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DAY 203

20

PROCEEDINGS RESUME ON 22 JANUARY 2020

CHAIRPERSON: Good morning Ms Wentzel, good morning everybody.

ADV SUSAN WENTZEL: Good morning Chair.

CHAIRPERSON: Are you ready?

ADV SUSAN WENTZEL: Yes I am ready Chair.

CHAIRPERSON: Let us start.

ADV SUSAN WENTZEL: Thank you. Chair at the conclusion of the evidence yesterday we had dealt with the diagram TSW19 on page 1958 and the contracts between Intaka and the Department of Traditional
10 Affairs and Local Government. We are now going to turn to deal with the contracts between Intaka and the Department of Health.

CHAIRPERSON: And that starts from what page in the affidavit?

ADV SUSAN WENTZEL: Chair it starts from page 42 Chair.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: But for now I am going to not follow the affidavit exactly and show you some documents that are in the bundles.

CHAIRPERSON: Ja. Which Exhibit must I look at?

ADV SUSAN WENTZEL: Exhibit...

CHAIRPERSON: A or RR4a?

20 **ADV SUSAN WENTZEL:** RR4b.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: And in particular Annexure TSW8.

CHAIRPERSON: And what page is it on?

ADV SUSAN WENTZEL: 678.

CHAIRPERSON: Okay. Yes.

ADV SUSAN WENTZEL: And then Chair this story starts...

CHAIRPERSON: Am I the only one feeling hot?

ADV SUSAN WENTZEL: I – I am also feeling hot.

CHAIRPERSON: Okay. If the – somebody could put on the air conditioner but not too much. Yes.

ADV SUSAN WENTZEL: Chair the story will start as you will see by reference by Mr White at page 707.

CHAIRPERSON: Do you – do you want me to go to 707?

ADV SUSAN WENTZEL: Yes please Chair.

10 **CHAIRPERSON:** Okay. Yes.

ADV SUSAN WENTZEL: Now Mr White the document I have referred the Chair to Annexure TSW8 what is that document?

MR WHITE: Chair that was the report that I prepared that summarised the investigation and the evidence available relating to the procurement of two Water Purification Plants by the Department of Health in KwaZulu Natal for the Appelsbosch and Rietvlei Hospitals. So Chair this report summarises the justification that the Department came up with internally to make the procurement. The justification for not following a normal tender procedure and then how there was cover
20 quotes from Intaka and two entities related to them and that the Department ultimately purchased the goods at a significantly inflated price.

CHAIRPERSON: Just to make sure that on the record it is clear. The report you are talking about is the one marked TSW8 and starts at page 678, is that right?

MR WHITE: Correct Chair.

CHAIRPERSON: But we are now at 707?

MR WHITE: Correct Chair.

CHAIRPERSON: Okay thank you.

ADV SUSAN WENTZEL: And...

MR WHITE: Chair I also confirm I am the author of that report.

CHAIRPERSON: You are the author of that report yes. And you stand by its contents?

MR WHITE: I do Chair.

10 **CHAIRPERSON:** Yes thank you.

ADV SUSAN WENTZEL: And Mr White again are the references in the right hand column the references to the hard copies of the actual documents that you are referring to in your report?

MR WHITE: That is correct Chair.

ADV SUSAN WENTZEL: And you say that there were two items that were purchased by the KwaZulu Natal of Health. The one was a Water Purification Plant and how many of those were purchased?

MR WHITE: There were two Chair.

ADV SUSAN WENTZEL: And what was the value of that contract?

20 **MR WHITE:** Chair it was R9.9 million Chair.

CHAIRPERSON: Were they under the one and the same contract?

MR WHITE: Correct Chair it was one procurement.

CHAIRPERSON: One procurement process okay.

ADV SUSAN WENTZEL: And what was the colloquial name used to refer to those plants by Intaka?

MR WHITE: Chair Intaka calls them a Wataka. So effectively it is a combination of the word water and Intaka.

ADV SUSAN WENTZEL: And then what was the other item that was purchased?

MR WHITE: Chair that was the Oxygen Purification Plants which was part of a separate process where Intaka provided plants that would generate oxygen on site at hospitals or clinics so there would be no need for it to be bought in cylinders.

ADV SUSAN WENTZEL: And how many of those plants were
10 purchased?

MR WHITE: Chair they were installed at a number of hospitals on a – on a phased implementation. The ultimate plan was to install them at all hospitals in KZN.

ADV SUSAN WENTZEL: And what was the value of that contract?

MR WHITE: Chair that contract was in – was in the tens of millions of rands but the way the contract was structured was the Department would pay for the oxygen provided rather than for the plants. So the – Intaka would install a plant and then the Department going forward would then pay for the oxygen that that plant generates.

20 **ADV SUSAN WENTZEL:** At a price per litre for oxygen?

CHAIRPERSON: And what would Intaka get for making its equipment the plant available to the hospital – to the Department?

MR WHITE: Effectively the hospital would buy the output of the plant. So instead of a supplier generating oxygen, putting it in a cylinder and providing a cylinder they now put up a small plant at the hospital and

the output of that plant is then purchased by the hospital.

CHAIRPERSON: So the – the plant remained the property of Intaka?

MR WHITE: That is my understanding yes Chair.

CHAIRPERSON: Yes. I guess that in the Department paying for the oxygen whatever price was agreed would have taken into account that the Department did not buy the plant as such.

MR WHITE: Correct Chair.

CHAIRPERSON: But Intaka's plant was being used for the benefit of – of the Department?

10 **MR WHITE**: Correct Chair.

CHAIRPERSON: Ja okay.

ADV SUSAN WENTZEL: And there was a price agreed per litre of oxygen used, is that correct?

MR WHITE: Correct Chair. There were a number of issues around the pricing – was set. Because obviously Intaka did not want to provide a plant if the hospital bought ten litres. They needed to buy 10 000 litres a month for it to be viable for Intaka. So – and I will come to it later. There is issues within the officials in the Department where they pushed back on the – in the negotiations on the contract because the
20 minimum amounts Intaka wanted to supply at some of the hospitals was in excess of what the hospitals had previously been using. So they would now be paying at a minimum for oxygen they did not use. So that became a – a financial impact to the prejudice of the Department if they went with this supply.

CHAIRPERSON: So effectively they would buy oxygen that they could

not justify buying?

MR WHITE: Correct Chair and there was not a way to store it.

CHAIRPERSON: Hm.

MR WHITE: So if you paid for 10 000 litres and you only used 8 the other 2 000 they just disappear.

CHAIRPERSON: Ja. Hm.

ADV SUSAN WENTZEL: And what were the oxygen generating plants called by Intaka?

MR WHITE: An Oxintaka.

10 **ADV SUSAN WENTZEL:** Oxintaka. Right. So we are going to now start first with the Wataka's that were purchased and I would like to refer you on page 707 against paragraph 9.042 a report from a Sowetan Newspaper dated Friday the 22 September 2006. Could you...

CHAIRPERSON: What was that page?

ADV SUSAN WENTZEL: It is 707 Chair.

CHAIRPERSON: Oh still 707?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Could you please explain that?

20 **MR WHITE:** So Chair that – it was an article in the Sowetan on the 22 September 2006. The title of the article was Muddy Water Not on. And there was a quote in that article from the spokesman for the Department of Health in KwaZulu Natal Mr Leon Mbangwa and he stated and he said:

“The Department had not heard about the hospital's

plight. As the Department of Health it is not our mandate to deliver water services but we will contact the appropriate stakeholder. We do not want to see patients drinking dirty water.”

Chair that...

CHAIRPERSON: What kind of answer is that? You are running a hospital but you do not think it is your responsibility to make sure the hospital has got water?

MR WHITE: So Chair I think the – what he was trying to say is that the
10 – the responsibility for the supply of water in the area is the local municipality’s responsibility; it is not the Department – because the water that was coming to the hospital was the same water that was going to the town.

CHAIRPERSON: But he was saying they were not aware that there was a problem about water in the hospital.

MR WHITE: Correct Chair. Chair if one – and if we go through the documents the issue with – that ultimately happened with that hospital is the water was discoloured. It was not contaminated, it was discoloured. So that is why the ...

20 **CHAIRPERSON:** Said it was dirty water.

MR WHITE: Ja so the – the – ultimately the testing that was done of the water found out that it was perfectly safe to drink. It was just a bit cloudy. So it was not actually contaminated it was just cloudy which gave people the impression that there was something wrong with it. But Chair this was used by officials in the Department particularly the Head

of the Department at the time, Doctor Nyembezi to now find a reason to appoint Intaka without following a normal tender process. Because they are now saying there is an urgency. Because this article was one of the things that they used as a reference.

ADV SUSAN WENTZEL: Now you refer to the facts that it turned out that the water was not contaminated. With reference to that could you please deal with paragraph 9.043 the KwaZulu Natal Health Memorandum dated the 29 September 2006?

MR WHITE: So Chair that internal memorandum of the Department was
10 seven days after the Sowetan article. It was from Mr Kanyeke who was the Manager Environmental Health in the Department and it was addressed to Doctor Nyembezi the Head of Department. And it was titled Situation of Water Supply at Appelsbosch and other Rural Hospitals. It then says:

“The onsite inspection of water supplies at the
hospitals of the Provincial Department of Health have
been carried out to identify actual and potential
sources of contamination. Periodic surveys of water
supplied to the hospitals of the Provincial
20 Department of Health are conducted to monitor and
assess the microbiological safety status of the water
supplies”

Chair he then goes into a lot of detail in that memorandum explaining what was done and the tests etcetera. But then at the last three lines of the following paragraph on page 708:

“I say of significance is that the results reflect Appelsbosch contained no chloroform organisms or Fecal E coliforms. This report is dated one week after the Sowetan article of 22 September 2006.”

So Chair the Department did take the issue seriously that was identified. The appropriate people went to the hospitals, they did the tests and they said there is nothing wrong.

ADV SUSAN WENTZEL: What then happened if you refer to paragraph 5 on page 708?

- 10 **MR WHITE:** Chair that report where they tested the water and said there is actually no contamination seems to have been ignored. The fact that somebody had identified there was allegedly a problem was now used as the basis to now procure Wataka's from Intaka. And Chair there is then a memorandum dated the 6 October. So the 6 October so again about a week after the Department itself has concluded there is no issue and that document that I am referring to is on page 708 at paragraph 9.045 and that is a memorandum from Mr Ntshangase who was the General Manager Budget and Supply Chain Management addressed to Doctor Nyembezi the Head of Department and it was titled
- 20 Contaminated Water at Rietvlei and Appelsbosch Hospitals. Request for Exception from SCM procedures and process. SCM delegation 701. Chair this was request not to follow a tender process. The memorandum then goes on in the body and it states:

“A report received from Integrated Health Services Cluster in an article from the Sowetan dated 22

September 2006 attached hereto as reference. The contaminated water at the abovementioned institutions and poses a health risk hazard to the health – hospital employees, patients and visitors at the hospitals. The quality of drinking water at the hospitals has been a source of great concern. Three quotations were invited by the Supply Chain Management Unit with the intention to deal with this matter urgently as this is a health threatening situation. Approval to appoint the lowest bidder namely Messrs Intaka Investments at a total cost R9 960 000.00 including VAT and no hidden costs is kindly sought in terms of Supply Chain Management Interim Delegation 701.”

Chair that memorandum contains a number of statements that are just false Chair. The documents do not support it. So there was an article in the Sowetan on the 22 September that is factually correct. The Department's testing that they refer to here I actually found there was no problem at these two specific hospitals.

20 **CHAIRPERSON:** So the people who tested belonged to the Department?

MR WHITE: Yes Chair.

CHAIRPERSON: Yes. I guess they have to belong to the Department. People who deal with – they will have to be health professionals.

MR WHITE: So they – correct Chair.

CHAIRPERSON: Yes.

MR WHITE: So they concluded there was no issue.

CHAIRPERSON: Yes.

MR WHITE: That memorandum is now ignored and it says there is an issue.

ADV SUSAN WENTZEL: And just for clarity who was that memorandum sent to?

MR WHITE: It was sent to Doctor Nyembezi the Head of Department Chair.

10 **ADV SUSAN WENTZEL:** And who was ...

CHAIRPERSON: And I guess that the – or earlier on the report went to him, the report that said that there was no contamination also went to him?

MR WHITE: It is a lady Chair but yes.

CHAIRPERSON: Yes.

MR WHITE: It went to her.

CHAIRPERSON: Yes oh ja to her. Ja.

MR WHITE: Ja.

CHAIRPERSON: Thank you.

20 **MR WHITE:** So Chair so she had a report that said there is no issue. She now get a ...

CHAIRPERSON: And that is a report from...

MR WHITE: Her own [indistinct]/

CHAIRPERSON: Her health professionals in her own department?

MR WHITE: Own organisation.

CHAIRPERSON: Yes.

MR WHITE: She now received a memorandum that comes from Supply Chain Management in her own department that – that says there is a problem. So she had two memoranda. They contradict. It also says in this memorandum that three quotations were invited by Supply Chain Management. Chair I will come to the documents shortly but that is false. Because Doctor Nyembezi was personally responsible for obtaining the quotations.

CHAIRPERSON: Yes.

- 10 **MR WHITE:** She was also personally given the names of the cover – the people who would provide the cover quotes by Doctor Savoi. He emailed her the addresses and I will refer to the email shortly.

CHAIRPERSON: Hm.

MR WHITE: Saying these are the other two people you must ask for quotes.

CHAIRPERSON: Hm.

MR WHITE: So this is just a memorandum that contains a number of false statements.

CHAIRPERSON: Yes.

- 20 **MR WHITE:** That has been prepared in my view to try and give the impression that the proper procurement waiver has effectively been sought.

CHAIRPERSON: So are you saying that the quotations that they are talking about are not the quotations that Doctor Nyembezi obtained?

MR WHITE: It is the same ones Chair.

CHAIRPERSON: It is the same ones?

MR WHITE: They were attached to this.

CHAIRPERSON: So what you are saying – what you say is not correct is that they are the ones who obtained those quotations Supply Chain Management Unit.

MR WHITE: No. Chair they came to Doctor Nyembezi and she then gave it to Supply Chain Management.

CHAIRPERSON: Oh. Okay.

MR WHITE: Where a Supply Chain Management's responsibility is they
10 go and source the quotations.

CHAIRPERSON: Yes.

MR WHITE: The Head of Department does not personally source them.

CHAIRPERSON: Yes.

MR WHITE: And then just hand all three to the Supply Chain Management.

CHAIRPERSON: Yes.

MR WHITE: So she is interspersed herself into the middle of the procurement process.

CHAIRPERSON: Hang on one second. This is now paragraph 9.046?
20 Is that right? Is that where we are?

MR WHITE: Correct Chair. Correct.

CHAIRPERSON: That memorandum is it not from Ntshagase – it is from Ntshagase is it?

MR WHITE: Correct Chair.

CHAIRPERSON: And Ntshangase is General Manager Budget and

Supply Chain Management and she writes to Doctor Nyembezi who is Head of the Department. The report that Mr Ntshangase is referring to I the first sentence of the quote from Integrated Health Services Cluster is it not the one that found that there was no problem?

MR WHITE: It is Chair.

CHAIRPERSON: It is the one?

MR WHITE: That is why Chair if one reads these documents they actually – this memorandum is just false.

CHAIRPERSON: So it is not as if they do not know about it. They know
10 the report and that says there is no problem with water there and they actually refer to it but they go on to actually write something that shows the total disregard of the contents of that report?

MR WHITE: Correct Chair.

CHAIRPERSON: Without explaining or criticising it in any way to say it is wrong and what grounds?

MR WHITE: Correct Chair.

CHAIRPERSON: Okay alright thank you.

ADV SUSAN WENTZEL: And perhaps Chair although this was only discovered later if I can just show you what happened at this stage
20 because I think it will help us complete the picture. Could you please refer to page 784?

CHAIRPERSON: I am sorry, I am sorry Ms Wentzel. So in the paragraph that talks about three quotations the point you were making in terms of it being false was that they did not obtain the quotations from outsiders – from the suppliers. That – the quotations were given

to them by the Head of Department?

MR WHITE: Correct Chair.

CHAIRPERSON: And she had got them from Doctor Savoi.

MR WHITE: Correct Chair.

CHAIRPERSON: Okay alright now I follow.

MR WHITE: Because the way this is written it tries to...

CHAIRPERSON: Yes it says if...

MR WHITE: It implies that Supply Chain Management.

CHAIRPERSON: Yes.

10 **MR WHITE:** Has done the process.

CHAIRPERSON: Yes. Yes. And ordinarily they would be the ones who would be expected to obtain the quotes, is that right?

MR WHITE: Correct Chair. Correct.

CHAIRPERSON: Ja but this time that procedure did not happen?

MR WHITE: Correct Chair.

CHAIRPERSON: Okay alright.

20 **ADV SUSAN WENTZEL:** I am going to just divert to show you this and then we will go back to where we were Chair. If you can go to page 784 sub paragraph 5 of your – sub paragraph 6 of your report where you refer to an email from Savoi to Doctor Nyembezi marked personal dated 25 September 2006.

MR WHITE: So Chair that – that email which was obtained in Intaka's records that were seized by the police. It is an email...

CHAIRPERSON: I am sorry where does – do you say 784?

ADV SUSAN WENTZEL: 784 sub paragraph 6 referring to an email

from...

CHAIRPERSON: Oh okay alright.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: Thank you. Yes.

MR WHITE: So Chair that whole paragraph is dealing with various extracts of the electronic records of – that were seized by the police from Intaka. And this was one such email that I refer to. It is dated the 25 September 2006. So Chair that is three days after the Sowetan article. So between the Sowetan article and the Department doing an
10 assessment to say there is actually nothing wrong.

CHAIRPERSON: Hm.

MR WHITE: In that three day period there is an email from Doctor Savoi of Intaka to Doctor Nembezi the Head of Department of Health and it commences:

“Dear Amigo. As agreed upon”

CHAIRPERSON: I am sorry just stop there. In the course of your investigation did you get to understand the Amigo’s and Amiga. I wonder whether Amiga is the female version of the word Amigo maybe plural for male.

20 **MR WHITE**: So Chair.

CHAIRPERSON: My Latin – I am influenced by my Latin background.

MR WHITE: So Chair my understanding is it was...

CHAIRPERSON: But this must be Greek or something.

MR WHITE: It was the female version. Amigo is male and Amiga is female.

CHAIRPERSON: Yes.

MR WHITE: That – because depending on the emails that were sent if it was Amigo it was addressed to a male, if it was Amiga it was addressed to a female.

CHAIRPERSON: And what does it mean? Did you get to understand that?

MR WHITE: Chair my understanding is that it was just a...

CHAIRPERSON: A friend.

MR WHITE: A friendly way of – it is effectively Dear Friend.

10 **CHAIRPERSON**: Yes. Okay. I think when we were looking at an email or letter that was addressed to certain people in regard to – or certain people in the Department of Traditional Affairs and Local Government yesterday there was somewhere where it was saying Hello Amigos and I understood you to say this is not the way you would expect a potential supplier to a government department to be addressing the people that they deal with. And I thought that that might be because of your understanding of the word. Did I understand you correctly?

MR WHITE: Correct Chair it is partly because of the word but mainly because of the content of the emails.

20 **CHAIRPERSON**: Yes. Yes.

MR WHITE: They are on very personal...

CHAIRPERSON: Yes ja.

MR WHITE: There is no – it is not formally.

CHAIRPERSON: It is more personal than business. Ja.

MR WHITE: Yes correct Chair there is no formal introduction etcetera.

CHAIRPERSON: It is like just writing to a friend.

MR WHITE: Correct Chair.

CHAIRPERSON: Yes. Okay thank you.

MR WHITE: So Chair that – that email it then says:

“As agreed upon please note as follows.

1. Water purification system. Herewith the name of the
companies.”

And there is one company called Westpro and there is the contact
details of the people and their email address. And then Imvusa
10 Stainless and again contact details of the people and their addresses.
And then at the bottom of the page:

“And ourselves Intaka Investments for the patented
equipment Wataka. Do not hesitate to contact me.”

And then on the following page:

“Please bear in mind that we have Wataka’s model
HWT ready for delivery just in time.”

Chair those two entities Westpro and Imvusa Stainless are entities that
had a business relationship with Intaka. Westpro is a company that
supplies pumps that are used in the manufacture of the Wataka and
20 Imvusa Stainless was a company that did the manufacturing of the plant
on behalf of Intaka. So they were the company that did stainless steel
vats etcetera for the wine industry in the Western Cape but they made
these plants on instruction of Intaka as well. Those are the two entities
that subsequently quoted and provided quotes to Doctor Nyembezi on
behalf of – that were used as comparative quotes to the Intaka quote.

So you can see from this email Doctor Savoi is telling her who to ask. Her PA subsequently sent the emails requesting them to ask and they then submitted quotes that had actually been prepared by Intaka and emailed to them by Intaka. So Doctor Nyembezi and Doctor Savoi ...

CHAIRPERSON: They collaborated.

MR WHITE: To – to inflate the prices effectively Chair.

CHAIRPERSON: Hm. Okay.

MR WHITE: And Chair these are all in...hair these are all in...

ADV SUSAN WENTZEL: I am sorry Mr White not only to inflate the
10 prices because was there a requirement that three quotes be obtained?

MR WHITE: Well Chair it should have gone to tender because of the amount.

CHAIRPERSON: Yes.

MR WHITE: This is a R10 million project.

CHAIRPERSON: Yes.

MR WHITE: You cannot get quotes. It needs to go to tender.

CHAIRPERSON: Yes.

MR WHITE: But Chair effectively they – Doctor Nyembezi created the need because there was not – if one looks at the Department's own
20 records there was not a need for water purification plant. So it is – and then in conjunction with Doctor Savoi identified who to ask to quote. Chair of interest is that Imvusa Stainless and Westpro are not on the Supplier Data Base in KwaZulu Natal. So how would Supply Chain Management even know about them? They are not even suppliers to the Department. So Chair when one looks at all the details it is – it

becomes clear that this was just a fabrication of documents to circumvent the procurement process.

CHAIRPERSON: Were no – were there no suppliers in KZN that could provide this kind of product as far as you may have established during your investigation?

MR WHITE: So Chair we – I cannot recall the name of it but we did look at the time so at the time we looked in the Yellow Pages .

CHAIRPERSON: Hm.

MR WHITE: Telephone book and there were some adverts or people
10 that said and we phoned some of them and they said they could provide something similar.

CHAIRPERSON: Hm.

MR WHITE: If they had been asked they would have – would have considered it.

CHAIRPERSON: Hm.

MR WHITE: It is not exactly the same but something that would do the same job.

CHAIRPERSON: Yes and obviously that could save a lot in terms of at least the delivery that was said to be about - what? Five - five million
20 in regard to yesterday's plant for Traditional Affairs which I do not know what the delivery would be here.

MR WHITE: So Chair the - the point relating to - if - if one compares to the Traditional Affairs supply. Those were being supplied at the same time in the same six months of 2006. Those were being charged at R2.2 million each.

CHAIRPERSON: Hm.

MR WHITE: These are now being charged at R4.9 million each. Maybe a slightly different size ...

CHAIRPERSON: Ja.

MR WHITE: But it does not - does not ...

CHAIRPERSON: But the price is about double?

MR WHITE: It is more than double Chair ...

CHAIRPERSON: More than double.

MR WHITE: And Chair the - there is an affidavit in the docket from
10 Grotto and Imvusa the two entities that manufactured on behalf of
Intaka and they said the delivery price to KZN would be approximately
R750 000,00 each.

CHAIRPERSON: Hm.

MR WHITE: The cost.

CHAIRPERSON: Hm.

MR WHITE: So anything above that would be a profit to Intaka.

CHAIRPERSON: Hm. Hm.

MR WHITE: They are now charging a price of almost R5 million each.
So it is a profit of more than R4 million per item supplied.

20 **CHAIRPERSON:** Hm. Did you get to know whether the - Dr Nyembezi
and the people in the Department of Health knew about the - the price
and the - the price for - of the ones that were delivered to the
Department of Traditional Health. They - they must have known,
because they are dealing with the same supplier and the supplier had
provided to the same Provincial Government. It was just different

departments.

MR WHITE: So Chair, I - I do not know that they - I do not see anything that is specifically says they knew.

CHAIRPERSON: Yes.

MR WHITE: But - but as you say ...

CHAIRPERSON: But it would - it would be surprising if they did not know.

MR WHITE: Correct Chair.

CHAIRPERSON: Because ...

10 **ADV SUSAN WENTZEL:** And who ...?

CHAIRPERSON: It is - it is unlikely that in - in seeking to sell these - sell this to them. It is unlikely that Intaka did not say we have - we are also providing the same to your colleagues in the Department of Traditional Affairs and if - if they said that then the Department of Health should have checked what has happened.

What were you charged? What are we being charged and all of that?

MR WHITE: Correct Chair, but if one just looks at what - my view would be Dr Nyembezi did not care, because she is personally
20 manipulating the procurement process and circumventing it and assisting. So she did not care what the price was, because she was already instrumental in asking or asking for quotations from the supplier that she wants to win the work. So she ...

CHAIRPERSON: Ja.

MR WHITE: Did not care about the price.

CHAIRPERSON: Yes. *Ja.*

ADV SUSAN WENTZEL: And what position did Mr Tshabalala hold in the department?

MR WHITE: So Chair, he had no position in the Department of Health, but he was the - the ...

CHAIRPERSON: I am sorry. You said Mr Tshabalala?

ADV SUSAN WENTZEL: Yes.

MR WHITE: So he was the Head of the Provincial Treasury Chair ...

CHAIRPERSON: Hm.

- 10 **MR WHITE:** But we will show when it comes to the Oxintakas how he had some involvement in the procurement process there.

ADV SUSAN WENTZEL: But we will deal with that in - in due course. Thank you. Now if you do not mind if we can go back to this memorandum on page 7-0-8. 6 October 2006 memorandum which requests an exemption from Supply Chain Management procedures essentially an exemption to go out to tender.

Now what was the basis of that exemption? What was used as the reason?

MR WHITE: The urgency Chair.

- 20 **ADV SUSAN WENTZEL:** Urgency and ...

CHAIRPERSON: I am sorry. Are we back at 7-0-8?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: 7-0-8. Okay.

ADV SUSAN WENTZEL: And on page 7-0-9 at the top paragraph 9.0-4-7 who was the memorandum signed by and who were those - what

positions did those people hold?

MR WHITE: So Chair, Mr Shengazi was the Head of the Supply Chain Management and Health. So he was the preparer of - of the document. It was then recommended by Mr Buthelezi the Chief Financial Officer in the Department of Health and it was ultimately approved by Dr Nyembezi the Head of Department of Health.

ADV SUSAN WENTZEL: And attached to this memorandum were three quotations which you then deal with on page 7-0-9 from paragraphs 9.0-4-9. If you can just deal with that? We basically touched on it.

10 **MR WHITE:** So Chair that is just the - the proof that we obtained showing from the emails and the - and the computers that were - were imaged. How the quotations got to the Department of Health and the fact that the person that was doing this on the instruction of Dr Nyembezi was her personal assistant and the emails were - were being sent from and being received by her personal assistant on - on the instruction of Dr Nyembezi.

So Chair that just shows that the - the quote - the request for quotations and the receipt therefore did not originate with Supply Chain Management, but it was all done out of the office of the Head of
20 Department and in Chair in support of that there is - there is emails - the quotations that are attached to the emails are the same ones that ended up being attached to the memorandum that was then submitted for approval. So that - that is just the detail to support ...

CHAIRPERSON: Yes.

MR WHITE: The conclusion Chair.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Now three days after this memorandum there is a letter from the KwaZulu-Natal Health Department dated 9 October 2006 referred to - by you in your report on page 7-4-2 and paragraph 9.0-5-8.

MR WHITE: So Chair that is just the way I have structured this report I have just in a chronological order put all the - all the documentation. So again this is just three days later a decision is made and it is now sent to Intaka for the attention of Dr Gastón Savoi and at 9.0-5-9 the
10 content of that letter says:

“I have pleasure in advising you that the department has awarded the above mentioned quotation to your organisation at a total cost of R9 960 000,00 including VAT.”

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: Now after the award of the contract - I am referring you to page 7-1-5 paragraph 9.0-6-8. What then happens on 19 October 2006? A few weeks later.

MR WHITE: So Chair, there is a further report prepared by the - by the
20 Environmental Health Department within the Department of Health relating to the quality of water at the various hospitals. So they had obviously taken the allegation seriously and they had done further testing.

This is again prepared by Mr Kanele and addressed to Dr Nyembezi and ...

CHAIRPERSON: And where - where is that?

MR WHITE: On page 7-1-5 Chair at ...

CHAIRPERSON: Oh.

MR WHITE: Paragraph 9.0-6-8.

CHAIRPERSON: Yes. Okay.

MR WHITE: So that is the memorandum of 19 October 2006 and Chair that lists all the health institutions within KwaZulu-Natal hospitals and clinics and summarises the results of the test, but where they were negative - but there is no mention of Rietvlei Hospital or Appelsbosch
10 Hospital, because their testing was there was no issue.

CHAIRPERSON: Because they - they had tested it and they found that there was no problem.

MR WHITE: Was no problem.

CHAIRPERSON: Yes.

MR WHITE: So Chair - so ...

CHAIRPERSON: That is sent to the Head of Department again?

MR WHITE: Correct.

CHAIRPERSON: As well. Ja.

MR WHITE: Correct Chair.

20 **CHAIRPERSON:** Hm.

MR WHITE: So there is now two reports to the Head of Department that says that those two specific hospitals there is no issue.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: And was it in respect of those two hospitals that the water purification plants were bought?

MR WHITE: Correct Chair.

CHAIRPERSON: So - so the one hospital is Appelsbosch. The other one is?

MR WHITE: Rietvlei, Chair.

CHAIRPERSON: Rietvlei. *Ja* and the finding of Mr Kanele and his team is the same in regard to both?

MR WHITE: Correct Chair.

CHAIRPERSON: Yes. Okay. Hm. Well maybe you will address this at a later stage, but I would like to know now. Did you come across any
10 document where anybody within the Department of Health including Dr Nyembezi sought to justify their decision or her decision or their decision to buy these - to place these orders in regard to the two hospitals despite the fact that there was a health - there was a report by health professionals within the department which said there was no problem?

MR WHITE: No Chair. There was no ...

CHAIRPERSON: It is no.

MR WHITE: No.

CHAIRPERSON: They do not deal with it anywhere.

20 **MR WHITE:** Chair, none of the documents that I saw and we looked at everything we could ...

CHAIRPERSON: *Ja*.

MR WHITE: Find relating to this.

CHAIRPERSON: Yes.

MR WHITE: Explained ...

CHAIRPERSON: Yes.

MR WHITE: Why they would still ...

CHAIRPERSON: Yes.

MR WHITE: Go forward with the procurement ...

CHAIRPERSON: Yes.

MR WHITE: Even although there are these reports saying there is no issue.

CHAIRPERSON: Yes, but I know that you said yesterday in regard to - or was it the day before yesterday - in regard to one of the projects
10 that you investigated. I think in regard to Mr Panday and Colonel Madhoe that you did not speak to people who were or who seemed to be implicated, because in - the police were in charge of that investigation and your understanding was that there was going to be a stage later on when the police could approach the implicated persons for warning statements.

In regard to this one did you never speak to anyone who was implicated such as Dr Nyembezi?

MR WHITE: So Chair, this matter proceeded right up to the stage where it had trial dates in the High Court. So all these people had
20 been arrested ...

CHAIRPERSON: Hm.

MR WHITE: And warning statements obtained.

CHAIRPERSON: Hm.

MR WHITE: Most of the warning statements they - they declined to give - give a version.

CHAIRPERSON: To put up a version?

MR WHITE: Correct Chair.

CHAIRPERSON: Yes and - and since then you are not aware of any version that somebody like Dr Nyembezi may have put up for one reason or another?

MR WHITE: I do not know of - of any version that she did put up Chair.

CHAIRPERSON: Yes. Okay.

ADV SUSAN WENTZEL: Thank you. Now you have said in your report that after the authorisation had been granted in October 2006 a number
10 of concerns were raised. What were those concerns and what was - before - okay? Let us first deal with what were those concerns?

MR WHITE: So Chair, it was a similar situation to what happened with Local Government and Traditional Affairs. Entities that where these water purification plants were to be installed had not been properly consulted in the process. So when they suddenly were told here is an order this is to be installed at your hospital.

They then became a lot of toing and froing between the technical people in those - within the department as well as the Department of Public Works, because effectively what was proposed
20 was that the municipal supply of water to the hospital be diverted through this water purification plant and then continue to the hospital and officials from Public Works started to get involved and said well.

We are responsible for the - for the pipes, but as soon as you now divert it to something else we are not sure whether that meets our standards and as a result there was a lot of push back from various

individuals and - and so it just led to months of delay. Chair, what was interesting is that I never saw any further reports to say in those months of delay there was a problem with the water.

There were no further things saying people are - are getting sick as a result of the water.

CHAIRPERSON: The - the fundamental point is that there was no need for this in regard to those hospitals.

MR WHITE: Based on the documentation and the people ...

CHAIRPERSON: Yes.

10 **MR WHITE:** That were interviewed. That is ...

CHAIRPERSON: Yes.

MR WHITE: That is my view Chair. Yes.

CHAIRPERSON: Yes and those who said there was a need in the Department of Health were aware of Mr Kanele's report and they did not put any criticism of the conclusions reached in that report as far as you are aware.

MR WHITE: Correct Chair.

CHAIRPERSON: So they just went ahead. Did something that was contrary to a report that to your knowledge they could not attack on any
20 grounds.

MR WHITE: Correct Chair.

CHAIRPERSON: Ja.

ADV SUSAN WENTZEL: And then if I can refer you to page 7-2-4 at paragraph 9.0-9-4 which is a letter of 22 January 2007 addressed by Dr Nyembezi to Savoi.

CHAIRPERSON: I am sorry. You said page 7-1-4?

ADV SUSAN WENTZEL: 7-2-4. Sorry Chair.

CHAIRPERSON: 7-2-4.

ADV SUSAN WENTZEL: And it is paragraph 9.0-9-4.

CHAIRPERSON: Yes.

MR WHITE: Chair that - that is some three months later ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL:

MR WHITE: And it just - it states - it is about the Appelsbosch Hospital

10 and it says:

“Further to our discussions regarding the delays and the installation of the Wataka water purifier at Appelsbosch Hospital. It is my understanding that representatives from Health, Works and Intaka met at Appelsbosch on 28 September 2006 and decided on where the plant should be installed. Please proceed with installation as agreed at the meeting.”

So it is still not installed and Chair that and I say it in the following paragraph at 9.0-9-5 that.

20 “On 23 March 2007 Intaka sent a letter to Dr Nyembezi advising of the installation and commissioning was completing.”

So Chair, effectively it took some five months to actually install these plants and from what I could see there was no further reports of any negative publicity around people getting sick or anything

else as a result of the water and Chair the interesting fact is that same water is the water that supplies the towns.

So it would not just be a - a hospital issue. It would be a whole community issue if there was something wrong with the water.

ADV SUSAN WENTZEL: Okay. Mr White, if we can then go to page 7-7-8 and there you deal ...

CHAIRPERSON: To what page?

ADV SUSAN WENTZEL: 7-7-8 Chair.

CHAIRPERSON: 30 ...

10 **ADV SUSAN WENTZEL:** 7-7-8 - 778.

CHAIRPERSON: Oh. Okay. Yes.

MR WHITE: So Chair that - that is just where I refer to and I - and I briefly mention that this is just the - the detail. This is where we found the evidence in the electronic records of Intaka where they sent the quotes that were to be used - to be submitted to the Department of Health by - by West - Westpro and Imvusa Stainless.

So they - and the wording is exactly the same Chair. If you look at the attachment to the email that was sent. It just was not on these respective entities letterheads. So once these entities received
20 it they placed it on their own letterheads and sent it back to the Department of Health, but the source of the content and the price came from Intaka.

ADV SUSAN WENTZEL: So if we can just have a look at that from point 9.2-1-8. Who was Ashleigh Spencer?

MR WHITE: She was one of the personal assistants at Intaka.

ADV SUSAN WENTZEL: And it is directed to who?

MR WHITE: This one was to a - a Mr Geddes.

ADV SUSAN WENTZEL: And then it says:

“Please find the attached letter with the amendment
concerning the spelling of the name.”

And then attached thereto is a letter dated
29 September 2006 addressed to the Department of Health attention
Samantha Cheadle titled Re: Water Purification Plants. This would
indicate that Intaka prepared a letter on a blank letterhead and sent it
10 to Ron Geddes at Westpro. So were they required to put this letter on
their letterhead?

MR WHITE: Correct Chair and that is exactly what happened and Chair
just - Samantha Cheadle is the personal assistant to Dr Nyembezi.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And then in paragraph 2 on page 7-7-9.

CHAIRPERSON: One second Ms Wentzel. Yes. Thank you
Ms Wentzel.

ADV SUSAN WENTZEL: Thank you. Then paragraph 2 page 7-7-9.
Ashleigh Spencer sends a similar email to Mr Miller. Is that correct?

20 **MR WHITE:** Correct Chair.

ADV SUSAN WENTZEL: And he is told to do exactly the same thing?

MR WHITE: Correct Chair.

ADV SUSAN WENTZEL: Now if we could go to page 7-8-4. Sorry. We
have dealt with that. That - I - I went ahead Chair and showed you the
email from Savoi to Dr Nyembezi in which he tells her exactly which

companies to quote. Now having given that picture with regard to the purchase of the water purification plants.

I would like to now deal with the purchase of the oxygen generating plants. Sorry.

CHAIRPERSON: Would you like a - a comfort break?

ADV SUSAN WENTZEL: No. We would like to deal with something I have omitted.

MR WHITE: Sorry Chair. Just - just the one point that Advocate Wentzel did not cover was the fact that the two individuals
10 that did the cover quotes. They - while initially when they were interviewed they denied that they had done anything wrong. They subsequently entered in to a plea bargain with the state in terms of Section 105A and a copy of that plea bargain is at TSW20. Page 1-9-6-0 in Bundle D.

CHAIRPERSON: 1-9-6-0. Let us have a look at it and who were those individuals?

MR WHITE: Chair it was - it was a Mr Miller ...

CHAIRPERSON: Hm.

MR WHITE: And a Mr Romani.

20 **CHAIRPERSON**: (Indistinct)?

MR WHITE: Romani.

CHAIRPERSON: Oh. Okay.

MR WHITE: Romani.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: And were they the people in charge of the

entities who were requested to supply these quotes?

MR WHITE: So yes Chair. They were involved in those - those two entities ...

CHAIRPERSON: Hm.

MR WHITE: And they subsequently while initially saying - denying that anything improper had been done.

CHAIRPERSON: Yes.

MR WHITE: Once all the evidence became available ...

CHAIRPERSON: Yes.

10 **MR WHITE:** Their legal representatives ...

CHAIRPERSON: Ja.

MR WHITE: Suggested that they enter into a plea bargain with the state which they did ...

CHAIRPERSON: Hm.

MR WHITE: And that plea bargain related to both the cases in KwaZulu-Natal as well as there was another plea bargain on the same day for similar cases in the Northern Cape.

CHAIRPERSON: Yes and in terms of the - that - that agreement - plea bargain - bargaining agreement. They pleaded guilty to certain

20 charges?

MR WHITE: It was effectively to fraud Chair relating to the provision of the cover quotes.

CHAIRPERSON: Yes. So they - they accepted that they participated - they played a criminal role in the whole thing?

MR WHITE: Correct Chair.

CHAIRPERSON: *Ja.* Okay. Thank you. I wanted to - before we move to the next topic. I wanted to confirm with you that my understanding is correct that there seems to be some similarity in what the Department of Health and Dr Savoi were doing here in regard to these purchases with what Mr Panday was doing with regard to SAPS.

Mr Panday was supplying SAPS with entities that were said to be independent of him, but they were actually not independent of him. Dr Savoi is supplying names of entities to Dr Nyembezi and saying you can get - us for quotes from them. The difference might be that in
10 regard to Mr Panday's scheme - well I do not know if the Provincial Commissioner did not know that those entities that were said to be competing with - is it Gold Coast - Gold Coast.

I do not know if she knew or she did not know, but the people who were at the Supply Chain Management - Colonel Madhoe -may have known or did know that these were all entities linked to Mr Panday and in regard to the Department of Health Dr Nyembezi probably knew, because she got herself involved to getting names of entities from which to get quotes from Dr Savoi/Intaka who wanted to do business with them. Do you see any similarities although they are not 100
20 percent?

MR WHITE: Chair, they are - they very similar.

CHAIRPERSON: Hm.

MR WHITE: I think I would go further and remove the word probably knew.

CHAIRPERSON: Hm.

MR WHITE: I think on the documents I can come to the conclusion they knew ...

CHAIRPERSON: Hm.

MR WHITE: That the entities were linked or in one way were working together. Chair, in 20 years this is probably the common way in - the most common way in which Supply Chain Management procedures are circumvented. Where entities collude with each other to have inflated prices, but Chair it is something that is very difficult to do without the involvement of an official within the department.

10 So you need a person internally. The Government officials and then you need the - the private sector suppliers. They need to collude together. This process will not work or they will not be able to circumvent the procedures ...

CHAIRPERSON: Yes.

MR WHITE: If they do not ...

CHAIRPERSON: They need to have somebody inside.

MR WHITE: Correct Chair ...

CHAIRPERSON: Yes.

20 **MR WHITE:** And - and Chair why the people inside should always be able to pick this up is if they advertised in the proper procedure the chances of only linked entities quoting against each other is - is almost zero.

CHAIRPERSON: Hm. So then the - the entities or suppliers in the private sector needs somebody inside who will - will ignore the fact that he is aware that they are linked or they have a relationship with one

another?

MR WHITE: Well ...

CHAIRPERSON: *Ja.*

MR WHITE: Correct Chair.

CHAIRPERSON: *Ja.* Okay. Thank you.

ADV SUSAN WENTZEL: Thank you Chair. Mr White, if we could now look at your report - TSW7 in - I think it is the previous bundle - Bundle B at page 5-3-9.

CHAIRPERSON: D?

10 **MR WHITE:** B.

ADV SUSAN WENTZEL: B.

CHAIRPERSON: B for Beatrice?

ADV SUSAN WENTZEL: B for Beatrice.

CHAIRPERSON: *Ja.* I think it is much better if ...

ADV SUSAN WENTZEL: Sorry.

CHAIRPERSON: You say something to make sure I know whether it is B or D. So B for Beatrice or ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: B for bull.

20 **ADV SUSAN WENTZEL:** For bull for Beatrice, bad.

CHAIRPERSON: D for Dudu or D for Doris. D for Derek. It just helps so that ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: I look at the right one. *Ja.* Okay. It is the same one we had ...

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: That we were having.

ADV SUSAN WENTZEL: I think we were in C in and now we're in B.

CHAIRPERSON: I thought we were in B.

ADV SUSAN WENTZEL: Were we?

MR WHITE: Chair it's just earlier on in B, the same file but it's in B.

CHAIRPERSON: Yes, *ja*.

ADV SUSAN WENTZEL: Oh sorry, sorry, I'm confused. Sorry Chair I apologise.

10 **CHAIRPERSON:** So what page?

ADV SUSAN WENTZEL: Page 539.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Now this is a report of yours dated the 24th of May 2010, marked Annexure TSW 7, could you please tell the Chair, identify this report and explain to the Chair what it was about?

MR WHITE: Chair I ...[intervenes]

CHAIRPERSON: And confirm it.

MR WHITE: I am the author of the report and stand by the contents thereof.

20 **CHAIRPERSON:** Ja.

MR WHITE: Chair that now relates to the tender that was advertised by the Department of Health relating to the procurement of the Oxyntaka, it is the oxygen self-generating units. Chair this instances is slightly different to the previous ones because in this instance there was a tender, it was advertised by open tender but the difference here

Chair is that ...[intervenes]

CHAIRPERSON: Sorry, so this one was for buying what?

MR WHITE: Oxyntaka, the oxygen generating units.

CHAIRPERSON: Ja, there's Wataka and Oxintaka, okay.

MR WHITE: So Chair in this instance a – there was a tender, it was advertised and various bidders responded, but Chair the issue with this tender is that Dr Savoi colluded with Dr Nyabesi in the setting of the specifications that were advertised in the tender, and Chair I refer to various documents where there were emails backwards and forwards in
10 the lead-up to the advertising of the tender where Dr Savoi in track changes on the bid document changed the specifications, added things or deleted things where his product didn't comply with the Department of Health and that process was a backwards and forward process more than once to Dr Nyabesi's email address, culminating in a bid specification that suited to the best he could Intaka.

So while they didn't, they couldn't take out all the competition they set the specifications to suit his company to the prejudice of all the other potential bidders.

ADV SUSAN WENTZEL: So to tell that story if we could please start
20 at page 573, and paragraph 9.061 dealing with you say I also located an email from Savoi to Dr Nyabesi dated the 27th of November 2006, could you tell the Chair please about that email?

MR WHITE: Chair that email once again was found in the electronic records of Intaka that was seized by the police and the content of that email, the third line reads as follows:

“Dear Amiga

Checking the document with our technical staff it was detected that a lot of things were added that are not according to our specifications, neither to ISO 10083 specifications with which comply. Therefore I closed the draft with the modifications/withdrawals highlighted in red.”

And then attached to that document Chair was the draft bid specifications where Dr Savoi or the technical staff working for him at Intaka had deleted some items and had added other items.

10 **ADV SUSAN WENTZEL:** You deal with the changes that were made on page 574 from paragraphs 1 to 12.

MR WHITE: Chair I just – ja, I just refer to the different paragraphs in the bid specs that we either added or deleted.

ADV SUSAN WENTZEL: Then ...[intervenes]

CHAIRPERSON: Are there any particular changes that he made that you think deserves special attention?

MR WHITE: Chair I don't – I don't recall the specific details because it was ten years ago, but it was ...[intervenes]

CHAIRPERSON: Yes, okay. I thought maybe somewhere else in your
20 report you may be dealing with them.

MR WHITE: Chair the point I was just trying to make is that there were a lot and that he is having input prior to it becoming public and ...[intervenes]

CHAIRPERSON: Yes.

MR WHITE: And doing things where his entity doesn't comply with the

original draft specs, he is now deleting them and where there's something extra his entity has got he is putting it in as a requirement potentially to the prejudice of any bidder that doesn't have that little extra piece.

CHAIRPERSON: And he was allowed to do that, by the head of department?

MR WHITE: Well Chair that's what the emails reflect and ultimately his changes ended up, most of them, in the final bids that were advertised.

10 **CHAIRPERSON:** Mmm, mmm.

ADV SUSAN WENTZEL: Well let's see on page 575 paragraph 9.063 the head of department, Ms Mnyebesi, replies to Savoi also in an email dated the 29th of November 2006, could you explain to the Chair what she says there?

MR WHITE: So Chair that is two days after the previous email I have referred to, and in the fourth line down I quote from what she says where she says:

"Success at last, hope you get it."

And then attached to that is the bid specification word document with
20 the revised specifications. And Chair then down the bottom of that page at paragraph 9.064 on the same day Dr Savoi replies:

"Dear Amega,

I am sending the replies in green."

So now he has made further changes to the revised specifications.

CHAIRPERSON: Yes but where are you reading from at 575?

MR WHITE: 9.064.

CHAIRPERSON: Okay no “Dear Amega”, ja I see. That is addressed to who?

MR WHITE: Dr Mnyebesi.

CHAIRPERSON: Yes okay.

MR WHITE: So these emails are a chain of emails, where they’re just replying backwards and forwards.

CHAIRPERSON: Yes, yes.

ADV SUSAN WENTZEL: And then perhaps if you could tell the Chair
10 the conclusion that you come to, referred to in paragraph 9.065 on page 576.

MR WHITE: So Chair relating to these changes in the fourth line of that paragraph I state:

“It is clear however that Intaka was advising the Department what to include and exclude in the bid specification document for the 52 hospitals tender and that this was still an official document and not a public one that had gone out to tender and that Intaka themselves would later provide a bid.”

Chair it was a significant tender, it was to supply all the oxygen
20 requirements at 52 hospitals in KZN, so all the hospitals and Intaka is now – had ongoing input into the specifications which then ultimately become the final specifications.

CHAIRPERSON: I mean I – did your investigation ever reveal how somebody whose company operated from the Western Cape came to end up having the kind of influence that he seems to have had on these

– on senior officials in these departments where he was just getting whatever he wanted?

MR WHITE: Chair the introduction appears to have come via Mr Tshabalala, the Head of Treasury, and then these ultimately there were monies paid to people in either senior positions in the department or the MEC's of those departments.

So Chair the inference would have to be drawn that this kind of relationship was because there was pressure from higher up to do business with these entities regardless of the cost or the detriment to the Department in which these officials worked. Because Chair most of these officials that did these incorrect things it could never have been a mistake, because just on the documents and we can see when it comes to getting ultimately contracts signed there's push back from the officials in the department, they really try not implement what's actually been awarded in terms of a tender process, because they disagree and it takes months and months for these things to be – for contracts to be signed or things to be installed because people lower down in the hierarchy don't agree with what's happening, but ultimately they get overruled.

20 **CHAIRPERSON:** Now you told me that when you were doing this investigation that those people had already been arrested and so on and so on. Did you ever get a chance to speak to those officials, lower ranking officials who may have experienced what was happening and were you able to get an input from them?

MR WHITE: So Chair all the people that were involved in the process,

in the procurement, or the implementation etcetera, were all interviewed as part of that process and provided affidavits that were ultimately either referred to by reports and/or ended up in the police docket, so their – and a lot of them are very critical of the process but ultimately they were just pressurised into even if they raised concerns eventually they were overruled.

CHAIRPERSON: So in this case you were able to interview them or your team was able to interview them and affidavits and statements were obtained which are in the lever arch files that have been made
10 available to the Commission.

MR WHITE: Correct Chair.

CHAIRPERSON: Okay.

MR WHITE: And Chair those interviews were done, most of them in conjunction with the investigating officers allocated to the matter.

CHAIRPERSON: Yes, yes, okay.

ADV SUSAN WENTZEL: Thank you Chair. So after this did the contract go out to tender and you said with the specifications as manipulated by Mr Savoi?

MR WHITE: Correct Chair, those specifications were finally approved
20 by the Bid Specification Committee and the Department of Health on the 30th of November 2006. There were – people bid for it and the winning bidder was ultimately adjudicated as being Intaka, but the losing bidders a number of them then appealed and their appeals were overruled, were dismissed.

ADV SUSAN WENTZEL: And those that ...[intervenes]

CHAIRPERSON: They didn't go to Court?

MR WHITE: No Chair it was part of the internal departmental appeals process.

CHAIRPERSON: Ja, okay, alright.

ADV SUSAN WENTZEL: And you deal with that at page 590, paragraph 10.

CHAIRPERSON: Is it 590?

ADV SUSAN WENTZEL: Yes.

MR WHITE: So Chair there I just referred to the detailed ...[indistinct]
10 but the entities that appealed were Afrox, Insmad and Myriad Medical. The only interesting aspect is that Chair that appeal process was – it is run out of Provincial Treasury, effectively they oversee the appeals process son procurement and then once that appeal process had been concluded and effectively a decision had almost been made we identified that Mr Tshabalala, who I referred to yesterday he now also sent an sms to Intaka which I refer to at page 599 and ...[intervenes]

CHAIRPERSON: Yes?

MR WHITE: Paragraph 9.9.3, Chair maybe to explain what the people at Intaka seem to have had a – again very helpful if you're doing an
20 investigation, they typed out everything they received by sms and filed it, and emails and in many instances they printed them out and filed them, which was quite helpful when doing an investigation. So this was ...[intervenes]

CHAIRPERSON: Not very much unlike Mr Panday's situation?

MR WHITE: Correct Chair, these were very nice investigations to do.

CHAIRPERSON: You must have been – you are common to both, you are the investigator for both and somehow the investigation is made easy for you.

MR WHITE: It doesn't always happen Chair, but you have to take it when you can get it. Chair and in this sms I just set out we found it so when they - the document ...[intervenes]

CHAIRPERSON: Well do tell me how you found it as well.

MR WHITE: So maybe I will just read it Chair, it will be easier.

CHAIRPERSON: Ja, ja.

10 **MR WHITE:** So I located an email in the Intaka electronic records seized by the SAPS from Alicia Marcus to Roald de Lange, both of Intaka. Alicia Marcus is one of the secretaries at Intaka and Roald de Lange is an employee in Intaka. The body of the email titled KZN contains the following:

“I enclose text of an sms sent by Sipho Tshabalala to Dr Savoi. Attached is a document on an Intaka letterhead marked file note, sms sent by Sipho Tshabalala to Dr Savoi on 24 August 2007 at 10:20.

Amigo,

20 Hearing went very well, expecting results early next week.”

Now that related to the appeal where the other, Afrox and Insmmed etcetera about the outcome of that appeal.

CHAIRPERSON: Yes.

MR WHITE: Again Chair just not what one would be expecting ahead of Provincial Treasury to be sending to a potential supplier of services

to the Department of Health.

CHAIRPERSON: Yes, *ja*.

ADV SUSAN WENTZEL: And, sorry.

CHAIRPERSON: Let's take the tea adjournment now.

ADV SUSAN WENTZEL: Yes Chair if I can just clarify one thing, one word.

CHAIRPERSON: *Ja*.

ADV SUSAN WENTZEL: In what capacity was De Lange employed by Intaka?

10 **MR WHITE:** Chair if my memory serves me correct I think he was the in-house legal person at Intaka.

ADV SUSAN WENTZEL: Thank you.

CHAIRPERSON: Okay, we will take the tea adjournment and resume at twenty to five to twelve.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Let us proceed. Switch on your microphone.

ADV SUSAN WENTZEL: I beg your pardon. Mr White you say in your report that despite the award of the tender to Intaka there were on ongoing concerns about the contract. What were those concerns?

MR WHITE: So Chair there were a number of issues raised by the – the technical people in the department as well as by the medical

professionals. So Chair the first one was regarding maintenance. So the Intaka was going to provide these plants.

CHAIRPERSON: I am sorry. Are you talking about the Wataka or are you talking about the Oxintaka?

MR WHITE: The Oxintaka Chair.

CHAIRPERSON: Oxintaka okay, alright.

MR WHITE: Yes so relating to the Oxintaka.

CHAIRPERSON: I thought you had switched back to Wataka so okay. Oxintaka.

- 10 **MR WHITE:** So Chair so these plants that are going to be installed at each hospital to make the oxygen the way the contract was initially being drafted the Department of Health said it is Intaka's responsibility to maintain the plants because the department is just buying the output. It is buying the oxygen it is not buying the plant. Whereas Intaka's representatives said the department must be responsible for the maintenance or must pay a maintenance contract for Intaka to maintain. Now obviously that is an ongoing cost so that was one of the points of disagreement between the officials and Intaka when it came to finalising the contract. So there was – it took about six months for
- 20 when Intaka were told you appointed until when the contract was signed. So one of the negotiations related to maintenance. The second one related to the minimum usage. So there was - Intaka wanted – had said the minimum usage for certain hospitals was say 10 000 litres a month, the departmental officials said we only normally use 8, we cannot pay for 10 so that also in different hospitals there was – that

was an issue.

CHAIRPERSON: 8 as in 8 000 instead of 10 000?

MR WHITE: Correct Chair.

CHAIRPERSON: Ja.

MR WHITE: So Intaka wanted to be paid for 10 or anything above that, the department said, no it needs to be 8 the minimum – so that led to quite a long negotiation. There was then also the cost of the backup and this was the main – one of the main issues from the medical professionals where they said, we are not prepared to operate in
10 hospitals where this is the only source of supply of oxygen. Because they said if there is a breakdown or an electricity failure there will be no oxygen. And if they are busy operating or people who are in intensive care there would be no oxygen for those patients. Intaka's solution to that was to provide a generator which would provide power if there was a power failure. But the plant's needed significant modification if they were going to store oxygen in cylinders which their plants were not currently – it was not what they were planning to provide. So that again led to disagreements in the contracts because the doctors wanted the department to continue to buy cylinders that
20 would be used as the backup obviously at an additional cost then this does not become viable. And the last point that I can remember is there was issues around whether these plants needed to be registered as a medical device by the medical control council because there was ongoing debate about whether the supply of oxygen was a medical supply or not. So those items took – took months effectively to try and

resolve and again it was because officials within the organisation did not agree with what had happened and were now – there was push-back and I can refer to some – some documents and emails where effectively the MEC Peggy Nkonyeni now became involved in trying to finalise these negotiations.

ADV SUSAN WENTZEL: Now before we go there if I can refer you to Doctor Savoi's affidavit. It is bundle D for dog, page 1394?

CHAIRPERSON: Exhibit RR4d?

ADV SUSAN WENTZEL: Yes RR4d.

10 **CHAIRPERSON:** For dog. What page?

ADV SUSAN WENTZEL: 1394.

MR WHITE: Chair it is going to be C.

ADV SUSAN WENTZEL: Oh is it C?

CHAIRPERSON: It is C.

ADV SUSAN WENTZEL: I beg your pardon sorry I am just trying to locate it myself.

CHAIRPERSON: Okay. C.

ADV SUSAN WENTZEL: I beg your pardon.

CHAIRPERSON: So it is R – Exhibit RR4c.

20 **ADV SUSAN WENTZEL:** C.

CHAIRPERSON: What page, 1394?

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: Okay. What is that?

ADV SUSAN WENTZEL: And...

CHAIRPERSON: Is that somebody's affidavit?

ADV SUSAN WENTZEL: Yes it is Mr Savoi's affidavit we dealt with it.

CHAIRPERSON: In what matter?

ADV SUSAN WENTZEL: In both matters and just to remind you Chair I will – if I can refer to page 1386 paragraph 5 where Doctor Savoi says:

10 "I have been advised that the issues that have been
 raised and with which I should deal in this affidavit
 are firstly a certain donation that was paid by Intaka
 in February 2007 and secondly to commission
 payments paid by Intaka to Rowmoor Investments
 738 PTY Limited in August 2007. I shall now deal
 with these issues."

Chair we referred to this affidavit with regard to the donation
apparently made to the ANC but through Shezi Attorneys and what
Doctor Savoi said.

CHAIRPERSON: So this is the affidavit that Mr White you yesterday
was furnished to the police by Doctor Savoi at stage in the course of
the police investigation.

MR WHITE: Correct Chair.

20 **CHAIRPERSON:** Ja okay. I just wanted to make sure it is clear where
the affidavit came from.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay let us continue.

ADV SUSAN WENTZEL: And from paragraph 36 of his affidavit page
1394 he deals with what he calls commissions paid to Rowmoor. Could
you deal with that?

CHAIRPERSON: Starting with what was – what was Rowmoor?

ADV SUSAN WENTZEL: Yes.

MR WHITE: So Chair maybe if just to explain that if I could refer to the diagram at TSW19.

CHAIRPERSON: Is it one of those we saw yesterday?

MR WHITE: It is Chair.

CHAIRPERSON: Yes.

MR WHITE: It is the diagram that shows the whole relationship with Intake in the middle.

10 **CHAIRPERSON:** Yes.

MR WHITE: It is in RR4d for dog at page 1958.

CHAIRPERSON: Yes.

MR WHITE: So Chair that...

CHAIRPERSON: Okay.

MR WHITE: Diagram shows that Intaka is in the middle of the picture.

CHAIRPERSON: Hm.

MR WHITE: It shows all the relationships with the different departments and then it shows that two payments were made to Rowmoor Investments of R500 000.00 each. Rowmoor Investments is
20 an entity that is owned and the director of which is Mr Linda Mkhwanazi.

CHAIRPERSON: Yes.

MR WHITE: And Mr Mkhwanazi is the boyfriend of the MEC for Health at the time Ms Peggy Nkonyeni.

CHAIRPERSON: Yes.

MR WHITE: So this affidavit of Doctor Savoi attempts to address those two payments and what those payments were for.

CHAIRPERSON: Yes.

MR WHITE: In this affidavit he says those two payments.

CHAIRPERSON: I am sorry. Before that. Does the diagram tell us who – who owns Rowmoor?

MR WHITE: So Chair if we go to the left on the page.

CHAIRPERSON: Ja.

MR WHITE: In the middle we see Intaka is in the middle.

10 **CHAIRPERSON:** Hm.

MR WHITE: There is two payments to Rowmoor.

CHAIRPERSON: Ja.

MR WHITE: Then next to that I have LH Mkhwanazi.

CHAIRPERSON: Yes.

MR WHITE: And the arrow going across with 100%.

CHAIRPERSON: Yes.

MR WHITE: So he is the 100% owner of Rowmoor Investments.

CHAIRPERSON: Okay.

MR WHITE: And then I link...

20 **CHAIRPERSON:** Was Rowmoor a CC?

MR WHITE: It was a company to my recollection.

CHAIRPERSON: Close Corporation. Yes okay. But he was the sole director?

MR WHITE: Correct Chair.

CHAIRPERSON: Okay.

MR WHITE: Chair the interesting point is the entity was initially registered on the 26 March 2007.

CHAIRPERSON: Yes.

MR WHITE: Mr Mkhwanazi became a director on the 4 May 2007.

CHAIRPERSON: Yes. Okay.

MR WHITE: Now the importance of those dates is that Doctor Savoi in his affidavit says the two payments of R500 000.00 related to Mr Mkhwanazi's assistance and involvement with obtaining the contracts for the supply of the Wataka's to the Appelsbosch and Rietvlei Hotel –
10 Rietvlei Hospitals.

CHAIRPERSON: Yes.

MR WHITE: Now the – the problem with that explanation Chair and where – with respect to Doctor Savoi it does not all tie together is those contracts for those hospitals were awarded in October of 2006.

CHAIRPERSON: Yes.

MR WHITE: The payments are now made in August and November of 2007.

CHAIRPERSON: Yes.

MR WHITE: Some more than ten months later.

20 **CHAIRPERSON:** Yes.

MR WHITE: So – but what was happening...

CHAIRPERSON: Were those payments – so the payments were made to the legal entity and not to Mr Mkhwanazi in his personal capacity.

MR WHITE: Correct Chair.

CHAIRPERSON: And – and if they – if – well assuming if Rowmoor had

existed in 2006 and Mr Mkhwanazi had been involved in it and Rowmoor had been used assuming it would have been lawful for this to happen to assist Intaka to get this business then at least if Rowmoor existed in 2006 and Mr Mkhwanazi was part of it at that time maybe there could be something in the proposition. But you are saying that Mr Mkhwanazi and Rowmoor had no involvement with each other prior to 2007 and you say the award was in 2006/

MR WHITE: That is correct Chair. And just to take that one step further there was also nothing in Intaka's records that were seized
10 including the emails as well as the Department of Health's records, including all the officials interviewed saying that Mr Mkhwanazi in his personal capacity had any involvement either. So he may have said I did it in my personal capacity and my company was only registered later but in his personal capacity his name or any mention of him does not appear anywhere in that process.

CHAIRPERSON: But did – does Doctor Savoi in his affidavit explain exactly what it is that either Rowmoor or Mr Mkhwanazi did for Intaka?

MR WHITE: So Chair maybe it would be better if I just read this specific paragraphs?

20 **CHAIRPERSON:** Yes.

MR WHITE: So Chair if we go to page 1394 which is in RR4c.

CHAIRPERSON: Yes.

MR WHITE: At paragraph 36 it reads?

"I now turn to the issue of the commission paid to Rowmoor."

Paragraph 37.

“In this regard Mr Lindelihle Mkhwanazi with whom we had initially come into contact at an early stage during our discussion with very role – various role players in KZN approached us expressing an interest in marketing our products in KZN. He indicated that he was already supplying stationery and other products to KZN PG departments and we therefore thought that there would be no harm in giving him an opportunity to market ours as well. I would add that discussions with previous potential BE business partners in KZN had come to naught. I cannot recall exactly when the initial discussion with Mr Mkhwanazi took place.”

Paragraph 38.

“We initially had not place [indistinct] what I would describe as a gentleman’s agreement in terms of which it was agreed he would promote Intaka and its products within the geographical area of KZN. The intention was that this would be followed up with a formal sole agency agreement in terms of which inter alia he would be entitled to commission on all Intaka Water Purification and Self Generating Oxygen equipment sold in KZN irrespective of whether he was the direct cause of the sale. This is the

standard approach reached in our sole agency agreements. That this was not pursued at any stage after the initial discussions an agreement is perhaps due in part to the fact that Intaka did not have a full time legal counsel at the time and it was only subsequent to the appointment of Mr Rual De Lange in February 2007 that a number of outstanding legal issues or issues with legal implications were followed up.”

10 Paragraph 39.

“Be that as it may however at some point subsequent to our discussions with Mr Mkhwanazi I was approached by Doctor Busi Nyembezi the then Head Department of Health whom I had met previously together with the MEC of Health for KZN Ms Peggy Nkonyeni. Doctor Nyembezi enquired from me about the possible purchase of two Wataka's for the Rietvlei and Appelsbosch Hospitals.”

20 **ADV SUSAN WENTZEL:** Now if you can just stop there. It is clear what he is saying and it will appear as we refer further he refers to this as commission not for securing the self-generating oxygen plant contract but it is commission for securing the two Wataka's the Water Purification Plants, is that correct?

MR WHITE: Correct Chair.

ADV SUSAN WENTZEL: Okay continue.

MR WHITE: But Chair just on paragraph 39 there was no documents anywhere and as I said before from what I saw Intaka had the – and their employees printed out everything or typed it up and saved it and saved it in files etcetera. So if there was communication with Mr Mkhwanazi I would have expected to have found something even if it was sms' because that is – that is the way they kept their records. So there was – there was absolutely nothing in their records around that time. Chair and then maybe just the...

CHAIRPERSON: But was there any indication that either Mr
10 Mkhwanazi or Rowmoor was doing any marketing for anybody?

MR WHITE: Chair I did not have their records.

CHAIRPERSON: Yes.

MR WHITE: But from what I could see in Intaka's records they were not doing anything.

CHAIRPERSON: Yes. Yes. Well it would be interesting to see whether their business involved marketing anybody's product at all at the time. Yes.

ADV SUSAN WENTZEL: If we could then go to paragraph 44.

CHAIRPERSON: Of course Mr White if there is no proper explanation
20 or satisfactory explanation for these two payments to Rowmoor and Mr Mkhwanazi it may well be that those payments might be part of the explanation for some of the things that are difficult to understand in regard to these projects.

MR WHITE: Chair I agree 100% and that was the conclusions that the prosecutors in this matter came to originally.

CHAIRPERSON: Hm.

MR WHITE: When you look at it as a complete picture they said as Chair said a lot of things are inexplicable for what was done and the fact that money is now being paid to people linked to people in positions that could influence these processes the inference that was drawn by the prosecutors was that these were corrupt payments Chair.

CHAIRPERSON: Hm. Yes thank you.

ADV SUSAN WENTZEL: So if you can deal with paragraph 44 please?

MR WHITE:

10 “The two Wataka’s were subsequently supplied as per the quotation and copies of the relevant sales orders and tax invoice of 6 December 2006 are attached as are also a letter from myself to Doctor Nyembezi dated 12 December regarding the 50% issue including fax transmission form. Three further tax invoices, 311, 347 and 348 and an extract from Intaka’s general ledger in this regard.”

Chair this – the 50% that is being referred there is Intaka wanted a 50% upfront payment before – based on receipt of the order.

20 **CHAIRPERSON:** Okay.

MR WHITE: And there was a push-back from the department saying in terms of government procurement we cannot pay up front.

CHAIRPERSON: Yes.

MR WHITE: You need to deliver and then we will pay you.

CHAIRPERSON: Yes.

MR WHITE: That – so there was some backwards and forwards regarding that as well

CHAIRPERSON: Yes. I am sorry I just want to go back to the commission, to the two payments. Did your investigation reveal how far that money went?

MR WHITE: No Chair. I do not know.

CHAIRPERSON: If it went to Rowmoor and did it end there?

MR WHITE: Chair it was used from there I cannot – there was nothing – I could not trace it to any specific other individual.

10 **CHAIRPERSON:** Ja.

MR WHITE: Linked to the Department of Health.

CHAIRPERSON: Yes okay alright thank you.

ADV SUSAN WENTZEL: Okay now Chair just to make the point.

CHAIRPERSON: Ja.

ADV SUSAN WENTZEL: In paragraph 44 again.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And it is made very clear by Doctor Savoi that he is referring to the two Wataka's not the self-generating oxygen plants.

20 **CHAIRPERSON:** Yes.

ADV SUSAN WENTZEL: If you could then please deal with what he says in paragraphs 46 and 47?

CHAIRPERSON: But before you do that just to go back to the point I think at 44 you say that Intaka demanded an upfront payment and there was resistance to that from officials within the Department of Health.

MR WHITE: Correct Chair.

CHAIRPERSON: Yes. And later on you will indicate how far that debate went – what – how it ended?

MR WHITE: Well Chair they were not – and the upfront payment was not made.

CHAIRPERSON: Was not made oh okay.

MR WHITE: So Chair at paragraph 46 on page 1397 it reads:

10 “Reverting to the issue of Mr Mkhwanazi and the
 commissions paid to him as already indicated I was
 of the view that a gentleman’s agreement existed
 between us and that as a result he was entitled to
 commissions on the sale of the two Wataka’s as
 detailed above. I do note that by the time the
 payment for the two Wataka’s had been made to
 Intake by the Department of Health the standard sole
 agency agreement prepared by our legal counsel Mr
 De Lange had not yet been concluded with Mr
 Mkhwanazi. After the agreement was prepared by Mr
 De Lange the matter was also subsequently followed
20 up by or commercial department under the direction
 of Mr Fernando Praderi. However in the spirit of the
 gentleman’s agreement I nevertheless believed the
 commission should be paid to him in respect of the
 two Wataka sales and therefore authorised that such
 payments be made. Copies of the documentations

pertaining to the payments are attached.”

So Chair there was apart from the so called gentleman’s agreement there was nothing to support the link of Mr Mkhwanazi to the sale of the Water Purification Plants for the Appelsbosch and Rietvlei Hospitals.

CHAIRPERSON: Did – did your team look at Intaka’s computers and cell phones for Doctor Savoi to see what communications either by email or letters or sms’s or Whatsapp had – may have taken place between Mr Mkhwanazi and – and Intaka about his marketing role?

MR WHITE: Chair we could find nothing in their records.

10 **CHAIRPERSON**: Hm.

MR WHITE: Both hard copy documents that were seized.

CHAIRPERSON: Hm.

MR WHITE: There were some 320 lever arch files of documents seized from Intaka’s premises.

CHAIRPERSON: HM.

MR WHITE: As well as we had approximately three terabytes of electronic data from the various computers.

CHAIRPERSON: Hm.

MR WHITE: And we could not find details of what he was alleged to
20 have done relating to this marketing Chair.

CHAIRPERSON: Yes. And actual communication between them?

MR WHITE: Not at the time Chair no.

CHAIRPERSON: Not at the time?

MR WHITE: So Chair what I will refer to shortly is where I found records that Mr Mkhwanazi had meetings with Doctor Savoi together

with Peggy Nkonyeni at the time.

CHAIRPERSON: You – you found evidence of that?

MR WHITE: Correct Chair.

CHAIRPERSON: And was this prior to the award of the Oxintaka?

MR WHITE: So it was after the award of the Water Purification.

CHAIRPERSON: Ja.

MR WHITE: But prior to the finalisation of the contract for the oxygen plants.

CHAIRPERSON: Yes.

10 **MR WHITE**: So Chair...

CHAIRPERSON: And how – how did you find evidence of that meeting?

Was that in some correspondence? Was that in some sms's or?

MR WHITE: So Chair maybe if I could just refer to that?

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Chair we will deal – we will deal with that in due course. Perhaps if I can take it step by step Chair?

CHAIRPERSON: No I just want to know now.

MR WHITE: Okay so Chair it was in the records of Intaka.

CHAIRPERSON: Yes.

20 **MR WHITE**: So one of the sources was Doctor Savoi's electronic diary.

CHAIRPERSON: Yes.

MR WHITE: Which we then matched back to supporting documents like bookings for air tickets.

CHAIRPERSON: Yes.

MR WHITE: Hotel accommodation etcetera.

CHAIRPERSON: Yes.

MR WHITE: As well as other documents in Intaka's records confirming that meetings were set down and were to take place.

CHAIRPERSON: Yes. So you found records which reflected that such a meeting did take place?

MR WHITE: Correct Chair.

CHAIRPERSON: Ja and then later on we can go to the records but that is what – that is how you came to know?

MR WHITE: Correct Chair.

10 **CHAIRPERSON:** And would there have been any minutes of the discussions?

MR WHITE: There is no.

CHAIRPERSON: No minutes?

MR WHITE: So Chair I come to the conclusion that those were not official Department of Health meetings.

CHAIRPERSON: Hm.

MR WHITE: Because there is no minutes and no feedback into the Department of Health based on those meetings.

CHAIRPERSON: Hm.

20 **MR WHITE:** So those appear to have been private meetings of Ms Nkonyeni and Mr Mkhwanazi with Doctor Savoi.

CHAIRPERSON: Yes. Okay thank you.

ADV SUSAN WENTZEL: So now going back you said that the bid was accepted on the 26 June 2007 and we know that the contract was ultimately signed on the 13 December 2007 nearly six months later.

And you explained that there was a delay in signing the contract because of these difficulties that had been raised. And Chair I am now going to refer to documents from which I will submit it will become clear what the true purpose of the payment to Rowmoor Investments was.

CHAIRPERSON: Yes. Where do I go?

ADV SUSAN WENTZEL: So Chair if we can go back. I think it is bundle b Chair. So it is RR4b for bad and it is page 630.

CHAIRPERSON: Page 630?

ADV SUSAN WENTZEL: Yes Chair. And the bottom of that page
10 paragraph 9.128.

CHAIRPERSON: Yes.

MR WHITE: So Chair this is now some five months after the award and it is about a month before the contract is – the appointment is actually made and Chair to put the – into the context the two payments of R500 000.00 to Rowmoor Investments were on the 30 August and the 23 November 2007. So this is between the two payments this communication took place. So Mr De Lange who is the in-house legal at Intaka sent a letter to Doctor Mbele. Doctor Mbele at the time was the new Head of Department of KZN Health so Doctor Nyembezi had
20 been removed.

CHAIRPERSON: Oh did he or she succeed Doctor Nyembezi?

MR WHITE: Correct Chair. So she [indistinct].

CHAIRPERSON: Oh was it – was it a she?

MR WHITE: Also a she.

CHAIRPERSON: Okay.

MR WHITE: So 15 November 2007 and the email is copied to Ms Nkonyeni. Okay and it relates to the delays experienced and the need to finalise the agreement. Okay. So that is what that - that email is about. Dr Savoi sent an email to De Lange on the same day. That was titled "KZN Tender Contract" and included in that email is the following:

"After a long conference with the MEC ..."

It would be Ms Nkonyeni.

10 "...she is very disappointed with HOD and Victor's attitude not proceeding as per her instructions."

Chair the HOD was Dr Mbele and Victor was Mr Ntshangase - the Head of the Supply Chain Management Department.

20 "All the situation was created because Victor received questionnaire from DA and only today disclosed to MEC. MEC will reply to DA. Victor must send to you legal documents as you requested today. If you do not receive them claim them to him by email and a copy to MEC. I informed the MEC that as per my instructions once we receive these documents you will email him. CC MEC and HOD informing that you and the Commercial Director will be there to make a short presentation of the company and product to HOD. She will make sure that you return with the documents signed. I explained to her the reason why I will not be there

and she fully agreed.”

CHAIRPERSON: This is - this is Dr Mbele or no, no. This is De Lange.

Who is writing here?

MR WHITE: So this is Dr Savoi sending an - sending this to - to De Lange. So there was am ...

CHAIRPERSON: Hm ...

MR WHITE: Initial email.

CHAIRPERSON: And de - and De Lange is legal counsel - internal legal counsel for Intaka?

10 **MR WHITE:** Correct Chair. So he was ...

CHAIRPERSON: Oh. So ...

MR WHITE: He was the ...

CHAIRPERSON: So - so Dr Savoi had had a conversation with Dr Mbele?

MR WHITE: No. With - with Ms Nkonyeni Chair.

CHAIRPERSON: With - with Ms Nkonyeni ...

MR WHITE: Yes Chair.

CHAIRPERSON: And he is now updating De Lange - Mr De Lange about what transpired in that conversation. Is that right?

20 **MR WHITE:** That is correct Chair ...

CHAIRPERSON: Okay.

MR WHITE: Because Mr De Lange had been tasked or was the person that was interacting with the legal people at - at the Department of Health trying to get the contract finalised. So because it was not moving - was not getting finalised Dr Savoi appears to have gone

outside of the legal process negotiations to the MEC.

CHAIRPERSON: Yes.

MR WHITE: For her to put pressure on the people to get it final.

CHAIRPERSON: Yes. Yes.

MR WHITE: The slight additional complication is now that there was also a new Head of Department.

CHAIRPERSON: Yes.

MR WHITE: So that is why my interpretation is they now wanted to do a brief presentation to her as to what this is actually about as well.

10 **CHAIRPERSON**: Oh. Let me just see. Yes. Okay. Yes. You can continue.

ADV SUSAN WENTZEL: So it ...

CHAIRPERSON: So does - does this email reflect that Mr De Lange would do the presentation and Dr Savoi would not be there?

MR WHITE: Correct Chair.

CHAIRPERSON: Ja. Okay.

ADV SUSAN WENTZEL: And it also - Chair - indicates that he is reporting to De Lange that after a long conference with Ms Nkonyeni. She is very disappointed with the Head of Department and Victor's
20 attitude for not proceeding and this whole situation is created because of a questionnaire from the DA, but she - the assurances at the end very importantly she will make sure that you return with the documents signed.

If I can then turn to page 6-3-2 and paragraph 9.1.3-3 which refers to a further email - internal email dated 5 December 2007 from

Savoi to De Lange. Could you deal with that?

MR WHITE: Chair, this email was titled KZN Contract Oxygen Generators and in that email Dr Savoi advises Mr De Lange as follows:

“According to yesterday’s telephone conversation with the MEC of Health KZN. I reiterate the need for both parties to have the contract signed this week.”

ADV SUSAN WENTZEL: And paragraph 9.1-3.4. What does that deal with?

10 **MR WHITE:** So Chair this paragraph now sets out that never mind the people at the Department of Health having concerns about the contract. The - some of the employees at Intaka also felt that the contract was not properly worded or drafted because they did not believe their product met the requirements of the contract and Chair this is a document now dated 7 December 2007 and it is sent - and I am reading from the - the second line.

From Stefan Oosthuizen who was the Industrial and Technical Director of Intaka. He sent this email to Intaka. He sent this email to Mr De Lange. He copies Mr Praderi who was the - one of the Directors
20 and Mr Erasmus. Chair, I do not quite recall what Mr Erasmus’ position was, but he raised concerns with regard to the bid and the bid offer.

These concerns are relevant particularly to point one and then I quote from his - his email:

“Scope is clear that supply must be continuous online supply. Our standard machines as a stand-

alone cannot provide this without the cylinder manifold or VIE of the hospital as backup.”

Chair, I conclude that hence at that stage the technical people at Intaka said the contract we are about to sign our - our equipment does not meet the specifications. So - and that was why this thing had been dragging on for so long, but Chair regardless of the internal issues the contract was still signed six days later on 13 December 2007.

ADV SUSAN WENTZEL: So just going back to that to make the point.

10 What has been said to De Lange who then signs the agreement within a few days of being told this presumably by technical people in his own company that we are providing self-generating oxygen plants that are about to be relied on by hospitals and patients who in operations or otherwise in intensive care and we are not sure that our machine will give continuous supply and that we will need backup. What backup was - were they contemplating?

MR WHITE: Chair, there were two options. Either the - the department had to buy or rent cylinders as it had used in the past or the - the machine - the plant to be provided by Intaka to be modified to add on
20 an additional unit to it where they could - the oxygen could be stored in tanks.

CHAIRPERSON: One second. Sorry. Thank you.

ADV SUSAN WENTZEL: Then on the same day I believe that the contract was signed - 13 December 2007. You refer to an email of that date sent to staff members of Intaka by Savoi. It is page 6-3-2

paragraph 9.1-3-5. Could you deal with that?

MR WHITE: If I could just read it Chair and then I will comment.

10 “On 13 December 2007 at 18:03 (the agreement was signed earlier in the day at Inkosi Albert Luthuli Hospital). Savoi sent an email to four of his staff. The content of the email relates to Intaka’s relationship with Rowmoor Investments as at 13 December 2007 being more than a year after they had been awarded the supply of the two water purification plants for Rietvlei and Appelsbosch Hospitals and things that either did not or were not going to happen: quantities, maintenance contract and the removal of one hospital.”

So Chair they effectively muddling both together. They referring to the Oxyntaka contract, because that is where the issues of quantities, maintenance contract etcetera as well the Rietvlei and Appelsbosch Hospitals, but the coincidence is this email is written in the afternoon or early evening.

20 6 o’ clock in the evening when the contract was signed that afternoon for the Oxintakas. Some - so while it refers to the Watakas. This - this email is written by Dr Savoi on exactly the same day that the Oxyntaka contract is signed.

ADV SUSAN WENTZEL: And ...

CHAIRPERSON: Yes.

MR WHITE: Chair maybe ...

CHAIRPERSON: I am trying to understand the point you are making about the time of the signing and the time of the email.

MR WHITE: So Chair, this email was written within hours of the Oxyntaka contract being signed.

CHAIRPERSON: Yes.

MR WHITE: So my inference to draw from that is that the - the issue that ...

CHAIRPERSON: Let - let us start with what it says, because then maybe that is where I will get the - the clue.

10 **MR WHITE:** Okay. So the ... (intervenes).

CHAIRPERSON: About quantities and maintenance - what - what it saying the email about all those things?

MR WHITE: So Chair maybe I can refer to the - I have quote on the next page.

CHAIRPERSON: Yes. Let us read that first.

MR WHITE: Page 6-3-3.

CHAIRPERSON: *Ja.*

20 **MR WHITE:** "Considering that the conditions of the KZN tender contract that was signed are different from what was initially approved between our company and the Department of Health. I believe it is necessary and important to check the draft contracts sent to Rowmoor Investments. It must be transmitted to Rowmoor that there are a lot of things agreed with the Department of Health of KZN

that were going to happen and did not happen as one: they decided to consider the wrong quantities mentioned in the tender and the volumes that our technicians got during the visit and that most of them were confirmed later by Mr Victor of the Chain Supply Management. There is no evidence that any quantities were considered at the signing of the agreement as the schedule to Annexure B was not completed.”

10 That is my insert Chair.

“Two: they did not accept the maintenance contract. Three: they took one hospital out alleging that it is part of the Eastern Cape and not KZN. Not substituting for another one etcetera.”

CHAIRPERSON: Yes.

MR WHITE: So Chair ...

CHAIRPERSON: So what - what was the point about the time when the agreement was signed and the - and the timing of the email or its contents?

20 **MR WHITE:** So Chair, this is now - this email is now the first time I can find the references to Rowmoor Investments and ...

CHAIRPERSON: Yes.

MR WHITE: Whether they - and it is now linking them to this contract, because ...

CHAIRPERSON: And - and is it not interesting that Rowmoor is

Rowmoor Investments and if you think about marketing. It seems to very diverse things. If you are an investment company then you do marketing for other - for other people.

MR WHITE: Chair, I - I think Rowmoor Investments was just the name of the shelf company that - that was purchased. I did not draw any inference from the name.

CHAIRPERSON: Yes, but - but if you - if - if you want to - if you want a vehicle for a marketing business. I do not think you - you collect investment.

10 **MR WHITE:** I - I would agree Chair.

CHAIRPERSON: Ja. Okay. Alright.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: So now ...

CHAIRPERSON: So - but - but still I think I am - I am still trying to get the point. Maybe - maybe I am overemphasising, but I just want to make sure that I do not miss an important point that you may have been trying to make. That - about the fact that the contract was signed on - earlier on that particular day and there was this email.

20 **MR WHITE:** So Chair, the point I was trying to make is that suddenly this relationship seems to come to light. It is now being referred to internally within Intaka and - so my inference is that the signing of the contract to Oxintakas was in one way or another linked to Rowmoor Investments, because why does he now refer to it and the issues that Intaka was not happy about around the quantities the maintenance

contracts etcetera.

He now refers to that and says we now need to check what we were discussing with Rowmoor relating to this contract.

CHAIRPERSON: Hm. Hm.

MR WHITE: Whereas Dr Savoi has said the monies that were paid to Rowmoor relate to the water purification plants. Whereas it now appears that ...

CHAIRPERSON: Oh, yes. Oh. Okay. No. I think ...

MR WHITE: That - that - so and based on the timing of those payments
10 leading up to the signing of this contract. It is my opinion Chair that those payments link - linked to this contract not to something that happened more than a year prior to this.

CHAIRPERSON: So the point you are making is simply this. The fact that this email which is sent a few hours after the signing of the contract that relates to Oxintaka. The fact that Rowan Investments - Row - Rowmoor Investments is mentioned in relation to that contract and not in relation to Wataka - to the Wataka contract ...

MR WHITE: Correct Chair.

CHAIRPERSON: Is inconsistent with Dr Savoi's version that those two
20 payments relate to Rowmoor's role in marketing the - or is inconsistent with Dr Savoi's version that it was payment connected with Wataka.

MR WHITE: Correct Chair.

CHAIRPERSON: Ja. Why mention it in relation to Oxintaka if Rowmoor relates to Wataka. Unless of course - unless of course, because I think his affidavit - that is Dr Savoi's affidavit seems to suggest that

Rowmoor or Mr Mkhwanazi was going to market their products - their products.

Unless somewhere he says he also - also marketed this Oxintaka and those payments included his work that he did in relation to this, but he does not say that.

MR WHITE: Chair he does not - he does not say that ...

CHAIRPERSON: *Ja.*

MR WHITE: But also the - Mr Mkhwanazi is not involved from what I can see. Dr Savoi dealt directly with the Head of Department at the
10 time setting the specifications. So any involvement - so Chair the only involvement I can see of Mr Mkhwanazi is that he is the boyfriend of the MEC of Health at the time who assisted in getting the contract signed and the payments are made over that time period where her involvement was very clear that Dr Savoi was using her influence to get the contract signed.

CHAIRPERSON: Okay. Okay. Thank you.

ADV SUSAN WENTZEL: And Chair for clarity what the staff are told is that I am complaining about the terms of the contract that I eventually got and he says:

20 "I believe it is necessary and important to check the drafts contract sent to Rowmoor Investments. It must be transmitted to Rowmoor and there are a lot of things agreed with the Department of Health and KwaZulu-Natal that were going to happen and did not happen."

And he says:

“I have got the wrong quantities. They have not got a maintenance contract.”

And he complains. That - now I am going to refer to something that occurs the day after the contract is signed and I would like to refer you Chair to page 6-7-3 paragraph 20. You say there that:

“Ms Nkonyeni was present at the hospital on 13 December 2007 when the agreement was signed.”

10 You then refer to an SMS sent the following day...

CHAIRPERSON: I am sorry. Who writes here? Is it the same email or what is his and who does - is it going to?

ADV SUSAN WENTZEL: It is - it is - we are going to refer to an SMS.

CHAIRPERSON: Sorry.

ADV SUSAN WENTZEL: So paragraph 20 is Mr White recording on page 6-7-3.

CHAIRPERSON: Oh. Okay. Yes.

ADV SUSAN WENTZEL: He records:

20 “Peggy Nkonyeni was present at the IALC Hospital on the 13th ...”

CHAIRPERSON: Well hang on. Hang on. The - this is Mr White in his report recording that Ms Peggy Nkonyeni was present.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: On the 13th ...

CHAIRPERSON: This is just part of the report and ...

ADV SUSAN WENTZEL: Exactly.

CHAIRPERSON: In that - in that paragraph he quotes an SMS or something.

ADV SUSAN WENTZEL: Exactly.

CHAIRPERSON: *Ja*. It is just important that as we go to whatever page is clear what document it is from whom to whom ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: And about what.

10 **ADV SUSAN WENTZEL:** Yes.

CHAIRPERSON: *Ja*.

ADV SUSAN WENTZEL: So you record that she was present at the hospital on 13 December 2007 when the agreement was - was signed. Can you tell the court what you discovered from your investigations referred to in that - in paragraph 20 of your report happened the very next day - 14 December 2007?

MR WHITE: So Chair, maybe just to come back to the fact that Ms Nkonyeni was present. So people that were part of the process where the agreement was signed said Ms Nkonyeni was present in the
20 room, but she sat at the other end of the table. She was not part of the discussions and that was at the Inkosi Albert Luthuli Hospital in - in Durban. On the following day after ...

CHAIRPERSON: That is - that is an interesting venue to go and sign a contract at.

MR WHITE: So Chair ...

CHAIRPERSON: One would have thought that they would go to the department's offices.

MR WHITE: Chair, it - it may sound strange, but I - in the course of these investigations we had a number of meetings at that hospital complex, because they have an administration wing where they have a number of boardrooms.

CHAIRPERSON: Oh.

MR WHITE: So it is - it seems to be used for meetings by the Department of Health on a - on a fairly regular basis. So it was not ...

10 **CHAIRPERSON:** Oh.

MR WHITE: It does happen. It is not ...

CHAIRPERSON: Oh. Okay.

MR WHITE: Because I attended ...

CHAIRPERSON: Okay.

MR WHITE: Similar.

CHAIRPERSON: Okay. No. I am just thinking that I am under the impression that the headquarters of the department would be in Pietermaritzburg, because that is the capital of the province and ...

MR WHITE: That is correct Chair.

20 **CHAIRPERSON:** And Inkosi Albert Luthuli Hospital is in Durban.

MR WHITE: Correct Chair.

CHAIRPERSON: Okay, but you say there - there are certain facilities which might be attractive for use by the department?

MR WHITE: Correct Chair. There is an administration block with a number of boardrooms.

CHAIRPERSON: Okay. Okay.

MR WHITE: That are used for meetings.

CHAIRPERSON: Okay. Yes.

MR WHITE: So Chair the - the day following the signing of that contract for the Oxintakas. There was an SMS sent to Dr Savoi. A copy of that was found in Intaka's records and it reads as follows.

CHAIRPERSON: Sent by?

MR WHITE: Ms Nkonyeni.

CHAIRPERSON: Yes. Okay.

10 **MR WHITE:** It says:

“Doc! A contract was signed yesterday although your guys were not happy with maintenance and a few other things. Buy they were crushed because of what was reflected in the bid document. Next time we will have to be more careful and perhaps you need to cancel the donation since you are losing on maintenance. What do you suggest? Peggy”

Chair that is just a very, very unusual SMS to be sent. It
20 almost looks from reading that - that SMS that Ms Nkonyeni is more concerned about the welfare of Intaka and Dr Savoi than she is about the department she is the MEC of.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And more ...

CHAIRPERSON: And - and the reference to donation?

MR WHITE: So Chair, I do not know. Everybody has asked me that question. I do not know what donation she is referring to.

CHAIRPERSON: Yes.

MR WHITE: So it may be a donation I do not know about.

CHAIRPERSON: Did - did you ask Dr Savoi what ...

MR WHITE: Chair, they ...

CHAIRPERSON: Donation ...

MR WHITE: They were all accused in the matter Chair.

CHAIRPERSON: At - at that stage. So you never got a chance to - to
10 ask him?

MR WHITE: I did not - did not Chair.

CHAIRPERSON: Okay. Okay. Thank you.

MR WHITE: Or they were suspects at this stage Chair.

CHAIRPERSON: Yes.

MR WHITE: When we did the investigation.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: And Mr White the way that I read it is that we
know from the internal memorandum that we were referring to earlier
that Mr Savoi was not happy that he had to maintain these oxygen
20 purification plants in terms of the final agreement and it is quite clear
that would be a cost implication to him if he were to - this is - I am
deducing.

There would be a cost implication to him if he had to bear the
cost of maintenance and I assume that when she says buy. The means
but and a few other things, but they were crushed because of what was

reflected in the bid document. I - and you can tell me if you agree - can only read that to mean that from what was said in the bid document it appeared that they would have to assume responsibility for maintenance, but then what is more important is she says:

“Next time we will have to be more careful.”

And then what can one only deduce from this. You have now got to incur greater costs, because you are incurring maintenance. So she says:

10 “Perhaps you need to cancel the donation. Since
you are losing on maintenance. What do you
suggest?”

She is saying I can understand maybe you do not want to make such a big a donation. I cannot read it any other way.

MR WHITE: Chair, maybe that is why in our investigation we did not find this donation if there was going to be one or a pay ...

CHAIRPERSON: I am sorry. Just repeat that.

MR WHITE: So Chair, maybe if that is the interpretation of this SMS maybe that is why we did not identify a further payment to anybody, because the decision was made I am not going to make - loosely call it
20 - a donation, because the contract was not as favourable as I originally anticipated.

CHAIRPERSON: Ms - Ms Wentzel just repeat the interpretation that you attach to it. Let me ...

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: Understand it.

ADV SUSAN WENTZEL: Yes Chair. Just bear with me. I am just going to go back to it. Now she says:

“Doc! The contract was signed yesterday although your guys were not happy with maintenance and a few other things.”

Buy I read as but.

“But they were ...”

I think it should be crushed. Perhaps with a C and S, because it is C-R-U-C-H-E-D.

10 “...because of what was reflected in the bid document.”

I understand that to mean that they were not happy with having to assume responsibility for maintenance. We know from the earlier documents this is - this was one of the contentious issues. Who was going to bear responsibility for maintenance and they are not happy that at the end of the day it is found that Savoi who is the owner of the machine needs to be responsible for its own maintenance.

What he wanted to do is lease the oxygen, but then also make the department pay for the maintenance of the machine. So he
20 did not have that and when she says:

“They were crushed, because of what was reflected in the bid document.”

I read that to mean that the bid document specified that they would have to be responsible for maintenance. So that was a problem. The next thing is she says ...

CHAIRPERSON: Has - has somebody looked at the bid document and see whether it would support that?

ADV SUSAN WENTZEL: Hm.

MR WHITE: Correct Chair. The - the document did say the bid specifications said that the supplier would be responsible for the maintenance ...

CHAIRPERSON: Oh. Okay. Okay.

MR WHITE: But Intaka after being awarded did not want that - they did not want that in the final contract.

10 **CHAIRPERSON:** Yes. Okay. Okay. So - so what - was what you were saying there is that when Ms Nkonyeni says in the email:

“...your guys were not happy with maintenance and
a few other things ...”

Let us stick with maintenance. You understand that to mean that they did not want Intaka to be responsible for maintenance and their stance was contrary to the bid specification, because the bid specification required Intaka to be responsible for that. So they did not get that and the reason they did not get that is because of the bid document?

20 **ADV SUSAN WENTZEL:** Yes.

CHAIRPERSON: Ja. Okay and you - and - and you say you can - you can go along with that interpretation?

MR WHITE: I can confirm that is the facts Chair. Yes.

CHAIRPERSON: Ja. Okay.

ADV SUSAN WENTZEL: And then following on that ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Chair, my submission is that what is said now is I know you wanted the department to pay for maintenance. Now I understand and I am - we have to be more careful next time. You are going to have to pay for the maintenance. So there is going to be an extra cost. You are not going to get as much out of this deal as you anticipated and so what does she offer him. She says:

10 “Perhaps you need to cancel the donation. Since
 you are losing on maintenance. What do you
 suggest? Peggy”

CHAIRPERSON: Yes what did you say to that interpretation, I know about the first part, I don't know if you...[intervenes].

MR WHITE: So Chair we didn't find any subsequent payment that was made.

CHAIRPERSON: Yes.

MR WHITE: So my only conclusion could be that if there had been an agreement to make a payment that maybe it was cancelled because the contract wasn't as lucrative as Intaka originally anticipated.

20 **CHAIRPERSON:** Yes okay thank you. Now what did you understand
the reference to “we” to be referring to, we'll have to be more careful?

MR WHITE: So Chair my interpretation of that was that ...[intervenes].

CHAIRPERSON: Who was the “we”?

MR WHITE: It was referring to herself and Intaka, as in we together, will have to be more careful next time. So she almost was putting herself as part of Intaka rather than as the political Head of the

Department.

CHAIRPERSON: Yes because the one option is that she was talking about her Department, the other option is that she was talking about herself on the one hand or herself and the department on the one hand and Intaka and Dr Savoi and Intaka on the other but you say, if one looks at the context you don't think it's a reference to her and the Department?

MR WHITE: Chair it doesn't actually matter which variation of that it is, it's wrong.

10 **CHAIRPERSON**: Yes.

MR WHITE: If it's her and the Department, he personally....[intervenes].

CHAIRPERSON: They should not be working together they should not be a unit, ja.

MR WHITE: Because why would the department have to be more careful that they got a better deal than the supplier wanted?

CHAIRPERSON: Yes.

MR WHITE: So she should be happy for the Department not need to be more careful I – so I can give a better deal to the supplier.

20 **CHAIRPERSON**: So you are saying, irrespective of whether she was referring to herself and Dr Savoi or herself and Dr Savoi and Intaka or she included the Department or she was meaning herself and the Department it was simply wrong, they couldn't be spoken about as a unit, the Department and Intaka or herself and Intaka or Dr Savoi?

MR WHITE: Correct because Chair when it comes to maintenance her

only interest should have been the Department and what is it going to cost the Department.

CHAIRPERSON: Yes she should not have been moaning about the fact that Intaka – Dr Savoi's guys didn't get what they wanted about maintenance.

MR WHITE: Correct Chair.

CHAIRPERSON: And she seems to have been moaning about that.

MR WHITE: I agree Chair.

CHAIRPERSON: She – the end result of the agreement is in favour of
10 her department but she seems to lament that as if she would have been happier if the end result was that Intaka got its way which would have been the department must be responsible for maintenance and that's not what she should have stood for.

MR WHITE: I agree.

ADV SUSAN WENTZEL: And Chair my submission to you is that the inference is – it's inescapable, that the "we" referred to is Peggy Nkonyeni and the person she calls doc.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And the reason for that is that after saying I
20 couldn't get the department to pay for maintenance because of what was in the bid documents, she ties the statement, next time we'll have to be more careful, with it follows and in the very same sentence she says and perhaps you need to cancel the donation since you're losing maintenance.

CHAIRPERSON: So she regrets that the Department insisted that

Intaka must be responsible for maintenance and she wants to compensate for that and she says, next time we'll need to be more careful, which seems to suggest, next time there is anything like this we must be careful about the bid specifications.

ADV SUSAN WENTZEL: Yes Chair, it can only mean that.

CHAIRPERSON: Because this time – because this time the reason why we are ending with this is because the bid specification was clear.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: One gets the impression that, that...[intervenes].

10 **ADV SUSAN WENTZEL**: Exactly Chair with respect it can have no other meaning.

CHAIRPERSON: Okay yes.

ADV SUSAN WENTZEL: Now Chair I can make one point and that is that perhaps she's not quite as magnanimous as it would appear because we know that her boyfriend's company Rowmoor was paid a million rand in chanters of R500 0000.00 each and I'd like to ask Mr White at this stage, had those payments been made?

MR WHITE: They had been made Chair.

CHAIRPERSON: How long before, are you able to remember?

20 **MR WHITE**: So they were made on the 30th of August and the 23rd of November, so one payment was some three weeks prior to this and the other one was three months prior to this.

CHAIRPERSON: And it would be difficult – if Mr Mkhwanazi was still her romantic partner it would be difficult to think that she was not aware of those payments three months later.

MR WHITE: I agree Chair and she was having ongoing meetings during that period with Dr Savoi and Mr Mkhwanazi.

CHAIRPERSON: Between the payment dates and this date.

MR WHITE: Around – before, during and after that period Chair.

CHAIRPERSON: Yes.

MR WHITE: Chair maybe I could just refer to a summary of those meetings, just the dates.

CHAIRPERSON: Yes, okay.

MR WHITE: Chair if I could just refer to that in RR4C at page 1268.

10 **CHAIRPERSON:** Yes Exhibit RR4C page 1268 yes.

MR WHITE: So Chair that's a summary based on the records from Intaka that I could find where meetings were scheduled in Dr Savoi's diary with Ms Nkonyeni or Mr Mkhwanazi. So Chair that summary in that table I've interpreted where it refers to Peggy to be a reference to Ms Peggy Nkonyeni, where it refers to Linde to a reference to Mr Mkhwanazi who, in many instances is just referred to as Linde but if you look in line seven on the 10th of July 2007...[intervenes].

CHAIRPERSON: Ja just read them out all those relevant ones, let's get them into the transcript.

20 **MR WHITE:** Okay so Chair on the 18th of January 20017 there was a meeting with Dr Busi Nyembezi and the MEC for Health for Kwa-Zulu Natal at our Intaka premises, so that MEC at the time was Ms Peggy Nkonyeni. On the 12th of April 2007 ...[intervenes].

CHAIRPERSON: Sorry again, just to make sure that whoever reads the transcript knows this is now Dr – this relates to meetings between Dr

Savoi and the people indicated on this page, okay continue.

MR WHITE: Correct Chair...[intervenes].

ADV SUSAN WENTZEL: Sorry Chair and it comes from Dr Savoi's electronic diary.

MR WHITE: Correct Chair.

CHAIRPERSON: Yes, okay.

MR WHITE: So the 12th of April 2007 MEC Peggy in CT, which I've interpreted to be Cape Town.

CHAIRPERSON: Yes.

10 **MR WHITE:** The 13th of April MEC Peggy in Cape Town, the 4th of May Peggy and Linde in Cape Town.

CHAIRPERSON: Yes.

MR WHITE: The 7th of June 2007 Linde plus MEC Peggy, the 21st of June 2007 collect Linde and Peggy and then there's a further reference to meeting with Dr Shabir, Linde and Peggy, Dr Shabir was from the Northern Cape Department of Health. On the 10th of July – so Chair just to put it into the context, the contract for the Oxintaka's, the bid adjudication committee and the final clearance from the appeals that was accepted on the 26th of June 2007. So up until line six, the 21st of
20 June that is before the Oxintaka award is made. So subsequent to that is the period when the Department of Health is trying to negotiate the terms with Intaka that led to the signing of the contract on the 13th of December. So during that negotiation period there's now a meeting on the 10th of July 2007, Linde and MEC Peggy in Cape Town...[intervenes].

CHAIRPERSON: I'm sorry I just want to take you back to item six at 21 June 2007 it says 9 o' clock collect Linde and Peggy do you know whether that means collect them from the airport or what?

MR WHITE: That's my understanding Chair.

CHAIRPERSON: Yes, okay continue – that is on 21 June 2007 okay continue.

MR WHITE: So 10 July 2007 is Linde Mkhwanazi and MEC Peggy on the 11th of July 2007 Linde MEC Peggy. Chair some three weeks later, on the 3rd of August the first R500 000.00 payment is made to Rowmoor
10 Investments.

CHAIRPERSON: That's R600 000.00.

MR WHITE: Sorry Chair that's just a bad photocopy but the original one, it's R500 000.00 Chair.

CHAIRPERSON: It's R500 000.00?

MR WHITE: It's R500 000.00.

CHAIRPERSON: Oh okay this was written in the diary?

MR WHITE: No Chair this was not in the diary I just put it in amongst this...[intervenes].

CHAIRPERSON: Oh for convenience.

20 **MR WHITE**: So that you can see the dates the payments were made.

CHAIRPERSON: Okay.

MR WHITE: On the 16th of August 2007, Peggy Y in Cape Town, 17th of August Peggy Y in Cape Town...[intervenes].

ADV SUSAN WENTZEL: To be fair it says – I would read it as, Peggy Y in Cape Town to be confirmed, that's CONF.

MR WHITE: Correct Chair that would probably be correct interpretation.

CHAIRPERSON: Yes.

MR WHITE: Then on the 13th of August 2007 MEC Peggy Linde in Cape Town...[intervenes].

CHAIRPERSON: Did you say September, 3 September...[intervenes].

MR WHITE: 3 September 2007.

CHAIRPERSON: Okay.

MR WHITE: The 10 October 2007 Linde Y MEC Peggy at Steenberg.

10 Chair Steenberg is a hotel in Cape Town, we confirm they stayed at that hotel.

CHAIRPERSON: Okay.

MR WHITE: 8th of November 2007 MEC Peggy in Cape Town, some two weeks later...[intervenes].

CHAIRPERSON: I'm sorry did you do 14 – from 5 to 6 November 2007 accommodation at Steenberg Hotel?

MR WHITE: That was correct.

CHAIRPERSON: You covered that?

MR WHITE: I didn't read that line out, that was accommodation for Mr

20 L Mkhwanazi and Ms O Nkonyeni, then on the 8th...[intervenes].

CHAIRPERSON: This one says O, I take it, maybe it's a mistake or what?

MR WHITE: Chair that is what was in the diary but...[intervenes].

CHAIRPERSON: That is what was in the diary?

MR WHITE: Correct Chair.

CHAIRPERSON: Ja but the only Nkonyeni that's been referred to is the MEC?

MR WHITE: Correct Chair.

CHAIRPERSON: Mmmm okay.

MR WHITE: Then there's a further – I just inserted so that we can see the relevance of the dates of the payment, on the 23rd of November was the second payment of R500 000.00 to Rowmoor Investments and then Chair there's no other meetings in Cape Town until the following year on the 18th of February and that was actually a meeting in Durban and
10 then there's another meeting much later in 2008. So Chair what I was trying to show by that summary is to show that there was, almost monthly meetings between...[intervenes].

CHAIRPERSON: Between Dr Savoi and the MEC Nkonyeni and Mr Linde Mkhwanazi.

MR WHITE: Correct Chair.

CHAIRPERSON: Both before the award of the contract and after?

MR WHITE: And after...[intervenes].

CHAIRPERSON: And during negotiations?

MR WHITE: To the signing of the contract.

20 **CHAIRPERSON**: So with this – if this is true then it will be difficult to think that Ms Nkonyeni was not aware of the payment to Rowmoor at the time of sending the email that we were dealing with earlier on where she was lamenting the fact that the Intaka guys, Dr Savoi's guys didn't get what they wanted in regard to maintenance.

MR WHITE: Correct Chair.

CHAIRPERSON: Ja okay.

ADV SUSAN WENTZEL: Thank you and in the course of your investigations Mr White did you find in the records of the Department of Health minutes...[intervenes].

CHAIRPERSON: We are now going back to...[intervenes].

ADV SUSAN WENTZEL: No I'm dealing with this still Chair?

CHAIRPERSON: No I mean the Exhibit are we still dealing with the same?

ADV SUSAN WENTZEL: I'm still dealing with page 1268 yes Chair

10 **CHAIRPERSON**: Oh okay, I'd closed it, was it 1268?

ADV SUSAN WENTZEL: Yes you probably don't need the...[intervenes].

CHAIRPERSON: I don't need to have a look at it, okay.

ADV SUSAN WENTZEL: Did you, in the course of your investigations find minutes in the records of the Department of Health that referred to any of these meetings?

MR WHITE: Chair not the ones that Mr Mkhwanazi, according to the diary, was also present at, no.

20 **CHAIRPERSON**: Did you ever have access to the MEC's diary to see whether those meetings were also reflected?

MR WHITE: Chair I can't 100% recall at this point.

CHAIRPERSON: Yes okay, okay.

ADV SUSAN WENTZEL: Can you recall whether or who paid for the accommodation at the Steenberg Hotel for the 5th and 6th of November 2007 for Ms Nkonyeni and her boyfriend Mr Linde Mkhwanazi?

MR WHITE: Chair to my recollection that was paid for by Intaka.

CHAIRPERSON: I'm sorry, what is that?

MR WHITE: My recollection it was paid for by Intaka.

CHAIRPERSON: Was that the travelling.

MR WHITE: The accommodation Chair.

ADV SUSAN WENTZEL: The accommodation, the two days at the Steenberg Hotel in Cape Town.

CHAIRPERSON: Oh okay was it paid for by Intaka?

MR WHITE: To my recollection, yes Chair.

10 **CHAIRPERSON**: Yes okay.

ADV SUSAN WENTZEL: And then – sorry Chair I am referring back to something that follows page 1269...[intervenes].

CHAIRPERSON: Yes we are done – we are not done with that email you'll still go back to is isn't it?

ADV SUSAN WENTZEL: Yes I'm going to go back to the email but I just want to point out that after – in your report after referring to these meetings we go back to where I started your testimony and that was – well not your testimony but your testimony on this issue and that was with the affidavit by Dr Savoi as to his explanation for these payments
20 and just to recap he said that it was for him marketing not this contract but the purchase of the water purification plants. You make the point on page 1269 that the marketing and sale took place on and prior to 6 October 2006. Rowmoor Investments was only registered on the 26th of March 2007 and Mkhwanazi was appointed as a Director on the 4th of May 2007, the same day when he had a meeting with Mazars who are

also the auditors of the Intaka Group of companies. Can you just comment and explain and is that correct?

MR WHITE: Chair that is correct, this – the company that was formed from what I could see was formed by Mazars and they registered Mr Mkhwanazi as the Director of the entity and they were the same entity that were the auditors of Intaka at the time. So it appears that the setting up of this company had been done at the request of Intaka and they'd used their same auditors to form the company for Mr Mkhwanazi.

ADV SUSAN WENTZEL: And then just finally you say, it's your
10 conclusion that you reach on page...[intervenes.

CHAIRPERSON: I'm sorry Ms Wentzel so this wasn't – what happened here doesn't seem to be what happened with Mr Panday's entities or some of them where they were taken out of the shelf or the same might have happened here, we don't know?

MR WHITE: Chair I think the same happened because the company was registered on the 26th of March but Mr Mkhwanazi was only made a Director on the 4th of May.

CHAIRPERSON: Yes but same year 2007?

MR WHITE: Same year Chair but some – more than a month later. If
20 he was – if it was registered and he was the first Director, I would have expected it to be the same date.

CHAIRPERSON: Ja okay.

ADV SUSAN WENTZEL: And then finally you say that he was appointed a Director on the 4th of May which is the same day when he had a meeting with Mazars who are also the auditors of the Intaka

Group of companies but then you say this,

“It appears from the electronic diary of Savoi and from the information provided by Rennies Travel that Mkhwanazi together with Nkonyeni also attended a meeting with Dr Savoi in Cape Town on the 4th of May 2007”,

Is that correct?

MR WHITE: That’s correct Chair. So Chair that was referred to at line 4 in that table above that I’d previously – one of the lines I’d read the date out of.

10 **ADV SUSAN WENTZEL:** Thank you and now if we can go back to Bundle D...[intervenes].

CHAIRPERSON: Is that the email, are you going back to the email?

ADV SUSAN WENTZEL: I’m not going back to the email I’m going back to another document to tell – there’s more in the story.

CHAIRPERSON: Well I want us to finalise the email let’s not leave it for – let’s go back to the email at page 673 of RR4B.

ADV SUSAN WENTZEL: Are you 673?

CHAIRPERSON: Ja.

ADV SUSAN WENTZEL: The SMS?

20 **CHAIRPERSON:** The SMS – oh I thought it was the email ja, SMS.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Is that what you wanted to go to?

ADV SUSAN WENTZEL: I was going to go to a further document later but let’s go back to the email.

CHAIRPERSON: Let’s finish this ja. Mr White that SMS at page 673

from the MEC to Dr Savoi is your understanding that when she says, that is the MEC, perhaps you need to cancel the donation since you are losing on maintenance, well I think it's clear it looks like she wants to – she's thinking of how maybe this could be made up, how Intaka could be compensated for losing on maintenance.

MR WHITE: I agree Chair

CHAIRPERSON: But you say you don't know what this reference to the donation was about, what that was about and you never found anything that threw light on what it was about?

10 **MR WHITE**: Correct Chair.

CHAIRPERSON: We know that yesterday you said that Dr Savoi said that the R1million and something that was paid to Kuboni & Shezi Attorneys was a donation. If you look at – I don't know have you thought about the dates when that payment was made – when this was made this SMS was made is there any possibility that it could be referring to that donation?

MR WHITE: So Char that other donation was made on the 12th of March 2007 so it's some nine months prior to...[intervenes].

CHAIRPERSON: So it had already been made so it could not be
20 cancelled?

MR WHITE: I don't believe it's referring to the same thing Chair.

CHAIRPERSON: Ja because the cancellation of a donation must be referring – if it is a reference to a donation to a donation that had been discussed and it was contemplated was still to be made.

MR WHITE: That was my interpretation Chair.

CHAIRPERSON: Ja to say I said I would give a donation but maybe you should change your mind about that, that's what...[intervenes].

MR WHITE: That was my interpretation Chair.

CHAIRPERSON: So as you understand the – this SMS it could not – with your reference to the donation could not be a reference to that R1million donation that we talked about yesterday – you talked about yesterday? It could also not have referred to the two payments that were made to Rowmoor because those were not donations according to Dr Savoi, that was payment for services rendered by Rowmoor as far as
10 marketing services – as far as he was concerned.

MR WHITE: That's correct Chair.

CHAIRPERSON: So it remains a mystery what the reference to donations is a reference to other than that there may have been some prior discussion about a donation and that's what she might be referring to.

MR WHITE: I agree Chair.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: And Chair one must bear in mind with respect the affidavit of Dr Savoi where he readily admits that he paid in the
20 contract with the Department of Traditional Affairs and Local Government a donation of R1million to the ANC as a *quid pro quo* for getting that contract and when one remembers that – because he says I was told, what I have to do is get the donation and after the contract was concluded he writes to Mr Tshabalala and says, now I need to pay the donation and he says he then pays the donation and he's told to

pay it into Kuboni & Shezi Attorney's Trust account which then happens. Now that's on the version of Dr Savoi. When you read that, here, although there isn't evidence, in my view it is implicit that a similar donation had been requested in this instance but Ms Nkonyeni is saying, look I know you haven't done as well as you thought you would you don't have to pay the donation.

CHAIRPERSON: Well there may be parts of what's in the Exhibit that were not referred to yesterday, I don't remember hearing or reading something to the effect that Dr Savoi said the donation was a *quid pro*
10 *quo* for him getting the contract, I don't remember that but you have read more in the bundle than what I have read, maybe you are telling me what you read but which wasn't covered yesterday.

ADV SUSAN WENTZEL: Yes Chair it was covered yesterday but perhaps after...[intervenes].

CHAIRPERSON: We can go back to it at some stage but I do seem to have seen something in Ms – in Dr Savoi's affidavit to the effect that something like, I was made to understand this is how business is done or something like that.

ADV SUSAN WENTZEL: Yes exactly.

20 **CHAIRPERSON**: But I don't know – I can't remember whether it was in relation to that or it was something else.

ADV SUSAN WENTZEL: Yes it was in relation to that.

CHAIRPERSON: Yes, okay alright. Well the other part you mentioned, namely whether this was – this may have been a similar donation that's just speculation.

ADV SUSAN WENTZEL: It's speculation – yes it's speculation.

CHAIRPERSON: Ja okay.

ADV SUSAN WENTZEL: Now...[intervenes].

CHAIRPERSON: We have gone past 1 o'clock.

ADV SUSAN WENTZEL: Yes perhaps it's a convenient time.

CHAIRPERSON: How far are we from finishing with Mr White?

ADV SUSAN WENTZEL: I think about 45 minutes.

CHAIRPERSON: Yes okay, we'll take the lunch adjournment now, it's five past one, we'll resume at five past two, we adjourn.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Are you ready?

ADV SUSAN WENTZEL: Yes thank you Chair.

CHAIRPERSON: Okay let us continue.

ADV SUSAN WENTZEL: Mr White.

CHAIRPERSON: Just to summarise at least part of the evidence in relation to the Department of Health and these two contracts.

In regard to the – what is it called Wataka?

MR WHITE: Correct Chair.

20 **CHAIRPERSON:** Wataka I am sure I am getting it wrong. In regard to that one there was no tender at all – competitive tender at all. Is that right?

MR WHITE: That is correct Chair that is the one where there was three quotations.

CHAIRPERSON: There were just three quotations that were actually –

the entities from which they were obtained were provided by somebody who would – was supposed to compete with them?

MR WHITE: Correct Chair.

CHAIRPERSON: That is Intaka.

MR WHITE: Correct Chair.

CHAIRPERSON: They supply to the Head of Department Doctor Nyembezi and then she passed them on to Supply Chain Management.

MR WHITE: Correct Chair.

CHAIRPERSON: And Supply Chain Management said they obtained
10 them. And

1. There was no need for this purchase at all in regard to the two hospitals because the water had no problem?

MR WHITE: Correct Chair.

CHAIRPERSON: So it is a questionable transaction to say the least because there is no – there seems to be no need for it. There is a team or a person – a health professional within the department who wrote a report after inspecting the water and said the water is not contaminated. But that was – that is disregarded and a memorandum is or email is written to say, there is an urgent need for – for this plant in
20 the two hospitals and ultimately the purchase happens and then with regard to the Oxintaka then an impression is created or rather a tender process seems to be followed but the entity that had been given that had benefitted from the first project in regard to the two hospitals is given the right opportunity to specify or amend specifications to suit their bid and ultimately they get awarded this. But at some stage there

is a payment – there are two payments of about – is it 600 – R500 each
– R500 000.00 each?

MR WHITE: Correct Chair.

CHAIRPERSON: To the romantic partner of the MEC of the same
department and in terms of your investigation you find out that Doctor
Savoi's electronic diary reflects that he had a number of interactions or
meetings or contacts with them or they were a number of meetings or
contacts that were planned in terms of the diary. And you say you
found that at least on two occasions when the MEC of the department
10 and her romantic partner stay at a hotel in Cape Town that is paid for
by Intaka, is that correct?

MR WHITE: Just one occasion Chair.

CHAIRPERSON: Just one occasion that is paid for by Intaka. The
others did you check or you did not check?

MR WHITE: We did not check because the diaries did not record

CHAIRPERSON: Yes.

MR WHITE: That it was an overnight stay.

CHAIRPERSON: Okay. Okay. So – so then there is this sms from the
MEC to Doctor Savoi of Intaka a few hours after the signing of the
20 contract in regard to the Oxy plant – Oxintaka, Oxintaka and it seems
to indicate that she is more concerned about the fact that Intaka did not
get its way in terms of the maintenance of the plant. And she says
something like we will have to more careful in the future and then she
says, maybe you should cancel the donation. So that is a summary of
part of what we dealt with before lunch.

MR WHITE: Correct Chair.

CHAIRPERSON: Ja. Okay.

ADV SUSAN WENTZEL: Thank you Chair. Now Mr White returning to the body of your affidavit Annexure RR4 and page 43.

CHAIRPERSON: Did you say page 43?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Pursuant to your investigations is it correct that you prepared nine separate reports?

10 **MR WHITE:** That is correct Chair.

ADV SUSAN WENTZEL: And are those the reports that are listed in paragraph 56 and Annex mark – annexed to your affidavit marked Annexure TSW7 all the way through to TSW16?

MR WHITE: Correct Chair. There was nine reports and one affidavit prepared.

ADV SUSAN WENTZEL: Now some of these reports Chair deal with corruption investigated with regard to procurement irregularities with the same contractor in the Northern – in the Northern Cape.

MR WHITE: Correct Chair.

20 **ADV SUSAN WENTZEL:** Chair just so that you understand I have not dealt with any of that procurement irregularity because it was felt it falls beyond the Terms of Reference because there is no evidence of political interference or interference in the National Prosecuting Authority with prosecutions pursuant to those investigations. So...

CHAIRPERSON: Was it not corruption?

ADV SUSAN WENTZEL: Yes it was – it was corruption but in terms of the brief that I have here and the evidence I am now presenting on the behalf of Law – the State Capture of Law Enforcement Agencies I have not dealt with that in detail. I just would like the witness just to give you a broad outline of what those investigations entailed. But I do not propose dealing with them in the same detail as I have.

CHAIRPERSON: Well depending you know it is not as if we only deal with corruption, fraud that involves politicians and corruption and fraud that does not involve corruptions we do not deal with.

10 **ADV SUSAN WENTZEL:** Yes.

CHAIRPERSON: So...

ADV SUSAN WENTZEL: No, no that was not the point. What I was saying is that this – this evidence is focussed as was with regard to the Panday matter and with regard to the Intaka matter with the subsequent interference by the NPA.

CHAIRPERSON: The NPA oh – you – in regard to the other one you say there is complaint that the NPA did not do.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Their job.

20 **ADV SUSAN WENTZEL:** Yes.

CHAIRPERSON: Oh okay alright.

ADV SUSAN WENTZEL: It might be something that needs to be investigated later but not at this stage with this witness.

CHAIRPERSON: Ja.

ADV SUSAN WENTZEL: In this...

CHAIRPERSON: No that is fine let me hear about and have an idea.

ADV SUSAN WENTZEL: Thank you.

CHAIRPERSON: And let us take it from there.

MR WHITE: So Chair the – the processes followed in the Northern Cape by the Department of Health were very similar to what happened in KZN.

CHAIRPERSON: Hm.

MR WHITE: Only difference was the officials in the Northern Cape were different and instead of the MEC being involved Mr John Block
10 was the contact of Intaka and the person who directed what was to happen.

CHAIRPERSON: Hm.

MR WHITE: And he was a person who received benefits directly from Intaka.

CHAIRPERSON: Hm.

MR WHITE: So that was the significant difference.

CHAIRPERSON: hm.

MR WHITE: The other – so just – it was again the Water Purification Plants and the Oxintaka plants purchased by the Department of Health.
20 Chair again with regards to the Water Purification Plants there was no need.

CHAIRPERSON: Hm.

MR WHITE: They created a need.

CHAIRPERSON: Hm.

MR WHITE: They purchased 10 Water Purification Plants.

CHAIRPERSON: Hm.

MR WHITE: For installation at 10 different hospitals.

CHAIRPERSON: Hm.

MR WHITE: Throughout the Northern Cape.

CHAIRPERSON: Hm.

MR WHITE: Chair I went with the investigating officers in that matter to each of the 10 hospitals in the Northern Cape when we were doing the investigation and not one of the 10 plants was in operation. So again there was no need.

10 **CHAIRPERSON:** Hm.

MR WHITE: So Chair what they had done was they had installed these plants and had just diverted the municipal water supply through the plant in effectively a U and back in – back to the hospital. When the plant ...

CHAIRPERSON: So as if they were providing water that would have gone there anyway.

MR WHITE: Chair it went through this plant in theory to be purified. When the hospital either could not afford the chemicals or for some maintenance reason the plant broke down they just turned the taps that
20 diverted the water to these plants back to the original direction and they just bypassed the plant straight to the hospital with no detrimental effect to any of the patients or the people in the hospital. And Chair just to show ridiculous it was in one of the instances they actually installed one of these plants at a hospital that was busy relocating to a different premises. They installed it while the relocation was taking

place and by the time the installation was complete the hospital had relocated to a new building. So it was never even switched on. So that is the extent that there was never a need. So that is regarding the Water Purification Plants. There was also issues around...

CHAIRPERSON: I am sorry what were the prices there compared to the prices paid by the – by KZN departments?

MR WHITE: Chair I would have to check but they were – they were closer to what the Department of Health paid than to what local government paid.

10 **CHAIRPERSON:** Okay.

MR WHITE: So they were again significant.

CHAIRPERSON: Okay. Okay.

MR WHITE: Chair what – what then also happened was they used these cover quotes. So those two gentlemen that pleaded guilty in terms of their plea in KZN also pleaded guilty in the Northern Cape courts. But Chair those – in some instances those quotes there was examples again of emails etcetera printed out, maintained where Mr Block was liaising with Doctor Savoi saying he needed three quotes. The person In Supply Chain was being difficult. Doctor Savoi replied, I
20 will arrange the three quotes. Intaka then in their own records have got copies of the three quotes as well as copy of the courier waybill that couriered those quotes to Doctor – sorry to Mr Block's house. The following week those three quotes exactly the same ones appeared at the Northern Cape Tender Board and Intaka was appointed. So it just shows the level of interference in the procurement process and what

was happening. Chair there was also 16 dialysis machines purchased. They were distributed across various hospitals in the Northern Cape. A number of them went to hospitals that did not have that unit in it and as a result there was no-one to operate them. And Chair ...

ADV SUSAN WENTZEL: You mean they did not have a kidney unit?

MR WHITE: Correct Chair. Apparently the idea was they were going to establish one but the required nurses and medical practitioners had not been appointed. Some eighteen months later when we were doing this investigation I took photographs of seven of those sixteen machines
10 still in their original packaging standing in the corridors of these different clinics. They were not – they just were not operational. So again purchased at inflated prices. Again there was cover quotes not using the same people as the Watakas but other entities and as a result creating a need where there was a desperate need for this kind of equipment but at the hospitals they dispersed them to. Those were then all subsequently transferred to the Kimberly Hospital. But years later only as a result of when the investigations were taking place. So Chair that process.

CHAIRPERSON: That is just the summary.

20 **MR WHITE:** At a high level Chair but because of the legal process that – and challenges that were happening in KZN there was a decision that the cases in the Northern Cape would be prosecuted after the cases in KZN. So those cases are waiting for progress in KZN and as a result nothing from a court perspective has – has happened on those cases yet either. Although people were arrested, they are out on bail, charge

sheets were drawn up, it is now just waiting for the legal process in KZN to proceed.

CHAIRPERSON: So Mr Block's criminal trial was not connected with the same thing?

MR WHITE: No Chair the case that Mr Block was convicted on related to the procurement of renting of facilities for different departments in the Northern Cape and his involvement in that.

CHAIRPERSON: Ja. Okay so – so – but you have got that report here or relating to Northern Cape or not really?

10 **MR WHITE:** Chair they all attached to my affidavit.

CHAIRPERSON: Ja.

MR WHITE: So this morning we just referred to two – the two that related to KZN.

CHAIRPERSON: Ja.

MR WHITE: All the balance of those are also attached.

CHAIRPERSON: Ja. Well I – I want us to have that. But what you have told me is already under oath in your affidavit in regard to that matter?

MR WHITE: Correct Chair.

20 **CHAIRPERSON:** And it is in the reports that you are talking about and you confirm that you stand what is in the reports and in the affidavit?

MR WHITE: Correct Chair;

CHAIRPERSON: Okay alright. No I think what we need to do is you do need to study the reports relating to Northern Cape and the affidavit and they need to be identified. I would like to have a look at them as

well. It may or may not be that we might ask you to come back and deal with them in more detail but there might not be a need. It may be that the way forward might be to give the relevant people implicated persons, people implicated in your affidavit and in your report an opportunity to respond to it and we take it from there. Because the – even a lot of that you are testifying about is really in your reports today and here in the past few days. So – so if we would like you to come back we certainly will ask you. But I know that we are not done. I think Ms Wentzel has not – is not done yet with you.

10 **ADV SUSAN WENTZEL**: Yes.

MR WHITE: But thank you for that picture that you gave me about what happened in the Northern Cape.

MR WHITE: Thank you Chair.

ADV SUSAN WENTZEL: Thank you Chair. So Mr White it is...

CHAIRPERSON: I just think – I am sorry – I just think that it would not be right to tell the story involving Intaka in KZN without saying that appears that they did the same thing in North – in the Northern Cape. Even if in terms of the Northern Cape there might not have been any challenges in the prosecution but for a complete picture that may be
20 important. Because even with a trial in regard to KZN the criminal trial it may be important for – there may be references to what Intaka is alleged to have done in the Northern Cape.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: So there is some...

ADV SUSAN WENTZEL: Interconnection.

CHAIRPERSON: Important connection ja.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Yes Chair and I will spend some time with Mr White and investigate those more fully as well.

CHAIRPERSON: Yes. Okay alright.

ADV SUSAN WENTZEL: Mr White it is correct that a number of persons were implicated in your reports were arrested on preliminary charge sheets and a final indictment was issued and filed in the
10 KwaZulu Natal high court and it is annexed your affidavit as Annexure TSW17 and Chair that is in RR1d for dog and it appears at page 1867.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: How many accused were there?

MR WHITE: So Chair there were 23 accused of which 18 were natural persons.

ADV SUSAN WENTZEL: And who were the natural persons?

MR WHITE: Chair if I could just refer to the document at 1867? The accused are listed as Gaston Savoi, Sipho Derrick Tshabalala, Busisiwe Muriel Nyembezi, Peggy Yliswa Nkonyeni, Victor Ntshangase.

20 **CHAIRPERSON:** So there – I think that is where that Y comes from. I did not understand where the Y came from in Doctor Savoi's diary where it says, Peggy Y. So it must be coming from Yliswa.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay alright.

MR WHITE: Victor Ntshangase, Alson Sipho Ribeane Buthelezi, Ronald

Winston Green Thompson, Yliswa Lulama Mbele, Fernando Predari, Annsano Romane, Donald Keith Miller, Sindile Kuboni, Michael Mabuyakhulu, Beatrice Nthombenhle Tshabalala, Lindelihle Mhkanazi, Nozibele Priscilla Phindela, Jabujlani Langahle Thusa, Ian – Chair I definitely need some help with the gentleman's second name,

CHAIRPERSON: Ian Buhlemake, Ian Buhlemake Blose.

MR WHITE: And it is the entities linked to Intaka. Intaka Holdings PTY Limited. There is Rowmoor Investments 738 PTY Limited. Mr Mkhwanazi's entity. Skyross Medical Supplies PTY Limited entity
10 linked to Mr Tshabalala. Kuboni and Shezi Attorneys and Blue Serenity Investments PTY Limited an entity linked to Beatrice Tshabalala the wife of Mr Tshabalala. So Chair that – that indictment has some 54 charges. It related to racketeering, fraud, corruption, money laundering and PFMA charges. Chair that indictment took a long time to be prepared. There were lots of consultations and when I say lots I just cannot even remember how many meetings there were. This investigation the prosecutors which changed a number of times were involved right from the very beginning. So it was a joint effort. There was the police, PWC assisting the police, representatives from National
20 Treasury as well representatives from the NPA. So we worked together and ultimately presented the evidence and the prosecution team drew up the indictment. While – so this was the – the end result effectively but Chair that was only finalised after the - for want of a better word the racketeering certificate had been issued by the NDPP. Because this was included racketeering charges and you could only have

racketeering charges if the NDPP had authorised it. And that certificate is at TSW18 on page 1945 in the same file. So directly after that. And that certificate is the one that refers to exactly the same charges that is in that indictment and that was signed by the NDPP on the 31 July 2011.

ADV SUSAN WENTZEL: Then Mr White Annexure TSW20 is the plea deal in terms of which the two entities Mbusa and Westpro produced cover quotes to assist Savoi which was referred to by you earlier in your evidence. Is that correct?

10 **MR WHITE:** So that is correct Chair. So after this indictment had been finalised two of – those two entities that did the cover quotes their representatives, legal representatives negotiated a plea bargain with the state.

ADV SUSAN WENTZEL: Then Mr White if we can go to paragraph 68 on page 49 of your affidavit? You say that after extensive work between your, the investigators and prosecutors at the NPA charges were drawn up. A racketeering certificate issued. What happened on the 19 March 2012?

MR WHITE: So Chair on the 19 March 2012 which is some eight
20 months after the racketeering certificate had been issued I received an email from Advocate Dunywa he was the lead prosecutor in the matter for KZN and he invited me to attend a meeting on the 2 March 2012 at the NPA offices in Durban at ten o'clock. I attended that meeting together...

CHAIRPERSON: I am sorry. I just want to make sure I understand

this. When you say he was the lead prosecutor did that relate to the two contracts relating to the Department of Health only or did it also relate to the matter involving Intaka that we dealt with yesterday relating to the Department of Traditional Affairs and Local Government and the donation? Or was it all of these put together?

MR WHITE: It related to both Chair.

CHAIRPERSON: To – to both yes the Department of Local Government, Traditional Affairs as well as Department of Health?

MR WHITE: That is correct Chair.

10 **CHAIRPERSON:** Okay alright.

ADV SUSAN WENTZEL: Now

MR WHITE: So Chair if – just – sorry. Just to go back. If one looked at the indictment and the racketeering certificate it included both. It was going to be one trial Chair.

CHAIRPERSON: Yes okay. Okay.

MR WHITE: So Chair just maybe the only split was going to be made between KZN and the Northern Cape. They were going to be tried separately

CHAIRPERSON: Yes.

20 **MR WHITE:** And the reason there was lots of discussion about centralising everything.

CHAIRPERSON: Ja.

MR WHITE: But then it was going to be in excess of 50 accused.

CHAIRPERSON: Yes.

MR WHITE: And it felt it was going to become unmanageable.

CHAIRPERSON: Ja okay.

ADV SUSAN WENTZEL: Okay. Now you referred to the email that you received to attend the meeting. That is Annexure TSW22 and Chair it appears in bundle Exhibit RR4 at page 1980.

CHAIRPERSON: Hang on has he completed paragraph 68? He got an email inviting him to a meeting on 23 March 2012 with the NPA at ten am in Durban.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Hm.

10 **ADV SUSAN WENTZEL:** I am going to deal with it now with reference to the actual email.

CHAIRPERSON: Okay yes.

ADV SUSAN WENTZEL: The email Chair is found in bundle D for dog. It is at page 1980.

CHAIRPERSON: Do I need to go to it?

ADV SUSAN WENTZEL: Chair you can listen to the evidence it is not necessary.

CHAIRPERSON: ja.

20 **ADV SUSAN WENTZEL:** If you could just perhaps read for the Chair what...

CHAIRPERSON: Well - well if it needs to be read. It probably needs me to see it.

ADV SUSAN WENTZEL: Okay.

CHAIRPERSON: I thought ...

ADV SUSAN WENTZEL: Okay.

CHAIRPERSON: It might just be a one liner.

ADV SUSAN WENTZEL: No. I think it is important what - what he is ...

CHAIRPERSON: What is the page again?

ADV SUSAN WENTZEL: It is page 1-9-8-0 Chair.

CHAIRPERSON: 1-9-8-0. Yes.

ADV SUSAN WENTZEL: If you could just deal with this email please.

MR WHITE: So Chair that is a - a hard copy of the email that I received. You can see at the top of the page it is addressed to Du Plooy P J, Lieutenant-Colonel and to Trevor White - being myself
10 and Clarence Jones who was also involved in investigations, but not on
- not in this specific matter and it is Cc'd ...

CHAIRPERSON: Was - was he a member of your team?

MR WHITE: He was not Chair.

CHAIRPERSON: Oh. Okay.

MR WHITE: It is then Cc'd to Cyril S Mlotshwa who was who was the Acting DPP at the time and it is an invitation to an NPA - an investigating team meeting on 23 March 2012 at 10 o' clock and it was in the Southern Life Building and just the part that is relevant to myself Chair. It says:

20 "This serves to inform you that you are invited to
the above mentioned meeting to be held on Friday
23 March which will be attended by the National
Head of SCCU and the National Head of the
Organised Crime Unit of the NPA."
Chair, I found out afterwards when I attended the meeting

that the National Head of the SCCU is - was Advocate Lawrence Mrwebi.

CHAIRPERSON: Yes. Yes.

MR WHITE: Or the National Head of ...

CHAIRPERSON: Mrwebi.

MR WHITE: Mrwebi.

CHAIRPERSON: Mrwebi. *Ja*.

MR WHITE: The National Head of the Organised Crime Unit was Advocate Anthony Mosing.

10 **ADV SUSAN WENTZEL:** What were you asked to bring to the meeting?

MR WHITE: So Chair, the first point relates to Lieutenant Colonel Du Plooy and then the second point which says:

“A forensic investigator Mr White is requested to prepare the following: a, Busisiwe Nyembezi’s companies’ flow of funds; b, Rowmoor flow - funds flow analysis and c, Intaka flow of funds.”

Chair that ...

CHAIRPERSON: Where is that part of what you should bring? Oh.

MR WHITE: It is in the middle almost opposite ...

20 **CHAIRPERSON:** Is requested to prepare the following. Oh, okay. Now I see it. *Ja*.

ADV SUSAN WENTZEL: And was Colonel Du Plooy the investigating officer?

MR WHITE: That is correct Chair. So Chair, what I was requested to - to bring it actually made no sense to me what I was supposed to do. I

did not know the purpose of the meeting. There was no such thing as a flow of funds for Dr Nyembezi's companies. I did not know what was meant.

CHAIRPERSON: Hm.

MR WHITE: The Rowmoor flow of funds was just the two payments of R500 000,00 each. So that - and then the Intaka flow of funds I was not quite sure what they meant, but that diagram I have referred to at TSW19 effectively showed at a high level. So I had that, but it was not - apart from that I did not know what else was required.

10 **ADV SUSAN WENTZEL:** Did you then attend this meeting?

MR WHITE: I did Chair.

ADV SUSAN WENTZEL: And what happened?

MR WHITE: And I refer to it - page 50 of my affidavit in RR4 Chair at paragraph 70 going onwards. Chair when - I recall the meeting very clearly, because it was a very unusual meeting. It was a very hot day in March in Durban and the only reason I recall that is that there was problems with the air conditioning in the building and as a result they could not find a room where there was air conditioning or it was cool enough and as a result the meeting started 20 minutes late.

20 I very clearly recall that. When the meeting started I refer to it at paragraph 71. Advocate Dunywa - the lead prosecutor in the matter. Advocate Vimbani - the Head of the SCCU in Durban and Advocate Mthembu who was Advocate Dunywa's junior in the matter were present. As well as Advocates Mrwebi and Mosing who I was introduced to at the meeting and Lieutenant-Colonel Du Plooy and

Colonel Jones were also present.

Chair, once that meeting started it became very clear to me that Advocate Dunywa was almost a spectator to the meeting. Even although he was ...

CHAIRPERSON: Was almost?

MR WHITE: A spectator ...

CHAIRPERSON: Yes.

MR WHITE: In the meeting.

CHAIRPERSON: Hm.

10 **MR WHITE**: Even though he was the lead prosecutor.

CHAIRPERSON: Yes.

MR WHITE: He was just effective ...

CHAIRPERSON: Was not active?

MR WHITE: Active. He was just sitting in the meeting ...

CHAIRPERSON: Hm.

MR WHITE: And Advocates Mrwebi and Mosing ...

CHAIRPERSON: Hm.

MR WHITE: Were running the meeting.

CHAIRPERSON: Hm.

20 **MR WHITE**: Chair, when the meeting started Advocate Mrwebi informed us that a decision had been made to withdraw the charges against Mr Mabuyakhulu and they just wanted to know what evidence there was against Ms Nkonyeni as they were considering withdrawing the charges against her as well.

CHAIRPERSON: But was that not a - a strange question, because if

they had already decided to withdraw the charges against Mr Mabuyakhulu. One would have expected that they would have read the whole - your report to say the least and - and all relevant affidavits to get a full picture of the whole case.

MR WHITE: Chair that was what I thought.

CHAIRPERSON: Hm.

MR WHITE: So I - this was a first for me in all the years I had been investigating matters of this nature and dealing with police and prosecutors. I had never come across this situation where on one of
10 the accused the decision is already made and now they asking what evidence is there.

I would have thought they would either be asking for a very detailed briefing or they would have already looked at all the evidence and would have specific queries about what was said. Chair, taking in - into account ...

CHAIRPERSON: So with regard to Mr Mabuyakhulu effectively they were saying we are not here to consult you about whether that decision should - we should withdraw all the - the charges against Mr Mabuyakhulu. They are saying that decision has been taken. The
20 only person we - we want to engage you on is Ms Nkonyeni. Tell us what evidence there is against her.

MR WHITE: Correct Chair.

CHAIRPERSON: Okay.

MR WHITE: So Chair, this is after numerous people in the NPA have come to the conclusion there is cases against these people. There has

been lots of presentations to senior members of the NPA at the VGM Building in Pretoria and a racketeering certificate has been issued. The matter is before the High Court.

Judge McLaren had been allocated as the - as a Retired Judge to hear the matter, because it was going to - they thought it was going to take quite some time. So that was where it was at. We asked this question. Myself and - and Lieutenant-Colonel Du Plooy and they said regardless of what has happened to date there is no evidence against Mabuyakhulu in their view and we must not waste their time
10 with this and we must just deal with Nkonyeni. So Chair ...

CHAIRPERSON: I am sorry. Did - did anybody - did you or Lieutenant Colonel Du Plooy or anybody seek to engage them on their decision on Mr Mabuyakhulu? In other words how did they come to say what you say they said? Was it because somebody said hang on. How can you make that decision about Mr Mabuyakhulu, because of - because there is evidence or anything like that?

MR WHITE: Chair we did ...

CHAIRPERSON: Hm.

MR WHITE: And that is where they said we must not waste their time.
20 That decision is already made and we have only got an hour for this meeting and you have already wasted 20 minutes which was not - we did not waste it. They could not find a room and we only had till 11 o' clock to finalise the discussions on Nkonyeni.

CHAIRPERSON: And how - before you proceed with the meeting. How did you receive this news that one, the decision - a decision had

already been taken to withdraw the decision to - to withdraw charges against Mabuyakhulu and two that the people were telling you about that decision to withdraw the charges did not seem to have time to hear from you and yet you are - you had spent a lot of time obviously at state expense to do an extensive investigation on these matters.

MR WHITE: Chair, I got the distinct impression that they were just going through a formality of - of being able to say we consulted with the investigators. They actually did not care what we had to say, because one, what I then said to them was if we are going to do this properly I need three days of time.

CHAIRPERSON: Hm.

MR WHITE: I need to bring all the reports. All the annexures and I need three days and I will work through it with you systematically. Almost as if we are going to court to explain the evidence and show them the documents etcetera and I said I need three days and they said we do not want this to be a long drawn out process.

We need to finalise our decision today and you have got to 11 o' clock. Basically get on with it.

CHAIRPERSON: Coincidentally you have taken about three days to - to take me through the ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: The - the matter.

MR WHITE: So Chair, I - I did do Mr Panday. So that would have been separate to this. So that may have been there, but Chair if - if a decision is going to be made to withdraw against people where they are

already before court. There is an indictment for racketeering which is not issued very easily by the NPA and not very often.

CHAIRPERSON: Hm.

MR WHITE: You are not going to make a decision in less than an hour ...

CHAIRPERSON: Hm.

MR WHITE: To withdraw. Chair, it just felt like ...

CHAIRPERSON: Hm.

10 **MR WHITE:** They had already made up their mind and this was a formality ...

CHAIRPERSON: Hm.

MR WHITE: And Chair, it felt like they actually did not care what the evidence was.

CHAIRPERSON: Hm. They wanted to finish and leave.

MR WHITE: Correct Chair.

CHAIRPERSON: And you say Advocate Dunywa was very quiet in the meeting?

MR WHITE: Chair, he - to my recollection he said almost nothing. So they ...

20 **CHAIRPERSON:** And was he one of the NPA prosecutors or people who may have previous said there is a case here?

MR WHITE: Chair, he was the person that was instrumental in drafting the indictment.

CHAIRPERSON: Hm.

MR WHITE: So he had been part of this case - I cannot remember for

how long, but it must have been almost a year.

CHAIRPERSON: Yes.

MR WHITE: So he drew up that indictment.

CHAIRPERSON: Yes.

MR WHITE: He did the presentations to his superiors in Pretoria.

CHAIRPERSON: Yes.

MR WHITE: He appeared in court when the people were arrested and ...

CHAIRPERSON: Yes.

10 **MR WHITE:** And he was going to prosecute the matter in the High Court.

CHAIRPERSON: Yes.

MR WHITE: So ...

CHAIRPERSON: So his - his view as far as you knew was quite clear. There was a case to - to prosecute?

MR WHITE: Correct Chair, but I got the impression that the prosecution team had been told to just ...

CHAIRPERSON: Hm.

MR WHITE: Be present, but not to be involved in the discussion ...

20 **CHAIRPERSON:** Hm.

MR WHITE: And Chair the - it - it goes further. When he ultimately withdraw the charges in court - Advocate Dunywa. He made a very specific point of saying I am withdrawing these - these charges on instruction.

CHAIRPERSON: Yes.

MR WHITE: He told me he did that on purpose, because it was not his view.

CHAIRPERSON: It was not his view. Yes.

MR WHITE: He only did it on instruction.

CHAIRPERSON: Yes.

MR WHITE: It sounded strange at the time, but that is what he said.

CHAIRPERSON: Well it does not strange to me. You know very often lawyers have a way of putting things when they want to disassociate themselves from it. So I - has Advocate Dunywa being interviewed? Is
10 he going to be called?

ADV SUSAN WENTZEL: Chair, I am not sure if he has been interviewed, but Advocate Mlotshwa is going to testify today. He is also involved.

CHAIRPERSON: No. Will - will you please get hold of Advocate Dunywa?

ADV SUSAN WENTZEL: Yes. I will.

CHAIRPERSON: He needs to be interviewed if he has not been interviewed. He could throw a lot of ...

ADV SUSAN WENTZEL: Yes.

20 **CHAIRPERSON:** Light.

ADV SUSAN WENTZEL: Yes. He could.

CHAIRPERSON: On how that decision came about ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: And - so that we - in due course we could have his evidence.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: I will arrange that.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Now when you were told that you had essentially 40 minutes to address which has taken a few days in this court. What did you and Lieutenant-Colonel Du Plooy say and do?

CHAIRPERSON: I am sorry. I miss - I missed that question. Is it after the meeting or is it still on the meeting?

10 **ADV SUSAN WENTZEL:** When they were told they had ...

CHAIRPERSON: Oh. Still in the meeting?

ADV SUSAN WENTZEL: Essentially they had 40 minutes.

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: To address them.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: What did you do? What did you and Colonel Du Plooy do?

20 **MR WHITE:** So Chair, Colonel Du Plooy was also particularly irritated. I mean this was a matter we had worked on for years and he made the rather abrupt statement to say to Advocate Mrwebi you send us your decisions in writing. The police are not part of this process. We are not going to be party to a whitewash to withdraw these charges by saying you consulted us.

You just tell us what your answer is, but Chair what we then did was in the time available as best we could we tried to explain at a

very high level. They were not interested in seeing documents. So you can see just from what we have done for the last day and a half on this you need to understand the detail and the process.

So they were not interested in the detail. They wanted to know at a high level. So Chair, we - we did what we - what we could.

ADV SUSAN WENTZEL: What happened when the hour had elapsed?

CHAIRPERSON: I am sorry. This was now in regard to Ms Nkonyeni, because they said about Ms - Mr Mabuyakhulu you must not waste their time. The decision has been made.

10 **MR WHITE:** Correct Chair.

CHAIRPERSON: Yes. Okay. Continue.

ADV SUSAN WENTZEL: What happened when the hour had elapsed?

MR WHITE: Chair, they said thank you for attending the meeting and they left.

CHAIRPERSON: But tell me more about what you said to them if you are able to.

MR WHITE: Chair ...

CHAIRPERSON: You said you did the best you could do within the time available. Do you remember what - what you said or is it ...?

20 **MR WHITE:** Chair to my - my ... (intervenes).

CHAIRPERSON: What points you made?

MR WHITE: Chair, I - I did not make notes. It is some eight years ago or so, but to the best of my recollection. We had a high level try to explain that what I explained just before - before - this morning. Was that the link of the - of the two payments of R500 000,00 we believed

as an investigating team were linked to Ms Nkonyeni via Mr Mkhwanazi.

That there was no evidence that those payments related to the Watakas, but in fact were paid during the period that she was influencing the signing of the contract and putting pressure on - on officials in the department to sign the contract with Intaka for Oxintakas and then we also referred to that - that SMS that she sent to Dr Savoi which I have referred to just before, because that was a crucial reference just showing her involvement in the process and - and where her loyalties lay, but Chair that was - you know they - they did not
10 really - they were not really interested in seeing how it all fitted together.

CHAIRPERSON: And what was their response after you had told them what you could tell them within that time?

MR WHITE: They said they would make their decision. They did not - they did not tell us what their decision was.

CHAIRPERSON: Ja. They said they would make it. So it is like they would make it later.

MR WHITE: That was my impression Chair.

CHAIRPERSON: That - that was your impression and then they closed
20 the meeting?

MR WHITE: Correct Chair.

CHAIRPERSON: Yes. Okay.

ADV SUSAN WENTZEL: So they in fact did not give you any more time beyond that hour?

MR WHITE: Correct Chair.

ADV SUSAN WENTZEL: What happened after that?

MR WHITE: So Chair, following that I had a - a meeting on 2 May 2012 with Advocate Dunywa and following that meeting I sent her an email which is at TSW23.

CHAIRPERSON: Was it a lady?

MR WHITE: Sorry Chair.

CHAIRPERSON: Did you say "her"? Was it a lady? I thought it was a man - a man? Dunywa - Advocate Dunywa.

MR WHITE: Dunywa. It is - it is a man Chair.

10 **CHAIRPERSON:** It is man. Oh. Okay. I thought you said her.

MR WHITE: No sir.

CHAIRPERSON: I thought maybe I heard you used the wrong - *ja*. Okay.

MR WHITE: So Chair the email I wrote following that meeting is on page 1-9-8-2 in Bundle RR4D.

CHAIRPERSON: Yes.

MR WHITE: Chair, maybe if I could - so Chair if I could just maybe read the email and I will you ...

CHAIRPERSON: *Ja*. You can read it. That is an email from you to
20 Advocate Dunywa?

MR WHITE: No Chair. This is an email from me to Freeman Nomvalo who was the Accountant-General from National Treasury.

CHAIRPERSON: Oh. Okay. *Ja*.

MR WHITE: Who was - who was the contracting party with PWC. He was paying our fees effectively.

CHAIRPERSON: Yes. Okay.

ADV SUSAN WENTZEL: He was your client?

MR WHITE: Correct Chair.

CHAIRPERSON: Yes.

MR WHITE: He was my client, but I was ...

CHAIRPERSON: Ja.

MR WHITE: Working under the direction of the police.

CHAIRPERSON: Yes. This was on the same day?

MR WHITE: Same day as the follow up meeting ...

10 **CHAIRPERSON:** Yes.

MR WHITE: With Advocate Dunywa. 2 May 2012 and I say:

“Dear Freeman, I met with the prosecutors in the
Intake case this morning. They informed me that to
date no charges have formally - have been formally
withdrawn from any of the ...”

(Loud background noise)

CHAIRPERSON: I am sorry. I think I am - we may have just spoken at
cross purposes just now. When I said you sent this email on the same
day I meant on the same day as the day when you met Mr Mrwebi and

20 Mr Mosing?

MR WHITE: No Chair.

CHAIRPERSON: That is not true?

MR WHITE: No Chair.

CHAIRPERSON: You had a meeting with Advocate Dunywa at some
stage and this was on the same day?

MR WHITE: This email - so that meeting was on 2 May ...

CHAIRPERSON: *Ja.*

MR WHITE: And following that meeting with Advocate Dunywa I sent this email ...

CHAIRPERSON: On the same day?

MR WHITE: On the same day.

CHAIRPERSON: Okay. Alright. Well is there something to tell me about your meeting with Advocate Dunywa on 2 May ...

MR WHITE: So he picked ...

10 **CHAIRPERSON:** Or is it contained here?

MR WHITE: Sorry Chair.

CHAIRPERSON: Is there something for you to tell me about your meeting with Advocate Dunywa on 2 May or is it captured in this email to ...

MR WHITE: Chair, it is captured in the email Chair, but - but maybe the important aspect ...

CHAIRPERSON: *Ja.* I would like to hear what ...

MR WHITE: So ...

20 **CHAIRPERSON:** The discussion was, because that would have been I guess the first meeting with him after your meeting with Mr Mrwebi and Mr Mosing.

MR WHITE: So Chair what - what happened was he informed me that the Acting DPP in KZN at the time - Advocate Mlotshwa - was challenging the decision that had come out from Advocate Mrwebi to withdraw the charges against Nkonyeni and Mabuyakhulu and he

informed me that ...

CHAIRPERSON: By then - by then they had withdrawn the charges against - they had decided to withdraw the charges against Ms Nkonyeni as well by the time of 2 May of the meeting.

MR WHITE: Correct Chair.

CHAIRPERSON: Okay.

MR WHITE: So the decision had been made ...

CHAIRPERSON: Hm.

MR WHITE: But they had not been formally withdrawn ...

10 **CHAIRPERSON:** Yoh. Okay. In court?

MR WHITE: Because the - the DPP in KZN had said ...

CHAIRPERSON: What ...?

MR WHITE: He is not going to withdraw the charges.

CHAIRPERSON: Yes. Huh-uh.

MR WHITE: Because he felt there was a case ...

CHAIRPERSON: Hm.

MR WHITE: And he said if they wanted to withdraw the charges ...

CHAIRPERSON: Hm.

MR WHITE: The NDPP must take his decision on review ...

20 **CHAIRPERSON:** Huh-uh. Hm.

MR WHITE: And he said it - they must follow the formal process.

CHAIRPERSON: Yes.

MR WHITE: So - so he - what he said was that to date at that date the charges have not been withdrawn ...

CHAIRPERSON: Hm.

MR WHITE: Because the DPP is - is pushing back and challenging the decision ...

CHAIRPERSON: Yes.

MR WHITE: And that it needed to go - to go on review.

CHAIRPERSON: *Ja.*

MR WHITE: So Chair that was on the 2nd ...

CHAIRPERSON: Well I guess that is what - that meant was that the NDPP would need to review the decision to charge the two in terms of the National Prosecuting Authority Act. I think that is the review they
10 may have been talking about ...

MR WHITE: That is my understanding Chair.

CHAIRPERSON: Or to - or to review the decision to withdraw, but in terms of that Act.

MR WHITE: Correct Chair and - and my understanding was that Advocate Mlotshwa - the DPP - wanted the process to be done formally
...

CHAIRPERSON: Yes.

MR WHITE: And the reason for that was he believed there was a case.

CHAIRPERSON: Hm. Hm.

20 **MR WHITE:** He had signed all the original warrants of arrest personally
...

CHAIRPERSON: Yes.

MR WHITE: Himself ...

CHAIRPERSON: Yes.

MR WHITE: And he said if you now decide to withdraw the charges ...

CHAIRPERSON: Hm.

MR WHITE: Follow a formal process ...

CHAIRPERSON: Hm.

MR WHITE: And then come to that decision ...

CHAIRPERSON: Hm. Hm.

MR WHITE: But he was not prepared to just withdraw the charges ...

CHAIRPERSON: Hm.

MR WHITE: Because Advocate Mrwebi told him to.

CHAIRPERSON: Yes. *Ja*.

10 **MR WHITE:** So Chair that was on 2 May 2012.

CHAIRPERSON: Then you sent this email to the Accountant-General on the same day.

MR WHITE: Correct Chair. Just to update him on - on the status of what was happening, because everybody wanted to know what was happening with this matter.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: What then happened in July 2012 to Advocate Mlotshwa?

MR WHITE: Chair, I refer to ...

20 **CHAIRPERSON:** I am sorry. I think what is necessary to just say. Earlier on you were going to read this email, but you are not reading it now and I think that is because you have basically told me what is contained in it. You - you told the Accountant-General basically what you knew up to that stage about what was happening in the case.

MR WHITE: Correct Chair. So effectively telling him the status of the

case.

CHAIRPERSON: *Ja.*

MR WHITE: What the process was.

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL:

MR WHITE: It has been set down. Judge McLaren has been allocated. Some people have asked for further particulars. So effectively updating him. So he knew ...

CHAIRPERSON: Okay.

10 **MR WHITE:** The process.

CHAIRPERSON: Hm.

MR WHITE: So Chair that was on 2 May. During July 2012 and I refer to it at page 53 of RR4 paragraph 79.

CHAIRPERSON: That is of your affidavit?

MR WHITE: My affidavit Chair.

CHAIRPERSON: Yes.

MR WHITE: So during July 2012 Advocate Mlotshwa who was the Acting DPP in KZN was replaced by Advocate Noko and shortly thereafter in mid-August 2012 the charges were withdrawn against Ms -
20 Mr Mabuyakhulu and Ms Nkonyeni. So Chair there was a number of stories at the time that it was just a rotational thing of Acting DPP.

So everybody was being given a chance. Chair the - the coincidence is just uncanny that Advocate Mlotshwa refuses to withdraw the charges. It takes some months. He is replaced by Advocate Noko and a couple of weeks later the charges are withdrawn.

CHAIRPERSON: And as far as you know when Advocate Noko withdrew the charges the review process that Advocate Mlotshwa had said he wanted to happen - the formal process that would led to the NDPP making a decision had not happened.

MR WHITE: Chair, it did not happen.

CHAIRPERSON: So - so you have an - an Acting - a Acting DPP who refuses to withdraw the charges when Mr Mrwebi and Mr Mosing say they should be withdrawn and he insists that there should be a proper lawful process followed in terms of the Act. Then he gets removed and
10 somebody else takes his place and that process that he wanted to be pursued does not happen and the new person does not take long before she withdraws the charges.

MR WHITE: Correct Chair.

CHAIRPERSON: Ja. Okay.

ADV SUSAN WENTZEL: And before she withdrew the charges did she ever ask you or Colonel Du Plooy to brief her on the matter? Ask for documents, explain the matter to her?

MR WHITE: Chair, I was not asked and - and to my knowledge nor was Colonel Du Plooy.

20 **CHAIRPERSON:** Do you have any knowledge whether she was - she withdrew the charges because she came to the conclusion after looking at the matter that they should be withdrawn or she was withdrew them in order to carry out an instruction from somebody senior to withdraw them ...

MR WHITE: Chair ...

CHAIRPERSON: Because if - if she was carrying out the instruction maybe there might have been no need for her to interview you or consult you, but if she was making her own decision. One would have expected that she would want to consult with the investigating officer and yourself.

MR WHITE: Chair, we were not consulted. The - the timeframe was very short. If one was to study the documents that are in the docket which are the forensic reports, the annexures and all the affidavits of all the - the factual witnesses. If one was to look at that cold and read
10 it. It is going to take weeks and weeks of time.

CHAIRPERSON: Yes.

MR WHITE: It is not - it is not going to be something you can just do in an afternoon.

CHAIRPERSON: Yes. Yes.

MR WHITE: So Chair - so just in respect of the time available ...

CHAIRPERSON: Hm.

MR WHITE: And considering that she was the new ...

CHAIRPERSON: Hm.

MR WHITE: Acting DPP.

20 **CHAIRPERSON:** Hm.

MR WHITE: Even if she spent every day working on it.

CHAIRPERSON: Yes.

MR WHITE: She probably would not have got through all the documentation.

CHAIRPERSON: Yes.

MR WHITE: By the time she made the decision.

CHAIRPERSON: Yes.

MR WHITE: So the only inference I could draw would be that it was - it was on an instruction.

CHAIRPERSON: Hm. Hm.

MR WHITE: Just because of the time available.

CHAIRPERSON: And if she - if she had taken the trouble to read as much as she would have had to read in order to arrive at a decision. She probably would have wanted to speak to the investigating officer
10 and you would have known even if he did not - she did not speak to you.

MR WHITE: I would have Chair.

CHAIRPERSON: Ja. Okay.

ADV SUSAN WENTZEL: Now had she read all the documents and all your reports, in your view is it conceivable that she could have come to a decision not to prosecute?

MR WHITE: Chair the facts are the same facts I presented here at a high level so there's a lot more content and detail behind that, it's just more evidence supporting what happened. So Chair the decision would
20 be her interpretation of those facts but a lot of other people in the NPA prior to that had come to a decision, there was a case. So how you would come to - I know lawyers come to different decisions based on the same facts but it appeared that the facts weren't really that important in this decision.

ADV SUSAN WENTZEL: And when you say you made numerous

presentations to prosecutors at the NPA, was that to several prosecutors?

MR WHITE: Chair I can remember a couple of meetings at the VGM Building where there was probably 30 people in the room where this matter was discussed. So you know it wasn't – and they were senior people it wasn't junior people that were involved and Chair – but just the rigorous process to get to a racketeering certificate is not something that happens very easily in the NPA.

CHAIRPERSON: There must be a reason why the Act requires that
10 racketeering charges be pursued only after the NDPP has issued a certificate, that's what, in part you are talking about.

MR WHITE: Correct Chair.

CHAIRPERSON: To say that is simply because the idea is that this is a special kind of crime and the idea is that it must have received consideration and attention of the highest officer in the NPA before anybody is charged with it.

MR WHITE: Correct Chair.

CHAIRPERSON: Ja okay. Now what do you say about Mr Mgwebi's and Mr Mosing's view or conclusion that there was no case against both
20 Mr Mabuyakhulu and Ms Nkonyeni and maybe I must just say that there was no *prima facie* case because that's the conclusion they must have reached. At that stage they are not looking at whether there's a conclusive case. They are supposed to look at whether there is a *prima facie* case which the accused must answer in the light of the work you had done in the light of the facts that you knew about the case as

part of – arising out of the investigation, what do you say about that decision or that conclusion?

MR WHITE: So Chair just to clarify...[intervenes].

CHAIRPERSON: And I accept that you are not a lawyer.

MR WHITE: Ok so that is what I was going to say, I am an accountant by training.

CHAIRPERSON: Ja but you have dealt with these types of crimes for around 20 or more years.

MR WHITE: So Chair it just didn't make sense, so on the facts as I
10 knew them that was supported by the most part by documents the
decision just appeared illogical and it appeared that it was made for an
ulterior motive it didn't – and that was also from all my discussions with
the various prosecutors that had been involved etc. there was no legal
basis and I never saw – Chair the other point to make is when these
kind of decisions are made, normally it's not so late in the process it's
not when the person's already appearing in Court and it's set down
there's normally a review done by the Prosecutor normally, maybe
someone more senior and they will look at the evidence and say, you've
got a gap over here, you need to fill that gap otherwise we're going to
20 have a problem if we go to Court, go and look for more evidence, more
documents, find a factual witness that was at a meeting or was involved
in some process. So it's not a decision, you tell us what you've got and
then we're going to say there's nothing. They would normally look at it
and say, here's where you need to do something further. Now that
definitely wasn't the process followed here.

CHAIRPERSON: And at the meeting which you attended where Mr Mgwebi and Mr Mosing were present, did they ever give any reason for the conclusion that they had already reached that there was no case against Mr Mabuyakhulu and they have decided or the decision has been made to withdraw the charges against him?

MR WHITE: Chair they just said, there's no evidence.

CHAIRPERSON: But did they reason that out to say what was the basis for saying there was no evidence?

MR WHITE: Chair they just refused to discuss it because they said the
10 decision's already made.

CHAIRPERSON: Yes.

MR WHITE: And when we tried to probe it, they said we're wasting time and you've only got an hour so that topic's closed, now let's talk about Nkonyeni. They were not interested in discussing it at all.

CHAIRPERSON: Did you establish from them, in one way or another, at that meeting or after as to who exactly had made that decision was it them or was it somebody else?

MR WHITE: So Chair I had no interaction with the after that meeting so there was no further opportunity to ask that question but they never
20 said at the meeting so I never heard whether it was someone else who told them to do it.

CHAIRPERSON: Yes.

MR WHITE: Or whether they just did it on their own behalf.

CHAIRPERSON: But is my understanding correct that the way they spoke about the decision, or let me put it this way, did you get any

impression whether when they said the decision had been made that meant that they had made the decision or was it neutral that they were not indicating who had made the decision, they're simply saying, that decision has been made and don't waste our time because it futile to talk about it?

MR WHITE: Chair it wasn't clear whether it was their decision or somebody else had told them, they just said the decision has been made.

CHAIRPERSON: Okay thank you.

10 **ADV SUSAN WENTZEL:** Thank you Chair. Mr White you say in paragraph 79 the charges were also withdrawn against Ms Pendela, Mr Thusi and Mr Blows, who were they?

MR WHITE: So Chair those were the attorneys that worked for Kuboni Shezi Attorneys so they were the people that had been making the payments out of the Trust account. So originally they were charged with a money laundering charge but obviously if you're going to start withdrawing charges against people further down the line, and likewise the charge against Mr Mkhwanazi was withdrawn because the charge against Nkonyeni had been withdrawn. So the people on the periphery
20 of the two MEC's the charges against them, even although it wasn't discussed at the meeting they were ultimately withdrawn against them later.

CHAIRPERSON: And your understanding is that the withdrawal of charges against those people was a consequence of the decision to withdraw charges against the two MEC's?

MR WHITE: Correct Chair.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Now you've told the Chair that Advocate Dhanwa made a point when he was required to formerly withdraw these charges in Court and you said he said,

"I'm withdrawing these charges on instructions",

Did you have a cause, after this to discuss what had happened with Advocate Mlotshwa?

MR WHITE: Chair I did, so Advocate Mlotshwa was the acting DPP
10 that had been replaced by Advocate Noko and Chair I bumped into him, I can't recall, I think it was at the airport on one occasion and I was talking to him and he said that he believed the reason he was removed as the acting DPP was because he had refused to withdraw these charges.

CHAIRPERSON: And do you recall who the National Director of Public Prosecutions was at this time?

MR WHITE: Chair I don't specifically...[intervenes].

CHAIRPERSON: I'm sure Mr Mlotshwa will tell us yes okay.

ADV SUSAN WENTZEL: He's going to testify Chair.

20 **CHAIRPERSON:** Yes. Are we – has Advocate Noko been interviewed are we going to get her to come here and explain some of the things?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Yes.

MR WHITE: It is the intention.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Could you tell the Chair, after that, what has happened to these matters, both here and in the Cape?

MR WHITE: So Chair there were a number of challenges brought – legal challenges in the case brought by Dr Savoi and Intaka’s legal representatives so the first legal challenge they brought was they challenged whether the words, “ought to have known” are constitutional and that obviously followed the process where it went to the SCA and it then went to the Constitutional Court and Chair probably knows better than I do, it was found that they are constitutional but that was just a
10 delaying process, it delayed it by almost two years and in the – partway through that appeal process in May of 2013 they filed notice that they were going to apply for a permanent stay of prosecution and the main reasons for that permanent stay, apart from various others were that the politicians had been treated differently to Dr Savoi and the Intaka people. So they were saying that there’s not equal treatment of all the accused and if the charges were withdrawn against the politicians the charges against Dr Savoi and Mr[indistinct] should also be withdrawn, that’s one of the reasons for the applications for a permanent stay. Chair that matter I was consulted with...[intervenes].

20 **CHAIRPERSON:** I’m sorry I just want to make sure I understand, the withdraw of charges in relation to KZN were the charges withdrawn against every accused or was it the two MEC’s plus departmental people in their departments and Mr Mkhwanazi only and Dr Savoi and others did not have their charges withdrawn against them?

MR WHITE: So Chair it was against the MEC, the two MEC’s and those

attorneys and Mr Mkhwanazi, so it was them, there was also charges against – at a later point against Mr Green-Thompson and Dr Mbele who were also heads of Department of Health, they were also withdrawn against. So the other officials within the Department of Health as well as Mr Tshabalala from Provincial Treasury as well as the people from Intaka, those charges stayed. So some were withdrawn and, Chair if I understand there's either 11 or 12 accused that are still before Court.

CHAIRPERSON: Did you ever get a chance to apply your mind to the
 10 fact that charges were withdrawn against some and not against others and were you able to understand the basis of the withdrawal in terms of evidence to say, well maybe I do understand a little bit about so and so, the charges being withdrawn, you know, but I can't understand the withdrawal against so and so or I can't understand why, if there's no case against so and so, and charges against him or her are withdrawn, why that one remains?

MR WHITE: So Chair that's – a lot of that, what's left doesn't make sense but Chair what's happened in the process is the NPA has changed the prosecutors in the matter, Advocate Dhunwa is no longer
 20 involved...[intervenes].

ADV SUSAN WENTZEL: Who is now involved?

MR WHITE: So Chair, Advocate Vimbani from the SCCU in Durban is currently heading up a team and there are new Prosecutors allocated but Chair it's ...[intervenes].

CHAIRPERSON: I want you to finish what we were dealing with,

namely that which you thought didn't seem to make sense about withdrawal and not withdrawing, I thought you had not finished what you were telling me.

MR WHITE: So Chair it's currently not clear exactly which charges the accused that are left still face. So we've – so the State has withdrawn charges against some of the people that got the alleged corrupt payments but I don't know what amendments have been made to the charge sheet because it's just not proceeding because of this permanent stay application that has been floating around for some six
10 years Chair.

CHAIRPERSON: Yes I would like you if you haven't done so, to look at which charges were withdrawn against whom.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: And does that withdrawal make sense if the charge against so and so is not withdrawn.

ADV SUSAN WENTZEL: Yes Chair and I will address you on that.

CHAIRPERSON: So I would like that to be looked at in depth.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: Okay alright.

20 **MR WHITE**: So Chair even although the permanent stay application was initially – notice of motion was issued in May of 2013...[intervenes].

CHAIRPERSON: Yes I was about to ask you, do you know why it's taking so long to process a review application, to process that permanent stay application?

MR WHITE: Chair there seems to be a reluctance on both the part of the State and the accused to set the matter down. I now understand it is set down for – in the next couple of months, I think it's sometime in March this year, so some, almost seven years later it's now finally set down but Chair what this has done, it's effectively sterilised the whole prosecution both in the KZN and in the Northern Cape because nothing has happened.

CHAIRPERSON: Ms Wentzel I'm interested in the Commission examining what has been happening in regard to that application from
10 the time it was launched, what has been done, by whom with whom up to now so that we can see if there's a case to say, people who were supposed to make sure that it was processed quickly didn't do their job because I can understand if the accused who brought the application don't mind it it's not pursued – processed quickly but I don't understand – I wouldn't understand why the NPA, if for argument sake the accused were not acting diligently in pursuing it why they themselves wouldn't do that. So I want to know what has happened, the NPA has always had, either a Head or an Acting Head over the years, how can that application stay pending for six years.

20 **ADV SUSAN WENTZEL:** Yes Chair.

CHAIRPERSON: Or was this another way of letting this matter go away?

ADV SUSAN WENTZEL: Yes Chair.

MR WHITE: So Chair while this – there was this whole, nothing happening I was then approached sometime in 2017, I'm not – I can't

recall exactly when by Advocate Vimbani who now said she was heading up the prosecution and she had a team and she wanted to consult with myself relating to the evidence with the new prosecution team. Chair because I'd had no involvement with this matter for some five years, I went back to National Treasury and said, are you prepared to appoint me to consult with these people and National Treasury said they weren't prepared to pay further money for something that didn't appear to be going anywhere and if the NPA wanted to consult, then the NPA must pay. I went back to the NPA with that message and they

10 subsequently appointed PWC on the 13th of December 2017 and said, right you're appointed, we want you to brief us and we want to consult in the matter. Chair the first consultation took place some six months later on the 12th of June 2018...[intervenes].

CHAIRPERSON: Well there may be – there might not be any connection but it's interesting that attempts to get going on the matter took – started or resumed in 2017 when there were to be certain changes in the political landscape of the country.

MR WHITE: Chair lots of these things happen, if one draws pictures between the dates and happenings they...[intervenes].

20 **CHAIRPERSON:** Yes it's something we have got to look at because decisions of the NPA should have nothing to do with who is in what position where but part of what this Commission is doing is looking at to what extent the NPA and other Law Enforcement Agencies may, themselves have – may have allowed themselves to be influenced in regard to certain matters and we need to look and remain open and

look at everything. Maybe it's got nothing to do with that but we must remain open and look at all possibilities. Yes, so the NPA appointed you to ...[intervenes].

MR WHITE: In December of 2017 to consult, the meeting took place on the 12th of June 2008, Advocate Vimbani was present together with three new prosecutors that had never been involved in the matter before as well as Lieutenant Colonel du Ploy and Mr Jansen van Vuuren, a manager in my office that that had assisted me with the matter originally. Chair the prosecutors were totally unprepared for the
10 meeting, they did not have any background other than what they had seen on TV, read in newspapers or heard in corridor talk, they had not read anything. I then asked them, have you read the reports, they said no, you must tell us about it. Chair, with respect I was fairly...[intervenes].

CHAIRPERSON: You were annoyed.

MR WHITE: Ja annoyed is probably the right word because now we're going to have a two-day consultation and they know nothing about the matter. So I said to them it's not my job to read the report to them. So what we ultimately agreed was we would give them an overview, similar
20 to what we've probably done today Chair, we spent the better part of the first day, giving them an overview of what the case was about and who the people were that were involved. We then agreed that we would adjourn and reconvene on the 16th and 17th of October 2018 to work through what they now, perceived the charges should be and the detail.

CHAIRPERSON: So how big was that gap between that first meeting

and the next meeting, more or less?

MR WHITE: Four months Chair.

CHAIRPERSON: Four months, okay.

MR WHITE: So it was from the 12th of June till the 16th of October.

CHAIRPERSON: And the lead prosecutor now was who?

MR WHITE: It was Advocate Vimbani Chair.

CHAIRPERSON: Yes okay.

MR WHITE: So Chair just before that meeting was to take place, we confirmed, right the meeting's taking place and we were told they were
10 not ready for the meeting, they needed more time to study the material...[intervenes].

CHAIRPERSON: Now just to understand what was happening. Now when you had this meeting with them was it on the basis that they wanted to – they wanted to consult with you in order for them to make certain decisions about the application for a permanent stay, was it – did they want to consult with you so that they could make a decision – you could assist with information for them to make a decision as to whether to withdraw or to restate the charges that had been withdrawn
20 consultation, that they could make decisions as to the way forward in regard to those accused persons against whom the charges had not been withdrawn?

MR WHITE: So Chair it was the last one.

CHAIRPERSON: It was the last one?

MR WHITE: So it was how this team of prosecutors was now going to

prosecute the remaining accused against – who the charges had not been withdrawn.

CHAIRPERSON: Okay.

MR WHITE: So Chair so – I mean I would have thought they would have started with the charge sheet that was currently before Court, they would have crossed out the charges that relate to the accused that are withdrawn and then you would work with what's left but it looked like they wanted to start afresh but Chair – so four months went past and then the meeting did not take place because they said they needed
10 more time, so that was October of 2018 and to date the meeting's never been rescheduled. Chair it sounds impossible but they've never come back and said, we're now ready let's consult.

CHAIRPERSON: So the NPA appointed you towards the end of 2017 because they wanted to consult with you in order to take the matter – the charges relating to the accused against whom charges had not been withdrawn, to take that matter forward and there was a meeting sometime in 2018 and it was adjourned and the date was arranged for a second meeting then that meeting didn't take place because they were not ready, they said they were not ready and it's 2020 now, they've
20 never come back to you?

MR WHITE: So Chair relating to consulting around that, that's correct Chair.

CHAIRPERSON: If they've been in touch with you it's been about other matters?

MR WHITE: So Chair there was a meeting towards the end of 2019

where they wanted to discuss – one of the accused wanted to enter into a potential plea bargain and they wanted to talk about the details around that, that's the only further consultation that has taken place.

CHAIRPERSON: Yes, okay alright, yes thank you.

ADV SUSAN WENTZEL: Thank you Chair. Chair unless there is something else you would like to clarify or address with the witness, that concludes the evidence of the witness yes.

CHAIRPERSON: Yes, no I think – I don't think I've got further questions, thank you very much Mr White for coming forward to assist
10 the Commission we may ask you to come back or we may correspond with you with regard to the Northern Cape matter or if there's an application for leave to cross-examine you and if it's granted there may be a need for you to come back but – then the Commission will be in touch with you at that time, but thank you very much and you are excused.

MR WHITE: Thank you Chair.

CHAIRPERSON: Thank you.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: Yes, the next witness is ready?

20 **ADV SUSAN WENTZEL**: Chair if I might just address you firstly, the next two witnesses are going to be Colonel du Ploy and also Advocate Manyathi. Chair those witnesses are going to be led by my learned friend Mr Nicholson but I just want to address you on one aspect and that is the issue that was raised by the attorney for Mr Ngubene and Mr Malikla during the course of the proceedings where he...[intervenes].

CHAIRPERSON: You're referring to counsel for the Provincial Commissioner?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Now what was said was that he had informed Mr Nicholson that there were two cases in which his client had set out her version and there was a very clear implication and criticism of the Commission for not having pursued that or had a look at it or had made any effort to find those cases. I want to place it on record that from
10 what I understand from Mr Nicholson, the conversation took place in a much more oblique way in a different context. He had no idea that what was being referred to were affidavits that had been deposed to by her in – relating to this very matter. Be that as it may Chair what has transpired is that attempts have then been made to obtain the two matters. The two matters are the first, an affidavit deposed to by his client in an application to strike out certain statements made by Colonel Booysen in his application to have himself reinstated.

The second, is an affidavit deposed to by her in her own disciplinary proceedings. Now the first affidavit was emailed to
20 Mr Nicholson by Mr (indistinct) last night and I have that before me. The second was retrieved from the archives in Durban and couriered this morning. It arrived at the Commission's Offices while I have been leading this evidence.

I have not had a chance to look at it. So Chair I cannot address you as to what is set out in the disciplinary proceedings.

These ...

CHAIRPERSON: Well what you have said may be construed as if counsel for the Provincial Commissioner criticised you. I do not know whether you intended to say that.

ADV SUSAN WENTZEL: No.

CHAIRPERSON: I did not understand him to criticise you, but ...

ADV SUSAN WENTZEL: I - I understand - I understood him to criticise the Commission ...

CHAIRPERSON: Hm.

10 **ADV SUSAN WENTZEL:** And also what I wanted to correct Chair is that ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: When this was said in the manner in which it was said ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: I publically ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Said to you ...

CHAIRPERSON: Hm.

20 **ADV SUSAN WENTZEL:** But my junior did not even mention this to me.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Chair that was not fair ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: And I need to address that.

CHAIRPERSON: Huh-uh.

ADV SUSAN WENTZEL: An aspersion was created that perhaps he had not done his job properly and he ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: It was something he really should have told me about ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: But it has been explained that that did not happen ...

CHAIRPERSON: Hm.

10 **ADV SUSAN WENTZEL:** And I just think that that needs to be publically addressed.

CHAIRPERSON: No, no. That is fine. The - I just wanted to make sure that you are not understood to convey that counsel for the Provincial Commissioner was criticising you or the legal team based on what he may have told Mr Nicholson the day before. Maybe there is room to say there was some criticism.

Maybe mild implied to say, but there is - there is a version in the public domain ...

ADV SUSAN WENTZEL: Hm.

20 **CHAIRPERSON:** From my client ...

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: And we expected the Commission to have been aware of that. Maybe to that extent. Maybe - maybe it can be said there - there was some criticism, but I - I - my own impression was that counsel for the Provincial Commissioner said whatever he needed to

say in a very constructive manner and in a very collegial manner and sought to cooperate. That was my impression.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: I may have - I certainly expressed certain sentiments which may be seen as criticism of the legal team or whatever, but it was not based on - to the extent that you can call it criticism.

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: It was not based on the fact that the day before you were told something. I specifically said there had not been much time
10 even if you had been told ...

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: If you were told the day before.

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: So whatever concerns I had ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Were based on other factors in relation to not having that information, but I think you have placed on record what you wished to place on record.

ADV SUSAN WENTZEL: Yes Chair. I - I just wanted to correct what -
20 the criticism I had levelled at my colleague ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: On national TV and I just ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Felt compelled to address that.

CHAIRPERSON: Hm. Okay. Okay. Alright.

ADV SUSAN WENTZEL: Thank you.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: If I can ask him to then call the next two witnesses.

CHAIRPERSON: Well let us talk about the fact that we are at 20 minutes to five. Maybe he should take ...

ADV SUSAN WENTZEL: To four.

CHAIRPERSON: Hm. Oh. Is it to four?

ADV SUSAN WENTZEL: Yes.

10 **CHAIRPERSON:** Oh. Okay. I looked at my watch I thought it was to five. Okay. There is still time then.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay. Alright.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: I am happy that there is still time. Okay.

ADV SUSAN WENTZEL: Thank you.

CHAIRPERSON: So let us - let him call the witness and we can talk about whether it looks like we can finish within the remaining time.

ADV SUSAN WENTZEL: Thank you Chair.

20 **CHAIRPERSON:** I am happy to continue until five.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: Ja. Okay.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: Mr Nicholson.

ADV WILLIAM NICHOLSON: Good afternoon Chair.

CHAIRPERSON: Good afternoon.

ADV WILLIAM NICHOLSON: Chair, I intend calling Adv Manyathi. The - the legal team had intended on calling two witness: Colonel Du Plooy and Adv Manyathi. However due to the time constraints and the fact that they are both from Durban and both of them have planes at 7 o' clock which means that they both need to be out of here by five at the very latest. I think what we may only be able to finish one witness.

CHAIRPERSON: I think what we should have done yesterday. If we at that stage thought that we would take as long as we did with Mr White.
10 We should have explored the possibility of starting early - earlier than 10 o' clock, but it may be that it was not foreseen that we would take as long as we ultimately took with him.

Now of course the one concern that arises if we are not going to hear the evidence of one of them. Is that costs have been incurred to bring them up here and if anyone of them has to go back without giving evidence that would mean further costs would have to be incurred some other time when they must come up.

That - I know that in chambers I indicated that we could continue until five and I just repeated that, but it may be that if need be
20 we might have to look at possibilities. Now the one possibility is subject to me checking if I can manage is that I sit and we deal with both of them if they can get or the one that will come after - after this one.

Will - if they can get later flights, but I understand yesterday SAA was not flying. So that might mean there is a reduced number of

flights available, but I do not also know whether they have - may have commitments that they need to honour. So do - do you know anything about these issues that I am raising?

ADV WILLIAM NICHOLSON: Chair, with regard to the flights.

CHAIRPERSON: Hm.

ADV WILLIAM NICHOLSON: We have attempted - certainly for Adv Manyathi - we have moved the flight by one hour.

CHAIRPERSON: Hm.

ADV WILLIAM NICHOLSON: There is no flights after 7 o' clock as I
10 understand ...

CHAIRPERSON: Hm.

ADV WILLIAM NICHOLSON: Because what I had suggested was we move the flights to 8 o' clock ...

CHAIRPERSON: Yes.

ADV WILLIAM NICHOLSON: But the - the administration staff had come back to me and stated that they can only get a flight at 7 o' clock.

CHAIRPERSON: Yes.

ADV WILLIAM NICHOLSON: Colonel Du Plooy's flight is at 20 to seven.

20 **CHAIRPERSON:** Yes.

ADV WILLIAM NICHOLSON: So it would not make any sense ...

CHAIRPERSON: Ja.

ADV WILLIAM NICHOLSON: To move it to ...

CHAIRPERSON: Ja.

ADV WILLIAM NICHOLSON: To seven.

CHAIRPERSON: *Ja.* Okay.

ADV WILLIAM NICHOLSON: On my estimation Chair we - we may be able to conclude both witnesses ...

CHAIRPERSON: *Ja.*

ADV WILLIAM NICHOLSON: In one and a half hours.

CHAIRPERSON: *Ja.*

ADV WILLIAM NICHOLSON: If we can ...

CHAIRPERSON: Yes. Well ...

ADV WILLIAM NICHOLSON: See how it goes.

10 **CHAIRPERSON:** Maybe let us try. Let us start. Yes. Let us just administer the oath or affirmation to the witness.

REGISTRAR: Please state your full names for the record.

CHAIRPERSON: I think - I think switch off the other one. *Ja.*

REGISTRAR: Please state your full names for the record.

ADV MANYATHI: Bheki Felix Manyathi.

REGISTRAR: Do you have any objection to taking the prescribed oath?

ADV MANYATHI: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

20 **ADV MANYATHI:** I do.

REGISTRAR: Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth? If so please raise your right hand and say so help me God.

ADV MANYATHI: So help me God.

ADV MANYATHI: (duly sworn, states)

CHAIRPERSON: Thank you very much. Then you can just switch on your mic. Thank you. Yes Mr Nicholson.

ADV WILLIAM NICHOLSON: Chair, Adv Manyathi is going to deal with two - with his - with one issue. His involvement in the - in the prosecution of Colonel Madhoe and Thoshan Panday in the corruption matter. Adv Manyathi do you have your affidavit in front of you?

ADV MANYATHI: I do.

ADV WILLIAM NICHOLSON: Do you confirm that ...

CHAIRPERSON: I am sorry. We should admit this first is it not?

10 **ADV WILLIAM NICHOLSON:** That is correct. With the leave of the Chair ...

CHAIRPERSON: The affidavit - the affidavit of Mr Bheki Felix Manyathi will be admitted as EXHIBIT RR3 and will be marked accordingly.

ADV WILLIAM NICHOLSON: I am indebted Chair.

CHAIRPERSON: That includes whatever annexures there are to it. Yes.

ADV WILLIAM NICHOLSON: Do you confirm your affidavit with annexures derived from pages 1 to 29 of RR3? Do you confirm that is your affidavit?

20 **ADV MANYATHI:** I do. However Chair there is one aspect that I would like to elaborate on regarding paragraphs 19 and 22. My elaboration will ... (intervenes).

CHAIRPERSON: Hang on. Before you elaborate. You do confirm that this is your affidavit?

ADV MANYATHI: Yes.

CHAIRPERSON: Okay. So now you want to talk about the contents and you have something to say on a certain paragraph. Is that right?

ADV MANYATHI: Yes. 19 and 22. I will - I will just add something in due course, but it will not take anything from the essence.

CHAIRPERSON: From the substance. *Ja*.

ADV MANYATHI: Yes.

CHAIRPERSON: Okay. No. That is fine. Do you want to do that when it is the right time as you give evidence?

ADV MANYATHI: Yes Chair.

10 **CHAIRPERSON:** *Ja*. Okay. Alright.

ADV WILLIAM NICHOLSON: Do you confirm those are you initials at the bottom of each page?

ADV MANYATHI: Yes.

ADV WILLIAM NICHOLSON: And at page 11 is that your signature?

ADV MANYATHI: Yes.

ADV WILLIAM NICHOLSON: Do you confirm the correctness and truthfulness of your affidavit save to what you have just mentioned?

ADV MANYATHI: Yes.

20 **ADV WILLIAM NICHOLSON:** Advocate Manyathi where are you currently employed?

ADV MANYATHI: I am in private practice as an advocate at the Durban Bar.

ADV WILLIAM NICHOLSON: For how long have you been in private practice?

ADV MANYATHI: This is my sixth year.

ADV WILLIAM NICHOLSON: Prior to joining the bar where were you employed?

ADV MANYATHI: I was with the National Prosecuting Authority at different levels, but when I left - my last day was 31 December 2013. I was a Senior State Advocate based at the office of the Directorate of Public Prosecutions.

ADV WILLIAM NICHOLSON: So for how long were you at the NPA?

ADV MANYATHI: From 1997 to 2013.

ADV WILLIAM NICHOLSON: Could you just briefly take ...

10 **CHAIRPERSON:** Would that more - about 15 years?

ADV MANYATHI: 1997/2007 - eight, nine, 10, 11, 12, 13. 16.

CHAIRPERSON: Alright.

ADV WILLIAM NICHOLSON: Can you briefly take the Chair through your career at the Department of Justice and/or the NPA?

ADV MANYATHI: Before I became a prosecutor I was a court interpreter employed by the Department of Justice from 1985 to January 1993 and then in - from February 1993 I then went to full time studies at the University of Zululand. In other words I - I resigned from the Department of Justice effectively 31 January 1993 and then 1993,
20 four, five, six I was in full time study at University of Zululand doing BProc and then I returned to the NPA in 1997 as an aspirant prosecutor.

CHAIRPERSON: Well I - I guess you - you came to the NPA, because for the first time rather than return, because before you were in the Department of Justice?

ADV MANYATHI: Yes.

CHAIRPERSON: As an interpreter.

ADV MANYATHI: Yes.

CHAIRPERSON: You were coming to the NPA for the first time?

ADV MANYATHI: Accurately. Correct Chair.

CHAIRPERSON: Yes.

ADV MANYATHI: I - I started in the NPA in 1997.

CHAIRPERSON: Yes. Okay.

ADV MANYATHI: Yes.

10 **CHAIRPERSON:** *Ja.*

ADV WILLIAM NICHOLSON: In 2011 where were you employed?

ADV MANYATHI: I was at - at the Office of the DPP as a Senior State Advocate. I was based in the Durban Office.

ADV WILLIAM NICHOLSON: And do you know who the DPP of KZN was at that stage?

ADV MANYATHI: At that time it was Advocate Simphiwe Mlotshwa. He was Acting as DPP.

ADV WILLIAM NICHOLSON: Now if we turn to your affidavit at page 1 paragraph 4. You state that you were allocated a corruption case.

20 **ADV MANYATHI:** Yes.

CHAIRPERSON: I am sorry. Mr Manyathi so you - you may have been at the Bar for six years, but you have been an advocate for more than 20 years.

ADV MANYATHI: No, no, no Chair. It is an interesting point. I - I never thought I would leave the NPA.

CHAIRPERSON: Yes.

ADV MANYATHI: So it - it was one of those mind-set aspects that I do not need to be admitted as an advocate because ...

CHAIRPERSON: Oh.

ADV MANYATHI: As - as a prosecutor you do not need to be admitted.

CHAIRPERSON: Oh. Okay.

ADV MANYATHI: You can be - that is why it is called a state advocate.

CHAIRPERSON: Oh. Well I thought you - you are only a state advocate if you have been admitted as an advocate.

10 **ADV MANYATHI:** No. Not necessarily. Some - some ...

CHAIRPERSON: Oh. So you - you can be a state advocate without being an advocate in terms of the Advocates Act ...

ADV MANYATHI: Yes.

CHAIRPERSON: Because in terms of the Advocates Act you are only an advocate if you have been admitted as an advocate. Is it not?

ADV MANYATHI: Yes Chairperson?

CHAIRPERSON: Yes.

20 **ADV MANYATHI:** In - in the sense that the delegation and authority to prosecute is in terms of National Prosecuting - Prosecuting Authority Act.

CHAIRPERSON: Yes.

ADV MANYATHI: So you - you can be a state advocate without being an advocate in terms of the Advocates Act.

CHAIRPERSON: Yes. Oh. Okay. No. I did not know that. I - I thought you are called state advocate, because you are an advocate

employed by the state. Okay. Alright. I - I learnt something today.

ADV WILLIAM NICHOLSON: Indeed Chair.

CHAIRPERSON: Yes.

ADV WILLIAM NICHOLSON: Advocate Manyathi when you - did you in fact receive this corruption matter?

ADV MANYATHI: Yes.

ADV WILLIAM NICHOLSON: Did you peruse the police case docket?

ADV MANYATHI: I did.

ADV WILLIAM NICHOLSON: What were ...?

10 **CHAIRPERSON**: Mr Nicholson you just said this corruption matter. I think you must specify what corruption matter you are talking about.

ADV WILLIAM NICHOLSON: Indeed Chair. I was going to come to it later, but - but I think it is ... (intervenes).

CHAIRPERSON: For somebody who is reading the transcript to follow the evidence they will not understand what this matter is.

ADV WILLIAM NICHOLSON: Advocate Manyathi can you tell us who the suspects in this matter were?

ADV MANYATHI: The suspects were ...

CHAIRPERSON: You still have this matter.

20 **ADV WILLIAM NICHOLSON**: Yes. I am coming to - I am coming to the explanation.

CHAIRPERSON: Why do you not go to it? Is it not in dispute? Why do you not go to it straightaway? It is the Amigos matter or whatever - whatever. Just specify it.

ADV MANYATHI: I will - I will answer that Chairperson.

CHAIRPERSON: Yes. *Ja*. Tell us what the matter is first.

ADV MANYATHI: The corruption related to the alleged bribery ...

CHAIRPERSON: Hm.

ADV MANYATHI: General Johan Booysen ...

CHAIRPERSON: Huh-uh.

ADV MANYATHI: Who was the Provincial Head of the Hawks ...

CHAIRPERSON: Yes.

ADV MANYATHI: At the time.

CHAIRPERSON: Oh. Okay. That is the - the Panday and

10 Colonel Madhoe - Madhoe matter?

ADV MANYATHI: Yes.

CHAIRPERSON: *Ja*. Okay. Alright. That is what I wanted so that further questions as they follow - every - everybody understands which matter you are talking about, because there - there are various matters that have today and yesterday.

ADV WILLIAM NICHOLSON: Indeed Chair.

CHAIRPERSON: Okay. Alright.

ADV WILLIAM NICHOLSON: Did you peruse the police case docket?

ADV MANYATHI: I did.

20 **ADV WILLIAM NICHOLSON:** What was your impression of the evidence in the police docket?

ADV MANYATHI: There was a case.

ADV WILLIAM NICHOLSON: Okay.

ADV MANYATHI: That is why I prosecuted.

ADV WILLIAM NICHOLSON: Now you - you mentioned the names of

the accused at paragraph 6 of your affidavit at page - at page of RR3.

ADV MANYATHI: Yes.

ADV WILLIAM NICHOLSON: What were the names of the accused?

ADV MANYATHI: Colonel Navin Madhoe as in Colonel in the South African Police Service and businessman Mr Thoshan Panday.

ADV WILLIAM NICHOLSON: At page 2 of RR3 paragraph 5 you state that:

“The corruption case relates to a case of - of
procurement fraud.”

10 **ADV MANYATHI:** Yes.

ADV WILLIAM NICHOLSON: Who was the prosecutor of the procurement fraud investigation?

CHAIRPERSON: I am sorry. Before that. You - you were asked the question what your impression was of the case ...

ADV MANYATHI: Yes.

CHAIRPERSON: And you said there was a case. How strong was the case against the accused in your view?

ADV MANYATHI: I - I will borrow from what the Chairperson said to the previous witness.

20 **CHAIRPERSON:** Hm.

ADV MANYATHI: I was sitting.

CHAIRPERSON: Hm.

ADV MANYATHI: At - at the stage of making a decision ...

CHAIRPERSON: Yes.

ADV MANYATHI: Whether to prosecutor or not.

CHAIRPERSON: Hm.

ADV MANYATHI: All you are required to look at is whether there is a *prima facie* case.

CHAIRPERSON: Yes.

ADV MANYATHI: That warrants a prosecution ...

CHAIRPERSON: Yes.

ADV MANYATHI: In respect of which the accused are required by law ...

CHAIRPERSON: Yes.

10 **ADV MANYATHI:** To respond.

CHAIRPERSON: Yes.

ADV MANYATHI: So there was a *prima facie* case.

CHAIRPERSON: There was a *prima facie* case?

ADV MANYATHI: Yes.

CHAIRPERSON: Okay. Thank you.

ADV WILLIAM NICHOLSON: Okay.

ADV MANYATHI: In - in fact I may elaborate Chair. That obviously investigation progresses ...

CHAIRPERSON: Yes.

20 **ADV MANYATHI:** And even at the early stage ...

CHAIRPERSON: Yes.

ADV MANYATHI: When I enrolled the matter ...

CHAIRPERSON: Hm.

ADV MANYATHI: There was a *prima facie* case.

CHAIRPERSON: Yes.

ADV MANYATHI: As - as the investigation progressed.

CHAIRPERSON: Yes.

ADV MANYATHI: The evidence was supplemented.

CHAIRPERSON: Yes. So as the investigation went on - or in any case speaking generally - as the investigation goes on the evidence might become stronger ...

ADV MANYATHI: Yes.

CHAIRPERSON: And the case might become strong against the accused ...

10 **ADV MANYATHI:** Yes.

CHAIRPERSON: Or sometimes it can be weaker.

ADV MANYATHI: Yes.

CHAIRPERSON: Ja. Okay.

ADV MANYATHI: To - to ...

CHAIRPERSON: Ja.

ADV MANYATHI: To illustrate the point I am making. Ultimately I drafted an indictment and indicted both accused in the High Court on a charge of corruption.

CHAIRPERSON: Yes. Okay. Thank you.

20 **ADV WILLIAM NICHOLSON:** Okay. Who was the prosecutor in the procurement fraud investigation?

ADV MANYATHI: Ms Wendy Clark. Clark was her maiden surname. She then got married. I have got the - the married surname there - Greeff, but we still called her Wendy Clark.

ADV WILLIAM NICHOLSON: Okay. In which section of the NPP is she

based?

ADV MANYATHI: I beg your pardon.

ADV WILLIAM NICHOLSON: In which section of the NPA is she based?

ADV MANYATHI: Ms Clark was with the Organised Crime of the NPA which fell under the General Section.

ADV WILLIAM NICHOLSON: Okay and can you just briefly - do you know any of the facts regarding to the procurement fraud?

ADV MANYATHI: The facts would be based on what I was told when I consulted with the investigation team in the corruption matter as well
10 as Ms Clark herself. I did consult with her. The reason I mention this is because I did not read the fraud case. I did not need to read it. So the facts as I was informed were - were that in 2010 when there was the Soccer World Cup in South Africa.

Police officers from all over the country were doing special duties. Obviously at specific places where there were stadiums where the matches were going to be held. So you would find police officers being moved from their bases to these different places. They were - they were doing special duties and in the process accommodation had to be obtained for them and in - in the process of awarding tenders -
20 for lack of a better word.

I do not know what the procurement process was, but - but let me rather say in the process of awarding the accommodation to the SAPS it was alleged that companies - not one - companies that were owned by Mr Thoshan Panday - he was a businessman - were awarded this procurement - so to speak - and the charges that - that were

charged for the accommodation were - were over inflated.

Hence the - the R60 million fraud based on the over inflate - inflation of prices for those BNB's/lodges etcetera.

ADV WILLIAM NICHOLSON: Okay. Do you - who were the suspects in that fraud case you just mentioned?

ADV MANYATHI: Again as I was informed by my colleague and the investigators it was the same two suspects - Madhoe and - and Panday.

ADV WILLIAM NICHOLSON: Those people that you mention at paragraph 6 of your affidavit?

10 **ADV MANYATHI:** Yes. If - if I may elaborate so that the Chair will understand. Madhoe was in charge of Procurement in KwaZulu-Natal. I think that is how he featured in - in the alleged fraud, because the procurement for the accommodation had to go via him. He was in charge of it.

ADV WILLIAM NICHOLSON: Okay. At paragraphs 8 to - to 18 at EXHIBIT RR3 page - pages 3 and four. You give a brief detail of the corruption matter. Is that correct?

ADV MANYATHI: Sorry. Which paragraphs? Page 3.

ADV WILLIAM NICHOLSON: It is pages 3 and four. Paragraphs 8 to
20 18. Okay.

ADV MANYATHI: Yes.

ADV WILLIAM NICHOLSON: Who is the complainant in the corruption case?

ADV MANYATHI: Complainant was General Johan Booysen.

ADV WILLIAM NICHOLSON: And how did this corruption occur?

ADV MANYATHI: It was alleged that Colonel Madhoe approached General Booyesen.

CHAIRPERSON: I am sorry. Please do not forget your question Mr Nicholson.

ADV WILLIAM NICHOLSON: Okay.

CHAIRPERSON: Before you proceed I just want to talk about your statement that General Booyesen was the complainant. Yesterday during Mr White's evidence reference was made to either an email or a memorandum which was written by General Booyesen I think to the Head
10 of the Hawks at the time where he was refuting the statement made by I think somebody from the NPA.

I think Advocate Letswalo that he or Advocate Noko. One - one of the two or both. That he had been the complainant in that matter and I think he said well he was simply a witness and that - I hope I am - my recollection is correct. I think he said the complainant was the state. I - I may be mistaken about the second part, but it - but he - he refuted any suggestion that he was the complainant.

ADV MANYATHI: I ...

CHAIRPERSON: What - what would you like to say about that?

20 **ADV MANYATHI:** I will - I will answer as a lawyer and - and a former prosecutor. He - he was technically correct. In - in the sense that it is - it is a layman's perspective. I will - I will use the example of say my car is stolen. I go and lay a charge of theft of motor vehicle. I regard myself as the complainant ...

CHAIRPERSON: Yes.

ADV MANYATHI: And in fact the prosecutors, the police and everyone will say I am the complainant. However in the sense that the ultimate decision whether to prosecute or not lies with the Prosecuting Authority. So strictly speaking you could say the NPA is the complainant.

More so Chairperson you have instances - I will use sexual offences - rape. You would have many instances even when I was a prosecutor that the so called complainant wants to withdraw a rape charge and as a prosecutor you say no. I am not going to do it, because you have the authority in terms of law. So it - it is a matter of perspective. So Booysen was not incorrect.

CHAIRPERSON: Well let us - let us look at that. Using the term complainant in the normal way in which it is used within the context of criminal law ...

ADV MANYATHI: Yes.

CHAIRPERSON: And within the context of crime and prosecution.

ADV MANYATHI: Yes.

CHAIRPERSON: Would it be a legitimate or correct use of that term to say he was a - he was a complainant in the matter?

20 **ADV MANYATHI:** I - I do not know what his reasoning was ... (intervenes).

CHAIRPERSON: Yes, but on your understanding of the term and on your understanding of his role in this matter. Would you - if - if somebody says he was - he was the complainant in that matter. Would - would it fit within your understanding of what a complainant is

generally understood to be - to be in the context of prosecution and criminal law?

ADV MANYATHI: I would say probably not.

CHAIRPERSON: Hm.

ADV MANYATHI: Based on the nature ...

CHAIRPERSON: Hm.

ADV MANYATHI: Of - of the charge. It is corruption.

CHAIRPERSON: Hm.

ADV MANYATHI: He - he is allegedly being bribed ...

10 **CHAIRPERSON:** Hm.

ADV MANYATHI: In his official capacity as a policeman.

CHAIRPERSON: Hm.

ADV MANYATHI: So it is not a personal ...

CHAIRPERSON: Hm.

ADV MANYATHI: Matter where like the example of theft of motor vehicle. I have ...

CHAIRPERSON: Hm.

ADV MANYATHI: Made the - the point.

CHAIRPERSON: Hm. Hm.

20 **ADV MANYATHI:** So he - he is just a witness ...

CHAIRPERSON: Hm.

ADV MANYATHI: In the sense that he is being bribed in his official capacity as a policeman.

CHAIRPERSON: Hm. Hm.

ADV MANYATHI: So he - he was - he had a point to make. So he ...

CHAIRPERSON: Hm.

ADV MANYATHI: He is correct.

CHAIRPERSON: Now to the extent that either Advocate Noko or Advocate Letswalo may have in one or more of their memorandums relating to the withdrawal of the charge may have said he was the complainant in that matter. What would you say about their use of that term in saying he was the complainant?

Would you say be able to say - would you say that was the wrong use of the terms? Would you say it was not wrong use if you
10 look at what is normally said, but technically it was wrong? What would you say about that?

ADV MANYATHI: It is a difficult one.

CHAIRPERSON: Yes.

ADV MANYATHI: In - in the context of ...

CHAIRPERSON: I just want to understand, because from the NPA's side when they withdrew the charges one of the criticisms they relied upon to justify the decision to withdraw the charges was that General Booyesen was the complainant in the matter and yet he was playing a certain role.

20 Such as they said he was - he was writing letters or giving instructions as to who could or could not visit or see Colonel Madhoe when he was in police custody and I think they said something else, but the - the impression they were creating was there is something strange happening here. This man is the complainant in this case ...

ADV MANYATHI: Yes.

CHAIRPERSON: And yet look at what he is doing. He - he is in charge of what is happening. He says he - he will say who may see the accused and who may not see the accused. He should not be playing that role. That is my impression of what they are saying and when he respond - when he responded.

He was saying no, but I am not the complainant. So I am trying to understand the matter from their perspective. Is there somebody who was being disingenuous in - in the use of the word - of the term or in adopting whatever position was being adopted by the two
10 sides or is this a situation where both could genuinely be thinking they were right in what - in the position they were taking and - and nothing more should turn on it, but the prosecution - the NPA used that term as one of reasons to say there is something fishy here.

For that reason we are not going to proceed. We are withdrawing the charges. For that reason and maybe other reasons we - we are withdrawing the charges.

ADV MANYATHI: I - I now understand. Based on the information that the Chairperson has given me. I was not aware why the charges were withdrawn, because they were withdrawn after I had left the NPA and
20 because it was in the public domain. I - I got to know, because certain prosecutors also called me out of interest to say.

CHAIRPERSON: Yes.

ADV MANYATHI: Are you aware that the case that you were allocated ...

CHAIRPERSON: Prosecuting.

ADV MANYATHI: Has been withdrawn on the instructions of the DPP - Advocate Noko.

CHAIRPERSON: Hm. Hm.

ADV MANYATHI: To - to answer the question. As a prosecutor I would not have given that reason if I took that decision to withdraw to say I am withdrawing because General Booysen is the complainant. No. I - I think it does not make legal sense. Perhaps one should also answer in - in an insightful way. Let us - let us talk about the R60 million fraud.

Where the state as in the department of the police was
10 allegedly defrauded. That who is the complainant. Is it - is it the person who opened the docket who is representing the police, because someone has - has to open the docket. So I - let us say it was Captain So and so who opened the docket, because a crime had been opened.

No it is not that Captain. It is the police - the entire department. So from that perspective I - I would say there is - there is substance in perspective that Booysen was not the complainant.

CHAIRPERSON: Okay. Okay. Thank you. I - I am just thinking of other cases where a police officer witnesses a crime being committed.
20 Whether - unless there is somebody else who is a complainant. The police cannot arrest and the NPA cannot charge unless there is somebody who is called a complainant.

What - what can you tell me on that? In other words this thing of a complainant must there always be a complainant?

ADV MANYATHI: No. Again interestingly practical cases that I have

dealt with are in - in my career as a prosecutor way back in - in District Court when I started. The police would - would go to the City - the CBD and be in plain clothes and do what was called crime prevention against pick pocketing.

I prosecuted several cases where for instance a pickpocket would pickpocket a civilian and the civilian was unaware that he is being pick pocketed. That was the whole point of pick pocketing. That - that you take the wallet or whatever ...

CHAIRPERSON: Ja. Without the person being aware?

10 **ADV MANYATHI:** Yes and the policeman would chase the pickpocket and by the time he catches the - the victim - so to speak ...

CHAIRPERSON: Has - is nowhere to be seen?

ADV MANYATHI: Is gone ...

CHAIRPERSON: Ja. Yes.

ADV MANYATHI: And we would prosecute pickpockets ...

CHAIRPERSON: Hm.

ADV MANYATHI: For robbery of a person unknown to the state ...

CHAIRPERSON: Yes.

ADV MANYATHI: And we would secure a conviction.

20 **CHAIRPERSON:** Yes.

ADV MANYATHI: On the basis of the evidence of the policeman.

CHAIRPERSON: And - and you would not say the policeman who arrested that - the pickpocket is the complainant?

ADV MANYATHI: No.

CHAIRPERSON: Yes.

ADV MANYATHI: He - he is not the complainant.

CHAIRPERSON: Ja. He is just a witness.

ADV MANYATHI: He is just a witness and because ...

CHAIRPERSON: To a crime.

ADV MANYATHI: He is a witness and the only one who - who witnesses the crime who is available. He would then open the docket.

CHAIRPERSON: Yes.

ADV MANYATHI: On the part where it says complainant. His name would be there. Sergeant So and so, but he is not the complainant
10 really.

CHAIRPERSON: Oh. So - so in terms of paperwork he - he or she might appear as the complainant?

ADV MANYATHI: Yes. On the face of each docket ...

CHAIRPERSON: Ja.

ADV MANYATHI: There is a part which says complainant.

CHAIRPERSON: Yes. Then you would put - the policeman's name could appear then ...

ADV MANYATHI: Yes.

CHAIRPERSON: There. Would it ever happen that no name is put
20 there, but the matter is prosecuted?

ADV MANYATHI: There would always be a name. A good example is cases of murder or homicide. In - in a case where someone has died the complainant is always the - a policeman who opens the docket ...

CHAIRPERSON: Yes. Okay.

ADV MANYATHI: Because the deceased is - is dead.

CHAIRPERSON: Yes. Okay. Okay. So - so this issue about whether General Booyesen was the complainant or not maybe it is not a simple issue.

ADV MANYATHI: No. It is not ...

CHAIRPERSON: *Ja.*

ADV MANYATHI: But based on what the Chairperson has told me ...

CHAIRPERSON: *Ja.*

ADV MANYATHI: As being one of the reasons cited for the withdrawal. For me ...

10 **CHAIRPERSON:** *Ja.*

ADV MANYATHI: It does not make legal sense.

CHAIRPERSON: To - to rely on that?

ADV MANYATHI: Yes.

CHAIRPERSON: Okay. Thank you.

ADV WILLIAM NICHOLSON: Advocate Manyathi, you were still explaining to the Chair how the corruption occurred.

ADV MANYATHI: Yes. The allegation was that Madhoe approached Booyesen and offered him R1.5 million to predate a report which had been submitted in the fraud matter. Those were the brief facts, but I
20 can elaborate further, because it - it was - it was something that happened over a period of time.

From the - from the moment the approach was allegedly made by Madhoe culminating in the exchange of the cash and the report.

ADV WILLIAM NICHOLSON: (Intervenues).

CHAIRPERSON: When you say fraud matter you relay - you referring

to the procurement matter?

ADV MANYATHI: Yes Chair.

CHAIRPERSON: Okay.

ADV WILLIAM NICHOLSON: I think it is appropriate if we can just go through it step by step. You say Madhoe approached ...

ADV MANYATHI: Booyesen.

ADV WILLIAM NICHOLSON: Booyesen and offered him 1.4 million.

ADV MANYATHI: 1.5.

ADV WILLIAM NICHOLSON: 1.5 million ...

10 **ADV MANYATHI:** Yes.

ADV WILLIAM NICHOLSON: To predate a report.

ADV MANYATHI: Yes. Which - which had been submitted in the procurement fraud case.

ADV WILLIAM NICHOLSON: What is the significance of this report?

CHAIRPERSON: Maybe before that. The procurement case - the fraud case that you refer to. The suspects or accused were who?

ADV MANYATHI: The same two.

CHAIRPERSON: Mr Panday and Colonel Madhoe?

ADV MANYATHI: Yes.

20 **CHAIRPERSON:** Okay. Alright. Then the question of what was the significance of the report that it was said he wanted predated.

ADV MANYATHI: Based on the briefing a - it was called specifically a preliminary report. In the sense that it was not final. The investigation was ongoing. A preliminary report was submitted to Booyesen as the Provincial Head of the Hawks. That - that preliminary report I was told

was not signed and - must I just ...

ADV WILLIAM NICHOLSON: Yes. Just continue.

ADV MANYATHI: Unpack everything?

ADV WILLIAM NICHOLSON: Unpack it. Yes.

ADV MANYATHI: Alright.

CHAIRPERSON: *Ja*, but having said so I think he was saying what was the significance of the report.

ADV MANYATHI: Oh yes.

CHAIRPERSON: So if you are able to just zoom in on that.

10 **ADV MANYATHI:** Okay. For the report to have been compiled there - there are occurrences that happened. The sequence is critical. Investigation - as part of the investigation the police in conjunction with the prosecutors would apply for what is called a Section 205 subpoena. Section 205 in terms of the Criminal Procedure Act. Must elaborate on what it provides?

CHAIRPERSON: No, no, no. Not really.

ADV MANYATHI: Not necessary?

CHAIRPERSON: *Ja*, because - *ja*. There has been evidence - *ja*.

ADV MANYATHI: So you - you then get a prosecutor to apply for the
20 Section 205 subpoena and a - a Judicial Officer authorises it.

CHAIRPERSON: Hm.

ADV MANYATHI: In this case the Section 205 subpoenas are served on financial institutions. I would presume banks.

CHAIRPERSON: Hm.

ADV MANYATHI: So that the banks would provide bank records of the

companies that allegedly were paid ...

CHAIRPERSON: Hm.

ADV MANYATHI: From the procurement fraud ...

CHAIRPERSON: Hm.

ADV MANYATHI: And it was alleged that those companies belonged to Panday.

CHAIRPERSON: Hm.

ADV MANYATHI: So sequence is Section 205 subpoenas served on the bank or banks depending how many accounts where they were held.

10 Banks then provide bank statements.

ADV WILLIAM NICHOLSON: Huh-uh.

ADV MANYATHI: The police then look at those bank statements. Remember the *modus operandi* that the charges for the accommodation were inflated and obviously the police would not pay those companies cash. There would be EFTs or whatever. So there - there would be a paper trail.

Once you access the bank records of those companies that were paid you then see how much was paid on what day for which accommodation totalling how much and then once you access those
20 bank records you then compile a preliminary report. Saying at this stage *prima facie* there is evidence against Madhoe and Panday.

CHAIRPERSON: Now ...

ADV MANYATHI: So coming back to the - the question. The significance of that report. So the report as I was told was not dated. It was a preliminary report. I was informed that what was going to

happen after that the police would engage an external service provider. It was usually accountants and auditors firms to conduct a forensic audit report. That would be the final one.

ADV WILLIAM NICHOLSON: Okay.

ADV MANYATHI: Tell me if I have not answered your question.

ADV WILLIAM NICHOLSON: No. No you have. What is the significance - I just - I did not come out clear. What is the significance of predating the - the report?

ADV MANYATHI: The report. Is the significance is this. Remember
10 the sequence. Section 205 subpoenas, bank statements, report.

ADV WILLIAM NICHOLSON: Huh-uh.

ADV MANYATHI: Also it is - it is important to mention that at some point Panday brought a challenge in the High Court to have the validity of the Section 205 subpoenas set aside. So he was challenging their validity. That was - that is a separate civil matter. Now if Madhoe approaches Booyesen and says predate this pre - preliminary report which refers to bank statements.

ADV WILLIAM NICHOLSON: Huh-uh.

ADV MANYATHI: Once you predate that report to prior to the date that
20 the Section 205 subpoenas were obtained. It - it logically means the report was already completed before the Section 205 subpoenas were obtained in terms of which the bank statements which are referred to in the report were obtained.

So it - it would bolster the notion that the Section 205 subpoenas were obtained illegally which would follow also that the bank

statements were obtained illegally.

ADV WILLIAM NICHOLSON: Okay.

CHAIRPERSON: We have to take a - a very short break. Let us make it five minutes. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV NICHOLSON: Advocate Manyathi if we go to RR3, page 4, paragraph 14 you mentioned that Panday's fingerprints were found on
10 the report.

ADV MANYATHI: One print.

ADV NICHOLSON: One print?

ADV MANYATHI: Fingerprint yes.

ADV NICHOLSON: From whom was this report received?

ADV MANYATHI: What happened is remember that Booysen already had a copy of the report, the preliminary report so when Madhoe approached him to pre-date it Booysen said he doesn't have a copy, whether he was misleading Madhoe playing along, I don't know, or whether he had genuinely misplaced it I don't know. In any way
20 Madhoe then said I will provide you with a copy of the report. Just to digress a bit when we were busy with the bail application in respect of both Madhoe and Panday because we opposed it as the State, I nearly said I opposed it (laughing). It was common cause that Madhoe had a copy of the preliminary report on his own version.

CHAIRPERSON: Yes.

ADV MANYATHI: So Madhoe said I will give you a copy.

CHAIRPERSON: Just to recall again that would have been a report prepared by the investigators?

ADV MANYATHI: Yes, in the fraud matter.

CHAIRPERSON: Ja in the fraud matter and it being a report to whom?

ADV MANYATHI: As I understood to – no I don't know whether to Booyesen as the Provincial Head of the Hawks in Kwa-Zulu Natal or to the National Head of Department, I think it was General Dramat at the time I'm not sure.

10 **CHAIRPERSON:** Yes it was one of them?

ADV MANYATHI: Yes.

CHAIRPERSON: It would have been a report to either General Booyesen or the National Head of the Hawks.

ADV MANYATHI: Yes.

CHAIRPERSON: That's your recollection?

ADV MANYATHI: Yes but both would have a copy of it.

CHAIRPERSON: Ja okay.

ADV MANYATHI: Whether it was addressed to Booyesen or Dramat the one would give the other – it will be given to both.

20 **CHAIRPERSON:** Yes, so is your – was your understanding that Madhoe was not supposed to have a copy of this report?

ADV MANYATHI: I don't know.

CHAIRPERSON: You don't know but it was common cause during the bail application that he had a copy?

ADV MANYATHI: Yes it was common cause based on the fact that it

was common cause, again this is just my reasoning, not based on any facts that were before me in the docket. Remember Chairperson the procurement fraud emanated from the accommodation and I said Madhoe was in charge of procurement. It could be that as the Head of Procurement in whose section this fraud occurred was given a copy of this report.

CHAIRPERSON: Ja okay.

ADV MANYATHI: Ja so he then said to Booyesen, well I've got a copy I'll give you, so he gave him and Booyesen did not sign – rather did not
10 pre-date that one that Madhoe gave to him because it was taken for investigation, that is where Panday's fingerprint was found it was found on that report.

CHAIRPERSON: Oh okay.

ADV MANYATHI: And it was then preserved as evidence.

CHAIRPERSON: Yes.

ADV MANYATHI: Yes because fingerprint elimination had been done on it so it was now evidence.

CHAIRPERSON: Yes.

ADV MANYATHI: So what then happened, I'm just completing the
20 picture, now that Madhoe has given him a report Madhoe is unaware of the developments now that Panday's fingerprint has been found. Subsequently then Booyesen gave Madhoe a pre-dated report. I don't know where that report came from, Booyesen can answer either Booyesen made a copy of the report that Madhoe gave him before it was submitted for fingerprint or afterwards or Booyesen draw his own report

that he initially said he doesn't have any.

CHAIRPERSON: Yes.

ADV MANYATHI: So the pre-dated one was then handed to Madhoe.

CHAIRPERSON: Okay I didn't hear that before so I think I'm hearing that for the first time.

ADV MANYATHI: Yes.

CHAIRPERSON: Okay so there was a pre-dated report that General Booyesen gave to Madhoe as you understood the position?

ADV MANYATHI: Yes.

10 **CHAIRPERSON:** Yes, okay.

ADV MANYATHI: The exchange occurred on the day that Madhoe was arrested. So what happened is...[intervenes].

CHAIRPERSON: Oh okay.

ADV MANYATHI: Ja as I said, it was over different days culminating in the day that the sting operation was held, so Madhoe gave Booyesen 1.362million yet he had offered 1.5 but gave him 1.362million and then in exchange Booyesen gave him the pre-dated report.

CHAIRPERSON: Okay maybe I was told about him giving –General Booyesen giving Colonel Madhoe a pre-dated report maybe I've
20 forgotten, I've been hearing too much evidence so ja.

ADV NICHOLSON: Do you know, dealing with the report, with Panday's print on it, where is that report now?

ADV MANYATHI: As I said the report on which Panday's print was found, after the print was found it was preserved as evidence, so it was – no it was not in the docket, I now recall. Procedurally when a

fingerprint expert does an elimination they keep the Exhibits so it would have been preserved in the safe or strong room of the local criminal records centre where the fingerprint expert is based but the fingerprint expert would depose to an affidavit for purposes of filing the docket setting out everything.

ADV NICHOLSON: Okay if we go to RR3 page 4 paragraph 15, you mention that authorisation was received in terms of Section 252 A.

ADV MANYATHI: Yes.

ADV NICHOLSON: Which Act are you referring to?

10 **ADV MANYATHI:** Criminal Procedure Act.

ADV NICHOLSON: What is the significance of Section 252A?

ADV MANYATHI: In essence the Section says before a trap is conducted the police must obtain authorisation from the Directorate of Public Prosecutions to conduct that trap, obviously there are exceptions like any other provision.

ADV NICHOLSON: Okay so you mention that a sting operation took place on the 8th of September 2011.

ADV MANYATHI: Yes.

20 **CHAIRPERSON:** I guess the significance is simply that it's a measure obtaining the authorisation beforehand, it's a measure to ensure or to distinguish, at least at a general level between a legitimate trap and something else that's not really a legitimate trap, in other words if you find if General Booyesen if, while General Booyesen was with Colonel Madhoe, and they – and Colonel Madhoe was handing over the cash if there wasn't this kind of provision, if later on the police charged both

Madhoe and General Booysen and General Booysen says no it was a trap it will be difficult to know is it genuine, is it true or was he also engaging in some illegal activity but now in order to get out of that he says, no as a police officer it was a trap.

ADV MANYATHI: Yes.

CHAIRPERSON: If you have gone to the NPA and said, I'm asking for authorisation to conduct a trap, if you are caught in that situation by the police you can say, go to the NPA you'll find that this trap has been authorised, I asked for it, then in that way you avoid a situation where
10 the police can get involved in illegal things and claim that they were conducting a trap.

ADV MANYATHI: Yes.

CHAIRPERSON: Ja okay.

ADV NICHOLSON: Now was there a Section 252A authorisation for a sting operation that took place on the 8th of September 2011?

ADV MANYATHI: According to the evidence in the docket there was authorisation.

ADV NICHOLSON: Okay, now you have spoken about the sting operation can you just tell us, where did the sting operation take place?

20 **ADV MANYATHI:** If I recall – yes I remember now it – both Madhoe and Booysen were based in the office of the Provincial Head Quarters of the police in Durban. The operation occurred in the basement in the parking lot of that building.

ADV NICHOLSON: Okay was it during this sting operation that the R1.3million was exchanged, that you mentioned earlier?

ADV MANYATHI: Yes.

ADV NICHOLSON: Can you just – do you know where the money was found after the exchange?

ADV MANYATHI: It was found in Madhoe's car – sorry it was found in Booyesen's car.

ADV NICHOLSON: Okay and the pre-dated report, was the pre-dated report ever exchanged?

ADV MANYATHI: Yes it was found in Madhoe's car.

ADV NICHOLSON: Okay.

10 **CHAIRPERSON:** I'm sorry what was found in Colonel Madhoe's car what was found in General Booyesen's car?

ADV MANYATHI: Initially I got it the other way around, the money, R1.362million was found in Booyesen's car and the report was found in Madhoe's car.

CHAIRPERSON: Oh okay at the time of the arrest?

ADV MANYATHI: Yes.

CHAIRPERSON: Okay so Colonel Madhoe had succeeded in transferring the cash from his car to General Booyesen's car?

ADV MANYATHI: Yes.

20 **CHAIRPERSON:** Ja as you understood the position.

ADV MANYATHI: Yes if I remember the specifics, they arranged to meet at the basement in the parking and then Booyesen said, come to my car. So Madhoe entered – gave him the money and Booyesen gave Madhoe the report and then Madhoe walked to his car. Once he entered the police officers who were at strategic spots then arrested

him on the spot.

ADV NICHOLSON: Okay, do you know if the sting operation was recorded in any way?

ADV MANYATHI: If I remember correctly there was an audio recording.

ADV NICHOLSON: Now we know that R1.362million was given to General Booyesen. What was the benefit to Madhoe who gave General Booyesen this money, you have mentioned it, if you can just crystallise it?

10 **ADV MANYATHI:** Benefit in what sense?

ADV NICHOLSON: What did he get this money...[intervenes].

CHAIRPERSON: Ja the question would be, why did Colonel Madhoe give General Booyesen such a lot of money.

ADV MANYATHI: So that as initially asked, so that Booyesen would pre-date the preliminary report.

CHAIRPERSON: Okay.

ADV NICHOLSON: Now if we go to paragraph 17 of RR...[intervenes].

CHAIRPERSON: So in other words he was buying him so to speak, buying him to do this for him?

20 **ADV MANYATHI:** Yes.

CHAIRPERSON: Okay, that's the normal language.

ADV MANYATHI: Yes.

CHAIRPERSON: Ja it was an inducement ja okay.

ADV NICHOLSON: If we go to page 4 of RR3 at paragraph 17, can you just read that paragraph.

ADV MANYATHI: 17?

ADV NICHOLSON: Yes.

ADV MANYATHI: “Madhoe admitted, after his arrest that the cash that was handed over to Booyesen had been provided by Panday”.

ADV NICHOLSON: How do you know this?

ADV MANYATHI: Because it was in the docket as in the evidence of the members of the sting operation who – I can’t remember.

CHAIRPERSON: Who made statements.

ADV MANYATHI: Yes they made statements.

10 **CHAIRPERSON:** Ja.

ADV MANYATHI: Ja.

CHAIRPERSON: So you had – when the docket was before you, you had the report that had Mr Panday’s fingerprint?

ADV MANYATHI: Yes.

CHAIRPERSON: And then you had statements by members of the investigation team who said Colonel Madhoe said to them after he had been arrested that Mr Panday had provided the cash that he gave to General Booyesen.

ADV MANYATHI: Yes.

20 **CHAIRPERSON:** Ja.

ADV MANYATHI: An interesting point of law because there have been developments at that time an admission was admissible against another person as in a court yes, the laws changed.

ADV NICHOLSON: Chair, the Chair asked my very next question, what was the evidence against Panday because in page 5 paragraph 18 you

stated that you applied for a warrant of arrest for Panday.

ADV MANYATHI: Yes. The Chair has summarised the two main aspects that I considered, of course there were other circumstantial aspects that I applied my mind to. What motivated me or rather what informed my decision to say there's a case, and I am going to apply for a warrant to have him arrested I was mindful that you know if I was having him arrested I could pursue it, so a fingerprint is found on a report which is strictly supposed to be within the police services, he is not a policeman, he is a businessman, what is his fingerprint doing on
10 a report.

Two the person who provides them R1.362million makes an admission that, sorry the person that gives Booysen the money makes an admission that Panday provided the money obviously in my head as I said you also look at other circumstantial aspects, without undermining him but I considered the probability that a Colonel in the police would have so much money.

ADV NICHOLSON: And you also mentioned ...[intervenes]

CHAIRPERSON: I am sorry, the point you make is that it was unlikely that a Colonel in the police would have so much money to give to
20 somebody else?

ADV MANYATHI: Yes.

CHAIRPERSON: Ja, okay.

ADV NICHOLSON: And you had also mentioned that Panday was a suspect in the fraud matter?

ADV MANYATHI: Yes.

ADV NICHOLSON: Do you know if Panday was ever arrested?

ADV MANYATHI: For the ...[intervenes]

CHAIRPERSON: Well firstly did you get the warrant?

ADV MANYATHI: I got it.

CHAIRPERSON: Ja, okay, was it carried out?

ADV MANYATHI: It was executed and they arrested him.

CHAIRPERSON: Yes, yes, okay.

ADV MANYATHI: And I enrolled him in other words I added him to who was already accused on the roll.

10 **CHAIRPERSON:** Yes.

ADV NICHOLSON: At the time you arrested Panday at that point in time what was your estimation on the prospects of a successful prosecution in the corruption matter, in this corruption matter we're dealing with.

ADV MANYATHI: As I said I ultimately indicted both in the high court, so there was a case, very good case, in my view and experience.

ADV NICHOLSON: Okay you had also mentioned that you were allocated this matter by the Acting DPP, Advocate ...[indistinct].

ADV MANYATHI: Yes.

20 **ADV NICHOLSON:** Did you keep him appraised of the progress in the prosecution?

ADV MANYATHI: I did.

ADV NICHOLSON: Did he ever express any reservations to you regarding the evidence?

ADV MANYATHI: No.

ADV NICHOLSON: At RR3 page 5, paragraph 19 you say that presentations were made to Advocate Lawrence Mgwebe, the National Head Specialised Commercial Crime Unit, known as the SCU?

ADV MANYATHI: Yes.

ADV NICHOLSON: Perhaps it is convenient if at this point you can just explain the structures within the NPA.

ADV MANYATHI: I will deal with the two units that are relevant here. You had – it still is the case so I will speak in the past tense, you had the National Prosecution Services which was called NPS, under which
10 all the officers of the DPP's in all provinces fell and in terms of hierarchy under the DPP you will have the Deputy Directors of Public Prosecutions, that is in terms of the High Court, and then on the side still falling under the Deputy you have Chief Prosecutors who were in charge of clusters. Clusters are made of districts and then under Chief Prosecutors you have SPP's who are in charge of districts and then your prosecutions below that.

That was the NPS which was called the general section, under which I and Ms Clarke fell. And then on the side you would have the Specialised Commercial Crimes Unit, the SCCU. The National Head of
20 SCCU was based in Pretoria was Advocate Mgwebe and then SCCU's would have offices and courts in major centres.

For instance in KwaZulu Natal the entire Province there's one SCCU office and court that would be in Durban. There were you know other officers and courts in major cities like Johannesburg, Pretoria, Cape Town.

ADV NICHOLSON: So the point is the NPS didn't fall under the SCCU but it was a parallel structure?

ADV MANYATHI: Yes.

ADV NICHOLSON: Okay.

ADV MANYATHI: If I may elaborate something important, when Advocate all along there were just two separate structures in the sense that the one hand did not know what the other hand was doing until Advocate Mendes Melone became the National Director of Public Prosecutions and he changed, so when he came on board he said he
10 doesn't want a situation where for instance I will use KwaZulu Natal the DPP in this case Advocate Mlodjwa, is in charge of the whole province, but he doesn't know what is happening at SCCU which is situated in Durban within his province, he said no there should be two centres of power in terms of SCCU, the DPP must be involved and so is the spatial director who sits in Pretoria, in this case Advocate Mgwebe.

ADV NICHOLSON: Okay, in which section did you and Advocate Wendy, I think you said Clarke, work?

ADV MANYATHI: General Section, NPS.

ADV NICHOLSON: And under which section did both the fraud and
20 corruption prosecutions reside?

ADV MANYATHI: The fraud matter I don't know whether it was ever involved but at the time it was not on the roll. Remember I said there was still a long way to go, there was still going to be forensic audit report etcetera, so it was no on the roll, it was still being investigated, the corruption matter was under the general section but that's one

aspect where I said I need to add, it actually came back to my recollection as I was sitting there, initially this corruption case was held at the commercial crimes court and then it was moved to the general court, which would be Durban Regional Court, but it was allocated to me by Mlodjwa who is in charge of the general section and also technically in charge of SCCU and I was in the general section.

ADV NICHOLSON: Okay did it make any sense for representations to be made to the head of SCCU and not to the Acting DPP KZN?

ADV MANYATHI: It's the point I make in my affidavit, I am just saying
10 I don't know why representations were made to Mgwebe, that is as far as I can say.

CHAIRPERSON: Hang on one second, did the corruption, did corruption matters not fall under his unit or they did, fraud and corruption?

ADV MANYATHI: Under the Specialised Commercial Crimes Unit?

CHAIRPERSON: No, they didn't under general?

ADV MANYATHI: Fraud yes, certain frauds.

CHAIRPERSON: Certain types of fraud.

ADV MANYATHI: Certain types fraud.

20 **CHAIRPERSON:** Would fall under his unit?

ADV MANYATHI: Yes complex fraud.

CHAIRPERSON: Complex fraud, commercial fraud.

ADV MANYATHI: Commercial fraud more precisely because we also in the general section we did a lot of fraud, very serious fraud I did mainly.

CHAIRPERSON: Yes, yes. Okay so commercial fraud would fall under his unit.

ADV MANYATHI: Yes.

CHAIRPERSON: But there would be a lot of other fraud cases that did not fall under his unit.

ADV MANYATHI: Yes.

CHAIRPERSON: And those would fall under general section.

ADV MANYATHI: Yes, yes.

CHAIRPERSON: And corruption, would there be some corruption
10 cases that fell under his unit?

ADV MANYATHI: If you look at the very establishment of that specialised commercial crimes unit I don't think they were dealing with corruption, I mean by definition but ...[intervenes]

CHAIRPERSON: Well unless, unless I guess they wouldn't separate it if the fraud is part of corruption.

ADV MANYATHI: Probably yes.

CHAIRPERSON: If the – if it is commercial fraud but that commercial fraud is part of corruption then maybe it could fall within, that type could fall within his unit.

20 **ADV MANYATHI:** Yes.

CHAIRPERSON: Yes, but this particular fraud would it fall under commercial fraud this kind of case or not?

ADV MANYATHI: I don't know but something important Chairperson as I have said I only recalled this morning as I was sitting there that when I first went to court for this matter we appeared at the Commercial

Crimes Court and then it was moved to Durban Magistrate's Court which is in a separate building.

CHAIRPERSON: Yes okay.

ADV NICHOLSON: Now the representations that we refer to are at page 12 of RR3, attached to your affidavits as BM1.

ADV MANYATHI: Yes.

ADV NICHOLSON: If you look on the same page at the second unmarked paragraph can you read the first line.

ADV MANYATHI: Which paragraph?

10 **ADV NICHOLSON:** On the same page the second unmarked paragraph starting from, well the bottom starts from we, the second we.

ADV MANYATHI: The one that says "we are instructed"?

ADV NICHOLSON: That's correct.

ADV MANYATHI: Read the entire one?

ADV NICHOLSON: Yes, well read the first line.

ADV MANYATHI: "

20 "We are instructed to make the following representations to your offices as our client is of the reasonable belief that your offices have clearly not been appraised of the circumstances wherein our client is a potential witness in matters of national interest involving both provincial and national levels of SAPS management, intelligence, covert operations, the Hawks and others."

ADV NICHOLSON: Okay it was just the first line I was interested in, we are instructed to make the following representations to your offices.

Now on whose behalf were these presentations made?

ADV MANYATHI: Interestingly the attorney is present here. They were made on behalf of accused number one only, Madhoe.

ADV NICHOLSON: Okay, now what do you make of the line there t hat you read, the first line?

ADV MANYATHI: In what sense Mr Nicholson, I am just reading this as an attorney saying to Mgwebe I have been instructed to make representations to your office.

ADV NICHOLSON: To your offices yes.

10 **ADV MANYATHI:** Yes.

ADV NICHOLSON: My reading is that Colonel Madhoe advised his attorney to make representations to Advocate Mgwebe's office, and not to your office.

ADV MANYATHI: I wouldn't want to go that far because I don't know, I was not privy to the discussions between Madhoe and the attorney.

CHAIRPERSON: Ja, I am not sure that I follow what you are talking about. Of course when that sentence says we are instructed, written by an attorney, it means our client has asked us to do A, B, C, D so we are instructed to make the following representations to your offices. The
20 reference to your offices is the reference to the offices of the National Head of the Special Director of Public Prosecutions in Pretoria. In Pretoria, so I am not sure that I follow what the issue is.

ADV NICHOLSON: Chair the point that I was trying to establish was my reading of that line is that the instructions were given to make representations to the SCCU's offices and not to the DPP's offices

where the representation should have been made, but Advocate Manyathi has stated that he doesn't see it that way.

CHAIRPERSON: Oh, okay. Well I don't know maybe the two of you were talking cross-purposes. The letter is addressed to Pretoria, to the National Head of the Special Commercial Crime Unit. Obviously when the author of the letter says we are ...[indistinct] to make the following representation to your offices that is the offices of the National Head in Pretoria.

ADV MANYATHI: Advocate Mgwebe?

10 **CHAIRPERSON:** Yes.

ADV MANYATHI: Basically yes.

CHAIRPERSON: Yes, that's what you also understand it to be saying?

ADV MANYATHI: Yes.

CHAIRPERSON: Yes. There is no confusion you bare both on the same page but I thought it looked like you were not on the same page.

ADV MANYATHI: Perhaps the difference Chairperson is this, Mr Nicholson is saying – is reading into that we instructed to make representations to you, Advocate Mgwebe and not to Malodgwa. It is the latter aspect that I am saying I am not willing to go to that extent.

20 **CHAIRPERSON:** Yes, but that's not what the letter says isn't it?

ADV MANYATHI: One could read the letter in that light.

CHAIRPERSON: Let me see, maybe I am missing something. We are instructed to make the following representation to your offices as our client is of the reasonable belief that your offices have clearly not been apprised of the circumstances wherein your client, our client is a

potential witness in matters of national interest involving both Provincial and National levels of SAP management, blah-blah-bah. What they may be saying is we – they are saying definite we are approaching you at national level, that is now specialised commercial crime unit, and then they seem to be saying the reason why we are approaching you is that you might not have been appraised of the circumstances wherein our client is a potential witness in such and such a matter involving the Provincial and National levels SAPS. I am not sure that I see what the point is, I am not sure.

10 If the point is they were supposed to make representation somewhere else that might be a separate point but I don't see that from that paragraph they are necessarily saying we have a particular reason for not sending it to the Provincial Office. I am not sure if it's important but you tell me if it is important to understand.

ADV NICHOLSON: No Chair I think we can leave it ...[indistinct] .

CHAIRPERSON: Okay.

ADV NICHOLSON: That same paragraph mentions that our client is a potential witness, can you see that?

ADV MANYATHI: Yes.

20 **ADV NICHOLSON:** Do you know if he is a witness in any matters of national interest?

ADV MANYATHI: I don't know. In fact in my memorandum in which I responded to Advocate Mgwebe's covering memorandum wherein he attached his representations I said Madau is clouding issues, most of those aspects that he is talking about I was not privy to, they did not

feature in the corruption matter so I don't know what he was talking about.

CHAIRPERSON: It was just statements which were not substantiated.

ADV MANYATHI: Yes.

CHAIRPERSON: He did not put up anything to say what he was talking about when he was referring to matters of national interest?

ADV MANYATHI: Yes, also the key word he said he is a potential witness, not as if it is actual.

CHAIRPERSON: Yes, but potential or not, potential witness or not
10 these matters of national interest he is referring to he didn't put up any facts to tell you what he was talking about.

ADV MANYATHI: Yes, no he didn't.

CHAIRPERSON: *Ja*, okay.

ADV NICHOLSON: During this time you had already mentioned that Madau was an accused in the – was a suspect in the fraud matter?

ADV MANYATHI: Yes.

ADV NICHOLSON: Okay.

CHAIRPERSON: I see we are at five, estimate of how much time we need?

20 **ADV NICHOLSON:** We are about halfway Chair.

CHAIRPERSON: We are about halfway. We won't get to the next witness hey?

ADV NICHOLSON: No Chair, it seems not Chair.

CHAIRPERSON: Okay I think I will go up to half past five, let's see if we can finish, will that suit you in terms of going back?

ADV MANYATHI: Now that the Chair has asked I will say, I didn't want to spoil the record, my flight is at seven which means I will have to check in at six, I don't know, Johannesburg has a reputation of traffic.

CHAIRPERSON: Yes.

ADV MANYATHI: I don't know, what's the latest I should leave here with the traffic to check in at six?

CHAIRPERSON: Yes.

ADV MANYATHI: And there is no flight after seven.

ADV NICHOLSON: My learned friend has just indicated that if he
10 misses the flight we will put him on another flight.,

CHAIRPERSON: But he says there is no other flight after that?

ADV MANYATHI: Chairperson that is based on what Mr Nicholson said.

CHAIRPERSON: He told you previously.

ADV MANYATHI: Told the Chairperson.

CHAIRPERSON: Oh.

ADV NICHOLSON: That is correct Chair I did mention that the administration staff had indicated that there is only a flight at seven and that's the flight we booked Advocate Manyathi on.

20 **CHAIRPERSON:** And that remains the position, as far as you know.

ADV NICHOLSON: That remains the position as far as I know.

ADV MANYATHI: Sorry the other option is this, which I am willing to sacrifice, but it is a sacrifice in the real sense of the word. I have a matter at Ulundu Regional Court tomorrow.

CHAIRPERSON: Yes.

ADV MANYATHI: There is no way I will not be there, worst case scenario if the Commission would hire a car for me to drive to Durban I am willing to sacrifice and leave it at Durban at the airport.

CHAIRPERSON: Ja, yes, look I think that's a good gesture but I think we might not finish in 30 minutes time. I am saying that because Mr Nicholson I think probably you and I are quite poor in estimating anything because you had said you thought we might finish both witnesses within one and a half hours, so I think what we should do, we should stop unfortunately and allow the witness to catch his plane and
10 then request that he should come back on the same day that the other witness must come back, so that we can deal with matters properly.

Now the other witness, that is Colonel ...[intervenes]

ADV NICHOLSON: du Plooy, Piet du Plooy?

CHAIRPERSON: Yes, I don't know if I can ask for your estimate again of how long he might be?

ADV NICHOLSON: Colonel du Plooy is definitely going to be longer than Advocate Manyathi.

CHAIRPERSON: Ja, we might have to find another time to bring them in. Next week there are no witnesses who will be heard by the
20 Commission because that's the week that had been reserved for the former President to come and give evidence, so one possibility is to find a day next week when then they can come back or to find another date not too far from now, so I think what should happen is let's adjourn. Before he leaves, before they leave you get information about possibilities, don't confine yourself to next week, also look at later in

February or early March, but also next week because I'm not sure. It may be that we can use one of the days next week or it may be that we should rather put it later on in February.

Would that be fine? Yes, let's do that, let's allow him to catch the flight because as I say I also didn't want to go beyond half past five and we might proceed and at half past five we are not done and when he drives all the way he would arrive in Durban after twelve midnight and then he must still drive from Durban tomorrow morning to where?

ADV MANYATHI: ...[Indistinct – mic off] I should be leaving Durban at
10 half past five.

CHAIRPERSON: Ja, so I think let's rather stop now and then you make those arrangements and then you come back to me and then I will fix a date for them to come back. What about – when was Advocate ...[indistinct] to come, because maybe he could come then too?

ADV NICHOLSON: Chair as I understand the position was Advocate ...[indistinct] was supposed to come in this week but because the law enforcement team had to give some of our times away a date has not been set for him.

CHAIRPERSON: Ja, no that's fine, but he's ready in terms of you
20 have his statement.

ADV NICHOLSON: Yes.

CHAIRPERSON: You have the statement, it's a question of fixing a date?

ADV NICHOLSON: We have the statement.

CHAIRPERSON: You've got the statement.

ADV NICHOLSON: I believe the 33 notices have been served.

CHAIRPERSON: Oh okay, that's fine. I just wanted to have an idea, later on you can tell me what the position is afterwards and then maybe tomorrow and then I can fix a date, but I think that's fine for today, let's allow Mr Manyathi to catch his flight. So we are going to adjourn the proceedings, discussions will be held to arrange another date and we will ask you to come back.

Okay, so we are going to then adjourn, we adjourn for the day.

REGISTRAR: All rise.

10 **INQUIRY ADJOURNS TO 23 JANUARY 2020**