

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

25 MARCH 2021

DAY 368



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

25 MARCH 2021

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 25 MARCH 2021

CHAIRPERSON: Good morning Mr Franklin, good morning everybody.

ADV FRANKLIN: Good morning Chair.

CHAIRPERSON: Yes are we ready?

ADV FRANKLIN: Thank you Chair. As – as you know...

CHAIRPERSON: Yes.

ADV FRANKLIN: We continue today with the evidence of Mr Symington.

10 **CHAIRPERSON:** Yes.

ADV FRANKLIN: Before we do that Chair.

CHAIRPERSON: Yes.

ADV FRANKLIN: I had informed you earlier of an application brought by the State Security Agency in respect of the evidence to be led by Mr Loggerenberg after Mr Symington. There have been numerous interchanges between the parties and a resolution has been received – reached rather which obviates the need for the application to be argued.

20 Counsel for the SSA is here and has asked the commission's indulgence to place on record at this point that their attitude so that he can then be excused thereafter.

I understand that the representatives for Mr Van Loggerenberg would similarly like to place certain matters

on record if you allow them to do so after the SSA.

CHAIRPERSON: Okay before I allow the SSA I just wish to announce that at 2:00pm this afternoon I will make a public statement about the events of Tuesday evening in this commission this past Tuesday during the evening session of the commission.

That will be at two o'clock at this venue. Okay alright – and then also I just need to mention to you Mr Franklin and all counsel and legal representatives present
10 and the witnesses that we will take an early lunch today at half past twelve but we will resume at two.

ADV FRANKLIN: Thank you Chair.

CHAIRPERSON: Thank you. Counsel for the SSA can then address me.

UNKNOWN COUNSEL: Good morning Chairperson.

CHAIRPERSON: Good morning.

UNKNOWN COUNSEL: Chairperson I made an appearance yesterday.

CHAIRPERSON: Yes.

20 **UNKNOWN COUNSEL:** On behalf of Mr Loyiso Jafta

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Who is the acting Director General of the SSA. Chairperson majority of what has been said by my learned colleague is correct. There has been numerous engagement and exchanges that necessitated that the

whole application that was brought before this commission should be not IU'd or the motion moved however my client has certain disquiets that I am under instruction to ventilate in the commission.

Chairperson the need for us to enter an appearance in these proceedings was firstly premise on a constitutionalism.

Chairperson the fundamental constitutional principle is that an individual can do anything but that which is forbidden by law. Whereas the government can do nothing but that which is authorised by law. So this is a trite principle of the law. So now the acting General of SSA deemed it prudent to bring this Honourable commission to certain principles of the law necessitated by the application.

If I direct this Honourable Commission to Intelligence Services Act 65 of 2002 particularly Section 4 which has – which reads as follows:

“A Director General must as far as it reasonably practicable take steps to ensure that identity of members of the agency are protected from unauthorised disclosure.”

Equally so Chairperson Section 26 of the same Act reads as follows:

“A person commits an offence if he or she

not being a member by words, conduct or demeanour pretends that he or she is a member encourages a member not to carry out his or her duty to perform any act in conflict with his or her duty.”

Now Section 26.1.a. 333 says:

10 “A person commits an offence if he or she discloses classified information or material entrusted to him or her by the Director General or a member without the permission of the Director General.”

Chairperson equally so which is legislation that we deem finds application in this situation is Section 4 of the Protection of Information Act No 84 of 1982 and for the record in fact let me just quickly go take it from jurisprudence which is now established in our courts in the Minister of State Security versus the Public Protector this is a recent judgment Chairperson if this commission wants that I should give it a full citation I will be glad to do so.

20 Now the general principle is that...

CHAIRPERSON: No, no do not. – no do not do – do not do so. Do not do so. How much time should I give you to make your address?

UNKNOWN COUNSEL: The last – perhaps about five minutes I will be done.

CHAIRPERSON: Five minutes more okay alright.

UNKNOWN COUNSEL: Five minutes more.

CHAIRPERSON: Okay alright.

UNKNOWN COUNSEL: If the Chairperson goes to paragraph 17 of the judgment Chairperson will see in quotation at paragraph 17 page 10 of the judgment it say:

“Just because a secret document already is in the public domain does not justify its further disclosure by an order of this court.”

10 This is now the judgment that came out recently. Chairperson now when I looked at the affidavit of the witness that is about to testify particularly at paragraph 83.

CHAIRPERSON: The one who will testify after the one who is about to testify?

UNKNOWN COUNSEL: To be precisely Mr Van Loggerenberg Chairperson.

CHAIRPERSON: Ja. Hm.

UNKNOWN COUNSEL: Chairperson this is what he says at paragraph 83 of his affidavit and I quote.

20 “I have always been and remain able and willing to implicate persons from the highest office of the land to Ministers, Deputy Ministers, Politicians, Senior State Officials, Politically connected persons, big business and executive the officers of the

constitutional oversight bodies, members of Parliament, head of state organs, law enforcement officials, secret agents and operatives of the state and many entities registered both in South Africa and elsewhere in the world. However I do so – I need to be permitted by law by specifically SARS and the State Security Agency and Police Crime Intelligence to do so. The

10 afforded access to records that I know of participated in compiling and oversaw, be afforded access to witnesses whom I know by name and worked with over the years who I know and will be able to corroborate.”

Now if I want to tidy up my submissions Chairperson today I wish to state the following:

Notwithstanding the legal principles that I have given to the commission the founding – the affidavit submitted by Mr Van Loggerenberg in these proceedings

20 particularly the 3.3 that I have been given by my client I will not mention the names because these are some of the names that are protected.

Now if one has regards to paragraph 4 at the end it says:

“The full statement of Mr Van Loggerenberg

will be uploaded on the Commission's website as soon as 00:07:00. The transcripts will be uploaded daily."

Now I am mindful of the fact that we have reached a consensus where we say the names particularly belonging to the list provided by Mr Loggerenberg will be redacted.

The question now that remains is that what happens to those that has already been disseminated through 3.3 letters? They still remain in their original form.

10 Chairperson I do not make this submission very lightly. My instruction is that in its original form the affidavit that was file by Mr Van Loggerenberg is in breach of Section 26 of the Intelligence Services Act and this Honourable Commission cannot be used as an instrument to countenance such behaviour and I hope and this is my client's instruction that an investigation will be commissioned to stay – to know exactly under what circumstances was the names allowed to be – to find themselves in the affidavit.

20 These are my only concerns as far as my client is concerned. As I said on the Notice of Motion there are two prayers that I requested one of which is evidence in camera and the second of which is the redaction of names.

As I have stated Chairperson that there is no longer a need for us to participate and in fact the last issue was

insofar as the Rule 3.3 my understanding of the Rules of the Commission Chairperson if you allow me is that 3.3 has a before – if perhaps for the record I need to read the rule itself. It says:

10 “If the commission’s legal team intends to present to the commission a witness whose evidence implicates or may implicate another person it must and this is now cast in peremptory measures through the secretary of the commission notify the person in writing within a reason time before.”

So now my understanding is that the commission has gone through the affidavit of Mr Van Loggerenberg and the analysis was that none of our clients or none of our members are implicated otherwise had they been implicated they would have then received the 3.2 Notices. – 3.3 I beg your pardon Chairperson.

20 Chairperson if there is anything else that you need me to address that is the submission or that is my instruction as far as my client is concerned.

CHAIRPERSON: No that is fine, no there is nothing than you very much.

UNKNOWN COUNSEL: Thank you Chairperson.

CHAIRPERSON: Thank you. And then is it Counsel for Mr

Van Loggerenberg?

UNKNOWN COUNSEL: Morning Chair.

CHAIRPERSON: Good morning.

UNKNOWN COUNSEL: Chair I will be very brief.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Mr Van Loggerenberg has requested that I make the following points which will be in response to what my colleague has already forward.

The first point Chair is that Mr Van Loggerenberg
10 has at all times been both cognisant of and respectful of the legislation governing the operations of the SSA.

The second point is that the names that have been mentioned in his affidavit have in the main all been in the public domain for close to a decade both through court process and through media coverage.

CHAIRPERSON: Hm.

UNKNOWN COUNSEL: Mr Van Loggerenberg took great care to only name those who have been listed in the public domain. He goes further to state that he could name many
20 more but due to the fact that those identities have not yet been exposed he has taken every caution to avoid disclosing their identities.

The third thing is that Mr Loggerenberg did not go out purposefully to seek out these individuals. The evidence presented by him came to his knowledge over

time through the actions of these very operatives.

Furthermore whenever these actions came to his knowledge he took extreme care to inform the SSA and to protect the SAA as best as he could.

Mr Van Loggerenberg also does not seek to tarnish the entire SSA that is most certainly not his intention. He is merely advising the commission of those operatives who he deems it appropriate for the commission to be aware of.

When Mr Van Loggerenberg received the application
10 from the SSA Chair it was he who initiated the dialogue to say let us reach a compromise, let us redact those names. I personally Mr Van Loggerenberg said will go through my affidavit redact the names and insert pseudonyms.

CHAIRPERSON: Hm.

UNKNOWN COUNSEL: The last point Mr Van Loggerenberg wishes me to make Chair is that whilst he is aware, cognisant and respectful of legislation he does not believe that legislation can ever be used by individuals to protect or to clothe them from any unlawful behaviour that they
20 may have been guilty of. Thank you Chair.

CHAIRPERSON: Thank you. Please sanitise the podium again. Yes Mr Franklin.

ADV FRANKLIN: Thank you Chair. I have nothing to add on the SSA issue.

CHAIRPERSON: Yes.

ADV FRANKLIN: And with your leave may we continue with the evidence of Mr Symington?

CHAIRPERSON: Yes let us do so. Good morning Mr Symington.

MR SYMINGTON: Good morning Chair.

CHAIRPERSON: The oath you took yesterday or affirmation whichever it was will continue to apply this morning.

MR SYMINGTON: Thank you Chair.

10 **CHAIRPERSON:** Okay. Okay you may proceed Mr Franklin.

ADV FRANKLIN: Thank you Chair. Mr Symington we concluded with your main affidavit yesterday what I would like to do this morning is put further affidavits to you and get your comment on certain issues. Please would you get before you the file which is – the bundle which is SARS03. You have that?

MR SYMINGTON: Yes.

20 **ADV FRANKLIN:** And would you please turn to page 659. That is an affidavit which runs to page 697 please look at page 697?

CHAIRPERSON: 697 you said?

ADV FRANKLIN: That is correct. I am sorry I have taken you too far. It is in fact page 688. You have that?

MR SYMINGTON: Yes.

ADV FRANKLIN: It is – reflects that this affidavit was deposed to by you on the 24th of February 2021 can you confirm that?

MR SYMINGTON: Yes Chair.

ADV FRANKLIN: And do you confirm the truth and accuracy of this affidavit which is described as affidavit.

CHAIRPERSON: I am sorry Mr Franklin did you say page 688?

ADV FRANKLIN: Correct.

10 **CHAIRPERSON:** On 688 I do not have an affidavit I have got a picture of somebody Officer Kushlo.

ADV FRANKLIN: Is the – is the Chair looking at...

CHAIRPERSON: I am having SARS Bundle 2.

ADV FRANKLIN: No 3.

CHAIRPERSON: Oh okay.

ADV FRANKLIN: Do you have that Chair? Just to orientate you the...

CHAIRPERSON: I have got 688 is the page?

ADV FRANKLIN: Yes that is the last of the affidavit.

20 **CHAIRPERSON:** Okay.

ADV FRANKLIN: And it begins at page 659.

CHAIRPERSON: Okay.

ADV FRANKLIN: And it is called Affidavit in Reply by Mr Symington.

CHAIRPERSON: Okay I have got the last page of that

affidavit.

ADV FRANKLIN: Thank you and Mr Symington you have confirmed the truth and accuracy of the contents of that affidavit?

MR SYMINGTON: Yes Chair.

ADV FRANKLIN: Chair Mr Symington's main affidavit was Exhibit WW3 may I ask that this affidavit in reply be admitted into the record as Exhibit WW3.1?

CHAIRPERSON: The affidavit – oh that affidavit starts at
10 659 is that right?

ADV FRANKLIN: Correct.

CHAIRPERSON: Okay. You suggested it should be WW?

ADV FRANKLIN: 3.1 Chair.

CHAIRPERSON: Okay the affidavit of Mr Johan Daniel Vlok Symington starting at page 659 will be admitted as an exhibit and will be marked as Exhibit WW3.1.

ADV FRANKLIN: Thank you Chair. Can I take you to your affidavit please Mr Symington and particularly paragraph 5
20 on page 660? You say there that various person implicated
were duly notified of such by the commission and some
have elected to file affidavits in response to certain
allegations in your main affidavit and you were provided
with the affidavits deposed to by four named persons and
they are I will just use the surname for purposes of this

exercise. Rapholo, Visser, Maphakela and Mothle is that correct?

MR SYMINGTON: Yes Chair.

ADV FRANKLIN: You also say in your affidavit that for purposes of responding to those statements you consulted with various SARS employees. You say that in paragraph 13 on page 662. Is that correct?

MR SYMINGTON: Yes Sir I did.

ADV FRANKLIN: And you confirm that on the 29th of
10 January 2021 and for purposes of compiling this affidavit in reply you consulted with SARS employees once again I will just use the surnames Mr Kingon formally acting Commissioner of SARS and currently head of stakeholder engagement. Broughton Chief Litigation Officer of SARS. Nkabinde Legal Specialist and Mosithe also a Legal Specialist. Is that correct?

MR SYMINGTON: Yes Chair.

ADV FRANKLIN: And you procured a confirmatory affidavits where necessary to confirm what they told you at
20 that meeting?

MR SYMINGTON: Yes Chair I did.

ADV FRANKLIN: What you have done then is you have taken each of the affidavits in turn and you have given your response to it and I would like to simply highlight some of the paragraphs in your affidavit. Please look at page 661?

There is a heading Response to Mothle's affidavit and just to remind the Chair Mr Mothle is the attorney who conducted the inquiry into your grievance against Mr Titi, is that correct?

MR SYMINGTON: Yes Chair.

ADV FRANKLIN: Alright please look then at paragraph 14 – paragraph 14 I understand to be a summary of what you were advised by the SARS representatives with whom you consulted, is that correct?

10 **MR SYMINGTON:** On 14 yes.

ADV FRANKLIN: On page 662.

MR SYMINGTON: Yes Chair.

ADV FRANKLIN: Could I please ask you to look at paragraph 14.6? Now you told the commission yesterday that there had been a report that had been drawn up by Mr Mothle in which he had essentially upheld your version of events and found that there was fault on the part of Mr Titi and that an inquiry should be convened in relation to Mr Titi's conduct. Is that correct?

20 **MR SYMINGTON:** Yes Chair.

ADV FRANKLIN: You also explained that sometime thereafter and I think you said effectively out of the blue you then received an addendum report and in the addendum report for the first time your conduct had been scrutinised and you were found to have committed

misconduct, is that correct?

MR SYMINGTON: Yes Chair indeed.

ADV FRANKLIN: Alright so if you would look then at paragraph 14.6 at page 663 you summarise here what you were told by the SARS officials with whom you consulted, is that right?

MR SYMINGTON: Yes Chair.

ADV FRANKLIN: If I may then just take you through it. In summary:

10 “1. After he submitted his first report Mothle was called to a meeting held at SARS offices.

2. Mothle was told that he had misunderstood the instructions. He disputed this.

3. He was instructed by R Mokoene together with Lebelo to prepare an additional report which also dealt with my behaviour. He was expressly pointed to the issue of my swearing as an issue to report on in the supplementary report.

20

4. He requested a letter about how he misunderstood the instructions but never received such a letter.

5. After leaving he shared his discomfort

about the instructions in a discussion with Rapholo and

6. With regard to the addendum report no additional evidence was obtained prior to reaching the conclusions and recommendations.”

Can you confirm that is an accurate summary of what was told to you by the SARS officials?

MR SYMINGTON: Yes Chair indeed.

10 **ADV FRANKLIN:** Then if I could ask you to turn to paragraph 21 on page 666 this is still part of your detailed response to Mr Mothle’s affidavit? And please turn to paragraph 21.3? And this is what you say:

“The first report ...”

CHAIRPERSON: Is that paragraph 21.3?

ADV FRANKLIN: Correct on page 667 Chair.

CHAIRPERSON: Okay thank you.

ADV FRANKLIN: Do you have that Mr Symington?

MR SYMINGTON: Yes.

20 **ADV FRANKLIN:**

“The first report can hardly be said to be incomplete or inadequate this is most likely why Mothle initially resisted instructions to “expand” on his first report. Unfortunately the irresistible inference to be drawn from

the facts is that Mr Mothle was pressurised inter alia by R Mokoene and Lebelo to frame me for misconduct and that he ultimately buckled under this pressure and produced the addendum report. The sole purpose of which was to justify SARS taking disciplinary action against me.”

Now you have – you have reached a – a serious conclusion there perhaps you can please elucidate for the
10 Chair what it is that leads you to this conclusion that the addendum report was planned purely at framing you?

MR SYMINGTON: Chair so I need to go slightly back in sequence and maybe start off where I was initially informed by SARS that an – that Mr Mothle would be appointed to investigate my grievance against Mr Titi.

At – it was made very clear after I have asked what the Terms of Reference would be for an investigation. It was made very clear to me and by way of email which is in one of my annexures that the investigation will be
20 focussing on the grievance which I lodged against Mr Titi.

And on that basis the investigator Mr Mothle produced a report dated 31 May 2017 and then handed to me I think on the 11th of May of that year.

And the report in fact went into my grievance investigated it, interviewed me extensively, interviewed Mr

Titi more than once and as a result the report what was – which was then produced to SARS found that my grievance was in fact valid.

And then a series of interventions which happened behind the scenes which we later found out about via emails that were provided to me by SARS from the SARS email server. It was then found that a meeting was held between SARS representatives and Mr Mothle where Mr Mothle was in effect pressurised by SARS to – to change
10 the outcome of his report and he then executed that hesitantly so and he expressed his – how he felt about it.

He uses the word hesitantly I am saying unethically then went back used the exact same facts exonerating Mr Titi and recommended four very serious disciplinary charges against me.

Now no one ever laid any – a complaint about me. Not my line manager Mr Louw, not Mr Titi, no one filed any grievance against me yet that was then the outcome.

And – so – and that led me to the conclusion that
20 there was only one reason that the second report or the addendum to the first report was asked for and that was to effectively remove me out of SARS because when you look at those disciplinary charges each of them is I was found guilty which by the way I would not have been – but if so any one of them would have led to my immediate dismissal

out of SARS. No other warning letters or anything like that and that is what led me to this Chair.

ADV FRANKLIN: Thank you then please look at 21.4 on page 667 what you have done there is to draw the Chair's attention to the introduction to the addendum report and you say that the wording of that introduction supports the inference in the preceding sub-paragraph. The wording is at page 667 and it is as follows:

10 "1.4 Following the elucidation of the Terms of our mandate we accept that the additional elements of the incident that requires specific investigation and recommendation include inter alia

1.The apparent breach of the employer/employee trust relationship by Symington.

20 2.An analysis of the content of the audio and video recordings released to the media to establish the true intent of the protagonists (Symington and Titi) and the actual underlying circumstances and associated nuances of the incident."

And in 21.5 you have said:

"It is suspicious to put it mildly that an independent attorney appointed to

investigate my grievance against Titi in which I allege illegal conduct by him and others finds in his first report that on the probabilities Titi was complicit in holding me against my will but then without any further investigation, interviews or even a communication to me accepts an instruction to investigate an apparent breach of trust by me towards my employer.

10 This is all the more disturbing to me if regard is had to the fact that Mothle deemed it appropriate to interview Titi twice before he finalised his first report. As is apparent from my explanation of my resort to expletives and Mothle’s concurrence that such expletives were not directed at Titi he then deemed it appropriate to canvass this particular issue with Titi again.”

And then you have made certain references. I think that is
20 self-explanatory.

MR SYMINGTON: Yes Chair it is.

ADV FRANKLIN: And then just to highlight one further issue in the first sentence in 21.6 you say that:

“No such allegation was ever brought to my attention prior to the issuing of the

addendum report. I was never asked to comment or respond to any such allegations.”

Is that factually correct?

MR SYMINGTON: Yes Chair.

ADV FRANKLIN: Then could I direct your attention to Mr Kingon’s confirmatory affidavit.

MR SYMINGTON: Mr Chair if I may?

ADV FRANKLIN: Yes.

10 **CHAIRPERSON**: Yes.

MR SYMINGTON: Just before we go there I think it is also relevant to know that when I was initially informed that Mr Mothle would be appointed I was informed of this on the 21st of November 2016 by Mr Rapholo and in that email the very same individuals that later sat with Mr Mothle to change the scope of the investigation if you can call it like that were cc’d in that mail.

20 So they knew in November 2016 and this was Mr Tebogo Mokoene, Mr Luther Lebelo, Kosie Louw, Glengale – Klengane Matabule no – you would notice that Mr Tebogo, Mokoene, Luther Lebelo, Klengane was in the meeting with Mr Mothle later on when they gave Mr Mothle other instructions.

But in November it was very clear to them and to me what the Terms of Reference would be so they never

objected against it they never said anything. In fact Mr Mothle was then appointed by them on those terms that were – that were expressed to me and I think that is relevant because those very same people who knew the exact terms of Mr Mothle later said to Mr Mothle no you misunderstood our terms. So I just wanted to ...

ADV FRANKLIN: Thank you for that addition. I wanted you to look please at the confirmatory affidavit of Mark Kingon which appears at page 730 to 733. Mr Kingon
10 records in paragraph 3 that he was approached by your lawyers with a request to consult and provide information regarding his recollection of a meeting held on the 31st of October 2019 attended inter alia by him, Moseto, Ledwaba and Mothle, that is correct?

MR SYMINGTON: Yes Chair.

ADV FRANKLIN: And what Mr Kingon does is to give his recollection of that meeting in the affidavit and I would like to direct your attention specifically to paragraph 9 on page 732 and this is what Mr Kingon says:

20 “I further recall that during this meeting I gained the distinct impression that Mothle had been coerced into preparing the addendum report. Given some of the words used during the engagement it was my perception that the purpose of the

instruction to prepare an addendum report was to “get” Symington by any means possible.”

Is that what Mr Kingon told you?

MR SYMINGTON: Yes, Chair. And the relevance, of course, is that the meeting was held and Mr Kingon was in the meeting with Mr Mothle when they asked him about this addendum report in 2019.

ADV FRANKLIN SC: Thank you. Then going back to your
10 main affidavit in reply. At paragraph 682, you then deal with the affidavit of Mr Maphakela. Is that correct? At page 682.

MR SYMINGTON: Yes, Chair.

ADV FRANKLIN SC: And similarly you have set out a detailed version of events in which you take issue with some of what he had said. Correct?

MR SYMINGTON: Yes, Chair I did.

ADV FRANKLIN SC: Could I direct you to one particular
20 issue? Is on page 685 and it is under the heading: The issue of whether the Hawks were aware of Maphakela’s opinion.

MR SYMINGTON: H’m.

ADV FRANKLIN SC: Just pausing there. Why, for you, is it important to establish whether the Hawks were aware of Maphakela’s opinion?

MR SYMINGTON: Well, Chair, it is later when Advocate John Abrahams withdrew the charges against Messrs Gordhan and Pillay and Magashula, on the early retirement issue. That was on 31st October 2016. Mr Abrahams made – wrote a letter afterwards to the Head of the Hawks and asked but why was not my memorandum of 2009 available to the Hawks.

And the nuance, I read, yes, that he was asking, sort of, if this memo was available to them, then you know, 10 why was it not handed over to the NPA. And so this – so when we discovered that Mr Maphakela also gave a legal opinion back in November 2014 about the lawfulness of Mr Pillay's early retirement.

Then it became relevant to understand that then why was this piece of information which is, you know, which advised SARS very strongly that the early retirement of Mr Pillay was in fact lawful. Why was this opinion then not available to either the Hawks or the NPA?

Because certainly it was available to SARS and 20 anybody interested in rule of law, would have handed this legal view, at least, over to the Hawks to consider.

And so would anybody who is interested in the rule of law have handed over my memorandum of 2009 to the Hawks and this is the relevance of it.

ADV FRANKLIN SC: Thank you. At paragraph 48 on page

685, you say that, in your main affidavit, you dealt with what was relayed to you regarding a meeting held between Maphakela, Kingon and Broadman on the 16th of April 2018 and you asserted that during this meeting Maphakela informed Kingon and Mr Broughton that he had previously provided his November 2014 opinion to the Hawks.

You explain in 49 that Mr Maphakela does not directly deal with your affidavit but in an affidavit, a further affidavit, he – sorry, his affidavit, he records his responses
10 to queries addressed to him by the Commission.

And what he says is, firstly, that he had no knowledge whether Brigadier Xaba was aware of his opinion dated the 5th of November 2014. And secondly, that he had never provided his opinion to SARS.

You said that those allegations contradict the allegations in your affidavit but because you do not have direct knowledge of what was discussed at the meeting of 18 April 2018, it was necessary to consult with Mr Broughton and Kingon on the issue.

20 **MR SYMINGTON**: Yes.

ADV FRANKLIN SC: What you have done in paragraph 52 is to quote from Broughton's confirmatory affidavit. Is that correct?

MR SYMINGTON: Yes, Chair.

ADV FRANKLIN SC: Could I then just take you to the

relevant parts of what Mr Broughton has confirmed to the Commission? 5.3:

“At the end of the meeting on 16 April 2018, I asked Mr Maphakela what he meant when he said that he an “ethical problem” with the investigation of the early retirement of Mr Pillay...”

5.4:

10 “Mr Maphakela explained that his view was that there was nothing illegal in the early retirement of Mr Pillay.

He had explained that he sent SARS a written opinion, explaining his views on the early retirement.

Mr Maphakela explained that he had also been contacted by members of the Hawks in the course of their investigation.

20 He said to me that in this meeting he had expressed his view but there was no illegality in the early retirement and that a member of the National Prosecuting Authority was also present at the meeting...”

MR SYMINGTON: He did.

ADV FRANKLIN SC: Then in 5.5:

“After the meeting with the Hawks,

Mr Maphakela said he received the request to assist in obtaining a statement from Mr Symington and that because he had told both SARS and the Hawks what his opinion was concerning the illegality of the early retirement when he forwarded the mail to SARS, he wanted to express very clearly that he did not want to participate in that investigation...”

10 And then jumping to para 6 of Mr Broughton’s affidavit. He says as follows:

“I had come to know about the “hostage” incident between Mr Symington and the Hawks through the media and had it found it very peculiar and irrational but after Mr Maphakela explained why he had sent the email refusing to get involved, using the phrase for “ethical reasons”, did it make sense why it was so important to retrieve Mr Maphakela’s email.

20 The reasons behind Mr Maphakela’s email is that an independent attorney acting for SARS had advised SARS in writing that the early retirement was lawful and had it expressed this opinion to the Hawks and the member of the NPA.

In short, the reasons behind his email of the “hostage” incident in a clearer and more serious context but further than that questions are raised as to how neutral the criminal investigation was...”

So you can confirm that is the gist of what Mr Broughton explained to you about what he had established in a meeting on the 16th of April 2018 from Mr Maphakela himself.

10 **MR SYMINGTON**: Indeed Chair.

ADV FRANKLIN SC: Thank you. Could I then leave your additional affidavit and take you to another affidavit in SARS Bundle 03 and it is an affidavit that has been filed before the Commission by Mr Moyane. And you find it in bundle, SARS-03, pages 12 to 37.

MR SYMINGTON: Yes, Chari, but before we go there.

ADV FRANKLIN SC: Is there something else you would like to ...[intervenes]

MR SYMINGTON: Ja, just by way of ...[intervenes]

20 **CHAIRPERSON**: Mr Maphakela?

ADV FRANKLIN SC: ...affidavit.

CHAIRPERSON: Yes, okay.

MR SYMINGTON: Back on page 687.

ADV FRANKLIN SC: Certainly. Go ahead.

MR SYMINGTON: So ...[intervenes]

CHAIRPERSON: Just wait for us. 687.

MR SYMINGTON: It was on 687.

CHAIRPERSON: Okay.

MR SYMINGTON: The – in Mr Maphakela's responding affidavit, he advised explicitly that he did not hand over or shared his written opinion dated November 2014 and so – which I ...[intervenes]

CHAIRPERSON: He shared it with whom?

MR SYMINGTON: With the Hawks or the NPA.

10 **CHAIRPERSON:** Okay.

MR SYMINGTON: And... But...but... He did not deny that he shared his view with the Hawks or the NPA. And so, the denial was focussed on the written opinion of November which he denied and which may be so. I could not... But what happened was that he had a meeting with the Hawks and the NPA where he shared his view with them, not necessarily in writing and not that document that he shared the outcome of his research. Thank you, Chair.

20 **CHAIRPERSON:** Well, if he did not share the – his written opinions with the Hawks. Do we know how the Hawks would have known about the fact that the email that they demanded from you had reference to him having given an opinion or refusing to get involved because of ethical reasons? Do we know?

MR SYMINGTON: Well, the only assumption I can make

out of that and I think I did draw an inference out of that in one of the affidavits, I will remain with the responding, is that, the Hawks must had some interaction with Mr Maphakela on the early retirement matter.

CHAIRPERSON: H'm.

MR SYMINGTON: And that is why then the Hawks wrote – forwarded that email – oh, that letter from Mr Pretorius.

CHAIRPERSON: H'm.

MR SYMINGTON: Not directly to SARS but to
10 Mr Maphakela and then asked Mr Maphakela to forward the mail or to make arrangements for me to do the affidavits. So there must have been something there which made the Hawks think or... you know that they should write to Mr Maphakela. And my suspicion is that they – that that rose out of the meeting where he shared his views with the Hawks and it then so happened, apparently, that a member of the NPA was in that meeting as well.

CHAIRPERSON: H'm. Mr Franklin.

MR SYMINGTON: I am not sure whether that answered
20 your...

CHAIRPERSON: Well... [laughs] It is okay. Well, Mr Maphakela had been involved in a particular matter, namely, to give an opinion to SARS about Mr Pillay's early retirement. Other than that, as far as you know, he had not been representing SARS in its interactions with the

Hawks or you?

MR SYMINGTON: No.

CHAIRPERSON: Is that correct.

MR SYMINGTON: No, I am not aware of any – what he – he certainly did not interact with me.

CHAIRPERSON: Yes, represent – he did not represent you.

MR SYMINGTON: No.

CHAIRPERSON: And you are unaware that he may have
10 represented SARS ...[intervenes]

MR SYMINGTON: I ...[intervenes]

CHAIRPERSON: As you recall.

MR SYMINGTON: Yes. I ...[intervenes]

CHAIRPERSON: You do not know.

MR SYMINGTON: The first time that I really became aware of this – of the firm of attorneys and Mr David Maphakela was his name in that email. I have never dealt with them before.

CHAIRPERSON: H'm. Yes, ja. Well, it is just that one
20 wonders why the Hawks would have decided that they should send that email or letter to him, rather than sending it to SARS. Mr Franklin, you might be able to throw light?

ADV FRANKLIN SC: I think you have elucidated it Chair.

CHAIRPERSON: Yes. Okay, okay.

ADV FRANKLIN SC: Thank you. I had asked you to look,

please, at – still in SARS-03 at Mr Moyane's witness affidavit which appears at pages 12 to 37. Do you have that?

MR SYMINGTON: Just give me the page number?

ADV FRANKLIN SC: It is at the beginning of the file, page 12.

MR SYMINGTON: [No audible reply]

ADV FRANKLIN SC: Mr Moyane has responded to various of the allegations made against him by a number of witnesses including you. And he deals with your evidence at page 21 from paragraph 33 until paragraph 51. Pages 21 to 25. Have you read what Mr Moyane says in relation to your evidence?

MR SYMINGTON: Yes, Chair, I did.

ADV FRANKLIN SC: And is it correct that this affidavit came to light subsequent to you having deposed to the affidavit in reply which we have looked at a few moments ago?

MR SYMINGTON: Yes, Chair.

20 **ADV FRANKLIN SC**: Alright. If I can take you to certain of the allegations made by Mr Moyane. Paragraph 33 on page 21 and this is really a summary which he makes. He says: In essence ...[intervenes]

CHAIRPERSON: On what page? I am sorry Mr Franklin.

ADV FRANKLIN SC: 21, Chair.

CHAIRPERSON: Okay. Ja, you may continue.

ADV FRANKLIN SC: Thank you.

“In essence, Mr Vlok Symington’s evidence against me is intended to support the theory that I was part of a state capture inspired conspiracy aimed at the dismissal of Minister Gordhan by inter alia:

1. Knowingly laying false charges against him.
2. Committing perjury and denying that I was the complainant in Mr Gordhan’s criminal case, and
3. Fraudulently or actively concealing evidence which was exculpatory in respect of Mr Gordhan’s alleged involvement in the Pillay retirement issue...”

10

He then turns to deal with those topics. I am interested in the third one for present purposes. He addresses that in paragraph 36 on page 22. And if I may read that out to you?

20

“I now deal with the main thrust of Mr Symington’s testimony, namely the unlawful concealment of exculpatory evidence in the form of:

1. Mr Symington’s 2019 memorandum which allegedly found that the Pillay retirement

scheme was lawful, and

2. The legal opinion of an external attorney by the name of Mr Maphakela who had also include that the Pillay retirement scheme was lawful...”

And 37:

10 “The thesis is that, had the Hawks been given these two documents, then the charges would not have been pursued and Mr Gordhan and others would not have been prosecuted.

Support for these areas is also based on the fact that in its statement subsequently withdrawing the charges the NPA sighted the belated emergence of the Symington memorandum and its alleged reputation of the requisite *mens rea* (subjective intention) on the part of Gordhan...”

And then paragraph 38 is the important one and I am going to ask you to comment on it.

20 “The above theory is, unfortunately, based on a false premises, namely, that the Symington memorandum had declared the Pillay retirement to be lawful and problem free, apparently, without any qualification.

This is the biggest lie ever told in support of

the unfounded allegations against me, more particularly, in that...”

And then he gives four reasons why he comes to that conclusion and he does so with reference to certain parts of your memorandum. I take it you have read those reasons?

MR SYMINGTON: Yes, Chair.

ADV FRANKLIN SC: And then he says in 39:

10 “How anyone can ever construed that document as a legal opinion confirming the lawfulness of the scheme is confounding and probably false or at best misleading...”

So Mr Moyane makes very straightened allegations against you and in effect contents that your memorandum does not in any way indicate that the Pillay retirement scheme was lawful. What is your response?

MR SYMINGTON: Well, Mr Chair, Mr Pillay would have – well, approached me in March 2009, wanting to know whether what he wants to do is lawful. There would have
20 been no other reason for him to ask me that because my expertise lay – well, one half of it laid in the area of retirement, the funding from a legal point of view.

And so the intent, his at least, but I know mine was to give him my version of – the outcome of my research about the lawfulness of these things. And I, in

fact, later on when the Hawks – when Mr Pretorius wanted to know how did I arrive at the outcome of my 2009 memorandum, I went into the details of the law. There is more than one law involved there. And there I went into the detail at how I arrived at the outcome of my memorandum of 2009.

It was – there was no other reason that I wrote and did the research because my research that I did, back in 2009, was about the lawfulness of whether this can be
10 done. So I really regard this as absurd then to say that the outcome does not talk to the lawfulness or otherwise of the scheme.

ADV FRANKLIN SC: Thank you.

CHAIRPERSON: I do want Mr Franklin to quickly go to that memorandum.

ADV FRANKLIN SC: Yes, I have that and that is my next document Char. It is Bundle 02, SARS Bundle 02.

CHAIRPERSON: Yes, okay.

ADV FRANKLIN SC: At page 202.

20 **CHAIRPERSON:** Thank you. Well, I could ask you this question Mr Symington, while I am waiting for the file to look at the opinion, briefly. Is there nothing in the memorandum that makes it clear that what you were investigating was whether Mr Pillay could be allowed to retire early? Is there nothing that says that is to that

effect in the memorandum?

MR SYMINGTON: Chair, well, I think we need to look at the wording then.

ADV FRANKLIN SC: Yes, Chair, 202.

MR SYMINGTON: Two...?

CHAIRPERSON: 202.

ADV FRANKLIN SC: Two, zero, two.

MR SYMINGTON: [No audible reply]

ADV FRANKLIN SC: And perhaps we can start at the
10 beginning for ...[intervenes]

CHAIRPERSON: Yes.

ADV FRANKLIN SC: ...to answer the Chair's question. But firstly, this is a memorandum addressed from you to the Commissioner. Its subject is: Early retirement, Mr Ivan Pillay. And the background is as follows:

20 "Mr Ivan Pillay requested me to consider certain elements that formed part of his decision to apply for early retirement from the Government Employees Pension Fund, the GEPF.

These elements are:

1. His application for early retirement from the GEPF.
2. His application to the Minister of Finance to waive the early retirement penalty.

3. His request to be appointed on contract after his early retirement from the GEPF...”

I am just stopping there. Although the three elements that would make up this, what is known as the Pillay retirement package.

MR SYMINGTON: Yes, Chair, indeed.

ADV FRANKLIN SC: And then you have headed under the heading: The Technical Position, you said:

“Approach individually.

10 All three elements are technically possible under the rules of the GEPF read together with the employment policies of SARS.

Mr Pillay has reached the required age for retirement.

He is entitled to request the Minister to waive the early retirement penalty and no technicality prevents SARS from appointing him on a contract after his retirement from the GEPF...”

20 Is that the summary of your ...[intervenes]

MR SYMINGTON: Yes, Chair.

ADV FRANKLIN SC: ...findings?

MR SYMINGTON: Yes, Chair, indeed. And there, I think, you know, in my mind it is very visible that to have arrive at this outcome, I researched the law.

CHAIRPERSON: H'm.

MR SYMINGTON: And it is not an easy road to get to the to - well, to ultimately get to the rules of the GEPF but that is where, ultimately, the law takes you, starting off with the SA Revenues Service Act. Then going into the Public Service Act which then leads you into the Government Employees Pension Law which then takes you into the rules of the fund itself.

And by saying that he has reached the required
10 age for early retirement. Now SARS does not have early or late or middle or retirement ages. The early retirement age for SARS and normal retirement and later retirement is set out in the Public Service Act, not in any SARS' policy and so on.

So the only way that I could have, as an example, arrived at that outcome was my research into the Public Service Act. Similar to the next part which in layman's terms, because that is how people referred to it, says that the – that he is entitled to request the Minister to
20 waive the early retirement penalty.

Now that, again, is done in terms of the Public Service Act but here, of course, I use layman's terms which the fund itself uses. It is actually not the Minister that waives any penalty. It is actually done by the fund itself together with the anticipating employer.

But I think the point I am making is the outcome of this, could not have been reached without an in-depth legal research.

CHAIRPERSON: Well, I do not know about in-depth Mr Symington. You did say yesterday that the Commissioner at the time, when he sought legal advice, mostly just the outcome.

MR SYMINGTON: Yes.

CHAIRPERSON: And did not – would not be interested in
10 a lot of things, which I assume, would be how you got there.

MR SYMINGTON: Indeed. And that is why the memo reads like it reads but I ...[intervenes]

CHAIRPERSON: Ja, but what was your position at SARS at the time of preparing this memorandum?

MR SYMINGTON: I was an Executive in heading up the
so-called Product Oversight Division of – at SARS which
deals with legal – the legal framework for all our products,
like, BAT, Corporate, Income Tax, Personal Income Tax and
20 so on.

CHAIRPERSON: H'm.

MR SYMINGTON: But the – but up to that point, maybe a little bit earlier, my whole career at SARS was focussed on matters relating to retirement funds.

CHAIRPERSON: H'm.

MR SYMINGTON: And I was known inside SARS and outside of SARS as a knowledgeable individual on legal matters relating to retirement funds.

CHAIRPERSON: Did SARS have a dedicated legal department?

MR SYMINGTON: Yes, Chair.

CHAIRPERSON: Were you in that department?

MR SYMINGTON: Yes, Chair.

CHAIRPERSON: So the department in which you were
10 was basically the Legal Department of SARS as well?

MR SYMINGTON: Well.. Yes. So it was called
...[intervenes]

CHAIRPERSON: Or was it a section or unit that would be
the bigger unit or section?

MR SYMINGTON: Yes. It was the whole Legal Unit
...[intervenes]

CHAIRPERSON: Ja.

MR SYMINGTON: ...which was overseen by Mr Louw.

CHAIRPERSON: Yes.

20 **MR SYMINGTON:** He was the head of the unit.

CHAIRPERSON: Yes.

MR SYMINGTON: The Chief Legal Officer.

CHAIRPERSON: Ja.

MR SYMINGTON: And I operated within that unit.

CHAIRPERSON: Okay. So Mr Louw, his position was

Chief Legal Officer?

MR SYMINGTON: Yes, Chair.

CHAIRPERSON: Okay alright. And was giving legal advice part of your duties?

MR SYMINGTON: Well, it was legal advice but mostly, you know, I was giving advice about the interpretation of the laws that we administer at SARS.

CHAIRPERSON: Yes.

MR SYMINGTON: Ja. And there are a number of them,
10 you know.

CHAIRPERSON: Yes, ja.

MR SYMINGTON: So ...[intervenes]

CHAIRPERSON: Not this type of issue, retirement and so on?

MR SYMINGTON: Well, yes, but earlier in my career.

CHAIRPERSON: Earlier. But I mean ...[intervenes]

MR SYMINGTON: At that point in time, I moved on my career. Yes.

CHAIRPERSON: Yes, but you had started as having –
20 with having knowledge on retirement policies and law in relation to SARS.

MR SYMINGTON: Yes, Chair and that would have been the reason that Mr Pillay came to me and to no one else.

CHAIRPERSON: Yes. Ja, well, I see that part of one of the topics you deal with there is financial risk which

obviously is not law, you know, and the memo although it does say you were requested by Mr Pillay to consider certain elements that formed part of his decision to apply for early retirement, I think part of what Mr Moyane is saying, you are not saying in your memo you had been asked to consider the lawfulness of the earlier retirement and, of course, when one reads a legal opinion one is used to person who gives the legal opinion articulating what the question is that he or she is asked to give an opinion on
10 and usually it will be the lawfulness or otherwise of something and whether something is constitutional or not constitutional and so on. So which is missing here and in the memorandum there appears, as far as I can see, does not appear to be any reference to any legal instrument.
Am I right?

MR SYMINGTON: Yes, Chair, but I ...[intervenes]

CHAIRPERSON: You may have before you prepared.

MR SYMINGTON: Yes.

CHAIRPERSON: You may have consulted a lot of legal
20 instruments.

MR SYMINGTON: Absolutely, but this is ...[intervenes]

CHAIRPERSON: But in the memorandum there seems to be no reference to any legal instrument that may have or that you relied upon for anything in regard to this.

MR SYMINGTON: Yes, so this is the way that we would normally write to any Commissioner, is that you – they are normally only sort of interested in the outcome of your research, so this memorandum, you know, was addressed to Mr Gordhan at that time, he was the Commissioner. I knew sort of the way that he liked to be informed and well knowing that if he wants to know more about what I have written then he would ask me to go into more detail, so one would give – normally one would give – almost an
10 executive summary of the outcome of what you and ...[intervenes]

CHAIRPERSON: No, I hear what you say. I hear what you say but I think what cannot be denied is that if my reading of your memo is correct is that there is no reference to any source on which the opinion may be based, such as a statute or regulations and things like that.

MR SYMINGTON: That is so, Chair, yes.

CHAIRPERSON: That is one. And the memo does not
20 make it clear that what you have been asked to answer is the question whether Mr Pillay's early retirement would be lawful or can be approved or anything like that. It does not make that clear. So it may well be that to the extent that Mr Moyane is maybe saying the memorandum does not have the useful features that one expects to see in a legal

opinion, it may well be that he should not be criticised for saying that. What do you say to that?

MR SYMINGTON: Chair, that may very well be.

CHAIRPERSON: But you say you also intended to get a legal opinion.

MR SYMINGTON: Yes, of course.

CHAIRPERSON: Yes.

MR SYMINGTON: What I need to maybe point out as well is that my reference to the GDPF, the rules of the GDPF is
10 in fact a law.

CHAIRPERSON: That is a legal instrument.

MR SYMINGTON: No, no, no, it is a part of the law.

CHAIRPERSON: Yes, that is what I am saying, that you are saying that is a legal instrument.

MR SYMINGTON: Oh, yes. Yes and this is ultimately where ...[intervenes]

CHAIRPERSON: Where you found...

MR SYMINGTON: Where you find the validity of the early retirement, the validity of the waiving of the penalties. So
20 and the GEPF Is not like any other fund, it is not a private fund, it is established ...[intervenes]

CHAIRPERSON: By law.

MR SYMINGTON: By law.

CHAIRPERSON: Ja.

MR SYMINGTON: Not in terms of the law but by law.

CHAIRPERSON: By law.

MR SYMINGTON: And you would understand the difference between the two. So the reference to the rules of the GEPF is in fact a reference to the law.

CHAIRPERSON: Okay, alright. Mr Franklin.

ADV FRANKLIN SC: Thank you. Just perhaps to conclude on the issue.

CHAIRPERSON: Oh, yes.

ADV FRANKLIN SC: Mr Symington, what was the point of
10 this memorandum, why were you approached to give it?

MR SYMINGTON: Chair, I think I explained it at one point that I was known as the individual in SARS to go to if you need to know anything about pension funds or pension law and so, yes, Chair.

ADV FRANKLIN SC: Alright and the propositions that had been put to you, as I understand it, are recorded under the background, in other words that Mr Pillay had made a request and the request basically consisted of three parts. The first was he wanted to – he wanted early retirement
20 from the GEPF. Secondly, he wanted the Minister of Finance to waive his early retirement penalty and thirdly, he wanted to be appointed on contract after his early retirement from the GEPF, is that correct?

MR SYMINGTON: That is so, Chair, and to add to that, all three those, he is governed by law, so the reason that he

would have asked me to do this was to check on the validity of it and certainly when I use words like technical position, it is the legal technical position and so that was why I – that was not why I wrote it but this was the outcome of whether it is lawful or not.

ADV FRANKLIN SC: And then in response, as I understand it, to those three requests and three propositions, you record your conclusions under the technical position.

10 **MR SYMINGTON:** Yes, Chair.

ADV FRANKLIN SC: Second paragraph you say:

“Mr Pillay has reached the required age for early retirement.”

Is the addressing question one, issue one?

MR SYMINGTON: Yes, Chair, it does.

ADV FRANKLIN SC: Then you say:

“He is entitled to request the Minister to waive the early retirement penalty.”

MR SYMINGTON: Yes, Chair.

20 **ADV FRANKLIN SC:** Is that addressing number two?

MR SYMINGTON: Yes, Chair.

ADV FRANKLIN SC: And then you say no technicality prevents SARS from appointing on a contract after this retirement from GEPF. Is that addressing issue 3?

MR SYMINGTON: Yes, Chair.

CHAIRPERSON: So are you saying you may not have used certain language that maybe one normally expects in a legal opinion but you say one, you were asked to give an opinion.

MR SYMINGTON: Yes.

CHAIRPERSON: To give that opinion you needed to look at the law with special reference to pension law and the rules of the GEPF.

MR SYMINGTON: Yes, Chair.

10 **CHAIRPERSON:** And that you answered those three – you dealt with those three issues on the basis of pension law and the rules of the GEPF, is that correct?

MR SYMINGTON: Yes, Chair, in respect of the first two issues. In respect of the third issue, I was not relying on pension law, that is labour law.

CHAIRPERSON: Ja. Yes.

MR SYMINGTON: Employment contract.

CHAIRPERSON: Yes.

20 **MR SYMINGTON:** Which is, you know, one of the appeals that I am interested in as well.

CHAIRPERSON: Okay, okay.

MR SYMINGTON: And I have in fact done some work at SARS in appeals, as an example, the – as you would know, very complicated area of the difference between and independent contractor and a common law employee and

those also, I do that under that experience to answer number three, Chair.

CHAIRPERSON: Okay. No, that is fine. Mr Franklin, I see we are way past the tea break.

ADV FRANKLIN SC: Yes.

CHAIRPERSON: But I do not know whether – probably we should just take the break now and you can finish up after...

ADV FRANKLIN SC: I should not be long after tea.

10 **CHAIRPERSON:** Yes, okay, alright. We will take the tea adjournment and we will resume at ten to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Franklin, I see they have put here in addition to the file I had before, the file that relates to your next witness. Is that because you asked them to do that or...?

ADV FRANKLIN SC: No, there are still some...

20 **CHAIRPERSON:** Okay, alright.

ADV FRANKLIN SC: Practical issues to attend to on that point.

CHAIRPERSON: Okay.

ADV FRANKLIN SC: I am still in file SARS bundle 03.

CHAIRPERSON: Okay, that is the one I have now.

ADV FRANKLIN SC: Thank you. Mr Symington, there is just one further aspect of Mr Moyane’s version that I want to put to you and that is at paragraph 51 on page 25. Do you have that?

MR SYMINGTON: Yes.

ADV FRANKLIN SC: Thank you. It seems this is Mr Moyane’s response to the evidence about the ostrich incident as you have described it on the 18 October 2016 and what he says is, regarding his internal grievance about
10 being allegedly:

“...blocked by my bodyguard from leaving a room and for which I had apologised, these are human resources issues which have no bearing on alleged state capture, there is no need to dwell much on such spurious allegations.”

What is your response to that?

MR SYMINGTON: So, Chair, I am sure it may be a human resource matter if one looks at what the grievance is but the whole incident of 18 October 2016 was instigated by Mr
20 Moyane so it is much more than simply a human resource issue, he was effectively in control of what happened inside that room.

Mr Titi and Mr Moyane – and we learnt this afterwards – was on the phone with each other during the incident so sure, it is a human resource issue but only in

as far it goes to the grievance itself which I lodged.

ADV FRANKLIN SC: Thank you. And then finally, if I could ask you to go to SARS bundle 02, page 261.

CHAIRPERSON: Are you going to come back to this one?

ADV FRANKLIN SC: No, not anymore, thank you. Do you have page 261?

CHAIRPERSON: I have got 261.

ADV FRANKLIN SC: Thank you, Chair.

MR SYMINGTON: Just a moment? Yes, Mr Franklin,
10 thank you.

ADV FRANKLIN SC: Yes, we looked at this string of emails yesterday, they were sent in the aftermath of the incident on the 18 October. You testified that you had meeting, you had got some explanation from Mr Moyane, you did not think it made any sense. You set out in a lengthy – sorry, an email on the 21 October why you did not think that the explanation given to Mr Moyane made any sense, that is the email at page 262.

At 261 he responded to you in the email at the
20 bottom of the page and we went through that yesterday. Can I direct your attention to the email at the top of the page 21 October 2016, this is you writing to Mr Moyane and Mr Louw regarding Ivan Pillay and could I ask you to look at the last paragraph? You say:

“I really hope we can get this whole thing behind us

as soon as possible. This has happened at a time when I am still trying to process why units and projects that I built and created from scratch producing significant tax revenue each year was reallocated elsewhere.”

Now you have been an employee since 1990, you were there during that era that Mr Moyane was Commissioner, can you put that comment in perspective please? What were you referring to?

10 **MR SYMINGTON:** So, Chair, maybe – and I will hold it short, but maybe I must go back to meeting which I, in my recollection, happened around August 2015 where the new model of SARS as it was apparently designed by Bains was presented to the executives of SARS and as a *fait accompli*, we have never participated in any aspect of the design, we have never – we were never consulted about our divisions that we managed at that point in time about our expertise or anything and when we saw this model, it soon for a number of us, we could not see ourselves in that
20 model. It was - the model was foreign to us.

Now I must emphasise this, that as SARS employees, we have gone through many changes so we are used to a change, we are not resistant to a change as we would normally expect of employees who are not used to change. But this model, we – I, and I do not, because I do

not want to speak on behalf of others, I was not able to see how this model is going to be more efficient than what we had at that moment, number one.

Number two, I could not see myself in that model. Up until that point in time I was heading up a division within legal which I explained earlier was called product oversight where most of the design of our products happened from a legal point of view and as what I referred to as something on the side, I was asked back in 2009 or
10 so to establish what we refer to as the VDP unit of SARS, the voluntary disclosure unit of SARS and so that was set up by myself and over the years that unit has produced a significant amount of money. On average we were on about R2.5 billion a year by the VDP process and that unit was just removed out of my care, it did not fit into where it used to belong, so – and that is what I meant when I wrote this part in the mail to Mr Moyane, it was just to express that what has happened now, this whole incident thing, this bizarre – which one would never have expected to happen
20 to anybody in SARS was now added to the confusion about this model and where I fit into this model. And so, Chair, that is where that part came from.

ADV FRANKLIN SC: Thank you, Mr Symington, unless there is anything else you wish to bring to the attention of the Commission, that concludes the testimony of Mr

Symington.

MR SYMINGTON: Thank you, Chair. Just maybe one word or so, Chair. First of all just thank you for the opportunity, it is – many of us have lived with what we have experienced as a nightmare and this is, you know, being given the opportunity to share what happened to us is a relief in more than one way and I myself have lived in SARS, I have seen SARS when it was referred to as Inland Revenue, before 1994. I have lived in it when Mr Gordhan
10 and Pillay and Mr Barry Hore drew us into a whole different direction, modernising us so much so that by 2008 or '09 we were recognised internationally as one of the best at tax administration, one of the most efficient tax administration and to then see this happening to SARS in a very short space of time from 2014 up to – well, it was less than four years where we could visibly see that our efficiency rate has dropped and you could see it in what we call the buoyancy rate, you know, which is just a measure to measure our efficiency has dropped in Mr Moyane's time
20 and so I just hope, Chair, that this will never happen again and I think your Commission is instrumental in ensuring that it will not ever happen again, Chair, thank you very much.

CHAIRPERSON: Thank you, Mr Symington, thank you for availing yourself to assist the Commission. You are now

excused. Mr Franklin?

ADV FRANKLIN SC: Thank you, Chair. Chair, the next witness that we intend calling is Mr van Loggerenberg. There are, however, practical issues which need to be attended to.

CHAIRPERSON: Yes.

ADV FRANKLIN SC: Consequent upon the arrangements that have been made with the SSA there is going to be a substitution of the existing affidavit by a redacted affidavit.

10 **CHAIRPERSON:** We had wondered whether it would be possible to proceed without that document but I do not think practically it will.

CHAIRPERSON: Okay.

ADV FRANKLIN SC: And so we would ask for the time to make those practical arrangements and then to commence with the leading with Mr Van Loggerenberg. I cannot tell the Chair exactly how long that will be.

CHAIRPERSON: Yes.

ADV FRANKLIN SC: But I imagine it will be more than half an hour.

20 **CHAIRPERSON:** Well, in that event, because we were going to take an early lunch at half past twelve, maybe we may as well adjourn now, maybe we should – if we adjourn now and take the same amount of time that we would have taken if we had adjourned at half past twelve, then we would resume at half past one but then at two there will be

that interruption. So I do not know what you think, whether...

ADV FRANKLIN SC: Yes, I think, Chair, that would be perfectly in order, that would give us enough time to get SARS in order and Mr van Loggerenberg ready.

CHAIRPERSON: Yes.

ADV FRANKLIN SC: And we will have half an hour, it will be interrupted for a while and then we will continue. So that is in order from our side, thank you.

10 **CHAIRPERSON:** Okay, alright. Okay, let us adjourn now and then we will resume at half past one.

ADV FRANKLIN SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are we ready Mr Franklin?

ADV FRANKLIN SC: Yes thank you Chair, we would wish to call our next witness who is Mr Van Loggerenburg.

20 **CHAIRPERSON:** Yes, thank you. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

MR VAN LOGGERENBURG: Johannes Hendrikus Van Loggerenburg.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR VAN LOGGERENBURG: No.

REGISTRAR: Do you consider the oath binding on your conscience?

MR VAN LOGGERENBURG: Yes.

REGISTRAR: Do you solemnly 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.

MR VAN LOGGERENBURG: So help me God.

10 **JOHANNES HENDRIKUS VAN LOGGERENBURG** [duly sworn, states]

CHAIRPERSON: Thank you, you may be seated Mr Van Loggerenburg.

ADV FRANKLIN SC: Thank you Chair, good afternoon Mr Van Loggerenburg.

MR VAN LOGGERENBURG: Good afternoon sir.

ADV FRANKLIN SC: You should have a file on the bench behind you ...[intervenes]

CHAIRPERSON: I think, sorry Mr Franklin, thank you Mr
20 Loggerenburg for availing yourself to assist the Commission.

MR VAN LOGGERENBURG: It is my honour Chair.

CHAIRPERSON: Thank you.

ADV FRANKLIN SC: Thank you Chair, it is called SARS Bundle 02. You have that?

MR VAN LOGGERENBURG: I do, yes Chair.

ADV FRANKLIN SC: Please, would you open that up to page 3? You see that is the commencement of an affidavit in your name, correct?

MR VAN LOGGERENBURG: That is correct, Chair.

ADV FRANKLIN SC: And then please turn to page eight zero. It appears from that page that this affidavit was deposed to you on the 11th of November 2020. Can you confirm if that is correct?

10 **MR VAN LOGGERENBURG:** That is correct, Chair.

ADV FRANKLIN SC: And can you give the Chair the assurance that the content of the affidavit is true and accurate?

MR VAN LOGGERENBURG: Absolutely, Chair.

ADV FRANKLIN SC: Thank you, Chair may I ask that Mr Van Loggerenburg's affidavits from page 3 to page 80 of SARS bundle 02 be admitted as exhibit WW2?

CHAIRPERSON: The affidavit of Mr Johannes Hendrikus van Loggerenburg starting at page 3 will be admitted as an
20 exhibit as it is marked as exhibit WW2.

ADV FRANKLIN SC: Thank you Chair. Mr Van Loggerenburg I am going to take you to various different topics in your affidavit and I would like to start off with just a brief introduction, and then with your employment history.

And you were an employee of the South African

revenue services from November 1998 until he resigned in February of 2015, is that correct?

MR VAN LOGGERENBURG: That is correct Chairperson.

ADV FRANKLIN SC: I am going to take you to your career at SARS, but before we do I just want to remind you that certain of the information that you wish to disclose and originally disclosed in your original affidavit is sensitive and that there has been a process of redaction at the request of the State Security Association. You're
10 aware of that?

MR VAN LOGGERENBURG: I am aware of a that Chairperson it was my offer to them.

ADV FRANKLIN SC: And I just want to be sure, please that neither of us inadvertently refer to a name or any other piece of information that has been redacted. I think you understand the process perfectly.

MR VAN LOGGERENBURG: I understand, Chairperson.

ADV FRANKLIN SC: Thank you. Could we then begin with your career at SARS, and I am going to just take it at
20 various stages, if you could start at paragraph 15. And what you say there is that you joined SARS in November of 1998, correct?

MR VAN LOGGERENBURG: It is correct, Chairperson.

ADV FRANKLIN SC: And there are a number of different units that you either established and or were head of

during your time, and the first unit to which you were assigned, was known as the Special Investigations Division of SARS that we call SI, is that correct?

MR VAN LOGGERENBURG: Yes, that is correct. Chairperson I should just perhaps say there was a distinction between division and unit within the revenue service.

ADV FRANKLIN SC: Yes, and so you were assigned to the Special Investigations Division and you were tasked to
10 build a manual case selection, tracking and monitoring system as part of a small unit. And that unit was formalised in 1999, and named the SARS Tax and Customs Intelligence Unit, the STCIU, is that correct?

MR VAN LOGGERENBURG: That is correct, Chairperson.

ADV FRANKLIN SC: And the purpose of that unit, you have made a reference to tax gap and the definition of tax gap, can you explain what that is to the Chair, please?

MR VAN LOGGERENBURG: Chairperson, simply put, the tax gap is a term used by revenue authorities worldwide,
20 you refer to the ideal tax amount collected per fiscal year by a revenue authority versus the actual amount collected.

So if everybody paid their tax, and nobody made any mistake, you would get a 100% compliance and then there's the real take, and that gap in between is the tax gap, and this is the holy grail for revenue service, is that

we want to go and collect more tax.

ADV FRANKLIN SC: Thank you. In paragraph 20, you say:

“That the mandate of the unit was to track and monitor ongoing investigations and audits of the then SARS Special Investigation offices, country wide.”

And you also say that:

10 “It was to allocate cases based on a manual suspicious activity report in SAR system.”

And briefly, what was the or is the SAR system?

MR VAN LOGGERENBURG: Chairperson it is in those days; it was a manual document that you have to fill in by hand. But it was borrowed from the American suspicious transaction report, which is really the equivalent almost of first information of crime form that you would complete at the Police Station if you want to report a crime or a suspected crime.

20 So, it was of a specific design to enable the person who was completing the report, to give sufficient information and data available, that would enable one to analyse it in a uniform manner, whether it was a standardised form.

ADV FRANKLIN SC: Thank you. Then in paragraph 21, you explain that:

“At two years later in the year 2000 as part of the modernisation of SARS, you were tasked by senior management to start an experimental unit known as the SARS Special Compliance Unit, the SCU.”

Just pausing there, the process of modernisation that you talk about, can you explain to the Chair when did that begin and under whose auspices and what was its objective?

MR VAN LOGGERENBURG: Yes, Chairperson there were
10 many elements of modernisation, but I guess the primary ones at the time, I referred to in paragraph 20.5, just the preceding paragraph on the same page, which were known as Yaka[?] and modernisation as a whole.

Which sought to look at the improvements, whether it was Information Technology, design of what would later become known as eFiling that we all use today, but also improvements in terms of human resource management, fiscal management within the institution, productivity planning, and aligning all of that with the medium term
20 expenditure framework, fiscal cycle.

ADV FRANKLIN SC: Right, and you say:

“That the SCU mandate was to assist law enforcement agencies to control organised crime, from a revenue customs and excise perspective.”

Can you just explain to the Chair in what way it would do

this?

MR VAN LOGGERENBURG: Yes, Chair towards the late 1990's the revenue service was increasingly being looked to by other law enforcement agencies and state intelligence and prosecuting authorities to help them to address crime, which was one of the I think there were seven key priorities for all government agencies countrywide.

And one of them was to address, crime rates which
10 were very high at the time, and in order for the revenue service to contribute to that and pick up on the demands that came from the respective agency, we saw a dedicated component was created with a view to assist in precisely that.

It may be useful to just recall that this was around the time that the law enforcement landscape in South Africa began to modernise as a whole. Chairperson, you may recall, the introduction of the Financial Intelligence Centre Act, the introduction of the Prevention of the
20 Organised Crime Act, the Prevention of Rough[?] Activities Act, and Special Investigations Unit and so forth.

And all of them were creatures of statute, and many of those laws, in fact, incorporated the revenue service into that aspect.

ADV FRANKLIN SC: Right in para 28 on page 8, you say:

“That this unit, went on to make a marked impact against organised crime from a tax customs and excise perspective, and worked closely with the South African Police Service, the National Prosecuting Authority, the National Intelligence Agency, South African Secret Service, Marine Coastal Management Asset Forfeiture Unit, and Metro Police Departments.”

Is that correct?

10 **MR VAN LOGGERENBURG:** That is correct, Chairperson. If I could add, there were also different multi-agency task grouping set up at the time where the revenue service also participated in, and in respect of those entities mentioned in my paragraph 28 there were also operational agreements that existed between the revenue service and specifically these State organs that I mentioned here to give guidance on how we assisted.

ADV FRANKLIN SC: Thank you, and then in paragraph 30, you explained that after a time, you were tasked to
20 return to the TCIU. That is the unit that we spoke about earlier, which you joined in November of 1998. It was set up and named as the TCIU in 1999 but you returned to that unit in order to enhance its capacity and capability, and that was then renamed the SARS Business Intelligence Unit, the BIU, is that correct?

MR VAN LOGGERENBURG: That is correct, Chairperson, in fact, there were something similar being formed elsewhere within the revenue service at the time under the customs and excise component, and the business decision was to say let us not duplicate let us get the resources together under a single umbrella, which was the specific task that I was given at the time and which I reported to as I state there, Mr Tshabalala.

ADV FRANKLIN SC: But you say in paragraph 34 that:

10 “The BIU you grew in size and continued with the mandate to conduct case selection, tracking and monitoring of non-compliance and investigations and audits and research on the so called tax gaps.”

Could you give the Chair an idea of practically what these tasks entail, how is it that the BIU executed its mandate on the topics that you have identified?

MR VAN LOGGERENBURG: This is very long and very briefly put, they were organised into if I can call them best or sub-units or sub-grouping. The staff was in that had
20 particular backgrounds or skills or capabilities, interests, that would focus on different parts of the economy. So, to one extent what that meant is that the revenue service now had a research capability that could collect, collate and analyse and distribute knowledge of specific areas in our economy, to those parts that had to either service, collect

tax or enforce the tax laws, or customs laws or excise laws.

In the main that was how they were organised but at the same time, they also worked very closely with those agencies that I mentioned earlier on because, of course, what they were looking at which included non-compliance, in terms of all the acts administered by the revenue service, inevitably, they would overlap with people who are not necessarily doing the right thing in our society.

10 And so as a consequence, then they work very closely together to try and collect all this information and make sure that this information was made available to the parts not only within the revenue service elsewhere, that would enable government to address the misbehaving or whatever.

ADV FRANKLIN SC: Yes, thank you. Then, in paragraph 14, you explain that:

20 “In 2005, you were tasked to oversee the amalgamation of several enforcement units countrywide into a single unit then named in as the SARS National Enforcement Unit, or NEU.”

Just pausing there, you say that this task was part of the continuous improvements at SARS. Is this a continuation of the modernisation program that you were speaking of?

MR VAN LOGGERENBURG: Yes, so within the roadmap

of the revenue service becoming more modern, one will have to look at each and every different part of the entire service, describe the route and the road it followed to modernise.

In this particular instance, I am restricting my evidence to that part which I was part of, which was the enforcement component, the revenues. Around, 2005 Chairperson what we found was that there were too many tasks teams, units, components, divisions, everything else
10 that were effectively all trying to achieve the same thing, which was to enforce the law and to catch the bad guy, and hold them to account, collect the money from them.

And so the logical thing was to do was to look at those different units in grouping that were almost similar, and to bring them together under a single umbrella, and give them a single management, so that they do not duplicate, they do not compete with resources and then you make the best with what you have in terms of number of people available, and your skill set.

20 It also makes it easier for administrative purposes when you plan for fiscal management, Human Resource Management, production planning, reporting to Parliament or whoever. It just make sense, not have many of same and that is effectively what resulted in creation of what became known as the National Enforcement Unit.

ADV FRANKLIN SC: Right moving forward in para 44, page 10. You describe how you then served as an advisor to what was known as the compliance division for a while, and then you were promoted in this period to the role of manager special operations, which was a sub-division of the enforcement division of SARS in 2007, is that correct?

MR VAN LOGGERENBURG: That is correct, Chairperson.

ADV FRANKLIN SC: Then para 49, you explain that, by 2010, you were promoted to the position of group executive
10 and oversaw the alignment and functioning of five units, which we will deal with in greater detail later. And is it correct that those five units resorted under a sub-division which was known as the Projects and Evidence Management and Technical Support Division?

MR VAN LOGGERENBURG: That is correct, Chairperson.

ADV FRANKLIN SC: That was one of the sub-divisions of what would become The Tax and Customs Enforcement Investigations Division, the TCEI of SARS.

MR VAN LOGGERENBURG: That is correct, Chairperson.

20 **ADV FRANKLIN SC:** And initially, you reported to the then Deputy Commissioner of SARS, Mr Ivan Pillay and by early 2012, you reported to the chief officer of Tax and Customs Enforcement investigations Mr Jean Ravel, is that correct?

MR VAN LOGGERENBURG: That is correct, Chairperson.

ADV FRANKLIN SC: And then finally, as regards your employment history, you resigned from SARS in February of 2019. As you say, your last job title at SARS was group executive tax and customs enforcement investigations, airline projects, evidence management and technical support, correct?

MR VAN LOGGERENBURG: Chairperson, I actually resigned in 2015, not 2019.

ADV FRANKLIN SC: Sorry, did I say 19? Sorry, February
10 2015, as is in your statement.

MR VAN LOGGERENBURG: But the rest is correct, the statement also reads 2015.

ADV FRANKLIN SC: Good, I would like to then take you to paragraph 53 and ask you please to explain the workings of the five units. Earlier you had said in 2010, when you were promoted to group executive, you oversaw the alignment and functioning of five units, I take it, is these five units.

And could you identify them and then briefly
20 describe their functions. So the first one, which is dealt with in paragraph 53.1, on page 11, is the National Projects Unit, the NPU. What did that unit do during your time?

MR VAN LOGGERENBURG: Chairperson the National Projects Unit is actually the later iteration of the National

Enforcement Unit that I described earlier, which was the conglomeration of small little bits and pieces of units that were doing the same work at the same time. By this time, we had developed a project investigation methodology and we were able to measure investigations reporting Standard Time.

So, we were able to predict how many audits or financial investigations, preliminary investigations we could do in 208 work day fiscal year with the number of
10 people that we have available. And so, we used the project that enables not just to track a transactional single instance, you can now look at a group of taxpayers at any time or a specific topic, cross all tax types, of all taxpayer type and utilise all the different tools and powers in remitted revenues.

So the National Projects Unit was then the largest investigative component of time that had presence in the majority of the provinces, in the country and they then conducted what was known as civil and criminal
20 investigative project within these projects. It might be sub-project cases, preliminary investigations and whatever the case might be and their aim was literally to go after the bad guy.

So I am not talking about ordinary taxpayers who forget to file their tax returns or anything like that I mean,

organised, or very deliberate tax customs in the excise offenses. They focused particularly on what we call the illicit economy, which would include all criminal activity as a fiscal consequence in South Africa.

ADV FRANKLIN SC: Sorry to interrupt, could I ask you to speak up or speak closer to the mic, I am told that you are not audible.

MR VAN LOGGERENBURG: I am sorry, I apologise Chairperson.

10 **ADV FRANKLIN SC:** Not at all, that is much better. So that was the first of the five units that you were in charge of the second is dealt within para 53.2. It is the centralised/ central product, sorry, projects units, which you say:

20 “Consisted of a small centralised office with a national mandate to conduct civil investigative projects aimed at combating preventing recovering tax, customs and excise losses in the illicit economy and criminal enterprises and to detain, seize and forfeit illicit controlled and smuggled goods associated there with.”

I am not sure...[intervene]

CHAIRPERSON: Maybe we should stop there, Mr Franklin.

ADV FRANKLIN SC: Yes, it is time for the...[intervene]

CHAIRPERSON: Ja, we will have an interruption for me to address certain matters and thereafter, we will continue.

On Tuesday evening this week this Commission had two sessions, a day session and the evening session, during the evening session, I had the cross examination of Minister Pravin Gordhan, Minister of Public Enterprises by Mr Tom Moyane's counsel Mr Mpofu as well as the re-examination of Mr Gordhan on, by his counsel, Ms Le Roux. Towards the end of Ms Le Roux's re-examination or
10 Mr Gordhan certain events happened and certain statements and utterances were made which ought not to have been made.

I have given myself the opportunity to watch the video of the last 15 minutes of those proceedings just to make sure that I see exactly what happened, and it seems to me that, as Chairperson of this Commission, it is imperative that I address this matter.

Many things may have happened during those proceedings in the evening section, that maybe should not
20 have happened, and maybe there may be certain statements that also may have been made, that maybe should not have been made. But I am not going to deal with all of them, I am going to deal with those that I regard as the most serious.

This Commission is established in terms of the

Constitution of our Republic, it is a Presidential Commission. It was established by the former President, Mr Zuma. I was asked to Chair it and I agreed, because I regarded its work as very important for our country, and for our democracy. It has been sitting for just over three years and during this time many people have appeared before me, including lawyers, attorneys and advocates.

Many people have sort to assist this Commission, for which we are very grateful and many lawyers who have appeared
10 before this Commission have conducted themselves in an acceptable way. That is not to say there have been no incidents that were not acceptable and that one would have preferred not to have happened. But by and large the overwhelming majority of people who appear before the commission, cooperate with the commission, show respect to the commission, show respect to one another.

Sometimes false tensions rise, but on the whole everyone manages to ensure that the proceedings of the commission continue. I am grateful to all of those who
20 show respect to this commission, and to show respect to others who have a role to play in this commission.

On Tuesday evening Mr Mpofu who as I have said appeared for Mr Moyane, told counsel for Mr Gordhan to shut up. He also told Mr Gordhan to shut up. I have never had any lawyer in any court proceedings or in any

commission or forum, tell another lawyer to shut up, or a witness.

The general Council of the Bar of South Africa, uniform rules of professional conduct provide under the heading duties regarding cross-examination of witnesses.

Rule 3.3.5:

10 “In all cases it is the duty of the advocate to guard against being made a channel for questions which are only intended to insult or annoy either the witness or any other person and to exercise his own judgment, both as to the substance and form of the question.”

Rule 4.12 reads, and the heading is ill feeling and personalities between counsel:

20 “Clients, not counsel, are the litigants. Whatever may be the ill feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanour towards each other or towards tutors in the case. All personalities between counsel should be scrumptiously avoided. In the trial of a cause it is improper to allude to the personal history or the personal peculiarities or idiosyncrasies of counsel on the other side. Such conduct cannot be

tolerated. It impacts upon the dignity of the commission and is taken in a serious light. Not least because the proceedings of this judicial commission of inquiry are televised to the public. Even the matters that are being investigated by the commission, it is to be expected that those who appear before it would make serious allegations and that these are quite firmly and passionately denied. That there may be animosity between accuser and defender in certain cases is to be expected. However, both witnesses and implicated persons are entitled to engage legal practitioners to assist them. This gives legal practitioners, namely practising attorneys or advocates an opportunity to assist the commission in its work, in the cause of protecting their clients' interests or rights. That opportunity however comes with certain responsibilities. A legal practitioner is required at the very minimum to ensure that the decorum defeating the forum in which she or he appears, is jealously maintained and that his or her conduct does not bring the forum in question, into disrepute."

I record my extreme concern that that did not happen during some of the exchanges on Tuesday evening. Not only was disrespect shown, to some of the people in the hearing, but also it was shown to the commission and to me as the Chairperson.

My task as the Chairperson is not made any easier when legal representatives all shocked of what their noble profession requires of them, incidentally the same considerations apply to public figures. All persons who are
10 given a platform at the commission, whether as a witness or an implicated person or as a legal practitioner, have a duty to the public and indeed to our democracy to ensure that they engender public confidence in processes such as those being followed at the commission, and that they maintain minimum standards of conduct and decorum expected of them when they are in a forum such as this.

I want to make it clear that in any meeting or forum where there is a Chairperson, it is the duty of that Chairperson to make sure that the proceedings of that
20 meeting or forum are conducted in a smooth manner. That is also my duty as Chairperson of this commission.

It is my right and obligation to make sure that I allow somebody who needs to be allowed the opportunity to speak, to speak but it is my right to determine when they may speak. It is my right to determine how long they may

speak. It is my right to determine when they must stop speaking.

So that I give somebody else a chance, also that the proceedings may continue. Mr Mpofu was told by me to sit down at a certain stage, towards the end of the proceedings. He was not the first legal practitioner that I told to sit down in this commission.

I have a clear recollection that I have told Mr Barry SC, who represents Mr Koko in this commission, a few
10 times to sit down. I remember that I have told Ms Mbantshwa who represents Ms Mamela in these proceedings to sit down and I think I have told a certain attorney also, whose name I cannot remember, to sit down.

It is my duty to make sure that these proceedings, the proceedings of this commission, continue in a smooth manner and where I need to ensure that somebody speaks, I will decide that that person will speak and I will allow him or her but where I decide that that person has said enough or that that person should be heard at another time, I am
20 the one who will decide.

No legal practitioner including Mr Mpofu, has a right to begin to tell any other person in this commission, to shut up. That power belongs to the Chairperson of the commission and even I will not use the words shut up. That conduct is unacceptable to this commission and it is

important that the public and other legal practitioners should know that this conduct is not acceptable in this commission.

As I have indicated there may be other utterances or conduct, but I have decided to focus on the most serious utterances that were made that day. I may have to consider in due course, what to do in the future if a witness or an implicated person or his or her lawyer is not prepared to subject themselves to the authority and
10 instructions of the Chairperson.

The right to cross-examine is granted to an implicated person by me on the understanding that that implicated person and his or her legal representative will subject themselves to the directions of the Chairperson during the proceedings.

The right to cross-examine and the right to re-examine they are all part of the right to be heard. The right to be heard is not absolute. The right to be heard is not absolute. The right to cross-examine that is only
20 granted by the Chairperson after applying his mind to an application for cross-examination is granted on the understanding that the implicated person and his or her legal representative will subject themselves to the authority of the Chairperson.

Where everyone or anyone can stand up and tell

other people in the proceedings to shut up and not rather request the Chairperson to ask the other person to please keep quiet, if that is allowed then there will only be chaos in the proceedings of this commission.

That I will not allow. Irrespective of who does it. I thought that it is important that I address this issue quite clearly so that anybody in the future who contemplates doing it, knows quite well what my attitude is and what is acceptable and what is not acceptable.

10 That is all I wanted to say about the events of Tuesday evening. Thank you Mr Franklin, we may proceed.

ADV FRANKLIN SC: Thank you, Chair. Mr van Loggerenburg, we were busy with the five units that were under your control from 2010 until 2015 as I understand it and we had got onto the second of those, which is the CPU and I wanted to ask you what is meant by the phrase the elicit economy.

MR VAN LOGGERENBURG: Chairperson, it is ...[intervenes]

20 **CHAIRPERSON:** I am sorry Mr Franklin, what is the page?

ADV FRANKLIN SC: It is 12, Chair.

CHAIRPERSON: Okay, thank you.

MR VAN LOGGERENBURG: Chairperson, I can talk for days on this, but in essence the revenue service made a distinction between money supply that came from

legitimate economic activities, whether it is business or people getting paid or transactions or whatever the case might be, in the formal sector as well as the informal sector.

So although there would be merging micro and small businesses, that would technically not always comply with let us say for argument's sake a municipal bylaw or something. That would have been seen as the licit economy.

10 Then super imposed over that is the illicit economy which refer to those activities within society that have an intent or, intent to achieve or physical consequence. In other words someone makes money somewhere or spend money.

But the activity is unlawful and illegal. So that is, it is an artificial distinction because you of course find unlawful and illegal activities within legitimate businesses form, but the illicit economy focussed on those people who were committing crime with the view to make money, and in
20 South African law as is the case mostly in the world, the source of or the origin of the income is not relevant for tax purposes.

Income is taxable. So that is essentially in a nutshell.

CHAIRPERSON: I am not sure whether you are speaking

in a manner that allows them to hear you.

MR VAN LOGGERENBURG: Am I too soft?

CHAIRPERSON: Remember they made a request. Ja, I think you must raise ...[intervenes]

MR VAN LOGGERENBURG: Lift my voice, sorry. Okay. Should I repeat what I said Chair?

CHAIRPERSON: Well, I did hear. They are not making an indication that they did not hear. It looks like they did hear but I think it is better if you raise your voice. Just repeat,

10 ja.

MR VAN LOGGERENBURG: I apologise, Chair.

ADV FRANKLIN SC: I am sorry. Mr van Loggerenburg, it may be easier if you bring the mic closer to you if you can. Move that file. Thank you. Thank you. So that is the second of the five units. The third is dealt with in paragraph 53.3, it is the tactical interventions unit, the TIU and that consisted of offices at ports of entry around the country. What was the focus of that unit?

20 **MR VAN LOGGERENBURG:** Chairperson, this was a component of the - what was and still, I do not know if it is still known as the customs border control unit, which is a paramilitary component within the revenue service that came about in the mid 2000's by statute.

Many people would have seen them in their black combat uniforms at border posts or at the airport perhaps.

Where they carry handcuffs and some of them carry firearms and they have a K9 unit that look for drugs and that sort of thing.

Now, so the tactical intervention unit is a part of that border control unit that was sliced out, because they were an investigative component as opposed to a visible policing component and for that reason they came to resort into the subdivision.

They were based at the majority of the ports of
10 entry which is the harbours, the commercial points of entry. Harbours, airports and land border ports, and they conducted investigations from the point where goods may have entered the country, up to the point where those goods end up within the country, as well as goods leaving the country from the point where they originate.

Maybe it is something that is manufactured all the way through the port of entry to another jurisdiction and they then focussed on those types of investigations. This would be, they would be the people who looked at
20 smugglers of illegal goods or drugs or cigarettes or whatever the case might be and as I say they have peace officer status and they are more of a paramilitary nature.

They would conduct inspections and raids and arrest people and detain goods and that sort of thing.

ADV FRANKLIN SC: Thank you. The fourth of the units in

paragraph 53.4 is the evidence management and technical support unit, the METS and that as I understand it was a small, centralised unit comprising of scarce and expensive expert skills.

Can you explain briefly what the role of that unit was?

MR VAN LOGGERENBURG: Yes. Chairperson, as a developed mental state constitutional democracy, the government departments are not all where we would like
10 them to be for many reasons. Historical reasons, economic reasons and all sorts of other reasons.

One of the side effects of that, is that sometimes you do not have the ideal number of expert skill sets. For instance we needed very good mathematician who could understand very complex mathematical formulations and help us in that sense.

I am using one example. Those types of people are scarce in South Africa firstly. They are even more scarce if you want to get them to come and work for a revenue
20 service and they are typically also very expensive. So in an ideal situation one would one day want people like that in every national projects unit in the country.

Every tactical enforcement, tactical interventions unit but you cannot have that and so this unit was a centralisation of the country's best experts in that

subdivision who then provided an auxiliary support service to these three units I have already described to you.

National project, central project and the tactical intervention unit, and I have given you an example we had a PHD in mathematics there. We had a world class forensics IT laboratory. In fact it was the best in the country.

The police used to ask us to help them with their complex matters. We had PHD's in criminal law or auditing
10 experts and that sort of thing. So this unit was really just a centralisation of those rear and expensive skills that you would make available on demand to the respective investigative units, within the context of the cases they are working on and on a prioritisation model.

So if it is a case that is more important, it really needs a particular type of skill, we make that person available to that theme for that duration of that investigation.

ADV FRANKLIN SC: Thank you, and then the last of the
20 five units is described in 53.5. It is the high risk investigation unit, the HRIU. We will hear more about this in a different context in due course. Please explain what that unit did.

MR VAN LOGGERENBURG: Chairperson, this unit conducted also auxiliary supportive assistance to the other

investigative units and also to other law enforcement agencies. In those instances where the tasks required in the context of an investigation was such that it presented either a risk to the revenue service official and here I mean life and limb.

All risk to the evidence. All when we were investigating people who we knew would put up resistance beyond law fare but actually threatened people, shoot people, abduct people and that sort of thing. They were, I
10 mean by 2012 they were six people so it was a very, very small team.

That is, they kind of did the support work for the bigger investigations that we were working on.

ADV FRANKLIN SC: Thank you. You have explained that in by way of structure, one had the division which is known as the TCEI and then under it was the PEMTS and the five units that you have described and then there was a separate division, is that right, or subdivision rather of the main division and that is one which you described in
20 paragraph 54 and that subdivision was known as the criminal investigations and preliminary investigations and enquiries subdivision, correct?

MR VAN LOGGERENBURG: Yes, Chairperson.

ADV FRANKLIN SC: And it had two units. The first was the national and regional offices of the criminal

investigation unit and the second was known as the preliminary investigations and enquiries unit, correct?

MR VAN LOGGERENBURG: That is correct, Chairperson. I could add the criminal investigations unit is the oldest enforcement unit in the revenue service. It has its roots in the days when the revenue service came about in terms of the act in 1997, and they had grown over time so they had the biggest footprint in terms of offices all over the country and they probably in my view had the most experienced
10 criminal investigators that focussed on SARS related criminal offences.

ADV FRANKLIN SC: Yes, and having regard to that overview Mr van Loggerenburg, I think it is safe to say that your career at SARS was very much enforcement and units that had as their objective, the monitoring of illicit activities and the insurance that revenue was collected as it ought to be collected and that persons who were not complying with the law, would be apprehended and dealt with.

20 **MR VAN LOGGERENBURG:** Yes, Chairperson. In one way or another as provided for in terms of the SARS regulatory and legal framework and of course the constitution.

ADV FRANKLIN SC: And you have described earlier the process of modernisation and your own area in the revenue

services was modernised as I understand it. you spoke about that process taking place effectively from around 1998 and onwards, and can you give the Chair an idea how successful was that modernisation process, where was SARS as an organisation in 2013, 2014?

MR VAN LOGGERENBURG: Chairperson, this is not in my affidavit but I can answer the question. There is an internationally recognised measurement instrument that is applied by tax authorities and customs authorities to
10 measure their efficacy and efficiency and status, areas that they need to develop and areas that they are very good at.

That is commonly known as the tax administration diagnostic assessment tool. People have to be specifically trained to use this tool and it takes some time. External people go into these authorities and they measure different points in different ways.

Quite a sophisticated system. I know that by 2013 the South African Revenue Service scored among the top five revenue and customs authorities in the world in
20 respect of that diagnostic assessment tool.

ADV FRANKLIN SC: Thank you. In paragraph 59 you allege this, you say:

“As a result the prominence of SARS ability to enforce laws it oversaw and its capacity to do so, became increasingly effective over the

years, ultimately being praised and studied worldwide.”

That is what you have just alluded to now.

MR VAN LOGGERENBURG: Well, that is one example Chair. This – the acronym they used for that tool is TADAT. That is one example. I mean there have been many publications over the years since the late ‘90’s until 2013. I know that other countries in fact in January/February 2014 the United Kingdom sent a delegation to come and spend
10 time with us to understand how we were managing to impact on the illicit tobacco trade because they – they did not know how. So I mean it is a – the Revenue Service was well known and well received worldwide and actually steady.

ADV FRANKLIN: Right I would like to move on to your investigative methodology which you have dealt with as a topic in paragraph 63 page 17 and following and could I ask you firstly to just highlight for the Chair and just to put a figure on this obviously these figures one can get more accurate figures but just a ball park figure. The last
20 sentence in paragraph 63 says that:

“At the time and this time I presume is when
in the – in the early 2000’s or 2010?”

Do you know what time you are talking about here?

MR VAN LOGGERENBERG: Yes it would have been around – around 2009 to 2010 Chairperson.

ADV FRANKLIN: And your estimate was that the illicit economy was costing the state in excess of R100 billion per annum. Is that – that a – as far as you know an accurate figure?

MR VAN LOGGERENBERG: Yes Chairperson and it is a well-known figure one that was widely published at the time and...

ADV FRANKLIN: And then in order to address that loss and in order to execute your mandate I understand that the focus areas which were prioritised in terms of what was known as the SARS Illicit Economy Strategy which you deal with in paragraph 66 on page 19.

The focus areas that were prioritised in terms of that strategy which was approved and presented to Parliament was as set out in paragraph 66.1 to 66.13.

So you need not go through them all but do I understand it that there was in place at least from 2006 until 2013 an approved Illicit Economy Strategy which was followed?

20 **MR VAN LOGGERENBERG:** Yes Chairperson the – the Illicit Economy Strategy existed before and so these focus areas and the preceding paragraph the manner in which matters were identified for investigation. But the significance of this is the fact that it was presented to Parliament and accepted in that year.

CHAIRPERSON: It was presented in Parliament and?

MR VAN LOGGERENBERG: And accepted.

CHAIRPERSON: And accepted okay.

MR VAN LOGGERENBERG: In other words for me it means a lot more if Parliament.

CHAIRPERSON: Yes.

MR VAN LOGGERENBERG: Is aware of it and...

CHAIRPERSON: Ja, no, no I accept that.

MR VAN LOGGERENBERG: And they do not stop us Chair.

10 **CHAIRPERSON:** Ja. It is just that you swallowed your word accepted. So .

MR VAN LOGGERENBERG: I apologise again.

CHAIRPERSON: Ja okay alright.

MR VAN LOGGERENBERG: I am a nervous character Chair.

CHAIRPERSON: No relax.

ADV FRANKLIN: And Mr Van Loggerenberg I understand that it was presented on more than one occasion to Parliament over at least that period 2006 until 2013?

20 **MR VAN LOGGERENBERG:** Yes Chairperson in fact we were often called to Parliament in the preceding years and post years on different matters often relating to shall I say common crime problems facing the country.

Not only did they call the ordinary parts of government that you would expect to be called by Parliament meaning the police or prosecuting authority and so on but

the Revenue Service was also always called to come and account and I in fact I attended many of those sessions and they were very difficult because you have to prepare quite a lot of documentation and so on.

All of them pushing the Revenue Service and expecting more of the Revenue Service to do its bit to address organised crime and crime in general in the country.

ADV FRANKLIN: And then to give the commission an idea of the ambit of the activities of the PEMTS sub-division you
10 say in paragraph 67 that that sub-division supported by others was at the forefront of investigating at least 87 projects as at the time that you resigned from SARS to the best of your recollection. Now do I understand you to say there were 87 odd live projects at or about 2015 when you left SARS?

MR VAN LOGGERENBERG: Yes Chairperson it was certainly not less it may be more and when I say projects that would be overarching focus area with multiple audits, multiple financial investigations and multiple civil
20 investigations, multiple entities, multiple tax 00:06:08.

ADV FRANKLIN: And just to highlight one that we will examine in greater detail in due course paragraph 66.9 you talk about smuggling activities with a specific emphasis on tobacco and alcohol related products. That obviously was one of the focus areas and I take that there were a number

or projects in relation to that particular objective?

MR VAN LOGGERENBERG: Chairperson there was one – by this time there was on project with multiple sub-projects underneath it so the project that the evidence leader Mr Franklin is referring to which was known as Project Honey Badger would count as one in this 87 projects.

ADV FRANKLIN: Right then I would like to take you to another topic which you deal with from page 23 and onwards and it is entitled Resistance Encountered by SARS during
10 Investigations.

Now I take it that not everybody in the country thought that compliance was a good idea. What you have done here is you have highlighted for the benefit of the commission some of the obstacles that you as SARS compliance units encountered in the way of executing your mandate and could I ask you to – to just explain that for the benefit of the Chair and perhaps you can do so in phases what you have done in this section of your statement is to begin in 2003 and then you have gone forward to 2014.

20 But could you give the Chair an idea of the type of resistance that was encountered by SARS concerning these investigations and projects that you have outlined?

MR VAN LOGGERENBERG: Chairperson when – when the Revenue Service began to make an impact on particularly organised crime in the early 2000's and here I mean we were

putting illegal drug dealers and drug manufacturers and cash in transit heists type organised crime people in jail for tax evasion.

Though at first I think they – they when I say they I mean the bad people, the crooks, the rogues did not see it coming because it was a new thing in the South African environment. But to the extent that some did on – in my early days at the Revenue Service I picked up that the common trend was really to corrupt people.

10 So the bad guys would simply pay money to an official to either make something happen or make something not happen. And that was kind of the standard informal counter that the bad guys had.

 By the time we had the Special Compliance Unit and we were now focussed and we were all on a mission to make an impact now the bad guys began to alter their way in which they responded to us. So the typical responses would be to delay you know when you – when they are obliged to submit information or to ask for extra time or to you know get sick
20 and say they are not available they can only come in two weeks' time or – the sort of typical defences that you find but in addition to that we began to encounter the names dropping.

 So somebody would say to us you know if you touch me you going to touch so and so and if you touch so and so

he knows Minister so and so. So it just you know when you deal with me maybe we should go and sit somewhere and see if there is not a way of making this go away which is what we used to call names dropping. It became a term.

So somebody would come in from a raid or from an interview or anything and they would say oh there was some names dropping again with this one. It began to be – get more and more so where it would happen just here and there it became – it would become more frequent.

10 And another trend at the time that I began to see was – was where people were being threatened literally. They were told if you want your job, you want to stay in your job you better back off which is what we called the make the life difficult kind of statement. So somebody would say well give me your name and your surname you know I know so and so – so you – if you want your job you may want to do things in a particular way.

 And that escalated by the mid-2000's to our people being held hostage, our people being shot at, our people
20 being shot, our people being murdered, assaulted and threatened in that manner. Their families threatened, equipment stolen and that sort of thing.

To – I mean to a point I remember even we uncovered a plot and this is public knowledge where they were planning to bomb my office. So this – in time that is the kind of

resistance that we began to experience and certainly by the mid-2000 I began to experience two things internally with the people that I was working with.

One was that some people felt incredibly uncomfortable to do this kind of work. They said look we auditors, we – this is not – we do not want to carry guns. And at the same time from labour there were demands for increased danger pay and for the purchasing and supply of bullet proof vests and bodyguards and that sort of thing. So
10 it – it over time became more and more the norm.

But I must say Chair I think we were good at mitigating those risks and where people did not want to work on cases we did not force them to work on cases and where bodyguards had to be provided they were. Where bullet proof vests had to be acquired and provided they were. We could not quite afford danger pay but we certainly did what we could.

And then I think because we were that effective in countering these attacks on us it changed. You still got
20 these here and there but it kind of almost changed almost immediately and it began to turn into personal attacks on individuals.

So usually in the form a rumour or an accusation but completely unsubstantiated and generally they would be – they would be 00:14:50. So it is kind of like this guy cannot

be trusted because this is what he has been doing or salacious of some kind or accused of corruption and that certainly began to increase and it – it ultimately became what I described as a cottage industry.

People created dossier of these things which at face value if you do not know anything it makes a good read but the minute you dig into it then you find it is complete nonsense and that just became the par for the course by at least 2013/2014.

10 **ADV FRANKLIN:** Alright then in the section on page 25 under the heading The Climate Set for the Final Attack on SARS. You have set out various examples here. Could I take you forward to paragraph 86 on page 33 and what you have said is this:

20 “SARS lost any semblance of effectively countering the sorts of attacks I have already described from end September 2014 when the appointment of then Commissioner Tom Moyane was announced by then President Jacob Zuma out of the blue and he took office almost immediately. Almost overnight when Mr Tom Moyane took over the public attacks on SARS and its officials ran unabated and Mr Tom Moyane did absolutely nothing to defend SARS or allow people in

SARS who were able to defend SARS and its officials and work to do so. In fact he prohibited this emphatically in this regard I refer to Annexures 1, 2 and 3.”

Just pausing there you have made quite blunt statements there regarding the former Commissioner we will get to some of the detail but can you describe in your own words to the Commissioner why you say that as from the time of the appointment of Mr Moyane SARS lost any
10 semblance of effectively countering these attacks?

MR VAN LOGGERENBERG: Chairperson in 2014 these sort of dossier type attacks that I described earlier were happening thick and fast. It was if not a weekly it was a daily occurrence. Now if I may Chairperson refer just to the previous page? Page 33 at paragraph 85 page 33, paragraph 85. What I quote here is a statement issued by the South African Revenue Service on the 31st of July 2014 to the media.

ADV FRANKLIN: This is before Mr Moyane’s appointment?

20 **MR VAN LOGGERENBERG:** Correct. So in – as I said Chairperson now we – we now under attack from all sides with these claims and we have had that before so we know the best way to deal with these sorts of claims is to take the dossier and unpack it in detail and demonstrate the truth so that whoever has it can weigh up the two against each other

and decide for themselves. But now they were just coming in thick and fast.

But by 31 July 2014 the Revenue Service was quite capable of dealing with this in this manner. But at this time persons from within the states – state intelligence environment began to feed these dossiers into the media and so the media would come to the Revenue Service and ask for comment and that is the origin of this statement. If I may read Chair if I may?

10 **CHAIRPERSON:** Yes you may but at some stage I would like you to tell me how SARS dealt with these attacks prior to Mr Moyane coming in because you implied or suggested that after he came on board it appeared that the – SARS was no longer dealing with these attacks in the same way as it might have done before his time. So at some stage if you can deal with that but you can read what you would like to read.

MR VAN LOGGERENBERG: Thank you Chair. What the Revenue said to the public at the time was that they were aware that people had a vested interest in creating confusion
20 amongst state institutions.

ADV FRANKLIN: Just for the record you are reading from the official document communicated by SARS to the media on the 31st of July 2014.

ADV FRANKLIN: That is correct Chairperson. I put a footnote of the origin of where I got it from the internet.

CHAIRPERSON: And it is quoted on page 33 of the bundle?

MR VAN LOGGERENBERG: Yes Chairperson.

CHAIRPERSON: Okay continue.

MR VAN LOGGERENBERG:

“So first of all the Revenue Service wanted the public to know that there – that the Revenue Service was aware that there were people who had a vested interest in creating confusion amongst state institutions. And the Revenue Service was in no doubt that they were behind these allegations as they had been in the past. It has become common place for certain individuals with an interest in perverting the course of justice to compile dossiers, files and information which purport to uncover corruption but are in fact a concoction of some fact and much fiction. Such dossiers are then distributed to the media, certain law enforcement agencies and political players in the hope of disrupting or flouting SARS action. SARS now has significant and credible evidence showing incidents of spying, double agents, dirty tricks, leaking of false allegations and the discrediting of officials. SARS is

10

20

collaborating with the directorate of priority crime investigations the Hawks and State Security. We are confident that soon many of the undesirable practices in the industry will come to light and the individuals will be held to account.”

These are just my emphasis it is a much longer statement Chairperson. It partly speaks to your question to me Chairperson if I may then respond to your question?

10 **CHAIRPERSON:** Yes.

MR VAN LOGGERENBERG: At this point in time the Revenue Service had begun to formerly engage with both the State Security Agency and the Directorate of Priority Crime Investigations to say look this is a problem. It is not just affecting us it is affecting you too. There is something going on. We need to sit around a table and deal with this.

The manner in which the Revenue Service responded to these types of fake dossiers up to that point Chairperson was firstly you need to have the fake dossier in your hands.
20 You then take it line by line and you go and investigate the claim. The investigation has as aim to take the hypothesis as stated in the dossier and either prove the hypothesis correct or incorrect. If it is found to be incorrect one would then want to investigate what is the purpose, what is the objective of putting something like this out there as if it is a

fact when it is not a fact? And the only way you can deal with it is unfortunately painful and it takes a lot of time is you have to take each allegation determine as much as you can where it originates from then you need to go and check the facts, then you need to put the two together and either it is proven to be so or proven to be not so.

But that does not solve the problem of another dossier landing on your doorstep the next day so in the – in the Revenue Service environment and I think in the
10 production environment engineers talk about corrective action and action at a disposition level and corrective action is you want to fix the bigger problem whereas at a disposition level you want to deal with that problem.

The car that has come out the factory with the broken steering wheel must be fixed but why is it coming out of the factory with a broken steering wheel there must be something wrong in the factory. And so at this point in time we were in discussion and I am not sure if Mr Franklin will take me there but I was party to some of those discussions
20 to see how do we deal with this problem?

Because it was not just that the Revenue Service was under attack the Prosecuting Authority was under attack in the same way, the Hawks were under attack in the same way and other parts of government.

When Mr Moyane arrived two things happened.

These dossiers and particular the one began to gain incredible traction in the media. Up until that point it was easy for us to if the media asked questions and they provided the dossier to give them the counter and say look this is who made the dossier and these are the facts.

But in this instance we were not given the dossier. In fact we were not even necessarily asked for comment. And then a – that would be front page news the next Sunday above the fold with photos of me as the poster boy or these
10 things. And instead of determining hold on a second here is somebody saying that you bugged Zuma and that you broke into his home in Forest Town and you planted a listening device there and it is on the front page of the biggest selling newspaper in the country hey what is your story? There is none of that.

In fact the opposite happened. It is accepted as if it is proof. And then it begins and now it begins to escalate and escalate so it was no longer a case of dealing with these dossiers as they come in it is now we are not even allowed
20 to respond to the dossier or see them.

ADV FRANKLIN: By way of example could I take you back to your statement? Paragraph 77 on page 26 you have said that you had personal experience of this because you say:

“In my case by way of example in December
2014 I was specifically instructed in writing

by SARS executive Mr Luther Lebelo in an email exchange between myself and the then commissioner Mr Tom Moyane and Mr Luther Lebelo to withdraw a bland denial of wrongdoing based on a leaked report I had never ever seen or else face summary dismissal. I withdrew my denial under duress.”

You then attached to your affidavit as JVL1 on page
10 81 an email string could I take you to that please?

MR VAN LOGGERENBERG: Yes Chairperson.

ADV FRANKLIN: The second email at the second half of the page is sent on the 19th of December 2014 by you to Mr Lebelo correct?

MR VAN LOGGERENBERG: Yes Chairperson.

ADV FRANKLIN: And this relates to leaked to the media of the Sikhakhane Report is that right?

MR VAN LOGGERENBERG: The so called Sikhakhane Report yes Chairperson.

20 **ADV FRANKLIN:** Right. And we will deal with it in a little more detail in due course. You were implicated in that?

MR VAN LOGGERENBERG: I discovered this in April 2015 Chairperson when it made public on the Revenue Service website.

ADV FRANKLIN: And what you said to Mr Lebelo was this:

“Following my previous email note my reply to the media following various requests and based on the fact that the Sikhakhane Report has been leaked to the media.”

And then what follows as I understand it in the quotations is the text of a letter that you wished to send to the media regarding this matter. Is that correct?

MR VAN LOGGERENBERG: I – Chairperson in fact what precedes this was me asking permission to respond because
10 I am being asked to personally respond they do not want an answer from the Revenue Service. They want an answer from me.

So I asked Mr Lebelo copying in Mr Moyane whether I can use my constitutional rights to issue something because to just keep quiet it is not good for us as the Revenue Service or for me. I received no reply and you will see at the time there five minutes to twelve at night I then because of the deadline by the newspaper to me that I will simply notify Mr Lebelo of what I am saying to the
20 newspapers. And so I took the mid-road. In other words, I did not want to say anything that would breach Chapter 6 or any of its sections. I just wanted a denial and some level of protection. That is the context ...[intervenes]

ADV FRANKLIN SC: Let us then look at the response from Mr Lebelo dated the 20th of December 2014 which you

will find at page 81, the top of the page that we were looking at. He says a number of things but am I right by summarising it by saying that if you were to release your statements to the media it would be regarded as a gross misconduct and you would render yourself liable to summary dismissal?

MR VAN LOGGERENBERG: Yes, Chairperson, I was told you are not allowed to defend yourself, you are not allowed to defend the institution. You do so and we fire you
10 overnight.

ADV FRANKLIN SC: Could I ask you to look at the – there are further examples that you have put up in your statement and the second one is JVL-2 at page 83 and that is a letter from attorneys acting on your behalf. Is that correct?

MR VAN LOGGERENBERG: Yes, Chairperson.

ADV FRANKLIN SC: And could you just explain to the Chair what the context of that letter is?

MR VAN LOGGERENBERG: Chairperson, the – if I can
20 call it the media propaganda attack on the Revenue Service, commenced on 12 October 2014. The headline in the newspaper was: SARS Bugged Zuma. And then it contained a whole lot of claims as fact. And it relied on former and current Revenue Service officials and intelligence officials or an official which remained

unnamed. They were anonymous sources.

On that point, I attempted to engage with Mr Moyane with a view to explain to him clearly the Revenue Services are under attack here and clearly there is something bigger but I can help to protect the Revenue Service. The annexures I have attached to my affidavit are few.

If I had to attach all the evidence of me attempting to help the Revenue Service address those
10 articles, I would just waste your time Chairperson. So I have elected to just pick a few across the time period.

The 10th of November one is one that followed a newspaper article, again, with the headline and big photo of me that said: Taxman's Rogue Unit Ran Brothel. And page 2, page 3 and page 5 and page 6 in the editorial, they were all dedicated to telling the country about the small little unit and how terrible they were.

It was clear to me that the institution was under a very ominous and powerful attack by this time and that is
20 why I sought my attorneys to address Commissioner Moyane rather than just me because up to that point, I was just being plainly ignored.

You will also note Chairperson that I copied the then Company Secretary because I wanted the matter on record. The essence of this letter is really to say to the

Commissioner: Look, these newspapers are harmful to the institution. They are harmful to me. I am not allowed to defend myself. Nobody in the Revenue Service is doing anything about this. It is running unabated. It is all nonsense.

I say at paragraph 3 on page 83. It is the last paragraph on the page of my attorney. It says clearly:

10 “Our client is of the view that SARS as an institution and certain SARS official, in particular our client, has been subjected to consistent scurrilous and defamatory attacks that are aimed to discredit them, most notable published in article...”

20 You can read the rest Chair. I then highlight a number of concerning matters to Mr Moyane in this letter and then I am now desperate to do something to make this stop wherein which I, first of all, deny the allegations as they stood up until that time directly or indirectly. And I now wanted to lay criminal charges against the newspaper and everybody else who were busy publishing these things.

 On page 83 at paragraph 5, right at the bottom Chair, I again make the point to Mr Moyane that in terms of my arrangement with SARS, I am not allowed to say publicly. So having regard to the persistent and continuing defamatory attacks on me in the media, it places me in an

unattainable situation because it is just running unabated.

I then ask:

“Please can I have permission to release a single media response...”

It continues on page 85, at the top Chairperson.

“...to the aforesaid allegations?”

Our client undertakes in this regard to submit the statement for approval from SARS and to release same via SARS...”

10 And I had hoped that at that point that the Commissioner would agree that if he vets the statement to be issued, at least we can protect the institutions and my rights. The last comment was just that I had heard along the grapevine that the so-called Sekukane Panel had been finalised.

I asserted my right to that report as I was entitled to. In fact, the report is named: Investigation into allegations of conduct of Mr Johannes van Loggerenberg. And I asked the Commissioner for a copy of the report.

20 Well, this letter was never responded to.

ADV FRANKLIN SC: Then the third of the annexures that you have put up is JVL-3 at page 87. The letter dated the 16th of October 2014. And am I correct that this was directed to the then Commissioner, Mr Moyane, together with a number of others whose names appear on page 86

by the six authors of the letter whose names appear on page 90?

MR VAN LOGGERENBERG: [No audible reply]

ADV FRANKLIN SC: And can you tell the Chair who are those six people? Were they members of the so-called “rogue unit”?

MR VAN LOGGERENBERG: Chairperson, they were members of the South African Revenue Service High-Risk Investigations Unit, dedicated civil servants who had placed their lives on the line for many people. I do not use that term that some people use. I also do not use it as so-called.

ADV FRANKLIN SC: Right. So the members of that unit wrote to Mr Moyane and other senior SARS officials. We not need to read the letter but it looks, in its entirety, as I understand it, there were a number of requests which they made of the then Commissioner including, for instance, bringing legal action against the newspaper. A request for a meeting. An offer to be polygraphed, et cetera, et cetera. Do you know what happened in response to this letter? Did Mr Moyane address these requests or exceed to any of them?

MR VAN LOGGERENBERG: Chairperson, if I may just very quickly explain the origin of this letter? This letter is the first whistle that was blown at the Revenue Service

that we have on record. As I said earlier in my testimony. The first of the vicious media propaganda campaign that was aimed at the Revenue Service, commenced on the 12th of October 2014 with the headline: SARS Bugged Zuma.

Chairperson, if you go to page 91 and 92, you will see at 92 it is dated the 13th of October. In other words, that would be the Monday of the Sunday Times of the publication of that article. On page 91, it is a message
10 from the Commissioner.

This is from Mr Moyane sending an internal newsletter to the 14 000 odd people in the Revenue Service in response to the newspaper article that commenced the day before.

“He starts by asking whether all had seen and read the Sunday Times story about SARS yesterday.

Like a bad picture in a negative exposé of what we are about.

20 In fact, it is a dent our image and our reputation before our important stakeholder, the South African taxpayer.

We had lost the moral high ground with these serial allegations...”

Mr Moyane accepted that what he read in the

Sunday Times on the 12th of October as fact. He went further. He then communicated in his position as the Commissioner of the institution of which he had only been at for less than two weeks.

He say to everybody else in the institution that this is so. The six people on page 90 who made up the full complement of the unit that had been defamed in that article then addressed the Commissioner, the Deputy Commissioner, the Chief Officer of Risk, the Chief Officer
10 of the Tax and Customs Enforcement Investigations Division, the Group Executive, Mr Godfrey Moloï and the acting Group Executive who was standing in, in my place and they coordinated collectively in an email and letter dated the 16th of October. In other words, three days later.

In this letter, they first of all indicated all the claims in the newspaper were false. They indicated that wherever these claims came from, they requested that these matters be investigated. They submitted and subjected themselves to investigations. They asked for
20 immediate polygraph tests.

They also asked that criminal charges be brought and that legal action be taken against the Sunday Times. And they asked for engagement. They asked for the institution to speak to them and defend them.

They also asked that if anybody accused them or

made claims against them, that those people do so on oath and they requested that they be treated fairly in terms of labour practise. And they asserted their rights to be presumed innocent in terms of the Constitution.'

They also named some of the intelligence operatives that they were aware of who were behind some of these attacks. They did not seek any animosity between SARS as the employer and themselves. This is on record.

ADV FRANKLIN SC: Right. If I could ask you, please, to
10 then go forward to paragraph 99 on page 39? And what you have done her, as I understand it Mr Van Loggerenberg, is you have collected together a very long list of the allegations that were out there concerning the high-risk unit. Are these a collection of what was said publicly or alleged publicly in connection with that unit?

MR VAN LOGGERENBERG: Yes, Chairperson, they are –
the themes, the... Well, they were not published as
allegations. They were published as a fact. But these
were the claims that were published, claims made and they
20 are sequential in terms of the timeline.

So if you look at 99.1: Broken into the home of former President Zuma. It would have been the first article of 12 October 2014. Found listening devices in former President Zuma's home. It would also be that article. It then goes on and ...[intervenes]

CHAIRPERSON: I am sorry. I am sorry. Mr Franklin, I thought you said we should go to 99 but ...[intervenes]

ADV FRANKLIN SC: Yes, it is paragraph 99, page 39...[intervenes]

CHAIRPERSON: Oh, paragraph 99. Not page.

ADV FRANKLIN SC: No.

MR VAN LOGGERENBERG: I am sorry.

ADV FRANKLIN SC: Page 39.

CHAIRPERSON: Yes, I have got it.

10 **MR VAN LOGGERENBERG:** You had pointed out the first sub-paragraph Mr Van Loggerenberg.

ADV FRANKLIN SC: Yes, Chairperson. So I just want to first illustrate to you that the list which continues for quite a few pages makes up the, what I call the media propaganda attack on the Revenue Service which span two calendar years and run uninterrupted despite all efforts and attempts to assist and get to the bottom of this.

The second thing, Chairperson, if I may. What is important to realise here is that the nature of the claims
20 are... I know one should not weigh up crimes but when somebody says six people or ten people broke into the home of the former President in Forrest Town with that specificity and blunt...[intervenes]

CHAIRPERSON: But of course, he was current President at the time. In fact ...[intervenes]

MR VAN LOGGERENBERG: In fact I think ...[intervenes]

CHAIRPERSON: Is it not?

MR VAN LOGGERENBERG: ...I think the date of this is the time when he was the ...[intervenes]

CHAIRPERSON: No, no. If it is... Is it not in... You said early 2010 that he was President at the time.

MR VAN LOGGERENBERG: Yes ...[intervenes]

CHAIRPERSON: If it was 2007, he was not President yet but if it was in 2010, he was. I am just looking at
10 paragraph 99.

MR VAN LOGGERENBERG: Yes, Chairperson. I am just trying to recall the exact wording of the media article. They dated the incident to sometime after his acquittal of a criminal matter in Durban.

CHAIRPERSON: Okay?

MR VAN LOGGERENBERG: And his election as President of the African National Congress. So that was when the incident supposedly happened.

CHAIRPERSON: Oh, okay.

20 **MR VAN LOGGERENBERG:** Which I think would have been ...[intervenes]

CHAIRPERSON: Before.

MR VAN LOGGERENBERG: If I am not mistaken, Chairperson, it would end 2007.

CHAIRPERSON: Okay. At that time, he was not in

government.

MR VAN LOGGERENBERG: No.

CHAIRPERSON: Ja.

MR VAN LOGGERENBERG: Now they then say that this – these tax officers, Tax and Customs... people broke into his home and planted a listening device there and listening to him and whoever else.

I am giving you an example, Chair, because when this is published, it is now 2014, Mr Zuma is now the
10 President of the country. One would imagine... This is not a report about a custom official taking a bribe to let a container of cigarettes come through the board. This is something at a next level.

The response to it is the oddest thing to me. These people are not rounded up. They are not made ...[indistinct – dropping voice. They are not asked ...[indistinct – dropping voice] It is nothing. It is just one story after the next, after the next, after the next, after the next.

20 There is no criminal case. There is no super task team assigned to jump on this thing and call these people to get to the bottom of it. Nothing. It just runs.

Now we know, Chairperson, before – as I sit here before you. We now know this is not true which begs the question. If it was not true, if none of these things are

true. Why? What were these articles supposed to achieve at this institution? That is my comment Chairperson.

ADV FRANKLIN SC: Yes. And could I take you to paragraph 102, please?

MR VAN LOGGERENBERG: Ja.

ADV FRANKLIN SC: On page 41. What you say there is:

10 “Mr Tom Moyane and various newsletters and public utterances by the spokesperson, Mr Lebelo on behalf of SARS never questioned the veracity of these false claims and to the extent that they knew that these were false and were denied by the entire HRIU on record, never revealed the true facts publicly and instead opened the advanced false narrative at all times...”

MR VAN LOGGERENBERG: That is correct Chairperson. There are so many examples, like, television interviews and radio interviews, news releases, comments, public comments. There are just so many for that entire period. I
20 should just correct this. The spelling error of Mr Lebelo’s surname. It is one L.

ADV FRANKLIN SC: Thank you. Then you say at 103 up to 105:

“Mr Tom Moyane had absolutely no interest in understanding the facts and truth behind any

rumour or fake news report about SARS on 12 October 2014 onwards...”

And then you refer to your annexures.

“All attempts by me to meet him and to ensure that he was fully briefed were either ignored or rebuffed.

I, again, refer to my examples...”

And then you say in 105:

10 “It was absolutely clear to me by November 2014 that the attacks on SARS and the specific persons there suited him and others perfectly.

He immediately began to alter SARS management by suspending the Executive Committee in November 2014, following the fake news headline about brothers being run by SARS.

All executive members of SARS will confirm this...”

20 So again, you have made some hard hitting allegations against the former Commissioner. Would you like to add anything to the reasons you have given already as to why you formed this conclusion?

MR VAN LOGGERENBERG: I think, Chairperson, if so required that I amplify this particular sets of events as I

described as a fact, I am happy to do so. It would mean to just go and get some records of the law and so forth. But the fact of the matter is. As soon as Mr Moyane the story started and I have given you examples of where we – we could not just say we want to help. We said in no uncertain terms this is wrong. This is false. There is an attack. I used the words: The institution is under attack. He did not speak to a single one of us.

CHAIRPERSON: You mean that despite these serious
10 allegations appearing in a newspaper or newspapers over a certain period of time, allegations being made against officials within SARS, never called any of those officials against whom allegations were made in the newspapers, to find out what you have to say about this, nor did he ever send a note or email to say: I want to hear what you have to say about these allegations?

ADV FRANKLIN SC: Chairperson, there was no need. They wrote to him on the 16th of October.

CHAIRPERSON: H'm?

20 **MR VAN LOGGERENBERG:** If I can take you to the...

CHAIRPERSON: Well, I guess, you – it looks like your answer is yes but in addition, you want to tell me the officials actually wrote to him?

MR VAN LOGGERENBERG: They begged him.

CHAIRPERSON: Yes.

MR VAN LOGGERENBERG: I want to just, if I may Chair. There is one small little portion I want to just ...[intervenes]

CHAIRPERSON: Ja, what page?

MR VAN LOGGERENBERG: It is ...[intervenes]

ADV FRANKLIN SC: Are you talking about the Annexure 3 at page ...[intervenes]

MR VAN LOGGERENBERG: The L3's.

ADV FRANKLIN SC: Chair, the L3, page 86.

10 **CHAIRPERSON:** Okay.

ADV FRANKLIN SC: And what part of the letter do you wish to ...[intervenes]

MR VAN LOGGERENBERG: It will at page 88 Chairperson.

CHAIRPERSON: Ja, okay, go ahead.

MR VAN LOGGERENBERG: Now at this point, they are only responding to what has been reported in the media as up until that date.

CHAIRPERSON: H'm?

20 **MR VAN LOGGERENBERG:** They say to the Commissioner:

“We wish to emphatically deny the specific allegations that we were ever involved in illegal interceptions of communications in any way or form including emails and phone

calls...”

Then they go on with this emphatic denial. The so-called house penetrations, illegal surveillance, investigation in any manner or form, any of the taxpayers mentioned in the Sunday Times articles at any time. Specifically, Messrs Malema, Mbalula, Kodwa and Hlongwane.

“We deny that we were paid from a secret cost centre...”

10 And they give the cost centre.

“We deny having ever conducted mail theft and utilising illegal tracking devices.

We deny that we ever bugged President Zuma or that we have ever been near his home in Forrest Town.

We place on record that we have never received or possessed any equipment of any nature that would have been used in illegal activities as described above.

20 We object to the implied suggestion that the internal communiqué in SARS dated 13 October 2014, as attached, which seems to create the impression that the media allegations are fact and that we were rogue elements in SARS...”

I think that is a typo.

“In particular, we emphatically the allegation that we possessed or used fake identity documents as stated...”

And so it goes on Chairperson.

CHAIRPERSON: H’m, h’m.

MR VAN LOGGERENBERG: My point is. When you open the newspaper and you read something about this Commission that suggests that the people here in this
10 Commission are up to no good. One would imagine some kind of response.

CHAIRPERSON: H’m.

MR VAN LOGGERENBERG: Not only from the Commissioner, but also those people.

CHAIRPERSON: H’m.

MR VAN LOGGERENBERG: If they keep quiet and hide away. Well... But if they write something and put it on record that ask the Commissioner to please... this is... here is a problem. We are under attack. Please, we need
20 to do things. We need to lay criminal charges. Somebody needs to investigate us. We want to go on polygraph tests and so on. But nothing of it, no.

CHAIRPERSON: H’m.

MR VAN LOGGERENBERG: In fact, the next story comes which is the brother and the very next day the Executive

Committee is suspended.

CHAIRPERSON: So there was never a response to this letter, the joint ...[intervenes]

MR VAN LOGGERENBERG: No, Chairperson.

CHAIRPERSON: Was it emailed to the Commissioner? Was it hand delivered or how was it?

MR VAN LOGGERENBERG: It was emailed to all the recipients identified on...

CHAIRPERSON: I see that it is appears to... Oh, it is
10 addressed to a number of people.

MR VAN LOGGERENBERG: Yes, Chairperson.

CHAIRPERSON: They were – they all held various positions within SARS, the people to whom it was addressed, except for – Mr Moyane was the Commissioner, obviously.

MR VAN LOGGERENBERG: Correct.

CHAIRPERSON: Then the next one was Mr Pillay, who was Deputy Commissioner. The others were officials within SARS.

20 **MR VAN LOGGERENBERG:** They were part of the component that this unit resorted under. So they were part of different levels of management.

CHAIRPERSON: Ja, okay, okay.

MR VAN LOGGERENBERG: I think they wanted to make sure that this is on record.

CHAIRPERSON: Ja, ja, ja. Okay. So you say there was no response to the letter, either by way of something in writing or a phone call to call a meeting, either individuals or the whole group to take the matter further?

MR VAN LOGGERENBERG: No, Chair. I mean, at the very least, one would have expected the Revenue Service would hold a public: Look, we have noted the articles. We view them as very serious.

CHAIRPERSON: H'm.

10 **MR VAN LOGGERENBERG:** We have, in the meantime, received denials from these people and we are looking into the matter.

CHAIRPERSON: H'm, h'm.

MR VAN LOGGERENBERG: Something like that but there was none of that.

CHAIRPERSON: H'm. Okay.

MR VAN LOGGERENBERG: In fact, I followed this up in... [end of recording session] So there are also emails from me ...[intervenes]

20 **CHAIRPERSON:** Ja.

MR VAN LOGGERENBERG: ...which I wanted hand delivered to Mr Moyane.

CHAIRPERSON: Ja.

MR VAN LOGGERENBERG: ...because I went into greater detail.

CHAIRPERSON: Yes.

MR VAN LOGGERENBERG: That also found its way into the - the media calling it a confession but everybody, ultimately, apologised to me and said it was not a compression, it was a denial.

CHAIRPERSON: H'm.

MR VAN LOGGERENBERG: And so... I can keep you very busy Chairperson.

CHAIRPERSON: Ja.

10 **MR VAN LOGGERENBERG:** Which I do not want to.

CHAIRPERSON: No, no. It is fine.

MR VAN LOGGERENBERG: The point is simple that the institution is under a significant media attack. You need to respond to the media. You cannot let this continue. It is now making the whole institution look terrible.

CHAIRPERSON: Okay.

ADV FRANKLIN SC: Alright. Thank you, Mr Van Loggerenberg. As it transpires, as you will know, subsequent to these events and as recently as December
20 of last year, various components of the narrative in relation to the high-risk investigative unit have been dismantled or there had been definitive findings in respect of.. We will get to that in due course.

But it is a matter of public record, for instance, that the Sunday Times withdrew their allegations

unconditionally. And that most recently, the full bench of the Gauteng Division of the High Court has issued a judgment in relation to the lawfulness of the unit. You are obviously aware of that?

MR VAN LOGGERENBERG: Well, Chairperson, there is a very long list, which I again, do not want you to keep you occupied with. I want to say the following in respect of what Mr Franklin has asked of me. It is so that the full court made the decision.

10 Well, issued the judgment in which - within the judgment it also said that the manner in which the Public Protector determined that the unit was established unlawfully was wrong, it was flawed.

 But that is what we are down to. We are down to how a unit was created. I want to know about who are the people that started this what we have bugged Zuma and broke into homes and... So it has reduced to that now. It is what is left.

20 The Sunday Times, actually, retracted and apologised twice, Chair. The second time was in 2018 and they went a step further. They admitted that they had been used as part of a project to cause harm to state institutions.

 There is a recent independent media panel that was instituted by the South African National Editors Forum

chaired by a retired Justice Cathleen Satchwell and to assess it. It is going there of what happened. It is going there.

I, again, I can go into lots of detail. I mean, one of the common issues is the question of how come the so-called Sekukane Panel report was never taken on review and set aside in a court of law. We tried to do that.

Senior counsel told us, you cannot because this not an administrative action. This is just a document. A
10 legal opinion and it is a bad one. You cannot. You waste the court's time and your money.

So the whole propaganda, as far as I am concerned Chair is, it is not worth putting people through trauma again. Ja.

ADV FRANKLIN SC: Alright. Mr Van Loggerenberg, in due course, if and when we introduce another affidavit of yours. You have very helpfully collected together 53 different episodes in relation to the undoing of this narrative. We will place that before the Commission in due
20 course.

MR VAN LOGGERENBERG: [No audible reply]

CHAIRPERSON: Well ...[intervenes]

ADV FRANKLIN SC: Chair ...[intervenes]

CHAIRPERSON: ...we normally take a ten minutes' adjournment at four but I have been thinking whether we

should take it earlier because we started earlier than two.

ADV FRANKLIN SC: Yes, it would be convenient. Thank you.

CHAIRPERSON: Ja, okay, let us take a ten minutes' adjournment. So we will resume at ten to four.

ADV FRANKLIN SC: Thank you.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Okay, let us continue.

ADV FRANKLIN SC: Thank you, you, Chair, Mr van Loggerenberg, you had given us a detailed account of the issues in relation to the high risk investigation unit and you have also outlined the attacks on SARS and their growing intensity, as you see it, towards the latter part of your tenure. Can I now take you to the section in your affidavit which is headed:

“The reasons for the attacks and capture of SARS”

Which starts on page 42.

20 **MR VAN LOGGERENBERG:** Yes, Chairperson.

ADV FRANKLIN SC: And what you – the point you make in para 106 is a very important one so let me just read it out:

“I am advised that I am not allowed to elaborate on audits, financial investigations or criminal

investigations by SARS as they are subject to Chapter 6 of the Tax Administration Act of 2011. I am quite capable of doing so, if authorised. To the extent that I am lawfully allowed to do so because this information is in the public domain, I set out only these under this heading.”

So what you have produced for the Commission, as I understand it, is information which is in the public domain, you are not here revealing anything which is the subject of
10 Chapter 6 of the TAA. Is that your intention?

MR VAN LOGGERENBERG: Yes, Chairperson, I just want to make a very clear point on this, if I may, Chair? When I say in the public domain it does not necessarily mean people can read about it in the newspapers, the clause in the secrecy – regulation secrecy clause in the Tax Administration Act allows one to share information in the course and scope of their duty and by virtue of that it became public so if I, for instance, as a SARS officers had to go and register a criminal case with the police or – then
20 it also becomes public, then it is no longer protected.
Thank you, Chair.

ADV FRANKLIN SC: Thank you. Please turn to page 43, paragraph 108. You say:

“I state this...”

Sorry, let me go back to 107 otherwise it does not make sense. You say:

“I wish to reiterate that what I list here are examples and not in any way a full and complete views of all such types of cases. I respectfully submit to the Commission that this part of my submission is a but a snippet of a much larger tale. Some aspects are interconnected whereas others are not. The commonality is that these cases
10 stepped on powerful toes, caused various persons to attack SARS in various ways as set out above all aimed in one way or another to cause disarray at SARS.”

And then 108:

“I state this since these matters resorted under PEMTS and my oversight and have been brought to a halt and taken no further since 2014 following the events of capturing SARS.”

So just stopping, you have given a number of examples of
20 improper perhaps unlawful conduct in paragraph 108.1 to 108.20 and what you say is that attempts to address this misconduct have come to a have not been progressed further since 2014. Is that what you are saying here?

MR VAN LOGGERENBERG: Yes, Chairperson.

ADV FRANKLIN SC: Alright, it is not necessary to go into all of the details but could I just highlight certain of them and we can take them as broad categories without going into the specifics. Let us take 108.7 as an example. You say there that:

“Various investigations by SARS into politically connected persons and entities have been ceased and taken no further since 2014.”

Is that your understanding?

10 **MR VAN LOGGERENBERG:** Yes, Chairperson.

ADV FRANKLIN SC: And then 108.17 which is – you have talked about a project Honey Badger which focuses on the tobacco trade. We will go to that in due course but is it your evidence that the various projects under project Honey Badger have not progressed in any meaningful way, as you understand it, from about this in 2014?

MR VAN LOGGERENBERG: Yes, Chairperson, if I may, 108.17 and 108.3 on page 43.

CHAIRPERSON: Did you earlier say 108.17?

20 **MR VAN LOGGERENBERG:** Yes, Chairperson. So it is the paragraph just quoted.

CHAIRPERSON: Yes.

MR VAN LOGGERENBERG: Which relates to project Honey Badger focusing on the tobacco trade and the fact that I am saying it came to a halt. If you go to page 43

paragraph 108.3, there I speak of evidence uncovered in 2013 and 2014 implicating *inter alia* members of – I give an acronym there but it is Anti-Ilicit Tobacco Task Team, Hawks, National Prosecuting Authority, State Security Agency, South African Police Service, Crime Intelligence, private tobacco manufacturer British American Tobacco South Africa, a private security firm, forensic security services and state intelligence offices and so on, I go on, and then I mention the serious offences. That would be
10 part of the reason why I say at 108.17 nothing happens.

Now I was provided with a document yesterday by my attorneys which forms part of the list of documents that I provided to your Commission, Chairperson, that request for records from the South African Revenue Service which would enable me to support what I have submitted to you, Chairperson.

ADV FRANKLIN SC: Yes, that has been added to SARS bundle 02 and it is page 865.

MR VAN LOGGERENBERG: Sorry, 865 of which bundle?

20 **ADV FRANKLIN SC:** Just hang on, we have just added it so give me a moment please? Yes, you will see that SARS bundle 02 has as EXHIBIT WW5 a correspondence section. If you ...[intervenes]

CHAIRPERSON: Sorry, Mr Franklin, you said?

ADV FRANKLIN SC: It is SARS bundle 02.

CHAIRPERSON: Yes.

ADV FRANKLIN SC: And it is in the correspondence section which is EXHIBIT WW5 and it is page 865.

CHAIRPERSON: Oh.

ADV FRANKLIN SC: Is that the – that is a covering letter from SARS and then at page 867 and following is a document. Is that the document you are referring to?

MR VAN LOGGERENBERG: Yes, Chair.

ADV FRANKLIN SC: So this was received from SARS and
10 you had requested certain information and this in
information provided by SARS. Can you just identify on
page 87, it is a document which is headed criminal and
illicit economic activities interoffice memorandum, project
Honey Badger pictorial overview and then the content of
the document really starts on page 868. Chair, would you
just give me a moment to confer?

CHAIRPERSON: Ja, that is fine.

ADV FRANKLIN SC: I am sorry about that. Chair, for
reasons which I will explain later, I do not want to proceed
20 to deal with this document now.

CHAIRPERSON: Okay.

MR VAN LOGGERENBERG: Alright. Well, other than
that, Chair, the point I wanted to make is then without
referring to that document, if I am allowed to still make the
point.

CHAIRPERSON: Yes.

MR VAN LOGGERENBERG: Is that it is quite clear to me that based on what I was provided a few days ago that nothing happened.

ADV FRANKLIN SC: Alright, well let us go into that in some more detail. We were at paragraph 114 page 54 of your affidavit and that is a section of your affidavit headed:

“Case study tobacco industry”

And you have taken that as a case study because this is
10 one of the 87 projects that resorted under you. You explained that Honey Badger on its own is a single project and that there are many, many subcomponents to it and you have told the Commission that you have had a complete view of the entire project and you were what is known as the project owner, so you are well-placed to talk about Honey Badger.

MR VAN LOGGERENBERG: Yes, Chairperson.

ADV FRANKLIN SC: Please would you look at paragraph
20 124, 125 and 126? What you do there is to give the Commission a sense of the quantum of the election of excise duties from local tobacco manufacturers and would you take the Commission through those paragraphs and just illustrate the point that you are making in relation to the quantum of excise over those periods?

MR VAN LOGGERENBERG: Chairperson, the cigarette industry in particular, which is a sub-element of the tobacco trade or sector, has always been a problem and government has been losing a lot of money and those legitimate businesses have suffered also.

2011/2012 fiscal year, the revenue service collected R10.8 billion in excise duty which is the specific tax levied on cigarettes from the sector. When the Minister does the – usually the February budget speech he always talks
10 about – or she maybe, hopefully in the future – will talk about sin taxes and you will always hear some murmurs in the crowd when it comes to alcohol or cigarettes, it is that tax excise.

So in the fiscal year '11/'12 the revenue serviced collected R10.8 billion in excise from the tobacco sector. Now in the following year – and this is attributable to all the activities in the Revenue Service, including Honey Badger, it went up to 11.5 billion for the fiscal year 2013/'14. For the fiscal '14/'15 it went up to 13.1 billion.
20 What this shows is for the period of Honey Badger operating there was a 15% year on year increase in excise flow of money coming into the Revenue Service attributable to just this small sector in our economy. So it was an upwards growth.

Now of course I am only talking about excise tax, with that automatically, Chairperson, will be the consequence Value Added Tax, Income Tax, Payroll Tax, Fuels Development Levy, Unemployment Insurance Fund contributions monthly and so for. So it just be seen as a broad indicator and not the full number, it would need more granularity to give you the full figure.

Somewhere in my affidavit I make the point that we did a test in December and January, December 2013 and
10 January 2014, to measure whether Honey Badger had any effect at all in this upward scale and the analysts at the Revenue Service, they worked very hard, took into account not just the sales of cigarettes and the excise and so on but also the importation of subcomponents of cigarettes like what they call filter rods, those are the things they cut to put at the end of the cigarette, that is the filter, the paper, the ink that they use to print the packets and so forth and the figure was published, it went up by 25%. The
20 illicit component of the total industry as whole was not just halted because it was in absolute upward curve, we turned it back which meant that where people were cheating the system before they were now actually voluntarily complying and voluntarily paying their money to the Revenue Service without us having to knock on their door.

ADV FRANKLIN SC: You have given us those figures and then, could I ask you by way of contrast to then look at paragraph 137 on page 57 and you had spoken about the 10.8 billion, the 11.5 billion and the 13.1 billion over the periods 2011/'12, 2013/14 and 2014/'5. And what happened then in relation to the period 2015/'16 and 2017/'18?

MR VAN LOGGERENBERG: Well, Chairperson, I mean, such a dramatic figure, I had to really check it properly and
10 I asked academics to help me check this. The very next year dropped by 15% which is significant.

The following year it dropped by a further 15%. I am not sure if I quote the figures here of the percentage of the illicit component of the industry but it shot up to 30% which meant ...[intervenes]

CHAIRPERSON: And what is in circumstances where for about three financial years or so before 2015 it was going up.

MR VAN LOGGERENBERG: Yes, Chair, we were winning
20 that war. The people, the few people, I must tell you, because it is not many people, they were really, really making an impact. In fact I can tell you, Chair, we had well-known tobacco manufacturers coming to us telling us look, we know you are coming for – we are in trouble, we want to fix it.

CHAIRPERSON: So you are not even talking about a situation where after that year on year increase that was happening over a certain period of time to the 2015/2016 year, you are not even talking about a stagnation, you are talking about a decrease after that.

MR VAN LOGGERENBERG: Yes, Chair.

CHAIRPERSON: And a significant decrease.

MR VAN LOGGERENBERG: 15% year on year.

CHAIRPERSON: Ja.

10 **MR VAN LOGGERENBERG:** The inverse of that is that the illicit part of the economy shot up to further the market, I mean you can equate it to every third cigarette you bought was crooked.

CHAIRPERSON: Mr Franklin.

ADV FRANKLIN SC: Thank you. Then please look at page 58 paragraph 138 where you say at the time that you resigned from SARS:

20 “Honey Badger had promised to collect at least R3 billion extra in excise taxes as well as additional income and other tax types or noncompliant and criminal manufacturers and role-players identified would have been made to be compliant going forward by one way or another as allowed for in legislation administered by SARS. In this regard, in some cases, these processes had already

commenced by way of full disclosure of some that were under investigation.”

Then 139:

“There were also a number of ongoing efforts to identify assets and conduct audits of entities and individuals as well as a number of criminal cases, none of which I have seen to have been concluded ever since.”

That you confirm the accuracy of that?

10 **MR VAN LOGGERENBERG**: Absolutely, Chair. I should say at the end of the fiscal year ‘14/’15, Chair, which is the so-called “1 trillion year”. Should have had at 1.3, that money was not collected. I can also maybe add there, Chairperson, there is one particular case that I am very familiar with, where – which I put to SARS actually in late 2014 in Mr Moyane’s time to Advocate Sikhakhane SC and it was a serious case where I believed we could collect R600 million in a fairly short space of time and the people who had committed that fraud and also corrupted one of
20 our officials in the process admitted to this and they were prepared to accept guilt, pay the monies and even plead guilty in a criminal court. That is how we had them red-handed. I know for a fact that matter went nowhere, absolutely nowhere.

ADV FRANKLIN SC: Mr van Loggerenberg what you have done for purposes of your evidence is you have referred the Commission to various cases and you have called them case 1, case 2, case 3, etcetera. We need not go into the details of any of them but am I correct that there is a familiar refrain in these cases and it is in essence, let us take case 2, paragraph 155, page 61:

10 “To the best of my knowledge this part of Honey Badger effectively came to a halt sometime in late 2014 or early 2015.”

And we see that in case 3 as well and case 4 and other cases that you have highlighted. So to your knowledge am I correct that these cases were live projects, were live at the time that you were at SARS but you have since leaving seen no evidence of them having progressed any further, is that correct?

MR VAN LOGGERENBERG: Yes, Chairperson, I have also seen evidence now – I think I am not allowed to refer to it but I have also now seen formal confirmation by the
20 Revenue Service themselves to that effect. I should just, Chairperson ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry, you said something when you were facing Mr Franklin and I do not think it would have been recorded. Do you want to repeat your answer? Just make sure that you speak loudly.

MR VAN LOGGERENBERG: A bit louder.

CHAIRPERSON: Ja because when you speak from ...[intervenes]

MR VAN LOGGERENBERG: Oh, when I turn my face? I am sorry.

CHAIRPERSON: Yes, then it is not recorded. In the transcript it will be written inaudible.

MR VAN LOGGERENBERG: I am very sorry, Chair.

CHAIRPERSON: Ja.

10 **MR VAN LOGGERENBERG:** I am not used to...

CHAIRPERSON: Do you want to just repeat that answer?

MR VAN LOGGERENBERG: Chairperson, there is a document that I have seen which was provided to the Commission which I am not allowed to...

CHAIRPERSON: To talk about.

MR VAN LOGGERENBERG: Talk to.

CHAIRPERSON: Ja, talk to.

20 **MR VAN LOGGERENBERG:** But I cannot un-see it, I have seen it, it was also provided to my attorneys and I studied it. So I do not want to make life difficult for any of the parties involved, I just want to say that over and above what I have said to you now, Chairperson, which is to confirm that nothing happened between 2014 to date, I have now also seen evidence from the Revenue Service

that that is the case, nothing happened between 2014 to date. Nothing.

I just want to also add, Mr Franklin highlights one common denominator between all these cases, which is that they all came to a halt in and around 2014, late 2014. There are three other common denominators which I would like to, Chairperson, just highlight to you.

One is that virtually every single one of them have connections to politicians and politics, all of them relate to
10 sophisticated and complicated criminal schemes, racketeering would be the offence.

And then fourthly, all of them have state intelligence operatives' footprints all over them. I just want to highlight that to you, Chairperson.

ADV FRANKLIN SC: Then, Mr van Loggerenberg, if we could go to the section of your affidavit headed "Inclusion" you have made various statements there but could I ask you to look at paragraphs 208 and 209 in particular. You say:

20 "There is also no doubt in my mind that Mr Tom Moyane had a clear brief to restructure SARS and dismantle its enforcement capabilities as soon as possible. This was evident to me from *inter alia* his promotion of the false claims and attacks on SARS, his inactivity to protect SARS as to be an institution

and employees affected despite my please and begging him, his and Mr Luther Lebelo's public statements and newsflashes issued at the time in his name."

You refer again to your annexures. And then in 209:

10 "The net effect of dismantling PEMTS in particular was that all the cases I have described here as well as many I cannot, have all been negatively affected in one way or another either by slowing them down, closing them completely, allowing insight into SARS' evidence and giving those subjects under investigation an advantage over SARS which has ultimately led to SARS having no real effective means to address the illicit economy or organised crime from a tax and customs' perspective."

So just pausing there, you talk about the dismantling of PEMTS, can you explain what you are describing there?

MR VAN LOGGERENBERG: Yes, Chairperson, it was dismantled, it was brought to a close in a very short space
20 of time. I should just perhaps repeat, Chairperson, if need be, I say in my affidavit I keep my whole affidavit narrow and to the point and I have a long tale to tell and I am known to be longwinded too, should there be any need for further examples or evidence, I am very happy to make it available to people at the Commission at your direction,

Chair. It is common cause, I have read the affidavits of Mr Mazzone submitted to the ...[intervenes]

CHAIRPERSON: Of Bain?

MR VAN LOGGERENBERG: Yes, Chair. He was the head of Bain South Africa at the time when they provided services to the Revenue Service but I can just tell you, Chair, I – when I ...[indistinct – word cut] service I would have still expected to see some people appear before Court, some detentions, some seizures, none of that
10 happened. In fact, I had conversations and received phone calls from the bad guys celebrating – “sjoe we got away, we are so lucky you’re gone”.

CHAIRPERSON: [laughing]

MR VAN LOGGERENBURG: And I mean some of these people I discussed these things with many years later when I wrote a book on the subject on tobacco in South Africa and I got the opportunity to sit down with them and I got really into the detail of what went down and they were all very, very happy when this came to an end.

20 **ADV FRANKLIN SC:** Thank you – sorry Chair.

CHAIRPERSON: Well, Mr Franklin I see in paragraph 205 of Mr van Loggerenburg’s affidavit that he clearly says he knows various persons who were involved in what seems to be clear criminal activity, but he says he believes he’s not allowed to name them, but I think he says if he’s given

legal authority to name them, he would have no difficulty. I assume that he is not talking about people who he protected in terms of the identity via the Intelligence Act, is he talking about people because whatever he says may disclose their personal tax information?

ADV FRANKLIN SC: That is as I understand it. So, there's two categories, people whose identities cannot be revealed and the second is people whose information cannot be revealed without the authority of SARS.

10 **CHAIRPERSON:** Yes.

ADV FRANKLIN SC: And, Chair, so that's perhaps a good point at which to come in and say, that's as far as we can take Mr van Loggerenburg's testimony now. He has produced an affidavit which answers certain of the allegations made by Mr Moyane against him. Because of the same constraints as held us up this morning we cannot – we do not feel it would be right to introduce that now. The document which we got from SARS we would also like to make doubly sure can be produced but what I would ask,
20 and I would hope that Mr van Loggerenburg is able to corroborate on this score is that we end his testimony now, or for the present, but that we ask for an opportunity, and it ought not to take very long, at some point over the next few weeks where we can complete that part of the testimony which will be the introduction of his affidavit and

the introduction of the document from SARS so that he is able, properly to explain everything in those affidavits and that affidavit as well but we would want to make certain that it proper to do so.

CHAIRPERSON: Yes, no, no that would be in order. Can I find out, Mr van Loggerenburg, whether the information you are talking about in paragraph 205 in your affidavit and maybe elsewhere in your affidavit which you can't disclose because it would contravene the tax legislation, I take it
10 it's obvious that it would be – it doesn't prevent you from disclosing that information to the Commissioner of SARS, isn't it?

MR VAN LOGGERENBURG: No, not at all Chair, in fact the Commissioner would be aware, and it's included in the long list of information that I indicated that I would have liked and simply, Chair...[intervenes].

CHAIRPERSON: Well, let me tell you what my question is, whether the current Commissioner of SARS or staff under him are aware of the information you have which
20 relates to allegations of criminal activities by certain people that you can't disclose publicly? In other words, can I have the confidence that SARS is aware of the information you have and that they should be working on those matters.

MR VAN LOGGERENBURG: I can't say Chair.

CHAIRPERSON: You can't say it later.

MR VAN LOGGERENBURG: Let me rather not commit.

CHAIRPERSON: Ja, but in terms of them knowing the information are you able to say you know that they know the information that you have, that you talked about?

MR VAN LOGGERENBURG: It's been there all along, I have not seen them act on it Chair, had they...[intervenes].

CHAIRPERSON: But in terms of knowing – the same information that you know because the current
10 Commissioner of SARS is what, two years, in office or so.

MR VAN LOGGERENBURG: I'm not sure of the time.

CHAIRPERSON: Ja, he has not been there for a long time, I would imagine that he might be interested in pursuing any criminal – any allegations of criminal activity.

MR VAN LOGGERENBURG: Chairperson, at the end of my affidavit, I took liberty to recommend certain things because of my long tales.

CHAIRPERSON: Yes.

MR VAN LOGGERENBURG: He suggests something along
20 those lines, that nothing ought to prevent the revenue service, the State Security Agency, the Inspector General of Intelligence and so forth, in the meantime to contact me and I will certainly help them because then you won't have the restrictions I have now.

CHAIRPERSON: Ja, no I understand...[intervenes].

MR VAN LOGGERENBURG: And I do believe, Chairperson, that 2. – 205, which you highlight is just one of those matters that I so dearly wish I could have sat here and testified today because it would have really related to evidence you have heard before in this...[intervenes].

CHAIRPERSON: Yes, yes, okay, alright. They have heard you, I would imagine that you are available all they need to do is contact you and you will assist, ja, okay, alright. Thank you very much Mr van Loggerenburg for availing
10 yourself to assist the Commission we appreciate it very much. I hear from Mr Franklin that, in all probability you'll be coming back with regard to the other affidavits but thank you very much for availing yourself, you are now excused.

MR VAN LOGGERENBURG: Thank you for the opportunity.

CHAIRPERSON: Thank you.

ADV FRANKLIN SC: Chair, that concludes the SARS work stream for now as the Chair will know we have to finish Mr
20 van Loggerenburg, of course Mr Moyane was due to appear today to be questioned but is ill and so arrangements will need to be made for him to come back on another occasion.

CHAIRPERSON: Ja.

ADV FRANKLIN SC: And if I may, I will make contact with

the Commission in order to try to set up the appropriate arrangements for that.

CHAIRPERSON: No, that's fine.

ADV FRANKLIN SC: That is, it for now, thank you.

CHAIRPERSON: Thank you very much, we are going to adjourn the day session of the hearing for about 15 minutes and then I will come back and then we will start the evening session. I will be hearing the evidence of Mr Anoj Singh in the evening session, we adjourn.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES:

CHAIRPERSON: Good afternoon Mr Seleka, good afternoon to all those who were not here in the morning. Yes, good afternoon Mr Singh.

MR SINGH: Afternoon Chair.

CHAIRPERSON: Yes, are you ready Mr Seleka?

ADV SELEKA SC: We are ready Chairperson.

CHAIRPERSON: Okay. Registrar, please administer the oath affirmation again.

20 **REGISTRAR:** Please state your full names for the record.

WITNESS: Anoj Singh.

REGISTRAR: Do you have any objection to taking the prescribed oath?

WITNESS: No ma'am.

REGISTRAR: Do you consider the oath binding on your

conscience?

WITNESS: Yes.

REGISTRAR: Do you solemnly 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.

WITNESS: So help me God.

ANOJ SINGH: (d.s.s)

CHAIRPERSON: Thank you, you may be seated Mr Singh.

10 **ADV SELEKA SC:** Chairperson, Mr Singh is legally represented as before.

CHAIRPERSON: Yes.

ADV SELEKA SC: My learned friends, they place themselves on record.

UNKNOWN COUNSEL: Good afternoon Chairperson.

CHAIRPERSON: Good afternoon.

ADV VAN DEN HEEVER: Again Advocate Annaline van den Heever.

CHAIRPERSON: Yes.

20 **ADV VAN DEN HEEVER:** Duly instructed by Mr Tshepo Matsopo, Matsope Attorneys. Thank you very much.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Thank you Chair. I understand Chair, the parties have exchanged some latest affidavits, but we will deal with them in due course.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: I do not think they will stand in the way of Mr Singh testifying today.

CHAIRPERSON: Yes, what you may wish to do is just to remind the public where we were with Mr Singh's evidence ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: Last time and from where we will continue ...[intervenes]

10 **ADV SELEKA SC:** Indeed.

CHAIRPERSON: What we will cover today.

ADV SELEKA SC: Yes. Last time when Mr Singh was here, he testified in regard to his secondment and ...[intervenes]

CHAIRPERSON: I just want to say Mr Seleka before you proceed, if your voice could remain as loud as that for the rest of the evening that would be excellent.

ADV SELEKA SC: Thank you Chair. The personality comes in, Chair.

20 **CHAIRPERSON:** This is the problem, if you compliment somebody or praise them, then they change.

ADV SELEKA SC: Okay. Ja, last time Mr Singh testified or lead, his evidence was lead in regard to his secondment and we also went into the issues pertaining to Trillian McKinsey or McKinsey Regiments and in respect of that we

led Mr Singh's evidence on the corporate plan.

There is the corporate plan, there is the master service agreement. We started on the corporate plan and we have to finalise that before we move to the master service agreement and we will then be left once we have dealt with those two matters pertaining to McKinsey Regiments and Trillian we will be left with Tegeta transactions, which are the pre-payments of the 1.68 billion rand, the 659 million rand and then the 2.17 billion
10 rand penalties.

Ja, I think we will try to ...[intervenes]

CHAIRPERSON: If you think of something else you will add it later.

ADV SELEKA SC: I will add it. I hope my learned friend will not jump up. Mr Singh ...[intervenes]

CHAIRPERSON: And say you did not mention that.

ADV SELEKA SC: That is correct. Mr Singh, I want to start you know so that we complete the Regiments issue. Remember last time when you were leading the, testifying
20 on this, there was an issue about who rendered the services in respect of the corporate plan.

A couple of things I want to, I want us to clarify before we move on and to do that I want to turn firstly to your affidavit which is the second affidavit in Eskom Bundle 16. Eskom Bundle 16, this is Exhibit U37.2, and I

would like you to turn specifically to page 755.

Page 755, follow the black numbers. It is way, way to the back. So Mr Singh, what we are trying to establish from the evidence is whether the party that rendered services in respect of the corporate plan is Regiments or Trillian.

CHAIRPERSON: Or none of the above.

ADV SELEKA SC: You are, do you want me to do that exercise based on I think what you might have read prior to
10 coming here again, because the evidence that I am about to show you indicated that Regiments is the one that rendered services in respect of the corporate plan.

MR SINGH: Okay Mr Chair, well then let us lead the evidence.

ADV SELEKA SC: Say again?

MR SINGH: I said let us lead the evidence.

ADV SELEKA SC: Let us lead the evidence, okay. So let us look at paragraph 24 of your affidavit on page 755 and just for context, you are dealing here with the 1.68 billion
20 rand submission to the board that is prepared in December 2015 and in paragraph 24 you say ...[intervenes]

CHAIRPERSON: Jus a second. Remind everybody ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: What was that about. So, ja.

ADV SELEKA SC: Okay. That 1.6 billion rand submission Chair, which we will come to when we deal with Tegeta because I am going to be referring to these paragraphs for a different purpose. It was a submission made by Mr Singh and Mr Koko for the board to make a decision in respect of a recommendation to make, to resolve to make a decision a pre-payment to now [indistinct] which one were you seeking to have paid this 1.6 billion.

The board said they understood you to mean Glenco
10 OCM should get that amount. You will give the Chairperson in due course your version of who you had in mind for the board to make that decision in respect of, but we will come to that.

For present purposes Chair, I want to just demonstrate ...[intervenes]

CHAIRPERSON: Okay.

ADV SELEKA SC: From Mr Singh's evidence as to who even on his version was actually working in respect of the corporate plan. Mr Singh, then paragraph 24 you say:

20 "I recall that at the time Koko pressed the urgency of the suspension, the submission on me, which in turn caused me once the submission was presented, to me to engage Eric Woods of Regiments."

This is in December 2015:

10 “For the reasons set out below. The engagement of Wood was important in that the financial implications originally included in the submission were clearly not dually considered by Koko and Daniels. Therefore I requested Wood to attend to the issue of the financial implications of the transaction in the submission. Wood at the time was involved with the cash unlocking initiatives, with reference to the corporate plan of the financial implications of such a transaction. I recall that I received the amended submission electronically from Regiments as I was not in the office at the time. I instructed my Maya Balmer to affect my electronic signature to the document and forward it to Daniels.”

20 So Mr Singh what I read here is a clear indication on your part of your knowledge that even as at December 2015, it was in fact Eric Wood of Regiments who was rendering services in respect of the corporate plan. The funding plan for the corporate plan.

So you could not be mistaken whether it is Trillian or Regiments. You knew exactly that it was Regiments.

MR SINGH: Mr Chair, I think I do not think we ever disputed the fact that it was Regiments or Trillian and

hence we used ...[intervenes]

CHAIRPERSON: No, no, no, no. Mr Seleka is not saying Regiments or Trillian.

MR SINGH: No, no I am coming ...[intervenes]

CHAIRPERSON: He is saying Regiments.

MR SINGH: Yes, and I agree that the document mentions Regiments. If you look at the email that came from Mr Wood for anyone for that matter, it would have been Regiments email and what is always the contention is
10 whether the individuals at that time were subject to the navigator secondment agreement between Regiments and Trillian.

CHAIRPERSON: No Mr Singh, no. We spent a lot of time last time when you were here, on the question of who provided the services. That is what Mr Seleka is talking about.

MR SINGH: Yes Mr Chair.

CHAIRPERSON: You say last time you did not want to say it was Regiments and I think he may be saying you wanted
20 to say it was Trillian, maybe Regiments and Trillian but I seem to recall that at a certain stage it appears you seem to be saying Trillian but he is now saying your own affidavit makes it clear that it was Regiments.

Do you accept that it was Regiments who provided the services?

MR SINGH: Mr Chair, correct.

CHAIRPERSON: Is that correct?

MR SINGH: Yes.

CHAIRPERSON: You say correct?

MR SINGH: Yes.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Thank you. Then Mr Singh, I do not even need to refer you to the affidavit of Mr, what is his name? Amang Koa which was McKinsey's official who
10 submitted a statement to the commission because he also says the same thing. That it was Regiments that rendered the services in respect of the corporate plan.

MR SINGH: Yes Chair, I have not seen that affidavit, so ...[intervenes]

ADV SELEKA SC: It is a statement, yes.

MR SINGH: Really?

CHAIRPERSON: Yes. Yes, he had not seen it but if it says what he says it says, you have no problem with it.

ADV VAN DEN HEEVER: Chairperson, sorry to interrupt
20 you.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: We were this morning at 08H49 forwarded an email with a number of attachments. The statement that my learned friend is referring to, is one of those. My instructing attorney have written a letter to the

commission and I have discussed it with my learned friend.

We want the opportunity to have regard to this statement before we deal with the content thereof. It is a 61 page statement ...[intervenes]

CHAIRPERSON: That is fair enough.

ADV VAN DEN HEEVER: Containing a vast amount of information.

CHAIRPERSON: Ja, ja.

ADV VAN DEN HEEVER: And I think in fairness before my
10 client needs to concede, as per the question of my learned friend, the issues pertaining to that I think he should be afforded the opportunity to have regard to the statement, duly consider it and consult on it.

CHAIRPERSON: Yes. No, no that is fine, but I guess what you have no objection to is the question that says if that affidavit says what Mr Seleka says it says, as to who provided the services you would have no problem with that part of it.

ADV VAN DEN HEEVER: Chairperson, we still have a
20 problem with it.

CHAIRPERSON: You still have a problem with it?

ADV VAN DEN HEEVER: I still have a problem and I will explain to Chairperson why I have a problem.

CHAIRPERSON: Do not worry.

ADV VAN DEN HEEVER: Because you will recall from the

last time Chairperson, that there were certain statements made to my client without referring him to the exact paragraphs.

CHAIRPERSON: No, no, no ...[intervenes]

ADV VAN DEN HEEVER: That leads to confusion and incorrect statements.

CHAIRPERSON: No, no but I am on your side.

ADV VAN DEN HEEVER: Thank you Chair.

CHAIRPERSON: I am saying do not worry to argue it, let it
10 be dealt with after you have had a chance to consult with your client.

ADV VAN DEN HEEVER: We are indebted to you Chairperson.

CHAIRPERSON: Ja, okay alright.

ADV SELEKA SC: And Chair, I was even making a more substantive point which is to the extent that he concedes it is Regiments that rendered services. Then I do not need to refer to this statement.

CHAIRPERSON: Yes, but I think they have a problem, so
20 ...[intervenes]

ADV SELEKA SC: Ja.

CHAIRPERSON: Let them get a chance to look at it with its client and then it can be dealt with later.

ADV VAN DEN HEEVER: Chairperson, again I apologise for interrupting. My learned friend stating that he

conceded Regiments rendered the services is incorrect. He conceded that he mentioned the word Regiments in this affidavit.

CHAIRPERSON: Well, no, no, no. When I put the question, he conceded that Regiments rendered the services.

ADV VAN DEN HEEVER: Chairperson, we will deal with it in due course.

CHAIRPERSON: Yes, okay. Alright, thank you.

10 **ADV SELEKA SC:** Thank you Chair. Mr Singh, so I know the difficulty is the payment of the 30.6 million rand, because one entity rendered services, the invoice came from a different entity which is Trillian. The invoice came to you and you ensured that that invoice was paid to Trillian but not to Regiments.

CHAIRPERSON: Do you want to confirm whether that is true?

ADV SELEKA SC: Do you ...[intervenes]

20 **CHAIRPERSON:** Because I think he is waiting to see what is the question.

ADV SELEKA SC: Yes. Yes, do you confirm that that is correct Mr Singh?

MR SINGH: No sir, that is not correct.

ADV SELEKA SC: So you did not pay Trillian 30.6 million rand for services rendered by Regiments?

MR SINGH: No sir.

ADV SELEKA SC: What did you do?

MR SINGH: I did not ensure that the invoice was paid.

CHAIRPERSON: Oh, that is the part that you were talking about.

MR SINGH: Yes.

CHAIRPERSON: Ja, the ensuring part.

ADV SELEKA SC: Okay. So when the invoice came to you, what did you do with it?

10 **MR SINGH:** Mr Chair, I do not have a recollection of what I exactly did with the invoice, but I think in testimony that we led the previous time, we went through an entire process, that that invoice would have went through for validation and verification before it was paid.

CHAIRPERSON: I think what you said was that the invoice came to you, and there was nothing wrong with it coming to you because of the position you occupied in relation to the project and you passed it on to the relevant people to process.

20 I think that is the term you used.

MR SINGH: Yes.

CHAIRPERSON: And certainly my understanding from what you said was that you were saying that once you passed it on to the relevant people to process, one or more of them had the obligation to check for example whether

there was a contract on the basis of which Eskom had paid and maybe to check other things as well, and if they did not do their job, I think that is what you were saying it is not your fault.

I am just putting it in my own words.

MR SINGH: That is correct.

CHAIRPERSON: But I think that is what you were saying and you were saying if any of those people picked up a potential problem, they were entitled to come back to you
10 but nobody came back to you.

MR SINGH: That is correct sir.

CHAIRPERSON: That is what you said.

MR SINGH: Yes.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Yes, so what was the purpose of you giving them the invoice?

MR SINGH: To conduct all the verification and validation checks that are required per the policy and procedure.

ADV SELEKA SC: Yes, for what purpose?

20 **MR SINGH**: For the invoice to be paid.

ADV SELEKA SC: Yes, so you gave them the instruction ...[intervenes]

MR SINGH: No, I did not.

ADV SELEKA SC: To process the invoice ...[intervenes]

MR SINGH: I did not give them an instruction.

ADV SELEKA SC: The validation, the verification
...[intervenes]

MR SINGH: That does not constitute an instruction to pay.

ADV SELEKA SC: Ja, let me just complete it. You gave them the instruction to do, follow that process of validation and verification in order for the invoice to be paid.

MR SINGH: Mr Chair, forwarding an email which I do not even remember doing with somebody with no instruction does not mean go and pay. It means go and do what you
10 are supposed to do to make sure that if you pay you have complied with all the policies and procedures of Eskom.

CHAIRPERSON: Well, let me put it this way. Let me ask you this way. Is it normal procedure or was it normal procedure that if you were involved in a project because of your seniority, invoices would be sent to you. Was that normal practice at Eskom when you were there?

MR SINGH: Mr Chair, external audits sent me invoices. I used to receive invoices from various ...[intervenes]

CHAIRPERSON: I am sorry, you are speaking too fast.

20 **MR SINGH:** Oh, sorry sir. I was just saying it is not unusual for suppliers to send invoices to me.

CHAIRPERSON: To you?

MR SINGH: Yes.

CHAIRPERSON: Okay.

MR SINGH: I receive invoices from external auditors and

the like.

CHAIRPERSON: Yes.

MR SINGH: Even that process Mr Chair, I explained in detail the last time.

CHAIRPERSON: Yes.

MR SINGH: As to how that would be undertaken.

CHAIRPERSON: Yes.

MR SINGH: In terms of the specifics Mr Chair, you can refer to the 1034 document. I think it is an Eskom policy, I
10 think procurement document that basically sets out who the people are that are responsible to make sure that invoices are matched to contracts.

Contracts that are loaded and so on. So the 1034 document is a document that effectively outlines that procedure. The fact that the CFO receives an invoice Mr Chair, cannot be authorisation for the invoice to be paid, as it would invalidate every single policy and procedure that any organisation puts in place.

So the mere fact that I received it cannot be viewed
20 as I approved the invoice and substantially I did not approve the invoice.

CHAIRPERSON: Yes, but just let us get the procedure or process right. so going back to my question would you say it was normal for service providers involved in projects where you were involved, to send invoices to you?

MR SINGH: Mr Chair, I think if you just look at the McKinsey invoice for example, it was addressed to me to.

CHAIRPERSON: Yes, but I do not want a single thing. I want to know whether it was normal.

MR SINGH: In my view it is normal sir.

CHAIRPERSON: Yes, okay no that is fine, and what role in terms of Eskom procedures were you supposed to play in regard to invoices when you had received them?

MR SINGH: Mr Chair, my role would have been to as I said
10 send it to the relevant people to ensure that the policies and procedures of Eskom is followed.

CHAIRPERSON: Yes.

MR SINGH: I would not be in a position to if I did not put my signature there and say I approved this invoice, that is when someone can act on it, can say the CFO has signed this document and therefore I acted. This document does not bear my signature.

CHAIRPERSON: Now so are you saying to me that the Eskom procedures in relation to the payment of invoices,
20 despite contemplating that invoices could be sent to the CFO did not expect or require the CFO to do anything other than just pass them on?

Is that what you are saying?

MR SINGH: Mr Chair, the policies and procedures of any organisation is built in such a way that it actually prevents

exactly what you are requesting me to confirm.

CHAIRPERSON: Yes.

MR SINGH: So the policies and procedures of any organisation, would want to ensure that there is not let us call it, they call it the technical term is basically called system override or process override. So if I had to basically sign that invoice the day it landed on my desk, that would have been policy override or system override.

CHAIRPERSON: That would have been policy?

10 **MR SINGH:** That would have been policy override or system override.

CHAIRPERSON: Ja.

MR SINGH: So before it went through any of the checks, I would have said I am happy, pay.

CHAIRPERSON: Yes.

MR SINGH: That would have been override.

CHAIRPERSON: Yes, but you see let me put it this way. Did Eskom procedures require or contemplate that the CFO after receiving an invoice from a service provider, to do
20 anything about it or with it other than passing it on to junior staff?

MR SINGH: Mr Chair ...[intervenes]

CHAIRPERSON: Junior to him.

MR SINGH: Mr Chair, I refer you back to the 1034 document.

CHAIRPERSON: Yes.

MR SINGH: And the 1034 document is very clear. It states that the contract management process is the responsibility of the procurement practitioner. The procurement practitioner has to make sure that they take the relevant documentation through to the delegated authority to have those documents approved.

In this case Mr Chair, I was not the delegated authority.

10 **CHAIRPERSON:** Yes.

MR SINGH: So if the CFO was a delegated authority ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: I would then expect yes for it to come back to me.

CHAIRPERSON: Yes.

MR SINGH: And even so Mr Chair, even if I received that invoice that required it to come back to me, I would have not put my signature to it until it went through the process.

20 **CHAIRPERSON:** Yes.

MR SINGH: And then arrived to me ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: Post that process. If that process indicated to me that all of the processes and policies were followed, then I would affix my signature to it, for them to

proceeding, it is on its way.

CHAIRPERSON: Ja, you see for me as long as at some stage there are invoices that where the CFO plays a role, then I can understand. Maybe depending on the amounts, maybe depending on the nature of the projects. That I can understand.

No one expects that the CFO should say whether a R1 000-00 invoice must be paid or not, you know.

MR SINGH: Yes.

10 **CHAIRPERSON:** But my difficulty arises if your evidence suggests that the Eskom procedures in relation to the payment of invoices, do not anywhere contemplate or require that the CFO should have a role, a substantive role at least in regard to some transactions or some invoices, depending on the amounts other than just passing the invoice on to other people. You know, I can understand if it is below a certain amount, may you just pass it on but I have in mind that there must come a time when the amounts are so big that the organisation would want its top
20 finance official to have checked that this is in order.

Whether the top finance official checks after some junior staff member and junior management staff had looked at it and then it comes to the CFO after if it passes all the various units. It is fine, but I just would have difficulty with the situation where the only role for the CFO,

irrespective of the amount involved in the invoice is just to pass it on without any substantive role to you, and then it will go to various junior people until it is paid.

That is what I seem to have difficulty with.

MR SINGH: Mr Chair, I think let me explain two of the concepts. The first one I think when you sort of, let us deal with the easy one first. I think when you deal, when you refer to junior people, I think that statement needs to be corrected firstly.

10 **CHAIRPERSON**: I mean junior to you.

MR SINGH: Ja, but even them too Mr Chair, junior to me could be very senior.

CHAIRPERSON: No, no I accept.

MR SINGH: Yes.

CHAIRPERSON: But still junior to you.

MR SINGH: Yes, because they could be at general manager level.

CHAIRPERSON: Ja.

20 **MR SINGH**: Or even senior general manager. So junior to me are very senior people.

CHAIRPERSON: Ja, okay.

MR SINGH: Or to the CFO for that matter. The second point Mr Chair, I have not come across a document that within the Eskom environment that required me to specifically sign of an invoice for a specific amount. The

only document that I have come across is the delegation of authority framework and the 1034 document as I have stated.

In both, they refer to a delegated authority. So if you were the delegated authority and if you were the CFO, then you would need to sign something. The delegation of authority does not refer from what I remember, to an invoice.

It refers to contracts, it refers to approval amounts
10 and yes, if there was anything in there that required me to sign specific invoice or contract or document, then it would obviously then arrive at my – my desk for signature.

CHAIRPERSON: So are you saying where are you saying that in terms of the Eskom procedures you would not be required to approve or authorise any payment if you were not the delegated authority in respect of that contract or that project but if you were the delegated authority ...

MR SINGH: Then you could pay.

CHAIRPERSON: Then you would have approved that is what
20 you are saying?

MR SINGH: Yes.

CHAIRPERSON: And you are saying here you were not the delegated authority.

MR SINGH: No Sir.

CHAIRPERSON: Ja. So – but just to get it clear where you

are the delegated authority yes indeed you would be required to approve payments relating to that project.

MR SINGH: That is correct Sir.

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Yes Mr Singh you have defended this payment in your affidavit as payment for services that were rendered. Is that correct

MR SINGH: Correct Sir.

ADV SELEKA SC: And I find your answer difficult to
10 comprehend because it is this payment that was one of the issues or charges against you before SICA and this payment has cost you your profession.

MR SINGH: Sorry Sir.

ADV SELEKA SC: Has cost you your profession.

MR SINGH: Mr Chair if you – if you have regard to the SICA finding the particularly this payment the make a finding that I signed the invoice or approved the invoice yet again I request the commission to prove that I approved the invoice. My signature does not appear on the invoice Mr Chair.

20 **ADV SELEKA SC:** Yes I do not think they say you signed the agreement – I mean the invoice.

MR SINGH: You said I approved it.

ADV SELEKA SC: Yes they say you approve.

MR SINGH: I did not approve Sir.

ADV SELEKA SC: Because if you did not approve that

payment you would not have passed it on for payment.

MR SINGH: No Sir.

ADV SELEKA SC: If you did not approve of that R30 million.

MR SINGH: My passing on again I would say for the Chairman's I think I am saying it for the third time Sir. Me merely passing on an invoice does not mean I approve for it to be paid. There could be a number of issues with that invoice that I am not even aware of that needed to be taken care of.

10 **CHAIRPERSON:** Well maybe let us go back to an answer you gave last time to question it later relating – related to this issue. I think if I recall correctly you considered that if for example as you put it if there was something glaring in the invoice you would be expected to say no but this cannot be paid.

MR SINGH: Yes it is.

CHAIRPERSON: You made an example and I do not know whether the example was if you knew that you had contracted A to render the services but the invoice was now
20 coming from E you would say but we did not contract E. Do you remember that?

MR SINGH: Mr Chair I think the example for present purposes may not be very appropriate.

CHAIRPERSON: Well I do not know what you are talking about.

MR SINGH: But Mr Chair to your point.

CHAIRPERSON: Ja the a - the principle you – ja the example ja.

MR SINGH: Let us use the glaring example. So for example let us say that the Trillian invoice arrived and it was for R150 million it is glaring but the contract value that we have got approval for was only R100 million. So the invoice coming from Trillian could never have been R150 million. So that invoice would not even go past my desk. I would send it
10 back to Trillian and say what is this for? So yes something like that would...

CHAIRPERSON: Yes but what would also be glaring I would think that you would concede is if the services were rendered by A – I know – I think you do not like A and B.

MR SINGH: Okay.

CHAIRPERSON: If the services were rendered C.

MR SINGH: Yes Sir.

CHAIRPERSON: And you got an invoice from D instead of an invoice from C that would be glaring would it not?

20 **MR SINGH:** Mr Chair I think again it would be glaring to the extent that the point of departure would be if you were expecting and understood that you had received services from Trillian which is my departure point.

CHAIRPERSON: I see you do not want to stick to C and D. You do not A you do not want B you do not want C you do not

want D.

MR SINGH: Okay we use A and B Mr Chair.

CHAIRPERSON: Ja let us look ja.

MR SINGH: If – if your departure point was that you receive services from A.

CHAIRPERSON: Ja.

MR SINGH: And then you got an invoice from B.

CHAIRPERSON: Yes.

MR SINGH: It would be glaring.

10 **CHAIRPERSON:** It would be glaring.

MR SINGH: Yes.

CHAIRPERSON: Yes I – ja. Ja but in this case is the position not that you received an invoice from Trillian in circumstances where to your knowledge the services that you rendered by Regiments.

MR SINGH: Which – this is again where we – it comes back to the departure.

CHAIRPERSON: Sorry.

20 **MR SINGH:** I said it comes back to the departure point. My departure point was we received services from Regiments staff that was seconded through a secondment agreement between Regiments and Trillian and therefore Trillian provided the services to Eskom for the corporate plan. If there was ostensibly an obligation or a liability Regiments we have not received any invoice from Regiments or those

services.

CHAIRPERSON: Yes but Mr Singh if you know that you have received services from Mr Seleka and instead of receiving an invoice from him for the services that he rendered you receive an invoice from your Counsel you are going to say but my Counsel did not render these services it is Mr Seleka who rendered these services and indeed you might pick up the phone to Mr Seleka and say why is my Counsel serving this – sending me an invoice in respect of service that you
10 provided? Or you might phone your Counsel and say but you never rendered any service. Is it not? Would that not be the reaction?

MR SINGH: Mr Chair at the time my expectation was that we were receiving services from Trillian and hence I passed the invoice on. If the validation process indicated otherwise it would have not been paid. It should not have been paid. And again Mr Chair I refer you back to the letters received from McKinsey. They approved the payment to be made to Trillian so it was on – even on McKinsey's version they
20 accept that Trillian had – was the party that needed to be paid.

CHAIRPERSON: But the letter from – the letter or letters from McKinsey that you are talking about did you receive them before you passed the invoice onto other officials at Eskom to process?

MR SINGH: No Sir.

CHAIRPERSON: After?

MR SINGH: Yes after.

CHAIRPERSON: Ja okay. Because you see I want us to focus on what could have been going on in your mind when one you knew that the services had been rendered Regiments but the invoice was from Trillian. And I just put it to you a few minutes ago what I would expect to be the reaction of somebody who had that knowledge that it is
10 Regiments who rendered the services but now I am being sent an invoice by Trillian. And the fact that you – and it seems to me you – you would not be able to say but I must pay Trillian because I have not received an invoice from Regiments. Because what if you receive it after when you have already paid the wrong party. That is what you would be concerned about.

MR SINGH: Mr Chair as I said to you the – the difference in opinion as to whether it should have been Regiments or Trillian is the reference point and the departure point. In my
20 view Trillian rendered the services. So when the receipt – when the invoice arrived it was within my expectation it was then passed on for the validation and verification.

CHAIRPERSON: But I thought – sorry. Oh okay. Did you want to say something?

ADV VAN DEN HEEVER: No I just let him answer

Chairperson.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: Because I want to at some stage maybe based on the questions being asked.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: With reference to actual documents.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: Before the commission deal with
10 this particular issue.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: Because with the greatest of respect to Chairperson and to my learned friend I think to put hypothetical propositions to the witness is something totally different if one actually has regard to documents before this commission that is presented to the commission where somebody in Eskom physically approves the payment and those documents are before you.

CHAIRPERSON: No, no, no that is another – another stage.
20 I am still at the stage as – that relates to what was the reaction expected of him as CFO when he knew that the services had been rendered by Regiments but the invoice he was getting was from Trillian. Just at that stage what transpires later on we can come to in due course. So – so Mr Singh I just – I said some few minutes ago that my

expectation was simply that – my expectation would be that when you know that the services were – when you knew that the services were provided by Regiments and you received a Trillian invoice you would not pass it on. You would pick up the phone or write either to Trillian or to Regiments or to both to say we are only liable to Regiments that is the only party that we can pay.

MR SINGH: Mr Chair for all intents and purposes of the paying we were of the view that Regiments was a sub-
10 contractor to – sorry not Regiments. Trillian was a sub-
contractor to McKinsey at the time through the business –
how can I say? Or the merger and acquisition process that
was unfolding between Regiments and Trillian.

CHAIRPERSON: But that is something that you did not properly enquire into to exactly establish what is the position, is it not? Did you ask for documents and the secondment agreement that you have been talking about? Did you ask for any documentation to check whether what the nature of the relationship between Regiments and Trillian
20 and Trillian and Regiments and not Trillian and McKinsey and McKinsey and Regiments?

MR SINGH: Mr Chair that again I would respectfully submit that is the process of the validation that would have had to happen.

CHAIRPERSON: Yes.

MR SINGH: In my view we understood this. Even McKinsey understood – I mean yes McKinsey understood it.

CHAIRPERSON: But how could you have that understanding when in your own affidavit you say the person that you passed to render the services if I understand it correctly was Mr Eric Wood of Regiments that is in paragraph 24 of your affidavit. When you say in 25 the engagement of Wood must be taken to be the engagement of Wood of Regiments was important bla, bla, bla and then I think you continue – how
10 could you think of Trillian having rendered services when you knew because you were the person who asked Regiments to render the services. And why did you not approach Regiments and say what is going on – why am I receiving an invoice from Trillian and not from you?

MR SINGH: Mr Chair at that point in time Mr Wood was ostensibly wearing two hats.

CHAIRPERSON: That should not matter to you because you had not – you had not as I understand your affidavit engaged him in his personal capacity. You engaged him as part of
20 Regiments.

MR SINGH: Yes Mr Chair and he was as I said wearing two hats at the time.

CHAIRPERSON: Yes but you wanted to pay him – to pay the right hat is it not the wrong hat?

MR SINGH: And Mr Chair I ostensibly submit that we did

pay the right hat.

CHAIRPERSON: Even though you accept that Trillian did not render services?

MR SINGH: Mr Chair as I said Trillian for all intents and purposes rendered the services.

CHAIRPERSON: Oh.

MR SINGH: With Regiments staff.

CHAIRPERSON: Okay. You see earlier on you agreed as I understood you that yes Regiments rendered the services
10 now you say Trillian rendered services for all intents and purposes.

MR SINGH: No Mr Chair. You – you got well – what I had referred to was the paragraph that Advocate

CHAIRPERSON: Mr Seleka.

MR SINGH: Yes Advocate Seleka led. So that was how – that is what I was referring to.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Yes. Okay Mr Singh I am a bit lost. This letter you are referring to it is on page 697 – 697.

20 **CHAIRPERSON:** 697

ADV SELEKA SC: Yes.

CHAIRPERSON: And what letter is that again?

ADV SELEKA SC: The letter which Mr Singh says they relied upon as a Director from McKinsey to pay Trillian directly.

CHAIRPERSON: Okay.

ADV SELEKA SC: Is that the letter Mr Singh 9 February 2016?

MR SINGH: That is correct.

ADV SELEKA SC: This letter reads:

“Authorisation to pay sub-contractor directly.
We refer to the professional services contract for the provision of consulting services for six months entered into between
10 Eskom and McKinsey dated 29 September 2015.”

Now as before I move on we have shown you this corporate plan agreement was not properly signed last time on your appearance. You recall that?

MR SINGH: So ja.

ADV SELEKA SC: You recall that we showed that the corporate – the agreement relating to the corporate plan or funding plan was not properly signed.

MR SINGH: Yes.

20 **ADV SELEKA SC:** The MEC.

MR SINGH: Mr Chair on that point the 1034 document again refers to the fact that there is a binding agreement on the issuance of a letter of acceptance.

ADV SELEKA SC: Sorry what is that?

MR SINGH: The 1034 document.

ADV SELEKA SC: What is the 1034 document?

MR SINGH: It is the Procurement Procedure Manual for Eskom.

ADV SELEKA SC: What does it say?

CHAIRPERSON: Yes but you – I am sorry but you are not answering the question Mr Singh. Mr Seleka is asking you whether you remember that the agreement was not properly signed. You remember when you were here last time there was – we looked where Mr Mbalane was supposed to sign.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: The page that was missing. So he is asking you whether you remember that.

MR SINGH: No yes I remember that.

CHAIRPERSON: That was (talking over one another.)

ADV VAN DEN HEEVER: Chairperson.

CHAIRPERSON: Ja.

20 **ADV VAN DEN HEEVER:** Just for the record again my client at no stage conceded that that agreement was not properly signed. He agreed that there is no signature that was affected as it was put to him. But to put to him at this point that he agreed that there is – that the agreement was not properly signed is simply not correct.

CHAIRPERSON: Well he is able to say no I do not agree that I conceded that was not properly signed what I agreed to is the following. So I think you can – Mr Singh do you

want to respond to the question?

ADV SELEKA SC: Chair.

CHAIRPERSON: Oh Mr Seleka wants to...

ADV SELEKA SC: That question is not right. The question is you repeated it.

CHAIRPERSON: Ja.

ADV SELEKA SC: It is the correct.

CHAIRPERSON: Ja it is the correct question.

ADV SELEKA SC: Whether he recalls.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: I am not asking him to agree.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja. So do you recall that?

MR SINGH: Yes Sir.

CHAIRPERSON: You do okay. Alright.

ADV SELEKA SC: Then the second paragraph says:

“Subject to

- 20
- 1.The terms of the agreement relating to any payments to be made by Eskom to us.
 - 2.Us issuing a written confirmation of our satisfaction with the relevant services to be performed by Trillian to McKinsey.
 - 3.The correctness of the amount to be invoiced we hereby agree for and authorise Trillian to

invoice and be paid directly by Eskom for any services performed by it in pursuance of our obligations under the agreement.”

Now my question to you is were these preconditions met?

MR SINGH: Mr Chair I would not know whether these preconditions were met or not.

ADV SELEKA SC: So how did you rely on this letter to support and defend the payment of over R30.6 million as the CFO?

10 **MR SINGH:** Mr Chair again I did not rely on this letter because I did not approve the invoice.

ADV SELEKA SC: No ...

CHAIRPERSON: No, no you remember when I was asking questions you said that Eskom was justified in paying Trillian because of among other reasons the letter that had come from McKinsey.

MR SINGH: Yes Sir.

CHAIRPERSON: And you have confirmed that this is the letter you had in mind. So Mr Seleka is saying but this letter
20 has certain conditions.

ADV SELEKA SC: Yes.

CHAIRPERSON: If those – if you do not know whether those conditions were met it cannot – it could not support you and you could not think it was supporting you if you did not know whether those conditions were met. But if you knew that the

conditions that it placed on you as Eskom to make sure they were met before you paid then you could still rely on that if that is what it says. What do you say to that?

MR SINGH: Mr Chair I do not understand the question.

CHAIRPERSON: Okay the question is I am now putting it in my own words. The letter from McKinsey you cannot say – you cannot rely on it to justify paying McKinsey –

MR SINGH: Trillian.

CHAIRPERSON: Trillian if it said it could only pay Trillian if
10 certain conditions were met and you pay without knowing whether those conditions were met because it provided support or authorisation for you to pay Trillian directly only if those conditions were met. If you pay Trillian without those conditions were met then you have acted outside of that letter. So you cannot rely of it. What do you say to that?

ADV VAN DEN HEEVER: Chairperson again with the greatest of respect my – I do not want to unnecessarily object the record will reflect what Mr Singh said.

CHAIRPERSON: No, no, no let Mr Singh answer this
20 question now we want to test the evidence of what he said and he understands what he said. If he thinks we have misunderstood he will tell us. Mr Singh.

MR SINGH: Mr Chair if you have regard for the last sentence I think – yes in the first paragraph it says:

“As you know McKinsey has sub-contracted a

portion of the services to be performed under the agreement with Trillian Proprietary Limited (Trillian).”

So that is what I was referring to. If McKinsey confirms that they had sub-contracted their portion of the work to Trillian in their own letter you – because the question that you have posed to me would you have been surprised – why were you not surprised because you got an invoice from Trillian yet Regiments was expected? And I am saying
10 because at all relevant times we understood that Trillian was a sub-contractor to McKinsey for this corporate plan. And this letter 00:23:41. So I was referring to this letter’s content as it relates to that paragraph to your question.

CHAIRPERSON: Okay.

MR SINGH: And Mr Seleka.

ADV SELEKA SC: May I say something?

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Singh you were not relying on that letter.

20 **MR SINGH:** No, no.

ADV SELEKA SC: This letter – let me finish.

MR SINGH: Yes.

ADV SELEKA SC: This letter you have told the Chairperson you did not have it at the time you received the invoice. You did not have this letter at the time.

MR SINGH: Mr Chair I am using the letter to demonstrate that it was at all relevant times whether it was McKinsey or whether it was Eskom we were under the expectation that we were receiving services from Trillian. As evidence to support my assertion that that was the case at that point in time I refer to this letter. So that is the context behind that.

Secondly this letter is dated 9 February the invoice is paid when Sir?

ADV SELEKA SC: No when did you receive the invoice?

10 **MR SINGH**: That is immaterial Sir. When was the invoice paid?

ADV SELEKA SC: I do not know you tell the Chairperson.

CHAIRPERSON: Well we – no, no.

MR SINGH: It was paid in April.

CHAIRPERSON: When you received it also important.

MR SINGH: No, no I agree Sir.

CHAIRPERSON: Yes.

MR SINGH: But I am saying is Mr Seleka.

CHAIRPERSON: Ja.

20 **MR SINGH**: Points out that this letter is of no relevance and I am saying it is of relevance. Because we received – the payment was only made in April. Notwithstanding the fact the invoice was received in January.

CHAIRPERSON: Yes.

MR SINGH: So if the pro – if it is taken that I approved the

invoice these processes would have not happened.

CHAIRPERSON: No, no that – I think that we –where we were was the question of what role if any this letter played in your conduct at the time you received the invoice and you have said – you have said that no the letter was not there at the time you received the invoice. But what you say you were saying is you were under the impression over a certain period that Trillian was a sub-contractor for McKinsey and you say in support of that you referred to this letter which
10 came after as showing that at some stage Trillian was the sub-contractor of McKinsey.

MR SINGH: That is correct Sir.

CHAIRPERSON: That is what you are saying.

MR SINGH: That is correct.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: And now we are back to the conditions Mr Singh. If you say you do not know well what is your answer? Do you know whether or not these conditions were met? What was your answer?

20 **MR SINGH:** Mr Chair I was not party to the process that validated this invoice for payment and these would have been – the documents attached here would have been some of the documents that was undertaken by the – through the validation process.

ADV SELEKA SC: Ja but that does not answer the question.

What was your answer about the conditions whether they were met or not?

MR SINGH: Mr Chair I was not aware of whether they were met or not.

ADV SELEKA SC: Yes. Then my next question was. How in your affidavit you refer to one of these letters as the reason why you paid Trillian. You have told the Chairperson that is the reason why you paid Trillian you relied on this letter. How could you have relied on this letter to support and
10 defend the payment of over R30 million that was my question?

MR SINGH: Mr Chair in compiling the affidavit to the commission we undertook to try and explain to the commission the process that was undertaken by Eskom to validate the process to indicate that the processes that were set out by Eskom were followed. In this – in the documents that are attached to this payment you will see that there is documents that validates not only the Trillian portion but it also validates the Eskom portion – the McKinsey portion.
20 The – the entire R100 million Mr Chair was validated by the Eskom process and that is what this attempted to explain. If – if –

CHAIRPERSON: Yes.

MR SINGH: If Mr Seleka is saying that I should have not included this because it was not in my personal knowledge

then it is a very different approach that we would then adopted to the commission.

CHAIRPERSON: Can we go to the affidavit?

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Where he refers to it.

ADV SELEKA SC: Yes that is on – let us start on page 601.

CHAIRPERSON: 601?

ADV SELEKA SC: 601 Chair paragraph 34. And Chair as we do so can I – can I clarify to Mr Singh.

10 **CHAIRPERSON**: Ja.

ADV SELEKA SC: What would have been my – what my expectation would have been.

CHAIRPERSON: Ja.

ADV SELEKA SC: Not for you not to include the document but when you include it to be satisfied that everything in that document was done accordingly.

MR SINGH: Mr Chair that in impractical it would never be then I would just submit everything that was only in my personal knowledge.

20 **CHAIRPERSON**: Let us go back – let us go to the relevant part of the affidavit?

ADV SELEKA SC: So – oh Chair the live stream has been interrupted is down they requesting an adjournment to sort it out.

CHAIRPERSON: Oh okay alright. Okay let us adjourn

hopefully it will not take long – five minutes – six minutes – ten minutes. Ten minutes and we will resume after that. We adjourn.

ADV SELEKA SC: Thank you Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV SELEKA SC: Thank you.

CHAIRPERSON: Let us continue.

MR SINGH: Yes. Chairperson, we were going to page
10 601, paragraph 34 to look where Mr Singh refers to that letter that seeks direct payment to be made ...[intervenes]

CHAIRPERSON: Oh, yes, yes.

ADV SELEKA SC: So paragraph 34 of Eskom Bundle 16, page 601 reads:

“With regards to the R 30 million payment to Trillian, I wish to highlight the events that led to the mandate given in respect of work to be done and subsequent payment made...”

And then there sub-paragraphs to that
20 paragraph, 34.1, .2, .3, .4, .5 and then .6 that is where he refers to the letter which is on page 603.

MR SINGH: Mr Chair, just, if I may?

CHAIRPERSON: Yes?

MR SINGH: The context behind including this ...[intervenes]

CHAIRPERSON: Okay just hang on Mr Singh. Had you finished?

ADV SELEKA SC: I ...[intervenes]

CHAIRPERSON: Are you referring to some parts of this? Had you finished? Or did Mr Singh interrupt you?

ADV SELEKA SC: Well, there is an interruption because I think the Chairperson ...[intervenes]

CHAIRPERSON: I think you much finish.

ADV SELEKA SC: Yes, yes.

10 **CHAIRPERSON:** Let him finish Mr Singh.

MR SINGH: Sure.

CHAIRPERSON: And then I will give you a chance.

ADV SELEKA SC: Yes. And then 34.7 which says:

“Lastly, the invoice submitted by Lebelo of R 30.6 million...”

And the Chairperson wanted to see where this reliance is placed in Mr Singh’s affidavit for this letter.

CHAIRPERSON: Yes.

ADV SELEKA SC: And we found it in paragraph 34.6.

20 And ...[intervenes]

CHAIRPERSON: 34.6:

“...with regard to the R 30 million payment to Trillian, I wish to highlight the events that led up to the mandate in respect of work be done and subsequent payment be made...”

Well, what is the point of which your question was made? Were you saying that – I understood you to be saying to him, he says in his affidavit that it was as a result of the McKinsey letter, maybe among other things, that he or Eskom made payment to Trillian?

ADV SELEKA SC: Yes.

CHAIRPERSON: Is that what you were saying?

ADV SELEKA SC: Yes, Chair. Yes.

CHAIRPERSON: Okay.

10 **ADV SELEKA SC:** Because he had also repeatedly said to you, to the Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Then continue. I just wanted to see the wording.

ADV SELEKA SC: Yes.

CHAIRPERSON: I said I wanted to see where he gives it like that in his affidavit.

ADV SELEKA SC: Yes, yes.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: And my point is, Mr Singh, that if you are to rely on a document. Remember, the document has to do with a payment to be made. It is a financial aspect. In your capacity as the CFO, which is you are the gatekeeper in respect of finances. That you would in

relying on it have ensured that whatever is stated in that letter as pre-conditions in particular, those conditions have been fulfilled. Your comment?

MR SINGH: Mr Chair, having regard to the questions that have been posed by Mr Seleka. I would like to, again, refer to paragraph 34. If we may?

CHAIRPERSON: Yes.

MR SINGH: And in particular, can we look at Annexure AS-4? Which I think, if i... AS-4. Yes, it is on page 650.

10 So... Are you there, sir?

CHAIRPERSON: Yes.

MR SINGH: So, Mr Chair, I would like to point out a couple of things in this AS-4 document and we will then correspond to Advocate Seleka's question. If you look at the document on the – below the date, 29 September 2015, you will see that the enquiry is directed to someone at Eskom, a Mr or Ms Molekwane.

CHAIRPERSON: I am trying to see...

MR SINGH: Just below the date.

20 **CHAIRPERSON**: Oh. Before – just below the telephone number?

MR SINGH: Yes, yes.

CHAIRPERSON: Okay.

MR SINGH: Okay. So, Mr Chair, that is for all intense and purposes, the procurement practitioner that I have

referred to previously, who would have the responsibility to make sure that this letter is issued, the contract is put in place and so on, and then load it into the system and once the invoice comes, they also have obligations to perform. So in this case, Ms Molekwane would be one of those people to perform those functions.

Then, Mr Chair, while we are on AS-4. I would just like to again point you to the next page, page 651 which is not directly related to Advocate Seleka's question
10 but I would just like to point out that there is a confirmation above the signature of Mr Koko, the paragraph that is headed Confirmation.

And there it actually says:

"We confirm that a contract will exist between Eskom and McKinsey & Company on the above basis.

Please include your acknowledgement thereof by signing below and deliver the undersigned..."

20 And that relates to, again, to whether a valid contract existed between Eskom and McKinsey, which is a separate point but I just thought I would point it out right now.

ADV SELEKA SC: Now ...[intervenens]

MR SINGH: The next point I would like to go to Mr Chair

...[intervenes]

ADV SELEKA SC: Sorry, Mr Singh. Just before you move on. That statement, you have read it previously. It says contract will exist. What do you want to make of it?

MR SINGH: Mr Chair, as I have said before. I am not a legal person but from my understanding of commercial law which I have done many years ago. I think, if there is an offer and an acceptance there is a binding contract. This, in my view, is a very – it contains the terms, the
10 conditions, the deliverables, the price rates. That is the offer and it is signed by Mr Koko. It is then in turn accepted by Mr Weiss.

So on my understanding of commercial law, this letter is sufficient to be evidence that a contract exists between the parties. But again, as I said, I am not a lawyer.

CHAIRPERSON: Yes. What is your understanding of how Eskom concluded contracts as a matter of practise and actually one could even talk about Transnet.

20 **MR SINGH:** Chair ...[intervenes]

CHAIRPERSON: Is it your understanding that when it talked about the need for there to be a contract before payment could be made, it talked about letters or whether it talked about a formal document which is a contract or agreement?

MR SINGH: Mr Chair, I refer back to this document called the 1034.

CHAIRPERSON: Yes.

MR SINGH: And the 1034 document ...[intervenes]

CHAIRPERSON: Where do we find this 1034 document? You have mentioned it a number of times.

MR SINGH: I think we can ...[intervenes]

CHAIRPERSON: Is it in the bundle?

ADV SELEKA SC: I do not know, Chair.

10 **MR SINGH**: We can make a copy available to you if ...[intervenes]

CHAIRPERSON: Because you have been speaking as if we should know what document that is.

MR SINGH: [No audible reply]

CHAIRPERSON: Okay let us continue. I think your counsel is...

ADV VAN DEN HEERDEN: Chairperson, I have got a copy for yourself and I have got one for...

20 **CHAIRPERSON**: Ja. Otherwise, copies can be made by the staff if we need more copies.

ADV VAN DEN HEERDEN: Indeed.

CHAIRPERSON: Okay.

ADV SELEKA SC: Should I object Chair?

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs]

CHAIRPERSON: Well, where are the other people? Okay ...[intervenes]

ADV VAN DEN HEERDEN: Chairperson, may I just have a second to confirm, please?

CHAIRPERSON: Ja.

ADV VAN DEN HEERDEN: Chairperson, we will hand the one copy that we have got in the interim ...[intervenes]

CHAIRPERSON: Yes, okay.

ADV VAN DEN HEERDEN: ...to my learned friend.

10 **CHAIRPERSON:** Yes and then copies can be made.

ADV VAN DEN HEERDEN: I hear my learned friend wants to object. Maybe he can state why he wants to object. [laughs]

CHAIRPERSON: [laughs]

ADV VAN DEN HEERDEN: I always assume that the Commission is there to establish the... facts ...[intervenes]

CHAIRPERSON: No, he was not serious.

ADV VAN DEN HEERDEN: Oh, okay.

CHAIRPERSON: He was just ...[intervenes]

20 **ADV VAN DEN HEERDEN:** I could not see the tongue in his cheek because his face was turned away. [laughs]

CHAIRPERSON: [laughs] Okay alright. Okay Mr Singh, you were ...[intervenes]

MR SINGH: Sorry ...[intervenes]

CHAIRPERSON: ...making a point by referring to that

document.

MR SINGH: Yes, so ...[intervenes]

CHAIRPERSON: Just make the point.

MR SINGH: So... Can we pass the ...[intervenes]

CHAIRPERSON: Oh, you want until ...[intervenes]

MR SINGH: We pass the document.

CHAIRPERSON: Okay.

MR SINGH: But the original point relating to Mr Seleka, I think is then, Mr Chair we go through to the documents, 10 AS-6.1 to AS-6.5. And those documents, Mr Chair, are documents that indicate where the work was accepted or work was delivered to Eskom. And you will see various signatures by various employers of Eskom to indicate that work had been done. And that is typically the validation process that I had been referring to.

Then, Mr Chair, if you go to page 698 which is AS-8, you will see that that then culminates in the invoice being supported by Mr Govender on the 8th of April 2016 by attaching his signature thereto.

20 **CHAIRPERSON**: Yes.

MR SINGH: So Mr Chair, that is the process that would entail to be followed in terms of the validation process. So when Mr Seleka says to me that I should have ensured that these conditions were met. It would have been up to the procurement practitioner to ensure that all the conditions

or, alternatively, Mr Govender who I think was the Project Manager on this assignment at the time, given that he had supported the invoice. To ensure that those conditions or any conditions for that matter would have been – needed to be fulfilled.

CHAIRPERSON: Just ...[intervenes]

MR SINGH: Sorry, Mr Chair.

CHAIRPERSON: Yes, ja.

MR SINGH: So the context behind submitting this
10 document was to respond to an allegation that was made
by Mr Pillay in his affidavit regarding the surprise that he
had regarding Trillian being paid R 30 million for no work
being done. So these document, essentially, was to prove
that it did not need to be a surprise because there was a
proper process that was followed to appoint McKinsey and
Trillian. And secondly, that there was validation that was
actually done relative to the R 30 million that was paid.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Mr Singh, if you go back to page 684,
20 that Annexure AS-6.1.

MR SINGH: Page 684.

ADV SELEKA SC: Ja, page 684. Eskom Bundle 16, page
684. That annexure you referred to 6.1.

MR SINGH: Yes, sir.

ADV SELEKA SC: You say it indicates that work was

done. Can you tell the Chairperson, it indicates what was done by who?

MR SINGH: Well ...[intervenes]

CHAIRPERSON: Sorry, you are referring to what page?

ADV SELEKA SC: Page 684.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Yes. Please tell the Chairperson, it indicates work done by who?

MR SINGH: Well, Mr Chair, if you look at the heading of
10 the document. It says ...[intervenes]

CHAIRPERSON: Sorry. Where does it say work was done?

MR SINGH: So, Mr Chair, that is what I am trying to explain, sir.

CHAIRPERSON: Oh, okay.

MR SINGH: Sorry, sir. If you look at the heading of it, it says Monthly Work Completion Certificate.

CHAIRPERSON: Looking at schedules at page – what? 684? That is the page I am at.

20 **MR SINGH**: 684, sir. Yes.

CHAIRPERSON: Ja?

MR SINGH: And it is – if you look just below the Eskom logo.

CHAIRPERSON: H'm.

MR SINGH: It says ...[intervenes]

CHAIRPERSON: Oh, Monthly Work Completion Certificate. Okay.

MR SINGH: And then there is some stuff that is in there. There is a contract number there. There is a PO there.

CHAIRPERSON: Ja.

MR SINGH: The contract, the name, submission of reports and then there is some stuff there that is not legible but basically you can see it is actually signed off by two parties.

10 **ADV SELEKA SC:** Yes, work done by who?

MR SINGH: Sorry, sir?

ADV SELEKA SC: It indicates work done by who?

MR SINGH: McKinsey.

ADV SELEKA SC: So how does it relate to the letter you are referring the Chairperson to?

MR SINGH: Mr Chair, again, I come back to the context why this was submitted. The context behind this was submitted was to give an appreciation to the committee relevant to the allegation that was made by Mr Pillay.

20 Mr Pillay made an allegation and I responded thereto by including this document.

The... but answering directly to Mr Seleka Pule's point. Sorry, Advocate Seleka's point. The work that is validated is validated as the contract and that would be the McKinsey contract. So you would get the validation that

would probably head up to, as I understand it, the full R 100 million.

From there, we would then say: 70% goes to you McKinsey, 30% then goes to you, Trillian. So that is the purpose of these documents. I do not know if that answers your question.

ADV SELEKA SC: H'm.

CHAIRPERSON: Well, if you paid McKinsey or if you paid McKinsey the whole amount of fees for the entire job and
10 left it to them how they pay whoever their subcontractor was. This problem would not have arisen, is it not?

MR SINGH: Mr Chair, I think you are correct but if I have regard to my submission to the Portfolio Committee. And again, it is a very long time. Maybe I am mistaken in saying this. But I think evidence was led at the Portfolio Committee at the time by McKinsey that it was actually a policy of bears that they did not actually want their subcontractor's fees to be paid to them but they wanted
...[intervenes]

20 **CHAIRPERSON:** Yes, but they could not dictate to you as Eskom. If you ...[intervenes]

MR SINGH: If we had a policy different. Yes, sir.

CHAIRPERSON: Ja, ja. They could not dictate to you.

MR SINGH: Yes.

CHAIRPERSON: So what I am saying is. If you only had

– if you had a contract with McKinsey and the work had been done whether by on behalf of McKinsey and you paid the whole amount to McKinsey and left it to McKinsey and whoever their subcontractor was, whether that was Regiments or Trillian.

You say: That is between the two of you. You must act in accordance with the arrangements that you pay 80% of the contract value to... contractor. Then you would not be in this problem. The problem simply arises because
10 you as Eskom undertook to pay the subcontractor directly and now the question has arisen whether you paid the subcontractor that had done the work. But otherwise, if you paid the whole amount to McKinsey, then there would not be any problem, I supposed.

MR SINGH: Mr Chair, I would agree with your hypothetical scenario, up to the point where you said had we paid in a hypothetical scenario to the main contractor and then everything else would have been left for them to resolve between themselves.

20 **CHAIRPERSON**: H'm.

MR SINGH: I agree with in this situation.

CHAIRPERSON: H'm, h'm.

MR SINGH: But you would have – there is a possibility of that happening.

CHAIRPERSON: H'm?

MR SINGH: In that, McKinsey could have just sort of transfer R 30 million to Trillian or Regiments, for that matter, without anyone actually being there.

CHAIRPERSON: But it would not be your problem because you had no contract with Trillian, you had no contract with Regiments.

MR SINGH: Mr Chair, the obligation relating to the SDNL is part of the contract.

CHAIRPERSON: Yes, but it is part of the contract
10 between you and McKinsey. So if you had any issues, they would be with McKinsey.

MR SINGH: Yes.

CHAIRPERSON: Not with Trillian or Regiments.

MR SINGH: Yes, sir.

CHAIRPERSON: Ja. And insofar as you may have sought to resolve any issues that arose, you would act in terms of the contract between you and McKinsey.

MR SINGH: Yes, sir.

CHAIRPERSON: Ja. Mr Seleka.

20 **ADV SELEKA SC:** Thank you, Chair. Mr Singh, I am going to – you will read Mr Amanquoa's(?) statement to the Commission. I just want to place on record. This, you do not have to comment because of what my learned friend has said: He requires time to look at the affidavit or the statement.

But you will see from that statement that according to McKinsey:

“1. These preconditions in the letter were not fulfilled...”

So the letter, ultimately, could not be relied upon for the purpose for which the letter sought to achieve.

Number 2, McKinsey says”

10 “2. We never had a contract for Trillian, whether for the Corporate Plan, Funding Plan for the Corporate Plan or in respect of the MSA...”

Which we are going to come to now. They confirm that it was Regiments that rendered the services. But this is now for you which I want to ask and you can comment on. McKinsey says, consistent with Ms Matshepo, that Eskom had internal people who could do the work. And you will see in Mr Amanquoa’s[?] statement, he also says:

20 “Eskom had internal resources and personnel experienced in this matter because the Corporate Plan/Funding Plan had to be prepared annually...”

He says it was the new management, which was yourself, Mr Molefe who wanted McKinsey to come and give an objective assessment. But Eskom itself had the

personnel to do the work which is what Mr Matshepo said. If you have a comment on that you may comment because I want to move on to the master service agreement.

MR SINGH: Mr Chair, if we – in the spirit of closing this topic, is it possible to ask for maybe a 15-minute recess to look at the paragraph specifically that Mr Seleka refers to and maybe we can give a comment?

CHAIRPERSON: Yes. What do you say Mr Seleka to that? He is asking for about ten minutes' adjournment to
10 look at paragraphs ...[intervenes]

ADV SELEKA SC: Oh, to look at the statement?

CHAIRPERSON: Ja. H'm.

ADV SELEKA SC: Ja ...[intervenes]

MR SINGH: It is the paragraphs ...[intervenes]

ADV SELEKA SC: Well ...[intervenes]

CHAIRPERSON: ...it means looking at it, it might help to close the issue.

ADV SELEKA SC: Yes. I could give you... I have the paragraph numbers. You could go read tonight and come
20 back tomorrow.

MR SINGH: No, Mr Chair ...[intervenes]

ADV SELEKA SC: Oh, you want to look at those now?

MR SINGH: ...close this matter.

ADV SELEKA SC: Mr Chair, that is perfect.

CHAIRPERSON: Okay let us take ten minutes. We are at

nine minutes past seven. We go up to twenty past. I have in mind that we should stop at eight. I am just mentioning it so that we could be on the same page.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: But in terms of the arrangements, we are meant to continue tomorrow evening as well.

ADV SELEKA SC: Yes.

CHAIRPERSON: If we have not finished.

ADV SELEKA SC: Yes, Chair.

10 **CHAIRPERSON:** Ja, okay alright.

ADV VAN DEN HEERDEN: Chairperson.

CHAIRPERSON: Yes.

ADV VAN DEN HEERDEN: Maybe if I can place the following on record as counsel for Mr Singh. I would rather suggest that we continue at this point. I have already placed on record that this is a voluminous document. There are intricacies in the document. Even in the paragraphs that my learned friend is referring to. And I as counsel – and I have just confirmed my attorney, believes
20 that it is in the interest of Mr Singh that we rather have regard to this document overnight and revert on the issues tomorrow.

CHAIRPERSON: H'm.

ADV VAN DEN HEERDEN: I understand my client wish to deals with it and get it over and done with but we are here

to protect his interest too. Thank you very much.

ADV SELEKA SC: Ja, that is consistent with my suggestion Chair.

CHAIRPERSON: Okay. Mr Singh, I think your counsel is overruling you.

MR SINGH: It seems that I am overruled, sir. [laughs]

CHAIRPERSON: In your interest. Okay alright. Let us continue. You will look at that and then when tomorrow – when you come back tomorrow, then it can be revisited.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Mr Singh, shall we then deal with the supply development agreement?

MR SINGH: Master service agreement.

ADV SELEKA SC: The master service agreement. Tell the Chairperson, how does that agreement come about?

CHAIRPERSON: Is it in the file that is in front of me?

ADV SELEKA SC: It will be.

CHAIRPERSON: Whereabout?

20 **ADV SELEKA SC:** Chairperson, you want the agreement itself?

CHAIRPERSON: In another... No, no.

ADV SELEKA SC: It is in a different file.

CHAIRPERSON: Okay. Well ...[intervenes]

ADV VAN DEN HEERDEN: Chairperson, maybe you

should also Mr Seleka of his undertaking at the start that his voice will keep on being projected ...[intervenes]

CHAIRPERSON: [laughs]

ADV VAN DEN HEERDEN: Because currently, we are not hearing him that well.

CHAIRPERSON: No, it is my fault. I complimented him.

ADV SELEKA SC: [laughs]

CHAIRPERSON: [laughs] Ja-no, he will try and speak up.

ADV SELEKA SC: I will raise my...

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: I will raise the voice, Chair.

CHAIRPERSON: H'm.

ADV SELEKA SC: That is the – the master service agreement Chair is in Eskom Bundle 14(c).

CHAIRPERSON: Okay.

ADV SELEKA SC: There is one on page 8... 8771. But I want to find one which is... 8771. We also found it earlier. Ja, you will also find on page... Is the Chairperson already at the other page?

20 **CHAIRPERSON:** What page?

ADV SELEKA SC: 877.1.

CHAIRPERSON: Oh, yes, I found it. I got it, ja.

ADV SELEKA SC: Ja.

CHAIRPERSON: H'm. Thank you.

ADV SELEKA SC: Ja.

CHAIRPERSON: I just wanted to have it in front of me as you asked me about it.

ADV SELEKA SC: Yes. Yes, indeed Chair. Ja, eight... Ja... Ja, Mr Singh, the – if you could just tell the Chairperson in a nutshell what this agreement related to and when was it concluded?

MR SINGH: Mr Chair, in terms of the MSA or the Master Services Agreement between McKinsey and Eskom, given the discussion we had a short while ago, the Master
10 Services Agreement was – well, the concept of the Master Services Agreement predated my arrival at Eskom so whatever I would relay to you, I relay to you from the facts that I have gathered post or to this process of investigation and we will also understand which parts of the MSA I was directly involved in and I am sure Adv Seleka will lead that evidence in due course.

But, Mr Chairman, my understanding of the Master Services Agreement was that Eskom was in need of services relating to turnaround and McKinsey was engaged
20 to provide the services relating to the turnover and those specific aspects related to, for example, new build, generation, the primary energy space, some balance sheet for cash optimisation options, claims management and those were the basic areas that this Master Services Agreement related to.

In addition to that, one of the main points relating to Master Services Agreement was that it was actually a risk-based one, so the extent that McKinsey did not perform or deliver the value that was expected in terms of the contract then no fees were recruited reciprocally or alternatively, if they had delivered services then obviously value would accrue to them and then a fee would be [indistinct – dropping voice]. That is my understanding.

ADV SELEKA SC: Sorry, I just remembered looking at my
10 learned friend that I actually sent her the paragraphs which I intended referring Mr Singh to during the course of the day but anyway, so you will get the paragraph ...[intervenes]

CHAIRPERSON: Ja but that is too short a notice.

ADV SELEKA SC: You are correct, Chair.

CHAIRPERSON: [inaudible – speaking simultaneously]
made earlier, ja.

ADV SELEKA SC: Yes. Mr Singh, the other question was, when was it concluded?

20 **MR SINGH:** Mr Chair...

ADV SELEKA SC: You do not have independent recollection?

MR SINGH: No, Chair.

ADV SELEKA SC: Okay, you can look...

MR SINGH: Sorry?

ADV SELEKA SC: You can look.

MR SINGH: I had it ...[intervenes]

ADV SELEKA SC: You have read Dr Weiss' affidavit.

MR SINGH: Sorry?

ADV SELEKA SC: You have read Dr Weiss' affidavit to the Commission.

MR SINGH: Yes, I did.

ADV SELEKA SC: Okay, let me ask me not when but was the contract concluded?

10 **MR SINGH:** Sorry, Sir?

ADV SELEKA SC: Was it concluded?

MR SINGH: My personal knowledge, before reading Mr Weiss' testimony, yes.

ADV VAN DEN HEEVER: Chairperson, maybe just for the record, we were providing during the course of January, by we we mean the legal team with three redacted statements of Dr Weiss, Misala and Dr Fine. Subsequent to that, my attorney directed a letter – and just to put you into context, these redacted statements consisted of two or three pages
20 where it was obviously – obvious that they were long statements. There were no annexures even attached to the redacted statements where reference were made in the un-redacted portions and where we asked to comment on.

At that point my instructing attorney wrote a letter to the Commission and say please provide us one, with the

complete statements and two, with the relevant annexures. There was never any response to that nor did those statements arrive un-redacted with the said annexures. So at the time when my client deposed to the original affidavit, he reserved his right to respond thereto. So we now know that it seems – they are seemingly included in the reference bundle but I want to make it clear for the record that that is what the position was at that time and that my client has subsequently dealt with those little portions that
10 was un-redacted at the time. So just – I think it is important that you understand the background of this.

So specifically, my learned friend now wish to again deal with issues pertaining to these three persons statements and he needs to refer my client to the paragraphs because last Thursday when we dealt with this, my learned friend referred my client to paragraph 17 of the statement and he then put it to him why did you not deal with this? The other that - the redacted statement we provided with did not have a paragraph 17 in. So my client
20 at that stage said oh, maybe it was an oversight.

So it is against that background that I again say that we must be circumspect when we deal with statements that is in the possession of the Commission and which we want to rely on because otherwise we must lead the witness and because the witness, because of the fact that

we are in the position that we are, to accept what we put to him is correct?

CHAIRPERSON: Ja, I think you have made your point. Mr Seleka?

ADV SELEKA SC: Yes. Chair, I do not know of what my learned friend is talking about.

CHAIRPERSON: Ja, I think ...[intervenes]

ADV SELEKA SC: My approach is always to give the witnesses that I would lead the full affidavits. So I do not
10 know how redacted statements came to my learned friends. So I am not able to comment on that.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. But, Mr Singh, in his affidavit has said that the agreement was signed on the 7 January 2016 which is on page 623 paragraph 92.1 and so that is why I was asking you ...[intervenes]

MR SINGH: 623?

ADV SELEKA SC: Chair, we will have to go back to Mr Singh's bundle, which is Eskom bundle 16.

20 **CHAIRPERSON:** But before we go there, because you asked him when the agreement was concluded.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is that not shown in page 877.24 or is that something else? Which is 7 January 2016 which that date is written under the signature of Mr Mabelane.

ADV SELEKA SC: That is correct, Chair.

CHAIRPERSON: But there is no date even under the signature of whoever signed on behalf of McKinsey.

ADV SELEKA SC: Yes and Chair will see there are two different dates. There is one of Mr Mabelane which appears to be 7 January 2016 and then there will be on behalf of McKinsey – what they did is hard to see what it is but you get to know what the date is when reading Dr Weiss' affidavit and that date is 11 January 2016. So my
10 question to Mr Singh was whether he knows that this agreement was concluded, whether you know the agreement was concluded.

MR SINGH: Mr Chair, on the objective evidence of Mr Mabelane signing on the 1 January 2016, that is what the affidavit refers - or my affidavit refers to.

ADV SELEKA SC: Yes, which is the 7 Jan.

MR SINGH: Yes.

ADV SELEKA SC: But I wish you could tell the Chairperson that even in February the steering committee,
20 which you were the Chairpersons of, were still talking about an agreement to be concluded, the steering committee which you had on the 9 February 2016.

MR SINGH: So can we go to the specific steering committee minutes?

ADV SELEKA SC: Do you want the committee – you want

those minutes?

MR SINGH: If we have it here, yes.

ADV SELEKA SC: Yes. Page 875.32, Eskom bundle 14(c), Chairperson. 875.33 ...[intervenes]

ADV VAN DEN HEEVER: Chairperson, is it 875 or 879?

ADV SELEKA SC: 875. And look at page 875.34, paragraph 7, purpose of this meeting. Well, firstly – sorry, sorry, Chair?

CHAIRPERSON: What was the issue about page 875.3?

10 You referred us to that page.

ADV SELEKA SC: Ja, stay there for a moment, Chairperson, thank you. Mr Anoj, just stay there. So the document ...[intervenes]

ADV VAN DEN HEEVER: Chairperson, on our papers, on the reference bundles that were disclosed it stops at 875.32 and then it moves over to 876. That is the documents that were discovered to us as the reference bundle. We are just trying to - I am saying this because we are trying to follow ourselves what is going on.

20 **CHAIRPERSON:** Yes, Mr Seleka?

ADV SELEKA SC: Are those the minutes, minutes of the Top Consulting Programmes Steering Committee meeting held at Corome(?) Boardroom 9 February 2016.

CHAIRPERSON: Hang on, Mr Seleka.

ADV SELEKA SC: Yes, Chair?

CHAIRPERSON: What do you say about the concern that Mr Singh's legal team do not have page 875.34?

ADV SELEKA SC: Yes, I am asking whether on that page, Chair, is this the document. Okay, I do not – I am not on my – give us the right page because when Ms Lynne Brown was testifying I was also following here to assist with the page numbers. Just check which page on the cell phone, is it the same page? Thank you. The investigator confirms it is the same page.

10 **CHAIRPERSON:** Which page is the same as which page?

ADV SELEKA SC: Which is 875.33, so the document is on that page even on the soft copy.

CHAIRPERSON: Ja, but the concern is they do not have a number of pages including 875.34.

ADV SELEKA SC: Ja, I am asking...

ADV VAN DEN HEEVER: Chairperson, we have got a hard copy that we found amongst our documents, we will look at that in the meantime.

CHAIRPERSON: Okay, alright.

20 **ADV SELEKA SC:** So it is a steering committee meeting of 9 February 2016 at 12.30, then you have a list of those who are present. Members, Mr Anoj Singh, Chief Finance Officer, Chairman. Then you have Mr Matshela Koko, Mr Abram Masango, Edwin Mabelane and Willie Mjola. Mr Singh you confirm that you were the Chairperson of that

steering committee?

MR SINGH: Correct, Sir.

ADV SELEKA SC: Yes. So then you turn the page, page 875.34 under paragraph 7 or item 7 which is purpose of this meeting. Then it says:

10 “Prish informed the committee members this meeting is set up to assist the McKinsey contract to provide guidance and support to the top engineers’ programme as well as provide guidance to and approval of all work package initiatives as defined in the services level agreement to be entered into between McKinsey and Eskom for generation of services.”

This is what I was referring to. In this meeting on the 9 February 2016 the steering committee was still envisaging the services level agreement which is the same as the Master Services Agreement as an agreement that is to be entered into.

20 **MR SINGH:** Mr Chair, from my understanding and my recollection the Master Services Agreement was – had been concluded by this date.

CHAIRPERSON: Please speak up a bit?

MR SINGH: I am saying, Mr Chair, for all intents and purposes, my recollection, I was not involved in the let us say the negotiations and the finalisation of the contract or

the Master Services Agreement and for all intents and purposes I was under the impression that the contract had been concluded. The reason why this Steerco had actually been set up was because of the fact that, as I was given to understand, was that there were two conditions precedent that required the Steerco to be set up hence the Steerco was then put in place so for all intents and purposes, my understand was the contract was in place and signed.

ADV SELEKA SC: Yes but you see when you testify and I
10 ask you that general question, I am expecting you to tell the Chairperson everything which would also include referring the Chairperson to this meeting which you chaired on the 9 February which suggests differently from what you are saying. So you could say in my view, Chair, this is how I took it but I know in the minutes of this meeting which I chaired, something else is stated.

MR SINGH: Well, Mr Chair, if I had recollection of this paragraph that was referred to by Adv Seleka, I would have brought it to him, I did not have – well, I had access to the
20 minutes, but I did not really pay attention to this specific, how can I say, passage that ...[intervenes]

CHAIRPERSON: Do not speak too far from the mic.

MR SINGH: Sorry. Just I am saying to my recollection, I have given you a response as to my knowledge. The contents of the minutes, I had access to the minutes, yes,

but I did not have reference to the interpretation that Adv Seleka has put to it.

ADV SELEKA SC: So what would have been the basis of your understanding that the agreement was concluded?

MR SINGH: Mr Chair, as I said, the reason why the Steerco was actually set up was, as I understood it at the time, was to give effect to one of the suspensive conditions that was contained in the Master Services Agreement. So why would we set up the Master Services Agreement if we
10 did not have – not why we set up a Master, why would we set up a steering committee that is this, which was envisaged in the Master Services Agreement or the SLA if it was not fine?

And, Mr Chair, it is also conceivable that you would have a signed contract but maybe certain aspects thereof are still being negotiated or still to be completed at a later date.

ADV SELEKA SC: Yes. Well, talking of the condition, that was a suspensive condition and it has to be fulfilled
20 on the 31 January 2016. Now maybe you would like to tell the Chairperson was that condition fulfilled as at that date?

MR SINGH: Mr Chair, on – if we look at the date of the – let us put it this way first, I do not have reference to the 31 January as the date because that was not in my personal knowledge but if you have reference to the date of 9

February then it would probably be presumable that it was not.

ADV SELEKA SC: I did not hear you? Then...?

MR SINGH: I said I did not have reference or personal knowledge regarding the date of 31 January.

ADV SELEKA SC: Yes.

MR SINGH: So I cannot comment on 31 January but if we had – if we take the 31 January as a given then obviously 9 February would...

10 **ADV SELEKA SC:** Yes, no, it is given, it is in the agreement, it is in the contract, the service level agreement which I gave you on page 877.1 of the same bundle and the clause is on page 877.7. It reads, clause 3.1. The title is: Conditions Precedent. Clause 3.1 says:

20 “The provisions of this agreement other than the surviving provisions which are the unconditional and of immediate force and effect on and with effect from the date of signature of this agreement are subject to the fulfilment or waiver of the following conditions precedent by 31 January 2016.”

And then you have those conditions. So it comes from there. Does it mean you were not aware of that provision?

MR SINGH: No, sir, I was not.

ADV SELEKA SC: But you seem to have been hands-off at Eskom.

MR SINGH: Sorry, Sir?

ADV SELEKA SC: You seem to have been hands-off at Eskom.

MR SINGH: Hands-off?

ADV SELEKA SC: Yes, hands-off.

MR SINGH: Well – do I need to comment?

ADV SELEKA SC: Yes.

CHAIRPERSON: Well, he is suggesting that you were hands-off at Eskom and you can say yes, I was hands-off
10 or no, I was not hands-off or I do not know if I was hands-off or not hands-off, depending what the true position is.

MR SINGH: No, Mr Chair, I would say that I was not hand-off.

ADV SELEKA SC: You were not hands-off?

MR SINGH: Yes.

ADV SELEKA SC: So in the meeting of the 9th they talk about an agreement to be entered into and you are not aware that the date for preconditions to be fulfilled is 31 June 2016.

20 **MR SINGH:** No, Sir. Mr Chair, if it would please the committee I would then like to refer the committee to page 875.38.

CHAIRPERSON: 875 point?

MR SINGH: Point 38.

CHAIRPERSON: 38?

MR SINGH: Yes.

ADV SELEKA SC: Are we back at the minutes?

MR SINGH: Yes, Sir.

CHAIRPERSON: Yes, I have got the page. Continue?

MR SINGH: Sir, I would just like to draw attention to the paragraph that starts with Dave and Charles.

ADV SELEKA SC: Item?

MR SINGH: The paragraph that starts with Dave and Charles, it is somewhere in the middle of the page.

10 **CHAIRPERSON:** Under the heading:

“Resolved/actions for comment.”

MR SINGH: Yes. So, Mr Chair, the paragraph reads:

“Dave and Charles will ensure alignment with the contract from outside of the process to the PMO office. The delegation consent form Edwin delegated to Prish to manage this contract. The delegation consent form approved by the board is Edwin and Prish as senior managers who managed this contract.”

20 So, Mr Chair – and the reason why I refer you to this paragraph is in the context of Mr Seleka’s comment around me being hands-off. Not that I am hands-off, there are people that are appointed to do certain things. So the context behind me referring you to this is that there were officials that were appointed to ensure that certain things

are done.

ADV SELEKA SC: Well, I was being very diplomatic using the word hands-off. It is either hands-off or completely ignorant of the issues that were facing Eskom from a transaction point of view.

MR SINGH: Mr Chair, we will go back to this point. Mr Chair, if you have regard for the board approval to conclude the contract, I was not the delegated authority to conclude the contract hence Mr Mabelane is the signatory
10 to the contract. So again, the contents thereof, if I am not the delegated authority to sign the contract, I will again respectfully submit that I would not be expected to know chapter and verse of the contract especially when officials are appointed to specifically take care of those issues.

ADV SELEKA SC: But the irony is this, you know you have to form a steering committee because it is condition precedent of the agreement.

MR SINGH: Mr Chair, when someone requests me to chair a committee or says to me that there is a committee being
20 established that you need to check, I ask why, so they tell me why.

ADV SELEKA SC: I do not understand, you were in the negotiations for the conclusion of this agreement.

MR SINGH: Mr Chair, I was not in the negotiations for the conclusion of this contract and being in the negotiations

for the conclusion of the contract also would not mean that I actually know all the terms and conditions of the contract.

ADV SELEKA SC: And I think you know that the condition was not fulfilled on the 31 Jan 2016 because CDH has said so.

MR SINGH: Mr Chair, are we talking about whether I knew it on the 9 February? Are we talking about when CDH ultimately said it whenever they said it because CDH did not say it on the 9 February.

10 **ADV SELEKA SC:** Both of them, at the time of this meeting?

MR SINGH: At the time of this meeting, Mr Chair, I did not know that, no.

ADV SELEKA SC: But you would have known when you started the steering committee, Mr Singh. When you established it you would have known.

MR SINGH: Mr Chair, my evidence is that I did not know, if Mr Seleka has something else put to me to show that I did know, then I would suggest that you put it to me.

20 **ADV SELEKA SC:** No, you would have known when did you establish the steering committee which you chaired, you chaired all of – you chaired that steering committee.

CHAIRPERSON: Well, he is saying, Mr Seleka, if you do not accept his evidence that he did know ...[intervenes]

ADV SELEKA SC: He does not know.

CHAIRPERSON: Tell him – refer him to something that suggests that he knew.

ADV SELEKA SC: Well, Chair, I do not know when he started the steering committee, so if Mr Singh says he does not know, we will accept that position, Mr Singh. May, I – okay, so we are dealing with whether this contract was concluded based on the allegation that it was signed on the 7 Jan.

Let me show you another letter which is addressed
10 to yourself, it is on the same Eskom bundle 14,
Chairperson, page 876. Now you will recall this letter
coming from McKinsey date 30 March 2016.

MR SINGH: That is correct, Sir.

ADV SELEKA SC: This is a letter where McKinsey
...[intervenes]

CHAIRPERSON: Hang on, let me try and find it.

ADV SELEKA SC: Oh, page 876, Chair.

CHAIRPERSON: Looks like I do not have that page. Oh,
okay, I have got it. Yes, okay.

20 **ADV SELEKA SC:** Thank you.

ADV VAN DEN HEEVER: Chairperson, can we just have a
second? We are also trying to find it, but for us.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja. I think the best thing for me to
have the soft – the electronic copy.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Thanks, so yes Mr Singh and the letter dated 30 March 2016 comes from McKinsey's, addressed to yourself as the Group CFO of Eskom and it refers to...[intervenes]

CHAIRPERSON: And it has no second page with a signature?

ADV SELEKA SC: There is Chair.

CHAIRPERSON: On my bundle there is not.

10 **ADV SELEKA SC:** There is page 877, this one is not double-sided Chair.

CHAIRPERSON: Hmm?

ADV SELEKA SC: This one is not double-sided.

CHAIRPERSON: Yes, the page after page 876, the next page I have is 877.1 which is the Service Level Agreement.

ADV SELEKA SC: Oh, no then it is missing page 877, you are correct. I have it. Mr Singh do you have it?

CHAIRPERSON: Will I need the second page for now immediately?

20 **ADV SELEKA SC:** Yes Chair. It is exactly the one we will ultimately be referring to. Mr Singh does yours page 877?

MR SINGH: It does, sir.

ADV SELEKA SC: It does, thank you. I think Chairperson should keep them, just keep them. Thank you, Chair.

CHAIRPERSON: I have got it now.

ADV SELEKA SC: So the letter with the subject heading top consultant's programs, so we refer to your letter to us dated February 19, 2016 and our response is dated February 25, 2016:

10 "This letter serves as an update on further developments since our last letter to you on February 25, 2016. In particular, you may recall that we have confirmed to you that we will not be in a position to commence a relationship with Trillian or any other partner plus sub-contractor until the criteria below have been met and approved by our global risk and legal teams."

And I skip that, we go to the next paragraph below the bullet points. It says:

20 "We have requested the above and other additional relevant information from Trillian on separate occasions including via letters to them dated 25 February 2016 and 10 March 2016. We have to date not received any formal response to each of the letters despite the respective deadlines of 25 February 2016 and 11 March 2016. We have also accepted discussions with Mr Eric Wood on a number of occasions during these meetings Mr Eric Wood orally provided partial information concerning

Trillian.”

I want to skip that to go to after the bullet points Mr Singh where the paragraph actually starts:

“As a result McKinsey's interactions with Trillian have now been terminated with confirmation having been sent to Trillian.”

And here is the part I wish to canvass with you now because that first part I have read relates to emanating any relations with Trillian. This paragraph says:

10 “We acknowledge that the draft of the services level agreement between Eskom and McKinsey entails the requirement of outsourcing a percentage of the total consulting fee to a supplier development partner.”

And my emphasis for present purposes is on that statement with the word draft of the service level agreement on 30 March 2016, McKinsey tells you the SLA is still a draft, your comment?

MR SINGH: I see that, Mr Chair.

20 **ADV SELEKA SC:** So you have no further comment?

MR SINGH: No, sir.

ADV SELEKA SC: Thank you.

CHAIRPERSON: I am sorry, what did you put to him on which he does not wish to comment?

ADV SELEKA SC: That paragraph about...[intervene]

CHAIRPERSON: Ja, the second last from the bottom?

ADV SELEKA SC: The second yes, correct. That as of this date, 30 March 2016, McKinsey is telling him that the SLA, the service level agreement it is still a draft.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: So, that goes against the averment that the agreement was concluded on the 7th of January 2016.

CHAIRPERSON: Yes, okay.

10 **ADV SELEKA SC:** Mr Singh, then oh yeah, you have already heard the paragraph from Dr Weiss, let me conclude on this let us go to Dr Weiss's statement in Eskom bundle 14. We stick to the same bundle [c], yeah not paragraph 17 I will give you the page, the page reference that is on page 690.

MR SINGH: Are we on this one?

ADV SELEKA SC: Eskom bundle 14, I think the same one you have.

MR SINGH: 690?

20 **ADV SELEKA SC:** Yeah, six nine zero, right at the beginning of the bundle, yeah right at the beginning.

MR SINGH: We there, sir.

ADV SELEKA SC: You are on that page? So he...[intervene]

CHAIRPERSON: Remember not to speak too far away

from the mic, Mr Singh.

MR SINGH: I said I am there, sir.

ADV SELEKA SC: Yes, paragraph 29 and 30, now you will see how he ends which is different from how he starts, and he says:

10 “With the letter of acceptance in place, we had a signed agreement between Eskom and McKinsey and we began to work on the turnaround program in January 2016. At the same time, we will continue to work to finalise the service level agreement. Despite McKinsey's efforts, Eskom delayed signing the SLA. I eventually received the signed SLA from Eskom in late September or early October 2016 by then, Eskom had terminated the turnaround program, and had compensated McKinsey for our work. At the time, I did not expect that McKinsey would receive any additional compensation from Eskom.”

Paragraph 30:

20 “The SLA that I received was signed on behalf of Eskom as of January 7, 2016. After consulting with in house counsel regarding the SLA, I signed the SLA on behalf of McKinsey as of January 11, 2016, which was the approximate date that McKinsey began to work on the project. I understood that

Eskom's preference was that the SLA be signed as of the effective date, which was the date that we began work. I regret any confusion that this may have cost."

So you follow what is happening there, Mr Singh. He gets the agreement only, well signed by Eskom, he gets it only in late September or early October 2016 and he back dates it to 11 January 2016. You follow that?

MR SINGH: I do, Mr Chair with regards to Mr Weiss's
10 statement, I think these were parts of the statement that counsel was referring to that was redacted.

CHAIRPERSON: Sorry, please repeat that?

MR SINGH: I said the paragraph that Advocate Seleka refers to are the paragraphs that counsel referred to that were redacted. We did not have access to these paragraphs in the affidavits that was submitted.

However, in going through Dr Weiss's transcripts I obviously follow the narrative that was being led and to be quite honest, the first time that I knew that there was no
20 contract in place, or that there was no contract signed as of January, was when Mr Weiss confessed to the fact that he had not signed the contract on the 11th or whatever, January 2016. That was the first time that I heard of it.

CHAIRPERSON: But you are not in a position to dispute what he says in this regard namely that Eskom - that he

only received or McKinsey only received the contract in September, October 2016 and it was dated 7 January 2016, and although he signed it towards the end of the year, it was 11 January 2016, you are not disputing that?

MR SINGH: Mr Chair, this, this is not within my personal knowledge.

CHAIRPERSON: Yes, you do not know.

MR SINGH: So cannot confirm or deny the content.

CHAIRPERSON: No, that is fine.

10 **ADV SELEKA SC:** Does it mean, Mr Singh, that in the various Steering Committee meetings that you had, you never had sight of the agreement?

MR SINGH: No, sir.

CHAIRPERSON: We spoke last time about the fact that you were part of weekly meetings.

MR SINGH: Yes.

CHAIRPERSON: That would have been under another agreement?

MR SINGH: That is correct, sir.

20 **CHAIRPERSON:** Yes.

MR SINGH: That would have been in reference to the corporate plan.

CHAIRPERSON: Ja, thereto you said you were not aware that there was no agreement because that was somebody else's responsibility to make sure it was in place but you

were under the impression that was in place, is that right?

MR SINGH: That is correct, sir.

CHAIRPERSON: Yes, her and I think that one, the meetings went on for something like four or five months I think we said.

MR SINGH: That is correct, sir.

CHAIRPERSON: Ja, here the meetings that Mr Seleka talking about would have gone on for how long without there being a contract?

10 **MR SINGH:** Mr Chair, these - just the context behind these meetings.

CHAIRPERSON: Ja.

MR SINGH: Mr Chair, these meetings occurred as a consequence of the agreement.

CHAIRPERSON: As the consequence of?

MR SINGH: As a consequence of the agreement. So the agreement envisaged...[intervene]

CHAIRPERSON: Yes, but if there was no agreement, it could not be as a consequence of the agreement.

20 **MR SINGH:** That is from my perspective, Mr Chair.

CHAIRPERSON: You understood there was an agreement.

MR SINGH: I understood as I said, the first time that I understood that Dr Weiss had backdated his agreement, and that he was presented with an agreement from Eskom, as he says in September or so was the first time that I

knew that was when he testified, I have no prior knowledge of that.

So, for all intents of purpose, I was given to understand that the Steer Co meetings was a consequence of the contract. In terms of the purpose of the meeting, the purpose of the meeting was to basically provide operational oversight in terms of the actual work that was being done, *vis-a-vis*, the contract.

CHAIRPERSON: Yes, but going – let us go back to my
10 question.

MR SINGH: Yes.

CHAIRPERSON: Under this agreement, which you thought existed at the time, which you now accept, I think, did not exist at the time. At the meetings that you attended, would have gone on for how long?

MR SINGH: You mean in terms of hours?

CHAIRPERSON: No, no, in terms of over a month, two months, three months.

MR SINGH: No, they were I think it lasted until August.

20 **CHAIRPERSON:** So that would have - from about January?

MR SINGH: No, you had February, there was one in February, there was one in March.

CHAIRPERSON: Ja, but they were they monthly, more or less?

MR SINGH: I think it could have been more or less monthly.

CHAIRPERSON: More or less, ja.

MR SINGH: But it was called as and when it was acquired.

CHAIRPERSON: And throughout that periods, you thought there was an agreement but you had never seen it.

MR SINGH: That is correct.

CHAIRPERSON: And you never asked for it?

10 **MR SINGH:** No, sir.

CHAIRPERSON: And you were the most senior person in those meetings?

MR SINGH: Other than Mr Matshela Koko and the group executives.

CHAIRPERSON: Ja, was he senior to you?

MR SINGH: Sorry?

CHAIRPERSON: Was he senior to you, Mr Koko?

MR SINGH: We were all I guess on the same levels.

20 **CHAIRPERSON:** Okay, you were all on the same levels, okay alright. So you were one of the senior people here. You see that is part of difficulty, it is the same difficulty I expressed in regard to the corporate plan.

You know, it is just difficult for me to understand, how you being an accountant - and if it was a lawyer, I would say the same thing. But maybe I do not need to

refer to the profession, maybe just a senior manager or anybody how you could over a number of months, take part in meetings, which are supposed to be held in terms of some contracts, without ever seeing the contract.

And yet the meetings are supposed to be held in pursuit of provisions of the contract or to try and advance the work done in terms of the contract. That seems quite strange to me, because I would imagine that I am taking you back to the corporate plan, because there you were
10 the most senior, you agreed. That you were supposed to give guidance to those who are junior to you in terms of what should be done in terms of this contract or what position should we take. How do you give that guidance without having seen the contract, in terms of this one, too?

Even if there were other executives who are at the same level as you, I would expect all of you to at least, have seen the contract. Even if there was somebody else who is responsible for the details, to have seen the contract, and familiarised yourself with this provisions,
20 because I am not sure how you can engage in any meaningful, serious discussion and be part of serious decisions being taken, supposedly, in terms of a contract or to advance certain projects under the contract when you have never even seen the contract. That that is where I have some difficulty, do you want to say something?

MR SINGH: Yes, Mr Chair I think Mr Chair in organisations, I guess, not I guess you have to place reliance on individuals within an organisations that are required to perform certain functions. And as I have read out to you, previously, Mr Govender and Mr Mabelane were the delegated, through the delegated consent form were the individuals that were mandated to understand the provisions of the contract and give effect thereto.

In terms of the role that the CFO play, the role that
10 CFO play was to ensure that the initiatives that the CFO agree to was implemented, it realised there is certain value. And if Eskom and McKinsey agreed that those, that that value was realised, through the process that was established between McKinsey and Eskom then the CFO acted as a body, as a coordinating body relating to those initiatives.

CHAIRPERSON: So are you saying to me, as far as you are concerned, it is in order for somebody at the level of CFO of an organisation such as Eskom to take part in a
20 structure, I am talking about the Steering Committee, which is supposed to be a structure established in terms of certain contracts, or to advance the project of the contract over quite some time without ever saying, let me see this contract under which we are working.

Because the structure, which you are part of you

say you understood it to be there, that binds the project under the contract or whatever the project was. So you, you say it is in order for somebody at the level of CFO, and take over six months or whatever the number of months from February to August, without really ever having said, I need to see this contract, under which we are working.

MR SINGH: Mr Chair, when you are dealing with the level of individuals as Mr Govender and Mr Mabelane who were general managers in their own right at Eskom one would
10 place an inordinate amount of reliance on the fact that what you are requested to do is a contract that they are managing.

CHAIRPERSON: Was there one of them who reported to you?

MR SINGH: Sorry, sir.

CHAIRPERSON: Was there one of them who reported to you or not really?

MR SINGH: No, sir.

CHAIRPERSON: No, Mr Seleka, I see we are at seven
20 minutes to eight but you might have one or two questions.

ADV SELEKA SC: Yes, Mr Singh, you should tell the Chairperson that you were the Chairman of the Steering Committee.

MR SINGH: Sir, I was the Chairman of the Steering Committee.

ADV SELEKA SC: Yes, and then...[intervene]

CHAIRPERSON: Yes, that makes it even more astounding. How does the Chairman, chair a structure that is based on a certain document, and yet he has never seen that document?

MR SINGH: Mr Chair, that is the reason why the Steer Co started with Mr Govender giving an overview of what the document actually entailed and McKinsey was part of this at the time.

10 **CHAIRPERSON:** Ja, I can tell you Mr Singh I would never Chair any structure which is based on a certain document without having read that document because what your whole mandate, I suppose is supposed to come from that document, isn't it?

MR SINGH: Well Mr Chair, the Steer Co itself had a mandate.

CHAIRPERSON: Hmm?

MR SINGH: The Steer Co itself had a mandate.

20 **CHAIRPERSON:** Where did it derive it from, not from the contract? Where did it derive its mandate from?

MR SINGH: I would have to check the mandate, I am aware that had a mandate, but I have not seen it.

CHAIRPERSON: But am I right to say your evidence is that Steer & Co was established in terms of the contract as far as you understood at the time?

MR SINGH: Yes, sir.

CHAIRPERSON: Yes, Mr Seleka.

ADV SELEKA SC: Chair let us - we can proceed tomorrow Chair.

CHAIRPERSON: Okay, alright let us adjourn we will proceed tomorrow but before or when I adjourn, I would like to see both counsels for the legal teams.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: We adjourn.

10 **REGISTRAR:** All rise.

INQUIRY ADJOURNS TO 26 MARCH 2021