously disadvantaged individuals who are highly educated struggle to obtain work or jobs because of this requirement. It is difficult for them as it is, therefore there is no reason to make it more so.

It was recommended that the Authority consider structuring a course in such a manner that trainees are ready to conduct investigations immediately after completion of the required qualification.

10.9 Technological advances

The private investigation sub-sector is technologically advanced. To render the best services to their clients, private investigators are dependent on technology. Most of the technological devices that private investigators make use of are not effectively regulated in South Africa. They make use of drones; spy cameras; spy pens; debugging devices; covert equipment and tracking devices.

The use of gadgets is still a touchy issue in the private investigation industry. There is a lot of red tape about what is permitted and what is not. One investigator mentioned that they are at an advantage because there are things that they are able to use but police cannot use such as a person's IMEI sim card number to track them down.⁵⁶ It was also mentioned that body cameras are useful in cases where the perpetrator claims to have been assaulted by the private investigator. Other service providers were not in support for the idea of using gadgets since there is a grey area about the use of gadgets, especially drones.⁵⁷

10.10 Capacity constraints

Section 1 (4)(p) of the PSiRA Act states that the function of the Authority is to provide

⁵⁶ Interview with a service provider, 16 May, 2017.

⁵⁷ Note 34 above.

⁵⁸ As above.

⁵⁹ As above.

⁶⁰ As above.

⁶¹ As above.

⁶² As above.

information to the users, prospective users or representatives of users of security services regarding the compliance of security service providers with the provisions of this Act and the Levies Act. In an organisation, the employees need to have enough information so they can market the organisation. In the case of PSiRA, service providers argued that employees of PSiRA do not have sufficient knowledge to advise clients.⁵⁸

Prospective service providers face a challenge when they have to communicate with the Authority's employees with regards to advise on the registration processes, accredited training schools and other services, which clients may require.⁵⁹ They prefer associations over PSiRA as a regulator as latter is arguably invisible. The service providers said that the employees do not know much about the other sectors either, except for guarding and cannot be advised in the rightful manner.⁶⁰

10.11 Use of unregistered private investigators

Private investigators indicated that rogue private investigators get away scot-free with defrauding clients because nothing is done to these individuals.⁶¹ They also indicated that they have on numerous occasions reported to police and PSiRA officials. Rogue private investigators operate illegally from their homes and defraud clients. On PSiRA's and on the SAPS side there needs to be more stringent consequences put in place for trading under false pretences.

Clients put themselves at risk by using a private investigator that does not have much knowledge of the industry. Rogue private investigators usually use illegal methods to obtain information or at times investigators provide false information to clients that they could possibly react to, only to find later that they have been fed with information that is untrue. False information could have implications for the client as it could ruin their reputation or businesses dealings. It was recommended that before clients hire private investigators, they should check whether or not the service provider is registered with the Authority.⁶²

It was also stated that clients should do background checks of the investigator or company.⁶³ They need to watch out for investigators who charge them ridiculous money and keep on charging them money over a period of months and years. It was mentioned that a good and legitimate private investigator charges a reasonable amount of money and is able to solve cases.⁶⁴

10.12 Investigators doing pro-bono work

According to Mahatma Gandhi, “[t]he best way to find yourself is to lose yourself in the service of others.”⁶⁵ Accordingly, this quote motivates, to a large extent, some private investigators to undertake *pro-bono work*. The service providers stated that apart from being a good private investigator, an investigator does give back to society by helping the least advantaged with their cases free of charge.⁶⁶ Society should understand that private investigation is not just for the rich and mighty but also for individuals who are average and poverty-stricken. The justice system in South Africa has arguably failed all the social classes and that individuals do not choose to be victims of crime. Clients resort to the help of private investigators as the justice system has failed them dismally.

10.13 Auditors, lawyers and insurance companies unregistered

Section 1(f) (a) of the PSiR Act states that “auditors, accountants, attorneys, advocates or forensic scientists conducting investigations, which fall within the normal and reasonable course and scope of their professional functions” are not seen as ‘private investigators’. Individuals from audit, law and insurance firms are recognised as investigators and should be registered with the Authority because they are rendering a security service even though they are in different professions. Private investigation is all about searching for information about legal, financial and personal matters.⁶⁷

Private investigators compete with auditors, lawyers and insurance companies. They mentioned that they were not happy that audit firms, lawyers and insurance companies are not registered with the Authority, yet work as investigators.⁶⁸ The participants mentioned that the ‘big four’ audit firms in South Africa, namely the PricewaterhouseCoopers (PwC), Deloitte, KPMG and Ernst & Young challenge them in their field and at times the audit firms fail to be reactive and proactive which results in the audit firm solving the case.

Service providers argue that audit firms ‘bypass’ the law by covering up their ‘investigative work’ and stating that they are only conducting ‘audit work’.⁶⁹ They are unhappy that audit firms ignore PSiRA’s laws and regulations. They felt that this was unfair since if they do not register or fail to renew their registration they are penalised or face imprisonment. Private investigators were of the opinion that audit firms, law firms and insurance companies should face the consequences of providing an unregistered security service and need not register with the Authority.⁷⁰

Private investigators raised a concern that audit firms, law firms and insurance companies bid for work similar to theirs.⁷¹ They questioned why audit firms especially, conduct relatively similar work when these are meant to focus on the audit spectrum only. Law firms and insurance companies usually render a security service by investigating murder cases, fraud cases and fire insurance claim cases. A private investigator solves the same kind of cases that law firms and insurance companies do. Private investigators agreed that they were uncertain as to whom should play what role in the industry, as audit firms, law firms and insurance companies are registered by their own associations and regulating bodies. The question is how is PSiRA able to regulate this sub-sector if other professions are bypassing the law.

⁶³ As above.

⁶⁴ As above.

⁶⁵ Gandhi, M. 2017. <https://www.brainyquote.com/quotes/quotes/m/mahatmagagan150725.html>. Accessed 5 September 2017.

⁶⁶ Note 34 above.

⁶⁷ Note 3 above.

⁶⁸ Note 34 above.

⁶⁹ As above.

⁷⁰ As above.

⁷¹ As above.

10. Research findings (continued)

10.13 Auditors, lawyers and insurance companies unregistered (continued)

Another problem that private investigators face is that when individuals from other professions fail in their investigation or cannot solve cases, the companies that they work for end up employing private investigators to complete the job. In most cases they manage to solve the case. Another challenge that private investigators face is that they need to carry on working hand-in-hand with individuals from other professions, which could jeopardise their work. The principles of private investigators, auditors, lawyers and insurance investigators are different, so at times they do not agree on the methodology to be used.

Some unregistered individuals are qualified as certified forensic examiners. These are individuals working, or interested in, information pertaining to the security, legal and law enforcement industries who need to understand computer forensic analysis. The certification focuses on the core skills required to collect and analyse data from Windows computer systems.⁷² Individuals registered as certified forensic examiners do not feel the need to register with PSiRA and state that there is no reason to be regulated by PSiRA.

Service providers explained that they conduct internal investigations that do not comply with PSiRA regulations. They urged the Authority to look into companies that conduct internal investigations and that they should register with the Authority as they are rendering a security service.

11. Recommendations

11.1 Definition

Private investigation is a sector, which is too broad, resulting in more than 15 sub-sectors, and participants view private investigation differently and define it in different ways. For this reason, it would be impossible to have a standard definition. In the PSiR Act, private investigation can be

defined per sub-sector to help individuals understand the sector as a whole.

PSiRA could consider applying the definition by McMahon, which defines private investigation as “an investigator is a professional researcher who uses observation, inquiry, examination and experimentation to obtain evidence and factual information upon which sound decisions can be made. In order to achieve success as an investigator, certain basic guidelines must be observed.”⁷³

The Authority could also consider the following definition, which service providers⁷⁴ thought, would be a better fit for the definition of a private investigator/investigation:

- a) A private investigator is a professional individual who accumulates evidence on behalf of any person who mandates the private investigator in the prescribed manner upon which sound decisions could be made taking the following into consideration but not limited to the same:
 - i. the conducting of any form of investigation whether or not the investigation is carried out by a legislated body which means it is a transparent and independent investigation on behalf of the prejudiced or offended person or any persons;
 - ii. The conducting of any investigation that is carried out with or without the knowledge of the person, company, other juristic entity including the conduct of State Organs as contemplated in Section 239 of the Constitution of the Republic of South Africa, 1996;
 - iii. The conducting of any investigation whether or not it is carried out as a vital part of another profession, which simply means that the private investigator may be hired as a “watchdog” over the specified investigation, but not limited to the same;
 - iv. The conducting of any investigation of a technical nature limited to the compiling of the case file or documentation and

⁷² GIAC. 2017. <https://www.giac.org/certification/certified-forensic-examiner-gcfe>. Accessed 24 August 2017.

⁷³ Note 20 above.

⁷⁴ Note 34 above.

arranging any physical evidence in a chronological manner for adjudication by the relevant person or instructing person.

Private investigation, therefore, is a profession in which investigations are conducted in order to accumulate evidence in any manner the investigator deems appropriate under specific circumstances, but within the margins of the law. Private investigation has a link between any occurrence in society, which includes, but is not limited to personal, financial, legal or incidental matters.

11.2 Technological advancement

A clear indication of what is acceptable and what is not acceptable in so far as gadgets used in private investigation is critical. There is grey area around the use of gadgets. PSiRA needs to influence the legislation of gadgets in order to make the sector more professional and complaint. At the moment, most private investigators are using gadgets that are not regulated in South Africa because the gadgets make their jobs easier and when gadgets are regulated it eases their conscience. Private investigation is highly dependent on technology and in order for private investigators to do, their job effectively there needs to be some changes.

The use of technology can be regulated by applying strict laws and regulations in order to protect the abuse of technology by law enforcement and private security. An important aspect will be to protect the national interest as technology advances, but could be a huge risk in the national interest.

11.3 Training requirement

In order to be admitted as a private investigator, it is recommended that a person needs to have acquired a learnership for three years or 3000 hours with a registered private investigator before being awarded registration and certification. This influences the possibility of making private

investigation a professional field to work in and will ensure that each individual is up to standard. When individuals have completed the training, it was recommended that they need to write a test and receive an average of 90% in order to be certified as a private investigator.⁷⁵

There should be a realignment of the private investigation qualification. The new qualification should ensure that the private investigation industry is professionalised and internationally accepted. The new qualification should ensure that individuals complete a number of modules and attain a minimum credit score in order to be seen as a private investigator. Service providers should influence the curriculum, as they are the experts in the field.

The qualification needs to be well coordinated for quality and ethical reasons. There should be training schools that are more visible across the country. The industry could collaborate with SAPS training division in order to develop a professional training programme for prospective private investigators.

There should less turn around time on individual applications of the RPL. The recommended turn around time could be three months. This will ensure accessibility by the private security industry. The registration committee should ensure that it meets on a regular basis to consider RPL applications.

11.4 Transformation

The industry needs to be effectively transformed in terms of having more women, disabled and other races involved. Transformation could be influenced in such a manner that mentorship/internship programmes are introduced. This will assist individuals to get adequate training from influential private investigators and acquire the right skills to become successful. PSiRA could collaborate with relevant stakeholders to facilitate the provision of bursaries or scholarship to historically disadvantaged individuals.

⁷⁵ As above.

11. Recommendations (continued)

11.5 Legal advertisement

To regulate and professionalise the industry, individuals should have a PSiRA number on their advertisement. Only registered individuals will have permission to advertise and this will ensure that rogue investigators are penalised and forced to register, if they have the right training to be a private investigator. An official directory with all registered PSiRA registered private investigators must be made available to the public. This will ensure the safety of clients so they are not victims of fraud. There should be awareness campaigns by PSiRA to educate clients on how to identify registered private investigators. Adverts can be aired on national television to educate the public on what to look out for when hiring a public investigator. Most importantly, consumers should understand that private investigators need to be registered with PSiRA and they have the right to ask private investigators for the PSiRA registration number.

It must become a recommendation that all adverts that private investigators use to advertise themselves, whether it be on the internet, newspaper, business cards, pamphlets or any other form must include their PSiRA registration number. Private investigators adverts must be regulated with the Consumer Protection Act, 2008 with special reference to section 41 of the Act, which states that the marketing of goods must not be false, misleading or deceptive in order to lure people into buying services or goods.⁷⁶

PSiRA could utilise radio as a tool to educate the public. Most radio stations have a business segment during which the public is educated on their rights as consumers in trade and business. The public can be advised on what to look out for when purchasing the services of a private investigator and what rights they have as consumers. The public must also be informed that they can contact PSiRA if they are dissatisfied with the services that were rendered to them

and they can report services providers who operate illegally or who have defrauded them of their money.

A newspaper publication with the findings of the research and ways of identifying a legitimate private investigator could be published in all major newspapers in the country. These newspapers must not only be the well-known English newspapers but other newspapers that are written in the official languages of South Africa. Such newspapers include Die Beeld, Isolezwe, Ilanga.

11.6 Regulations

To professionalise the industry, every private investigator should be registered with PSiRA as a private investigator and not as a security officer. Private investigation is a specialised field, meaning that private investigators will be captured on the system as 'specialised'. Any person who aspires to become a private investigator must complete the PSiRA accredited course and must be an apprentice for a certain period of time to ensure that they not only have the knowledge about the job but they also obtain the skills needed to perform their job.

Any private investigator who operates without having a PSiRA registration number must be liable to a fine and must not operate until they sort out their registration. Any private investigator who operates without having a PSiRA registration number and does not have any formal training in private investigation must be charged for impersonation and must be registered as an offender with PSiRA's database and with SAPS.

Every private investigator's office must have a PSiRA certificate displayed on the wall for everyone to see. Each office must have their business liability insurance number visible for the public to see on their business card and on their business premises. There should be more enforcement from PSiRA, and a dedicated and effective whistle blowing platform introduced.

⁷⁶ Section 41 of the Consumers Protection Act of 2008.

11.7 Guarantee fund

The Consumer Protection Act, 2008 protects consumers of services and goods from being exploited by service providers and business entities. The Consumer Protection Act states that "When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to; the performance of the services in a manner and quality that persons are generally entitled to expect".⁷⁷ The Act further states that "If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either; refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure."⁷⁸

It is recommended that all private investigators have a business liability insurance to ensure that they are protected in the event of any loss occurring. A business liability insurance certificate could be used as a public indicator to state that the person is really registered as an entity and money could be claimed if the service provider fails to produce the expected results. The insurance number must be made available to the public either by having it printed on business cards, advertisements and registration certificates or be included in an operational folder which explains how the private investigator conduct his investigation.

At the moment, the provident fund excludes private investigators. Therefore, private investigators recommended that they should be included in the provident fund as they are part of the private security industry. Service providers advised PSiRA to have discussions with the Department of Labour in order to include private investigators in the provident fund.

11.8 PSiRA forensic department

The service providers stressed the issue that rogue private investigators get away with defrauding people because nothing happens to them when they are reported for their

fraudulent activities.⁷⁹ The PSiRA forensic department could play a more active role in ensuring that rogue private investigators are identified and brought to book. This can be done doing follow ups on reported private investigators to establish if they are really rogue and be punished accordingly if they are in breach of the PSiR Act and the Code of Conduct for Security Service Providers, 2003. The forensic department could also engage in random inspections whereby they call private investigators who advertise themselves in popular advertising websites such as Gumtree and OLX. Upon meeting with these private investigators, they can ask for their PSiRA registration number and if found not to have one, they must be charged accordingly.

11.9 Audit firms, insurance companies and law firms

Audit firms, insurance companies and law firms need to ensure that the private investigators they hire or employ are registered with PSiRA. If the information is collected by an unregistered private investigator, the defendant attorney can argue that the evidence is not admissible in court because the person who collected the evidence is not a private investigator as per section 20 of the PSiR Act. The entity could also be liable to pay a hefty price such as a fine or a loss of the case for having employed someone who is not registered with PSiRA.

11.10 Courts

When an expert witness is asked to take the stand in court, they are asked to state their expertise and where they obtained their qualifications and their professional registration number. The same rule must be applied to private investigators when they take the stand in court. As expert witnesses, they must state where they did their private investigation training or whether they were exempted because they worked as detectives in the South African Police Service. They must state their PSiRA private investigator registration number and no other PSiRA registration number.

⁷⁷ Section 54 (1)(b) of the Consumer Protection Act.

⁷⁸ Section 54 (2)(b) of the Act.

⁷⁹ Note 34 above.

11. Recommendations (continued)

11.11 Role for PSiRA as a Regulator

If PSiRA plays an effective role as a regulator of the private security industry, professional external stakeholders are more likely to be compliant. PSiRA's offices should be accessible to clients to avoid them having to travel more than 100 kilometres just to register or for any other enquiries. PSiRA employees to have more knowledge of the industry and should be able to advise clients. The annual fees that PSiRA introduces should be market related, since at times external stakeholders, depending on the service they provide, do not get work for certain periods. PSiRA needs to consider that aspect when it comes to the annual fees increase. PSiRA should also have enough resources (access to updated cards and certificates) for the registration period, and a database, which is up to date, and correct for future use.

11.12 Accessibility of private investigators

Private investigators should have more powers than they possess now, such as access to a commissioner of oaths to make their jobs easier and to avoid wasting time when conducting an investigation. The commissioner of oaths would be beneficial to private investigators particularly when they interview a witness. Private investigation tools need to be regulated to enable private investigators to abide by the PSiR Act and the state.

It is recommended that qualifying private investigators be granted the capacity to act as commissioners of oaths taking Sections 6 and 10 of the Justices of Peace and Commissioner of Oaths Act 16 of 1963 into consideration. It is furthermore strongly recommended that the PSiRA take South African Police Standing Order (General) 327 Attestation of Statements into consideration here as a peremptory guideline of how it must be done.

12. Conclusion

With life, evolving there is a greater need for people and business entities to make use of the expertise of private investigators. Private investigators are no longer only hired by people who want to confirm if their spouses are cheating or not. Their scope of work is now more complex and diverse. The work of a private investigator depends on the nature of their clients' business. It is also influenced by the period or province in which the case is to be investigated. The PSiR Act and the Code of Conduct for Security Service Providers, 2003 have both arguably failed to conform to the changes of the private security industry especially concerning private investigations. Both these guiding laws focus more on the security sector thus leaving private investigations susceptible to prey which in turn affects ordinary citizens who seek the services of private investigators.

In this report, the shortfalls of the PSiR Act and the Code of Conduct for Security Service Providers, 2003 with special reference to private investigations were examined. Individuals in their private capacity and business entities use the services of private investigators. It was noted that businesses such as insurance companies use the services of private investigators whether they are in-house or on contract. According to the PSiRA Act, all private investigators must be registered with PSiRA. Other information was gathered by conducting fieldwork and from PSiRA-registered private investigators. There is now more recognition of, and growth in, the industry. These private investigators are also mentioned their wish that PSiRA has a more stringent role in the regulation and inspection of private investigators.

The necessity for rogue private investigators to be punished for operating under false pretences was also stressed because they were not only defrauding innocent people but also tarnishing the image of legitimate

private investigators. In addition, there was a general outcry on the grading system of PSiRA and exemption from private investigator training makes it possible for anyone and everyone think they are, or can be, private investigators. It was also noted that there was a lack of transformation within the industry. The industry is still dominated by white men who have left the SAPS and became private investigators. There was also a grey area noted with regards to the use of gadgets by private investigators. Although these gadgets are to the advantage, of the private investigators they are sometimes sceptical of using them since there is no clear guideline that states what is acceptable to use and what is not.

The recommendations made in this report seek to address the issues related to the aforementioned issues and how PSiRA could better regulate the subsector. It includes

ways in which the advertisement of private investigators could be better monitored which in turn will protect the interests of the public. The recommendations also include the need for service providers to have business liability insurance that could be used as an identifiable feature to establish if private investigators are registered or rogue. Transformation in the private investigations industry also needs to be applied by making the industry more attractive to black South Africans especially black women and people with disabilities. The laws governing the private investigations industry also need to be recognised in the courts and for advocates and judges to apply these laws in a court setting. In addition, there should be regulations to guide and establish how gadgets may be used when conducting investigations.

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