

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

21 APRIL 2021

DAY 379



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 21 APRIL 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Good morning Chairperson.

CHAIRPERSON: Are you ready?

ADV SELEKA SC: We are ready to proceed Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: Thank you Chairperson. The witness today Chairperson is Professor Cecil Petrus Louwrens.

10 **CHAIRPERSON:** Yes.

ADV SELEKA SC: He is called by the Eskom work stream in regard to the pre-suspension letters and the metadata in relation thereto especially to determine the author and modifier of those three suspension letters of the executives.

CHAIRPERSON: Hm.

ADV SELEKA SC: Well Prof Louwrens will be ready to take the oath or affirmation.

CHAIRPERSON: Oh it is Professor Louwrens is that right?

20 **PROF LOUWRENS:** That is correct Chair.

CHAIRPERSON: Good morning Professor Louwrens.

PROF LOUWRENS: Good morning Chair.

CHAIRPERSON: I understand that you are part of the investigation team of the commission.

PROF LOUWRENS: That is correct.

CHAIRPERSON: Thank you very much for coming to assist us on this matter that requires I think unusual expertise so he will help us to make sense of some of the things that we do not understand. Okay. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

PROF LOUWRENS: Cecil Petrus Louwrens.

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

10 **PROF LOUWRENS:** No I do not.

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

PROF LOUWRENS: 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.

PROF LOUWRENS: So help me God.

CHAIRPERSON: Thank – thank you.

20 **ADV SELEKA SC:** Yes thanks. May I proceed?

CHAIRPERSON: You may proceed.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Yes. Have – have you announced for the benefit of the public the area on which he will be giving evidence?

ADV SELEKA SC: Yes sorry DCJ I was ...

CHAIRPERSON: Somebody was interfering with you.

ADV SELEKA SC: Ja they were giving me notice that Prof Louwrens' oath was not captured by the recording.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: We will redo that.

ADV SELEKA SC: Yes.

CHAIRPERSON: I was saying – I was asking whether you
10 have already informed the public for their benefit on what
aspect Professor Louwrens will be testifying so that they
can follow.

ADV SELEKA SC: Yes.

CHAIRPERSON: His evidence. If you have not done so
please do so before he – he starts.

ADV SELEKA SC: Yes.

CHAIRPERSON: But maybe let us redo the oath

ADV SELEKA SC: Yes.

CHAIRPERSON: What was wrong because I do not think
20 he was speaking too softly. They just did not put on their
mittens. Okay alright let us – Registrar let – and both
Professor Louwrens let us just redo the oath. Hang on I
think the technicians are making some gestures. Okay
alright.

REGISTRAR: Please state your full names for the record.

PROF LOUWRENS: Cecil Petrus Louwrens.

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

PROF LOUWRENS: No I do not.

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

PROF LOUWRENS: Yes I do.

REGISTRAR: Do you solemnly swear that the evidence you will give will be the truth; the whole truth and nothing
10 but the truth; if so please raise your right hand and say, so help me God.

PROF LOUWRENS: So help me God.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Yes. Thank you Chair. Prof Louwrens has been called as an expert witness for the matter that has arisen before the commission. That matter arose in the context of the affidavit provided to the commission by Mr Zethemba Khoza in terms of – in which an allegation is made that he had received four letters of suspension.

20 He – he thinks that the letters were received from Mr Tsotsi but he does not know how. He has provided those letters with the metadata relating to each of those letters in terms of which the author of the letter and of the letters and the last modifier of the letters are mentioned in the metadata.

The commission seeks to have established independently of what has been provided to it by Mr Khoza by way of an expert opting in or expert evidence whether the author of the letter is indeed the person whose name is reflected on the metadata and whether the last modifier of the letter is also the person reflected in the field or that name in the metadata.

And Professor Louwrens is here for that reason Chair.

- 10 **CHAIRPERSON:** Yes no that is fine. And as I understand the issue his evidence also relates to whether there is any basis on which the 00:07:09 said that somebody outside of Eskom had something to do with those letters of suspension.

ADV SELEKA SC: Yes.

- CHAIRPERSON:** Prior to the 11 of March 2015 so the evidence resolved around the suspension of the executives and if so what is the basis for saying that or there might not be a scientific or technical basis so that then that is
20 part of what Professor Louwrens will assist us on.

ADV SELEKA SC: Yes.

CHAIRPERSON: Using the – the suspension letters that you have referred to. Okay alright.

ADV SELEKA SC: Correct.

CHAIRPERSON: Thank you. You may proceed.

ADV SELEKA SC: Thank you. Prof Louwrens once again thank you for your availability in assisting the commission. Could you please by way of a background just state your qualifications and your expertise relevant to the assessment that you have been asked to perform.

PROF LOUWRENS: Certainly. So I am – I own a consulting firm called Quintessence Digital Forensics so I have had that for the past five years and it is basically why I am also involved in the – the commission because of my
10 involvement there.

But my background...

CHAIRPERSON: You said you have had the consulting firm of how long?

PROF LOUWRENS: Five years.

CHAIRPERSON: Five years.

PROF LOUWRENS: Yes.

CHAIRPERSON: Okay alright.

PROF LOUWRENS: But prior to that I was involved in the industry. I was in the military for a number of years where
20 I have – was in the military intelligence and also did a computer for – not computer forensics but computer security and I then worked for a major bank as a Chief Information Security Officer for a number of years. In that role I also managed the digital forensics function of that bank and I hold the following qualifications. First of all a

BSC or a BA Military Science, a BSCF Honours Computer Science. MSC Computer Science and then a PhD in computer science.

CHAIRPERSON: You – you mentioned BA is it BA Military Science or is it BSC Military Science? I see in the affidavit.

PROF LOUWRENS: It is BA.

CHAIRPERSON: It is BA so that should be corrected.

PROF LOUWRENS: This is – that should be corrected.

10 **CHAIRPERSON:** Okay I will sort that. Okay. And your consulting firm is in what sector? What does it do?

PROF LOUWRENS: It is in digital forensics.

CHAIRPERSON: Yes.

PROF LOUWRENS: So I do forensic investigations.

CHAIRPERSON: Yes.

PROF LOUWRENS: And analysis of well criminal cases, civil cases etcetera.

CHAIRPERSON: Ja. Okay. Mr Seleka.

ADV SELEKA SC: Thank you. Mr Bergs you have – oh
20 Professor Bergs you have – oh Louwrens you have provided the commission with an affidavit. Your affidavit Chairperson is found in Eskom Bundle 19 page 355. Are you there Prof Louwrens?

PROF LOUWRENS: I have got it.

PROF LOUWRENS: The affidavit runs up to page 370 –

370. I saw you follow the black pagination on the left hand corner – top left hand corner.

PROF LOUWRENS: Okay I have got it.

CHAIRPERSON: You speaking too softly Mr Seleka.

ADV SELEKA SC: You have – you found the page – page 370?

PROF LOUWRENS: I have got it.

ADV SELEKA SC: The affidavit – well on that page a signature appears above the name Cecil Petrus Louwrens
10 you see that?

PROF LOUWRENS: Yes.

ADV SELEKA SC: Do you confirm that to be your signature?

PROF LOUWRENS: That is correct.

ADV SELEKA SC: The affidavit is dated 19 April 2021 you confirm this to be your affidavit?

PROF LOUWRENS: I do.

ADV SELEKA SC: And you confirm the correctness of the contents thereof?

20 **PROF LOUWRENS**: I do.

ADV SELEKA SC: Thank you. Chairperson I beg leave to have the affidavit ...

CHAIRPERSON: Before that you want to let him confirm that it has got annexures and just to identify to say from what page to what page the annexures run.

ADV SELEKA SC: Yes.

CHAIRPERSON: Just so that I am sure which ones are his annexures which documents are not his annexures.

ADV SELEKA SC: Correct Chair. Prof Louwrens the affidavit also has annexures to it starting from page 371 you see that?

PROF LOUWRENS: That is correct.

ADV SELEKA SC: And there is a number of annexures to your affidavit up to page 421.

10 **PROF LOUWRENS:** That is correct.

ADV SELEKA SC: You see that virtually is the confirmatory affidavit of one Nondumiso Zibi, you see that?

PROF LOUWRENS: Yes.

ADV SELEKA SC: There is also a confirmatory affidavit on page 423 apparently it is the unsigned one. We have the signed one here of Mr Tshepo Moleko.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: Yes see that. Chairperson while we are there we have the signed copy of Mr Moleko's affidavit –
20 confirmatory affidavit which I shall beg leave to hand up.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: To replace the unsigned one.

CHAIRPERSON: Ja that is fine.

ADV SELEKA SC: Thank you. And so the last annexure Prof Louwrens is then the affidavit of Mr – confirmatory

affidavit of Mr Moleko on page 423.

PROF LOUWRENS: That is correct so.

ADV SELEKA SC: Is that correct. Thank you Chair then Chairperson I beg leave to have this affidavit of Professor Louwrens admitted as Exhibit U42.1. Chair well the reason I am pausing is because it is already marked Exhibit 42 – U42.

CHAIRPERSON: Oh but it should be 42.1.

ADV SELEKA SC: .1 yes. Thank you Chair.

10 **CHAIRPERSON:** Okay. Okay. Well that correction must be made so that there is no confusion.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay the affidavit of Professor Cecil Petrus Becks Louwrens which starts at page 355 is admitted as an Exhibit and will be marked as Exhibit U42.1.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Thank you. Prof Louwrens.

20 **CHAIRPERSON:** He has told us already about his academic qualifications.

ADV SELEKA SC: Yes.

CHAIRPERSON: He had told us about his consulting firm and what sector his consulting firm is involved in. I think you can take it from there in terms of completing the

qualifications as an exception.

ADV SELEKA SC: Thank you Chairperson. Prof Louwrens we – we see from your affidavit that you have also been involved in academics.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: Yes.

PROF LOUWRENS: I have – I have been involved at the University of Johannesburg specifically lecturing digital forensics at Honours level and also computer security, risk
10 management and a computer project management.

ADV SELEKA SC: Yes. So your – your background and I am talking educational – from an educational point of view your career is in IT.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: Can you explain to the Chairperson when you talking about digital forensics what exactly does that refer to?

PROF LOUWRENS: It is a similar field than normal forensics. The same principles apply but the techniques
20 are different and obviously we have to rely a lot on technology and specific tools. So that then means that you would investigate say for instance a hard drive and that is a computer disc from the suspect or whatever the case might be and the hard drive would then be analysed in detail as in terms of the consistency, the metadata and that

is the data about data so say for instance we have got a file or a word document – that word document is associated with other information or other data which is called metadata which in fact describes that document.

So if we want to know more about that document and the contents how it was created and who created it the metadata can actually provide us with some information to that extent.

And then if we have access to a computer the whole
10 disc you could also then get corroborative information in terms of the file system and you could then see if it is consistent and if that is consistent that would lead us to make certain deductions from that.

But it is basically a 00:19:15 of facts from digital media.

ADV SELEKA SC: Okay.

CHAIRPERSON: Yes continue I will come back to this later but I think continue the qualification.

ADV SELEKA SC: And so how long were you – were you
20 employed at the University?

PROF LOUWRENS: I was employed as a visiting professor.

ADV SELEKA SC: As a visiting professor.

PROF LOUWRENS: Yes.

ADV SELEKA SC: For how long?

PROF LOUWRENS: Fifteen years.

CHAIRPERSON: That is from when to when the fifteen years?

PROF LOUWRENS: That was from 1990 – ag 2004 to 2019.

CHAIRPERSON: Okay. 2004 to 2009?

PROF LOUWRENS: 19.

CHAIRPERSON: Oh 2019.

PROF LOUWRENS: 19 yes.

10 **CHAIRPERSON:** Okay alright. Okay alright. And throughout that period were you lecturing on computer science, IT, forensics digital forensics, forensics? You were covering those?

PROF LOUWRENS: Yes that is correct.

CHAIRPERSON: Okay. And some of the students that you were teaching were doing Honours – were at Honours level?

PROF LOUWRENS: Yes.

20 **CHAIRPERSON:** And any – any students were doing Masters and Doctorates that you might have supervised and promoted?

PROF LOUWRENS: I did. I supervised a few Master students and a few PhD students.

CHAIRPERSON: Okay. Okay. Alright continue Mr Seleka.

ADV SELEKA SC: Have you – have you yourself read any

articles on the – on the – in the field Digital Forensics and IT?

PROF LOUWRENS: Yes I did specifically the articles that were presented at International conferences and I also contributed to a chapter in one of the IFIP that is International Federation for Information Processing book.

CHAIRPERSON: Well maybe you – you can just give us the title of the book and if you able to and then maybe the title of the chapter that you wrote?

10 **PROF LOUWRENS:** Okay.

CHAIRPERSON: If you can remember.

PROF LOUWRENS: I have – I will get you the...

CHAIRPERSON: Otherwise you can just supply.

PROF LOUWRENS: The precise – ja it is about the latest developments in – into the forensics and the chapter was about the framework for evaluating these 00:22:12 forensics written at [?].

CHAIRPERSON: Okay other than the chapter that chapter in a book in that book and papers that you delivered at
20 international conferences would there be other – would there be articles that you have published in articles or in journals or – that fall within the – the sector of forensics, digital forensics, computer science and ja let us deal.

PROF LOUWRENS: Specifically in computer science I published an article on how to protect a computer by using

the – let us call it the biological model for computer security. So that enables the computer to protect itself.

CHAIRPERSON: Okay alright. Yes Mr Seleka.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Or maybe just before Mr Seleka proceeds just for the sake of completeness what is the name of your consulting firm?

PROF LOUWRENS: It is Quintessence Digital Forensics.

CHAIRPERSON: Yes okay alright. Continue Mr Seleka.

10 **ADV SELEKA SC:** Thank you. Prof Louwrens then talking of digital forensics and which involves looking at the metadata and making an investigation how often would you have done that sort of an investigation?

PROF LOUWRENS: Evidence of metadata ...

CHAIRPERSON: I am sorry, I am sorry Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: Maybe you should just cover what he has got to say under paragraph 4 up to 8 because it covers the other matters relating to his qualification as an expert. I
20 think some you may have covered but you can just check make sure we cover all of them.

ADV SELEKA SC: Yes.

CHAIRPERSON: Otherwise he can just give that evidence.

ADV SELEKA SC: Prof Louwrens you see – we go back to page 355 from paragraph 4 you mention there that you

have more than 41 years' experience in security and related fields in financial services industry and military comprising and then you give a list. Let us – let us deal with security which I think is what you deal with in 4.1. When you say security what are you referring to – experience in security?

PROF LOUWRENS: There are basically three types of security. The first would be physical security which we all know that physical guarding, alarm systems, CCTV systems
10 and access control. Then there is the next one would be personnel security which is screening of personnel, making sure that background checks are done and that the people are say – or are what they purport to be. And the third one would be computer security or information security in use interchangeably where it goes about the protection of computers, access control to computers their systems, the file to be able to monitor what happens on computer systems and to protect against viruses and malware.

CHAIRPERSON: And of the 28 years compared to in
20 paragraph 4.1 how many of those years relate to the last part that you said computers and 00:26:51.

PROF LOUWRENS: Computer security.

CHAIRPERSON: Yes.

PROF LOUWRENS: I was if information security officer since 2010.

CHAIRPERSON: 2010?

PROF LOUWRENS: 10 yes.

CHAIRPERSON: Yes okay.

PROF LOUWRENS: But prior to that I was always involved to a certain extent in information security.

CHAIRPERSON: Okay alright. Continue Mr Seleka.

ADV SELEKA SC: Then you mention in paragraph 4.2 that you have nine years in intelligence and information security in military environment. I know that you did touch
10 on the military environment could you elaborate a little more what the intelligence and information security in that environment would entail?

PROF LOUWRENS: It was early years in the military in terms of computer security. This is a new field. I just completed my degree at Stellenbosch University Saldanha and I was then requested to write the first information security policy for the Defence security. So I started off in the information security in 1986.

ADV SELEKA SC: 19?

20 **PROF LOUWRENS:** 86.

ADV SELEKA SC: So you would have then been employed by the South African Defence Force?

PROF LOUWRENS: That is correct.

ADV SELEKA SC: Ja. Well what is it that you did when we – we talking intelligence and information security?

PROF LOUWRENS: In terms of information security the first job that I had to do is to write a policy for information security. How to do it, what needs to be done, what the responsibilities are? Because the policy that govern information security or computer security as it was called at that time. In military intelligence basically we monitored of the external events in the vets to the country etcetera and also the computer security relates to that because as we were using computer systems it could have been
10 threatened and it could have been abused and accessed and hacked although at that time hacking was not – not a known term it just became more known later on.

ADV SELEKA SC: And you have five years you say in digital consulting. So you would have consulted in Digital Forensics which you have already explained.

PROF LOUWRENS: Yes.

ADV SELEKA SC: Now can you tell the Chairperson which years are those, if you can recall?

PROF LOUWRENS: Which year?

20 **ADV SELEKA SC:** Ja, you said five years.

PROF LOUWRENS: Yes.

ADV SELEKA SC: From which year to which?

PROF LOUWRENS: 2016.

ADV SELEKA SC: Yes. And in paragraph 5 you say you have the following Digital Forensic Certificates, Access

Data, Certified Examiner and EnCase Certified Examiner.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: Yes. So this – what does this certificate means, you are an Examiner?

PROF LOUWRENS: Yes, I am qualified to be an Examiner using those specific products and those are two of the more known products in the digital forensics environment.

ADV SELEKA SC: And what products are you referring to?

10 **PROF LOUWRENS**: The first product is Access Data and the second one is In-Case, EnCase Forensics. So the Access Data Certified examines the ACE qualification and then the EnCase Certified examines the ENCE qualifications. So both of those require examination and you can only be certified if you pass that examination. It involves a practical component as well.

ADV SELEKA SC: Are you able to give the Chairperson inside into what is being referred to as Access Data?

PROF LOUWRENS: Access Data is one of the leading
20 products in the digital forensic tools market. It provides you with a platform or the ability to analyse data, hard-drives, data that you capture from other electronic media and then to categorise it and to display it in a way that is understandable and also to report on it.

ADV SELEKA SC: So by way of an example, what sort of

data?

PROF LOUWRENS: So say for instance there is a question about if somebody did something on a computer, we could then access the logs on that computer and look at that event and see if that event correlates to the action that the person is accused or is purported to have done. We can also then display the actions, the time, the specific time that it happened.

We can also see from that that computer was
10 connected to any other computer on the network, any other device that are connected to it, for instance a USB stick. If you connect that, it is recorded. So I can show that that is what happened. I can also identify ...[indistinct] via the serial number that is supported.

ADV SELEKA SC: So the two, is it a software application?

PROF LOUWRENS: It is a software tool. It is actually a suite of products.

ADV SELEKA SC: Oh.

20 **PROF LOUWRENS:** That can – ja.

ADV SELEKA SC: And then the EnCase. If you could also explain what it entails.

PROF LOUWRENS: EnCase is similar. It has got the same purpose and it has got much of the same functionality. It is just two different tools. It is like having

two sets of spanners. The one you use for this and the other for the other. So the reason why we in the forensic world like to use more than one tool is to verify our results and make sure that it is actually correct and if there any anomalies we will be able to explain that.

So EnCase the same functionality. It has some strengths in certain areas and it is less well-versed(?) in others, for instance. But if you use both of those tools you will get to the correct answer.

10 **ADV SELEKA SC:** Then regard to the assessment that the Commission had required you to do, did you have to use any of these tools?

PROF LOUWRENS: Yes, I did. I specifically used EnCase because it displayed the information to the metadata that we needed to look at.

ADV SELEKA SC: So then ready to go into. [laughs]

PROF LOUWRENS: [laughs]

CHAIRPERSON: Ja-no, that is fine. Before – I guess this would be the right time for me to... I see that in your
20 affidavit footnote 1 you tell us what metadata is. You say metadata is that provides information about other data. In this case it is data about before MS Word documents in question.

PROF LOUWRENS: That is correct, yes.

CHAIRPERSON: Is that right?

PROF LOUWRENS: [No audible reply]

CHAIRPERSON: Now, if you are given a document and you have to establish in which computer or which computer was used to type, your expertise enables you to do that?

PROF LOUWRENS: No, that is not that easy to do. It depends on the document itself.

CHAIRPERSON: Oh, okay. So in some cases you can?

PROF LOUWRENS: In some cases you can?

CHAIRPERSON: In some cases you cannot?

10 **PROF LOUWRENS:** In some cases you cannot.

CHAIRPERSON: Okay.

PROF LOUWRENS: And – ja, we can talk about this case if you want to.

CHAIRPERSON: Yes, yes. So we will come to that. Ja, I think that is fine. Maybe – well, let us talk about this case and then we will take it from there.

PROF LOUWRENS: Alright.

CHAIRPERSON: Ja. Mr Seleka.

20 **ADV SELEKA SC:** Thank you, Chair. Yes, Prof Louwrens you were given an email ...[intervenes]

CHAIRPERSON: Well, I wanted to say earlier on and I did not say it, Mr Seleka and Prof Louwrens.

ADV SELEKA SC: Yes.

CHAIRPERSON: That I hope Prof Louwrens will not be embarrassed in any way by this. I wanted to say: Well,

some of the people have said the Commission has got some of the best investigators and I just wanted to say: Well, look at this qualifications, you see why they say that. [laughs]

PROF LOUWRENS: Thank you. It is a compliment.

ADV SELEKA SC: Prof Louwrens. [laughs]

CHAIRPERSON: Yes. [laughs] Yes, thank you.

ADV SELEKA SC: Ja. Prof Louwrens, you were given then an email with four letters attached to it.

10 **PROF LOUWRENS:** That is correct.

ADV SELEKA SC: The four letters titled: Pre-suspension Letters.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: And you were, together with those letters, provided with the metadata that we have also received with the letters from one of the witnesses.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: Yes. You referred to those letters in paragraph 11 of your affidavit. And what I would like you
20 to do for the purposes of evidence is to take us through each letter ...[intervenes]

CHAIRPERSON: Well, maybe before that Mr Seleka. I think it is important that he deals with ...[indistinct] which is, I think, where he articulates what he understood his mandate to be ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: In terms of what he was asked to do.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Do you want to deal with that Prof Louwrens, what you understood your task to be?

PROF LOUWRENS: I will, Chair. So I have been tasked to conduct a forensic assessment of the Metadata of four Microsoft Word documents that were submitted into evidence into the Commission. The four Word documents
10 were attached to an email and I have got the images of that attached to Annexure CL-1 here.

So as the first part of the annexure CL-1 contains an email that has been attached and forwarded. The second part of the annexure contains the email itself. In other words, the original email contained another email that was forwarded as an attachment. So it was an email within an email.

And it was in the second emails where four documents attached and those are the documents that I
20 have been asked to look at.

CHAIRPERSON: Take it from there, Mr Seleka.

ADV SELEKA SC: Yes. Let us go to CL-1 quickly while we are here which is on page 371.

CHAIRPERSON: What is the page? 371?

ADV SELEKA SC: 371, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: So Prof Louwrens, you say the four MS Word documents are attached to an email, images of which are contained in Annexure CL-1. So on that page 371 is an annexure marked CL-1. Do you see that?

PROF LOUWRENS: Yes, I do.

ADV SELEKA SC: Is this what you are referring to as images of which – images of an email?

PROF LOUWRENS: That is correct. So the top portion of
10 that is the image of the email. That is the first email that contains an attachment. You can see little yellow block.

ADV SELEKA SC: Yes.

PROF LOUWRENS: And that yellow block refers to the next page which is 372 which is the email containing the four documents.

ADV SELEKA SC: Is that yellow block the one titled Special?

PROF LOUWRENS: That is correct. Special Docs.msg.

ADV SELEKA SC: Msg.

20 **CHAIRPERSON:** H'm.

ADV SELEKA SC: Sorry. Just carry on. You were saying the next page is?

PROF LOUWRENS: The next page is actually that yellow block.

ADV SELEKA SC: Oh.

PROF LOUWRENS: That email is contained in that yellow block. So if you open that yellow block you will find the next one on page 372.

CHAIRPERSON: I am sorry. I am sorry. Going back to page 371, that is still with the yellow block. You have got something written there. What is that Prof Louwrens?

PROF LOUWRENS: We have got the sender ...[intervenes]

CHAIRPERSON: Who is reflected as?

10 **PROF LOUWRENS:** As khozazw@eskom.co.za.

CHAIRPERSON: Yes, and the subject?

PROF LOUWRENS: The subject: Special Docs.

CHAIRPERSON: And the message there?

PROF LOUWRENS: And there is a message ID which is a long stream of letters.

CHAIRPERSON: Yes.

PROF LOUWRENS: Which uniquely identifies that message to the mail system.

CHAIRPERSON: Ja.

20 **PROF LOUWRENS:** And then it is the to field.

CHAIRPERSON: Ja.

PROF LOUWRENS: It is Veneto, venete@kleininc.co.za.

CHAIRPERSON: Yes, okay alright. What do you make of that information there? What does that information mean? Namely, what appears next to the yellow block as the

information underneath that?

PROF LOUWRENS: It means that an email was sent from an email box called khozazw@eskom.co.za

CHAIRPERSON: Yes.

PROF LOUWRENS: To an email box called venete@kleininc.co.za.

CHAIRPERSON: Okay alright.

PROF LOUWRENS: Yes, continue Mr Seleka.

ADV SELEKA SC: Yes. So then you say when you click
10 on the yellow box ...[intervenes]

PROF LOUWRENS: Ja.

ADV SELEKA SC: ...it opens up to what?

PROF LOUWRENS: That is correct.

ADV SELEKA SC: Ja, it opens up – you were saying the page – I mean, the documents from page 372.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: And what do we find there in the yellow folder or box?

PROF LOUWRENS: We have then an email that was
20 attached and the email was from an email address called sethembe@khoza which is then the same address, the previous one, khozazw@eskom.co.za. And then we have got four Word documents attached, the little W in the blue boxes. It is very small but that you can make it.

And then it is a Word document. And the

document, the first one is called pre-suspensiondm.docx. The second one is called pre-suspensionfd.docx. The third one is called pre-suspensionkm.docx. (pre-suspensionmk.docx)

ADV SELEKA SC: Is it MK?

PROF LOUWRENS: Sorry, correct. And the third – the fourth one is pre-suspensiontm.docx.

ADV SELEKA SC: Yes. This email you are referring you, could you determine where it came from or was the
10 addressor and the addressee?

PROF LOUWRENS: Yes, in the sense that we looked through the evidence that we got from the Commission's systems, evidence previously seized from Eskom. I could discover that the same documents and I could actually find this email in the mailbox of this khozazw@eskom.co.za.

ADV SELEKA SC: And who was he addressing the email to?

PROF LOUWRENS: It was exactly the same here as venete@kleininc.co.za.

20 **ADV SELEKA SC:** I see. Yes. And you have a date for this exchange of email?

PROF LOUWRENS: Yes, let me just go through this.

ADV SELEKA SC: Is that the 14th?

PROF LOUWRENS: 14th of March 2015 at 13:20 but that Universal Central Time ...[indistinct] add two hours from

local time.

CHAIRPERSON: I am sorry. That date – that time is for what, for the sending of an email or what?

PROF LOUWRENS: It was the email that – the image here ...[intervenes]

CHAIRPERSON: Ja.

PROF LOUWRENS: ...that was sent at that date and time.

CHAIRPERSON: Yes, that was on the 14th of March.

PROF LOUWRENS: 14th of March 2015.

10 **CHAIRPERSON**: Yes. And what time?

PROF LOUWRENS: 13:20.

CHAIRPERSON: Yes.

PROF LOUWRENS: 36.

CHAIRPERSON: Yes.

PROF LOUWRENS: Plus two hours. So ...[intervenes]

CHAIRPERSON: Oh, I see.

PROF LOUWRENS: ...in South African time it will be 15:20.

20 **CHAIRPERSON**: Oh, okay. Okay alright. Okay. Thank you. You may proceed.

ADV SELEKA SC: Thank you. Then Prof Louwrens, the documents ...[indistinct] were documents you have indicated as pre-suspensions, FD, MK and TM. If you click on that, let us say the DM one first, what do you find?

PROF LOUWRENS: It is a document that purports to be a

pre-suspension document addressed to addressees.

ADV SELEKA SC: Ja, just look at page 373.

CHAIRPERSON: Page 373?

PROF LOUWRENS: 373 ...[intervenes]

CHAIRPERSON: Where there are three suspension letters. Is that right?

PROF LOUWRENS: Ja.

CHAIRPERSON: Okay.

PROF LOUWRENS: Right. And so, if we look at CL-2, the
10 pre-suspensiondm.docx. It is a document from reportedly
Dan Marokane to Projective Capital dated the
11th of March 2015.

CHAIRPERSON: You did say addressed to him, né, not from?

PROF LOUWRENS: Ja, addressed to Dan Marokane.

CHAIRPERSON: Yes. And the date given is
11th of March 2015 on the document?

PROF LOUWRENS: Correct.

CHAIRPERSON: Okay.

20 **PROF LOUWRENS:** And it is an invitation to a pre-suspension meeting.

CHAIRPERSON: H'm?

PROF LOUWRENS: In a – two points follow.

CHAIRPERSON: Yes?

ADV SELEKA SC: That is the document, reading:

“Dear Mr Marokane. Invitation to a pre-suspension meeting..”

Correct?

PROF LOUWRENS: That is correct.

CHAIRPERSON: Yes. For the sake of completeness because I think they are the same, is it not?

PROF LOUWRENS: Yes.

CHAIRPERSON: I think let us read one into the record.

Prof Louwrens, would you please just read that one into
10 the record.

PROF LOUWRENS: The whole letter?

CHAIRPERSON: Ja.

PROF LOUWRENS: Okay.

CHAIRPERSON: That one of Dear Mr Marokane.

PROF LOUWRENS: Okay.

“Dear Mr Marokane. Invitation to a pre-suspension meeting.

The company is presently conducting an investigation into allegations of misconduct
20 allegedly committed by you.

The allegations of misconduct which will be investigated relate to, amongst others, the following.

1.1. As the Chairman of the Emergency Committee, you have been negligent in the

management of the electricity system during the times of emergency that resulted to unnecessary load-shedding.

1.2. You were grossly negligent in managing the Bill Programme for Medupi that has resulted in delays and cost overruns.

10 1.3. You acted irregularly in administrating and managing the coal purchase contracts to the detriment of Eskom.

2.The company has not completed their investigations. The purpose of the investigations is to establish whether there are grounds for disciplinary action and in regard to that:

2.1. [Indistinct] of the allegations and

20 2.2. The possibility that your presence may jeopardise the investigation into the alleged misconduct.

The company is of the view that you should be suspended on full pay pending the finalisation of the investigation.

3. You are temporarily suspended until further notice.

4. You are invited to make a representation to the Chairperson of the Board of Directors.

5. The meeting will be held on 12 March 2015 at 09:45.

6. During the meeting you will have the following rights:

6.1. You are entitled to be present at the meeting.

10 6.2. You are entitled to be represented at the meeting by a fellow employee or an employee representative.

6.3. You are entitled to have the facility of an interpreter if so required.

6.4. You are entitled to confer with your representative at reasonable times before, during and after the meeting.

20 6.5. You are entitled personally or through your representative to question us as to the reasons why we believe that you should be suspended.

7. We envisaged that our investigation should be completed within a period of four weeks..."

And then ...[intervenes]

CHAIRPERSON: Yes. There is no name for the but there is a space and then there is a sentence saying:

“I, Dan Marokane, acknowledges receipt of this notice in the suspension hearing.”

And a space is provided for his signature and date. There is a space provided for the signature of the person serving the notice but those were not signed. Okay. I see they are not exactly the same in terms of the allegations.

ADV SELEKA SC: The allegations. That is right, Chair.

CHAIRPERSON: Ja. Let us deal with this for now and
10 then, this one, and then we take it from there. Or unless we should – you think we should deal with all of them and then you want to deal with all of them?

ADV SELEKA SC: I think so, Chair.

CHAIRPERSON: Okay. Then ...[intervenes]

ADV SELEKA SC: On the others ...[intervenes]

CHAIRPERSON: Then continue.

ADV SELEKA SC: Yes.

CHAIRPERSON: Then continue, Mr Seleka. Just proceed as you intended to.

20 **ADV SELEKA SC:** Yes. Prof Louwrens, so that would be the first annexure to the email on page 372. The other annexures – there is another on titled pre-suspensionfd. Look at page 377.

PROF LOUWRENS: That is correct.

CHAIRPERSON: Well, before you go to 377. Would you

let him tell me what the document at 375 represents?
Which comes immediately after the letter he has just read.

ADV SELEKA SC: [Speaker moves away from microphone
– unclear.]

PROF LOUWRENS: Page 375, we have got the metadata
...[intervenes]

CHAIRPERSON: Ja.

PROF LOUWRENS: ...extracted from that document.

CHAIRPERSON: Oh, okay.

10 **PROF LOUWRENS:** Yes.

CHAIRPERSON: Okay. And that is the metadata that you
used to interpret and come to certain conclusions?

PROF LOUWRENS: That is correct.

CHAIRPERSON: Okay alright. That is fine. And are they
at 376 and 376?

PROF LOUWRENS: Yes. What I did there then, we have
got two systems as – the one is the – the one that I have
extracted(?) the EnCase.

CHAIRPERSON: H'm?

20 **PROF LOUWRENS:** And on 376, is our system relativity
...[intervenes]

CHAIRPERSON: Ja.

PROF LOUWRENS: ...of extracted metadata
...[intervenes]

CHAIRPERSON: Yes.

PROF LOUWRENS: And what is important there is that the on 376 at the bottom the MD5#.

CHAIRPERSON: Yes.

PROF LOUWRENS: I will explain what the hash(#) is. The hash is like a fingerprint for a document.

CHAIRPERSON: Ja?

PROF LOUWRENS: It is a unique number that represents the document. If one bit changes in that document then that number will change.

10 **CHAIRPERSON:** Okay.

PROF LOUWRENS: So it is important that that number is the same as the number that – the document that I actually investigated.

CHAIRPERSON: Okay.

PROF LOUWRENS: So you would see that on page 375, the second line of that table is an MD5#.

CHAIRPERSON: Yes?

PROF LOUWRENS: And in the last line of 376 is also an MD5# and those hashes are exactly the same.

20 **CHAIRPERSON:** Okay.

PROF LOUWRENS: Which is important because that means that I have dealt with exactly the same document.

CHAIRPERSON: Okay.

PROF LOUWRENS: And that also referred to that document and if we go into the evidence later on the other

expert report, they also use that MD5 to identify the documents. So it is important just to note that those documents are exactly the same.

CHAIRPERSON: Okay, okay. Okay. Yes, Mr Seleka.

ADV SELEKA SC: Yes. Chairperson, I think we can go into the metadata ...[intervenes]

CHAIRPERSON: Yes, let us go there.

ADV SELEKA SC: So Prof Louwrens, you were asked to conduct digital forensic assessment of the metadata. You
10 are saying at page 375 – and we will deal with each letter at one time – page 375 is the metadata in relation to the letter pre-suspension dm.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: That is addressed to Mr Dan Marokane.

CHAIRPERSON: Just before you proceed. Just to make sure one can follow. You have said that – you have confirmed that you were asked to conduct a forensic – digital forensic assessment. Is that the correct?

PROF LOUWRENS: That is correct.

20 **CHAIRPERSON:** Yes. When a person conducts that assessment, digital forensic assessment, what would they be looking for? You conduct that assessment in order to get what? To achieve what? What is the outcome of such an investigation?

PROF LOUWRENS: Chair, in this case, I have only had

the actual Word documents.

CHAIRPERSON: H'm?

PROF LOUWRENS: And obviously the email.

CHAIRPERSON: Yes.

PROF LOUWRENS: Okay. So what – let us deal with the Word documents first.

CHAIRPERSON: H'm, h'm. And you must take it that I know nothing about IT and so on. So do not feel that you should not explain some of the basic terms to me.

10 **PROF LOUWRENS:** I will do that.

CHAIRPERSON: Ja.

PROF LOUWRENS: So the Word documents, it is Microsoft Word. It is a product from Microsoft. It is part of the Office products, Microsoft Office. And it is widely used as word processing tool, called software. Now what is specific about the documents that we are dealing with here is they are docx. If you look at the latter part of the name it is the name of the document and then it has got a docx. That qualifies that document as a certain type of Word
20 document. Now docx is the latest standard that is used in Microsoft Words. And it also then indicates that it is certain metadata, EXIF, we call it EXIF metadata which is imbedded in that document which you could then investigate. So by using digital forensic tools, like in Face for instance, you could then extract that information.

Information is also visible or some of the information is also visible on the document itself if you go into the document and you go into what we call info, file info, it will display a page and the page will then display who created the document and who last modified the document.

CHAIRPERSON: So you use some instrument to look at the document.

PROF LOUWRENS: That is correct, yes.

10 **CHAIRPERSON:** And then you can see certain images and information.

PROF LOUWRENS: Yes.

CHAIRPERSON: Okay. And that information would tell you a number of things including who may have had something to do with the document in one way or another.

PROF LOUWRENS: Yes.

CHAIRPERSON: Okay.

PROF LOUWRENS: So if you look at the table, 375, that is the information that I would then extract or could extract
20 from the document.

CHAIRPERSON: Yes.

PROF LOUWRENS: So I do not know if you want me to deal with that.

CHAIRPERSON: And using what we just talked about or using a number of instruments?

PROF LOUWRENS: A number of instruments.

CHAIRPERSON: Ja.

PROF LOUWRENS: I use – normally using Face but, as I said, I verify it and I verify this specifically with another tool to make sure that I understand it correctly because it is also a bit open to interpretation, they do not always give you all the information, maybe they – say for instance you get a value of 3, the question is, what does it mean? You have to corroborate with other tools to see three minutes,
10 for instance.

CHAIRPERSON: Okay, alright. Continue, Mr Seleka.

ADV SELEKA SC: Prof Louwrens, just before you move on, does it mean if I do not have the NKS tool on my computer, I will not be able to generate this information or to come up with – to pull out this information.

PROF LOUWRENS: No, you could use various other tools to actually do this but Encase enables you to do that.

ADV SELEKA SC: Yes – just say that – you could what?

PROF LOUWRENS: You could use a number of other
20 tools also to extract other [indistinct – dropping voice]

ADV SELEKA SC: Yes, what I am asking you is, take my standard laptop.

PROF LOUWRENS: Yes.

ADV SELEKA SC: I buy it from whichever shop. I have the normal word processing, Microsoft, but I do not have

the tools you are referring to. Does it mean without those tools I will not be able here to extract this information?

PROF LOUWRENS: You would be able to extract some of the information, not all of it because Word does actually display some of the information.

ADV SELEKA SC: I see. So then let us go to – clearly in this case you are given the emails and you were given the attachments to the emails. You are then asked to do or conduct digital forensic assessment of the metadata in
10 relation to what you have been given. Tell the Chairperson what then – what should we understand you to be doing when you conduct a digital forensic assessment in relation to the documents that you were given, do you know - firstly, is what we understand you to be doing and secondly, what is the objective in your exercise?

PROF LOUWRENS: In this case it was specifically to look at who created the document and also who last modified the document but also, if we look at any analysis you would also always look at time, when it was done, does it
20 make sense? For instance, was the document created before the email was sent because it is impossible to have it created and if it was created after as in one of the – or some of this metadata indicates, you could maybe look at why the dates are inconsistent and then you have to know a lot about the file system, how it actually creates dates,

changes dates, if you move files from one drive to the other and also if you access the file, how it is updated. So you look at all those things, ancillary things as well. But what is important to note here, these are the values recorded. How they relate to real life is something different so in this case the values recorded for the creator was Suzanne Daniels and the last modified field ...[intervenes]

CHAIRPERSON: And what was the date when she created
10 the document or you are still going to come to that? It is fine if you are still going to come to it.

PROF LOUWRENS: Ja, I can give it to you.

CHAIRPERSON: Ja.

PROF LOUWRENS: I would not be able to say if she created the document.

CHAIRPERSON: Oh, you can say when the document was ...[intervenes]

PROF LOUWRENS: I can give you the create date of the document.

20 **CHAIRPERSON:** Yes, okay, okay.

PROF LOUWRENS: So the create date of the document was 2015, the 10 March, 16.39 and that is also then universal central time, so plus two hours, so it is about – it is 18.39, South African time.

CHAIRPERSON: Okay. Yes, continue, Mr Seleka.

ADV SELEKA SC: Okay. So we will come to that. Let us just lay the groundwork relative to your investigation or forensic assessment. Please go back to page 357.

CHAIRPERSON: 357?

ADV SELEKA SC: 357. So your first task is ...[intervenes]

CHAIRPERSON: I just mention, Mr Seleka, for what it is worth, we – I was hoping we would finish within an hour, I will be having the witness for today in due course. I had
10 said he should be here at half past ten, so - but it is important that we cover this properly.

ADV SELEKA SC: Yes.

CHAIRPERSON: But I thought I must just mention that because when we previously spoke, today was vacant.

ADV SELEKA SC: That is right.

CHAIRPERSON: So I just want you to know that we do not have a lot of time but we must do Prof Louwrens' evidence properly.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** So – okay, let us continue.

ADV SELEKA SC: Yes. Prof Louwrens, page 357, just to lay the groundwork. Paragraph 10 you have already stated what the first purpose is or the first requirement to you was in regard to the documentation that were given to you and then in paragraph 12 you also say that you have also been

asked to express an opinion on the forensic report issued by a company called Cyanre.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: Okay, let us go to paragraph 13, we will come to your opinion in regard to that opinion of Cyanre. Paragraph 13 says:

“The evidence that I examined was forensically acquired and processed.”

When you say forensically, what do you mean quickly on
10 that?

PROF LOUWRENS: What I mean is that we have got a principle that whenever you acquire or source evidence or data you take care not to change anything. So when it is then acquired, that media or disk or whatever is write-protected so that you cannot change it. The tools actually enable you to verify that it has not been changed, so an exact copy of the data.

ADV SELEKA SC: So this will be your again computer-related tools?

20 **PROF LOUWRENS:** Correct.

ADV SELEKA SC: You then say:

“I have examined the chain of custody documentation associated with the evidence and found it intact.”

The chain of custody documentation, what does that mean?

PROF LOUWRENS: Chair it means that whenever we seize data or source data or acquire data we fill in a form which extracts exactly who is involved, what the source of that data, we get the signatures, the timing, the note, the media, the serial numbers, etcetera, on that form and then that documentation that accompanies the evidence to the point where we sign it into our storage facility and we can then verify that the data or this evidence was not tampered with and we know exactly what every hand-off would be
10 from one person to another.

ADV SELEKA SC: So that you confirm in this case was followed and it was found to be intact.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: Turn to page 358. Paragraph 14 you say:

“The email in question was sent from the mailbox of Khoza.”

You have already testified on that.

“...on 14...”

20 Let me read the brackets:

“Khozazw@eskom.co.za, the Khoza email mailbox on 14 March 2014 at 1.20.36 p.m. UTC to Venete@kleininc.co.za.”

Paragraph 16:

“I do not find an email received via the Khoza email

mailbox with the said documents attached to it on the Commission's eDiscovery platform for the purposes of performing my assessment."

Yes, the question is, given what you are saying there, could you see where did Mr Khoza obtain the documents?

PROF LOUWRENS: No, not from the evidence that I had, I could not see that. There are many other ways that he could have gotten that other than receiving it through his email box like for instance another email or a physical USB
10 drive.

ADV SELEKA SC: So are you saying there is not an indication that his email to Ms Venete was an email he was forwarding from somewhere else and then sending it to Ms Venete Klein?

PROF LOUWRENS: That is correct, I could not find any.

ADV SELEKA SC: You could not find.

PROF LOUWRENS: No.

ADV SELEKA SC: So he would have been the creator of that email and then I touched the letters which were sent
20 to Ms Venete Klein.

PROF LOUWRENS: That would be correct.

CHAIRPERSON: I just want to make sure I understand that. Did you have access to his computer and is that what you would need to have access to to see whether he had received documents from somebody else?

PROF LOUWRENS: Yes, Chair, I only had access to the mailbox, the image that we collected from his mailbox.

CHAIRPERSON: Yes.

PROF LOUWRENS: If I had access to his computer, I might find more information relevant to this.

CHAIRPERSON: Yes.

PROF LOUWRENS: For instance if he had other email addresses.

CHAIRPERSON: Yes.

10 **PROF LOUWRENS:** Or if that document resides – or those documents resides on his computer.

CHAIRPERSON: Oh, okay.

PROF LOUWRENS: But at this stage this is all I have, I cannot say.

CHAIRPERSON: Yes. Yes, okay. And about the creator the documents you say there is a possibility that it could be – could have been dated in his computer but you do not know that for sure.

20 **PROF LOUWRENS:** Yes, for the – the reason is that the creator and the last modified metadata can be changed. It is very easy to change and if you know what to do, you can actually change that. So you cannot rely on that on its own. You have to have corroborative information or evidence.

CHAIRPERSON: Yes, yes. But if it has not been changed

it would be giving one information about who created it, if we knew that it had not been changed.

PROF LOUWRENS: If we knew it was not changed. It normally picks up the user of that computer. In other words, if you have an account on that computer you have got a user name but user name is then reflected in those fields and if it not changed it is normally the user name.

CHAIRPERSON: Okay, alright. Thank you. Mr Seleka?

ADV SELEKA SC: So the user name will be the name of
10 the person who uses that computer or who owns the computer.

PROF LOUWRENS: No, I would not go that far. It is the user name that was assigned to that.

ADV SELEKA SC: I see. So my computer could have SLK as the user name as opposed to Pule as the user name.

PROF LOUWRENS: Correct.

ADV SELEKA SC: Is that what you are saying?

PROF LOUWRENS: That is what I say, you can have
20 Mickey Mouse as the user.

ADV SELEKA SC: You can have Mickey Mouse as the user name.

PROF LOUWRENS: Correct.

CHAIRPERSON: But if your computer reflects that – or if a document reflects that – reflects your user name, let us

say your user name is Bucks(?) that does not mean, does it, that that email was necessarily created in your computer, somebody can use another computer and just put in that user name.

PROF LOUWRENS: Correct, you could do that.

CHAIRPERSON: Okay. But if that user name, which happens to be your user name, is reflected in relation to a document that is found in your computer, is that not sufficient basis to say until somebody comes up with
10 evidence that somebody else interfered with this computer, with your computer, you must be the person who created that document. Is that not a basis to say this document is found in Prof Louwrens' computer, it reflects that as the user name, that is the user name that Prof Louwrens uses, therefore until somebody tells me otherwise, I should take it that he created it. Is that – can that – is that something that technologically sound or not?

PROF LOUWRENS: Not from a technological point of view but it is a reasonable assumption if you look at, say for
20 instance, if it was a corporate computer where the user names were defined and where there are specific rules and policies not to share passwords and not to have whole access to that computer then it would be reasonable to hold that person responsible for the actions on that computer. So yes in that sense.

Forensically, there is nothing that I can tell other than if those policies were in place. I cannot say that from the documents.

CHAIRPERSON: And when you refer to policies, that is the corroborative evidence you are talking about in your opinion in your affidavit.

PROF LOUWRENS: Yes, that is correct.

CHAIRPERSON: Yes, yes. So you look at what forensics provide us with and you look at surrounding evidence.

10 **PROF LOUWRENS:** Yes.

CHAIRPERSON: And then you use the two and based on that you might be able – you might be justified to reach a certain conclusion.

PROF LOUWRENS: Correct.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Thank you, Chair. Prof Louwrens, you mentioned having access to the mailbox of Mr Khoza but you did not have access to the computer.

PROF LOUWRENS: That is correct.

20 **ADV SELEKA SC:** Maybe you need to explain to the Chairperson how does that work.

CHAIRPERSON: And what difference it makes to have access to the mailbox and not the computer.

ADV SELEKA SC: Yes.

PROF LOUWRENS: Chair, it makes a huge difference.

What we got was, every big company, corporate environment, has got its own mail management systems, mail servers and so on. So what we have got is a copy of the mailbox on the server, not a mailbox on his personal computer. So I only had access to the mail-related evidence and not to any other system-related evidence that might be on the computer. Now on the computer we would find logs, we would find the master file table. It would provide us with a list of documents on that computer,
10 events, etcetera, that we can corroborate.

We could also look at the specific setup of the users, the access rights of those users, what they could and could not do. So that would make a huge difference in evaluating – if any tampered with a document or if somebody created a document.

We could also look at the templates for that document if that resides on that computer.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Yes, so his mailbox, Mr Khoza's
20 mailbox, were you able to access it from the Eskom server?

PROF LOUWRENS: No, it was actually seized by our investigators and then subsequently loaded onto our Relativity database or eDiscovery platform and I could access it from there.

ADV SELEKA SC: So it was seized from where?

PROF LOUWRENS: From Eskom.

ADV SELEKA SC: From Eskom?

PROF LOUWRENS: Yes.

ADV SELEKA SC: Is that what you are dealing with
...[intervenes]

PROF LOUWRENS: In the chain of custody
documentation.

ADV SELEKA SC: Say again?

10 **PROF LOUWRENS:** In the chain of custody
documentation.

ADV SELEKA SC: In the chain of custody documents.
Page 360, you may turn there quickly, 360 from paragraph
21 to 25, is that what you are dealing with there about
obtaining this – Mr Khoza’s mailbox from Eskom ultimately
to the Commission?

PROF LOUWRENS: Yes, that is correct.

ADV SELEKA SC: So in paragraph 21:

20 “I have located an alternative source of the four MS
Word documents in the email mailbox of Khoza
email mailbox on the Commission’s eDiscovery
platform, Relativity.”

So you call it an alternative source. Explain to the
Chairperson?

PROF LOUWRENS: Chair, the primary source was

documents that we received relating to the submission of those four documents to the Commission and also ...[intervenes]

ADV SELEKA SC: So that means the actual document as provided by Mr Khoza?

PROF LOUWRENS: No. Well, I did not get those actual documents.

ADV SELEKA SC: Yes.

PROF LOUWRENS: I got photocopies of the documents.

10 **ADV SELEKA SC:** So the Eskom work stream provided you with those documents.

PROF LOUWRENS: Electronic copy, yes.

ADV SELEKA SC: And you are saying that is the primary source.

PROF LOUWRENS: Yes.

ADV SELEKA SC: And then the alternative source is what you are referring to here?

PROF LOUWRENS: Correct.

20 **ADV SELEKA SC:** So you went - in your exercise, you went – you did not just relay on the documents given to you, you took a step further.

PROF LOUWRENS: Yes I did because in terms of the electronic analysis I needed electronic copies of those documents.

ADV SELEKA SC: Yes.

PROF LOUWRENS: And as I said previously Cyanre, the other company, provided us with the MD5 hashes for those documents so I could find the exact documents, so I knew I was working with the same documents.

ADV SELEKA SC: Okay. So that is right. Then paragraph 23 explains further:

“The Khoza email mailbox was subsequently forensically extracted and loaded onto the Relativity eDiscovery platform.”

10 And you refer to annexure CL8.

“...for the Relativity container path and unique evidence number recorded on Relativity as...”

And you give the whole number there.

“A copy of the chain of custody document for this unique evidence number as well as its entry in the DFT digital evidence register is contained in annexure CL9 hereto and reflect the following:

The evidence was collated on 22 February 2019 at 14.04 a.m. from one Nondumiso Ubi...”

20 I have seen from the confirmatory affidavit that the spelling should be corrected. Zibi, Chairperson, Z-i-b-i.

CHAIRPERSON: Yes.

ADV SELEKA SC: The Chief Information Officer and also she says she was the Acting Chief Information Officer. You saw that, Prof Louwrens?

“...at the Eskom head office by another DFT..”

That is digital forensic team member.

“...Mr Tshepo Maleku. The evidence was elected on a 1 terabyte Western Digital hard drive with the serial number...”

Which you give there.

“...see the second page of annexure CL9. The evidence was signed into the DFT Commission’s digital evidence register as number 104.”

10 And you refer to the annexure.

“From the above the COC...”

What does COC stands for?

PROF LOUWRENS: Chain of custody document.

ADV SELEKA SC: Chain of ...[intervenes]

CHAIRPERSON: What does it mean?

PROF LOUWRENS: Chain of custody.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: That refers to the process undertaken to obtain the information forensically, is that correct?

20 **PROF LOUWRENS:** That is correct.

ADV SELEKA SC:

“So from the above, the COC or chain of custody seems to be intact and the evidence can be relied upon.”

And you attach the confirmatory affidavits. Okay. So you

are confident that the Commission can rely on this information.

PROF LOUWRENS: I am confident that the chain of custody is intact and that the evidence is what it purports to be.

ADV SELEKA SC: Is what it purports to be. Thank you. So then in the interest of time, maybe you ...[intervenes]

CHAIRPERSON: But remember, Mr Seleka, you have got to do it properly so the interests of time must not
10 compromise the ...[intervenes]

ADV SELEKA SC: Thank you, Chair. Prof Louwrens, let us go to page 358.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Chair. Paragraph 16 you say:

“My examination of the metadata of the four MS word documents attached to the email in question reveal that all four of the MS Word documents were created from the custom office templates folder
20 using the letterhead template GEN2015.EOTX template on a computer with a user name DanielsM.”

CHAIRPERSON: I am sorry, where are you now, Mr Seleka.

ADV SELEKA SC: Page 358, paragraph 16, Chair. Sorry,

Chair.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: But also just remember to let him give the evidence.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Prof Louwrens ...[intervenes]

CHAIRPERSON: Well, at some stage we were on the
10 metadata relating to the first document.

ADV SELEKA SC: Yes.

CHAIRPERSON: I thought that might be quicker if he says this is what the information that has been revealed, this is what it means.

ADV SELEKA SC: Yes.

CHAIRPERSON: About the first document, that pre-suspension letter.

ADV SELEKA SC: Yes.

CHAIRPERSON: Maybe would it not be easier that way?
20 Prof Louwrens, because as I understand it, you looked at that first document, pre-suspension and that document that comes after that is the one that tells you what you find.

PROF LOUWRENS: Yes, that is correct.

CHAIRPERSON: So if we deal with that ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: You will tell us what you found and then we take it from there.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: I think let us do it that way, then we can do that with each one of the letters.

ADV SELEKA SC: Prof Louwrens did not, ja because I thought that paragraph 16 was also important but you will address is in due course.

CHAIRPERSON: You can do paragraph 16.

10 **PROF LOUWRENS:** Yes.

ADV SELEKA SC: Yes, just explain that. What you are saying there in paragraph 16 to the Chairperson, just before we go on to ...[intervenes]

PROF LOUWRENS: Chairperson, it is important the template that was used, it is like a format for that type of document, was stored in a computer which the username is Daniels M. So that is the closest connection I can make to a computer and a user.

20 Obviously I could not say if the user Daniels M is Susanne Daniels.

CHAIRPERSON: Yes, yes. So all you can say is your assessment or investigation of the document revealed this name as the user.

PROF LOUWRENS: Correct.

CHAIRPERSON: On the face of it, and you must just tell

me if I am putting words into your mouth. On the face of it, it means unless there is evidence to the contrary, it one can read it to mean it is Daniels who created it, without saying it is Susanne Daniels who have, or you say whoever created it, used this user name, or is that not correct?

PROF LOUWRENS: Just to be correct, that this template that was used ...[intervenes]

CHAIRPERSON: Yes.

PROF LOUWRENS: Came from a computer with that
10 name, does not mean there is no connection between the creator and the template username.

CHAIRPERSON: Okay. The template used ...[intervenes]

PROF LOUWRENS: Yes.

CHAIRPERSON: To create the document, had that username.

PROF LOUWRENS: Yes.

CHAIRPERSON: That is as far as you can go.

PROF LOUWRENS: That is as far as I can go.

CHAIRPERSON: Yes.

20 **PROF LOUWRENS:** So if I can explain it to you, if I send you a template.

CHAIRPERSON: Ja.

PROF LOUWRENS: That template would reflect or the META data would reflect that that template came from me.

CHAIRPERSON: Ja.

PROF LOUWRENS: If you then use that template to edit a document or create another document.

CHAIRPERSON: Yes.

PROF LOUWRENS: It would reflect your name.

CHAIRPERSON: Yes, yes. Yes, okay alright. Right. If you have sent me a template reflecting your name and I alter it before I send it to somebody else not to reflect your name but to reflect Mr Seleka's name.

PROF LOUWRENS: Only on the creator data or the last
10 modified data. The other date, the template folder name is imbedded so that ...[intervenes]

CHAIRPERSON: I cannot change that.

PROF LOUWRENS: You cannot change, well I cannot say you can never change that.

CHAIRPERSON: Yes, but generally speaking.

PROF LOUWRENS: Generally speaking you cannot change that.

CHAIRPERSON: Yes, so if you have sent me a document using your template reflecting your name, generally
20 speaking if I forward this to somebody else, it would still show that it came from a template with your username.

PROF LOUWRENS: Yes.

CHAIRPERSON: Okay, okay. Okay, so therefore is it correct and you must just tell me where, when I am asking you something that falls outside of your expertise,

therefore what you cannot say is that it was Professor Louwrens who created the document.

PROF LOUWRENS: That is correct.

CHAIRPERSON: That you cannot say.

PROF LOUWRENS: That I cannot say.

CHAIRPERSON: But what you can say is that the template on which it was created, if that is technologically correct to put it like that, the template on which it was created had Professor, had this particular username.

10 **PROF LOUWRENS:** Ja, had a particular username.

CHAIRPERSON: Yes, and then it is up to somebody else to determine who used, whose username was that.

PROF LOUWRENS: That is correct.

CHAIRPERSON: That is something else.

PROF LOUWRENS: Yes.

CHAIRPERSON: Okay, okay. No, that is helpful, ja. Okay, Mr Seleka.

ADV SELEKA SC: Thank you Chair. The, is the template or did the template in this case Prof Louwrens, remain the
20 same?

PROF LOUWRENS: It is impossible for me to say.

ADV SELEKA SC: Yes.

PROF LOUWRENS: I can only say that if you prepare it as to other documents that looks the same, not does not have necessarily the same template name, then there is a small

difference in like the address block below where the names of the directors were reflected, that was absent from the documents that I looked at.

ADV SELEKA SC: What was absent?

PROF LOUWRENS: The address block, if you look at the directors below, at the footer of the document.

ADV SELEKA SC: Yes.

PROF LOUWRENS: There is normally a list of directors and in the documents that I examined, those were absent.

10 That is all that I could maybe pick up. I could not tell if that was part of the original document or not, template or not.

CHAIRPERSON: Okay.

ADV SELEKA SC: Could we quickly go to Eskom Bundle 12 Chairperson, just ...[intervenes]

CHAIRPERSON: Yes.

ADV SELEKA SC: To exhaust this point. Page 50. Prof Louwrens, I want to show you something and you can explain this to the Chairperson. On Eskom Bundle 12,
20 page 50.

CHAIRPERSON: Continue.

ADV SELEKA SC: Yes, there is a document there Prof Louwrens, which appears to be a template as the date enquiries tell. It says dear, it is on Eskom logo. It says:

“Intention to suspend, pending an investigation

into allegations of misconduct.”

And the details are there:

“Eskom has received information in terms of which it is alleged that you committed various acts on misconducts. The allegations relate to the following.”

A space is left open there to fill in:

10 “In the light of the serious nature of the allegations of misconduct against you, I believe that your presence in the work place will have a negative impact on the organisation and your contractual duties. I have therefore taken the preliminary decision to suspend you from work, with full pay pending the outcome of the disciplinary hearing. My preliminary decision to suspend you is informed by the following.”

20 Then a space is left open to complete as well. This appears to be a template, it goes on to page 51 with information to be filled where there are open spaces. Now could you explain to the Chairperson what were you talking about in regard to the information that is not, or that has been excluded from the pre-suspension letters that we are talking about.

PROF LOUWRENS: Chair, if we refer to page 373

...[intervenes]

ADV SELEKA SC: Of Eskom Bundle 19.

PROF LOUWRENS: You would see that there is an image of the pre-suspension, DM.docx and at the bottom of that page, the bottom left there is a black line, a vertical line and right next to it, it is open space, nothing there. If you look at the Eskom file page 50, the document handed to you now.

At the bottom of that page ...[intervenes]

10 **CHAIRPERSON:** Okay, we are now comparing the document with Eskom Bundle 19 page 373, and the document at Eskom Bundle 12, page 50.

PROF LOUWRENS: That is correct.

CHAIRPERSON: Okay.

PROF LOUWRENS: You would see at the bottom of the page 50 document, there is a human resources division and address, etcetera and if you refer to the other one that is absent ...[intervenes]

CHAIRPERSON: Yes.

20 **PROF LOUWRENS:** That is the only ...[intervenes]

CHAIRPERSON: Difference.

PROF LOUWRENS: Difference that I can see from the templates.

CHAIRPERSON: Well, I guess that is one set of information that is not there, but of course the information,

the contents of the two documents the way it is structured does not seem to be the same. It may well be that the substance is the same.

Mr Seleka, I do not know if you have had a chance to compare them in terms of substance.

ADV SELEKA SC: Yes Chair, in terms of particularly the rights of the Employee to be legally represented, to make representations, to just well the wording seems to be the same.

10 **CHAIRPERSON:** Well, the heading on the one at page 50 is intention to suspend an investigation into allegations of misconduct. The one at page 373 the heading is indication to a pre-suspension meeting.

PROF LOUWRENS: Yes.

CHAIRPERSON: Ja, okay. Alright.

ADV SELEKA SC: Yes. Chairperson, you will see what comes before this particular document is an exchange between certain Eskom officials and the attorneys ...[intervenes]

20 **CHAIRPERSON:** The document at page 50.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: The document at page 50 is a correspondence of emails, starting on page 43 in Eskom Bundle 12, where instructions are being given to Bowman

Gilfillan and they have requested to be provided with the suspension policies and the suspension process.

This is what they were provided with. Amongst others ...[intervenes]

CHAIRPERSON: And what date is that? It is 16 March. I see at page 43 ...[intervenes]

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Email dated 16 March.

ADV SELEKA SC: Correct.

10 **CHAIRPERSON:** Yes.

ADV SELEKA SC: And the suspension process. From Mr Neo Tsolanko to Jerry Kapo.

CHAIRPERSON: I see that there is an email at page 44 ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: Of Bundle 12.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: From LC Phule to Phillip Mashego dated 11 March 2015 at 09H27 which says:

20 “Please urgently compile the step by step process to follow when suspending an [indistinct].

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: And when you turn the page to 45 you

see suspension process.

CHAIRPERSON: Yes.

ADV SELEKA SC: And they give the process there. Then on page 47 is what appears to be a template of an intention to effect the suspension pending an investigation.

CHAIRPERSON: Ja.

ADV SELEKA SC: Then you have on page 48 a notice of suspension which is also on the face of it appears to be a template.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: And lastly is that also what appears to be a template on page 50 which is an intention to suspend.

CHAIRPERSON: Ja.

ADV SELEKA SC: So these were exchanged within Eskom and then ultimately with the attorneys Bowman Gilfillan.

CHAIRPERSON: Ja, okay. Okay, let us continue.

ADV SELEKA SC: Prof Louwrens, let us deal then with the META data. When you did, when you performed the forensic assessment of the META data, and you can take
20 the Chairperson to whichever relevant page you wish, particularly in respect of the first letter and explain your findings in respect of your forensic investigation.

PROF LOUWRENS: Thank you. Chair, if we turn to page 375.

CHAIRPERSON: Yes.

PROF LOUWRENS: The suspension DM.docx and I would not go through all of the META data because all of them are not relevant to this case.

CHAIRPERSON: Yes.

PROF LOUWRENS: So I will deal with what is relevant in my opinion.

CHAIRPERSON: Yes, okay and the document at 373 to which the META data relates is a letter addressed to Dan Marokane, Group Executive, Group Capital. Ja, okay.

10 **PROF LOUWRENS:** That is correct, yes. So I have dealt with the MD5 as previously, so that is just to verify that I have been working with the correct document and it was not changed by anybody.

CHAIRPERSON: And when you say it is the same document, that is now the same document that came from the mail box of Xhosa dot whatever.

PROF LOUWRENS: Yes.

CHAIRPERSON: Yes, okay.

PROF LOUWRENS: That and also the same document that
20 Dihandre, the other forensics company evaluated.

CHAIRPERSON: Okay.

PROF LOUWRENS: Right. We have dealt with the template and you can see that the path there, the template path is users and the username in this instance is Daniels M / documents.

CHAIRPERSON: Just tell me where about in the, on the page that is?

PROF LOUWRENS: It is ...[intervenes]

CHAIRPERSON: Where it says templates?

PROF LOUWRENS: Template ja.

CHAIRPERSON: Ja, okay. Alright.

PROF LOUWRENS: Okay. Then it is / users and after that normally the username is listed, the user that is registered on the computer. In this case the name there is Daniels M
10 / documents / custom office templates / letterhead template
Jan 2015.x.

Now the .ex is different than the docx. .x means it is a template. So you can use it to create your own documents but using that template as a framework. What is also important here, if you go down to application, it is about one, two, three, four down.

CHAIRPERSON: Yes, I can see that.

PROF LOUWRENS: The application is Microsoft Mackintosh Word. That is important.

20 **CHAIRPERSON:** What does application mean?

PROF LOUWRENS: It means that the software that created that document, was Microsoft Mackintosh Word. The Word Apple computer. It runs on an Apple computer. Mackintosh is Apple computer. So ...[intervenes]

CHAIRPERSON: Okay, you will have to just speak up a

little bit more so that we hear this very important part of your evidence and it can be recorded properly.

PROF LOUWRENS: So it means it was created on an Apple computer or Mackintosh computer and the application or the software that is running and created that document, was Microsoft Mackintosh Word. Why this is important is I have looked at Ms Daniels's email box and documents that I found in her email box and that was created by Microsoft Word and not Mackintosh Word.

10 Okay, so there is a difference.

CHAIRPERSON: Okay, that is the difference.

PROF LOUWRENS: Yes.

CHAIRPERSON: So it is consistent with the username.

PROF LOUWRENS: Yes, but what it means is that the documents I found on Ms Daniels's mail box.

CHAIRPERSON: Ja.

PROF LOUWRENS: Was not created on the same computer as this.

CHAIRPERSON: Okay. So her ones are not Microsoft
20 Mackintosh.

PROF LOUWRENS: That is correct.

CHAIRPERSON: And her ones are what? Her one is what?

PROF LOUWRENS: Microsoft Word for Windows.

CHAIRPERSON: Oh, not Microsoft Mackintosh Word.

PROF LOUWRENS: Yes.

CHAIRPERSON: So you say from that the conclusion is what?

PROF LOUWRENS: Well, I can refer that it was not created on the same computer.

CHAIRPERSON: On the same computer.

PROF LOUWRENS: Ja.

CHAIRPERSON: Okay, okay. Alright, yes continue.

ADV SELEKA SC: Sorry Chair. Prof Louwrens, just by
10 way of illustration. Of the two different computer products.

PROF LOUWRENS: Yes.

ADV SELEKA SC: I have an Apple computer on my right and here on my left is a Bell computer. This one uses Microsoft Word.

PROF LOUWRENS: Correct.

ADV SELEKA SC: And the Apple computer uses?

PROF LOUWRENS: Mackintosh Word.

ADV SELEKA SC: Mackintosh Word. So what you are
20 saying to the Chairperson is the creation of the document in terms of the META data or just before that. The software in the two are different.

PROF LOUWRENS: Correct.

ADV SELEKA SC: Used by two different companies.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: And that is why you are able to see that

Mackintosh Word you can ascribe it to an Apple computer as supposed to a normal computer that uses the Word software.

PROF LOUWRENS: That is correct.

ADV SELEKA SC: So what you are saying to the Chairperson is according to this META date the application Microsoft Mackintosh Word, which shows that the letter would have been created by an Apple computer. That would have been a different product altogether.

10 **PROF LOUWRENS**: That is correct.

ADV SELEKA SC: And what you find in, the documents that you find in Ms Daniels's computer, are from MS Word and not an Apple computer.

PROF LOUWRENS: That is correct, yes.

ADV SELEKA SC: You could not find any documents, is that what you are saying to the Chairperson in her, is it her computer or her mail box?

PROF LOUWRENS: Her mail box.

ADV SELEKA SC: You could not find any document that is
20 created on an Apple computer?

PROF LOUWRENS: I could not say that. I did not do an in exhaustive search on that, I only looked for similar documents.

ADV SELEKA SC: I see.

CHAIRPERSON: Now if I have two or more computers,

they could obviously be different. One could be Microsoft, Mackintosh Word, another one another Word.

PROF LOUWRENS: Yes.

CHAIRPERSON: You would have to examine mail boxes in all of them to exclude me completely from or to exclude the possibility that the document was created in one of them.

PROF LOUWRENS: Yes, I would ...[intervenes]

CHAIRPERSON: You would have to examine ...[intervenes]

10 **PROF LOUWRENS:** I would have to examine both, ja.

CHAIRPERSON: The mail boxes in all of them. Okay, alright. Right, so what you are able to see is if you have examined a mail box in relation to a particular computer, you are able to say if there is no relation between the words, then it was not created in the particular computer.

PROF LOUWRENS: That is correct.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Yes, thank you. Prof Louwrens, you may carry on in your explanation of the META data.

20 **PROF LOUWRENS:** The next point there of interest is that it says:

“Titles of parts.”

Basically the heading which is the business unit or division, that is the bottom part of that document. Just the title of that place holder and the company that this

computer is being registered to, is Eskom.

Okay. Then ...[intervenes]

CHAIRPERSON: What does that mean? That the company that is registered is Eskom. Is that the company that is registered as the owner of the Microsoft ...[intervenes]

PROF LOUWRENS: Of the software, yes.

CHAIRPERSON: Of the software.

PROF LOUWRENS: Yes.

CHAIRPERSON: Okay, and I take it that from that you can
10 safely infer or conclude and you must just tell me if that is not justifiable. Conclude that an Eskom computer was used or Eskom software was used whether it was an Eskom person or somebody from outside, but it was Eskom or can you not say that in terms of technology?

PROF LOUWRENS: It depends how the software was registered, but when you register your operating system, the company as entity and as part of the licensing agreement.

CHAIRPERSON: Yes.

20 **PROF LOUWRENS:** So it is reasonable to assume that it was part of Eskom.

CHAIRPERSON: So is it reasonable to infer that the document was created using an Eskom computer, or that is going too far?

PROF LOUWRENS: It is going too far, because this

relates mostly to the template ...[intervenes]

CHAIRPERSON: Ja.

PROF LOUWRENS: And the software and so on, but the ja. I think we could infer that it definitely leans towards Eskom.

CHAIRPERSON: Ja.

PROF LOUWRENS: Yes. Otherwise ...[intervenes]

CHAIRPERSON: Because what are the chances that somebody ...[intervenes]

10 **PROF LOUWRENS:** You have to register your own computer if you are not part of Eskom as Eskom.

CHAIRPERSON: Yes. So we can say an Eskom computer was used to create it, in all probability. Is that fair to say?

PROF LOUWRENS: That is fair.

CHAIRPERSON: Ja, no okay.

ADV SELEKA SC: Ja. Prof Louwrens, I see there is a little bit of hesitation there. Let me ask the question this way. You have said the template I mean the document used here as a template.

20 **PROF LOUWRENS:** Yes.

ADV SELEKA SC: They would have used a template to create a letter. Then that template is or is it not in an application that is owned by Eskom. The computer application owned by Eskom, or I cannot make that ...[intervenes]

PROF LOUWRENS: No, you cannot make that distinction.

ADV SELEKA SC: Okay.

PROF LOUWRENS: What normally happens is that a company would create templates for use by its staff.

ADV SELEKA SC: Yes.

PROF LOUWRENS: And those templates would then be stored on the individual computers.

ADV SELEKA SC: Yes.

PROF LOUWRENS: For use and you could then edit those
10 templates for your use.

ADV SELEKA SC: Yes.

PROF LOUWRENS: So it is not to say that the person that edited the document was part of Eskom.

ADV SELEKA SC: I see, okay. I see what you are saying. So are you saying then, with my computer which is not a MacBook, it is not an Apple computer, I could have stored these templates and sent it to my junior who has a Mac laptop and she could then have used the template to create a letter and that is why the application would then reflect
20 her computer application and not mine.

PROF LOUWRENS: Yes.

ADV SELEKA SC: Is that what happened, what you ...[intervenes]

PROF LOUWRENS: That is correct.

CHAIRPERSON: Okay, alright. Continue.

PROF LOUWRENS: Right, then the field that is very important here is the creator field, and the value in that field was Susanne Daniels.

CHAIRPERSON: I am sorry, where about are you on the document?

PROF LOUWRENS: Page 375, the table.

CHAIRPERSON: Yes.

PROF LOUWRENS: Near the bottom, the creator.

CHAIRPERSON: The creator, yes okay.

10 **PROF LOUWRENS:** So that was what was recorded as the creator, as I said previously it could have been picked up by the system from the user, but that's because I then edit, very easy to edit, I can change this creator to whoever I want.

CHAIRPERSON: Okay, okay. So you say that part, one cannot rely a lot on it, on its own.

PROF LOUWRENS: On its own you cannot rely on it.

CHAIRPERSON: But you can rely on it together with other information?

20 **PROF LOUWRENS:** Yes.

CHAIRPERSON: What if the – what if the – well with the information about application from that information you said we can say that probably the template or the letter that was created was created on an Eskom computer, is that right?

PROF LOUWRENS: That is correct.

CHAIRPERSON: So then we can say well there is somebody or there was somebody called Suzanne Daniels at Eskom at the time, but you are saying that on its own is not terribly helpful because somebody who is not Suzanne Daniels if they want to falsely implicate Suzanne Daniels can easily tamper with the system to make sure that it reflects her as the creator, is that right?

PROF LOUWRENS: That is correct Chair.

10 **CHAIRPERSON:** But I would imagine that somebody who does that would obviously be seeking to implicate somebody, if I create – if I interfere with the system so as to make sure that the creator of the document is Professor Louwrens in circumstances where it is not, and I know it, I would be seeking to falsely implicate Professor Louwrens in being the creator of the document, is that right?

PROF LOUWRENS: Yes I did really, if you do not understand how easy it is to change that field you would be led to believe that that person created the document.

20 **CHAIRPERSON:** Yes, could it be changed negligently?

PROF LOUWRENS: No.

CHAIRPERSON: You have got to intentionally change it.

PROF LOUWRENS: You have got to intentionally change it.

CHAIRPERSON: Yes, and when if you – if I change it I

have to know what it was before I changed it, isn't it?

PROF LOUWRENS: No, not necessarily.

CHAIRPERSON: Oh, I might not know?

PROF LOUWRENS: It is displayed so you would know in any case what it was and then specifically on this field what you would do is you would then add another creator, type in your own name or somebody else's name and then you would remove the original name.

CHAIRPERSON: So but is the position that if we go to the
10 true creator, the one creator of the document, when he or she creates it, it is reflected that this is the person who created it?

PROF LOUWRENS: Yes.

CHAIRPERSON: If somebody else – if it is sent, the document is sent to somebody or somebody else comes and uses this same computer they can change it, but when they change it they know who the creator was immediately what is reflected as immediately before they change it?

PROF LOUWRENS: Yes.

20 **CHAIRPERSON:** There is no way they would not know.

PROF LOUWRENS: That is correct, because you have to replace that name or that value, you cannot just delete it.

CHAIRPERSON: Yes.

PROF LOUWRENS: So you can't negligently just do it.

CHAIRPERSON: Ja, you have got to have the intention to

change it.

PROF LOUWRENS: You have to add another one, then remove the previous one.

CHAIRPERSON: Yes, so which therefore means that I can only change the original creator to effectively distort the position, otherwise I have no reason to change it? Is that correct?

PROF LOUWRENS: Ja, I would suppose that is the inference one can draw there.

10 **CHAIRPERSON:** Yes, yes, because why change who created it? Ja, okay, alright. Mr Seleka?

ADV SELEKA SC: Prof Louwrens so we have the template and then we have the creation of the letters themselves. Could it be that the template would show for instance in this case Ms Daniels as the creator, not of the letter but of the template?

PROF LOUWRENS: If we have the template, if we have that computer and we could access that template then we could see what the creator was, so ja, I think that is
20 basically the only thing that we can say.

ADV SELEKA SC: Okay so you will need access to the template on the computer which has the template in order to determine who the author of the template is.

PROF LOUWRENS: Yes.

ADV SELEKA SC: In this case this author is the author

not of the template, but of the letter itself.

PROF LOUWRENS: Correct.

CHAIRPERSON: That is the creator that we are talking about, it is the creator of the letter.

PROF LOUWRENS: Creator of the letter yes.

CHAIRPERSON: Not necessarily of the template. Okay.

ADV SELEKA SC: Anything else on ...[intervenes]

PROF LOUWRENS: Yes, the next just below the creator on the same table, last modified by the value there is
10 Salim Essa. So again the last modified information is also easy to change but you cannot do that directly.

CHAIRPERSON: Just repeat that please. It is easy to change but?

PROF LOUWRENS: You cannot do it directly, you can – he has to go to another screen to actually change that value, so you go to an option screen and you do a personalisation of that document and then you can change the name. Now the name reflected in the personalisation options is usually the name that is connected to the user,
20 so that is where it picks up who the user is, so I can then change that user to somebody else and when I save that and I apply it the next time I save that document the last modified would then be reflected as that new user that I have furnished.

CHAIRPERSON: So what do we - what do you make of

the fact that here the information or what you found is that it said last modified by Salim Essa – well what do you make of that?

ADV SELEKA SC: Well firstly as with the previous creator you cannot rely on that solely because it can be changed to any value but if the user was called Salim Essa on a computer it would pick it up as Salim Essa, but on its own it is very easy change, but that is all I can say.

CHAIRPERSON: Yes. Now this information that was
10 modified by Salim Essa that part of the information you get by examining the letter itself, is that right?

PROF LOUWRENS: The metadata on that letter yes.

CHAIRPERSON: The metadata on the letter?

PROF LOUWRENS: Yes.

CHAIRPERSON: But the metadata doesn't tell you where or in what computer the modification happened?

PROF LOUWRENS: No it doesn't, unfortunately in this case we only had the word document itself to analyse.

CHAIRPERSON: Yes, yes.

20 **PROF LOUWRENS:** So I don't have that much, the only relationship to the computer was or is the application used, the Microsoft Mackintosh Word.

CHAIRPERSON: Yes.

PROF LOUWRENS: Which then was the last application used to modify that document.

CHAIRPERSON: So the modification are you able to say as you did with regard to application are you able to say whether the modification, the last modification was effected in the Microsoft Mackintosh Word or the other?

PROF LOUWRENS: Microsoft Mackintosh Word.

CHAIRPERSON: It is the?

PROF LOUWRENS: Microsoft Mackintosh Word.

CHAIRPERSON: The modification took place in that, it was effective.

10 **PROF LOUWRENS:** Last saved.

CHAIRPERSON: Ja, so does it mean that one can infer reasonably that the letter was probably created using an Eskom computer and that the last modification was also effected using an Eskom computer or not?

PROF LOUWRENS: No, I would not say that, the fact that the software belongs to Eskom but it could have been edited on another computer and could have been modified and sent so it does not mean necessarily an Eskom computer.

20 **CHAIRPERSON:** Yes, what would you need to look at in order to be able to be more precise on for example what computer was used, or is that something that you can't – Eskom computer or non-Eskom computer what would you need to be able to reach a conclusion on that or is that something that's difficult to achieve?

PROF LOUWRENS: I would say the best option would be to have access to the computers involved or seemingly involved, the analysis of those computers Mr Chair.

CHAIRPERSON: Yes.

PROF LOUWRENS: Without the it is very circumstantial in the things that can be easily changed and forensically I cannot support anything more.

CHAIRPERSON: Yes, okay. If you were to get the computer that – or computers that may be Ms Daniels' 10 whilst she was at Eskom was using having access to those computers would that help in one way or another seeing that she is alleged to have been the creator here?

PROF LOUWRENS: That would definitely help. I can't say if it will definitively give an answer.

CHAIRPERSON: Ja, but it could help.

PROF LOUWRENS: It would help definitely yes.

CHAIRPERSON: Yes. Okay, has that been tried Mr Seleka?

ADV SELEKA SC: Obtaining her computer, I don't know 20 off hand Chairperson but I know they have imaged her hard drive, something to that effect, even during her disciplinary hearing which information has been made available to the Commission, I will follow up with the investigators to find out.

CHAIRPERSON: Do you need the actual computer or as

long as you have ...[intervenes]

PROF LOUWRENS: If I have a forensic image of that computer that should be fine.

CHAIRPERSON: Then you should be able, okay, but I think that should be pursued.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, ja. And then I guess the same can be done with in regard to Mr Khosa's computer.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Ja. Okay, alright.

ADV SELEKA SC: Prof Louwrens would it help to find out from Eskom whether during this time, 2015, March 2015, Eskom would have provided its employees with Apple Computers

PROF LOUWRENS: Yes it would.

ADV SELEKA SC: It would help?

PROF LOUWRENS: It would definitely help yes.

ADV SELEKA SC: Because as you say the last modification was in an Apple Computer.

20 **PROF LOUWRENS:** That is correct.

ADV SELEKA SC: Okay.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Then you have obviously the last three columns, it is about the dates, or the last three rows, it is about the date when the letter was last printed, created

and modified.

PROF LOUWRENS: That is correct.

CHAIRPERSON: So the date of creation of the letter, date of modification, date of printing, how certain can you be that those are the dates you give or the dates that appear here are definitely the dates?

PROF LOUWRENS: It can only be certain to the extent that the computer's clock was set correctly.

CHAIRPERSON: Yes, so assuming it was set correctly
10 that should be correct, ja.

Well that suggests to me that in the absence of any evidence that it was set incorrectly that you would be able to say the probabilities are that the creation and the modification of the letter and the printing was on that day.

PROF LOUWRENS: Yes we – probably that, if it is a corporate computer the times, the time and date settings are normally managed centrally.

CHAIRPERSON: Ja.

PROF LOUWRENS: So the user would not be able to
20 change it on their own, so if this was a corporate computer chances are that the dates are correct, if not the it can be anything.

CHAIRPERSON: Yes, okay so maybe you could explore all of those aspects because then I think you need to come back to say I have done this part as well and in the light of

this part this is what I am able to say.

Okay, alright.

ADV SELEKA SC: Prof Louwrens I see that the last, the times there's a discrepancy of some interest there in respect of the creation date and modification date and time. The dates are the same, the 10th of March 2015, but I see the dates for creation and modification, I mean the times, I beg our pardon, are identical, 16:39, 16:39.

PROF LOUWRENS: Yes.

10 **ADV SELEKA SC:** But the last print time is 16:25.

PROF LOUWRENS: Correct.

ADV SELEKA SC: Which is before 16:39.

PROF LOUWRENS: Before it was created.

ADV SELEKA SC: Before it was created yes. What do you say to that?

PROF LOUWRENS: Ja, that's an anomaly that is within the Windows file system. If you copy a file across from one volume to another, in other words from one drive to another it assumes the creation date of that time that you
20 copied the file, so the file then would have existed and at this stage been available to print, but then the file was copied across to another drive and then it assumed the new creation date, and that explains it.

CHAIRPERSON: Okay.

ADV SELEKA SC: So you say it is an anomaly?

PROF LOUWRENS: It is an anomaly, it's a peculiarity, I don't know how to explain that, it is not something that you would expect, you would expect that the creation date would stay the same, but it does not work that way with Microsoft Windows.

ADV SELEKA SC: So there is nothing strange about that?

PROF LOUWRENS: Nothing strange here.

CHAIRPERSON: Okay, I think Mr Seleka we should stop here, because obviously there is a need for Mr Louwrens to
10 come back.

ADV SELEKA SC: Yes.

CHAIRPERSON: So we can do the rest when he comes back, so then let us stop here. How long do you think it might take you to be ready to come back after doing the outstanding ...[indistinct].

PROF LOUWRENS: It is difficult to say Chair but if I have got access to information a couple of weeks maybe.

CHAIRPERSON: Oh, is that so?

PROF LOUWRENS: Ja.

20 **CHAIRPERSON:** Okay, maybe two weeks, or maybe more than that?

PROF LOUWRENS: Maybe more than that, because it takes time.

CHAIRPERSON: Okay no that is alright, okay let us say as soon as you are ready let Mr Seleka know and he will

tell me and the I guess you will have prepare an affidavit I think and the we can call you, yes.

PROF LOUWRENS: Thank you Chair.

CHAIRPERSON: Okay, alright, but thank you very much, I will excuse you but you will be coming back, thank you very much.

PROF LOUWRENS: Thank you Chair.

CHAIRPERSON: I am going to adjourn to enable the PRASA work stream to come in and then I will continue
10 with them.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may be seated Mr Montana. Good morning.

ADV SONI SC: Good morning Chairperson.

CHAIRPERSON: Yes. I am very poor with estimating time so I am sorry that I thought we would finish within an hour and we ended up taking so long.

20 **ADV SONI SC:** Yes.

CHAIRPERSON: So I apologise for that. Let us continue. Yesterday's oath will continue apply today Mr Montana. Okay alright.

ADV SONI SC: As you please Chair. Mr Montana I now want to deal with the allegations made by Ms Martha Ngoye

in her affidavit of 17th of February 2020 that affidavit appears in Bundle E1 as Exhibit SS7(b) and it starts at page 277.

MR MONTANA: Through you Chair I am sorry Mr Soni I – I just decided to put one matter on record emanating from yesterday Chair.

CHAIRPERSON: Yes. Yes.

MR MONTANA: I think – I think that we dealt with the issues of the companies and I kept on referring to one company as
10 Mashonesa that Mr Molefe referred to as Mashonesa. The name of the company is Mazwe Financial Services.

CHAIRPERSON: Okay.

MR MONTANA: So I wanted to put that on record.

CHAIRPERSON: Yes.

MR MONTANA: And secondly Chair that I want to put on record there was a report that there was placed before me I think the report was written by Mr Jabulela Majola. And Chair I – I did raise a concern with one of his conclusions. At that time I did not know and on enquiry I find that those –
20 this was a – in fact a junior chap who wrote that report. In fact some of the people had indicated that the chap is not even capable of writing such a report. Now it was placed before me yesterday Chair so I wanted to ask the commission to – of course concern the position of this chap with PRASA number 1 and confirm whether that is their

report because if it is Chair I may want to – I am considering exercising my rights in terms of Rule 3.4 to apply for cross-examination for – of the – of I think Mr Majola. I do not know him.

CHAIRPERSON: Yes.

MR MONTANA: But I think that Chair.

CHAIRPERSON: Ja.

MR MONTANA: From what I could gather people said look there is just no way he would have written this report and so

10 I want to confirm that formally and exercise.

CHAIRPERSON: Yes.

MR MONTANA: And exercise my right Chair. Thank you.

CHAIRPERSON: Yes.

MR MONTANA: Sorry Mr Soni I just wanted to do this thing.

CHAIRPERSON: Okay I do not know how much you know about the author of that report Mr Soni but if you do not then the information can be obtained.

ADV SONI SC: Yes.

CHAIRPERSON: In terms of what his position is – is he still
20 at PRASA, what was his position at the time of writing the report and any other relevant information about him. Ja.

ADV SONI SC: We will make this inquiry.

CHAIRPERSON: Yes I guess another issue would be why would he have been identified as the person to conduct the investigation or to do the reports – is that because of the

position he held or why was it?

ADV SONI SC: Yes.

CHAIRPERSON: And that information can then be shared with Mr Montana. And it may well be that because it is just a report it may well be that consideration should be given to whether he should not be required to depose to an affidavit and say whether that is his report and say how it came about that he – he did that report of the investigation bla, bla, bla. Ja. Okay.

10 **ADV SONI SC:** As you please Chair.

CHAIRPERSON: Thank you. Of course we with all of that in mind Mr Soni there would also be the question of what the place and role of that report is in our – in these proceedings.

ADV SONI SC: Yes.

CHAIRPERSON: Or whether it was just – it was attached simply because somebody who was deposing to an affidavit had to mention that there was some reports that was put together and this is the report.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** Or whether it is going to – to be relied upon much or 00:06:24 on these proceedings.

ADV SONI SC: Yes.

CHAIRPERSON: You know when people do an affidavit they can attach a lot of things and everything they attach is important for a particular proceedings.

ADV SONI SC: Yes.

CHAIRPERSON: But you could reflect on that..

ADV SONI SC: I will Chair.

CHAIRPERSON: Ja okay.

ADV SONI SC: Mr Montana can we then go on with Ms Ngoye's allegations. I want to start at paragraph 8 which is on page 279. The page numbers are on the right hand side in red. She says:

10 "I have been asked by the commission to
provide information on maladministration at
PRASA of which I am aware insofar as it
relates to state capture."

And then in paragraph 9 she says:

 "In dealing with these matters I consider it
will be helpful to begin with the following
observation. In my respectful view
maladministration and possibly corruption
are quite widespread at PRASA. This was
particularly while Mr Montana was the CEO."

20 You want to react to that?

MR MONTANA: Chair I – I totally reject that I think in effect she con – she starts with that view from paragraph 6 of her affidavit – of her affidavit. I reject that Chair I think in my testimony I will show in fact that Ms Ngoye was herself at the heart of some of the issues that have been made here.

ADV SONI SC: Yes. And then she says – she finishes paragraph 9 saying?

“That there is certain entities which and persons who were known to be close to you.”

And at paragraph 10 she says:

“Among those are two individuals Mr Roy Moodley and Mr McKenza Mabunda.”

Like to react to that?

MR MONTANA: Chair I dealt with these matters yesterday
10 that entities were identified linked to me and those that – they were doing work for them were even appointed irregularly. They were being championed. So – so again Chair I will be consistent with that – with that view.

ADV SONI SC: I am – she says:

“The entities with which Mr Moodley were – was alleged to be associated are Siyagena Technologies, Strawberry Worx, Royal Security and Prodigy can we accept that Mr Moodley was associated with those four
20 entities.”

MR MONTANA: No Chair I do not want – I know that with – with Royal Security yes he was but when I was still at PRASA there was no relationship – I do not know of any relationship of Mr Moodley with Strawberry Worx.

I do not know of any relationship and I think I will

deal with Strawberry Worx in much greater detail Chair. And I read after I have left PRASA that there was a close relationship between Siyangena and Mr Moodley that did not happen when I was there. I was not aware of it at that point in time.

We dealt with Mr Mabunda's Siyaya and I think I explained that in great detail about our relationship with the Germans Chair and its involved – and this involved them with that. They do not make them my – entities closer to Mr
10 Montana they were appointed by PRASA and its board.

ADV SONI SC: And of course Prodigy we dealt with yesterday.

MR MONTANA: Yesterday indeed Chair indeed.

ADV SONI SC: Alright. Can we look at paragraph 11 she says:

“These are individuals and entities which have benefited most handsomely from contracts that were dubiously awarded to them or implemented in a highly dubious
20 manner.”

MR MONTANA: Chair the most – one of the companies that benefited handsomely from PRASA was Werksmans 00:10:48 and Ms Ngoye dispose – deposed to an affidavit when she was aware of the facts. So you can see Chair this is the same kind of – of things so if you look at again Mr – Mr Soni

to go back to paragraph 6 of her – of her affidavit. If you read what she say in there consistent with what Mr Molefe said consistent with what Mr Dingiswayo says that these are people who – who project themselves that is so clean who want to point fingers at other people but four fingers in fact pointing at them Chair.

It is so false and I think Chair that that we have to deal with the individual contracts still I think yesterday was – we dealt with Prodigy so this broad 00:11:44 is not going to
10 help the commission to actually get to the facts.

CHAIRPERSON: Ja.

MR MONTANA: I mean just (talking over one another) facts rather than the broad branch ja.

CHAIRPERSON: Ja, no, no we will deal with it. Ja we will deal with them ja.

ADV SONI SC: Yes. And then she says:

“Most of these contracts are the subject of
litigation.”

Can I just mention those that have come before the
20 commission?

MR MONTANA: Of course.

ADV SONI SC: And have been dealt with or will be dealt with. One is Swifambo we know. The other is Siyagena which we are going to deal with when we deal with the rest of Ms Ngoye’s affidavit. Then there is Prodigy which Mr

Dingiswayo dealt with and this – the Siyaya matters which as we know it was in your absence that there is litigation between them and – between PRASA and them. And I can perhaps just deal with one matter. You are aware that PRASA has refused to pay Siyaya DB and you in fact testified at the liquidation hearings Mr Montana.

MR MONTANA: Indeed Chair.

ADV SONI SC: Alright can I then ask us to go to paragraph 14 there is that she is going to deal with the following
10 matters oh she became – this is Ms Ngoye how she became aware of the influence of Mr Roy Moodley and her interactions with you as CEO and the dispute between Strawberry Worx and Siyaya Group. We are not going to deal with the Siyaya Group here for different reasons. But these are the matters we will deal with.

MR MONTANA: Well Chair I would like the Chair to note the fact that in almost exactly the same formulation is what you find in Mr Dingiswayo's affidavit. So you could see Mr Molefe says – traverse the same route. So it is very
20 interesting Chair but again I think it is the focus on facts will help us to ...

CHAIRPERSON: Ja.

MR MONTANA: To deal with the matters properly.

CHAIRPERSON: Yes. No that is fine.

ADV SONI SC: Yes. Now she says in paragraph 15 which I

am going to deal with in some detail when I say detail I just want us to establish the extent to which you dispute what she says. She says she first encountered Strawberry Worx whilst she was the CEO of Intersite. She was in fact the CEO of Intersite.

MR MONTANA: That is correct, that is correct Chair.

ADV SONI SC: And she says:

10 “It came about as follows. First on about the 23rd of July 2011 PRASA through Intersite assets investment SOC Limited which is a wholly owned subsidiary of PRASA and Umjanji Media concluded an advertising agreement following an invitation for companies to submit proposals for media broadcasting advertising and broadcasting services in respect of various assets held by PRASA.”

Do you accept that as a general?

MR MONTANA: Yes Sir.

20 **ADV SONI SC**: And then she says:

 “The agreement had commenced on the 1st of June and was for a five year period unless terminated or renewed by the parties.”

Is that correct?

MR MONTANA: That is correct Chair.

ADV SONI SC: Then she says:

“But on the 31st of August 2011 and I am just going to point out it is not in her affidavit it is about five weeks after the contract was concluded and with the consent of PRASA Umjanji ceded portions of its rights under the advertising agreement Strawberry Worx.”

And another entity called Siyathembana – Siyathembana Trading are you aware of that?

10 **MR MONTANA:** Chair I was aware with them ceding to Strawberry Worx but I was not aware I am hearing about Siyathembana Trading for the first time.

ADV SONI SC: But can we accept that that may have happened?

MR MONTANA: It may be – it may be Chair but I was not aware.

ADV SONI SC: No I understand thank you. Then at paragraph 15.3 she says?

20 “Although Intersite and not PRASA was the party to the agreement during the contract period we at Intersite received instructions from Montana - Mr Montana on how to deal with the advertising portfolio more specifically the Strawberry Worx contract.”

But she is making two points there. Firstly she says that the

contract was between Umjanji and thereafter Strawberry Worx and Intersite. That I understand is correct.

MR MONTANA: It was between the main contract was between PRASA and Umjanji.

ADV SONI SC: Umjanji and that that was ceded to Strawberry Worx.

MR MONTANA: No, no part – part of that contract.

ADV SONI SC: Oh sorry part of it.

MR MONTANA: Part of that the outdoor advertising part of
10 that contract is what was – was ceded to Strawberry Worx.

ADV SONI SC: Yes. Now she says that they received instructions from you how to deal with the advertising portfolio and particularly Strawberry Worx.

MR MONTANA: Well Chair it was not – I never gave such an instruction. There was a – there was a – there was a draft that was submitted to me on how the relationship between Umjanji and Strawberry was going to be structured on our portfolio.

So I had written notes to say no, no it cannot be dealt
20 with in that way because we will lose money as PRASA. And chair I want to make it clear I think that after I present I want to make a more detailed response to what Ms Ngoye say because the – the facts are being somehow too 00:18:33 a bit to present a particular picture.

But – but I think let us distinguish the facts first and

then before I make my comments.

ADV SONI SC: Now...

CHAIRPERSON: Well I guess – I guess you will have a better feel Mr Soni whether it is better that he should deal with that now or whether a little later. He – he is saying at some stage he would like to give a more substantive response.

ADV SONI SC: Yes.

CHAIRPERSON: If it is more convenient for him to do that
10 later he will do that later but I am just saying be aware that he ...

ADV SONI SC: No I understand perfectly.

CHAIRPERSON: Ja. Yes.

ADV SONI SC: Chair it may be – it may be better to follow the affidavit.

CHAIRPERSON: Ja.

ADV SONI SC: Know the extent to which Mr Montana agrees with what ...

CHAIRPERSON: Ja.

20 **ADV SONI SC:** The disputes what Ms Ngoye is saying.

CHAIRPERSON: Ja.

ADV SONI SC: And then in regard to any inferences or any allegations that Ms Ngoye makes about improprieties we can deal with that at the end of what it has been agreed are the basic facts on which there is common cause.

CHAIRPERSON: Okay so – so where would that put us at the end when we are done with the affidavit or at some stage?

ADV SONI SC: It will be at the end of paragraph 15 Chair.

CHAIRPERSON: Oh okay alright that is fine. You may proceed.

ADV SONI SC: She says there at paragraph 15.4 she was once summoned to a meeting with representatives of Strawberry Worx. Now I take it and she is not making
10 allegations about you on this. Are you aware of this meeting?

MR MONTANA: No Chair.

ADV SONI SC: Okay. But she goes on in paragraph 15.4.

“I was given instructions by representatives of Strawberry Worx on how I ought to manage the advertising portfolio and how I was expected to take instructions from them.”

Are you aware of that?

20 **MR MONTANA:** No I was not part of the meeting Chair.

ADV SONI SC:

“I was even – I was even told that they have the power to remove the portfolio from Intersite.”

I take it that too you do not know about? Is that correct Mr –

you – are...

MR MONTANA: Chair I was not part of the meeting.

ADV SONI SC: YEs.

MR MONTANA: Just looking at it I can see that this is – you know afterthought? Ja it makes people draft things that – but I was not part of the meeting so for the record I would not confirm or deny.

CHAIRPERSON: Yes.

MR MONTANA: I was not part of the meeting.

10 **CHAIRPERSON**: Yes. I think Mr Soni you can go on with the paragraphs that he – where – that relate to what was discussed at the meeting but he does not know anything about it.

ADV SONI SC: No, no I understand.

CHAIRPERSON: Ja but you – he can...

ADV SONI SC: It is a necessary because it...

CHAIRPERSON: Ja.

ADV SONI SC: It has a consequence.

CHAIRPERSON: No, no that is fine.

20 **ADV SONI SC**: And I can understand why Mr Montana is saying this is a malthought[?] because there is a thread that is followed through thereafter.

CHAIRPERSON: Ja. No that is fine.

ADV SONI SC: Then at paragraph 15.5 she says:

“That she was told that there were

instructions from Mr Montana to remove instructions we had given to our legal representatives Hogan Lovells who were representing PRASA in a litigation instituted by Primedia challenging the advertising tender process.”

Now I just want to deal with two things Mr Montana. Did you give instructions – oh did you say to Strawberry Worx that you were going to remove Hogan Lovells as PRASA’s attorney’s of record in the dispute with Primedia.

MR MONTANA: Chair – Chair that – that is not correct but I think she is saying it as – she says is still part is at the meeting?

ADV SONI SC: Yes.

MR MONTANA: Which I was never party to. So I do not know who said that to her specifically. She does not mention she just mentioned that – she was told by a representative. She mentioned three representatives Mr Maraj, Mr Ashvier, Mr Selwyn Moodley those are the three people who were part of the meeting. She does not say so this person said this she says representatives so it is a general I do not even know but I never – probably at this time because she is describing the earlier period of the contract. I had not interacted with any of these players in the industry

ADV SONI SC: I – I hear you Mr Montana but I just want us

to if you just bear with me for a moment or two to deal with another allegation and then come to the extent to which she says she communicated with you. So let us deal – I understand you say you did not know about this, you were not part of the meeting. Then she says ...

MR MONTANA: Sorry Mr Soni I accept that except that the – I am not saying communicated with her I am saying com – I have never communicated with Strawberry at the time that she is describing.

10 **ADV SONI SC:** Yes, no, no I understand ja. She says:

“I was told that Mr Montana had instructed that I terminate the mandate of Hogan Lovells and appoint BBM Attorneys.”

I take it you had never told anybody from Strawberry Worx that that should be done.

MR MONTANA: Chair I had the legal advisor who was dealing with this particular matter other than the – our Group Corporate Function in my office. I had the legal advisor who conceded quite a number of things and this was one of the
20 issues precisely because there was a major litigation issue on this matter. And – and probably I would discussed with – but I can see that my legal advisor was not even part of the meeting that was mentioned. So the question still arises who said all of those things to Ms Ngoye and that is why I say I do not know, I was not part of the meeting but for me it

sounds like a good afterthought Chair for the – in her affidavit.

ADV SONI SC: Alright. Now I just want to make this one point. She says that whether you said it or not BBM Attorneys were not on PRASA's panel of attorneys at the time. Is that correct?

MR MONTANA: Chair I would not know.

ADV SONI SC: You would not know.

MR MONTANA: I would not know. In the same way that the
10 – I also learnt that Werksmans were part of the PRASA panel
and when I checked at the time they were not so again here
someone who – who picks up on this one and ignores on to
this one. So Chair I do not deal with panels – I do not even
– in my entire period I never knew who was on the panel or
was not.

ADV SONI SC: And she says at paragraph 15.6.

“I did indicate to Mr Montana that the move
would amount to wasteful expenditure and
that I was not willing to account for that and
20 further that it was not possible to appoint a
firm that was not on the panel.”

Now is that correct or not?

MR MONTANA: No Mr Soni. You know Chair I did Bantu Education as well but sometimes the style of writing becomes very important so that you follow a sequence. This

person is told by someone at a meeting but in paragraph 15/16 it say he indicate to Mr Montana who was never party – party to this meeting.

CHAIRPERSON: Ja well I notice that Mr Montana that we were – we were – she was telling us in a few paragraphs about the discussion at the meeting and she did not include you as one of the people who were in that meeting and as you pointed out she did not say who among the people who were at the meeting told her that you had instructed that she
10 should terminate the mandate of Hogan Lovells and appoint BBM Attorneys and then in the next paragraph 15.6 she says – she did indicate to you that the move would amount to wasteful expenditure but she does not say when in relation to the meeting but in the – in the paragraph that comes after that she is talking about what happened after the meeting. So I do not know whether it is just a question of the arrangement of paragraphs or whether it is something else.

MR MONTANA: Chair I think if you look at the – the previous paragraph there they underlying message is that
20 the firm was appointed outside of the panel. I think the question will come who appoint people to the panel, how they 00:28:45. In all of that.

I was not – I mean that is why I was checking my legal advisor if she was part of the meeting I would have said maybe she reflected discussion she had with me but she

was also not party to the meeting.

And I would not say what the other people said at the meeting specific she also does not also specify who said and unless if the commission is provided with perhaps a record of that meeting an actual record you know of that meeting so that we can – you should know. So there are three people and it's her, it is Mr Holele who was Mr Holele's what was his role in the meeting? You know all of those things Chair that I think that raised a lot of questions and answers as it were
 10 but Chair there was never even subsequent to whatever meetings that were held any discussion about wasteful expenditure that is not consistent with my own narrative which I will present after Mr Soni had dealt with paragraph 15.

CHAIRPERSON: Okay.

ADV SONI SC: Alright. Mr Montana can we just now – I just want to put a question directly to you.

MR MONTANA: Yes.

ADV SONI SC: Did she speak to you about there was a
 20 suggestion that Hogan Lovells be removed as PRASA's attorneys of record.

MR MONTANA: No, Chair.

ADV VAS SONI SC: Okay.

MR MONTANA: I think my legal advisor had later – at a later stage did, when we were dealing with the – what is it

called – Primedia's review application.

CHAIRPERSON: H'm. Okay. When you say the only -
advisor did. You mean did talk to you? Did talk to her,
Ms Ngoye?

MR MONTANA: No, Chair. Did talk to me, Chair.

CHAIRPERSON: About?

MR MONTANA: About the - our team in respect of the
litigation that we were ...[intervenes]

CHAIRPERSON: Yes.

10 **MR MONTANA:** ...involved with Primedia.

CHAIRPERSON: Yes.

MR MONTANA: And I think that is a separate matter to
this Chair. And that is why ...[intervenes]

CHAIRPERSON: Oh.

MR MONTANA: I think ...[indistinct]

CHAIRPERSON: Yes.

MR MONTANA: I ...[indistinct] issues are being – because
somebody is in the organisation. She is aware of what is
happening but she structures this thing in a way that
20 supports – so that is why it does not speak to each other.

CHAIRPERSON: H'm.

MR MONTANA: And I will deal with the issue Chair
...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...when I ...[intervenes]

CHAIRPERSON: No, that is fine. But I think what you are saying is that there was a time when – in connection with the litigation relating to Primedia when your legal advisor in your office spoke about changing the law firm representatives.

MR MONTANA: That is correct, Chair.

CHAIRPERSON: Yes, that is what you are saying. Ja.

MR MONTANA: Exactly, Chair.

CHAIRPERSON: Okay alright.

10 **ADV VAS SONI SC:** Well, not only spoke about it but a decision was actually made and implemented to remove Hogan Lovells as PRASA's attorneys of record. Is that correct?

MR MONTANA: Chair, I think so. I did not know who was ultimately our team there but I think that that decision was ...[intervenes]

CHAIRPERSON: Was made.

MR MONTANA: ...was taken and it enjoyed my full support Chair.

20 **CHAIRPERSON:** Yes.

MR MONTANA: And I will explain why.

CHAIRPERSON: Okay.

ADV VAS SONI SC: She says then at the end of paragraph 15.6... Oh, sorry. Your legal advisor is Ms Malani(?) Naidoo. Is that correct?

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: Now Mr Montana, just – and you must accept that we tried to keep in our minds all the goings-on. When you made application to the Secretary of the Commission to bring a delegation, one of the people whose names you mentioned in the letter to the Secretary was Ms Malani Naidoo.

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: Now it is also said that the last group
10 of attorneys who handled the matter for PRASA when Maharaj(?) Attorneys. Are you aware of that/

MR MONTANA: No, no Chair. I am not aware.

ADV VAS SONI SC: Okay. Because she says then that they coincidentally were the attorneys of record of Strawberry Worx.

MR MONTANA: Attorneys of record for – on which matter?

ADV VAS SONI SC: In the Primedia matter.

MR MONTANA: Is it?

ADV VAS SONI SC: Yes.

20 **MR MONTANA:** Chair, I am not aware of that.

ADV VAS SONI SC: Okay. Can I just ask you as a general proposition though? And I accept that it would be improper for PRASA where this is a dispute raised by Primedia against PRASA and perhaps Strawberry Worx to have the same attorney as Strawberry Worx.

MR MONTANA: No, no Chair. It would be improper.
Unless if the parties ...[intervenes]

ADV VAS SONI SC: No, I understand.

MR MONTANA: ...agree and there is no conflict of
interest there but generally you want to separate these
things.

ADV VAS SONI SC: Yes.

MR MONTANA: Ja.

ADV VAS SONI SC: Alright. Paragraph 15.7, she says:

10 “After the meeting, Intersite continued to
manage the portfolio but under very difficult
circumstances as threats were constantly
received about the mandate being removed
from Intersite...”

Now, of course, that is not a matter that
concerns you. I mean, she is not making an allegation that
the threats came from you. She says the threats came
from Strawberry Worx.

MR MONTANA: Chair, I think the – in the – you see, she
20 makes that point and then she says: But we told
Mr Montana that he was required to provide a resolution
from the board. No such resolution was provided to
Intersite. I do not know where this discussion took place,
Chair. And what I think is happening here, Chair, is that
Ms Ngoye maybe – because she was a member of the

Executive. She may be aware of a matter taking place there. So she conveniently brought these things.

So for example, when she talks about the issue of the panel or when we had the discussion about Primedia, she then conflates that to support the view that she wants to advance. So I want to – for us to separate(?) those issues. If we deal with Strawberry, we deal with Strawberry. If we deal with Primedia, we do so, so that, Chair, we can separate fact from fiction because I think
10 that is what is happening here.

So orphans are put in there and here is a hero, a heroin. I told Mr Montana. When the meeting takes place, I am not part of it. I told Mr Montana. And I think, Chair, the only matter that she discussed with me, by the way, was when Ms Hope Zinde, the late – Hope Zinde, so rest in peace, had gone to her office because they took some files from there and she said that was done properly by the two(?) respective people.

And she raised that with me. She wanted to
20 enquire where was the – they were sent by me. I said no and shall explain. Again, this matter does not relate to this context. It is a completely different context. And I supported her because I said that it cannot be done that way.

So again, Chair, it is said because we are going

to discuss the matter. Ms Zinde is late. She cannot even depose and I would not want to discuss that matter of someone who is no longer no there and able to defend herself. Not that I was going to speak ill of her.

No, that is not what I am saying but I think that Ms Ngoye's is scratching at straws, trying to mix issues and I want to separate them so that this Commission has a clear picture. I mean, yes, she tried to chase Mr Moodley but I think she is doing it in a wrong way, Chair.

10 **ADV VAS SONI SC:** Alright. Let us just look at the part you have dealt with in paragraph 15.7, the second sentence. She says she told you that you were first required to provide a resolution of the board but there was no resolution that was provided. Now I am going ask you a direct question on this. Did she raise the issue of the threatened removal of the oversight of the contract from Intersite to PRASA with you?

MR MONTANA: No, no Chair. Again, Chair. Perhaps maybe let me see this paragraph 15, it is long and some of
20 the issues that I need to deal with. I think I want to address them in that context. Chair, there was no such a threat. I think that Ms Ngoye is confusing the issue of us getting a new division which is called PRASA Operate Real Estate Solutions. In short called PRASA Cres(?). Now this is a new division that handles our properties.

So because Intersite, historically, was what we call Intersite Property Management Services. It changed its role. So that it became Intersite Asset Investment. And the new company that we created was then because it was then going to manage the property portfolio with everything that goes with it including advertising on those properties.

Chair, the reason why we took that decision had to do with the – it was a tax efficiency issue because what happened is that PRASA would pay Intersite a management
10 fee that because Intersite was a subsidiary it was paying tax when its parent company was not paying tax. So we pay them R 15 million to manage our properties and it paid almost 18% to 20% of that money back to SARS.

So we get a subsidy from government and we pass the R 50 million, R 100 million whatever amount in the form of a management fee and it goes back to government in the form of a tax. So we wanted to ensure that we maximise our revenues, our income. So that is why I am saying Ms Ngoye is confusing all these issues
20 into one to say: No, no these things were happening, not because of the strategy of the business but to support Strawberry Worx.

In fact, Chair, the facts will show evidence that I will put before this Commission which is part of my thing. The notion that we managed the portfolio under very

difficult circumstances is actually so false that Ms Ngoye worked with Strawberry. The agreement to see this contract from Strawberry from ...[intervenes]

ADV VAS SONI SC: Umjanji

MR MONTANA: ...Umjanji or Provantage, the entity that won the contract, it was signed by Ms Ngoye. So she says there in one of the – in the closing paragraph – I wanted to go back to paragraph 15 point – I think it was 15.2. The conclusion of that paragraph says:

10 “At that time, I was already the CEO of Intersite...”

You see, Chair, here – that is where you find the solace(?). It does not say at the – I signed this agreement to see it. Sign between her and Strawberry as CEO of Intersite. She says at the time I was already the CEO of Intersite. Now the Chair, of course, you look at that, it does not tell you the story, the truth. Part of my annexures I provide where she signed.

20 Then I have got, Chair, is volumes of emails which shows, for example, the nature of the – and between Intersite under Ms Ngoye’s, okay? And more specifically her right-hand person who was managing this at Intersite was a chap by the name of mister – his surname is Chauke. Mr Chauke – when is that?

The emails that exchange, Chair, is one where

our subsidiary was actually working and forging this relationship because they had to do that. Now she comes five years later. The country has got Commission on state capture, corruption. She changes tune. She does not remember the facts. It is part of my annexures, Chair.

ADV VAS SONI SC: Sorry, Mr Montana. And I do not want to. You might remember, I think on Friday, what we agreed on is when you have a version which maybe contained in your affidavit, you will set it out here so we do
10 not have to be looking in different places. So I am going to suggest, Chairperson, that Mr Montana refers or sets out his version on these matters here as agreed on Friday otherwise we are going to be all over the place. I do not want to stop him. I am just saying that we are going to be back and forth on the same question.

CHAIRPERSON: I am not sure that I follow. What I do remember is that on Friday one of the things I said was that he could tell me what is in his affidavit without referring to the paragraphs.

20 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: Just tell me ...[intervenes]

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: ...what I will later find in the affidavit ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: ...when his affidavit is sorted out. I am not sure whether that is what you are talking about.

ADV VAS SONI SC: That is exactly what I am saying, Mr Chair.

CHAIRPERSON: Oh, okay, okay.

ADV VAS SONI SC: That instead of now saying: It is contained in my affidavit but not saying what was said in the affidavit.

CHAIRPERSON: Oh.

10 **ADV VAS SONI SC:** I have got no – in fact, I want to hear what Mr Montana's version is.

CHAIRPERSON: Yes, okay.

ADV VAS SONI SC: So we all have it. We know what ...[intervenes]

CHAIRPERSON: I think the reason he may be doing that - but he is here, he can say - maybe is that, you remember in regard the issues under 15 ...[intervenes]

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** ...the arrangements that has been made is that when you are done with para 15, he then get a chance to give a substantive response to what Ms Ngoye has said under para 15. I take it that is why he has not gone into details because that is the arrangement.

MR MONTANA: That is correct, Chair.

CHAIRPERSON: Ja.

MR MONTANA: And that is why I even said, it seems paragraph 15 is very long.

CHAIRPERSON: Yes.

MR MONTANA: Because I realise that Mr Soni was then – he wanted the answers.

CHAIRPERSON: Ja.

MR MONTANA: And I want to – and I think perhaps it is better, Chair, I suggest I make that input now.

CHAIRPERSON: Ja.

10 **MR MONTANA:** And so then when Mr Soni then takes me on, takes these issues in the paragraphs, he is fully aware of what my view is on this particular matter.

CHAIRPERSON: You suggesting an amendment of the earlier arrangement?

MR MONTANA: Of the arrangement. If I do it now ...[intervenes]

ADV VAS SONI SC: I have got no difficulty with that.

CHAIRPERSON: Is that fine?

ADV VAS SONI SC: Yes, yes.

20 **CHAIRPERSON:** Okay alright. That is fine.

MR MONTANA: Chair, thank you very much. I think this matter is dealt with, of course, in detail in my affidavit and I think it was done so Chair as a direct response to Rule 3.3. You said the time I suggested to the Commission, I am going to deal – I am going to do only

but ...[intervenes]

ADV VAS SONI SC: Ja.

MR MONTANA: But I will specifically indicate where I am dealing with a response to a particular allegation.

ADV VAS SONI SC: Yes.

MR MONTANA: Chair, PRASA did issue a tender on advertising. I think it was in February 2010. This tender would then later awarded to a company called Provantage/Umjanji Consortium. If you look at the – one of
10 the issues the Public Protector mentioned, Chair, is that you have this Provantage which put a bid and it does not – the Public Protector – we do not understand Umjanji as a consortium, comes in there. So I think that is a context that the matter is raised in the Public Protector report.

Chair, the - what has happened is that Provantage – I think that there were 19 companies that then responded to the PRASA tender. PRASA then had a team that evaluated this and the head of that team, Chair, was none other Mr Tiro Holele. So Mr Tiro Holele led the
20 team, and then they selected Provantage/Umjanji Media as a company to all of that.

This company – this tender, Chair, was for – was mainly not only about advertising but it was for media and broadcasting services. It was advertising, media and media advertising and media as well as broadcasting.

They were all in one – under one tender.

Now what happened Chair. Strawberry, I think it was one of the companies that put a bid, it lost. There is a passage. It lost Chair. It had nothing to do with Roy Moodley. They lost the bid but what happened is that big as they do, they then agreed to themselves – among themselves, rather, my strength is on this, your strength is on that. Let us work together.

So after we had signed, PRASA had signed the
10 contract with Provantage. Provantage came back to PRASA. Provantage/Umjanji came to PRASA and say: We want to see it. Part of the work was to want to bring a company that will help us manage – because they have won the tender – the right on broadcasting, advertising and media, they have won – they got that right. They were awarded ...[indistinct].

So they say: No, we want to bring Strawberry. So that matter is elevated because when they want to bring a company in terms of – or to see part of a contract or
20 subcontract, our SCM policy provides that they must then formally apply to PRASA so that PRASA can satisfy itself that this company has the capacity to meet the obligations that are there. So Chair, it was done, they applied.

Then the agreement, the draft agreement was presented to us that what Strawberry would do, we will

then make – we will work on the portfolio, pay Provantage and pay them – Provantage to pay to PRASA. I said: No, but if you love that model it means, therefore, that Provantage/Umjanji will take a cut before passing on the money.

If they want to sit, then they must agree that Intersite was in a direct relationship so that you do not have a middleman in that process. So when she says she spoke to me, Chair, it was not me actively going as the
 10 CEO. I am approached to say: Here is an arrangement and as a CEO acts in the best – she says in her affidavit – we must act in the best interest of the company.

There is one instance where I act in the best interest to make sure that the revenue for outdoor advertising does not go anywhere else but goes to PRASA. Then I say: No, that is how she structured the contract. So I think the Commission, Chair, should of course go to Provantage and ask them questions rather than relying on the affidavit of one conflicted individual who signed and
 20 who want today to dissociate herself. And ask Provantage/Umjanji under what circumstances did you guys enter this agreement? Who initiated it? And all of those things, Chair.

There are many letters. They are part of my annexures but I think that we had agreed that she put

those things now. Now Chair, so that is the one part of it. Provantage wins the tender and then later on to decided to sit. It selects amongst the 19 people that the 18 other companies, Chair, and the names, I have got all of them. Outdoor network. I do not want to go into detail about this company.

Who, Chair, that will recommend that this thing should be managed? It is none other than Tiro Holele who recommended that: No, we have gone through that. We
 10 have selected this company. Mr Holele was also here, Chair, and he did not remember this thing. He spoke about other things but this fact, she does not tell the Commission, Chair.

In the same way that they withheld such information on the Swifambo matter. Now Chair, why then did you go out on tender? And I know later on when we discuss judgment... A month ago or few weeks ago there was a judgment on this decision on the ...[indistinct]

Primedia succeeded, Chair, even though this
 20 things comes nine years later. The contract had expired. So that judgment is of academic – it is academic in the sense that it does not have an impact because I think that time has passed, the contract has expired, PRASA is dealing with the matter and they never got it done.

The big issue, Chair, is that and I elaborate on

this. What is the issue? And why will we be fighting over who represents us on this matter? And my legal advisor was...? Because you calculated the numbers, Chair. And the numbers were very clear. Primedia, Continental were the two leading companies, Chair, onto the PRASA network.

They were making more money than PRASA itself, Chair. So as a CEO of PRASA I am required and I never accused Ms Ngoye that you are acting in the interest
10 of those... But we are already seeing instances of collusion, Chair. And one of the major issues was in the recent judgment on this Primedia issue.

I think that the court noted the fact that PRASA did not oppose. And why did it take nine years, Chair? You know why? Because it took many years precisely because the review application is on the table, the beneficiaries, the people who had occupied PRASA's sites, continue to make more money on the sites than PRASA itself. So here I have got an instance of a state-owned
20 enterprise that is being robbed of much needed revenue.

I come as you, I say: No, these guys have been here for long. Issue a tender and let us get the benefit for that. If you look at the numbers Chair you will be shocked because both Primedia and Continental – Primedia occupied 29% of the sites that PRASA had. Continental

was the second biggest one, Chair. But if you look at the amount they were paying – the smallest companies were paying the highest amount, okay?

So they were paying us – some of the companies were paying us over a thousand per site. Continental and Primedia were paying us even two hundred per site. Yet they own the property. There was no way as CEO I would allow that situation to persist and that is why we saw for example that our own people colluding with these
10 companies that has made in PRASA's things.

And that is why our – when you look at some of the companies that were there and you look at the role of my legal advisor, it is things like this because she is not performing the function. She is not managing cases for PRASA. I choose a CEO. Here is the direction that you take.

Now these people, Chair, will not come and testify that they go and talk about Strawberry, okay? And when we look at the arrangement we had with Strawberry,
20 it was giving us more money than even the companies per site, Chair, when you look at each site, okay?

But if PRASA goes to court and say: We are not going to oppose the Primedia's thing because they are fighting. It was awarded under Montana's terms. Who draft the affidavits and the statements? Ms Ngoye and

Mr Holele. The very same people who were at the heart of this thing and the one wash their hands and say: No, it was an irregular contract awarded by – under Montana's – during Mr Montana's tenure, okay?

They do not take accountability and say: This is our role. What is my role as CEO? To act. The primary responsibility to act in the best interest of PRASA is with me Chair. Now when we created PRASA Cres - and Ms Ngoye does not say that in her affidavit Chair, our
10 property and we changed the mandate. We changed the mandate a bit earlier but we had to then separate these functions. And Ms Ngoye then, of course she brings suspicions. She says all of these things.

No, Chair. In fact, I had meetings between PRASA Cres and Intersite, a subsidiary and a new division because they were refusing to – there were instances where their collaboration was very important for us to achieve our goals as it were. It has got nothing to do with Mr Moodley. It has to do with the fact that we had the
20 property portfolio or rather an advertising portfolio where PRASA was not making money and two private companies were making money at the expense...

Again, Mr Soni, I want to bring to your attention that when you look at the documents because I want to ask someone to go – to bring me the entire file and they

brought the file. The figures are mentioned there, they are shocking Chair.

ADV VAS SONI SC: Somebody from PRASA?

MR MONTANA: What?

ADV VAS SONI SC: Did you ask somebody from PRASA?

MR MONTANA: No, no, no. No someone, a lawyer. A lawyer and say: Can you get me that file? I want to look at that. Chair, the numbers there are shocking. We are looking at state capture. We say state-owned enterprises
10 do not work but here big private companies who are having a feeding frenzy on the assets of these companies.

And so that relationship, I took that on and I did not leave that Chair. I think it was a right decision. When you look at the papers that have been filed, you look at some of the numbers you will actually see Chair that one of the papers mention the numbers and say Primedia and Continental made R 300 million out of the portfolio.

PRASA only made just a mere R 70 million. So the owner of the asset gets R 70 million, okay? The
20 private companies who had not even invested in that assets all of them to put a board(?). They make almost R 300 million.

And I read in the judgment that particular fact was not even challenged in that – I am not saying you must accept it here. I am simply mentioning the fact that in my

affidavit I deal with this issue ...[intervenes]

ADV VAS SONI SC: No, look. Mr Montana, we have agreed that whatever is in your affidavit you will present now.

MR MONTANA: No, no. I am not changing that Chair.

CHAIRPERSON: Yes. No, no. Ja, he is not changing it.

MR MONTANA: I am just simply saying that I am not ...[intervenes]

CHAIRPERSON: He is just mentioning that ...[intervenes]

10 **MR MONTANA:** I am not urging ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...I am not saying the Commission should accept the – what is it called – the court judgment.

CHAIRPERSON: Ja.

MR MONTANA: That is what I am referring to.

CHAIRPERSON: Ja, ja.

MR MONTANA: But I am elaborating on the point as agreed.

20 **CHAIRPERSON:** I think maybe to clarify because I think I can see what maybe causing Mr Soni concern. My understanding is that when you say in your affidavit, you are not saying that where you need to state what is in your affidavit, you are not stating it because we will see it. You are not saying that? You just mention that.

MR MONTANA: I am dealing with it now.

CHAIRPERSON: Yes, yes.

MR MONTANA: I am dealing with it now.

CHAIRPERSON: Yes, ja. That is my understanding.

MR MONTANA: I am dealing with it now Chair so that ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: So that ...[intervenes]

CHAIRPERSON: I think Mr Soni was concerned that we had one agreement earlier on and if you deviate from it, it
10 should not just be left like that. But I think you have clarified. Ja.

MR MONTANA: Chair, in my affidavit Chair and you will remember I submitted this to the Commission in October last year.

CHAIRPERSON: Well, I do not remember when in last year. Ja.

MR MONTANA: Yes, but it was in October, the 15th of October. This is almost four months before this court's judgment.

20 **CHAIRPERSON:** H'm, h'm.

MR MONTANA: Chair, I want to indicate that I state in my affidavit that Primedia and Continental together occupied 55% of the sites, advertising sites of PRASA but they paid on 3% of rental income whilst companies that occupied 45% of sites paid almost 67% of the rental. So on

average, these companies Chair will pay 1100 per site but when you look at Primedia and all of – and the other companies, they would pay you, Chair, R 200,00. So it is a huge... Now – and I made the calculation that if we were to ...[intervenes]

CHAIRPERSON: Now let me just – just to recollect the whole context about this. This is a transaction in terms of which a company that...

[break in recording]

10 **CHAIRPERSON**: ...on property belonging to PRASA or its subsidiary.

MR MONTANA: Yes.

CHAIRPERSON: They put up whatever they want to advertise. It is on PRASA's property or on the subsidiary.

MR MONTANA: Indeed, Chair.

CHAIRPERSON: And they – as long as that advert is there, they pay per month. Is that right?

MR MONTANA: They pay per month, Chair.

CHAIRPERSON: Okay alright.

20 **MR MONTANA**: Ja. So Chair, you will see that there – and I say that if they were to pay the same amount, Strawberry – Primedia and Continental would basically increase the revenue income for PRASA on the advertising portfolio by almost 122% Chair and these numbers correlate exactly with what is contained in that court – in

that litigation that was unfolding Chair.

But the court, I think, I am not saying made a wrong decision but the court – if PRASA does not oppose and say PRASA – Mr Holele is there, Ms Ngoye is there. They allow Primedia to go to court and then PRASA ultimately does not file(?).

And you see – my legal advisor said but this law firm that is representing us is giving us advice that we do not – that we think is actually not protecting our own
10 interest. And we think we should change. We should change that.

But Chair these are the factual issues, and I thought, in some way, it was fair. Like Ms Ngoye who says you must act in the best interest of the company, should raise all these issues. And if she feels that Strawberry – Chair, there is no evidence. I have listened to these things.

I have never heard one evidence that says the relationship between Provantage/Umjanji is broken. If
20 someone says: Well, that relationship was started by Montana, he has got interest in it. They would be having a discussion here. Nothing of that sort. What we have are insinuations. You know, that after the contract had been signed, at that time we have also now shifted the portfolio to PRASA Cres, not to PRASA Corporate.

Chair, this is an ongoing thing. Ms Ngoye was part of discussions on – when I went to the Board of PRASA in 2010, I said three things to the board, Chair, which is relevant to this. I said we want – after the World Cup we want to have a different organisation. So we need – we are going to do three things.

One, of course, as to recapitalise the asset of this thing. The second thing was of course to sustain rail operations. But the third one Chair was to ensure that we
 10 will maximise income from the properties and the assets that we have and that we will then separate PRASA Intersite and create a new division.

The other one will continue being a subsidiary. Invest in assets. For example the assets that include telecoms lines so that we can rent that to telecommunication companies and they pay a fee for that to access that. But the property portfolio, our landlord will become a PRASA Cres and that is why that... To this very
 20 day I understand that that portfolio is still being managed there Chair.

But at the heart of this thing Chair is the fact that we have people who project themselves as revolutionaries, anti-corruption busters but in real times are actually protecting the interest of established companies that are making money at the expense of

PRASA.

Strawberry, Chair, I do not even know who is the shareholder there, Chair. I have never – the only time that Mr Moodley would speak to me and he wanted to talk to me about security, either what work you are doing and all of those things. Not Strawberry, Chair. It was not one of the companies.

And I think the Commission is obliged to go and obtain an affidavit from the CEO of Provantage or what has
10 – the consortium that was called Umjanji. How did you come to that? But the documents that I have Chair including the main emails, it shows that Ms Ngoye is making a major U-turn, creating a story where email evidence at that time suggested that she was working...

That is why she cannot even tell this Commission that the agreement to sit and that Intersite had to enter into an agreement with Strawberry as a result of that concession that PRASA approved and it was signed by me as the CEO of Intersite. And she must then say: I
20 did not want to sign it. I was forced by Mr Montana.

Chair, at that time, there was none. Now she is trying to think about it to bring – and that is why she can conclude 15.2 Chair by saying I was - at the time I was already the CEO of Intersite. She does not take it to its logical conclusion.

At the time I was already the CEO of Intersite and I could not sign the agreement between Intersite and – so it is about Lucky Montana. Lucky Montana was captured by Roy Moodley when the facts are very clear Chair and that is what I am outlining.

And she never – you know this affidavit Chair, it is so disappointing because the entire affidavit does not – it talks about a law firm that is removed but the most important issue is. Is PRASA as a public entity getting
10 value from the portfolio it owns? It has not even been dealt with and I think that is where the problem is Chair.

CHAIRPERSON: Yes.

MR MONTANA: So that would be – that is my ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...and of course my submission and this submission Chair, you will find it – it is – when we deal with my affidavit later on I elaborate on the details in there.

20 **CHAIRPERSON:** Ja. Okay alright. So that is what you had to say about paragraph 15 and its sub-paragraphs?

MR MONTANA: Indeed, Chair.

CHAIRPERSON: Ja, okay alright.

ADV VAS SONI SC: As it pleases.

CHAIRPERSON: I see that we are at twenty past one.

ADV VAS SONI SC: I did not want to interrupt.

CHAIRPERSON: No, no but it is fine. Maybe we should adjourn now?

ADV VAS SONI SC: As you please.

CHAIRPERSON: Let us adjourn now and then we will resume at twenty past two.

ADV VAS SONI SC: As you please.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Okay, let us continue.

ADV VAS SONI SC: As you please, Chairperson. Chairperson, just to finalise Mr Montana's last point. We were not aware of the judgment given in the Primedia. I have raised with Mr Montana that we would appreciate a copy of the judgment. We can look at it and then decide if there are matters that arise, that would have to be [inaudible – speaking simultaneously]

CHAIRPERSON: No, that is fine, that is fine.

20 **ADV VAS SONI SC:** Mr Montana, can we go on with what Ms Ngoye says and I think we were at paragraph 15.8 on page 284. She says that the threats of removing the portfolio, that is the Strawberry Worx portfolio, were carried out on the 20 May by Ms Naidoo, I think this is I think Ms Malini Naidoo the legal assistant in your office.

Were you aware of that?

MR MONTANA: Chair, I think that there are two separate issues here. I earlier on ...[intervenes]

CHAIRPERSON: I am sorry, let me first establish, which paragraph are you on?

MR MONTANA: Oh sorry, Chair. It is 15.8 on page 284.

CHAIRPERSON: Oh. Okay, alright, yes. Yes, Mr Montana? Your mic?

MR MONTANA: My apologies - after lunch. The legal
10 adviser in my office did not have such authority, Chair, she would not have done anything of that sort. We had the general manager who was running what do you call public affairs and that the late Hope Zinde.

She – they did not take – move the function. The movement of a function, the corporate function is a structure of a company. They would not do something like that.

But there was of course the issue of the files in respect of Primedia and Continental and I think that is
20 what I confirmed she called me – she called me about to say they came and they took some files here and I said look, that is not the right way to do it when people pitch and took and removed files from a subsidiary. That is not how we should do it.

But the issue of the movement of the function from

Intersite, it has got nothing to do with this fight, it has to do with the strategy of the business about this portfolio and where we allocate some of these functions of which Ms Ngoye was party to.

So I think for me she is conflating those two into one to make the argument that because she had taken a different position – and, Chair, I think all evidence will show that at a particular point there was not even a dispute between Intersite under her leadership.

10 I think a guy by the name of Mr Chauke, Mr Martin Chauke, she had written a lot of emails on her own behalf, on behalf of Intersite and the CEO confirming how they were going to work with Strawberry.

Now, Chair, remember we are discussing advertising portfolio, Umjanji ceded, it is not the whole portfolio, they have ceded the outdoor part of that advertising portfolio and I think it is very important that we emphasise that particular issue.

20 So she is talking about Ms Ngoye's affidavit, she send advertising portfolio in total but I do not know if taking out that entire advertising portfolio, that speaks to Strawberries because that speaks only one part of the entire function [indistinct – dropping voice]

ADV VAS SONI SC: I just want to understand, Mr Montana, if I understand your evidence correctly, you are

drawing a distinction between removing the function relating to advertising from the files concerning Primedia's complaint about the unlawfulness of the award. Is that the distinction you draw?

MR MONTANA: Ja, I am saying that they are related but they are not one and the same thing, Chair. So I think in her affidavit, she is basically taking a position – let say we talk about Primedia or we talk about Strawberry or we talk about changing of these functions. She says the function
10 was changed because it was aimed at benefiting Strawberry and I am saying, Chair, that is incorrect.

Her starting point is that she is listing entities that were entities that belonged to Mr Moodley. Now we have not been presented with evidence that who owns Strawberry, who are the owners of this company, that is this particular company and I think those facts are lacking here, Chair.

So my view is that I am saying some of the things she is saying may be true but they belong to a different
20 context yet she has conflated them to support her own argument and I think that is why I am making a distinction in those matters.

CHAIRPERSON: Is the – so you said that she called you in relation to ...[intervenes]

MR MONTANA: The files.

CHAIRPERSON: The removal of the files.

MR MONTANA: Yes.

CHAIRPERSON: And you told her that what they had done was wrong, it was not the way to ...[intervenes]

MR MONTANA: The removal of the files.

CHAIRPERSON: The removal of the files.

MR MONTANA: Indeed, Chair.

CHAIRPERSON: You were with her on that.

MR MONTANA: Exactly, Chair. Chair, I am in agreement
10 with her on that, I still do.

CHAIRPERSON: Yes.

MR MONTANA: But she is now taking that, Chair, and you will see that there has been ongoing conflict there, that is confirmed in even emails, fights that were there. When people have fights amongst themselves, it is official, someone that elevates her position and make it as the absolute truth, that no, this is what is right, I am making the best interest of the business, the others are not.

And I am saying no, it cannot be, you have to look
20 at that, for example I am saying if you look at the argument, Chair, and analyse this affidavit and I look and say what was facing PRASA at that time, it was the fact that it was not about this legal frame that we said is being changed.

The primary issue from someone in leadership

position is that are we achieving our strategy goals or objectives that we set ourselves as a business? Are we making money, getting – maximizing the revenues from the advertising portfolio that we have?

Throughout in this affidavit she is so preoccupied with something else, that the primary – she lose sight of the much bigger picture that we are trying to achieve and I think that is part of why we have some of this five issues, she is confirming that. So she is trying to put it in two
10 contrasting lines. You are dealing with good people and she is part of the good people and you are dealing with bad people and Montana are supporting Moodley and they were supporting Strawberry and I am saying there is false dichotomy that will not help the Commission because it does not provide the facts.

So what I was trying to do before we went onto the break, I was trying to say here are the facts of the matter. Did you go out on tender? Who tendered for that? Who won that tender? Who signed the letters and those are the
20 facts that I am proving, Chair, and they do not support the line that she has taken.

CHAIRPERSON: So to the extent that Ms Ngoye says that Ms Naidoo said she had been instructed – I think I saw something along those lines but I do not think she says - she said she was instructed by you.

ADV VAS SONI SC: In the last sentence of that paragraph, Chair.

CHAIRPERSON: Oh, she said she had strict instructions all from Mr Montana to remove the files. So you say you were in agreement with Ms Ngoye that files should not be removed either – or not be removed in the manner in which it was done.

MR MONTANA: No, the manner it is been done, Chair.

CHAIRPERSON: Yes.

10 **MR MONTANA:** And I think the fight had to do with how there was a dispute between the legal adviser and how Intersite was dealing with the issue of the litigation, the Primedia litigation.

CHAIRPERSON: Ja.

MR MONTANA: So I am saying this specifically.

CHAIRPERSON: Yes.

MR MONTANA: And within one organisation, just imagine, Chair, as CEO I agreed that files are taken in that way, there is no proper handover, so things – going have chaos
20 and you are creating a precedent where people can just go into – especially subsidiary, it was subsidiary though I was the Chair, it required board resolution to make even decisions like those. So, Chair, I agreed with her in that specific matter.

CHAIRPERSON: Yes.

MR MONTANA: But she is now saying we could not manage the portfolio because we were now – we manage it under very difficult conditions and I am saying that it is not correct because if you look at the very documents, emails that are available, actually show that you managed the portfolio and you interacted with the very Strawberry as Intersite, not at the instigation of anyone. You signed a contract, the main – the executive at Intersite was managing this portfolio, it is written where they are making
 10 arrangements on how they should implement the outdoor – what is called the outdoor of the type role that is there.

Now if – and I was going through those emails, Chair, to try and pick up whether there was any area of disagreement and dispute. There was none, Chair. Okay? And it is at a particular point that Ms Ngoye take the thing and that is why I kept on using the word afterthought, that she wanted to find out how do you support this story that Moodley was running the show, let us bring Strawberry.

Now does Roy Moodley control Umjanji and
 20 Provantage who won the tender? And if that is – Chair, the last point, if indeed he controls those, the people who made the award – now who made an accusation against Moodley that he is controlling things? It is Mr Holele. Now Mr Holele, if Provantage works with Strawberry after being awarded, was he aware of that? At what point did he

become aware of that? Was he controlled by Mr Moodley?

So, Chair, we need to find out. It is either these people were given instruction by me to say award this to Provantage and Provantage then after being awarded I say work with Strawberry. None of these people are saying that, that we are seeing a story that says Moodley was involved by association and not by evidence, Chair.

CHAIRPERSON: Okay, now just to get clarification. You were against the way in which the files were sought to be
10 removed but did you give an instructions that they should be removed by some people just did it the wrong way or you had not given any instruction?

MR MONTANA: No, no, Chair, I have not given the – I have not given any instruction ...[intervenes]

CHAIRPERSON: For the removal of files.

MR MONTANA: It did not require, I mean, what is called even instruction from me.

CHAIRPERSON: Yes.

MR MONTANA: These are an interaction between our
20 teams on this particular matter and I do not know whether it was requested, the others removed and the others decided to use their own strict approach in getting these particular files.

CHAIRPERSON: Okay.

MR MONTANA: But I had nothing to do with the function

and it did not come from me because the function issue about where and how this portfolio should be managed, it is far beyond Strawberries or that thing and that is a decision that we make as a company, as an exco.

CHAIRPERSON: Ja.

MR MONTANA: As well as a board, Chair.

CHAIRPERSON: Yes, okay. Mr Soni?

ADV VAS SONI SC: As you please, Chair. Now if – and I know you were not there, if Ms Naidoo said to Ms Ngoye
10 that she had instructions from you to remove the files and I know the distinction you draw, so let us not go back to that, Mr Montana. She would not have been reflecting what you told her, Ms Naidoo. If she told Ms Ngoye you had instructed to remove the files because you did not instruct [inaudible – speaking simultaneously]

MR MONTANA: Chair, well I would say, Ms Ngoye would have a legitimate [indistinct] to believe that that comes from me, Chair, particularly from a legal adviser but she would also would want to confirm that with me and if she
20 has got a different view, she will do exactly that but you will see in this submission, Chair, that in her affidavit the meeting where all these things are said is a meeting attended by three representatives of Strawberry, Mr Holele and Ms Ngoye. The legal adviser is not even there.

ADV VAS SONI SC: No, Mr Montana, I am sorry to

trouble you, this is a very separate meeting, this is now the 20 May 2013, the meeting that we are talking about is in 2011.

MR MONTANA: What page are we, sorry/

ADV VAS SONI SC: 23 July 2011.

CHAIRPERSON: It is page 284, paragraph 15.8.

ADV VAS SONI SC: I am sorry, I am on page 22.

CHAIRPERSON: Go to Ms Ngoye's affidavit which starts – you know, these are red numbers only, there are no black
10 numbers, it starts at page 277 and then you go to page 284.

MR MONTANA: Ja, I am there. Sorry, Mr Soni, I am at the right page now.

ADV VAS SONI SC: Okay. So I am saying to you at 15.8 Ms Ngoye is talking about an interaction that happened on the 20 May 2013. The meeting you are talking about was in July 2011. So my question now is directed to the last sentence in this paragraph where Ms Ngoye said Ms Naidoo told her that she had instructions from you. I just
20 want to confirm, you did not give those instructions to Ms Naidoo.

MR MONTANA: No, not at all, no.

ADV VAS SONI SC: Okay. She then says at 15.9 ...[intervenes]

MR MONTANA: Before you move, counsel. Chair, I just

want to – as you can see 15.8, the point I was making, that there are two issues there. There is a removal of the files and there is a threat of the removal of the portfolio and they are being used as one thing and that is the point I was trying to clarify.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: We have got that, Mr Montana.

CHAIRPERSON: Okay, ja.

ADV VAS SONI SC: Alright then at 15.9 she says:

10 “I immediately called Mr Montana but he did not respond.”

Then she called one of the independent directors. That does not concern us. It carries on though in the last sentence, she is saying that Ms Naidoo removed the files. Now when did you become aware that Ms Naidoo had removed the files?

MR MONTANA: Chair, if you recall, I said earlier – and I am surprised the – we are talking about – unless we were talking about two different things. I spoke about Ms
20 Naidoo, who was the legal adviser, and I am talking about the late Ms Hope Zinde. Now – and I was told that Ms Zinde accompanied by Ms Naidoo removed the files. Ms Zinde was a general manager for the public affairs portfolio.

Now throughout, Chair, the submission, there is not

even any reference to Ms Zinde in the file. I do not know if it is out of respect for her but I think that that very same day she did call me and we spoke and I said I agree with you that that is not the way to go.

ADV VAS SONI SC: Okay.

MR MONTANA: So when ...[intervenes]

ADV VAS SONI SC: I am asking a different – because Ms Zinde is mentioned in paragraph 15.10.

MR MONTANA: Okay.

10 **ADV VAS SONI SC:** You know, Mr Montana, we are not going to make much progress if we do not answer questions. The question I asked is when did you become aware that Ms Naidoo had removed the files?

MR MONTANA: But, Chair, that is an issue of dispute, it is not a factual issue. I am saying that the issue that was there – and now that is why the people who removed the files, I am saying that in my understanding it is supposed to Ms Zinde accompanied by Ms Naidoo.

ADV VAS SONI SC: Alright.

20 **MR MONTANA:** Okay? Now that is a factual issue and I am saying that – now I was not aware that she is mentioned in the next page but there it is mentioned in a context of a meeting, not in the context of the removal of files.

CHAIRPERSON: Let us take this bit by bit. To your

knowledge were the files ever removed?

MR MONTANA: Chair, I was told – when she called me, yes, she confirmed they came to remove the files.

CHAIRPERSON: So when she spoke to you, according to her the files had already been removed?

MR MONTANA: Had already been removed, Chair.

CHAIRPERSON: Yes.

MR MONTANA: I think it was late in the evening when she called me.

10 **CHAIRPERSON:** Yes.

MR MONTANA: And said look, I was trying to reach you during the day.

CHAIRPERSON: Yes.

MR MONTANA: And I spoke to the meeting independent director.

CHAIRPERSON: Yes.

MR MONTANA: This is what happened. So we spoke over the phone on that [inaudible – speaking simultaneously]

20 **CHAIRPERSON:** So it was on the same day.

MR MONTANA: It was on the same date, Chair, but late.

CHAIRPERSON: Ja, late. Okay, alright.

ADV VAS SONI SC: And when you say she called you, you are talking about Ms Ngoye.

MR MONTANA: Ms Ngoye, sorry.

ADV VAS SONI SC: But she says then – and I understand you are drawing a distinction between who was present when the files were removed. I understand you to say you thought Ms Hope was also there – sorry, Ms Zinde was there. Can I ask you this? Is it correct that, as Ms Ngoye says, a board meeting was scheduled for the following day? Is that correct?

MR MONTANA: The board meeting of what, of Intersite?

ADV VAS SONI SC: That is what it seems like. And she
10 says she confronted you with this issue at that board meeting.

MR MONTANA: No, Chair, I cannot recall such a conversation, no.

ADV VAS SONI SC: Alright. Okay, let us just look at what you agree with and disagree with.

MR MONTANA: Ja.

ADV VAS SONI SC: You do not – you cannot recall if there was a meeting on the following day, that is the 21 May.

20 **MR MONTANA:** Of the board, no. I assume this is the board of Intersite, Chair. I cannot recall it.

ADV VAS SONI SC: Okay. And then she says ...[intervenes]

CHAIRPERSON: Well, there seems to be a problem, Mr Soni, because in paragraph 15.8 Ms Ngoye says the

...[intervenes]

ADV VAS SONI SC: The meeting took place on
...[intervenes]

CHAIRPERSON: The removal of the files seems to have happened on the 20 May and then in paragraph 15.10 she says a board meeting was scheduled for the following day but then she says 27 May 2018, unless it is an error.

ADV VAS SONI SC: You will recall, Chairperson, she corrected that when she gave evidence.

10 **CHAIRPERSON:** Yes, okay, so it is meant to be 21?

ADV VAS SONI SC: It is meant to be 21.

CHAIRPERSON: Okay. This supplementary affidavit was filed? It is [inaudible – speaking simultaneously]

ADV VAS SONI SC: She corrected when she was here, Chairperson.

CHAIRPERSON: Ja, no, I am saying even if they correct it here it always convenient if a supplementary affidavit is done.

ADV VAS SONI SC: As you please.

20 **CHAIRPERSON:** So that in the bundle one can see oh, this was corrected. So that could still be done.

ADV VAS SONI SC: Yes.

CHAIRPERSON: That could still be done. Ja, okay. So that is 21st. Okay, you may proceed.

ADV VAS SONI SC: She says at this meeting she asked

you why you had not told her of the instruction to remove the file. Now I know you say you did not give that instruction to her. I just want to know whether you recall a conversation with Ms Ngoye about the removal of the file except on the phone on the previous matter.

MR MONTANA: No, Chair, only that night when we spoke about it on the phone as in 15.9, yes, ja.

ADV VAS SONI SC: So can I take it that as regards the rest of paragraph 15.10 you say either you cannot recall or
10 it did not happen.

MR MONTANA: Well, Chair, let me – I do not recall having a discussion for 15 – 10.15.11 with Ms Ngoye, no.

ADV VAS SONI SC: Alright, she ...[intervenes]

MR MONTANA: In the meeting she is referring to.

ADV VAS SONI SC: Yes. She says present at the meeting where Ms Hope Zinde, Ms Naidoo, Mr Holele, yourself and herself. I take that those would all be the board members of Intersite?

MR MONTANA: Those would be?

20 **ADV VAS SONI SC:** The board members of Intersite, the people whom she names there.

MR MONTANA: No, no, no, this – she was the CEO of Intersite, the other people were the PRASA corporate office.

ADV VAS SONI SC: Oh, I see, okay, alright.

MR MONTANA: So there were no board members at all involved in that discussion.

CHAIRPERSON: Well, she in the first line of paragraph 15.10 talks about a board meeting and now of course she does not specify whether that is PRASA board or Intersite but one might assume that because at that time she was CEO of Intersite that she is talking about the board of Intersite.

MR MONTANA: And then she was also not participating in
10 the board of PRASA.

CHAIRPERSON: Yes.

MR MONTANA: So I agree, Chair, that ...[intervenes]

CHAIRPERSON: That must be Intersite.

MR MONTANA: Intersite, it should be Intersite board, Chair.

CHAIRPERSON: Yes, okay. But would Ms Zinde, Ms Naidoo, Mr Holele normally have been entitled to attend board meetings of Intersite?

MR MONTANA: No, no, Chair, only myself as – because I
20 was chairing the board at [inaudible – speaking simultaneously]

CHAIRPERSON: Yes, ja.

MR MONTANA: And Ms Ngoye.

CHAIRPERSON: Ms Ngoye as CEO. If these were to attend they would attend per invitation or something?

ADV VAS SONI SC: Sorry, Chairperson, can I intervene?

I am the cause, that is why I want to intervene.

CHAIRPERSON: Oh, okay.

ADV VAS SONI SC: You will see on the fifth line, this is something I – because I was trying to use a broad stroke to deal with 15.10, she says:

“At the board meeting he asked Mr Montana to schedule a meeting with all the relevant parties so that the matter could be dealt with. He scheduled a
10 meeting for a few days later.”

So these are two different, I [inaudible – speaking simultaneously]

CHAIRPERSON: Okay, these are two different meetings, okay, okay. No, that is fine, that is fine.

ADV VAS SONI SC: I am sorry about that.

CHAIRPERSON: No, no, no. No, no, that is fine. Okay, you may proceed.

ADV VAS SONI SC: Now can you recall a meeting – now we know it is not the board meeting, where the six of you
20 discussed or the five of you discussed.

MR MONTANA: Not at all, Chair, no.

CHAIRPERSON: When one looks at the contents of paragraph 15.10 is it possible that she is mistaken about the day when that discussion took place? Maybe it took place over the phone on the evening when she called you

or...?

MR MONTANA: I think so, Chair, I think - and that relates to 15.9.

CHAIRPERSON: Yes.

MR MONTANA: She did make a call to me.

CHAIRPERSON: Yes.

MR MONTANA: We spoke, that I remember vividly.

CHAIRPERSON: Yes, yes.

MR MONTANA: And she was, she was unhappy about
10 that.

CHAIRPERSON: Yes.

MR MONTANA: The board meeting, of course, if she raised it at the board meeting of the 27th – of course that should be reflected in the minutes and the other meeting, I cannot recall whether there was such a – that there was a meeting to discuss this specific issue, Chair, no.

CHAIRPERSON: Yes.

MR MONTANA: But that is the point I am making, Chair.

CHAIRPERSON: Ja.

20 **MR MONTANA:** That some of these things are mixed and I think that is a bit of problem that I have, also with the sequencing of what you are trying to portray but I think let us deal with the affidavit as it is, Chair.

CHAIRPERSON: Because she does say in paragraph 15.10 that your response when she asked you why you had

not told her about your instruction that the files should be removed from Intersite, she does say you responded by saying that you had nothing to do with that instruction and that you did not know what she was talking about.

Now that might not be exactly in the same way you put it but it reflects – it is consistent with what you said.

MR MONTANA: Indeed, Chair.

CHAIRPERSON: You know, you say you had not given instruction and that is what you told her.

10 **MR MONTANA:** Correct, Chair.

CHAIRPERSON: And then the only next thing is the question of the suggestion of a meeting.

MR MONTANA: Ja.

CHAIRPERSON: Where the people she lists there would be present. You say you do not recall ...[intervenes]

MR MONTANA: No, I do not recall, Chair.

CHAIRPERSON: That part.

MR MONTANA: I am not denying, it is possible, but I do not recall us having that meeting, Chair, no.

20 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: Can I just put to you - and I understand your answer – I just put to you and we know what your answer is, so that you fully responded to everything that she has said because she said at the meeting and it have not even gone on for five minutes

when you accused Mr Holele and her of not following your instructions, and I will just tell you what those instructions are.

That, sorry Mr Holele then said you had no authority to just remove the mandate of the advertising portfolio from Intersight without a proper board resolution and thus he could not have carried out that instruction. Can you recall that?

MR MONTANA: Chair, no. But let me also say that this
 10 very point is made earlier in the earlier pages, where she said she said to me that she is asking for a board resolution and none was provided. Later on in the affidavit, Mr Holele says that.

Chair, the I am not sure if Mr Holele would disobey a lawful instruction from me, unless if he stated it and say that I cannot clearly, but this PRASA that is described here Chair, it really shocks me that this Mr Montana was so haphazard, he just arrived and said move a function.

A function Chair, let us part the files a bit. A
 20 function is a big thing. It has to do with budget and a number of Employees Chair. They do not just come and say move the stuff there, and I think Ms Mboye because of what she is trying to portray or present to the commission, she is dealing with the issue of files and elevating that to the issue about the function.

I think here possibly what she was trying to do is she was trying to debate how PRASA was dealing with the issue of litigation of [indistinct] Chair. So I, that is what my thinking is and that is why I have a problem with all of those things there.

Mr Holele never said that I do not remember sitting in a meeting where he said that, I mean if you look at it Mr Holele was still at PRASA corporate office, not even at Intersight and I think this time Chair you will see even the
10 stuff that he was writing, that he would not even express such a critical view Chair.

It only became, it became so vocal when I have taken disciplinary action against him Chair, for other wrong things that he has done.

CHAIRPERSON: Yes, Soni.

ADV VAS SONI SC: As you please Chairperson. Mr Montana, I do not want us to enter this debate, but I am saying to you when one reads 1511, the one thing that is quite clear because I accepted the distinction you drew
20 between removing the file relating to the case that Prime Media was going to bring, and removing the advertising function in relation to Strawberry Walks.

But if nothing else, 1511 makes that quite clear, because Ms Ngoye says that you said they, he told you you had no mandate to move the advertising portfolio. So I

accept the distinction you draw. I am saying that they are not mistaken about it.

They know the tune. She says they removed the files on the one day and now she is talking about the removal of the advertising portfolio as well. I do not want you to react to it, you have given your view. I am just saying to you that based on this, that is not consistent with what is contained in Ms Ngoye's affidavit.

MR MONTANA: No, no Chair, I note that but I do not agree
10 with 1511. That is the point that I made, ja.

ADV VAS SONI SC: Yes no, no, no I understand.

MR MONTANA: Chair, let me say Mr Soni you keep on confusing I think probably even the Chair, because you then say and I think you have corrected it now, advertising portfolio and then earlier on you were talking about removing the Strawberry Portfolio.

So I think that sometimes when I respond, it is because of ... I do not think it happened consciously, but I think then when I respond ...[intervenes]

20 **CHAIRPERSON:** Ja.

MR MONTANA: I just wanted you to note that point.

CHAIRPERSON: Okay, okay.

ADV VAS SONI SC: Okay. I am just again, sorry I know you say that you cannot recall that this happened or probably it did not happen. She says at 1512:

“I was taken aback by this approach. I thought the purpose of the meeting was to deal with the alleged instruction which she had denied giving you.”

Then she says Ms Naidoo accused her of fraud and maladministration of the portfolio and that she was preferring other media players over Strawberry Walks. Can you recall whether it happened at this meeting or some other meeting?

10 **MR MONTANA**: No Chair. I think that Chair, my advisor ... my advice, my advisor was not performed or [indistinct] Chair. At that time an advisor does not perform executive function. She advises me. She interacts, pull out the right kind of information and she would not make, she would not make Chair, I do not know but I think the relationship between Ms Ngoye and Ms Naidoo was not, it is clear it was not a good one, and you can see that how she is pumping this issue.

20 But Chair, if she were to say that to an executive, I would not she rather say that to me, that so and so I think is guilty and here are the facts, but if I sit with my executives and she says that, I will never accept that Chair, because it will be a disrespect not of the executives themselves, but for me as the CEO, and I will not accept that.

So I do not think, I think Ms Naidoo has a great professional, a sharp legal mind. I think she did tremendous work for us. The fact that on this one within the business, there was this big confrontation and that there was, and I think this was in fact unfortunately her timelines are not in this affidavit.

It will even make us understand at what point we were Chair. So yes, things were not smooth. There were those type of tensions and conflicts between people, but I
10 think Ms Ngoye had made a choice to put them to say no this were happening to Strawberry, Strawberry is supposed to be linked to Mr Moodley.

That is the point she is making Chair, even if the facts ... so she is trying to harness the facts or the particular experience to support that view, and I do not share that view Chair. That is what I am saying to you, to Mr Soni.

ADV VAS SONI SC: Alright, but she says something quite significant thereafter at the top of page 286. She says:

20 "I told Mr Montana he will have to put me on suspension if he believed the allegations against me, so that he could conduct an investigation [indistinct]."

MR MONTANA: Chair, this did not happen. It did not happen. The only time that Ms Ngoye get me to do that

she knows that she left PRASA. When I tried to speak to her and she shows, she showed signs of insubordination, she disrespected in fact the meeting, the fact that I was having people there.

I said look, I hear your concerns and this related to Mr Dingiswayo. So if she had dealt me in that way if there was such a meeting Chair, I know that I would have acted immediately without any hesitation. It did not happen Chair.

10 So I think that for me, I note that it is in line with the narrative that she wants to present. I am saying it is not the truth and the commission will evaluate whether what she is saying and what I am saying, once my affidavit is presented Chair, what actually could be the truth in these matters.

ADV VAS SONI SC: Alright. Then she goes on in relation to that proposition to you, that she be put in suspension. She says:

20 “However, instead of taking steps against me, Mr Montana outraged as he was instructed the manager who was responsible for the advertising portfolio at Intersight, and had recently been moved to report to Ms Zinde, Mr Martin Chauke be suspended with immediate effect.”

Now she is dealing with a lot of things here. She is talking about different people, but the essence as I understand it she is saying you then instructed that Mr Chauke be suspended. Having regard to the call on you to suspend her, pending an investigation into the allegations Ms Naidoo made.

MR MONTANA: Chair, it is unfortunate that Ms Zinde is not with us, because I know, I know the reason why she wanted to take action against her. Mr Chauke, and I think
10 at that time if I remember he had reported that to her, to the ER department at PRASA on why there should be such an action.

Again a separate activity which is linked to support the narrative that she wants to make. I think that Chair I have never made such an instruction. Mr Martin Chauke when he was at PRASA, I think he was a senior manager Chair.

He was not even a general manager. I only dealt with group executives and general managers. So I do not
20 think Chair, it was right to present it in that way and Chair, also I do not like the way Ms Zinde comes to the picture. Remember, before I saw these paragraphs, I spoke to her in a different role.

Now she comes out there and she is acting in, under my instructions and I was outraged. That is what

she is saying. Outraged as he was. Chair, it takes time to, for me to be provoked and surely I do not know what Ms Ngoye is describing here Chair.

CHAIRPERSON: I think Mr Soni to the extent that this may not have been done or it may be necessary to obtain the affidavits of Mr Holele and Ms Naidoo to give their version about what happened at this meeting.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Obviously Ms Zinde is late, there is
10 nothing we can do about that, but I am sure Ms Naidoo can be found somewhere and Mr Holele. We do not have an affidavit from Mr Holele about this?

ADV VAS SONI SC: Mr Holele, you will recall Chairperson. He was the first witness in PRASA. He made a general statement besides dealing with what Ms Moodley told him. He made a general statement that he had read the affidavit of Ms Ngoye and Mr Dingiswayo and he confirmed the correctness of those allegations in so far as they concerned him.

20 But obviously this is now a different issue. It is not just simply a concern free affidavit.

CHAIRPERSON: Yes.

ADV VAS SONI SC: We will have to get details about it.

CHAIRPERSON: Ja, ja and attempts can be made by Ms Naidoo as well.

ADV VAS SONI SC: Yes, well Mr Montana I am sure will help.

CHAIRPERSON: That is assuming they are still in touch.

ADV VAS SONI SC: Well, you will recall Chairperson, I asked earlier ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: If he had asked is Ms Naidoo can attend these proceedings.

CHAIRPERSON: Oh okay, I did not know that.

10 **ADV VAS SONI SC:** Yes, that is the Ms Naidoo ...[intervenes]

CHAIRPERSON: Context of ...[intervenes]

MR MONTANA: Chair, I wanted to invite her ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: Especially because there were matters, I would ask a number of people. Some of them former PRASA Employees ...[intervenes]

CHAIRPERSON: Ja.

20 **MR MONTANA:** Will remember the details and I consult with them on these issues, so I will speak to her Chair.

CHAIRPERSON: Yes, no that is fine and then you can give her number to Mr Soni.

MR MONTANA: Soni, ja.

CHAIRPERSON: Or somebody. Ja. Or Ms Rangata or, ja okay. Alright, let us continue.

ADV VAS SONI SC: Alright. Then she goes on to say, this is Ms Ngoye:

“Mr Montana then instructed me to call Mr Chauke and tell him to bring back all PRASA property that evening as he was suspended with immediate effect.”

Which is obviously, now this is the 27th because it is a few days later.

MR MONTANA: Chair, can I see the copy of the letter?

10 **ADV VAS SONI SC:** There are no letters. Whatever we have Mr Montana, we have presented it.

MR MONTANA: No, I am saying Mr Chauke is still there Chair. He received a letter of suspension. Can we have that letter? Was it a letter signed by me or who signed the letter?

CHAIRPERSON: Okay.

ADV VAS SONI SC: Can I ask you let us, and I do not mean to be disrespectful Mr Montana. This is an investigation into a whole number of allegations. If you
20 want to deny it, deny it and we will talk to Mr Chauke, but we cannot keep saying can I see this and can I see that.

It is not going to be ...[intervenes]

CHAIRPERSON: No, no, no Mr Soni. No, no, no.

MR MONTANA: Chair, I just want to ...[intervenes]

CHAIRPERSON: Hang on, hang on, hang on. Mr Montana

is not a lawyer. He has denied some of the things that are being said by Ms Ngoye. I suspect that if Ms Ngoye says Mr Chauke was suspended in the light of the fact that he is denying some of the things, if he wishes to see the letter of suspension I think that is fine.

But if we do not have it, we do not have it. So if we can find it that is fine, but if we cannot find it, then that is what we can just have. We do not have it or we cannot find it and then it may well be that there is something that
 10 he wants to look at there which might help his version.

Or it may well be that there is nothing, but let us see if we can find the letter from Mr Chauke.

MR MONTANA: Chair, the reason I am asking for it is not to argue. I am saying I just want to remind myself, because here and we are dealing with a factual issue which is very important Chair, and because the ... we are told that two people handed the letter to Mr Chauke.

The letter, so that is why I am saying it will help me to make even the recollection and what was the context.
 20 Was the letter signed by me, signed by somebody else. We are told it is being handed over but we are not told who signed the letter, who suspended Mr Chauke and what was the specific, what was the specific transgression that he was suspended.

So I just wanted to do that to assist the commission

Chair. Not to argue against what Ms Ngoye is saying. It is possible but I do not want to disclaim that Chair, hence I was asking for the letter.

But I will accept it Chair if the commission does not have it, but noting that Mr Chauke is there and he has deposed to an affidavit I think on the matter of Mr Moodley, I think he probably has a copy of that letter and he could share it to the commission Chair.

CHAIRPERSON: Okay, alright. I think Mr Soni let us just,
10 somebody maybe the investigator can check and if it is there it is there, if it not there it is not there.

ADV VAS SONI SC: Chairperson, I was not being short with Mr Montana. I am trying to get a version out of him and I think if you did not do it, tell us. Then we know that we need to go and look Chair, but ...[intervenes]

CHAIRPERSON: Okay.

ADV VAS SONI SC: It was not intended as anything else ...[intervenes]

CHAIRPERSON: Yes.

20 **ADV VAS SONI SC:** But to extract from Mr Montana an answer to the allegation that you instructed that he be dismissed but that does not prove ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: But we just want a version on record so we can say that ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: That is the allegation.

CHAIRPERSON: Okay.

ADV VAS SONI SC: That is the response.

CHAIRPERSON: Okay, maybe it would have been more helpful if Mr Montana had started by saying that is not true and then he could enquire about the letter.

ADV VAS SONI SC: Yes, no no I understand.

CHAIRPERSON: Okay.

10 **ADV VAS SONI SC:** But ...[intervenes]

CHAIRPERSON: Let us just ...[intervenes]

ADV VAS SONI SC: But we leave that point Chairperson.

CHAIRPERSON: Yes.

ADV VAS SONI SC: We know we must try and get the letter to the extent that ...[intervenes]

CHAIRPERSON: No, no that is fine. Ja. That is fine.

ADV VAS SONI SC: Mr Montana, and please I am not being disrespectful of you. As I say, if you cannot remember or you say look, I do not recall it, but if I am
20 shown the letter I do not mind, but at least we know that is your reaction.

MR MONTANA: Chair, I think that is what I was trying to say, ja.

ADV VAS SONI SC: Okay.

MR MONTANA: Thank you.

ADV VAS SONI SC: But can I ask you this just as a general question. Do you know whether you suspended him or not, do you know if Mr Chauke was suspended?

MR MONTANA: Chair, I do not know. I do not know, that is why I need to go and verify exactly that information.

ADV VAS SONI SC: Because it is said that he was suspended with full pay for two years, but he was brought back, that is at 15.15. But obviously if you do not know that he was suspended, you cannot meaningfully react to
10 that.

At 15.15.

MR MONTANA: I see that Chair, I see that.

ADV VAS SONI SC: Yes. Alright, now ...[intervenes]

CHAIRPERSON: Would you know whether he was charged or not charged?

MR MONTANA: Chair, I do not have the details.

CHAIRPERSON: You do not know. Ja, okay.

MR MONTANA: The only thing Chair that 15.15, the first part I would not, but I take note of what is said in the
20 following lines. He was one of the Employees who was brought back to the office after the board of Mr Popo Molefe had instructed that all suspensions of Employees be investigated.

I also record that the auditor general had noted that several PRASA Employees were on suspension for very

long periods without any charges and that this could constitute wasteful expenditure.

ADV VAS SONI SC: Yes. Now at 15.17 he makes the point ...[intervenes]

MR MONTANA: No, Mr Soni.

ADV VAS SONI SC: Ja.

MR MONTANA: Sorry Mr Soni, and Chair just to why I read that part, is because at that time Ms Ngoye herself was suspended. The paragraph that she is describing on
10 how she came back and I think it was Norton Rose or one of those law firms which came back.

I think after I had left PRASA, but I think I have seen where a lot of Employees who were suspended Chair, not in one centre, in divisions everywhere. Ms Ngoye recalled she was suspended amongst the charges she was facing was the issue of the regular payment or approval of variation of 58 million to SA Fence and Gate.

She was suspended by me Chair for a number of things, including that and immediately after I have left, she
20 is one of those people that were brought back through the same process Chair and a lot of people were not, did not take accountability as a result of that.

So I am reading it Chair, because it then tells you that we if the board, I am not sure if the board of PRASA had taken a specific decision and say that specific person,

but people were brought back and some of them are issues that I am pursuing with the commission that in fact these people should be held accountable for some of their actions Chair.

ADV VAS SONI SC: Alright. In regard to 15.17 you have made this point before Mr Montana, that there is no evidence that you have seen linking Mr Moodley to Strawberry Walks. That is 15.17.

MR MONTANA: Chair, with what we have discussed I
10 agree with you and Mr Soni.

ADV VAS SONI SC: Yes.

MR MONTANA: With what we have discussed about these meetings and everything. It actually tells us about the ongoing battles within a public entity at a particular point. I thought that will be shown, it is on the same fence, you know the hand of the one that is manipulating this.

There is no evidence that does that and then the conclusion is drawn ...[intervenes]

CHAIRPERSON: Remember to translate that Mr Montana.

20 **MR MONTANA:** The hand, what is it called ...[intervenes]

CHAIRPERSON: So I am not going to help you.

MR MONTANA: If ...[intervenes]

CHAIRPERSON: Mr Soni must hear what you are telling me.

MR MONTANA: Manipulating hand. We always say it is a

monkey's hand Chair. That is my, ja it is a saying that you cannot translate. [Indistinct] changing this. We have not Chair, we have dealt with fights between PRASA people, okay.

We have dealt with ups and downs and then at the end, with the stroke of a pen, this shows how Mr Moodley, surely we can do better than this Chair in terms of evidence. I thought Chair let us, because the meeting where Mr Moodley was said and I have seen the affidavits, 10 where Mr Moodley was said to have interacted with PRASA.

Was 2017 after I have left. I left in 2015. He is interacting with PRASA in 2017. So maybe he became powerful Chair in 2017 after I have left PRASA and when him and the Chairman of the board were playing golf together or arranging golf trips all over the world.

CHAIRPERSON: Mr Soni, did you skip 15.16 deliberately or was it oversight or I did not hear you deal with it.

ADV VAS SONI SC: Chairperson, I in my notes I did not 20 think it was relevant.

CHAIRPERSON: Oh okay, maybe let me clarify. Let me clarify. You see at paragraph 15.16 Mr Montana, Ms Ngoye says:

“The effect of moving the advertising portfolio from Intersight to PRASA is that the

management of the portfolio was not in the interest of PRASA and PRASA benefitted legally if anything from the portfolio.”

Now I know that you have said a lot about the distinction between removing the portfolio and removing the files. It is clear from this paragraph that Ms Ngoye’s version is that the portfolio was moved. Now I want to ask the question whether while you were there as group CEO, was the portfolio ever moved from Intersight to PRASA?

10 **MR MONTANA:** Chair, indeed.

CHAIRPERSON: It was moved.

MR MONTANA: The portfolio was moved.

CHAIRPERSON: Okay.

MR MONTANA: At the point, I think I admitted that at the beginning.

CHAIRPERSON: Okay, I missed that.

MR MONTANA: But I said the reasons for moving the portfolio ...[intervenes]

CHAIRPERSON: Ja.

20 **MR MONTANA:** Has nothing to do with the fight ...[intervenes]

CHAIRPERSON: Yes, you said it was about ...[intervenes]

MR MONTANA: But the point I am making Chair ...[intervenes]

CHAIRPERSON: It was about what the strategic objectives

of the company and whether ...[intervenes]

MR MONTANA: Indeed Chair.

CHAIRPERSON: The company was making money out of this portfolio.

MR MONTANA: Chair, in fact when I was there I think the portfolio was moved probably twice.

CHAIRPERSON: Yes.

MR MONTANA: But it had nothing to do with Ms Moodley.

CHAIRPERSON: Yes.

10 **MR MONTANA**: As she wants to complete in 15.17.

CHAIRPERSON: Yes. In terms of timing, is it possible that the two of you are talking about the moving of the portfolio on the same occasion? You just differ on the reason why it was moved. Is, do you think that might be the position?

MR MONTANA: No Chair, I think there are two things from where I sit. The first one is that we both know the objective reasons why the portfolio moved and why there were changes and all of that. I think that is, and this was
20 not a secret.

If you look at the, at PRASA's corporate plan in particular, for the years that we are discussing here, you will see that there is a lot of discussion about that and what we should get from the advertising portfolio, more specifically.

Now the, it is also a separate issue that there were files and these files did not start at the beginning. It is just as I said the email show that this, we did not wake up in the beginning and there was this big fight. Excuse me, this big fight about advertising, or rather let me put this big fight relates to how we deal with the litigation of Prime Media and which law firm should represent PRASA and all of those things.

Now 15.6 Chair, I said earlier on ...[intervenes]

10 **CHAIRPERSON:** 15.16 or 6?

MR MONTANA: 15.16, the one that we just said ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: I do not share the view Chair. I think that what is the interest of PRASA in that, except to maximise revenues from portfolio and it did not get any of that at that time, and that is why I spoke about even the judgment that I shared, and shared some of the numbers that I dealt with.

20 So Chair, I think what I think this could be happening, that when Ms Ngoye was recollecting some of those things, she may then have confused some of the dates and some of the processes, but I think for me the biggest thing that she is trying to deceive 15.17.

So she is trying to harness these things towards

supporting the point she makes, because that is ...
remember when we started Chair on the other side, she
mentioned companies that were favoured and we got into
Strawberry and then he says I submit that what I have
narrated you know just how powerful Mr Rory Moodley was
at PRASA, and I am saying but Chair we classified that this
is a friend and didn't see all in this thing.

CHAIRPERSON: Now at some stage when you were
talking about the issue of moving the portfolio I understood
10 you to say something along the lines that Miss Ngoye
would have been part of a discussion of such a matter.

MR MONTANA: Indeed Chair.

CHAIRPERSON: When the decision was taken to move
the portfolio, as you say it was. Was she part of that
decision?

MR MONTANA: Chair Ms Ngoye - was part of all
these meetings, these were discussions at our Exco, they
were not secret meetings.

CHAIRPERSON: H'm

20 **MR MONTANA:** And she had my – you know she had
my support Chair.

CHAIRPERSON: H'm

MR MONTANA: And that is why when - her name
came up to be appointed as CEO of Intersite, firstly, when
she was appointed the CEO of Intersite at that time spoke

to me and said,

“I think that – when we transferred some of our businesses, Metrorail, Shosaloza from Transnet to PRASA, the person on the other side was negotiating with us...”,

You understand the portfolio. I’m not referring to the portfolio, but the – the assets of the [indistinct].

“And I think that we should head hunt her”.

I supported that Chair. When he left – or he went to
10 become a CEO of a different division within PRASA and –
and he said that,

“We think that, we need to bring a woman into that leadership position”,

And Ms Ngoye was nominated. I supported her Chair. The fact that when Ms Ngoye was moved, from Intersite and she came to PRASA, and let me say one thing – one other thing Chair, by the way. When – when there were these changes. One of the biggest fights was not about this, was about the – was about the, the creation of PRASA Cres. I
20 had to sit with the team from Intersite and PRASA Cres who didn’t want to co-operate Chair, to implement a decision that was now not even a – a decision of the CEO, but was now a PRASA body, that were now going to have a division manger of property portfolio and advertising, and they were going to have an Intersite focusing on asset

investment.

Chair so you can see, for me I won't write and say it shows that Ms Ngoye was there, because CEO's and their managers fight for their businesses within a group. I was a group CEO, sometimes I have to manage and sometimes this one win over this one, sometimes visa versa. I had to play a balancing role. But what she s trying to do here Chair. She – you know it's one thing when she says,

"I didn't agree with Mr Montana's strategy",

10 And all of those things, she is trying to say this was the lackey, of Mr Moodley. But the evidence she provides or the events – her narrative doesn't even support – haven't had – haven't seen the hands of Mr Moodley. I'm still waiting for it Chair. Maybe as we proceed I'll come across it.

CHAIRPERSON: So, should there be minutes of an Exco meeting where these decisions were taken which would show that she was present, you would expect such meetings to exist at PRASA?

20 **MR MONTANA:** No, no, Chair, they exist, in fact one of the things we did, I think I took the entire Intersite and PRASA Cres teams to, I think we went outside because of the fight I said, guys maybe we need to think, you know the bit of fresh air let's go and see, we went to go and see together and we crafted what became known as a PRASA

real estate strategy, which teams from both sides drafted, presented, I tell you I was happy with it, we took it to the Board and everything so, Board minutes and other things will support all of that Chair.

CHAIRPERSON: Yes, but in particular, because you said it would have been Exco which made this decision?

MR MONTANA: Exco discussion Chair would hear all of that.

CHAIRPERSON: Ja, there should be minutes.

10 **MR MONTANA:** And Ms Ngoye would have participated, I think if we call for those years, for the minutes Chair, they will show that these were Exco discussions especially when we were preparing and drafting the PRASA corporate plans.

CHAIRPERSON: Okay, alright, Mr Soni?

ADV VAS SONI SC: We'll try and see if we can secure that. The part of the problem of course, I'm not saying we won't try.

CHAIRPERSON: Yes, yes.

20 **ADV VAS SONI SC:** That the lockdown has created a serious of ...[intervenes]

MR MONTANA: ...[indistinct]

CHAIRPERSON: Oh, yes.

ADV VAS SONI SC: ...issue because many of their senior employees still work from home, in respect of matters that

we've been trying to get it's been a bit difficult but in respect of our access to PRASA itself, until Ms Hlatwayo was suspended he was one of the contracts and then Ms Ngoye is now under suspension. I'm not raising difficulties I'm only explaining that we may ...[indistinct].

CHAIRPERSON: Yes, no, no that's fine I guess that in their absence you'll just have to either approach the company secretary or the CEO or the Chairperson of the Board, ja, okay, alright.

10 **ADV VAS SONI SC:** Mr Montana I just want to understand just finally on the issue of the removal of, either the files or the portfolio, the advertising portfolio from Intersite. Now, there were differences between you and Ms Ngoye would that be correct, or am I missing something that she's inventing those differences now, in this affidavit?

MR MONTANA: Well, Chair, with what she has submitted here, I'm not sure if – when you translate that we have brought strategic area I'm not sure if you've heard, we've heard a thing on the bigger issues, we've debated issues,
20 people have given their views but on these specific issues raised I think, clearly, Chair we stand on opposite sides.

ADV VAS SONI SC: And that's always been the case from at least 2013 when she complained about the removal of the files and you say she did phone you so at least from that time you knew that she held a different view, not

necessarily with regard to the movement of the advertising portfolio but in relation to the movement of the Primedia or the file relating to the Primedia disciplinary.

MR MONTANA: Yes Chair, Chair, you know for me removal will be fine, if somebody say, I wasn't happy, Martha said she was – Ms Ngoye rather, said she wasn't happy with the way this thing was done. Now, a CEO managing a big asset may get angry with that and say we've got a different view Chair about...[indistinct]. So,
10 I'm saying Mr Soni, that – and you'll see 2015 notwithstanding all the to and fro's in the files you'll see – and in fact I think she says it in the next page about the nature of our relationship and that was that. That is why I view many of the things that she writes as manufactured lies, Chair, more than anything else and I say she even taken an event and then she subject it to 15.17, that's the point I'm making. So – but if you go to paragraph 19 chair or rather paragraph 18 and 19, I think that it tells you that I didn't treat Ms Ngoye in the manner that you saw, I don't
20 think the differences were profound until I formed a view, I explained that I formed a view that Ms Ngoye and Mr Dingiswayo were not working in the interest of the company and that was only in 2015 after I came back from Cape Town Chair.

CHAIRPERSON: Now, this – I wanted to ask this, the

removal of the files, did it happen prior to December 2015 when you recommended that she should - 2014 you recommended that she should act in your absence when you are on leave?

MR MONTANA: Yes, Chair, I think this happened, two, three years earlier.

CHAIRPERSON: Oh, okay.

MR MONTANA: So, you can see, Chair, that we all have our own personal irritations and everything but for me it
10 didn't – it was not a matter that I should be furious or angry about. I asked her to act because I thought – and I explained yesterday that when somebody acts in a position it was an opportunity for them to – as part of developing their leadership skills to have an opportunity of what it means because they get submissions, they've got the full powers and authority that I have as Group CEO, they have to make those decisions in my absence. So, Chair, I think to answer Mr Soni's question, I don't think, until that time there was this big difference and at that time there was not
20 Mr Moodley's hand in only came when now the explanation why certain contracts should be investigated and to be linked to certain people that's what this story is all about.

CHAIRPERSON: In terms of who would be appointed as Group CEO in your absence with whom did that power lie. Did you make a recommendation to the Board and the

Board made the decision or would you make the decision yourself, did you have the power to make the decision yourself?

MR MONTANA: Chair, I had – well I think I'm sorry, I think I have to look at the delegation of authority ...[intervenes].

CHAIRPERSON: Yes but your recollection.

MR MONTANA: My recollection and the practice, Chair, was that it will be my decision but I will consult the Chair
10 of the Board so that has been the practice and in this particular case I did consult with Mr Molefe because when we leave – [indistinct] was leaving – going for a relatively long period of time.

CHAIRPERSON: Ja.

MR MONTANA: So, I had to inform him that ...[indistinct] would be acting in that position and if the Chairman has got a problem he will say, but – I think we agreed because we had one on one meetings with the Chair and then I'll sign documents, including forms that I'm going on leave
20 and who authorised the leave, is the Chairman of the Board and then I indicate whose acting in that position.

CHAIRPERSON: I guess one of the points, either, that you are making or would be entitled to make is that, at least from your point of view as at November/December 2014 you didn't – your relationship with her has been

negative because if you viewed it as being negative, it's unlikely you would recommend it that she would act in your position or that you would get her to act in your position, because when you are going to be away you can't take your enemy and put them in your position.

MR MONTANA: Well, Chair later on- I agree with what you've said Chair, I fully agree with that but I think later events will prove that I've actually taken an enemy and put it in that position Chair, which then resulted in a situation that culminated on the 15th of July when I left PRASA.

CHAIRPERSON: H'm.

MR MONTANA: Certain things were independent directors, he didn't discuss, even without me, Chair, with a seat on their own so that where they realise that there might be issues between PRASA and Intersite as the Group CEO, you are Chairman here you are Group CEO, you are conflicted. So, that relationship was managed, Chair, so she mentioned Mr ...[Indistinct] here and then at Autopage you had, I think it was, Ms ..[Indistinct] to make sure, Chair, that I don't use my position, abuse my position and impose a view on a subsidiary. So, there was a system of control which is in line – guided by what the Company's Act or – in that respect. So, we had that interest and Chair the Board was not hostile ...[indistinct – dropped voice] but

they were saying, you as Chairman of the Board and as Group CEO have to take a view because we think there's a – and I then sat with them, I say, - and I said, look let's take it through a process of non-performance I did convey it in a meeting but I said we do not want to do that, considering where you are coming from, we headhunted you from Intersite, from Transnet, brought you into Intersite you became CEO but he said, we see that you are not achieving those goals, you are not performing at that

10 level and I said to her, I advised the Board of Intersite that, no I think I must speak to the Board of PRASA that, because we are restructuring our Risk Compliance and Legal Portfolio that she comes there. So, in a meeting she – of course she was not happy, Chair because in terms of profile and everything, being a CEO is more important than being a Group Executive and Chair she was, I don't know the word, upset, not upset but – and there were tears Chair, she cried and I know, Chair, then she then consulted the Chairman of the Board, of PRASA, Mr Buthelezi and

20 said, look I'm being removed from my position and everything. The Chairman is someone - and I explained the circumstances, looked at the numbers we think that we are not winning with her but we don't want to be firm with her and take it – and make an appraisal thing and then get rid of her, I suggest – so she's where she is, Chair, there,

because you know one of my weaknesses is that even when people have made big mistakes, I've always remained human, think of their families and say, how do I support them and if Ms Ngoye is fair she will tell this Commission and say, look indeed what Mr Montana is saying is true, Chair. Now, afterwards, a few months later, Chair, I then – brings us to the moment you just described about December when I had to go on leave and maybe Chair, I was trying to close the bridges and I said Ms
 10 Ngoye should act and Chair, I nearly used a word which is inappropriate here that we use in Mamelodi but, Chair...[intervenes].

CHAIRPERSON: This is not Mamelodi.

MR MONTANA: This is not Mamelodi, Chair, I agree and then she showed me flames Chair, let me put it in that way, she showed me flames and they used that time of acting Chair, and I was to discover, only later, not at the time Chair, and I think, Chair, the point you are making is supported by paragraph 18 and paragraph 19.

20 **CHAIRPERSON:** Okay, Mr Soni?

ADV VAS SONI SC: As it pleases. I just want to understand that. Ms Ngoye says that she didn't want legal advisor in regard to the Primedia matter that's ...[indistinct] to be replaced. Was it your view that they should be replaced?

MR MONTANA: Chair, yes, I think that when I got the report at that time, what we were being told, if I remember the details very well, Chair, I think that the – my biggest instruction was that, look, we are not going to win this matter as long as Primedia and Continental still occupy the site, because they make money and fight us with the same money that they make out of the portfolio, and they were trying to suggest a completely different route and I need to think, Chair, I think in the course of the discussion what
10 they were proposing. Chair, it was presented to me Chair, I think it was at the time when the draft – some draft affidavits were being prepared for Court. I think that some of the scores and everything and I think they felt that my legal advisor was taking a more aggressive approach in respect of, what is it called, in respect of that litigation. I think, Chair, they had appointed one of the counsellors it was Mr [indistinct] Twala who was representing us in that matter which was an instructing attorney, I can't recall the exact detail Chair, they were not appointed by me but
20 Chair, I think that the – we did come to a determination at that time, that Intersite, in fact, they were following an approach on advertising, that is not consistent with what we're trying to achieve. Now, that may have given rise to this war that we are talking about that we are describing...[indistinct - dropped voice] and that, I will

accept that but Chair I think when people go and pull files and do all of those things, I'm not part of that file and that is why Ms Ngoye had to call me for ...[indistinct] to me, raise with me, I'm saying she called, she says of course at the Board meeting she raised that matter with me. So, I think – I think, Chair, that we had differences on that issue but did it affect our relationship, no Chair, until probably around January 2015 I think we still had a good relationship and I bumped into her numerous times, we
 10 were pleasant, we exchanged pleasantries Chair, we talked about things and we also recognised, we say, hey – she says to me, you are really fighting me and I said the same Chair and this thing, Chair, is like a ...[indistinct] isn't it Chair. Maybe in coming battles we'll become great friends again Chair, but for now we stand on opposite sides Chair.

CHAIRPERSON: Ja, okay, Mr Soni?

ADV VAS SONI SC: As you please, Chair. I just want to finalise this issue because I want to understand. Was Hogan Lovell effectively less firm on its opposition to
 20 Primedia's case than you and Ms Naidoo would want?

MR MONTANA: Chair, look, my view I was very – I had taken a very hard line stance on the issue of Primedia, 22.44], they had put a bid they lost the bid and I said to the team, the one – the main reason why they are taking this is for them to continue to remain on site and I had

actually given a specific instruction that they should be thrown out of the site because they are unlawfully there okay, and I remember this as one of the issues that we fought about in this matter.

ADV VAS SONI SC: You and Ms Ngoye?

MR MONTANA: No I'm referring to the – Me, Ms Ngoye and all the people that we describe here – that she describes in her affidavit.

ADV VAS SONI SC: Yes, is it – okay, so that was the
10 difference that you wanted a more aggressive stance to opposing the application by Primedia as opposed to what Hogan Lovell's and Ms Ngoye was?

MR MONTANA: Chair, my view was very clear those who lost the tender and who were being dominating this portfolio for how many years, I think – for years, must be thrown out of the portfolio and I think somewhere Ms Ngoye says, Mr Montana, says we didn't follow his instructions but she does in that paragraph – I'm answering your question that – I want to clarify this thing, Chair, Ms
20 Ngoye links it to – she links it to Strawberry, whereas the instruction that we're talking about was that there must be – there must be an order where these entities are actually thrown out of the PRASA portfolio, and I remember that time both Intersite and the law firm, I didn't remember their name...[intervenes].

ADV VAS SONI SC: Hogan Lovell.

MR MONTANA: Yes, I think that they were not in favour of that approach and I was unhappy with that but that was not only the reason Chair, I think that there were a couple of reasons in this thing.

ADV VAS SONI SC: But do you say that, that difference between you and Ms Ngoye was not the reason for what the removal of the file?

MR MONTANA: Ms Ngoye and I, even with the differences
10 that we had, we - I wouldn't describe at that time, that our relationship had collapsed where I'd do that, and I was the Chairman of the Board and she had presented reports to the Board and I think that, in fact, to confirm what I'm saying an assessment of the minutes or the Board of Intersite where she was CEO, you actually see...[intervenes].

CHAIRPERSON: You were civil to each other?

MR MONTANA: We were civil, but I was supporting her, Chair.

20 **CHAIRPERSON:** Yes.

MR MONTANA: I was supporting her throughout. It's not like we differ on this issue, she's saying, we differ on this issue because for her, as I said, 15.17 I'm saying that no, there's much more dynamic environment, there were other issues involved, let's deal with the issues for what they are

and not trying to fit them into what I call, Isando's Inferno, which is actually playing itself out there.

ADV VAS SONI SC: Why then remove the files, why don't you just instruct her, I'm telling you to remove Hogan Lovell and if you don't obey that instruction it's going to constitute insubordination?

MR MONTANA: Yes I could have dealt with it in that way Chair, but again I am saying she also agrees with me that I said I have never instructed for any person to be removed
 10 Chair, there were wars between these people Chair, you can even see how she described Ms Naidoo in these pages, so it is people who are at war with each other ...[indistinct], no, no, no they should have – they are acting with the authority of the Group CEO and when she called me I said no, that is not the case. Indeed Chair one of the reports, and I will check, I think I may still have it that way, when I was given a report from the Legal Advisor, it is called Litigation Matter, it deals with a whole range of issues there and ...[indistinct] and evaluate for me the
 20 litigation strategy that PRASA is following to respond to particular matters and I don't think Chair that there are probably a couple of this – of these matters Chair and she would also for example trace even cases that are before courts involving PRASA, so I don't think Chair that's what I had intended.

Yes, it was an option but I then at that time come to that determination as it were, and Ms – by the way the late Ms Zindi when she assumed her position Chair she was running and she of course had said that – and again she is not here Chair to speak for herself, but she had spoken about her own difficulties in dealing with some of the things that were there, even the Public Affairs portfolio was a relatively new position Chair.

We had also created a new Chief Strategy Officer to
 10 accommodate a couple of these, so this was an organisation that was evolving and yes people were – may have been unhappy about some of the decisions but you can't then put it and say 15.17, that's my main objection there and I am not saying everything that Ms Ngoye is saying is false, I am saying that what she does she creates a motive and she wants to fit and try to say Montana his part was working for this, so he is vested in this thing because of that, and I am saying that is – that I cannot agree with her Chair. That is basically what I am saying.

20 **ADV VAS SONI:** May I ask you why didn't you when she raised it with you, Ms Ngoye, that this is – this was removed, these files were removed, you say you didn't order the removal, why didn't you ask Ms Naidoo to return the files to Intersite?

MR MONTANA: Chair I think this speaks to even a bigger

issue about the relationship between Mr Chaukin and her boss, not Ms Ngoye, but Hinde, and I can tell you Chair we need to check with the PRASA probably in their own – what do you call it, employee information is then why she was suspended. She says she was suspended for the reasons that – that are stated there which I then rejected Chair earlier.

So yes I do not think we took a decision to – for those parts. We spoke about it I just said we did not – we
10 ended up there but I think that they continued Chair in their own way what was happening there.

Was it in the interest of the business? No but I think Chair people in the – you have the kind of dynamics where people undermine each other, fight over things around that but it was never an instruction from me Chair.

CHAIRPERSON: But Mr Soni's question is here you find that according to Ms Ngoye files that should be at Intersite have been removed and she was told according to her that the instruction came from you and you know that that was not
20 true, you never gave such an instruction. Mr Soni's question is the most logical thing is for you to say Ms Naidoo those files must be taken back why did you not say that? That is what the question is.

MR MONTANA: Chair I explained earlier on so let us bring back what I said. I hear Mr Soni's thing but two things here.

The first issue is that a fact Ms Naidoo never removed the file. Even that her own version – in my own version when she spoke to me Ms Ngoye she said Mazinda removed her file supported by or accompanied by Ms Zinde – Ms Naidoo.

CHAIRPERSON: Ms Naidoo.

MR MONTANA: Ms Naidoo okay. Then there was a discussion Chair a separate discussion with Ms Zide – Zinde where she said she is trying to get what is called her own hold on the specific matters that she had deal with but
10 00:02:01 what is called on the – as a head of public – public

CHAIRPERSON: Relations.

MR MONTANA: Public Affairs and that Ms Muckend [?] was being transferred to him who was responsible for some of those activities was actually not cooperating with him. That was the explanation and that is why Chair the reason why I ask for the letter is because I am trying to verify exactly how that process in fact – what was the reason why Mr Chauke was actually suspended – what was stated in there? Because that will – that will actually Chair enable us to
20 answer Mr Soni's question Chair.

CHAIRPERSON: I am not sure that I follow. Ms Ngoye calls you and says certain files which belonged at Intersite was removed and she says they were removed by Ms Naidoo and (inaudible). Ms Zinde I am not sure or with Chauke.

ADV SONI SC: Ms Zinde.

CHAIRPERSON: Ms Zinde in a manner that you agree is unacceptable and she says to you Ms Naidoo said it was you who gave instructions for the files. You say to her that is not true I never gave those instructions. You have said you could tell she was unhappy about this so now I am not sure that what you have told me in your last answer helps me to understand because Mr Soni is in effect saying you see your Intersite CEO is unhappy she feels strongly about something and you agree that it should not have happened. The most
10 natural thing to do is to say well those people must return those files maybe until you are given a proper explanation or something but they must return them. So the question is why did you not do that, say that?

MR MONTANA: Chair I think again maybe we are – maybe I am starting in the middle.

CHAIRPERSON: Yes.

MR MONTANA: Let me go back slightly. I was saying Chair that there was a process I said let us not complain two things. Removal of the function and the removal of the fine
20 and I said these two things are related but they cannot be explained in the way she explained them.

Now I think at that time when we created the position that Ms Zinde was responsible for Chair the decision had been made...

CHAIRPERSON: Was responsible for what?

MR MONTANA: For Public Affairs Chair involved – it was mainly our media side of things. It involved some part of advertising. So it was a number of functions that we called – we called Public Affairs and then it also dealt with our – our public image and when we undertake some of the public campaigns like the Nelson Mandela events – so at that time Chair there was no dispute. We have made a decision those functions were there again.

CHAIRPERSON: Doing affairs functions.

10 **MR MONTANA:** Public Affairs functions Chair.

CHAIRPERSON: Were with – is it Ms Zinde?

MR MONTANA: Ms Zinde.

CHAIRPERSON: Ja.

MR MONTANA: If you recall Chair I said this portfolio has moved a number of times at various stages she will take any decision around that. Now Ms Zinde at that time...

CHAIRPERSON: Public Affairs did it include this advertising outside advertising?

MR MONTANA: Chair it included?

20 **CHAIRPERSON:** Did it include the outside advertising?

MR MONTANA: It included – there were some – there were issues about signage, there were issues about some part of advertising Chair, some part of the broadcasting function.

CHAIRPERSON: Okay.

MR MONTANA: It involved – so there were a number of

functions.

CHAIRPERSON: Okay.

MR MONTANA: I will have to verify it Chairperson. So that decision has been made.

CHAIRPERSON: Ja.

MR MONTANA: And I think that was one of the reasons why..

CHAIRPERSON: To move the function.

MR MONTANA: To move the function Chair.

10 **CHAIRPERSON:** Of Public Affairs.

MR MONTANA: Of – to Public Affairs.

CHAIRPERSON: To move the function of what to Public Affairs?

MR MONTANA: Part of that advertising and media.

CHAIRPERSON: Oh okay.

MR MONTANA: And remember...

CHAIRPERSON: Which had been – which had been sitting at Intersite?

MR MONTANA: At Intersite Chair.

20 **CHAIRPERSON:** Okay alright, alright.

MR MONTANA: At Intersite. That is a separate – it has been made.

CHAIRPERSON: Yes, yes.

MR MONTANA: So the new incumbent at that time says I am having difficulties with this.

CHAIRPERSON: Ms Zinde?

MR MONTANA: Ms Zinde.

CHAIRPERSON: Ja.

MR MONTANA: And Chair that is why I apologise that she is not here to speak for herself. She says here is a chair who is not cooperating with me.

CHAIRPERSON: Referring to who?

MR MONTANA: Mr Chauke.

CHAIRPERSON: Ja.

10 **MR MONTANA:** Who is now reporting to her but who insists on working with – on the other side with Intersite.

CHAIRPERSON: With Ms Ngoye?

MR MONTANA: With Ms Ngoye.

CHAIRPERSON: Yes.

MR MONTANA: Okay. And that decision Chair – so it was not about we are not moving functions to Ms Zinde so there is a transition there. Now...

CHAIRPERSON: Now you mean you were not moving files you were moving a function.

20 **MR MONTANA:** We are moving a function Chair.

CHAIRPERSON: Ja.

MR MONTANA: Now that function when it moved she then said –

CHAIRPERSON: Who is she now?

MR MONTANA: Ms Zinde.

CHAIRPERSON: Ja.

MR MONTANA: She is saying that Mr Chauke is not cooperating which resulted in her taking the step that she did Chair.

CHAIRPERSON: Which is?

MR MONTANA: Which is to go and collect.

CHAIRPERSON: Take the files.

MR MONTANA: Because she says Mr Chauke is not cooperating with me is not – he is supposed to report to me
10 but he is not working with me and then went to the office to collect the files.

CHAIRPERSON: So – so she seeks to solve the problem of Mr Chauke's cooperation by taking the files?

MR MONTANA: By taking the files indeed Chair that is why I said I did not support. So I would not then resolve that issue in that way. Ms Ngoye was not raising the issue about function at that time. She was saying the manner of this thing was bad even though she had her own views about these functions but had taken a decision as a collective. So
20 when the files were taken she says these people they just come barge into the office and said – and then she says when Ms Zinde was doing that she was supported by Ms Naidoo. Ms – and I confirmed Chair Ms Naidoo never collected any files there from Intersite and in – in the later discussions and that is why I say I want to see the letter and

part of the letter say it will explain precisely and I think Mr Chauke should still have the letter – precisely the reason why Ms Zinde support – sus – wanted her suspended or suspended her.

CHAIRPERSON: So you – you think there is a possibility that she suspended Ms – Mr Chauke because of his failure to cooperate with her in relation to these...

MR MONTANA: Indeed Chair.

CHAIRPERSON: To this function.

10 **MR MONTANA:** Indeed Chair but I am saying those issues are conflated in this affidavit.

CHAIRPERSON: Okay.

MR MONTANA: That is the point I am making Chair.

CHAIRPERSON: Okay but now then I shift Mr Soni's question from – from Ms Naidoo then I say why did you not ask her Ms Zinde to take the files back?

MR MONTANA: Chair I would not ask her to do that.

CHAIRPERSON: Ja.

20 **MR MONTANA:** Because I – I would not ask – I would criticise – I would criticise and say no, no but that is not how we should be doing – we should be managing the transition when you deal with our functions. But I would not say return the function because if they were doing something about the function that was not there then that was a completely different matter Chair.

CHAIRPERSON: Well the story that – I mean what you have told me suggest to me that it may not have been necessary at least in that stage to change files if only Mr Chauke was cooperating with Ms Zinde. It was because Ms Zinde seems to have sought to solve one problem by creating another problem in a sense that she had a problem with Mr Chauke not cooperating and then she thought well if I take the file from Intersite then he will cooperate. And maybe she did succeed maybe she did not succeed.

- 10 **MR MONTANA:** Chair that was the complaint by Ms Ngoye I agree but you would not solve by then say return the file. That is why the discussion and my thing that the nature where we are going to get the right answer about whose is telling the truth the answer would be in the reasons provided by Ms Zinde to suspend Mr Chauke. Because – and secondly you will recall Chair what Ms – what Ms Ngoye says is that the instruction to suspend Mr Chauke comes from Mr Montana and she says that the letter was delivered by Ms Zinde and Mr – Ms Naidoo. So she is saying that Chair. I
- 20 suspended Mr Chauke and if I did Chair that in itself would have been irregular because a senior manager will not be suspended by a Group CEO Chair. He is suspended or disciplined by the immediate supervisor as it was – so I do not think Chair that the right approach would have been say to return them back when they were transitioning. So the key

thing was managing whatever changes that were taking place at (inaudible).

CHAIRPERSON: But why would not – why would that not be the right thing to do because you are agree what has been done is wrong. The CEO of Intersite feels very strongly about it. What would be wrong with saying Ms Zinde the way you have gone about this is unacceptable. The files must go back. If there needs to be a discussion then there can be a discussion. It may well be that later on they can be taken
10 but then they must be taken in the right way but let us – let us right this wrong. It was not the right way.

MR MONTANA: Chair the discussions about that had taken place subsequently but I am simply saying that – that the answer about files and maybe Chair – maybe to with hindsight when you say you want to – to what is it called – remove or reduce a tension and unhappiness maybe that would have been a right way but would it have been symbolic to say oh I am taking serious my concerns are being in the interest.

20 **CHAIRPERSON:** No, no I – I accept that in a situation like that it may be that somebody who is supposed to resolve the matter might decide look in the end the files were going to end up there.

MR MONTANA: There indeed Chair.

CHAIRPERSON: And maybe there is no point in saying they

must go back but the manner in which they were taken is unacceptable. Let us address the unhappiness that is associated with the manner in which they taken. Assuming for example that Ms Ngoye might not have had an in principle objection to the files going but she might just have had an objection to the manner in which this was done.

MR MONTANA: No she did Chair I think it was in the manner in which it was done.

CHAIRPERSON: Yes.

10 **MR MONTANA:** And that is what she conveyed to me that people just arrive and enter then say we are coming to take the documents. And she says is this how we work Chair? Yes we have taken a decision but is that how we are going to do it Chair? Of course at that time Chair I did not think we should return there were engagements around those issues on how we dealt with the – with the function but Chair I think the answer to our question lies in this letter of suspension and that is why I think it would be better if we get it. So I would want to suggest to park it. I am given that when I
20 come back for my testimony I deal specifically having seen the letter.

CHAIRPERSON: Okay.

MR MONTANA: If it was signed by me I will say Chair it was irregular. If it was signed by Ms Zinde and the reasons for that Chair we do not discuss it on that basis Chair.

CHAIRPERSON: Okay Mr Soni I took over your question.

ADV SONI SC: No, no I was going to go in a similar direction though not as well as you did it Chair.

CHAIRPERSON: Okay. Okay

ADV SONI SC: Mr Montana I am not going to deprive you of the opportunity of revisiting this issue and I know it is – I do not mean it – say that you – you doing it to avoid it you doing it because you want the facts in front of you relating to a letter. But I have a related question and it is this. The
10 contract that is signed is between PRASA – I mean between Intersite and Umjanji okay.

MR MONTANA: No Chair there are two contracts there. The first contract is – it was initially signed between PRASA and Umjunji 00:15:56. The second contract is when Umjanji applies to PRASA for the ceding of part of that function which is – which is then – which is the outdoor – specific outdoor function. Okay. And therefore that was between Intersite and Strawberry.

ADV SONI SC: Right okay. Now where was Ms Zinde based
20 at the time – around the time of this?

MR MONTANA: At the – at the – she was based at the PRASA Corporate office.

ADV SONI SC: So the function was now moved to PRASA.

MR MONTANA: The PRASA – the function – no Chair the function that funds the full advertising function Chair was

initially at PRASA Corporate. And when the tender was agreed Chair was done I think it was in 2011 it then was then placed with Intersite and then later on if you recall Chair I spoke to the function moving a couple of times to be – and then it was – it was when the new portfolio was created to say you must manage part of that advertising portfolio more specifically – and in fact I think the advertising work – advertising is one part of a bigger portfolio Chair that was there. So I think – I think the – we then sat with the Public
 10 Affairs under Group Strategy which was led by Mr Holele. Yes so Ms Zinde was the Group – was a General Manager reporting to Mr Holele And I think that is when this issue about files Chair happened in that process.

ADV SONI SC: So – so on that score there can only be two possibilities. One is that the files had to move because the function was now at PRASA not at Intersite. That must be correct is it not?

MR MONTANA: No, no that is correct.

ADV SONI SC: Okay.

20 **MR MONTANA:** With the function yes.

ADV SONI SC: Now did you tell Ms Ngoye that – that look at the end of the day I accept that the files were removed wrongly but at the end of the day they now belong to PRASA because the function is now with PRASA.

MR MONTANA: But Chair I – that is why I am saying we are

also – we are confusing ourselves because the issue - and that is the point I have been making throughout of the day. The issue of the files and the decision about the movement of functions did not happen at the same time that the – today we are making a decision and people know there has been an on-going process Chair and that is why we need to find the time that decision was made and I think you ask an important earlier was Ms Ngoye part of those decisions that were made about where this function should be kept and that

10 is – I think that is a big issue around it. It clarifies what needs to be done Chair. When the position was created and then somebody will say appointed to that position Chair then that is where the fight in fact happened okay. So I think the – I do not think that it is actually – there are more even more possibilities than actually only those two.

ADV SONI SC: No, no Mr Montana.

CHAIRPERSON: But I am sorry Mr Soni. I think Mr Soni's question requires that I know whether at the time of the removal of the files a decision to move the function from

20 Intersite to PRASA had been taken or not?

MR MONTANA: Chair it had already been taken.

CHAIRPERSON: Yes.

MR MONTANA: And that is the point. It has already been taken.

CHAIRPERSON: Yes.

MR MONTANA: And Ms Ngoye was part of that decision.

CHAIRPERSON: Was part of that.

MR MONTANA: That is why – that is the point I am making and that is why when Mr Soni asked the question did not the logical thing have been for you to say let them be returned.

CHAIRPERSON: Yes.

MR MONTANA: For me I say but that is not the solution because then you are returning – let us rather manage this thing in a proper disciplined fashion as a company.

10 **CHAIRPERSON:** But Mr Soni's last question says or suggests that because you knew that the decision to remove the function from Intersite to PRASA had been taken and because you knew that on your version Ms Ngoye knew that as well.

MR MONTANA: Yes.

CHAIRPERSON: One would have expected you when Ms Ngoye was complaining about the removal of the files to – for – would expect you to say to her yes I definitely agree with you Ms Ngoye that the manner in which the files have
20 been removed is unacceptable it is wrong but remember that you were party to the decision. We already made the decision that the function must go to PRASA. They are where they are supposed to be or they are where they were meant to be ultimately. So he is asking whether you – you raised that with her.

MR MONTANA: No, no Chair I do not think I did in that discussion.

CHAIRPERSON: Yes.

MR MONTANA: Maybe I took it as a matter of common cause but both of us know about it but that – that was a decision Chair that we made but the specific discussion is that she raise it was that ...

CHAIRPERSON: And you are quite clear that the decision to remove the function had to be made. You are not mistaken.

10 **MR MONTANA:** No, no Chair it was made much earlier.

CHAIRPERSON: Much earlier.

MR MONTANA: She was part of that thing – and we have made not only this decision Chair we have made other decisions.

CHAIRPERSON: Other decisions.

MR MONTANA: Which – that is why I explained that there were other decisions that related to how do we split the portfolio for example and I am referring to the property portfolio between Intersite and the newly created PRASA
20 00:22:27. Okay – and they were filed Chair they were big files because PRASA was being restructured as an organisation Chair.

CHAIRPERSON: Now the – it is one thing to make the decision that this function should move from Intersite to PRASA you make the decision today but there may be the

question of from when? Had that issue been also sorted out by the time of the removal in terms of when the function would move or had it definitely move in accordance with this?

MR MONTANA: So the functions at that time were being performed in Public Affairs.

CHAIRPERSON: Yes already?

MR MONTANA: Already Chair.

CHAIRPERSON: Okay.

10 **MR MONTANA:** That – that discussion and that is why I am saying the letter that I am asking for will then help us.

CHAIRPERSON: Will clarify

MR MONTANA: To 00:23:20 exactly that thing – this thing Chair so that we do not deal with it that Ms Ngoye did not know – she was party to it Chair. We have taken that decision. Ms Zinde was employed as part of her duties and when she took that decision Chair about Mr Chauke she was saying that he was not cooperating - she was not cooperating in that particular matter.

20 **MR MONTANA:** Okay alright. Mr Soni I hope I helped to – to have the clarification.

ADV SONI SC: Yes, no, no it does but what it illustrates Chairperson and I will say this to Mr Montana is that it seems if you are correct that Ms Ngoye was not being reasonable at all so she had no reason to be unhappy

because that as a lawyer she would know it is a logical function but not only must the function move for logical conclusion but not only must the function move but the file must move because it is being handled now at PRASA no longer at Intersite.

MR MONTANA: But Chair Ms Ngoye was not 00:24:33 she was saying the manner in which...

CHAIRPERSON: The manner in which it was done.

MR MONTANA: The files were moved was unacceptable to
10 her. And I agreed with her in that – in that particular issue.

ADV SONI SC: Alright I just refer you to 15.6 but we must leave this now because I want to get on.

MR MONTANA: 15.6.

ADV SONI SC: 15.16 sorry.

CHAIRPERSON: Yes.

ADV SONI SC: Where she is saying even the removal of the function was not in PRASA's (inaudible)

MR MONTANA: Chair I –

CHAIRPERSON: Ja it reads:

20 “The effect of moving the advertising
 portfolio from Intersite to PRASA is that the
 management of the portfolio was not in the
 interest of.”

I am not sure that I follow this sentence properly but she says the effect is that the management of the portfolio was

not in the interest of PRASA and PRASA benefitted little. If anything from the portfolio I – from the way she starts the sentence I expect her to be saying it served the interest of PRASA better to keep the files – the portfolio at Intersite. It did not serve the interest of PRASA to better to take them to PRASA.

ADV SONI SC: To PRASA.

CHAIRPERSON: But she uses the word management but I – maybe that is what she intends I am not sure.

10 **ADV SONI SC:** Chairperson as I understood and I have dealt with this affidavit before but there is a vagueness about it. As I understood it she is making a distinction between PRASA as opposed to Intersite.

CHAIRPERSON: Yes

ADV SONI SC: Now if Intersite holds the contract then all the benefits go to Intersite and it would do as much as possible to secure the full benefit whereas PRASA is not receiving any material benefits from the contract and therefore may not nurture the outcome as well as somebody
20 at Intersite as – as a complete – that is how I understand it.

CHAIRPERSON: But I guess what is also true is that if this is the view – if she held the same view at the time then one would expect that she would not have gone along with the decision to move the function from Intersite to PRASA. So it would therefore be interesting if the minutes of whatever

meeting revealed differently.

ADV SONI SC: Absolutely.

CHAIRPERSON: Yes.

MR MONTANA: Chair I fully agree with that I think you raised the issue earlier on in this – on this issue. And my view Chair I think my answer was very simple. I think the key issue about this portfolio advertising portfolio had to do the – with the maximisation of revenue for the company for PRASA as a group. So I think it is more of a – not PRASA
10 Intersite but it is a group PRASA Group structure as against Intersite and it suggest Chair that here you know if you look at the previous – because they not flow logically Chair. In – in 15.15 she deal with the issue of the suspension of Chauke and then she immediately goes and make that big point and then conclude in 15.17. Okay. Now – so the issue of the portfolio moving and the issue of Chauke are treated interchangeably somehow and that is why you – it raises the question did she actually support the decision? What should we – let us look at the – what do we call the – the EXCO
20 minutes – let us look at the Intersite board meeting – minutes they will then – as well as the letter of suspension of Mr Chauke. Those documents Chair will be able to help us to come to a determination and say which version is more probable than the argument that we are having Chair.

CHAIRPERSON: Okay alright.

ADV SONI SC: Just one final question on that. Where was Mr Chauke based? Was he based at Intersite or at PRASA?

MR MONTANA: At some stage he was based at Intersite Chair.

ADV SONI SC: No at the time of his suspension. At the time of this incident.

MR MONTANA: He may – I think Chair because the transition was happening he was reporting to – he was now required to report to Ms Zinde but she may have been
10 physically still at Intersite as part of that process.

ADV SONI SC: Would you have the power as the CEO of the Group CEO of PRASA would you have the power to suspend him although he is based at Intersite and an employee of Intersite?

MR MONTANA: No Chair I think the – unless if – if he is based at Intersite – no Chair it would be different – completely different....

CHAIRPERSON: Entity.

MR MONTANA: But let us make a distinction, sir. You say
20 if it is based at Intersite?

ADV VAS SONI SC: Yes.

MR MONTANA: You mean in the structure it is reporting to the CEO of Intersite?

ADV VAS SONI SC: Yes.

MR MONTANA: No, no Chair it would be regular but if he

is physically at Intersite but he is reporting to, let us say, Ms Zinde – Chair, the decision is a completely different one. I cannot parachute and come into Intersite and suspend an employee when there is a CEO there. It would be inappropriate. But if it is part of the corporate office irrespective of where physically he sits, if he reports to the – what is it called?

CHAIRPERSON: Ms Zinde.

MR MONTANA: Ms Zinde. And Chair, it depends on the
10 nature of the transgression because there are transgressions that may be serious, that may be dealt with there at the... This impacts on the stability, on the assets of the company and I take a decision on the employees.

You know, Johnny Strike(?) actions. Some of the decisions are made by me because at that time the protection of the assets of the business it sits with me. So again, it depends on but to answer in short Chair. If he is an employee of Intersite, I cannot suspend him Chair. It will have to be the CEO of Intersite that makes that
20 decision.

CHAIRPERSON: And if she – if he was employee of PRASA and according to Ms Zinge(sic) ...[intervenes]

MR MONTANA: Zinde.

CHAIRPERSON: ...generally speaking, even if you might ask me to have the power in certain circumstances, you

suspend him – then you would not suspend him. You will leave that to Ms Zinde.

MR MONTANA: Ms Zinde will have to do that Chair. That is why I said in response.

CHAIRPERSON: Yes.

MR MONTANA: If I did – and that is why – that is the reason why I am asking for the letter Chair because if that letter says Montana signed and suspended a senior manager, it means Chair that I will have to say to this
10 Commission I concede that I acted at that time irregularly Chair.

CHAIRPERSON: H'm, h'm.

MR MONTANA: Ja.

CHAIRPERSON: But something tells me that you would not forget if you suspended him. [laughs]

MR MONTANA: [laughs]

CHAIRPERSON: Or did you suspend too many? [laughs]

MR MONTANA: Chair, I know where you are coming from. Indeed Chair. But that is why I think sometimes I have
20 been hammered by the Public Protector where I did not sign but I may have said but you need to take action against this chap.

CHAIRPERSON: You may have authorised?

MR MONTANA: I am – well, not authorising Chair, I would say.

CHAIRPERSON: Ja.

MR MONTANA: I mean, I would go to Park Station.

CHAIRPERSON: Ja.

MR MONTANA: Certain companies do not clean their station. I said to the boss, act against these people.

CHAIRPERSON: Ja, okay.

MR MONTANA: Where if indeed the Public Protector said that seven companies were fired by Mr Montana. I never fired them. I said today, Boards of PRASA Cres, if you do
10 not act against those who do not clean the company, I am going to act against him. And the finding of the Public Protector said dismissal of those companies were done by Mr Montana.

CHAIRPERSON: H'm, okay.

MR MONTANA: So Chair, you could have that.

CHAIRPERSON: Yes.

MR MONTANA: So that is why in this particular instance, the reasons that Ms Zinde – they have advanced, they have justified – what is it called – taking action against
20 Mr Chauke.

CHAIRPERSON: Mr Chauke, ja.

MR MONTANA: And she may have said this is the route that I take and I may have supported that route Chair.

CHAIRPERSON: Ja.

MR MONTANA: But that is why I am saying I want to

remind myself ...[intervenes]

CHAIRPERSON: To see that, ja.

MR MONTANA: ...and see the letter before I confirm or reject and what and so on.

CHAIRPERSON: Yes.

MR MONTANA: ...asking me.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: We may then turn now to – I take it until we get those documents ...[intervenes]

10 **CHAIRPERSON**: Yes, yes, yes.

ADV VAS SONI SC: ...we will deal with ...[intervenes]

CHAIRPERSON: With ...[intervenes]

ADV VAS SONI SC: ...the paragraph, I think ...[intervenes]

CHAIRPERSON: Ja, ja.

ADV VAS SONI SC: [Indistinct]

CHAIRPERSON: We will ventilate some of the aspects when we ...[intervenes]

ADV VAS SONI SC: [Indistinct]

20 **CHAIRPERSON**: Ja.

[Parties intervening each other – unclear]

CHAIRPERSON: We have gone past four. We are at half-past four. But I think we need to go at least after five.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Then I will have the evening session.

So we will have to... [laugh] And Mr Montana, he said to cooperate.

ADV VAS SONI SC: Yes-no ...[intervenes]

CHAIRPERSON: [laughs]

ADV VAS SONI SC: ...clearly he has been now.

CHAIRPERSON: Ja. Are you going to deny that you are ready to cooperate, Mr Montana?

MR MONTANA: Not with you, Chair, except that I would raise the issue of opportunity because that goes with my
10 testimony Chair. I was joking with your team earlier on to say ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...people like us who are hustlers – when I sit in the Commission ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...the cost ...[intervenes]

CHAIRPERSON: You do not make money.

MR MONTANA: ...you do not make money Chair.

CHAIRPERSON: Yes.

20 **MR MONTANA:** But Chair I have committed to assist the Commission.

CHAIRPERSON: Yes, yes, ja.

MR MONTANA: And to cooperate.

CHAIRPERSON: Ja.

MR MONTANA: And I think I will continue doing that

Chair.

CHAIRPERSON: Yes. Okay. No, that is fine. At five o'clock we will just talk about when Mr Montana should return. But let us continue until five.

ADV VAS SONI SC: As you please. Mr Montana, let me express our gratitude to you.

MR MONTANA: Thank you, Chair.

ADV VAS SONI SC: Now paragraph 17. We have dealt with some of these matters and you just tell me where you
10 disagree Mr Montana. She says:

“I first encountered Mr Montana when I joined Intersite as an Executive in the Office of Intersite’s CEO in January 2011...”

Is that something ...[intervenes]

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: And then she says:

“That appointment was made by Intersite’s Board of which Mr Montana was the Chairperson...”

20 That is correct?

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: She says:

“Nine months later, on the 1st of September 2011, the board still chaired by Mr Montana appointed me as Intersite’s

CEO...”

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: And then she says:

“I was transferred to PRASA with effect from
the 1st of September 2014...”

Now Mr Montana, you have – and I – because I
just want us to close that gap. As I understand it. You say
it was effectively a forced transfer because the board was
unhappy with her or she was unhappy that she was being
10 removed as a CEO of one of the subsidiaries and made –
although she as an Executive – she was unhappy. Does
that capture ...[intervenes]

MR MONTANA: No, no Chair she was unhappy Chair.

ADV VAS SONI SC: Yes.

“Just three months later, Mr Montana asked me
to act in his position...”

Well, you have confirmed this but let me just
finish it.

“...for two months in December 2014 and
20 2015...”

That is correct...

MR MONTANA: Well, the total days, Chair, I think it was
about 28-days but of course it was during the month of
December and January. It was not the two full months.

ADV VAS SONI SC: Oh, yes. I understand.

MR MONTANA: Ja.

CHAIRPERSON: Oh, it was 28-days?

MR MONTANA: Chair, I think ...[intervenes]

CHAIRPERSON: ...which straddled.

MR MONTANA: Ja, it straddled. Ja.

CHAIRPERSON: Ja, okay.

MR MONTANA: It was in mid – mid – late December.

CHAIRPERSON: Ja.

MR MONTANA: And then I think I went around the 22nd of
10 ...[intervenes]

CHAIRPERSON: ...of January.

MR MONTANA: ...of January.

CHAIRPERSON: Okay.

ADV VAS SONI SC: She says:

“These are periods for the long-distance
business of PRASA...”

Is that correct?

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: And she says:

20 “...Mainline Customer Services and Ultra-
Packs(?) and it was at the time when the board
was considering a very important tender for
the construction of the biggest depot for
PRASA...”

Is that something you recall?

MR MONTANA: Chair, I recall that very well because in November the board had dealt with the Braamfontein but I were to learn, of course, later – the answer is yes, Chair – that on the 23rd of December, the board met to discuss this issue again but I was on leave at that time. So it is correct, Chair.

ADV VAS SONI SC: Yes.

“On his return, Mr Montana thanked me personally at the Group Exco Meeting for the hard work and having held the fort for him...”

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: ... You are fully in sync'd with each other.

MR MONTANA: No, that confirm what the kind of man I am Chair. And I think that is one of the major findings that a Chair... [laughs]

ADV VAS SONI SC: Alright. Then she says:

“On the 18th(?) of May...”

Now we have dealt with this issue to a large extent yesterday and we can, you know, without avoiding any issues, this is the day on which you sent the email – I mean – yes, the email. You remember this? This was in Mr Dingiswayo ...[intervenes]

MR MONTANA: Dingiswayo.

ADV VAS SONI SC: Mr Dingiswayo's affidavit.

MR MONTANA: That was ...[intervenes]

CHAIRPERSON: Is that the email about the campaign?

ADV VAS SONI SC: Yes.

CHAIRPERSON: The email about the campaign?

ADV VAS SONI SC: Please have a look at it Mr Montana.

MR MONTANA: Ja-no, Chair I confirm but this was a different matter. The email was on the 18th of April but the same – the matter is the same – it is almost the same matter Chair. I agree with Mr Soni.

10 **ADV VAS SONI SC:** Now please have a look at page 317.

MR MONTANA: Yes, I see 317, 316 and 318.

CHAIRPERSON: It is the same email that we looked at yesterday in the context of Mr Dingiswayo's affidavit where you were talking about other people who you said were on the campaign.

MR MONTANA: But I remember the email, ja.

CHAIRPERSON: H'm.

ADV VAS SONI SC: So what I am saying is, it is the 18th of May, not April.

20 **MR MONTANA:** Not April. Okay.

ADV VAS SONI SC: Yes.

MR MONTANA: Yes.

ADV VAS SONI SC: But let us have it – well, I mean, I do not want to deal with it anymore but I just want to say that it is the same email and I would just like you to be

comfortable with it that that is the email we are talking about.

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: Now, it says the contents are self-explanatory. And can I just – well, let us just finish this part:

10 “...because the email was sent after the legal function of PRASA through Mr Dingiswayo and me had indicated that we were not in a position to deal with the Swifambo contract which required some amendments to be effected to the main agreement that was already in place...”

Is that correct?

MR MONTANA: Unfortunately, I think, in fact, yesterday – Mr Dingiswayo says in his affidavit that the reason why I took action, he says it was because I was defending Prodigy. In this paragraph it is now saying it has to do with Swifambo.

20 **ADV VAS SONI SC**: Yes. But she comes to that issue in a moment but you say this had nothing to do with their refusal to be involved in the amendment to the Swifambo contract which would extent the price of the contract from R 3,5 billion to R 5 billion. She said this had nothing to do with it.

MR MONTANA: No, no Chair. Chair, I think – look, I feel that Ms Ngoye is confusing things, okay? The – and this thing about him not having – as a legal function that it had questions on the principle transaction through which... It is – Chair, it is just – I think it is just a lie Chair. You will recall that I said that Ms Ngoye was part of this process, part of the Bid Adjudication Committee that recommended this thing to the board.

CHAIRPERSON: Yes, you said that.

10 **MR MONTANA:** I said that Chair.

CHAIRPERSON: H'm, yes.

MR MONTANA: Now the issue of the 3.5 and you will see again in my – and let me explain about this thing – it is in my annexure. In 2014 Chair – not – May 2014 with the board under Mr Sfiso Buthelezi ...[intervenes]

CHAIRPERSON: Under Mr Buthelezi?

MR MONTANA: Mr Buthelezi.

CHAIRPERSON: H'm?

MR MONTANA: Not mister – this is 2014, not 2015.

20 **CHAIRPERSON:** Ja, ja. The first part of 2014?

MR MONTANA: Of 2014 Chair.

CHAIRPERSON: H'm.

MR MONTANA: Just before the new PRASA Board of Mr Molefe was appointed. We went to the board because we were dealing with the Euro rate exchange. And Chair, I

think the supporting documents are provided there. Then we took a decision as the board that the contract is 3.5 but it is very important to renegotiate some parts of that contract and pass the risk – we should remember the risk. The risk of – the exchange rate risk was fitting with PRASA.

So we wanted to pass that to Swifambo but that was on 201. And I think the documents are very clear. It was in – that decision was made by the board and the
10 board further said: Guys, with all these fluctuations whilst things are happening, we do not want this contract to shoot off the roof. So it is going – you need to practise so that it does not exceed R 5 billion. So it does not say increase the contract to five billion.

We said tried to do that but manage this thing in such a way when the – at that time, I think, the Rand had lost about almost 40% of its value to the Euro. So for the same amount of money we could buy only fewer trains Chair. So that is what happened. Now I am saying,
20 Ms Ngoye is confusing this thing.

It was in 2015, May 2015. It was the board of Mr Molefe. Mr Molefe and the new board were appointed on the 1st of August 2014. So we discussed that matter three months earlier. And let me say Chair that – let me say that at that time she was not in that same position. She was in

at Intersite as things stood because ...[intervenes]

CHAIRPERSON: Now which time is that? Is that three months before Mr Molefe's board came or ...[intervenes]

MR MONTANA: Yes. And you will recall she was only transferred – Ms Ngoye was transferred, I think, in September 2014.

ADV VAS SONI SC: 2014, yes.

MR MONTANA: 2014.

CHAIRPERSON: H'm?

10 **MR MONTANA**: Okay?

CHAIRPERSON: So the discussion that you are talking about would have happened about May ...[intervenes]

MR MONTANA: May 2014.

CHAIRPERSON: Okay.

MR MONTANA: So it is recorded Chair. The documents, the evidence is there to support that. So it would not have been the reason. The Swifambo matter would not have been the reason at this time because there was a new board and we knew that the board of Mr Molefe, when he
20 comes to this issue, had even take a more ... approach.

And later, I think from December – from December or rather in 2015. And these reasons, Chair, that she is saying that we were not prepared to do that because we were worried about the principle and we did not get the ... responses Chair. I thought Ms Ngoye was

going to say Annexure MN-10 or whatever contained a document that was sent to the ... This – Chair, this is created – she is actually creating a reason Chair and ...[intervenes]

CHAIRPERSON: So part of what you are saying is that she says and they sent on the – well, they or you sent your email that we have referred to on the 18th of May 2015 where you talk about the campaign, okay?

MR MONTANA: Yes.

10 **CHAIRPERSON:** And then she is saying that email was sent – you sent it – that email after the legal function of PRASA, I guess that is the Legal Department, through Mr Dingiswayo and her, had indicated that you when they were not in a position to deal with the Swifambo contract which required some amendments to be effect, the main agreement that was already in place.

So what you are saying is. The – your email to – about the campaign could not have been prompted – could not have been prompted by their refusal, if there was a
20 refusal, to deal with the Swifambo contract because they are talking about May 2015 but this was during Mr Pop Molefe's board ...[intervenes]

MR MONTANA: In 2015. That is correct.

CHAIRPERSON: ...in 2015. And you say the two do not go together.

MR MONTANA: Even in terms of the timelines there is no correlation. So Chair, it tells you ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...that the reason she is advancing, she is actually advancing a reason which she had created thereafter and this ...[intervenes]

CHAIRPERSON: H'm. But ...[intervenes]

MR MONTANA: ...and this social(?) deed(?) you must look at Mr Dingiswayo's thing. He said me and
10 Mr Dingiswayo.

CHAIRPERSON: H'm?

MR MONTANA: Mr Dingiswayo is saying a different thing. He does not talk about Swifambo. And if – even if the two of them were to – were in agreement that this – it is about Swifambo, I will say Chair it is false because at that time in May we never discussed – unless if she wants to be blinded and put it for what it is Chair. But at that time, she says we did not get satisfactory responses. You know what that suggests to me Chair?

20 **CHAIRPERSON**: H'm?

MR MONTANA: That I said – it confirms my email, in fact. For me it brings to my email that there is now this campaign. Mr Dell(?) said to the Commission they have identified contracts. When I came in January, a call from Cape Town, a meeting with the chairman and sorting out

the ANC's transport plans, they were investigating. So Chair, this has nothing to do with what she is saying here.

In fact, for me, if I were to provide the list of the companies to be investigated, it suggests to me that actually she is trying to go around that because this issue was not there in 2015 unless if there was an investigation ...[intervenes]

CHAIRPERSON: While you were there as Group CEO, to your recollection, was there a time when the Legal
10 Department refused to deal with the Swifambo contract?

MR MONTANA: No, no Chair. Not at all.

CHAIRPERSON: That ...[intervenes]

MR MONTANA: Did not ...[intervenes]

CHAIRPERSON: ...according to ...[intervenes]

MR MONTANA: Not at all.

CHAIRPERSON: Yes.

[Speakers intervening each other – unclear]

MR MONTANA: And I ...[intervenes]

CHAIRPERSON: But they did refuse to deal with other
20 contracts, certain other contracts that you know of?

MR MONTANA: Chair, that is why ...[intervenes]

CHAIRPERSON: [Indistinct]

MR MONTANA: ...that is why I wrote and that is why I called by even Mr Dingiswayo's version.

CHAIRPERSON: Yes.

MR MONTANA: When I request him to come to my office that: No, you are now working against the business. And I said the reason why he acted in that way is because he(?) was part of this broader campaign.

CHAIRPERSON: Okay.

MR MONTANA: Now his ... Chair – I do not think she had intended to say that, okay?

CHAIRPERSON: H'm.

MR MONTANA: And she tried to find a reason that did not
10 exist and she brought the Swifambo.

CHAIRPERSON: Yes.

MR MONTANA: And nothing(?) is false Chair. It is false, it is misleading the Commission. It is not the truth, Chair.

CHAIRPERSON: H'm. Now I do remember that you did say yesterday that there were certain contracts that they identified and you talked about them being inconsistent in their approach. Some contracts maybe could be having the same perceived problem or alleged problem but one gets investigated, another one does not get investigated and
20 that it is part of what you had a problem with ...[intervenes]

MR MONTANA: Indeed ...[intervenes]

CHAIRPERSON: ...in their approach. But – you are saying that – but you are also saying that there was a time when there was a decision in terms of which the board said we do not want to find after some time that the costs

relating to this Swifambo contract had a short out(?). They must be kept and that is where the issue of five billion was mentioned.

MR MONTANA: Indeed, Chair.

CHAIRPERSON: Ja.

MR MONTANA: That was in May ...[intervenes]

CHAIRPERSON: Now ...[intervenes]

MR MONTANA: ...2014.

CHAIRPERSON: Now that would have been the Board of
10 PRASA?

MR MONTANA: Indeed, Chair.

CHAIRPERSON: And Ms Ngoye would not have taken part
in that one?

MR MONTANA: She was still the CEO of Intersite, Chair.

CHAIRPERSON: Yes. But I thought earlier on you said
she would have been part of that discussion about five
billion or something.

MR MONTANA: No, no Chair.

CHAIRPERSON: She would not?

20 **MR MONTANA:** No, no Chair. Maybe I mixed up a number
of things in one – in my explanation.

CHAIRPERSON: Ja.

MR MONTANA: I am saying, where she says we did not
understand the principle. We had several questions on the
principle transaction.

CHAIRPERSON: H'm?

MR MONTANA: I am saying Ms Ngoye was part of the Bid Adjudication Committee.

CHAIRPERSON: Oh, okay.

MR MONTANA: So if the legal function, which was reporting to her raises questions - she writes here that I did not have. So she is telling us Chair that she was part of the Bid Adjudication Committee that recommended something she did not understand.

10 **CHAIRPERSON:** H'm.

MR MONTANA: Maybe that is why she is fighting it, she realised: Oh, my God. What have I been party to? What have I done? But this cannot be the reason Chair that she starts dancing here because this happened a year earlier in May 2014. She was still at Intersite by that time. She would not have been part of that discussion. And my evidence, Chair, that I will submit will provide even the memorandum that was prepared by one Mr Sipiwe(?) Matyobeni(?). It shows the movement of the Rand in
20 relation to the Euro. And the huge risk that we were facing as PRASA at the time.

CHAIRPERSON: H'm. What is that you say happened in 2014?

MR MONTANA: Chair, in 2014 there was a board meeting.

CHAIRPERSON: Yes, about this ...[intervenes]

MR MONTANA: The Rand/Euro exchange.

CHAIRPERSON: Ja, capping the ...[intervenes]

MR MONTANA: And the board said, number, one, go and renegotiate some parts of this contract ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: Because if the Rand, the value of the Rand continues to deteriorate, we are going to be in a big problem because the amount can shoot beyond. So they say, continue doing that but cap this thing so that it does
10 not even exceed R 5 billion. They were not saying increase it to R 5 billion. They said go and negotiate. But they do not want – when he comes back to us and say the Rand/Euro has changed to such an extent that this is R 10 billion, as an example.

CHAIRPERSON: H'm.

MR MONTANA: So that is what was happening. You remember Chair, there is a formulation in the contract where if the Rand is at a particular level, we sit with the risk but if it goes – I think there is an entry and exit level.

20 So the exit level, Chair - the material conditions have change so much and that is why we had to discuss it in May. So we are not changing the contract but we wanted to make sure that we still get under the new economy conditions or market conditions, we still get the same value for money that we have intended. So that was

the discussion in May 2014 about the Swifambo contract.

CHAIRPERSON: Yes. And then to complete the point. Did the Legal Department and in particular Ms Ngoye and Mr Dingiswayo get involved in the negotiations which were – which would have been pursued following that decision by the board and did they refuse to do anything in regard to that?

MR MONTANA: No, no Chair ...[intervenes]

CHAIRPERSON: As far as you recall.

10 **MR MONTANA:** No, Chair the – you remember when the contract was done – it was signed in 2015.

CHAIRPERSON: Ja.

MR MONTANA: Ms Ngoye was part of the Bid Adjudication Committee ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...that recommended.

CHAIRPERSON: Yes.

MR MONTANA: But in terms of our SCM policy and the composition of the committees, it requires of course that –
20 consider these bids – what is it called – the - your finance and legal... It is actually pro – it specifies that, Chair.

CHAIRPERSON: H'm.

MR MONTANA: So I would not know, for example, who at the time. Ms Ngoye was sitting, not even coming from the Legal Department... Because she was appointed even

though she was at Intersite. And I think she may have been even appointed before she was CEO, when she was the Head of the CEO's Office at Intersite.

Because this Adjudication Committee was for the entire group. It involved a number of people who were at that level. So Chair, somebody from legal could have been involved in the – both in the adjudication process but I would not know, as I sit here, who it was at that time.

CHAIRPERSON: H'm. What I am trying to establish is,
 10 whether she might have made a mistake by dealing with an issue, namely their refusal to deal with the Swifambo contract. She may have made a mistake by saying that issue – their refusal happened in 2015 when maybe it happened in 2014 if the discussion that you are talking about happened in 2014. So I was trying to see whether ...[intervenes]

MR MONTANA: Chair – no, Chair. Chair.

CHAIRPERSON: H'm?

MR MONTANA: Let me be honest – let me be direct on
 20 this issue.

CHAIRPERSON: Ja.

MR MONTANA: There was no confusion Chair.

CHAIRPERSON: H'm.

MR MONTANA: There is no confusion when I am the CEO of a subsidiary. I am not at PRASA, okay? There is no

confusion that the new Board of PRASA did not discuss - and where the Board of PRASA even in 2015, Chair, in 2015 discussed the Swifambo contract, that was done by me at the board and we were not asking for money or changes to the contract because the new board had asked to discuss the Swifambo contract in light of what was being reported in the media.

And I went there. I took the CEO of the Rail Division and I took some of our own engineers, Chair, and
10 that is the day we had quite a lot of – even fights about this particular contract. This one, Chair, does not relate to any of that. Martha was not – Martha was not part of – or was not at PRASA Corporate office. She was still at the Intersite – she was an Intersite CEO.

But Martha knew about this particular contract because she was a member of the Bid Adjudication Committee that recommended it to the board. And I am saying the reason she is advancing, Chair, where she says I sent this particular email because of the Swifambo
20 matter.

I want to argue that with all the facts considered that it is actually false. It is a misrepresentation. It was not – it cannot be a mistake Chair. I know that you want to give her the benefit of the doubt but all circumstances show Chair that she lied. And if she says in this affidavit

that me and she - through Mr Fani Dingiswayo and me had indicated that we are not in a position to deal with the Swifambo contract which – no, Chair.

CHAIRPERSON: H'm. Yes-no, but the reason why I am asking is simply to make sure that I understand it from your point of view. You are saying, this cannot be a situation of her being mistaken or taking something that happened in 2014, thinking it happened in 2015. You say she did this deliberately. She knows the two have no connection. Or
10 whether there is room that she might have ...[indistinct] as to when what happened, but you are saying there is no – as far as you are concerned, there is no room for her to have made a mistake? She ...[intervenes]

MR MONTANA: Chair, in the earlier one.

CHAIRPERSON: Yes.

MR MONTANA: In the earlier one where we were discussing advertising.

CHAIRPERSON: Ja.

MR MONTANA: You recall I said this may have happened
20 but she is confusing the – that I accept.

CHAIRPERSON: Yes, yes, ja.

MR MONTANA: In this particular one, Chair ...[intervenes]

CHAIRPERSON: It is not confusion.

MR MONTANA: No, no, it is not correct and in fact if she meant what she had written here, Chair, one of the things

she would have said, I annexure and email here to support what I am saying. Who did she raise this thing with, Chair? And can you see it is coming out that we were not prepared. We had asked questions, several questions on the principal transaction to which no satisfactory response were provided. Who did she ask, Chair? Because now it is a general statement. Did they ask Lucky Montana? Because, Chair, all she found was, Chair, I do not – and I think Mr Soni knows, I actually believe that the court
 10 judgment is even wrong on this issue, but that is not the point here.

They never asked me, Chair, they never sought my guidance. I am saying, Chair, the only probable explanation is that they were dealing with Swifambo as part of their list of contracts that they have now identified which led to me writing this particular email on the 18 May, Chair. But that is the only explanation, Chair.

CHAIRPERSON: Okay and I see that in the sentence you had written there she does not say with whom they raised
 20 those questions. I think that is one of the points you make.

MR MONTANA: Indeed, Chari, because if ...[intervenes]

CHAIRPERSON: I guess because if she said they raised them with you, you would then be able to say yes, they did or no, they did not, and she does not say they raised them

with Ms Zinde or whoever, she just says they raised questions.

MR MONTANA: Exactly, Chair, and if let us assume that the teams who were dealing with this matter will not be in a position to answer, Chair, the most logical thing would be to say hey, we think there is a risk, there is a big contract for the business, we want to elevate this thing to the Group CEO to deal with that.

Chair, the intention of this entire paragraph is
10 actually for Ms Ngoye to dissociate herself from the Swifambo contract so that she can put it as if it is other people who did something wrong. So she is projecting herself, I am this hero, I asked questions.

Now this contract was recommended by Ms Ngoye, Tiro Holele and his adjudication committee, not for approval by Mr Montana but by the board of PRASA.

CHAIRPERSON: So when it is said that this contract was irregular, was unlawful, you would say the people who recommended that it be granted must share whatever
20 blame in relation to that, if that is the position?

MR MONTANA: Chair, you seem to have read my affidavit.

CHAIRPERSON: Well, I read your affidavit last year.

MR MONTANA: Last year, Chair.

CHAIRPERSON: I think I told you that on Friday, I read it

but I cannot remember everything but I think ...[intervenes]

MR MONTANA: Yes, Chair, the reason why I am saying that, Chair, is because PRASA under Mr Nathi Khena who was the Acting Group CEO after I had left PRASA, when they were busy doing this investigation they started creating new grounds of why they should challenge the Swifambo contract. These were not, as I said, Chair, they were never raised by the Bid Adjudication Committee either to me or to the board that approved this thing. They
10 started coming new things, oh there was no proper agreement between Swifambo and Vossloh. They created – all of those are created, Chair. I detailed them there.

But the most important thing and here is the issue, Chair, Mr Nathi Khena prepared ...[intervenes]

CHAIRPERSON: Do not go too far from the mic.

MR MONTANA: Mr Nathi Khena, the Acting CEO of PRASA who was appointed by the board to act there immediately after I have left, issues letters to all members of the Bid Adjudication Committee and the Bid Evaluation
20 Committee and the Bid Adjudication Committee and asked them please write to me and explain why I should not take action if those reasons are true. You know what happened, Chair?

Nathi gave an email written by Mrs Erasmus of Mr Bernard Hotz and saying taking action and saying taking

action against these people. So these are corruption busters, nè? People who have been brought to fight to fight corruption, the tendency of PRASA, that something that violates the law, the violates the PFMA, if those reasons are true.

You cannot take that, Chair, because it will undermine our strategy when we fight this [indistinct] and the reason why PRASA did not act against people like Tiro Holele, it is because it was an intervention of Werksmans
 10 [indistinct – dropping voice]. The same Werksmans, Chair, that chases other people on other irregular contracts, as it were.

So I am saying that if we look at 19, Chair, this was an afterthought, it is manufactured to drive – for Ms Ngoye to dissociate herself, Chair, from the Swifambo contract and she is an integral part of it, Chair, and she must take ownership for that.

CHAIRPERSON: Now you referred to two people. I think they may be from Werksmans that you say wrote and said
 20 action should not be taken against ...[intervenes]

MR MONTANA: Against all those people, Chair.

CHAIRPERSON: All those people, which included Ms Ngoye?

MR MONTANA: That included Ms Ngoye because already Ms Ngoye, Mr Holele and others had already received

letters from Mr Khena.

CHAIRPERSON: Yes.

MR MONTANA: And Mr Bernard Hotz instructs – I think it is his PA to say no, no, no, send this email, so I think it is dictated to her.

CHAIRPERSON: That is an attorney from Werksmans?

MR MONTANA: From Werksmans, Chair.

CHAIRPERSON: But on whose instructions would he have been writing to do that? To issue those instructions to say
10 do not – I mean, how PRASA or the Acting CEO disciplines its employees, that is an internal matter.

MR MONTANA: Chair, I provide this Commission with an annexure. So this I am saying, Chair, that these people are so truthful to this Commission, they are truly corruption busters, they tell us who they are. The first thing, Chair, they will apply the same rule to themselves. So it is quite clear that – and I think when Werksmans – that is why I said I welcome the opportunity to be cross-examined by Werksmans because I am going to read to their counsel
20 this email and ask exactly the question, Chair. Somebody lobbied and because their own people, Chair, people like Dingiswayo or people like Martha, Holele are part of this group they felt oh, we cannot discipline here.

Yet they were running a massive campaign at PRASA to discipline people for even things that are not

even material and threw them out, Chair. It is part of the list of contracts they were investigating and I think Ms Ngoye, she let - with this paragraph, Chair, for me and when I bring senior counsel to cross-examine, there will never be any other explanation, Chair. She let the cat out of the bag. When you look at the time, Chair, you ask an important question, the contract had already been in place and I think it was negotiated in 2012, it was signed in 2013 and this is 2015, Chair.

10 So this is – it has nothing to do with Swifambo, it has nothing to do with Prodigy, it had to do with the fact that they were implementing a mandate, they had this particular thing. But, for me, when I saw this email given to me by even Werksmans' own employees and say look at what our company is doing. Chair, I provided a lot and you asked the question, I did not obtain anything unlawfully but I want to salute those many employees at Werksmans who work for this company but who were unhappy, we have seen there are many wrong things that they are doing.

20 This is one of them, Chair.

 So Werksmans, Chair, they are telling us about the irregular appointment of other people, but not theirs, Chair. They are disciplining others for others and they are intervening, that others should not be intervened, Chair.

 So that is why the PRASA that has been created of

corrupt people and when Martha was here again, Chair, she said I am being suspended because I am fighting against corruption. It is so false. It is not true, Chair, it is not even supported by fact. That is why I offered this Commission to present as much information including this email written by Ms – it is coded, Chair, this thing but the essence of it is telling Mr Nathi Khenka. You cannot proceed with it, Chair, and that is why Mr Khenka signed a letter of engagement with Werksmans, that is on their
10 letterhead on their own terms which, Chair - if Mr Soni, yesterday we had a huge debate about violation of Section 217 of the Constitution.

Chair, there is no better illustration of a violation of Section 217 of the Constitution than what Werksmans did in this particular contract. I will come back, Chair, to testify about it, so I am simply saying if we do 19, written by Ms Ngoye under oath, Chair – she deposed to this affidavit to this – and this issue was not there other than the investigations that they created with their list of
20 contracts, Chair, of contracts.

CHAIRPERSON: Let us go back to the Acting CEO who came after you. So are you saying in the end – okay, maybe I should not say that – to your knowledge did the persons whom he had written letters to say tell me why I should not take action against you if these reasons are

true, did they respond, as far as you know, or you do not know?

MR MONTANA: No, I do not know, Chair.

CHAIRPERSON: You do not know.

MR MONTANA: What I know, Chair, is that ...[intervenes]

CHAIRPERSON: No action was taken.

MR MONTANA: No action was taken and that was at the instructions of Werksmans Attorneys, Chair, in black and white.

10 **CHAIRPERSON:** Yes, yes.

MR MONTANA: And I hope when Mr Khena comes here he will be able to say I wrote back to Bernard Hotz and told him that what he is saying is completely out of order, I am proceeding.

Even after the matter been finalised in 2017 - the judgment on this issue happened in 2017, Chair, and most of those people were still employed with PRASA including Ms Ngoye, including Mr Holele and other people are still there that I know, who served on the Bid Adjudication
20 Committee, Chair.

Yet the legal department, when Mr Molefe first laid a charge on Swifambo, they even said Swifambo and Siyangena were approved by Mr Montana when they know that they recommended to the board and these were approved by the board. So they will tell even vital

information from the board of Mr Molefe, as it were.

CHAIRPERSON: So speaking about the Swifambo, only leaving out others that you deal with, you are saying yes, I approved the Swifambo contract but I did not just approve it, there was a recommendation coming from – is it the Bid Adjudication Committee?

MR MONTANA: No, no, Chair, I am not saying that.

CHAIRPERSON: You are not saying that.

MR MONTANA: I am saying I did not approve the
10 Swifambo contract.

CHAIRPERSON: Okay, you did not, ja.

MR MONTANA: It was approved by the board.

CHAIRPERSON: By the board.

MR MONTANA: At the recommendation of the Bid Adjudication Committee.

CHAIRPERSON: Which included...

MR MONTANA: Which was checked by Mr Holele and it involves other people including Ms Ngoye.

CHAIRPERSON: Okay, okay.

20 **MR MONTANA:** And so you can see, Chair.

CHAIRPERSON: Yes.

MR MONTANA: So when you say that, you cannot then say we had asked several questions on the principal transaction to which no satisfactory responses were provided.

CHAIRPERSON: So what you are saying is – part of what you are saying is how – insofar as the questions that she is talking about, that she says they raised, may have related to how PRASA awarded the Swifambo contract. She could not have raised those questions because she had been part of the people who recommended that Swifambo be awarded the contract. That is part of what you are saying.

MR MONTANA: Yes, Chair. If – let us assume, Chair, 10 they were not involved in the negotiations, okay, but here she is saying, she is talking about the principal transaction. The board approved the principal transaction which – let us assume she does not even attend the let us say the Bid Adjudication Committee but when documents are served, they are served to members of the committee as a committee and they quorate, they present that to the board.

So, Chair, I am simply saying this 19 is a manufactured story and it also tells you there, Chair, that 20 is does not – it is not Montana against Ngoye, in fact you could take it as – it is Ngoye against Dingiswayo, Chair, because they provide different reasons for that but I am saying that with 19 could not have been because the discussion on Swifambo – and I know the details on this thing at the back of my hand, Chair, the details on this

thing was discussed in 2014. May 2014 the Chairman was still Mr Sfiso Buthelezi

In 2015 it was Mr – so this was part of – and for me, Chair, there is only one conclusion. That is why I am blunt on this Chair, I say Ms Ngoye lied to this Commission, she needs to be asked to explain this and I am hoping that my friend from Werksmans, when they come, Chair, they will be able to explain simply things. On what basis do they write a letter instructing the CEO not to
10 discipline people because we said when the culture of accountability, we want – what is it called now, into the consequence management. Okay?

So that it does not apply to the people we love, it must apply to Montana. We even tell the board to go to court to say Montana approved a contract of 3.5 billion which is beyond – beyond its – so they manufactured the reasons, Chair. When you look at the – and I explained on Friday, I went to a legal firm, I asked ...[intervenes]

CHAIRPERSON: I want to stop you because of time.

20 **MR MONTANA:** Okay, okay, Chair.

CHAIRPERSON: Ja.

MR MONTANA: Thank you, Chair.

CHAIRPERSON: Mr Soni, I know you may have still wanted to ask something but I see we are way beyond five.

ADV VAS SONI SC: Yes, no we are way beyond.

CHAIRPERSON: Let us talk about – if I were to be available – Mr Montana laughs – if I were to available this coming Saturday – just that I do not know if I will be available, if I were to be available this Saturday, is there a chance that we could continue starting in the morning, maybe we see how far we go, maybe up to lunchtime or so? From your side, Mr Soni?

ADV VAS SONI SC: [indistinct – dropping voice]

CHAIRPERSON: Yes. From your side, Mr Montana?

10 **MR MONTANA:** Well, Chair, I will be guided by you. I would be available. I know – I just have to confirm, though, Chair, because I know that this weekend it is my turn to look after the kids, Chair.

CHAIRPERSON: Okay.

MR MONTANA: So I think that may be an issue.

CHAIRPERSON: That might be an issue, yes.

MR MONTANA: But I can quickly negotiate that in case, if I can come and honour, Chair.

CHAIRPERSON: Okay.

20 **MR MONTANA:** Because I think it is very important that we conclude this matter.

CHAIRPERSON: Ja, it is very important. Okay, I am going to indicate and you will be informed if I am available for Saturday.

MR MONTANA: Saturday.

CHAIRPERSON: But if I am not available for this Saturday, unless something unforeseen happens, I would be available Saturday of next week. So maybe if we do not sit this Saturday we could sit Saturday of next week. Does that sound ...[intervenes]

MR MONTANA: No, Chair, I said, Chair, because I have been losing money as a [indistinct].

CHAIRPERSON: Ja, ja, yes.

MR MONTANA: But I think from a national interest point
10 of view it is my priority, Chair, so I will come.

CHAIRPERSON: Ja. No, that is fine. As for next week, I will check what the situation is about evening sessions. My impression is that it is full already but if I do have a space, so we might explore even sitting during the evening.

MR MONTANA: That is fine, Chair.

CHAIRPERSON: Ja, ja. But thank you to everybody, we will then adjourn for – we will adjourn the hearing of Mr Montana's evidence and then arrangements will be made
20 for him to continue on another day. I will adjourn this to allow the evening session team to get ready so that we can then start with the evening session. Thank you very much, Mr Montana, you are now excused.

MR MONTANA: Thank you, Chairperson.

CHAIRPERSON: We adjourn.

ADV VAS SONI SC: Chairperson, can we from the PRASA's team be excused?

CHAIRPERSON: You are excused as well, yes, thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Good afternoon Mr Pretorius, good afternoon everybody.

ADV PRETORIUS SC: Afternoon Chair.

CHAIRPERSON: Yes. Are you ready?

10 **ADV PRETORIUS SC:** We are.

CHAIRPERSON: Good afternoon Dr Dintwe. Your mic is not on.

MR DINTWE: Good afternoon Chair.

CHAIRPERSON: Yes, the oath you took yesterday will continue to apply today, okay. Alright.

ADV PRETORIUS SC: Thank you Chair. Before we continue with questioning, may I place something on record?

CHAIRPERSON: Ja.

20 **ADV PRETORIUS SC:** We received a communication from Shaun Pillay Attorneys on behalf of a party that is implicated in the evidence of Dr Dintwe. They have provided us with a statement attested to by their client on behalf of a company, both of which are identified in the statement under pseudonyms.

They say in the letter:

“We attach hereto a statement by our clients which must be carefully studied, as we are not certain whether any of the information contained in this statement falls in the category of being classified.”

Then they continue to say:

“We take no responsibility in that regard.”

The first thing that we need to place on record
10 Chair, is that the fact that they purport to absolve themselves from any responsibility, is not a statement that we accept that responsibility, it remains with them.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: But never the less, we are checking the statement carefully. We will check it with the SSA so that we do not inadvertently release any confidential or classified information. For that reason, despite the invitation to put the statement to Dr Dintwe in evidence, we will not put it at this stage, but at a later stage.

20 **CHAIRPERSON:** No, that is fine.

ADV PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Dr Dintwe, are you at page 789 of Exhibit YY15 where we left off yesterday?

MR DINTWE: Yes, I am on that page.

ADV PRETORIUS SC: And you deal in paragraph 52 with the topic as you describe it, executive over reach.

MR DINTWE: Yes, I do.

ADV PRETORIUS SC: Evidence has been given on the topic of executive over reach by more than one witness to date, and there is an opinion that has been expressed that it is undesirable for a minister to become involved in the operations of the SSA.

Another view that has been put is that there is
10 nothing that makes such involvement and operational affairs unlawful or improper but that such practice has been avoided by at least one minister who has testified or by the minister who has testified, or the previous minister who has testified.

What is your view in that regard?

MR DINTWE: And Chairperson, my view will be firstly be confined to our role as an oversight body and what problem is imposed by that kind of involvement or the executive over reach general. The first point is that you have a
20 situation where the ministers bring themselves into our oversight space.

So ordinarily we will not investigate the ministers. We will not even make findings as far as they are concerned. But an example of what the legislation provides, is that the minister of state security shall have

super retendence[?] over the agency, over the intelligent service.

Now that super retendence, the examples thereof is that the minister gets involved in issues such as purchasing and leasing of property and I am just going to take that example and try to demonstrate our problem as the oversight.

Now, now that we deal with maladministration, let us say for instance the property is being leased in KZN,
 10 and they did not follow the procurement process and so forth and so forth, it means that as and when we conduct our monitoring or our review, if we find that that particular process, I mean the procurement process was not properly followed, it will mean that we will have to make a finding against the minister.

Because it will be the minister who would have made that kind of a decision. So that is a problem as far as we are concerned of that executive over reach or the involvement in operations, because we oversee operations
 20 in general.

ADV PRETORIUS SC: Yes, we will in due course place before the Chair an analysis of the legislative provisions dealing with the powers and duties of the minister in relation to the operations of the SSA. We are not going to deal in detail with it here Chair, but maybe to give this

evidence.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Because the legislation does at least on the face of it, the minister direct oversight powers and responsibilities in relation to matters falling within the purview of the administration and operation of the SSA. At least at an oversight level. How that is applied of course is a matter of controversy and certainly one of our submissions may be to you Chair, in due course that these
10 issues should be clarified one way or the other.

CHAIRPERSON: No, no that is fine, but let me ask this question Dr Dintwe. Why would it be a problem for you as an oversight body to make a finding against the minister?

MR DINTWE: It is because Chair, the Oversight Act says that we shall monitor, review and investigate complaints which involves the heads of services. So the heads of services are defined as a director general in the case of SSA, as the divisional commission of sub CI, crime intelligence and also the others.

20 So there is no provision basically which says that we can investigate, monitor or even review their actions.

CHAIRPERSON: Oh, okay. No, then I understand, but obviously if the, if a minister does what the head of the department is supposed to do and in doing it he or she acts improperly or breaches the law, then obviously you

can say that what you were investigating was matters that fall within your jurisdiction.

It so happens that one of the players is somebody who should not have ventured into that kind of issue and then you venture into it and you have to pronounce that you did not go out of your sphere of operation to deal with matters that were outside of your jurisdiction.

So the subject matter would still be within your jurisdiction, but the person who would have acted in
10 breach of the law or improperly, would be the minister, or are you saying your understanding is that the moment you hear that in this operation the minister was involved, you have to leave it, because you do not have jurisdiction over a minister, even if the subject falls within your jurisdiction subject matter?

MR DINTWE: I know that I would have provided the Chairperson with a pedantic view ...[intervenes]

CHAIRPERSON: Yes.

MR DINTWE: As far as the provisions are concerned.

20 **CHAIRPERSON:** Yes.

MR DINTWE: But we have dealt with that issue.

CHAIRPERSON: Yes.

MR DINTWE: I have received complaints against the ministers ...[intervenes]

CHAIRPERSON: Yes.

MR DINTWE: Previously ...[intervenes]

CHAIRPERSON: Yes.

MR DINTWE: And I have worked on them.

CHAIRPERSON: Yes.

MR DINTWE: The position of the office is that we do not follow the rank ...[intervenes]

CHAIRPERSON: Yes.

MR DINTWE: Or a person ...[intervenes]

CHAIRPERSON: Yes.

10 **MR DINTWE:** Or an official.

CHAIRPERSON: Ja.

MR DINTWE: We follow the activity.

CHAIRPERSON: The activity, yes.

MR DINTWE: Yes, and that is the advice that has been preferred to myself ...[intervenes]

CHAIRPERSON: Yes.

MR DINTWE: The [indistinct] also asked our office whether they could refer certain matters that involves the ministers, but I think that the reading of the legislation and

20 I think the legal team here will assist ...[intervenes]

CHAIRPERSON: Ja.

MR DINTWE: Is to say that we look at intelligence and counter intelligence activities.

CHAIRPERSON: Ja.

MR DINTWE: So it does not matter who is doing it.

CHAIRPERSON: Yes.

MR DINTWE: In fact, I think that even in the spirit of the legislation, if you like, it even goes beyond because there is a provision here which says that I may also invoke the provisions of the Criminal Procedure Act, if there is any other organisation which is not the three that I have mentioned that gets itself involved in intelligence.

So we can see that the intention of the legislature is to make the scope a little bit broader. We have dealt
10 with the issue and I think that is our position Chairperson, is that we follow the activity and not the person.

CHAIRPERSON: Okay. Okay.

ADV PRETORIUS SC: So if a minister by their action brings himself or herself within the purview of the IGI's office, you will investigate as I understand it.

MR DINTWE: That is exactly what I am saying. The example that I was giving Chairperson, was to say that let us say a lease of a property. So there I am not concerned who is doing it. If it is done by even a private citizen, as
20 long as it is one of the resources that belongs to intelligence services, it will be an activity that I can investigate if there is any maladministration coming out of it.

ADV PRETORIUS SC: But that does not mean to say that the legislation could at the very least be tidied up.

MR DINTWE: I have never ever had a challenge. I wish for a stage where there will be findings against a particular minister and maybe they take us you know, on review, but from where we are seated, because I think that a person sitting somewhere may think that now that the legislation does not say that you can investigate a minister, that then it means that you cannot investigate.

ADV PRETORIUS SC: We will leave that to a later stage.

MR DINTWE: Alright.

10 **ADV PRETORIUS SC:** Would you then deal with the examples you give in paragraphs 53 and 54 of your affidavit?

MR DINTWE: Alright. Now according to the Intelligence Service Act, as well as the regulations of the SSA specifically here, is that when a member gets dismissed for example, and this is the case that I would have worked on. It was just basically [indistinct].

Then that member can appeal to the minister and our view has always been but the director general, the
20 moment you see that the minister has super retendence, it means that a dismissal that is metered out by the director general, is tantamount to a decision of the minister.

If they have super retendence. So it creates a problem, because then the minister becomes a player and a referee at the same time, because it says that then that

member would have to lodge an appeal with the minister.

ADV PRETORIUS SC: The SSA member so dismissed may lodge a complaint then with your office, and that minister's decision may then be subject to your oversight as I understand is what you are saying in paragraph 53.

MR DINTWE: That is exactly also what I am referring to Chairperson.

ADV PRETORIUS SC: And what if a minister were to involve himself or herself in the operational matters of the
10 services that fall under their superintendence. Would you investigate such a matter if the complaint arose?

MR DINTWE: I do not have a choice. I will investigate it, but then you can understand the [indistinct] that I will find myself in because it will be almost like double jeopardy. The minister would have committed an error the first time around and the second time around.

In any event, the end result is that I have to recommend to the same minister again for rectifying.

ADV PRETORIUS SC: Now you deal in the next section of
20 your affidavit, Dr Dintwe, with the ministerial delegation of powers and direction of payments, and you make out the case that this document or this direction of payments document has been used or even abused to undermine the provisions of the Oversight Act and the Intelligence Services Act, and to undermine the oversight role of the

IGI.

Would you explain please, as succinctly as possible to the Chair how this comes about and you deal with it in paragraph 55 onwards.

MR DINTWE: Alright. Now submission Chairperson, is that these MPD's have been manipulated and used to undermine primary legislation. Because this is a document developed by the minister and its main purpose is to delegate certain powers to the director general.

10 So which means that basically the director general does not have any powers to run that institution. So the MPD's are used to delegate. So it will be written there to say that for instance any procurement which is less than five hundred thousand, the director general can make a decision.

 Procurement of buildings for the provinces will reside with the director general. We do not have a problem with that. It is a good instrument of punishment, a good one. But now it has been used over and over again to
20 undermine and to blend the lines between what the road of the director general is and what the role of the minister is.

 It is creating a serious problem for us as an oversight, because then we cannot really tell whose decision is it, because if you delegate a power, the power still remains with myself. If I delegate a power to a

manager in my office, I am still a decision maker in that instance.

I do not know if you wanted me to go a little bit deeper than that?

ADV PRETORIUS SC: Well, do you have any examples of how this delegation has been used? As I understand it, paragraph 57 you say that paragraph 1.1 of the MPD reads:

10 “Delegation refers to an institutionalised activity whereby certain activities and authority are handed down from the minister to the director general and by the director general to subordinate members of the agency.”

Do I understand you to be saying when the minister hands down one of his or her powers, in relation to their authority over you, you might find the director general or the director general’s subordinates exercising that authority over you.

MR DINTWE: Exactly my point.

20 **ADV PRETORIUS SC:** That I understand you to say is undesirable because in fact you have oversight over those persons who may be exercising authority over you.

MR DINTWE: Yes, that is our submission Chairperson.

ADV PRETORIUS SC: And you say that that has actually happened in your statement.

MR DINTWE: It has happened. There is a specific incident of December 2017.

ADV PRETORIUS SC: December 2017?

MR DINTWE: Yes.

ADV PRETORIUS SC: What happened?

MR DINTWE: Alright. Now in December 2017 we had a minister who served for a very short [indistinct] there. Court Advocate Bongani Bongo. When he got there, he clearly had an instruction Chairperson. I would have had
10 some engagements with him which were not recorded unfortunately, but that was the [indistinct] that they wanted to remove me from the office.

That they did not want oversight. What happened is that ...[intervenes]

ADV PRETORIUS SC: Sorry.

MR DINTWE: Okay.

ADV PRETORIUS SC: If I may just interrupt. That is your opinion and inference you draw from what happened.

MR DINTWE: It is an inference that I draw from that.

20 **ADV PRETORIUS SC:** Yes, okay.

MR DINTWE: Yes, it is an inference. Okay, now what he did is that he then amended the MPD's and they never told anybody what was wrong with the MPD's which were in place, and there were few amendments there and I am going to give an example of one.

Where they said that the inspector general of intelligence shall be clothed with the powers similar to those of a deputy director general. Yes, so let us put that in motion. Like they started by demoting myself, to say that now I am a DDG and in that MPD, obviously the point that I think that we attempt to drive home here, is that the MPD is secondary to the Oversight Act, which does not put me at that level.

So that was the first problem. The second problem
10 with the then MPD's was to say that in my absence and in the absence was not qualified. So I could be sick, I could be on leave, I could be on suspension and whatever. They said that the director general of the SSA shall have the power to appoint an acting inspector general of intelligence.

So they are right there, because they have been struggling. The Oversight Act does not and it is a point that we conversed yesterday, to say that in my absence no one can even appoint somebody to act in my position. I
20 am the only person who can do that.

So I do not know if the commission will see it as an inference, because I mean it was straight forward that these are the people who want to action something, but they are preparing the ground, so that when I am not there, there will be MPD's in place which will then say that Mr

Arthur Fraser at that time will then appoint an acting inspector general of intelligence, as that I am actually subordinated to him, because now I have been demoted to a level of a deputy director general or a head off a spending centre as they called it.

ADV PRETORIUS SC: Well, let us just summarise that then to show how the MPD was used or even abused. Depending on which way one looks at it. You say in paragraph 62 that the MPD provided that your powers
10 would be such that you would have the administrative authority and financial limits of a deputy director general of the agency.

That would in effect make you subordinate to the director general of the agency. Do I understand that correctly?

MR DINTWE: That is correct, yes.

ADV PRETORIUS SC: Over whom you exercise oversight.

MR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: Because he would then be the
20 accounting officer and he would be senior to you.

MR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: And in relation to your appointment and your standing, you are appointed by the president. You are accountable to the JSCI and your appointment and the appointment of the office or the person who occupies

the office, is approved by parliament.

MR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: The effect of the amendment to the MPD, you have notes is that in your absence the person being monitored appoints your replacement. On a temporary basis.

MR DINTWE: That is correct. That is exactly what happened Chairperson.

ADV PRETORIUS SC: And you have drawn the inference
10 from those facts that these efforts or these amendments to the MPD were directed at undermining your authority. Do I understand your opinion correctly?

MR DINTWE: You understand my opinion correctly. Maybe also to add, to say that as we get deeper then towards the end of my evidence, you will see that there were other activities that were being carried out by the director general and the minister which were sort of supplementary to this particular taking or amendment to the MPD's.

ADV PRETORIUS SC: Alright. You make the point in
20 paragraph 63 that the MPD is subordinate legislation. You call it secondary legislation and you make the point that for it to be valid, it must be consistent with the enabling legislation, the Oversight Act and indeed the constitution.

MR DINTWE: That is my submission Chairperson.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: Just one second Mr Pretorius. You said yesterday in answer to one of my questions Dr Dintwe, that the IGI is ranked at the level of deputy minister. What is the basis for saying that? Is it the remuneration or is there some document that says that?

MR DINTWE: It will be the remuneration. That is how they determine that.

CHAIRPERSON: Okay.

MR DINTWE: But as I said is that then we will develop
10 something which looks like an agreement. So
...[intervenes]

CHAIRPERSON: Yes.

MR DINTWE: Because I am not appointed in terms of the Public Service Act ...[intervenes]

CHAIRPERSON: Yes.

MR DINTWE: We will have a document which is actually an agreement between myself and the employer.

CHAIRPERSON: Yes.

MR DINTWE: And in that document it will tell me exactly
20 what level am I and so forth.

CHAIRPERSON: Yes.

MR DINTWE: Now the Act only says the conditions of service shall be determined by the president in conjunction with the joint standing committee on intelligence and they shall not be down variated, I have to read but they do not

really use that word, by anybody during the tenure of the IGI.

Maybe every time I could be [indistinct].

CHAIRPERSON: Okay, okay. No, that is alright, thank you.

ADV PRETORIUS SC: You detail your inference in paragraph 64 of your affidavit on page 792 and 793 and you say in short that the amendment to the MPD was part and parcel of concerted efforts by Mr Fraser and later
10 Minister Bongo to remove you from your position.

Now, or and if this tail to negate your oversight powers. That is quite a strong inference to make from the facts. Why do you draw that inference?

MR DINTWE: It is because it is based on the first sentence, which says that the mentioned MPD was issued by Minister Bongo following a flurry of [indistinct] correspondence received by the OIGI from Mr Fraser, regarding the complaints lodged against him.

ADV PRETORIUS SC: Right, now ...[intervenes]

20 **MR DINTWE:** And then that formed the basis of that, because you could follow the letters. The letters would have started earlier, where they will say that I am not competent to possess state secrets, that they have got some intentions to revert myself, that I was spotted somewhere sitting with the members of the opposition.

So you could see where these people are going, and the letters in my bundles, I mean in my evidence will show you exactly that there was a concerted effort to remove me from my position.

ADV PRETORIUS SC: So you rely on what you have told the Chair, together with other evidence which provides the context for what you have told the Chair, including other evidence which, from which you conclude directly that there was an attempt to remove you from your position.

10 Do I understand you correctly?

MR DINTWE: I am understood there, that is ...[intervenes]

ADV PRETORIUS SC: You refer for example in paragraph 64 to correspondence marked SD4. You do not by any chance have that letter with you there or must we wait for the bundle to be prepared before we place that letter on record?

You see, if you look at paragraph 64, you annex copies of the relevant correspondence marked SD4. Do you see that?

20 **MR DINTWE:** I see that Chairperson.

ADV PRETORIUS SC: That correspondence will be in the bundle that you were going to hand up to the Chair in due course.

MR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: You do not have it with you there?

MR DINTWE: I always keep those letters ...[intervenes]

ADV PRETORIUS SC: No, no but as you sit there ...[intervenes]

MR DINTWE: No, I do not have here.

ADV PRETORIUS SC: Can you just summarise for the Chair what that correspondence says?

MR DINTWE: Alright. Now in that correspondence Chair, the Mr Arthur Fraser was telling me that he is going to revert me and it was followed by a letter which then said
10 that my security clearance has been withdrawn. I put them in a single annexure, because it is three letters which follows each other.

ADV PRETORIUS SC: Perhaps you should explain to the Chair was preceded these activities on the part of Mr Fraser. The fact that you were investigating complaints in regard to him.

MR DINTWE: Yes.

ADV PRETORIUS SC: If you could just explain that to the Chair.

20 **MR DINTWE:** Okay.

ADV PRETORIUS SC: That is an important contextual fact.

MR DINTWE: Thank you very much. It started in a meeting Chairperson, where I met with Mr Arthur Fraser, his office manager and office manager from my office and

myself, and in that meeting Mr Arthur Fraser told me that the caucus of the African National Congress in Parliament had told him that he should tell me to withdraw or to stop the investigation, because he said the investigation that I was busy with was now becoming personal because it was a repetition of what was investigated, so I understood him to refer to that panel which yes of course was investigated, but he misunderstood what – which complaint I was investigating. The complaint that I was investigating was
10 from a leader of the DA in the Parliament, who said that this issue was never followed through, may you please investigate what happened, because there were recommendations which were made, so what happened.

So in that meeting I disagreed with Mr Fraser on the basis that you are not my messenger, you are not even my supervisor, I am reporting directly to Parliament and if the committee really wanted me to stop this investigation they must tell me directly so I am not going to stop any investigation and my due at that time the committee
20 members were not there, so that is where the problems started, because I make him aware that I am investigating this particular complaint and when I went back to the office I wrote a letter because he had misunderstood what I was investigating, so it was a courteous letter to say this is the complaint as received from I think I can mention Mr

Steenhuizen here, as received from Mr Steenhuizen.

ADV PRETORIUS SC: Alright, then you can go back to the stage where you deal with your conclusion that action was being taken and the aim of that action was to either undermine your investigative capabilities, scope, or to remove you from office.

DR DINTWE: Yes.

ADV PRETORIUS SC: That's the conclusion you drew?

DR DINTWE: Ja, the conclusion that I then arrived at was
10 to say that it is either I should give in and say that I am not going to conclude this investigation or that I was going to be removed but then the latter actually materialised because then I started receiving then a flurry of correspondence and they were saying only one thing, to say that I am not competent, because if I do not have security clearance then I cannot continue to occupy the position.

ADV PRETORIUS SC: Alright, well we will come to the security clearance issue in due course. Let's just
20 complete the fate of the amended MPD. You mention in paragraph 65 that you made a presentation to the next Minister, Minister Letsatse Duba, on the 6th of April 2018. What did you say to her?

DR DINTWE: I told her that the – there was a frequent change of ministers in that period, so you had a minister in

December and then you had the other Minister in April, so when I was still busy dealing with this issue there was a new Minister, so I informed, I went to make a presentation in fact, to say that these are ...[indistinct] ministers and we have serious reservations about this position and that particular position and I also informed her that we were intending to boycott, because that was the advice that I had received, to say that we are ready to go and challenge these MPD's because they were outside ...[indistinct] but
 10 they were also inconsistent with the National Legislation.

ADV PRETORIUS SC: The primary legislation, the empowering legislation?

DR DINTWE: The empowering legislation.

ADV PRETORIUS SC: And what did the minister then decide to do?

DR DINTWE: A day or three later there was a message which just circulated on our internet, because I will be on the same internet, to say that those MPD's have been withdrawn and that we are relating back to the ones before
 20 the arrival of Minister Bongo.

ADV PRETORIUS SC: So the MPD to which you objected or the amendment to the MPD to which you objected was withdrawn?

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: Right. Let's then go to the next

topic, the weaponisation of vetting or security clearance, what do you mean by that? You deal with that in paragraph 66.

DR DINTWE: The Chairperson would have heard evidence where they said that there were parallel structures in the State Security Agency. One of the parallel structures was a structure that was used to vet different categories of people, let's say two. Now you will have that group that was seen as opponents of State Capture, I am expressing
 10 an opinion here Chairperson, and then you will have the other group that will facilitate it, so we wouldn't be vetted by the same team, or the same structure, you will have other structure which will deal with David because David is not liked, and then you will have the other one which will deal with Joseph because Joseph is liked, so they were using vetting or the security clearance as a weapon to fight against those who were opposed to corruption and malfeasance in the State Security Agency.

ADV PRETORIUS SC: Was this occurrence a rare
 20 occurrence, was it a more frequent occurrence, was there a pattern, what do you conclude from what you learnt in an office?

DR DINTWE: It was a pattern, in fact we – when we wanted some information we got to the other office and there were no less than twelve files that were never seen

by the adjudication committee, so they will have an adjudication committee, they use the other term there, but after the investigator, that investigator and the polygraph and all those other things, they would then take it to this mini committee to then sort of you know make a final decision before it gets signed, so we had files which were no less than 12, which were never seen by anybody and they were being dealt with by this other structure that we say was parallel, parallel to the other main structure.

- 10 **ADV PRETORIUS SC:** Alright, you then in your statement in that paragraphs which follow give three examples, and we will deal with those now because those examples have been raised in other evidence before you Chair.

In paragraph 67 you make reference and you cite the Intelligence Services Act at Section 14, that is a Section which provides for the vetting of SSA members by the Director General of the SSA, am I correct?

DR DINTWE: You're correct, that is correct Chairperson.

- ADV PRETORIUS SC:** Right and because there is a
20 provision in the legislation that says that you must also have a security clearance similar to the security clearance that a member of the SSA must have are you subject to these particular provisions that you quote here?

DR DINTWE: Yes I am.

ADV PRETORIUS SC: So who performs your security

clearance, or who is responsible for your own security clearance?

DR DINTWE: It is the same person that I oversee, the Director General of the SSA.

ADV PRETORIUS SC: Yes. Alright, and then you deal in paragraph 69 with another section, 14[8][a] of the Intelligent Services Act which deals with the facility of an appeal to the Minister in relation to anything that happens to your own security clearance, for example if it's been
10 degraded, withdrawn or refused, you see that?

DR DINTWE: I see that Chairperson.

ADV PRETORIUS SC: And you refer in paragraph 70 to a related regulation under Chapter 26 of the Intelligent Services Act which also deals with the possibility of a security clearance, including your security clearance being withdrawn or downgraded.

DR DINTWE: Yes I am also subject to those regulations.

ADV PRETORIUS SC: So if the Director General decides to withdraw your security clearance that is in effect
20 removing you from office, is that not so?

DR DINTWE: It is, it amounts to that.

ADV PRETORIUS SC: Alright. And we will come to what happened in that regard in your case in due course.

DR DINTWE: But may I please also impress upon the Chairperson that it should not have been the case,

because there is a difference between the regulations which deals with the members of the service. I am not a member of the service myself, so the position which deals with the regulations is found in the Oversight Act Section 78, which says if these were the regulations ...[intervenes]

ADV PRETORIUS SC: Section 74.

DR DINTWE: 74, yes, it says a Minister acting with the concurrence of the committee may make regulations regarding, and then you have got paragraphs A, B, C, I
 10 want to go to F, which says security clearance for the Inspector General and members of the committee, so these regulations were never promulgated, this 1994. Yesterday I was counting the number of ministers there, we don't have these powers but we have drafted them more than once, and because they deal with important issues they also deal with the performance of the functions by the Inspector General, the reports submitted by the Inspector General, the suspension or removal from office of the Inspector General and the termination of employment of
 20 the Inspector General.

So in the absence of these regulations which were never promulgated they then revert to the regulations which deals with the employees of the service as if I am an employee of the service.

ADV PRETORIUS SC: So as I understand what you are

saying to the Chair is that properly regarded there is legislation which would allow the Director General actively to remove you from office by withdrawing your security clearance.

DR DINTWE: That is correct.

ADV PRETORIUS SC: Or there is no valid legislative or regulatory provision to that effect.

DR DINTWE: There is not.

ADV PRETORIUS SC: Right, and we will later deal with
10 an example where as I understand your evidence an attempt was made to do precisely that.

DR DINTWE: Exactly and they invoked the same regulations which deals with somebody else other than this ...[intervenes]

ADV PRETORIUS SC: Okay, we will come to that in due course, but I would just like to place on record Chair Section 74 of the Oversight Act, which reads:

“The Inspector General may be removed from office
by the President ...”

20 That is the body that appoints you, but only on the grounds of misconduct, incapacity, withdrawal of his or her security clearance, poor performance or incompetence as prescribed.

DR DINTWE: That’s what the agreement is.

ADV PRETORIUS SC: So if your security clearance is

withdrawn it remains the prerogative of the President to remove you from office, as I understand that section.

DR DINTWE: That's correct.

ADV PRETORIUS SC: Is that your view as well?

DR DINTWE: That is my view as well Chairperson.

ADV PRETORIUS SC: Right let's deal with paragraph 72 and following, and that is the issues surrounding the security clearance of Robert McBride, what happened there? You deal with that at paragraph 72 and following?

10 **DR DINTWE:** ...[Indistinct] the notorious fact that the tenure of Mr Robert McBride as the Executive Director of the IPID was not renewed after the expiry of his contract in 2017, and if you follow the reasons that was provided by Minister Bheki Cele was to say that Mr Robert McBride did not have a renewed security clearance, or he was not re-vetted.

In the meantime Chairperson he had applied in time for the renewal, he did not have control over that because the State Security Agency is having that mandate to also
20 deal with what we call external ...[indistinct], it involves vetting of other officials outside the agency.

ADV PRETORIUS SC: Including IPID?

DR DINTWE: Yes.

ADV PRETORIUS SC: And including you in fact.

DR DINTWE: Well of course yes I will be falling under

external space.

ADV PRETORIUS SC: We have made that point. Did the matter then arrive on your desk?

DR DINTWE: And then before it arrived on my desk is that a decision was made in Parliament and it was given that reason and so forth and I think that he was contemplating going to challenge that decision, but then he complained to me on something else. His complaint to us was to say that there was a team that went to this foreign country that I
10 want to call Jupiter, I don't know how it was called there, ja, but that country, so they went there and the allegations were that Mr McBride was in cahoots with some people who resided in that particular country or in Jupiter, which is not a problem, the problem is that you cannot go and investigate an individual without having a registered project to say that we suspect that Dintwe – ja I think it is in the public domain, people have been accused of being handled by foreign intelligence agencies, so the moment there is that allegation they must register a project, they
20 must follow their operational directives and it must be approved by the highest person in the SSA who happens to be a Director General or his delegate, but in this instance nothing of that sort was done, but there was a second problem, the second problem is that there are people who were sent there were then accompanied by a

certain gentleman ...[intervenes]

ADV PRETORIUS SC: Don't mention the name, don't mention the name or the company.

DR DINTWE: Yes, we are using a pseudo name there, I think we call him Mr Ivanhoe.

ADV PRETORIUS SC: Yes.

DR DINTWE: Now Mr Ivanhoe is a director of a company called Icebox Incorporated.

ADV PRETORIUS SC: Both are pseudonyms.

10 **DR DINTWE:** It is also a pseudonym.

CHAIRPERSON: It is very important to mention if it is a pseudonym, otherwise people accuse the Commission of not being responsible and mentioning names.

ADV PRETORIUS SC: We will get a complaint from the real Mr Ivanhoe.

CHAIRPERSON: Ja, okay, continue.

DR DINTWE: But who is this Mr Ivanhoe? Mr Ivanhoe and his company were being investigated by the OIGI, my office and they were also being investigated by IPID, by Mr
20 Robert McBride. He had provided some equipment to the Intelligence and the procedure was not followed. There were also findings by Treasury that there was contravention of some of their directives and so forth, so that brought about that problem because obviously then it was Mr Ivanhoe who informed the State Security Agency

that Mr McBride was not upright, so in the meantime Mr McBride did not get security clearance, his tenure could not be extended at IPID because he was fighting against this person who is connected, there is evidence later which shoes his political connections and to what extent was he involved also in fleecing the ...[indistinct] regions.

ADV PRETORIUS SC: As in many spy stories they get quite complicated and it is difficult often to follow the plot, but as I understand it Mr McBride was investigating this
10 company.

DR DINTWE: That's correct Chairperson.

ADV PRETORIUS SC: This company or the director of this company, Mr Ivanhoe, then lodged a complaint against Mr McBride which accused him of nefarious dealings in a foreign country.

DR DINTWE: That is correct.

ADV PRETORIUS SC: So the very company that was being, and the person that was being investigated by IPID under Mr McBride was at the same time reporting to Crime
20 Intelligence I think it was, that Mr McBride was not behaving appropriately or properly or lawfully in relation to activities in a foreign country, do I understand that correctly?

DR DINTWE: But we should add that it was not only a complaint, he then becomes a source or an informer who

then even accompany the team that is going to investigate in Jupiter.

ADV PRETORIUS SC: So the company or the director being investigated by IPID and Mr McBride is now a source, protected as a source, and accompanies the investigators of Crime Intelligence to this foreign country, do I understand that correctly?

DR DINTWE: You understand correctly.

ADV PRETORIUS SC: That is the additional part of the
10 plot that you delineate.

DR DINTWE: Yes.

ADV PRETORIUS SC: Right, what happened?

DR DINTWE: And when he gets to that country at the cost, full expenditure being carried by the SSA and they get to Jupiter, they meet with the people that had informed the investigators here that they have evidence of even offshore accounts that belongs to Mr McBride, but they returned empty-handed because that was never – it was never a reality, it was never the truth.

20 **ADV PRETORIUS SC:** But there is a further twist and that is that this director and this company are actual service providers and potential service providers or bidders to the extent of tens of millions of Rands to the security establishment, am I correct?

DR DINTWE: For Crime Intelligence to be specific.

ADV PRETORIUS SC: For Crime Intelligence and that you will deal with in due course.

DR DINTWE: We will deal with that in due course.

ADV PRETORIUS SC: Is there anything you wish to add then in relation to that?

DR DINTWE: ...[indistinct] they come back and they say that no the information was negative but by that time there is somebody already appointed to act at IPID, Mr McBride is out already, so they have done that and it is one of what
10 we can call a *modus operandi* they just dismiss you and they just delay things and they know that there is no truth in what they are alleging, but the prejudice was still suffered.

Maybe not even call it prejudice to Mr McBride but maybe some prejudice to the citizens of this country because at that time he was fighting tooth and nail to make sure that he reverses the damaged caused by State Capture, corruption, police brutality and all those issues.

ADV PRETORIUS SC: We have summarised these events
20 but they are detailed in your statement and the Chair has the report. Let us move on then to the facts surrounding the security clearance of Mr Nqasana, you deal with that in paragraph 82 and following. What happened there?

DR DINTWE: In Mr Nqasana's case Mr Nqasana gets appointed, they opened the files to vet him, he signs, he

consents to everything and then they go through all the processes and at the end he then they qualify him, he didn't get awarded top secret. There is communication to the Minister, the then Minister of Justice to say that no this candidate is now okay and then he resumes his duties and then something happens between himself and the former President, there is a disagreement, there is a mistrust that he could charge the former President.

They did not come back to him and withdraw the
 10 security clearance, what they do is that they then request his file, because then the file would be stored for the coming five years or until such time that you want to reinvestigate or withdraw.

They go ...[intervenes]

CHAIRPERSON: When you say they you mean people within SSA?

DR DINTWE: Ja, I just want to see if they maybe didn't use the other two names that I mentioned but ...[indistinct]

CHAIRPERSON: Oh pseudo names obviously.

20 **DR DINTWE:** No, those would not be pseudo names.

CHAIRPERSON: Oh those would be real names?

DR DINTWE: Oh no, they are pseudo names.

ADV PRETORIUS SC: Chair Mr Nqasana may have named those persons, or those persons may have been named, the persons who dealt with his security clearance, they

were not operatives, but I am not sure whether rule 33's have been issued in that regard. Well they are not named here anyway.

DR DINTWE: 87.2, no 87.2 the last but one sentence on page 801.

CHAIRPERSON: 801.

DR DINTWE: Yes Chair.

ADV PRETORIUS SC: 87.2?

DR DINTWE: It will be one, I mean that first sentence on
10 that page. So it will be paragraph 872 which starts on 800.

ADV PRETORIUS SC: The name in paragraph 87.2 can be mentioned, he has received an 33 Chair.

CHAIRPERSON: Okay that is the ...[intervenes]

ADV PRETORIUS SC: But anyway you tell the story.

CHAIRPERSON: You say instead of the pseudonym, you say ...[intervenes]

ADV PRETORIUS SC: No, there's no pseudonym here.

CHAIRPERSON: On mine there is a pseudonym on paragraph ...[intervenes]

20 **ADV PRETORIUS SC:** There is a pseudonym for the first person mentioned in paragraph 87.2, that pseudonym should remain. The second person mentioned in paragraph 87.2 has received a Rule 33 and you can mention that name and they are two different people although they – ja, they are two different people, well they

are mentioned ...[intervenes] he same context.

DR DINTWE: Alright. So Chair after that six – I mean after the 6th of March 2014, which was the date that the certificate was issued of top secret to Mr Nqasana they two days later and unbeknown to Mr Nqasana the then general manager, we call him Danny, in the SSA gave instructions that further investigations should be conducted on Mr Nqasana. The file was then allocated to a different vetting investigator who interviewed certain unidentified referees
10 in KwaZulu Natal and those referees can be identified by Mr Thulani Dlomo, who was then the Deputy Director General in the Domestic Branch of the SSA.

Now vetting is intrusive, they even ask funny questions, sometimes they ask are you ...[indistinct], are you, have you ever had a problem of drugs and so forth, so it is an intrusive kind of a method. Now the reason why you got informed that you sign, you are consenting, that you can go to the banks and check my actions, you can do this, you can go even talk to my referees. Here in this
20 instance Mr Nqasana's consent ends on the 6th of March when this certificate is issued, but then this General Manager called Danny then takes the file again, he speaks to a different vetting investigator and give that instructions that Mr Thulani Dlomo will give you names, you must go and talk to these people in KwaZulu Natal.

ADV PRETORIUS SC: Did you investigate this vetting process or this re-vetting process?

DR DINTWE: I investigated that and I called for some documents during the course of our monitoring.

ADV PRETORIUS SC: Yes and did you look for the file?

DR DINTWE: We could not locate the file, we could only get some other documents which were then given to us. Some of those documents suspecting me were not even signed, I think there is one left that was still signed.

10 **ADV PRETORIUS SC:** So the evidence which would have assisted you in your investigating to what you regard as an improper or unlawful re-vetting process quite frankly disappeared?

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: What do you say in paragraph 87.6 then?

DR DINTWE: Right, now what we found to be very strange was that when we looked at the digital vetting files, so remember that we could not get the physical file, but we
20 could be assisted to get onto the system and check what they call digital, so – because they cannot delete that, there will always be an auditable trace there. What we found was a letter which was uploaded there which said that Mr Nqasana's vetting process was not complete.

ADV PRETORIUS SC: Is that a correct statement of the

facts, was that a correct statement of the facts?

DR DINTWE: It cannot be a correct statement because there was a certificate issued and signed on the 6th of March 2014.

ADV PRETORIUS SC: Correct, and was that letter ever signed?

DR DINTWE: The letter, this letter was not even signed.

ADV PRETORIUS SC: So someone put that letter in a file presumably intending it to be signed at some stage but it
10 never got to be signed, is that correct?

DR DINTWE: It never got to be signed and the Chief Directorate dealing with that advised or informed us that they had no knowledge of the author of the alleged letter.

ADV PRETORIUS SC: Yes, you say in paragraph 87.6:

“The management of the Chief Directorate stated that the issue of the denial letter remains questionable.”

That means the denial of the certificate, does it?

DR DINTWE: That is correct Chairperson.

20 **ADV PRETORIUS SC:** There was no letter of denial written by the Chief Directorate External Vetting and Advising, that does not mean to say of course that some parallel vetting process might have drafted that letter.

DR DINTWE: Look certain letters, like in my office you will have ...[intervenes]

ADV PRETORIUS SC: That may be an unfair inference on my part so ...[intervenes]

DR DINTWE: Yes, I understand what made it more strange was that if an official in my office writes a letter they will write on top the reference or an inquiry at least even if I sign that letter. This one did not indicate who at least the drafter is in the bare minimum.

ADV PRETORIUS SC: Alright. The conclusion you drew after all your own investigations in relation to whether Mr
10 Nxasana had a valid security clearance or not what was that?

DR DINTWE: I will have to read that one because I – ja on paragraph 87.7 I think you are referring to that.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Yes.

DR DINTWE:

20 “It is not worth that Mr Thulani Dlomo’s name featured prominently in the findings of the HLRP the panel concerning the rogue intelligence unit within the SSA and reportedly took instructions from and reporting directly to the then President Mr Zuma. President Zuma...”

ADV PRETORIUS SC: Just before you go on. What is your source for that conclusion?

DR DINTWE: It is the high level review panel it is .

ADV PRETORIUS SC: Well it may not be stated in the high lever review panel in so many words but we can always check it. But what you are saying is you relying on what you stated in that HLRP report? Is that correct?

DR DINTWE: That is correct yes.

ADV PRETORIUS SC: Of course we do not have the full report certain portions of that report remain classified even to the commission but I am concerned that – that conclusion
10 that you draw may not be accurately reflected in the report. Were you satisfied that it is?

DR DINTWE: It is fine Chairperson I am always amenable to us putting it on hold until you have checked those facts and then you are raising it Advocate because it is raising a very important issue so I am sitting with an unredacted version of the HLRP and I think that everyone else may be having a redacted version.

ADV PRETORIUS SC: Alright. The second sentence how does that read or what does it read?

20 **DR DINTWE:** The second statement?

ADV PRETORIUS SC: In 87.7.

DR DINTWE: Alright.

“President Zuma relied upon the alleged lack of security clearance of Mr Nxasana as a basis for instigating an inquiry into his

fitness to hold office notifying Mr Nxasana of
his intention or to suspend him.”

ADV PRETORIUS SC: So your understanding of the facts
which you investigated is that Mr Nxasana was issued with a
valid Top Secret Security clearance.

DR DINTWE: That is correct.

ADV PRETORIUS SC: Subsequent to that a further
investigation into his security status was conducted you say
that that was improper or not – or properly authorised, am I
10 correct?

DR DINTWE: That is correct.

ADV PRETORIUS SC: So that his original security
clearance remained in place?

DR DINTWE: It remained in place as far as my investigators
– as far as my investigators could establish.

ADV PRETORIUS SC: Yes. Notwithstanding that you say
that the issue of the security clearance, its status, its validity
and question marks around an alleged lack of security
clearance were used as one of the reasons for questioning
20 Mr Nxasana’s fitness to continue to hold office as NDPP
National Director of Public Prosecutions, am I correct?

DR DINTWE: Yes that is correct. Would not maybe the
commission wants the Chairperson allow me to just mention
that there is an abstract that I would have taken from an
opinion piece but it says here:

“It is absurd to suggest that a murder charge which resulted in an acquittal could conceivably affect a person’s security competence.”

So the second round of vetting then revealed this charge of Mr Nxasana from which he was acquitted.

ADV PRETORIUS SC: Yes that has been canvassed in evidence in fact thank you Mr Dlomo but you say as I understand it in your...

10 **DR DINTWE:** I am not Mr Dlomo Chairperson.

ADV PRETORIUS SC: In your statement that... - sorry

CHAIRPERSON: Dr Dintwe you said Mr Dlomo.

ADV PRETORIUS SC: I am very sorry.

CHAIRPERSON: You did not even say Mr Nxasana.

ADV PRETORIUS SC: Alright let me repeat all that. It is noteworthy that the grounds on which the subsequent investigation into whether Mr Nxasana should retain his security clearance or not was based on grounds that you say are entirely fallacious.

20 **DR DINTWE:** That is correct Chairperson.

ADV PRETORIUS SC: And you detail that in these paragraphs of hearsay?

DR DINTWE: That is correct Chairperson.

CHAIRPERSON: Where were you reading just before Mr Pretorius asked you where you say it – you started with It is

– I am not sure what you (talking over one another).

DR DINTWE: No alright yes.

CHAIRPERSON: Charge of murder.

DR DINTWE: Yes it will be paragraph 85 where I refer to a statement made by Mr Paul Ngobene of the Progressive Professionals Forum Western Cape. And then I had just went – it says a lot there but I had turned to the next page which will be page 800 and it will be line – not even a sentence 123456.

10 **CHAIRPERSON:** Oh now I can see where it says it is absurd.

DR DINTWE: Yes.

CHAIRPERSON: In the middle of a sentence.

ADV PRETORIUS SC: Yes perhaps – perhaps for the sake of completeness that comment should be placed on record Chair.

CHAIRPERSON: Yes, yes.

ADV PRETORIUS SC: In paragraph 85 you say Dr Dintwe:

20 “That it is my submission that the vetting and
 security clearance of Nxasana was not
 properly handled.”

And you referring there to the continuation of the investigation after the issue of a certificate I presume?

DR DINTWE: That is correct.

ADV PRETORIUS SC:

“The statement by Mr Paul Ngobene of Progressive Professionals Forum Western Cape elucidates my submission – that is your submission as he writes and I quote – or you quote “it is disconcerting that justice ministry officials appear to conflate the issue of whether an NDPP is fit and proper with the issue of his security clearance” there – these are not the same. Security clearance is simply an official document indicating the degree of security competence of a person. This reflects a person’s ability to act in such a manner that he does not cause classified information or material to fall into unauthorised hands thereby harming or endangering the security or interests of the state. Security competence is normally measured against certain criteria focussing on his susceptibility to extortion or blackmail, amenability to bribes, susceptibility to being compromised due to compromising behaviour and loyalty to the state or institution. Measured against these standards it is absurd to suggest that a murder charge which resulted in an acquittal could

conceivably affect a person's security competence. In similar vein a killing committed when Nxasana was a teenager long before he qualified to be a lawyer and before he was declared fit and proper by a court during the attorney admission process cannot be grounds for questioning his fitness now."

As I understand it you endorse those comments?

10 **DR DINTWE**: I endorse those comments.

ADV PRETORIUS SC: Alright. I hope that clarifies that issue Chair.

CHAIRPERSON: Yes, no, no I understand the issue ja. I just – I just had not seen where he was reading from.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: But I have – he has told me.

ADV PRETORIUS SC: Right. Then you deal in paragraph 88 and following with your own security clearance. Would you tell the Chair about that please.

20 **DR DINTWE**: Ja.

ADV PRETORIUS SC: Before we do that you have made it clear to the investigators and the legal team all along that you are not here to raise personal grievances.

DR DINTWE: That is correct Chairperson. But before I go there if you allow me Chairperson can we...

ADV PRETORIUS SC: Yes sure.

DR DINTWE: Can we go back to 87.7 to say that the – the issue of Mr Nxasana took the other turn and it ended up by thinking the highest court of the land. I think that during my investigation I would have also made some reference because by that time when I was doing this affidavit and when I was doing that monitoring that decision was then made and – and the involvement of – of the SSA and the endorsement to say that it is so surprising that why would
10 you go for the second round of vetting investigation without even informing the subject. It could also be part of that and I will request the – Advocate Paul Pretorius but maybe we need to look at those decisions and just check what were some of the facts that could have influenced my submissions there.

CHAIRPERSON: Well to the extent that you may be referring to the judgments of the constitutional courts we have dealt with it. Mr Pretorius led the – was the evidence leader. He had dealt with it in relation to Mr Nxasana. So Mr
20 Nxasana himself gave extensive evidence but obviously he would not have known some of the things that you discovered I think in your investigation. But he has given extensive evidence and – and we have looked at that judgment so – so we are quite familiar with it.

DR DINTWE: Thank you Chair. So an earlier question...

CHAIRPERSON: Maybe I should just say also not only are we familiar with the judgment we are familiar even with the affidavits that were filed in that matter and the record of the constitutional court – the commission has got all of those affidavits that were before the courts in relation to these matters.

DR DINTWE: Thank you very much Chair. So Advocate Pretorius the Chairperson had prefaced his question – his next question by saying that again this should not be taken
10 as a personal grievance. What I have done here I have taken examples of.

CHAIRPERSON: Ja.

DR DINTWE: Different people that in my opinion were opposed to fraud in government, malfeasance, state capture, corruption if you like. So I have taken them and I am trying to create a pattern here.

CHAIRPERSON: Ja.

DR DINTWE: So that the Chair can see.

CHAIRPERSON: Yes.

20 **DR DINTWE:** How did this parallel structure operate.

CHAIRPERSON: Yes. Well I would say while there is – there is certainly something to be said for the view that it should not be not seen as personal grievances on the other hand it is important to make sure that you do not end up not putting before the commission what should be put before the

commission in the interest of the office as opposed to in the interest of a particular incumbent but in the interest of the office because you are now too apologetic that you may be seen as ventilating personal grievances. So it is a striking of the balance. Okay.

DR DINTWE: Thank you Chair.

ADV PRETORIUS SC: Yes. And of course these matters do deal with the office of the Inspector General in Intelligence and the vulnerabilities related to that office.

10 **DR DINTWE:** That is correct Chairperson.

ADV PRETORIUS SC: Would you then tell the Chair what happened in this regard as you deal with it in paragraph 88 and following?

DR DINTWE: So my – my security vetting was done and it was completed. There was in fact I think some threats from the other political parties who were saying that their President was taking too long to appoint me because the Parliament had already – had already voted in November of 2016 and here we are talking around January/February of
20 2017.

So my security clearance was done in an extraordinary kind of speed if you like. I think that he had a little trim just to deal with that so I got a certificate yes of course there were some issues there but they were not worrisome so I got the certificate.

The problem only arose at a later stage.

ADV PRETORIUS SC: So you were duly vetted before you assumed duties as IGI and you were given a top secret security clearance, correct?

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: What is the period of validity ordinarily of a security clearance certificate?

DR DINTWE: It is not legislated but they write in there they will say that this will be valid for the five years.

10 **ADV PRETORIUS SC:** And you raise the issue of the exercise of a power or an alleged power to re-vet you and that occurred during 2017 and 2018, correct?

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: Alright. What is the background...

DR DINTWE: A few months after – after the all depends on the office.

ADV PRETORIUS SC: Oh you suddenly find yourself subject to a re-vetting process, is that correct?

DR DINTWE: That is correct.

20 **ADV PRETORIUS SC:** What were the circumstances surrounding this? You deal with that in paragraph 90 and following.

DR DINTWE: 90 and then following yes. May I please just refresh my memory? So I think that I would have dealt with paragraph 90 where I said that Mr Fraser was aware of the

investigation that I was busy with.

ADV PRETORIUS SC: So you were investigating Mr Fraser based on a complaint received by your office, is that correct?

DR DINTWE: That is correct.

ADV PRETORIUS SC: Right.

DR DINTWE: And he was aware of that because I would have written a letter to him saying him that this courtesy.

ADV PRETORIUS SC: Right.

DR DINTWE: I am in receipt of a complaint which implicates
10 you.

ADV PRETORIUS SC: Right did he make any requirement of you in regard to the source of your information?

DR DINTWE: Yes then he wrote to myself saying that he has a counter intelligence mandate and his interpretation thereof was to say that if somebody comes to my office and reports I must tell him if they happen to be in possession of classified information.

ADV PRETORIUS SC: So he says well I have a counter intelligence mandate you must give me all the information
20 concerning the complaint against me.

DR DINTWE: Exactly and the reason why he was saying that he knew that that matter had to deal with the pen investigation. So the time investigation had lots and lots of documents that were classified.

ADV PRETORIUS SC: Alright. Just maybe at it – mention it

now but I understand it from a source in the public domain that the – at least one of the PAN reports or part of the PAN reports was leaked to the Ama Bhungani news service, is that correct, am I correct?

DR DINTWE: That is correct.

ADV PRETORIUS SC: Right.

DR DINTWE: But there would have been a leak in 2014 before I came to that office in the City Press in that instance.

ADV PRETORIUS SC: Right. Did you accede to Mr Fraser.

10 **CHAIRPERSON:** Just one second Mr Pretorius – just one second Mr Pretorius for the transcribers reference to pan report and pan investigation is pan – just for the – for the – when they do the transcripts.

DR DINTWE: And they call it a Principle Agent Network.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Alright. Did you accede to Mr Fraser's requirement that you disclosed this information to him?

20 **DR DINTWE:** No I refused and then I wrote to him telling him that his belief was erroneous that I should report receipt of all classified information to his office and that that would defeat the purpose for which IGI was created.

ADV PRETORIUS SC: What happened after the lodging of the complaint that you were investigating in respect of Mr Fraser – what had happened thereafter?

DR DINTWE: He then wrote a letter to me saying that he instituting what he called – okay he instituted – he launched a counter investigation against me.

ADV PRETORIUS SC: On what grounds or on what alleged grounds?

DR DINTWE: In the first letter that I received on the 8th of November 2017 I am taking an extract out of that letter he said that:

“The Inspector General had met representatives of political
10 parties in Parliament and had on that occasion received
classified information which information relates to the state
security agency and its activities. So that was the
accusation.

ADV PRETORIUS SC: So let us just put that in context so we understand the plot here. The office of the Inspector General of Intelligence receives a complaint.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: Included in that complaint is the disclosure to you of a classified document or documents?

20 **DR DINTWE:** There was not in fact. His moles got it wrong.

ADV PRETORIUS SC: Alright. Well that is an incorrect fact upon which Mr Fraser appears to have acted.

DR DINTWE: Yes.

ADV PRETORIUS SC: But there is an allegation then let us get it step by step.

DR DINTWE: That is correct Chairperson it is an allegation that he is making against me.

ADV PRETORIUS SC: The office of the IGI receives a complaint. It is alleged or believed incorrectly that as part of that complaint you received classified documentation.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: You are then requested by Mr Fraser to give that classified information which he incorrectly received?

10 **DR DINTWE:** That is correct Chairperson.

ADV PRETORIUS SC: You refused.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: He says then immediately after that that he is launching a counter investigation against you for receiving classified information as part of the complaint which you investigating against him.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: Alright I think we understand that. What happened then?

20 **CHAIRPERSON:** That is after he had launched the counter investigation against you – what happened?

DR DINTWE: Oh alright but I would have wanted to deal with the latter part of the same letter.

ADV PRETORIUS SC: Yes so please do so you deal with that in paragraph 91.

DR DINTWE: Yes of the 8th of November. That paragraph further said:

“Section 26 of the Intelligence Services Act 2002 65 of 2002 and Section 4 of the Protection of Information Act 1982 Act 84 of 1982 and I think it is a SIC there but that is how the letter was and undermines the agency’s ability to fill its counter intelligence responsibilities as defined and set out in
10 Section 21(b) of the National Strategic Act 1994 which includes information security.”

ADV PRETORIUS SC: Right well let us just briefly examine the logic of Mr Fraser’s stance here. The office of the IGI must investigate the activities of the security services including the SSA, correct?

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: Does that mean that you would inevitably it seems logical to me from the outside that you would inevitably have to have to access to classified
20 information?

DR DINTWE: Always it is a daily thing.

ADV PRETORIUS SC: And there could be no reasonable interpretation of your powers and duties to say that you can do – or you can investigate the procurement of stationery and leasing of buildings but you cannot deal with the

classified activities.

DR DINTWE: There would not be that is why you can see that Chairperson on paragraph 91 that he is struggling – he is bringing in the laws that are not even empowering that are not even establishing the office of the Inspector General of Intelligence that does not even deal with the appointment of the incumbent and so forth. So those laws they not be applicable to myself in any event.

ADV PRETORIUS SC: So – but it seems that they
10 interpreted and applied in such a way as to say that if you receive classified information in this – in the course of a complaint being made to your office you are somehow transgressing the law.

DR DINTWE: Yes that is exactly what the purpose of that letter was.

ADV PRETORIUS SC: Alright well I am sure that the Chair will with our assistance deal with the legalities there. Right what happened then? You refer in paragraph 92 that there were further – letters sent to you.

20 **DR DINTWE:** Now on the 13th of November 2017 remember the first one is the 8th of November. On the 13th he then writes a follow up letter in which he reiterates that I was in receipt of unlawfully obtained classified information from representatives of political parties in Parliament.

ADV PRETORIUS SC: Right. And you at the top of the or at

the end of paragraph 92 what did the Director General state in addition?

DR DINTWE: He then refers to Section 7 10 of the Oversight Act and only that line which says that:

“The Inspector General shall comply with all security requirements applicable to the employees of the agency.”

ADV PRETORIUS SC: So he was saying that the fact that someone had a classified document you must now report to
10 someone else?

DR DINTWE: That is correct and failure to do so will be in contravention of 7 10.

ADV PRETORIUS SC: Right. Now what was the culmination of this series of events? You deal with that in paragraph 93.

DR DINTWE: Okay then – and Chairperson I mean they were following each other that is why I said earlier that I think the commission would decide if it was inference that I was drawing with regard to the MPD's. Because you can see the frequencies of the letters there. One message and one
20 message only. Then on the 15th of November again he writes in which I get informed that SSA will be re-vetting me because I had not reported or disclosed to the Director General the fact that I was in receipt of unlawfully obtained classified information.

ADV PRETORIUS SC: Right.

DR DINTWE: But there is something very interesting about that letter. This letter gets delivered by the DG himself. We are not in Pretoria we are in Cape Town so we have got offices on the 18th Floor. Mine will be on the smaller passage his will be at the corner. And his secretary or PA then tells me – knocks at my door and says that the DG will like to see you. And I said no, no it is okay maybe in ten minutes I will be done with what I am doing because I was doing some preparation. Then he comes there with that
 10 letter he puts it on the table. Somehow violently and he says that Sir I have decided to re-vet you and he observes me, he was looking at me and I 00:26:53 making me very angry because I then like took that letter and I demonstrating Chairperson I just put it aside and said okay I will see that when I get back to Pretoria. So I did not show him any signs of frustration or off here and whatever. He actually left my office an angry man on that day.

CHAIRPERSON: But he – so he did not want any delay in you receiving this letter.

20 **DR DINTWE:** There was no reason our head quarters are in Pretoria.

CHAIRPERSON: Yes.

DR DINTWE: When we are in 00:2;7:36 even smaller in our offices.

CHAIRPERSON: Yes.

DR DINTWE: Just for administration to go to the committee make your reports and come back here. In fact our trips were not even arranged collectively. He went there and I happened to be there. I think that earlier then he said oh this man is around let us tie this matter and sort of spoil
00:27:56.

ADV PRETORIUS SC: So just to summarise then Dr Dintwe.

DR DINTWE: Yes.

ADV PRETORIUS SC: You receive a complaint from a
10 member of Parliament.

DR DINTWE: That is correct.

ADV PRETORIUS SC: That complaint deals with the Principle Agent Network.

DR DINTWE: That is correct.

ADV PRETORIUS SC: We know from other evidence at least in principle that implicated in the PAN report was Mr Fraser.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: Mr Fraser then says I want classified documents that you have received as part of the report,
20 correct?

DR DINTWE: That is correct.

ADV PRETORIUS SC: He then – you say you are not going to disclose the contents of the report to him at this stage or whatever you say to him.

DR DINTWE: That is correct. In fact if this was not a leader

in Parliament who is a well known prominent person if it is other complainants I do not even disclose the complainants beforehand to the implicated parties. I assure them confidentiality.

ADV PRETORIUS SC: Anyway it seems that Mr Fraser is concerned to put it at its lightest that you are investigating this complaint without disclosing information relating to the complaint to him.

DR DINTWE: That is correct Chairperson.

10 **ADV PRETORIUS SC:** He then decides to re-vet you.

DR DINTWE: That is correct.

ADV PRETORIUS SC: And the grounds for the re-vetting are exactly your handling of the complaint against him.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: And then what happened on the – well what happened shortly thereafter you refer to a telephone call you received in paragraph 94?

DR DINTWE: Yes so when I was about to leave and I – we – I was already in the aircraft coming back to Pretoria.

20 Then I received this telephone call. The person informs that he was instructed that I should be re-vetted. So he is introducing himself as a vetting investigator and he is asking me ...[intervenes]

ADV PRETORIUS SC: What ...[intervenes]

MR DINTWE: ...ability. How soon can you get to Pretoria

so that we can fill in the form.

ADV PRETORIUS SC: And what happened on the 3rd of December 2017?

MR DINTWE: No, he writes again on the 3rd of December 2017 and he advises me of an pending investigation by the SSA regarding the leaking of a classified OIGI report. A copy of which letter is annexed. So I annexed that, okay. But I do not have it here, Chairperson.

10 He mentioned that he was informed that I had been uncooperative with these vetting efforts of the SSA. So in other words, that was just another follow-up letter without giving me further reasons but here it is trying to bring something – the OIGI report was leaked.

ADV PRETORIUS SC: You then deal with the applicable legislation.

MR DINTWE: Yes.

ADV PRETORIUS SC: Did Mr Fraser give you an instruction or did he ought to give you an instruction that is
20 referred to in paragraph 98?

MR DINTWE: Yes, it was. I saw it as an instruction. May I continue and just ...[intervenes]

ADV PRETORIUS SC: Yes, please. You tell your story.

MR DINTWE: Okay.

ADV PRETORIUS SCA: And if you need to refer to the

legislation and its import, please do so.

MR DINTWE: No, alright. I do not know did – by the evidence leader but I think that I submitted earlier to say that in fact there are no regulations which deals with my ...[intervenes]

CHAIRPERSON: Yes, yes.

MR DINTWE: That is what I am saying,

CHAIRPERSON: H'm.

MR DINTWE: Yes. So I was instructed by Mr Fraser to
10 cooperate with the SSA in the process of my eviction(?) and the email investigation into my alleged conduct. And in the letter that was later sent to me, I would have to read that into record, it is at the paragraph. Chairperson, if you allow me?

CHAIRPERSON: Yes.

MR DINTWE: It will be on paragraph 98.

CHAIRPERSON: H'm.

MR DINTWE: Yes.

20 “The above, notwithstanding, your attention is brought to the media reports of today, 3 December 2017 in the Sunday Times, concerning classified reports of the Office of Inspector General of Intelligence, IGI. It has now become, as a cause of concern, that classified reports of the IG have been

leaked some four years after its finalisation.

You are hereby advised that the matter of the leakage(?) will be investigated and as such the corporation of the Inspector General of Intelligence is required...”

ADV PRETORIUS SC: Alright. And then in paragraph 99, you received further information.

MR DINTWE: And then I was informed by him again that I was to be re-vetted because now it is even something
10 noble(?) there. He says because he was in receipt of disturbing information ...[intervenes]

ADV PRETORIUS SC: ...disturbing ...[intervenes]

MR DINTWE: I have gone and I should consider that but he never told me what is that information. To date I do not know.

ADV PRETORIUS SC: Did you later find out what the disturbing information was?

MR DINTWE: No, I have never to date Chairperson.

ADV PRETORIUS SC: You refer in the second sentence,
20 paragraph 99 to disturbing information. What is that?

MR DINTWE: It is a recollection that I make because the first letter was seeing if I was in receipt. So I am saying that the only inference that I could draw from that is that this disturbing information is about me receiving, because there was no intervening issue where he would have

amended to changed the initial accusation or
...[intervenes]

ADV PRETORIUS SC: So this was a suspicion that you
had that this was what he was referring to?

MR DINTWE: Yes.

ADV PRETORIUS SC: He never told you what he was
disturbed by?

MR DINTWE: No, he never told me.

ADV PRETORIUS SC: You drew the conclusion that it was
10 – that you have met members of Parliament. You assumed
that or suspected that?

MR DINTWE: I actually just assumed that.

ADV PRETORIUS SC: Yes. And you do say that.

MR DINTWE: Yes.

ADV PRETORIUS SC: And say: Some credence for my
suspicions was confirmed in the report of the High-level
Review Panel.

MR DINTWE: Yes.

ADV PRETORIUS SC: Where it is recorded that Mr Fraser
20 had alleged that I was “spotted” meeting members of the
opposition. What do you say to that?

MR DINTWE: Chairperson, it is a disturbing thing. I hope
that one day, even if it is not myself, that somebody in that
office or that office will say that we have been very mild
about what happened here. And, like, again, generally

what is happening in the country. How do you follow a head of a constitutional body survey(?) them, intercept them and even spot them and then even confirm?

I think, Chairperson, that may be treasonable to, you know, to say the least. I think it is just pure criminal. And I am also able to refer to some of the other occasions where he would even write a letter to me and make me aware that we are – whether you have been meeting this and other persons. I am in possession of those letters.

10 The team is in possession of those letters.

I think it is a serious thing. I really got disturbed here to say that how do you spot a person who is doing his job?

CHAIRPERSON: Ja. No, quite something. Quite serious.

ADV PRETORIUS SC: Alright. So you say and you stress, in fact, in the last paragraph of 99 that, of course, it is your responsibility to meet with members of the public or your responsibility of members of your staff to meet with people who are raising complaints and to receive
20 information from them, whether classified or not.

MR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: You have given that evidence.

MR DINTWE: Ja.

ADV PRETORIUS SC: And you also refer in paragraph 101 to Section 7(8) of the Oversight Act that where you

receive information, the disclose of that information is controlled by the provisions of Section 7. You cannot just willy-nilly give it to anybody.

MR DINTWE: If I had to follow that process before I come to the Commission... Chair, you can just imagine the accusations that I was going to get if I disclose to Mr Arthur Fraser. It means that before that disclosure, I am enjoined by that provision that I should follow. I should inform the Minister of State Security and I should also
10 inform the President.

ADV PRETORIUS SC: Right. But as I understand it, Director Generals talked to your position was that his power overrode any other provisions.

MR DINTWE: That is what he was telling me. And it was in the letter also.

ADV PRETORIUS SC: Right.

MR DINTWE: Chairperson, may I say that these letters were part and parcel of my application that I would have placed before the North Gauteng.

20 **CHAIRPERSON**: Yes.

MR DINTWE: So they are – a majority of them are declassified so that we just wanted to clean our house.

CHAIRPERSON: Okay.

MR DINTWE: And tighten a few screws.

CHAIRPERSON: Okay.

MR DINTWE: But you can see that I am quoting extravagantly from them. It is because they are actually declassified.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: In paragraph 103 and following, you deal with the legal provisions and you give your interpretation of how they should be applied to the particular facts that you have related to the Chair. You see that?

10 **MR DINTWE:** I see that. And those are the Intelligence Services Regulations.

ADV PRETORIUS SC: Right.

MR DINTWE: Yes.

ADV PRETORIUS SC: And in paragraph 106, you say:

“Beyond the clear conflict of interest apparent in Mr Fraser’s claim to information in this instance...”

Of course, he was claiming information relevant to your investigation of him.

20 **MR DINTWE:** Yes.

ADV PRETORIUS SC: “It is stressed that the IPI does not report to the Director General or any of the Ministers responsible for Intelligence Services. He/she is accountable to the JSCI.
There is no legal provision requiring me to

account to the Director General on any information required in the course of the discharge of my duties...”

Correct?

MR DINTWE: That is correct.

ADV PRETORIUS SC: And his plan to have counterintelligence responsibilities, in your view, does not supersede that?

MR DINTWE: Not at all, Chairperson. He does not
10 supersede me.

ADV PRETORIUS SC: But in any event, arising out of all this. If Mr Fraser then initiated a process regarding your security clearance.

MR DINTWE: That is correct, Chairperson. I am dealing with that, I think, on paragraph 108.

ADV PRETORIUS SC: What happened in paragraph – what happened on 28 March 2018?

MR DINTWE: Okay.

ADV PRETORIUS SC: As you described in paragraph 108.

20 **MR DINTWE**: On the 28th, then, of March, Chairperson, I was served with a letter from the Director General sent by him, informing me that the security clearance had been withdrawn with immediate effect based on the following reasons. Very interesting. The first one was to say that:

“Failure to exercise my duty to report and

action breaches of disclosure of classified information in or from the Office of the Inspector General of Intelligence...”

That was the first reason provided for the withdrawal.

ADV PRETORIUS SC: So every time you received a complaint which might include classified information, according to this, you must go and report immediately to the SSA Director General whom you might be investigation
10 in that very context.

MR DINTWE: That is correct.

ADV PRETORIUS SC: Alright.

MR DINTWE: And it was now becoming a harassment Chairperson. You can see. It is different letters, one accusation. I am trying to write back to him. I am trying to educate him, basically, because at a particular point I said that maybe I should sit down and assist this gentleman. Ad that was one of the reasons. The second reason was that:

20 “You failed to execute my fiduciary duty as Inspector General of Intelligence towards the Intelligence Services by obstructing the due administration of justice...”

The third one was:

“You defeated ...[intervenes]

CHAIRPERSON: I am sorry. That second one.

MR DINTWE: Yes?

CHAIRPERSON: The allegation was that you had failed to your duty or fiduciary duty as the Inspector General of Intelligence towards the Intelligence Services by obstructing due administration of justice. What did you understand that to mean or did you ...[intervenes]

MR DINTWE: I never even bothered to understand that.

CHAIRPERSON: Ja.

10 **MR DINTWE:** Because I was talking to my colleagues and I was saying that now he is even accusing me of criminal offences.

CHAIRPERSON: Yes.

MR DINTWE: That is actually a criminal offence. So I was telling somebody, my legal rep, to say that if Mr Fraser was my employer or my supervisor, he would not even then be able to charge me with this.

CHAIRPERSON: H'm, h'm.

MR DINTWE: So the reason why I decided not even to
20 want to understand that today, Chair.

CHAIRPERSON: Ja.

MR DINTWE: It is because it was clear that he was clutching at straws and he was just acting out... He could not find any piece of legislation that he could use to deal with me.

CHAIRPERSON: And everyone was defeating or obstructing the end of justice by such failure. And the fourth one: Failing to comply with a request to submit to re-vet. Those were the four.

MR DINTWE: Yes. The fourth one, at least, I understand.

CHAIRPERSON: H'm?

MR DINTWE: The fourth one I understand.

CHAIRPERSON: [laughs]

MR DINTWE: I get it. The fifth one: Defeat and
10 obstructing the ends of justice.

CHAIRPERSON: H'm.

MR DINTWE: This was a sign of a person that wanted to harass me, Chairperson.

CHAIRPERSON: H'm, h'm.

MR DINTWE: He went beyond. That was just a pure harassment.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: Alright. So to summarise the facts, at least, up to this stage. You received a complaint from a
20 member of Parliament.

MR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: That complaint concerns Mr Fraser, the Director General of the SSA.

MR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Part or involved in the complaint is

the PAN, Principal Agent Network Report.

MR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: You immediately then are instructed or required by Mr Fraser to disclose what he says is classified information to him.

MR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And he gives the reasons that he has given but the culmination of this exchange between you, the Investigator, and Mr Fraser, the person being
10 investigated. As I understand, the train of facts that you are giving now is the withdrawal of your security clearance.

MR DINTWE: Yes. That is correct, Chairperson.

ADV PRETORIUS SC: Alright. These facts, of course, may be contested by Mr Fraser but he will have every opportunity to come and do so. But as I understand your evidence, it is based or corroborated by documentation in your possession which you will attach, the bundle to the Chair.

MR DINTWE: That is correct, Chairperson.

20 **ADV PRETORIUS SC**: Right. What happened on the 5th of April 2018?

MR DINTWE: Now that is what actually broke the channels, Chairperson. On the 5th of April, then I received a letter which bugged(?) me from my own office, from my own premises, Chairperson. An extract from that letter, it

said: You are here by advised that your security clearance has been withdrawn. You are no longer authorised to access classified information and restricted premises.

ADV PRETORIUS SC: Would that include your office?

MR DINTWE: It will include my office because I am in a restricted area. I am sitting in the same office with the Minister, with the Deputy Minister, with Head of National Intelligence Committee, with the Head of the ICCS.

ADV PRETORIUS SC: Right. What is the effect of that
10 communication or the occupation of the office of the IGI? I am talking about the office here in the official sense.

MR DINTWE: It was brought to its knees. There I was Chairperson - and of course, I did not go to the office because I was scattered(?) - distanced off. Maybe a physical fight between my protectors and his and the security officials. So I wanted to act as a responsible person and I decided then to take that ...[intervenes]

ADV PRETORIUS SC: Let us understand the import of these communications to you. It was effectively to remove
20 you, both from your physical office and from your offices as Inspector General.

MR DINTWE: That is correct, but my other import is that, even go beyond that end. Close that office because that will be the ultimate impact if the ...[intervenes]

CHAIRPERSON: It could not operate without you.

MR DINTWE: Without – without. That is correct.

ADV PRETORIUS SC: So there is, in fact, not only you that were removed from the office but the office is effectively shut down.

MR DINTWE: That is correct, Chairperson.

CHAIRPERSON: And of course, the complaint against him could not be investigated further once you were not there.

MR DINTWE: That is correct, Chairperson.

CHAIRPERSON: Because even if, I guess, even if you
10 could authorise somebody in your office to conduct the investigation, they will only conduct it on your behalf. And if you are not there, you have been removed, they cannot conduct – nobody can conduct any investigation lawfully.

MR DINTWE: I have been warned Chairperson which should – what would develop at that event(?).

CHAIRPERSON: Yes.

MR DINTWE: And let me also mention that there was an email, an Outlook email which got sent to the Exco – my Exco – now my managers... informing them that they
20 should not provide me with anything. They should not even communicate with myself because my security clearance has been withdrawn. That Outlook is available also.

CHAIRPERSON: H'm, h'm, h'm.

MR DINTWE: So I think that the point you are raising to say that I will not be able to delegate but again, it is

cutting the communication between myself and the other members who could then continue with the investigation in my absence.

CHAIRPERSON: H'm, h'm, h'm. Yes, okay.

ADV PRETORIUS SC: After the series of events, did you approach the courts?

MR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: What relief did you seek?

MR DINTWE: It was a Part A and a Part B. And Part A
10 was on an urgent basis. Part A was just to say that my security clearance should be reinstated.

ADV PRETORIUS SC: Right.

MR DINTWE: And along with that, there were some issues of security. So you would have worked on my security.

ADV PRETORIUS SC: Yes. Did the then Minister intervene?

MR DINTWE: The then Minister ...[intervenes]

ADV PRETORIUS SC: What did she do?

MR DINTWE: Yes.

20 **ADV PRETORIUS SC:** What did she do?

MR DINTWE: She reinstated that – on the eleventh hour. So we arrived at court because the matter was set-down ...[intervenes]

CHAIRPERSON: [Indistinct]

MR DINTWE: Yes, there was an opposition ...[intervenes]

ADV PRETORIUS SC: From Mr Fraser?

MR DINTWE: ...from Mr Arthur Fraser.

ADV PRETORIUS SC: So he opposed your application to, amongst other things, to restore your security clearance?

MR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: What did the Minister do? Was this at the doors of court?

MR DINTWE: Let us say that because when I was there, then they called and my legal representative was saying
10 and think that Part A of your application may have tempt(?), you know, moot, if you like. I do not know if they used that word but then they said that there is no need for us because they have given you exactly what you are claiming(?) for.

ADV PRETORIUS SC: So the Minister then intervened, reinstated your clearance certificate?

MR DINTWE: Yes.

ADV PRETORIUS SC: Or status?

MR DINTWE: Yes.

20 **CHAIRPERSON:** Ja, let me just go back. You launched your application in the high courts. Is that right?

MR DINTWE: Yes, correct.

CHAIRPERSON: Did Mr Fraser launch any affidavit to oppose that application?

MR DINTWE: That is correct.

CHAIRPERSON: And was he the only one who was opposing – who lodged the oppose?

MR DINTWE: Chairperson, I cannot – really cannot remember.

CHAIRPERSON: You cannot.

MR DINTWE: My application – my court application is part of the bundle.

CHAIRPERSON: Of the bundle. We do not have ...[intervenes]

10 **ADV PRETORIUS SC:** [Indistinct] ...[intervenes]

MR DINTWE: ...but if – but I do not think he was the only respondent.

[Parties intervening each other – unclear]

CHAIRPERSON: Okay. No, but we do not need to check. I just want to get that.

MR DINTWE: Alright, Chair.

CHAIRPERSON: And you had not filed a replying affidavit. You had filed a replying affidavit by the time ...[intervenes]

20 **MR DINTWE:** I had.

CHAIRPERSON: You had?

MR DINTWE: Yes.

CHAIRPERSON: And the matter was to be argued?

MR DINTWE: That is correct, Chairperson.

CHAIRPERSON: Yes. And then, the Minister intervened.

I assume the Minister was one of the respondents.

MR DINTWE: The Minister was one of the respondents.

CHAIRPERSON: Yes, but she had not filed any papers?

MR DINTWE: The legal representative, as when he was communicating with mine, he was indicating that he was representing both the Minister and Mr Arthur Fraser.

CHAIRPERSON: Oh.

MR DINTWE: Yes.

CHAIRPERSON: Okay. But you ...[intervenes]

10 **MR DINTWE:** But there was still affidavit from the Minister.

CHAIRPERSON: From the Minister. Okay alright.

MR DINTWE: Yes.

CHAIRPERSON: And the effect of the intervention of the Minister, was it that your security clearance would be reinstated. Therefore, there should be a settlement and withdrawal of the application or was it that an order was granted by concerned?

MR DINTWE: There was no order. They were very
20 allergic to that.

CHAIRPERSON: Oh.

MR DINTWE: Because there was other issue of security.

CHAIRPERSON: Yes.

MR DINTWE: That I was very much worried about.

CHAIRPERSON: Yes.

MR DINTWE: So they did that but we just felt that there was sufficient intervention. I was satisfied with that.

CHAIRPERSON: Okay.

MR DINTWE: Maybe also to mention that it was on the same day that I then get called by the then Chairperson of the Johannesburg Diplomat on Intelligence, Mr Charles Ngqula and I am not implicating him here.

CHAIRPERSON: H'm.

MR DINTWE: Who then said that there is a decision to
10 move Mr Arthur Fraser from the state or out of the State Security Agency.

CHAIRPERSON: Oh, okay.

MR DINTWE: So those things happened ...[intervenes]

CHAIRPERSON: Those things happened ...[intervenes]

MR DINTWE: [Indistinct] ...[intervenes]

CHAIRPERSON: Yes.

[Parties intervening each other – unclear]

MR DINTWE: I thought that ...[intervenes]

CHAIRPERSON: Ja.

20 **MR DINTWE:** I ...[intervenes]

CHAIRPERSON: So ultimately you withdrew the application or it was just postponed *sine die*. It was not pursued.

MR DINTWE: It was postponed. I remember that I said that no, for now we will not ...[intervenes]

CHAIRPERSON: Ja.

MR DINTWE: Yes.

CHAIRPERSON: Okay.

MR DINTWE: But we have never ever really pursued even the... of that.

CHAIRPERSON: Okay. No, that is fine. Mr Pretorius, I think let us take some adjournment.

ADV PRETORIUS SC: Sure.

CHAIRPERSON: Let us talk about how far we would go so
10 that we are all on the same page. Otherwise, I just push everybody [laughs] to midnight.

ADV PRETORIUS SC: [laughs]

CHAIRPERSON: I do not know, Mr Pretorius, what own assessment is?

ADV PRETORIUS SC: Chair, we can go as far as we can.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: To whatever time you deem necessary.

CHAIRPERSON: Yes, yes.

20 **ADV PRETORIUS SC:** You know my views on this. They have not changed.

CHAIRPERSON: [laughs]

ADV PRETORIUS SC: But we will not finish tonight.

CHAIRPERSON: Ja- no, I think we will not finish tonight. Maybe we go up to half-past eight or nine. [laughs]

ADV PRETORIUS SC: [laughs] I...

CHAIRPERSON: [laughs]

ADV PRETORIUS SC: I will take your main prayer
...[intervenes]

CHAIRPERSON: [laughs]

ADV PRETORIUS SC: ...up to your...

CHAIRPERSON: [laughs] Okay alright. Okay let us take
a ten minutes adjournment and then after that, we will
come back and go up to half-past eight and take it from
10 there.

ADV PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: Ja, okay. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may be seated. Yes, let us proceed.

ADV PRETORIUS SC: Thank you, Chair. In paragraph
111, Dr Dintwe, you summarise the import of this section of
evidence that you have just given. Perhaps because it is
well set out there you will read that paragraph onto the
20 record?

DR DINTWE: Paragraph 111, I am saying that:

“I am required by law to serve impartially and
independently and perform my functions in good
faith and without fear, favour or prejudice. This
requires the protection of the basic tenets of an

independent institution namely the manner of my appointment, my security of tenure (and due to the nature of my work, my security of person.) The budget of my office and the manner of and the grounds for my removal, the importance of the independent and autonomous functioning of an oversight body is underpinned by the International Best Practice and has been applied by our courts to corruption fighting institution, as in the Glenister case, and oversight bodies of other state institutions, as in the case of McBride. In view of this, the power of vetting determining security competence given to the SSA should not be permitted to be used in order to undermine the independence of the OIGI or stifle its investigations."

ADV PRETORIUS SC: You deal in the next section, Dr Dintwe, with what you term questionable intelligence reports and you say in paragraph 112:

20 "Mysterious intelligence reports have been used repeatedly to deal with or target those who are regarded as opponents"

And you set out in the following paragraphs some examples of this. Perhaps you could summarise these for the Chair.

DR DINTWE: I will summarise, Chair. The first example

is what happened in 2017. 2017 I received a complaint, this time from the Democratic Alliance, and it was followed by the other one from the South African Communist Party and the third one was from a private citizen residing somewhere in Gauteng and in that complaint I was requested to investigate the veracity of a report that was used by the former President Jacob Zuma to recall Minister Pravin Gordhan and his then deputy, Mr Mcebisi Jonas. And I was just quote what it said because it is very
 10 important later, it becomes very important latter. It says:

“An investigation into allegations surrounding an intelligence report allegedly used as a pretext for the recall of the Finance Minister.”

ADV PRETORIUS SC: What was the allegation? You can summarise it because there has been evidence before, before the Commission. You deal with that in paragraph 114.

DR DINTWE: The allegations were – and it was open because South African Communist Party went onto the
 20 media to report – they reported the matter to the OIGI and the person who was speaking on behalf of the organisation was the now Deputy Secretary, first Deputy Secretary, Mr Mapaila. And he had said that in one of the meetings of the top six at Luthuli House they were briefed verbally by the former President that he is in possession of an

intelligence report which alleges that Minister Pravin Gordhan and Mr Jonas were overseas and were going to meet with some foreign agents who were calling for regime change in South Africa and he also informed them that he was going to recall them from that [indistinct], not the recall from their positions, they use the same words.

But yes, of course, I think it is a matter of public knowledge that they were then recalled.

He never told them what was the source of that
10 report because I think that when we say that, that the expectation will be that it will be coming from one of the three State Security Agencies.

ADV PRETORIUS SC: Yes.

DR DINTWE: But we were not clear in knowledge of who exactly would have briefed the President on that.

ADV PRETORIUS SC: It was referred to or assumed to be an intelligence report of sorts.

DR DINTWE: Yes, according to the witnesses that I talked to and – ja and in high place.

20 **ADV PRETORIUS SC:** But in any event you were asked to investigate the source of this report.

DR DINTWE: I was, yes, yes, yes.

ADV PRETORIUS SC: And did you investigate?

DR DINTWE: I investigated the matter.

ADV PRETORIUS SC: And you say in paragraph 115:

“The core issues that needed to be investigated were the origin, authenticity and veracity of this alleged intelligence report.”

Who to your knowledge was the person or you were the persons in possession of this report?

DR DINTWE: It was only President Zuma who said that I am in possession of that.

ADV PRETORIUS SC: Did you ask him for the report?

DR DINTWE: I then – because at a meeting and
10 requested for that report.

ADV PRETORIUS SC: And what happened at that meeting and what was its conclusion?

DR DINTWE: In that meeting he – and he was welcoming, just a very, very, very nice meeting that I had with the President and he explained to me that when time is right he will then write to me and he will – he did not say he will send me the report, in fact maybe let me paraphrase what he said. He said that he is hearing people saying [indistinct] report and so forth and so forth and so forth
20 and that report may not be existent because he is not going to be dependent on written reports and he said that I saw something on the website, somebody was waving a report. I remember the incident where somebody was waving the report, it was Minister Pravin Gordhan who was having a one pager typed in very, very, very big

...[intervenes]

CHAIRPERSON: I also seem to think I have seen on television somebody saying...

DR DINTWE: Yes, yes. So the President in that meeting never said that there is a report that he will send to myself, he only said that when the time is right he will explain this so that I understand that matter and that is how I left his office.

CHAIRPERSON: So you went to him as part of your
10 investigation?

DR DINTWE: That is correct, Chairperson.

CHAIRPERSON: And did you ask him whether there was such a report and you asked him to give it to you but did he commit himself to whether it existed or not or what was the position?

DR DINTWE: I did that but our engagement was followed by a letter. So in a letter where I was requesting a meeting I had already put a paragraph there which says this is the purpose of the meeting.

20 **CHAIRPERSON:** Yes.

DR DINTWE: And I request the President to favour me with that report so that I can check its authentic.

CHAIRPERSON: Yes, yes. So that was before you actually met him, that was a letter that was requesting a meeting.

DR DINTWE: That is correct, Chairperson.

CHAIRPERSON: Yes and subsequently you met with him.

DR DINTWE: That is correct, Chairperson.

CHAIRPERSON: But in the meeting he did not commit himself to whether such a report was in existence or not, is that right?

DR DINTWE: He did not commit himself to that, save to say that he is aware that people are saying there a report somewhere.

10 **CHAIRPERSON:** Yes, okay. And then he said when the time is right he would write to you and explain or he would explain to you.

DR DINTWE: He said he will explain to me so I just took that maybe they will invite by way of a letter to come there or I will get a letter which explains that.

CHAIRPERSON: And did he give an indication of the timeframe how long it might take for him to – for the time to be right?

DR DINTWE: He did not, Chairperson, this is the reason
20 when I got to – when I got to the office I realised that I did not understand him. The nation will forgive me.

CHAIRPERSON: Yes.

DR DINTWE: I realise that. But what I did is that I then wrote another letter when our discussion was still fresh in my mind. Basically because no minutes were taken of that

meeting so I wanted to put it in my own records to say that Mr President we met on this particular day and this is the discussion and let me also remind you that I will be waiting for that engagement and I have also indicated that I wanted to conclude that investigation as soon as it is possible and so that is how I dealt with it but there was never a commitment in terms of the timeframe as to when he was going to explain that, Chairperson.

CHAIRPERSON: Yes.

- 10 **DR DINTWE:** And which year was it when you were having this engagement with him? Was it 2017? Well, the complaint was given to you in April 2017 so it must have been in 2017.

DR DINTWE: Yes it was in 2017, Chair.

CHAIRPERSON: Ja and say actually in paragraph 114 – oh no, no, you talk about a meeting. No, it is not your meeting with the president.

DR DINTWE: No, it is not that one.

CHAIRPERSON: But it must sometime in 2017.

- 20 **DR DINTWE:** Yes, Chairperson.

CHAIRPERSON: Okay, Mr Pretorius?

ADV PRETORIUS SC: Two issues, Mr Dintwe. Firstly, this correspondence to which your refer, do you still have it?

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And it could be provided?

DR DINTWE: It is I think in the documents that I have provided already.

ADV PRETORIUS SC: No reference is made to it but perhaps we will check.

DR DINTWE: But I do have that letter.

ADV PRETORIUS SC: Yes.

DR DINTWE: I am sure, I am very, very ...[intervenes]

ADV PRETORIUS SC: Do you want to check?

10 **DR DINTWE:** Yes, I am very, very ...[intervenes]

CHAIRPERSON: Actually, both letters, the one that went when you requested the meeting and the one that you wrote after the meeting.

DR DINTWE: It will be two letters.

CHAIRPERSON: Ja.

DR DINTWE: Because the other one – I cannot remember if it was the one, I was getting worried whether - that I cannot just keep it open. So we can even see it as a follow up, as a follow up letter. So I will always keep those
20 kinds of letters.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: Then in paragraph 115 and I need to ask whether this is accurate or not, line three, sentence begins:

“Despite numerous requests including one at a

meeting with the former President and despite his promise to provide a copy of the report, nothing was forthcoming.”

Is that correct or does it need correction?

DR DINTWE: Let us qualify it. I am sitting with the President, he says when time I right I will explain to yourself. I hear people saying there is a report somewhere, that report may not be existent because as the President sometimes I get verbal. But I never wanted to
10 conclude that the report was non-existent because he said it may not be existent. So I was still harbouring under that, I will just as and when it happens what comes to me.

CHAIRPERSON: Well, Mr Pretorius, we have an affidavit, we have affidavits from Mr Mantashe, Dr Zweli Mkhize, if I recall correctly and Ms Jessie Duarte. If I am not mistaken, all three of them have deposed to affidavits at the request of – at my request maybe last year sometime or maybe 2019 where they were asked to give their account of what Mr Zuma said to them at a meeting of the top six
20 the day before he – he, I think, he recalled or the day he fired Mr Gordhan. They have put up affidavits. I may be wrong, we need to check whether in their affidavit they talk about him having a written report in their hands- in his hand which he did not give to them or whether they simply said he said he had a report but did not make it available

to them because I do recall that it was not given to them.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: But I do not recall whether they said he had it in his hand or whether they just said he said he had a report.

ADV PRETORIUS SC: My own recollection, Chair, is that there has been evidence of the existence of a written report. Yes. Operation Checkmate it is called.

CHAIRPERSON: Yes and I seem to think that the current
10 President, there was – he gave an interview to one of the TV channels around the time of the dismissal of Mr Gordhan because you might recall he went public to say he was opposed to it. I may be wrong, I seem to think he may have spoken as if he had seen the report or had sight of some parts of it, I am not sure. So there is that clip, so one can check.

ADV PRETORIUS SC: Right, but ...[intervenes]

DR DINTWE: I can assist the Commission further than maybe taking the tow from what the Chairperson just said.
20 So the current President, at that time the Deputy President, was also interviewed for this investigation and they wrote to myself through her legal adviser but the report was never provided to myself. So that one I still remember succinctly. His responses will be in the file because it will be the file from different witnesses that I

would have spoken to.

CHAIRPERSON: Yes but do you recall whether he said he did not have it, because that would be one thing, or whether he said he did not have it and had never had sight of it or anything like that because I am just not sure, somebody has spoken about – as mentioned, I think, on television, features of it. Features of it, so – but it is okay, we can check.

ADV PRETORIUS SC: Yes, Chair, and it does appear in
10 certain media reports or not the report itself but copies of a person holding the report.

CHAIRPERSON: Ja or holding an alleged report.

ADV PRETORIUS SC: Allegedly holding the report. An alleged report, yes.

CHAIRPERSON: Allegedly holding the reports.

ADV PRETORIUS SC: Well, let us just summarise it then. You were asked to investigate the origins and authenticity of this report.

DR DINTWE: That is correct.

20 **ADV PRETORIUS SC:** You interviewed various people including the former President.

DR DINTWE: That is correct, Chair.

ADV PRETORIUS SC: You had a discussion with the former President about the existence or otherwise of a report.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: A report which you were investigating.

DR DINTWE: Yes.

ADV PRETORIUS SC: Did you ask him for a copy of the report?

DR DINTWE: Yes, I asked him.

ADV PRETORIUS SC: Did he ever give you a copy of the report?

10 **DR DINTWE:** Not at all until he left the office, Chairperson.

ADV PRETORIUS SC: Did anyone ever give you a copy of the report?

DR DINTWE: No, no one, there was only that badly written document which was on social media.

ADV PRETORIUS SC: Right.

DR DINTWE: Yes.

ADV PRETORIUS SC: And you say at the end of paragraph 115:

20 “We were of the view that we could not simply rely on the report leaked to the media in order to authenticate the veracity of the report allegedly provided to the former President.”

Was that the outcome of your investigation?

DR DINTWE: That was the outcome of the investigation

and that statement, I mean that when we had then was what we downloaded like anybody else.

ADV PRETORIUS SC: Right.

DR DINTWE: And the President had not taken ownership of it. So I say that you cannot deal with origin of a document, you cannot deal with the veracity if it is un-owned at all.

ADV PRETORIUS SC: In your view did you ever get a full and satisfactory report from the former President?

10 **DR DINTWE:** Not at all, Chairperson, until he left the office.

ADV PRETORIUS SC: Paragraph 116 you refer to another so-called intelligence report.

CHAIRPERSON: Before you go that one, Mr Pretorius, you referred Dr Dintwe to his departure from office. Do you know of anything that would have prevented him from making arrangements to ensure that he provided you with the explanation or the report even after he had left office if he wanted to assist on the investigation?

20 **DR DINTWE:** No, I am not aware of anything that we have presented [indistinct – dropping voice]

CHAIRPERSON: Okay, alright.

DR DINTWE: Maybe this point is also appointment that amongst the people that I would have talked to again, I wrote to the three intelligence services and I informed

them, I mean it was in their knowledge and so forth and all of them said that that report was – the report and the briefing was not given by any of them.

CHAIRPERSON: So all the intelligence services in the country said they never gave such a report or [indistinct – dropping voice] to the former President.

DR DINTWE: That is correct, Chairperson. In fact the head of defence, they call them CDI, Chief Defence Intelligence, he even requested that should I come up with
10 that kind of information I should decide to put them in the loop because I think that it could be to embarrassment if somebody had to provide the report and none of the intelligence services in the country was aware of such.

ADV PRETORIUS SC: So do I understand it correctly you could conclude after your investigations that it was not an authentic report emanating from any of the State Security Agencies?

DR DINTWE: No, my finding was that I could not reach a finding because I did not have any document that I could
20 verify its authenticity and its origin.

ADV PRETORIUS SC: But nevertheless the information you received during the course of your investigations from the intelligence agencies under your watch was that it did not come from them, is that correct?

DR DINTWE: That is correct, yes.

ADV PRETORIUS SC: Okay, alright, I understand.

DR DINTWE: But remember, that could not be a finding because I would have developed a hypothesis or, if you like, a question that I want to answer and the question that I want to answer was, is this report originating from any of the three? Is it an authentic report? And are we able to verify it, like the veracity thereof. So the finding, I will only mention those points in the analysis of the evidence that I got, the witness and so forth, but it will not come
10 there because I wanted to answer a specific question.

CHAIRPERSON: Well, there was the question of the authentic of the report, there was the question of the allegations made against the Minister of Finance, Mr Gordhan. I guess the allegation or allegations would be – ja, would have been what those who were in the meeting with the former President save he said namely that he had an intelligence report to the effect that Minister Gordhan and Deputy Minister Jonas, while they were outside of the country, they were going to meet with – they were going to
20 attend certain meetings which he viewed as unacceptable, threatening the security or whatever. I guess that is the allegation that you would be looking at and in the course of investigating that allegation, obviously you would want to see the report on which the allegation was made or in which the allegation was made. Is that right?

DR DINTWE: Ja.

CHAIRPERSON: Insofar as the allegation is concerned, you had interviewed the person who had said – who had made that allegation and said it was based on the report, that person being Mr Zuma and he had not given you anything to substantiate the allegation, you had – I do not know if you had interviewed Mr Gordhan and Mr Jonas because it seems to me that you ought to be able to say – you ought to have been able to say, if you had interviewed
10 all the people that you identified, to say has this allegation been substantiated or not and if it has not been substantiated then you say the allegation has not been substantiated and part of the reason why it has not been substantiated is because those who could have furnished you with the report that would have had information about that had failed to do so.

DR DINTWE: I did not go there, Chairperson.

CHAIRPERSON: Yes.

DR DINTWE: And I remember the reasons.

20 **CHAIRPERSON:** Yes.

DR DINTWE: Not that we are not careful with other complaints but this one, I remember that we were – I had several meetings with my team and we brainstormed. The first reason why we could not look at the allegations is because the complaint was not even coming from Mr

Gordhan or Mr Jonas so I declared them victims, if you like, but they were never my complainants. The complaints came from somebody else.

But the second reason why we could not investigate the allegations was because Mr Gordhan himself and Mr Jonas cannot be viewed as say members of an intelligence service or they cannot be seen as a head of a service and our investigation will be about the intelligence and counter-intelligence matters. So there is that little bit of
 10 confinement and we just did not want to go out of that.

CHAIRPERSON: Well, I am not sure whether it was right to approach it that way, you know? I can understand when you say I could not make any finding or make any pronouncement on the authenticity of the report because I did not get the report. That I can understand. The fact that I got some alleged – the report from whatever source that you downloaded, you know, would not help in terms of the authenticity of the report.

But in terms of the allegation, I would have thought
 20 that you would need talk to Mr Gordhan and Mr Jonas to say I am investigating this allegation that when you people were overseas, official trip, you were going to meet with certain people for whatever, whatever purpose.

They might say – if you tell them, they might say that is nonsense or they might say yes, we were going to

meet such people but we were going to discuss legitimate issues relating to our ministries or government, you know? And you could have information from them saying there was no such thing as was alleged, you have nothing coming from Mr Zuma who had made the allegation, and I would think that they should be entitled to being cleared because Mr Zuma has provided no evidence to substantiate the allegation.

But I accept that you – you may have looked at it in
 10 a certain way, but I am just saying, you know, it just seems that might be unfortunate if some allegation that is not being substantiated by anybody seems to be left hanging instead of being dismissed if there is no evidence to substantiate it in circumstances where those who are in a position to provide evidence have been given an opportunity to do so and they failed.

DR DINTWE: Chairperson, I may have omitted something.

CHAIRPERSON: Yes.

DR DINTWE: And I do not want to do this when I am
 20 giving evidence.

CHAIRPERSON: Yes, no, no, that is fine.

DR DINTWE: Going back.

CHAIRPERSON: Ja.

DR DINTWE: But I was only saying that I declared them as victims other complainants.

CHAIRPERSON: Yes.

DR DINTWE: But I have met with Gordhan ...[intervenes]

CHAIRPERSON: Yes

DR DINTWE: And he was even in the company of his legal representatives in Pretoria, we were also in possession of a transcript both a recording and a transcript that was done by his lawyers, where he denied those allegations. I had extended the same invitation to Mr Jonas, but it was at a period I think he was appointed for and deal with
10 something that's maybe something, so he was just not available, but I tried that and I also used a cell phone, because I don't understand the record to say that, but I have given you some time of an *audi* you know even if you are not an implicated person.

CHAIRPERSON: Yes, yes.

DR DINTWE: So we have those records, I don't know why ...[indistinct] or need that but part of my – and I accept criticism you know easily, part of my findings did not really deal with that ...[intervenes]

20 **CHAIRPERSON:** H'm, to the merits of the allegations.

DR DINTWE: If there is any information then you will find it somewhere in my report, but not under finding.

CHAIRPERSON: Ja, yes, okay, no, no that is fine, it is fine.

ADV PRETORIUS SC: In paragraph 116 Dr Dintwe you

give two further examples of the use of so-called intelligence report whether genuine or fake, would you tell the Chair about those briefly please?

DR DINTWE: Yes, let me preface just by saying that I am also observing a *modus operandi* here, I think the Chairperson remembers when I said that this means you suffer the consequences and then there is nothing, but they shall implicate, they even go the extent of saying as if it was a wrong ...[indistinct], but by that time the two people
10 that I have referred to were out of their positions.

CHAIRPERSON: Yes.

DR DINTWE: Now the same thing here there were allegations, there was a report and in that report there were allegations that Crime Intelligence in this instance during their course of monitoring they came across an alleged plot by the following members, General Shadrack Sibiya, Mr Robert McBride and Mr Paul O'Sullivan and others that they were intending to overthrow government. This report purported to be – I mean, no, no, that report
20 ...[indistinct] further report into the alleged unlawful rendition of foreign nationals involving Generals Dramat and Sibiya were questionable and have recently been proven to untrue.

The first one that I dealt with said that there was a meeting somewhere in the East Rand where these people

that I am mentioning here met and that they were plotting to overthrow the government.

ADV PRETORIUS SC: And the bundle of documents will include examples of these reports?

DR DINTWE: This one will include the example of that.

ADV PRETORIUS SC: Perhaps the conclusion that you reach in paragraph 117 of the existence of these reports and their use and outcome is summarised in paragraph 117, perhaps you should read that on the record if you will,
10 paragraph 117.

DR DINTWE: These reports, and it is very strange, it is only these reports that raise a suspicion, they are often prepared in a very clumsy manner, with lot of spelling errors and sometimes they are even incoherent, and I am also using a word there to say that they are also unintelligible when you read it, that becomes a common denominator, it does not even matter whether they were coming from State Security Agency or from Crime Intelligence. So you will not have those reports which
20 deals with the Domestic Intelligence as their defence is concerned, and there is a reason for that. They fall under a particular regime, but that is how these reports are, you are asking yourself who is writing them and if they are submitted to anybody what are those senior officials saying about these reports.

Not that I want them to be coherent and so forth and so forth, but I am seeking a standard ...[indistinct], they are dealing with lives and rights of individuals.

CHAIRPERSON: No but they must be coherent. They must be coherent and they must, when you look at them, when you read them they must show some seriousness because they deal with serious issues and as you say people's lives and if they are to be taken seriously I would have thought that any report that is going to be sent to the
10 President of the country would be a proper report and not something that really looks something that has not been prepared by people who are serious.

ADV PRETORIUS SC: In addition to the features you mentioned, you mention here in paragraph 117 that the identity of the compiler of the report is more often than not, not stated or evident.

DR DINTWE: Yes, it is not stated in those reports. I understand the security requirements but you cannot just have a report that you do not link to anybody, there should
20 at least be a code name or even a number, these people they will have numbers, so that they can know when they pay me, when they grade my report, they know that I am the one who compiled that report, but this one the one that was dealing with General Sibiya and Mr Robert McBride in fact it was written a compiler but it was left blank, not

knowing that when it was given to me maybe they would have tippexed that but I was expecting that the bare minimum at least I could find at least a code name or a number linked to the compiler.

ADV PRETORIUS SC: And the Chair has pointed out something which is very important and there is repeating that what is significant is not only who compiles the report and how the report comes about but the fact that people in senior position are prepared to make use of such reports,
10 to take action against people.

DR DINTWE: That is correct.

ADV PRETORIUS SC: Perhaps you can go on from line 3 of paragraph 117, and just put that on record please.

DR DINTWE: You wanted me to read from?

ADV PRETORIUS SC: Yes please, line 3, you have dealt with the first three lines of 117.

DR DINTWE:

20 “There seems to be no recourse for the citizens whose integrity and careers are destroyed by these reports. Even in cases where the compilers are known. It is my view that these reports are relied upon fully knowing that they will not stand up in court as they achieve and they may not achieve the desired effect of removing key persons who stand in their way.”

Maybe I must just repeat that, I made a mistake.

ADV PRETORIUS SC: Read that sentence again yes.

DR DINTWE: Yes.

“It is my view that these reports are relied upon full knowing that they will not stand up in court as they achieve their desired effect of removing key persons who stand in the way of State Capture from their positions. The deleterious effect of this is that the names of these persons are irreparably
10 damaged by these reports as by the time the cases are withdrawn against them it is too late, their careers have been damaged.”

ADV PRETORIUS SC: Thank you, in paragraph 118 Dr Dintwe you deal with a new topic and that is irregular appointments ...[intervenes]

CHAIRPERSON: Just before you proceed Mr Pretorius can I ask this question, to the extent that during your time you may have had the experience of investigating reports that are legitimate, that legitimately come from the
20 Intelligence Services, are you able to say generally speaking those that alert you to make do not have these features that you have identified in regard to the reports that seem not to be legitimate?

DR DINTWE: That is correct Chair, the other reports will go through a vigorous – a vigorous process that I do not

want to divulge here.

CHAIRPERSON: Ja, no, no that is fine.

DR DINTWE: But it will not move from person A to person B and end there, there will be checks and balances throughout the system to an extent that some of them I think that they will be discarded and if there were compiled by somebody who was expecting some kind of remuneration they will not then be remunerated because they will be “useless”.

10 **CHAIRPERSON:** Ja, ja.

DR DINTWE: And you can see that – you can see the ...[indistinct] Chair, it is only in this instance you want to look at those reports that are suspect, those reports that you could have some allegations that it was used knowingly to really with somebody who was standing against malfeasance or corruption, so there is a clear distinction between that.

CHAIRPERSON: So you say generally they will, the legitimate ones, will have a compiler even if just a code
20 that is given in terms of the compiler or the author and then you say even in terms of the quality of the report it is different from these other ones in terms of how professional they look.

DR DINTWE: It is far better, in fact Chairperson they made a presentation to me with regard to an issue which

came into the public domain about the intention of some group in Bloemfontein who wanted to attend the conference in 2012, very professional, even including the slides, where it started, where they registered the project and so forth, I was so much impressed and when you take that report and compare it to these ones that I have been mentioning here you can just see that no, no, no this one did not really go through the ordinary process of producing any grievance.

10 **CHAIRPERSON:** Oh, okay.

ADV PRETORIUS SC: Chair in relation to a query that you raised and comments made earlier about the so-called check-mate report, that was used at the meeting of the Top Six or referred to at the meeting of the Top Six, if I can just place on record and it is perhaps apt to do so in this context.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: I have in front of me the affidavit of Ms Duarte and at paragraph 10 of that affidavit she
20 says:

“At a meeting of the officials on 27 March 2017 former President Zuma informed the officials of an intelligence report which made reference to a meeting that Minister Gordhan had attended in London. He did not produce the report but said that

the contents gave him great discomfort.”

That evidence is confirmed by Mr Mantashe who says in paragraph 10 of his affidavit, and I will put the references on the record.

CHAIRPERSON: Ja.

ADV PRETORIUS SC:

“At a meeting of the officials on 27 March 2017 former President Zuma informed the officials of an intelligence report which made reference to a meeting that Minister Gordhan had attended in London. He did not produce the report but said it gave him great discomfort.”

And then it goes.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: And those are in Exhibit JGZ and I am not sure that these pages consist, I will ...[intervenes]

CHAIRPERSON: Ja, I think those affidavits have not been as far as I know have not been admitted as yet.

ADV PRETORIUS SC: Yes, well perhaps they should be, but I shall ...[intervenes]

CHAIRPERSON: Well they should in due course but my recollection is that they have – there has not been an occasion for them to be admitted, but we have obtained them.

ADV PRETORIUS SC: Yes, we will see to that or discuss

that with you in due course.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: In paragraph 118 you deal with a new topic and that is instances of irregular appointments within the Intelligence Services, would you tell the Chair about those please.

DR DINTWE: Yes, the problem about irregular appointments Chair is that they create instability, firstly, but they also create a fertile environment for State Capture
10 itself because sometimes it is not only about this irregular appointment but it is about the person that is being put in that particular position. So we have made several adverse findings with regard to both the State Security Agency but also with the Crime Intelligence with – where recruitment procedures were not followed. In certain instances there will be no criteria at all, you will ask which criteria do you use to recruit these people, they will just say that no it is not there. Some of the positions will not be advertised, and those are the examples, but I have got a specific
20 example here because it is of a senior person who was appointed.

ADV PRETORIUS SC: Alright, you give several examples but as I understand the point you make in the paragraphs that following, paragraph 118, is that where proper procedures aren't followed it does open the door to undue

influence being exercised and other irregularities, do I understand you correctly.

DR DINTWE: That is my submission and my argument.

ADV PRETORIUS SC: And you give those examples in paragraphs 119, 120, right through to paragraph 124, is that correct?

DR DINTWE: That's correct Chairperson.

ADV PRETORIUS SC: Alright, is there anything you wish to emphasize there for the Chair?

10 **DR DINTWE:** Let me emphasize this other one because it is done by Minister Bongani Bongo, the former Minister, so there is this position ...[intervenes]

ADV PRETORIUS SC: Is that paragraph 119?

DR DINTWE: It will be paragraph 119, so there is this position at NICOC so NICOC, National Intelligence Coordinating Committee is led by a Director General, but it is seen as part of the Intelligence Service, ja, the Director General of the State Security Agency is the accountable ...[indistinct] for NICOC, so ...[intervenes]

20 **ADV PRETORIUS SC:** That's the National Intelligence Coordinating Committee.

DR DINTWE: Ja, the Intelligence Coordinating Committee, so in that they had – there was a vacancy, but they did not advertise that particular vacancy and what happened is that Minister Bongo on his third or fourth day,

we can check because I have the full report in the bundle there ...[intervenes]

ADV PRETORIUS SC: And you investigated this ...[intervenes]

DR DINTWE: I investigated and I produced that report. So what happened is that he met then with the head of NICOC and he instructed the head of NICOC to produce a submission which then will come to him for approval but obviously it will go through the other signatories like a
10 recommender, it will be a compiler/recommender and I think maybe sometimes a second recommender maybe from H R and then it will be approved.

Appointing this particular member to a level of a programme manager and the reason that he provided to the head of NICOC was only to say that he knows this gentleman and he also knows that this gentleman is raising his kids alone because he lost his wife, so his argument I think that it was just to say that put him somewhere because he does not have a secondary you know income
20 like other families will have, that was the reason that was provided to the head of NICOC.

ADV PRETORIUS SC: Now however kind-hearted the gesture may have been what are the dangers that are attached to that sort of conduct?

DR DINTWE: It is that obviously those people will be

gratified to the appointing officers so they can be told to do anything and they will really, really do that because I mean this was unexpected and it created a lot of problems also because there were then grievances from the other people who said that we could have contested for this position.

CHAIRPERSON: Was this person who was the beneficiary of this decision, was it somebody that was a member of SSA already or was it somebody from outside?

DR DINTWE: No a member of SSA already Chairperson,
10 but they were placed at NICOC.

CHAIRPERSON: So it was a question of them being put into NICOC?

DR DINTWE: No, no, no it is in NICOC and then they are taking from let's level 2 ...[intervenes]

CHAIRPERSON: Promoted?

DR DINTWE: ...to level 3 within NICOC.

CHAIRPERSON: So that they can earn higher?

DR DINTWE: Exactly Chairperson.

CHAIRPERSON: Okay.

20 **ADV PRETORIUS SC:** Right, did you make any recommendation as a consequence of your investigation?

DR DINTWE: I made recommendations but I should have mentioned that he only spent a week in that promoted position, the position that he was promoted and then he was then appointed to become somebody higher than an

acting deputy coordinator.

ADV PRETORIUS SC: So he received two promotions?

DR DINTWE: Two promotions in a space of a month and yes of course I sent the recommendations to the Minister of State Security.

ADV PRETORIUS SC: You sent a recommendation to remedy the position or the situation?

DR DINTWE: That is correct Chairperson, our recommendations was that the appointment for that level
10 should be withdrawn, secondly that it should be advertised, so that everyone can take part on that, but there was something where we also recommended sometime of disciplinary measures to be taken.

ADV PRETORIUS SC: Alright.

DR DINTWE: Because one of the junior members who works at HR in that entity his signature was then forged in that submission.

CHAIRPERSON: To recommend?

DR DINTWE: I think it will be a compiler but somewhere it
20 will be a line of signatures and as I am saying that he doesn't make decisions but normally it will go to him to check whether the recruitment process, the selection process was so when he affixes his signature it is to say that I have assisted my principals to ensure that all processes are followed, but during that time he could

remember very well that he was in Cape Town, he was not in Pretoria so his signature was forged.

CHAIRPERSON: And how long ago did you submit your report to the Minister, more or less? Or which year were you investigating this matter?

DR DINTWE: I do have a file of 120, I have got some few dates there, ...[indistinct] will need.

ADV PRETORIUS SC: So it must have been latter part of 2019 and 2020, the early part of 2020?

10 **DR DINTWE:** Yes, so Chairperson I investigated that matter, I made recommendations but at the time that I was writing this affidavit that recommendation – those recommendations were not yet implemented.

ADV PRETORIUS SC: Well ...[intervenes]

CHAIRPERSON: And as far as you know as you sit there have they been complied with?

DR DINTWE: No, no, not at all.

CHAIRPERSON: Have you been told that maybe the Minister doesn't agree with your recommendation for the
20 following reasons, a, b, c, d? Has she told you anything along those lines?

DR DINTWE: Ja, no Minister then after I think several follow ups she wrote to me agreeing with our findings and our recommendations.

ADV PRETORIUS SC: That is on the 22nd of February

2020?

DR DINTWE: Yes.

ADV PRETORIUS SC: Those recommendations have not yet been implemented.

DR DINTWE: Not yet implemented.

CHAIRPERSON: Yes, so she has agreed with your recommendation but the implementation has not taken place almost a year after she indicated that she agreed with them?

10 **DR DINTWE:** That is correct Chairperson.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: So there were two problems as I understand it, one was your finding that a minister had exercised what I presume you regard as undue influence, is that correct?

DR DINTWE: That is correct.

ADV PRETORIUS SC: In the process of appointment, but secondly that the process itself was irregular?

DR DINTWE: That is correct Chairperson.

20 **ADV PRETORIUS SC:** And your recommendations have not been implemented yet?

DR DINTWE: The recommendations are not yet implemented. But there was a series of ...[indistinct] of ministers during that period yet the appointment is done by Minister Bongani Bongo and then we had Minister Letsatse

Duba, she wasn't there for long, clearly I cannot recall whether I would have written to her but then she was just replaced by Minister Ayanda Dlodlo who I am certain that I would have written to her, not once Chairperson.

ADV PRETORIUS SC: And then in paragraph 121 you refer to another example.

CHAIRPERSON: I think Mr Pretorius it might be appropriate to establish from Minister Dlodlo what the position is because I think that when these oversight
10 bodies make recommendations the relevant authority should apply their minds, take a view whether they have a problem with complying and if they think they have a problem at least they should say so and give their reasons and it may well be that in regard to some of these maybe they might have to go to court to set aside, I am not sure, but one shouldn't have a situation where there is absolute silence or there's agreement with the recommendation but for a long time nothing happens.

ADV PRETORIUS SC: We will do a request for
20 information Chair, I am sure we will get a response.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: A similar circumstance arises in paragraph 121 but I see we are over time.

CHAIRPERSON: I was thinking now maybe I shouldn't say anything but as long as you are pointing ...

ADV PRETORIUS SC: Well Chair I am in your hands.

CHAIRPERSON: [laughing] no because I think I promised that we would adjourn at half past let us adjourn but there are going to be days when I am going to ask everybody that we all be strong and move much – move beyond eight, go to nine and so on, so ...[intervenes]

ADV PRETORIUS SC: I will inform those accordingly.

CHAIRPERSON: And ja, but that is fine, let us stop now. I think we should talk Mr Pretorius to arrange another
10 evening session for Dr Dintwe to try and finish his evidence.

ADV PRETORIUS SC: Yes Chair if we are able to start around four we will finish in one last session.

CHAIRPERSON: Ja, ja, so – but there is a possibility that my evenings next week are full, there is that possibility, and if they are full I was thinking whether it might not be a good idea to look at a morning in terms of which we could say let's start at eight, so by ten o'clock we might be done and then I continue with the witness for the day if we
20 arrange that, how does that sound to you?

ADV PRETORIUS SC: Yes Chair that is fine, as long as it is after President testifies. We are obtaining the statements ...[intervenes]

CHAIRPERSON: Yes, okay, okay, alright. Okay, thank you very much to everybody, we will adjourn and then for

the benefit of the public I must just point out that tomorrow I will hear the evidence of Mr Anoj Singh under the Transnet work stream, as well as on Friday during the day sessions and tomorrow evening I will be hearing the evidence of the former Minister of Public Enterprises, Ms Lynne Brown, that is just to inform the public.

Thank you very much, we adjourn.

ADV PRETORIUS SC: Thank you Chair.

REGISTRAR: All rise.

10 **INQUIRY ADJOURNS TO 22 APRIL 2021**