

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

26 MAY 2021

DAY 403



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 26 MAY 2021

CHAIRPERSON: Good morning Mr Franklin, good morning everybody.

ADV FRANKLIN SC: Good morning Chair.

CHAIRPERSON: Yes. What have we got today?

ADV FRANKLIN SC: Thank you Chair today we are convened for the continuation of the SARS work stream evidence and in particular for Mr Moyane the former Commissioner of SARS to give his evidence.

10 But Chair will recall that Mr Moyane was due to testify on the 25th of March of this year but submitted a letter notifying the commission on the 24th of March that he was ill and unable to attend so this is the rescheduled date for the hearing of Mr Moyane's testimony.

Before Mr Moyane testifies, however there are two pending applications to cross-examine him.

20 Firstly from Mr Van Loggerenberg and secondly from Mr Symington both of whom have already given evidence before the commission and I understand that the Chair will hear these applications at the outset of proceedings today.

Before that happens Chair, there are a number of my learned friends who are representing the various parties and who would like to place themselves on record and would this be an appropriate time for that?

CHAIRPERSON: Yes let us do that. You can do it from

where you are if your mic is working. If it is not working you can approach the podium.

ADV HUTTON SC: Thank you Chairperson. Ross Hutton for Mr Loggerenberg on the instructions of Werksmans Attorneys Mr Hotz.

CHAIRPERSON: Thank you.

ADV SEBOKO: And I Mr Chairman I am Tiny Seboko. I assist Mr Moyane today on instruction Eric Mabuza Attorneys.

10 **CHAIRPERSON:** Thank you.

ADV FOURIE: Good morning Chair. I am Greg Fourie.

CHAIRPERSON: Yes.

ADV FOURIE: I represent Mr Vlok Symington on instructions from Mr Hotz of Werksmans Attorneys.

CHAIRPERSON: Thank you. Okay all right. I will start with the applications and in particular we start with Mr Loggerenberg's application and thereafter we will deal with Mr Symington's application.

I think it will be preferable that when counsel moves
20 that application they are at the podium. Somebody will sanitise the podium before he goes there.

Yes Mr Hutton.

ADV HUTTON SC: Thank you Chairperson.

CHAIRPERSON: Yes.

ADV HUTTON SC: Chairperson what serves before you at

the moment is an application by in terms of the rules of this commission on behalf of Mr Johannes Hendrikus Van Loggerenberg to – for leave to cross-examine Mr Moyane in terms of the commission's rules.

We rely on two affidavits in support of that. There is an affidavit dated the 17th of March 2021 which commences at paginated page 1 of sequence 14 2021 003.

That affidavit serves two purposes. Firstly to set out further evidence of Mr Van Loggerenberg who by the way
10 has already testified by certainly in part if not completely some time ago – sometime last month – two months ago.

So there is further evidence contained in this and it sets out the basis upon which Mr Van Loggerenberg seeks leave.

CHAIRPERSON: I understand that there is a redacted affidavit that has been awaited, is that correct.

ADV HUTTON SC: Yes, that is correct.

CHAIRPERSON: But other than that, it is redacted it is the same affidavit that we have had all along.

20 **ADV HUTTON SC:** Yes.

CHAIRPERSON: In the application.

ADV HUTTON SC: I have had a brief opportunity to look at it.

CHAIRPERSON: Yes.

ADV HUTTON SC: It would appear that names of...

CHAIRPERSON: Just the names are (talking over one another)

ADV HUTTON SC: Names of agents have been redacted out and they have been renamed.

CHAIRPERSON: Oh okay then it means now looks like that has been put into my file. Ja.

ADV HUTTON SC: You will see the names are somewhat random.

CHAIRPERSON: Ja.

10 **ADV HUTTON SC:** They now have Kumo Hobbs etcetera.

CHAIRPERSON: Ja pseudo names.

ADV HUTTON SC: One would need a – one would need a key.

CHAIRPERSON: Ja.

ADV HUTTON SC: To find out who they are.

CHAIRPERSON: Okay no that is fine. I have read the – Mr Van Loggerenberg's application – his affidavit. I think I noted that there are many areas in his affidavit where he says in effect, there is no dispute between his version and
20 Mr Moyane's version on certain matters. He says Mr Moyane does not dispute this – does not dispute that – does not dispute that bla, bla, bla. So that is the one aspect.

The second aspect is that as I understand his affidavit he does not say that Mr Moyane has made any allegations against him having been involved in state

capture for example.

I think he does refer to the units that has been given different names.

ADV HUTTON SC: Yes.

CHAIRPERSON: As you may be aware. The issue of that unit was dealt with by the commission headed by Justice Nugent.

ADV HUTTON SC: That is correct.

CHAIRPERSON: And the – the attempt has been to try and
10 not duplicate what that commission has done without necessarily saying that unit cannot be mentioned here.

You would have been I assume you would have read my ruling in relation to Mr Moyane's application for leave to cross-examine Minister Gordhan where at least at that stage the issue of that unit was not to be covered but there were certain 00:08:48 that happened after that.

So I mention these things because I am in – more inclined to grant leave to cross-examine to people who are accused of having been involved in state capture and
20 corruption than people who simply say I would like the opportunity to cross-examine this witness because he says I am lying or he is denying what I – what I say he said.

So for that kind of issue my inclination is the evidence leaders of the commission play an adequate role to take care of that. That is my inclination.

So having regard to that and you may of course say I have missed out something in thinking along the lines that I am thinking. In saying all of that we have got to go back to the rules of the commission in relation to applications such as these and they provide that the Chairperson may grant leave looking at regu – at a Rule 3.7:

10 “In accordance with Regulation 8.3 there is no right to cross-examine a witness before the commission but the Chairperson may permit cross-examination should he deem it necessary and in the best interest of the work of the commission to do so.”

So even where we are with the work of the commission wanting to wrap up one has got to – I have got to think about among other things why should we add more work when we are trying to wrap up. But obviously that has got to be balanced against the interest and rights of individuals but also the public interest is quite important.

So you might wish to address me on those thoughts.

20 **ADV HUTTON SC:** Yes. I am fully cognisant Chairperson of the time limitations and time constraints on the commission at this stage. It is correct that Mr Van Loggerenberg is not accused of being a state capturer and that broadly speaking the – the Nugent Commission if I may refer to (inaudible). I traversed some of that – some of that

area although it did not make – it did not make fundamental findings and I – in relation to that. It was essentially a concluding comment that said that I – word – and I paraphrase at this stage – I see nothing wrong with the establishment of the (inaudible) I see nothing wrong with what it did if it did – if something illegal was done that does not mean that the unit should have been disbanded and it seems to me that it was a good thing that there was such a unit. That is – that in a nutshell is what Justice Nugent
10 found.

I also appreciate the fact that Mr Van Loggerenberg has had his – has had a hearing from you in relation to inter alia the – the units – the units' activities – had his opportunity to – to present that evidence to you.

It is – and I also fully understand that if that is the commission's evidence leaders are in a position to tease out any points – any points of dispute my view of my role today when I was preparing the short time that we had available is that I would very much like to curtail – to curtail
20 my questioning of Mr Moyane right to be given leave to the events that occurred immediately after the Sunday Times report in October 2014.

And you will see from – you will see that there is fairly lengthy setting out by Mr Van Loggerenberg in his affidavit in support of the – his application to cross-examine

which sets out a sequence of events where Mr Moyane appeared having just arrived as the Commissioner and having read the Sunday Times on the Sunday it denounced the – to denounce this entire unit without further ado on the Monday by – by sending out a memorandum to – to the entire staff workforce at SARS where he on the face of it took a side without – without further ado and he admonished the members of the – of the unit.

What then transpired is that the members of the unit
10 some six of them who were the remaining members at that stage who were at work sent a very, very detailed letter to Mr Moyane where they – where they joined issue with the allegations that had been made.

What happened was that their fear was turned that. They got no – they got no hearing – they got no – their voice was not heard and...

CHAIRPERSON: Well I am sorry to interpret you Mr Hutton.

ADV HUTTON SC: Certainly.

CHAIRPERSON: You see some of the things that I have
20 seen I think in Mr Van Loggerenberg's affidavit and I do not know – I cannot remember whether Mr Symington does the same. He has raised issues that are really employer / employee kind of issues you know. Grievances about how Mr Moyane dealt with certain issues and while those have their place and in regard to some matters they have been

quite important in the commission. Some of – some of those issues have been quite important. But that has been limited to situations where there are allegations of – there were allegations to the effect that this employee were – was being removed for example as part of state capture and so on and so on.

But also my inclination in regard to the issue that you say you wish to limit your cross-examination to my inclination would be subject to the evidence leader what his view is in terms of whether he would include that issue in his questioning of Mr Moyane my inclination would be why should that not be left to Mr – to the evidence leader to deal with?

ADV HUTTON SC: I understand the position that you are taking Mr Chairperson and perhaps and I am – this had certainly crossed my mind while I was preparing that perhaps – perhaps we had this the wrong way round.

CHAIRPERSON: Yes.

ADV HUTTON SC: Today.

20 **CHAIRPERSON:** Yes.

ADV HUTTON SC: And that my – my client's application for leave to cross-examine perhaps properly only arises once – once Mr Moyane has given his evidence in chief and has been led by the

CHAIRPERSON: Evidence leader.

ADV HUTTON SC: By the evidence leader and if at the end of that there are issues which are of – which are pertinent to the – to the commission or at least to that we believe from our side are pertinent and would properly be the – properly fall within the ambit of legitimate cross-examination of Mr Moyane.

Not simply to test his credibility.

CHAIRPERSON: Ja.

ADV HUTTON SC: But to advance the pursuit of truth.

10 **ADV FRANKLIN SC:** I am sorry I have just been advised that there is a technical problem and we have been requested to stop for ten minutes while the technical problem is resolved.

CHAIRPERSON: Okay alright. Ja no sometimes these technical problems start as we are trying to start then they start.

Okay let us adjourn for ten minutes.

We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: So I see it took longer to solve the problem but let us continue. Yes, you were still addressing me on some of the issues that I raised.

ADV HUTTON SC: Yes. If I could just go back on an issue that you raised at the outset and that is that

Mr Moyane has not accused Mr Van Loggerenberg of being engaged in the state capture and therefore he is not implicated in that sense and accordingly, I would – I – you would prefer to restrain our cross-examination on each person implicated in state capture as Mr Moyane has been.

CHAIRPERSON: H'm, h'm.

ADV HUTTON SC: There is one passage in Mr Moyane's affidavit that runs against that... [Speaker unclear] I think the contention that Mr Van Loggerenberg has not been
10 involved in state capture as a participant in amongst(?) correct.

But Mr Moyane, without mentioning Mr Van Loggerenberg by name but in the context that Mr Van Loggerenberg was the head, at all material times, of this unit. He says the following at paragraph 31 of his affidavit and that is SARS-03746 WW7 Response 592. He says the following:

20 “More significantly and of relevance to the Commission is the fact that the unit clearly carried out extra judicial and unlawful covert intelligence activities thus creating a parallel intelligence service which was not accountable to any structure of Parliament...”

This, surely, amounts of the capture of state or some significant parts thereof. So through that broad

stroke ...[intervenes]

CHAIRPERSON: Well ...[intervenes]

ADV HUTTON SC: He does. He does.

CHAIRPERSON: [laughs]

ADV HUTTON SC: In that broad stroke, he accuses everyone who was participants in the activities of the unit whether going back to the foundation of the unit, the establishment of the unit or through its lifespan and Mr Van Loggerenberg was the commander of the unit, the
10 manager of the unit for that relevant period. He is indeed accused of being a state capturer.

CHAIRPERSON: But maybe even if one has regard to that, given the totality of his affidavit and what appears to be the basis for his application, I would still be inclined to – of the view that it should be adequate if whatever information he wishes to be placed before the Commission that, one, he himself has been able to deal with that in his evidence. But also that he can furnish to the evidence leader whatever perspectives or information that he
20 requests to be pursued in the questioning of Mr Moyane.

Obviously, the evidence leader is not bound by that but in his discretion can look at that and see whether he can put some questions relating to that. So my inclination would be that where he has been given a chance to give evidence and therefore refute whatever Ms

Moyane has to say and two, Mr Moyane will be subjected to questioning by the evidence leader and in this regard, one remembers that the rules make it clear that the evidence leader is entitled to question a witness with a view to establishing the truth.

That I would be more inclined to say. Why does he not give the evidence leader whatever he wants to give him or draw his attention two and the evidence leader can cover as much as, obviously, in his discretion he needs to
10 cover.

ADV HUTTON SC: Can I just respond to ...[intervenes]

CHAIRPERSON: Yes.

ADV HUTTON SC: ...to one significant part of ...[intervenes]

CHAIRPERSON: Yes.

ADV HUTTON SC: ...of what you said, Mr Chairperson?

CHAIRPERSON: Yes, yes.

ADV HUTTON SC: And it is this. As we stand today, Mr Van Loggerenberg's evidence is incomplete.

20 **CHAIRPERSON:** Ja.

ADV HUTTON SC: Essentially, the Commission ran out of time ...[intervenes]

CHAIRPERSON: Yes.

ADV HUTTON SC: ...occasion late afternoon or evening session ...[intervenes]

CHAIRPERSON: Ja.

ADV HUTTON SC: ...and had to terminate.

CHAIRPERSON: Ja.

ADV HUTTON SC: It has not been indicated to Mr Van Loggerenberg when or if indeed at all, he would be called back to continue.

CHAIRPERSON: There is an intention to give him an opportunity to complete.

ADV HUTTON SC: Yes.

10 **CHAIRPERSON:** Mr Franklin, has been reminding me about that outstanding issue. So there is an intention – of course we are trying to wrap up but it has not been forgotten and the intention is to find some time to complete it.

ADV HUTTON SC: Alright.

CHAIRPERSON: Yes.

ADV HUTTON SC: Well, that does give us some comfort.

CHAIRPERSON: Ja, ja. Certainly, there is that intention ja.

20 **ADV HUTTON SC:** Because there are two aspects. There are two distinct aspects ...[intervenes]

CHAIRPERSON: Ja.

ADV HUTTON SC: ...in Mr Van Loggerenberg's evidence. One of which is relevant to Mr Moyane.

CHAIRPERSON: Ja.

ADV HUTTON SC: But the other is – are in a completely different stream.

CHAIRPERSON: Ja.

ADV HUTTON SC: And he was requested after he testified on the previous occasion ...[intervenes]

CHAIRPERSON: Ja.

ADV HUTTON SC: ...to submit further evidence not related to SARS but say rather related to the SSA ...[intervenes]

10 **CHAIRPERSON:** Ja.

ADV HUTTON SC: ...and its interventions.

CHAIRPERSON: Ja.

ADV HUTTON SC: That has been ...[intervenes]

CHAIRPERSON: I do remember that.

ADV HUTTON SC: That has been led ...[intervenes]

CHAIRPERSON: Ja.

ADV HUTTON SC: ...through Mr Pretorius' stream, as I understand it.

20 **CHAIRPERSON:** Ja. I do remember that when Mr Van Loggerenberg was giving evidence the last time when he was finishing, there was an indication that there was quite some evidence that should be placed before – I cannot remember whether it is law enforcement agencies or SARS.

ADV HUTTON SC: Yes.

CHAIRPERSON: Or matters that were known to him but he could not deal with them.

ADV HUTTON SC: Yes.

CHAIRPERSON: Because it remained classified or something to that effect ...[intervenes]

ADV HUTTON SC: Well ...[intervenes]

CHAIRPERSON: And I encourage him to place that before the relevant authorities.

ADV HUTTON SC: Yes. I do not want to preamp that
10 evidence at all.

CHAIRPERSON: Ja.

ADV HUTTON SC: Because it is not – in effect remains in... [Speaker unclear]

CHAIRPERSON: Ja, okay.

ADV HUTTON SC: But there are one or two points where there is a cross-over.

CHAIRPERSON: Ja, okay.

ADV HUTTON SC: And it is, you know, it would certainly be comforting to us to know that Mr Van Loggerenberg will
20 have his opportunity ...[intervenes]

CHAIRPERSON: Ja.

ADV HUTTON SC: ...in relation to both aspects. The completion of his SARS evidence and then his testimony in relation to that.

CHAIRPERSON: Ja.

ADV HUTTON SC: But I am not asking if a ruling in ...[intervenes]

CHAIRPERSON: Yes. No, no, no I – all I can say is that there certainly is an intention that he be given an opportunity to complete the evidence that he did not complete. Obviously, the evidence leader will have a clear idea of what remained.

ADV HUTTON SC: Yes.

CHAIRPERSON: So if it is fine with you. I would like to
10 give you the last five minutes if you have any further submission to make.

ADV HUTTON SC: Yes. Yes, thank you.

CHAIRPERSON: Ja.

ADV HUTTON SC: Thank you, Chairperson. Chairperson, I am in somewhat of a dilemma because there are two avenues.

CHAIRPERSON: Ja.

ADV HUTTON SC: Two avenues open at the moment. The one is to request you to end this argument ...[intervenes]

20 **CHAIRPERSON:** Ja, up to ...[intervenes]

ADV HUTTON SC: ...and allow me to take it up ...[intervenes]

CHAIRPERSON: Ja.

ADV HUTTON SC: ...if – ja, if warranted ...[intervenes]

CHAIRPERSON: Ja.

ADV HUTTON SC: ...after the evidence leader has
...[intervenes]

CHAIRPERSON: I am quite happy to do that if you prefer
that to say ...[intervenes]

ADV HUTTON SC: I am not sure what I prefer.

CHAIRPERSON: Ja. [laughs]

ADV HUTTON SC: [laughs]

CHAIRPERSON: Well, you have very little time to make
up your mind. [laughs]

10 **ADV HUTTON SC:** Yes. The obvious ...[intervenes]

CHAIRPERSON: Ja.

ADV HUTTON SC: ...the obvious other point is to do what
I had been briefed to do.

CHAIRPERSON: Ja.

ADV HUTTON SC: And that is asking you to make a ruling
now.

CHAIRPERSON: Ja, h'm.

ADV HUTTON SC: The difficulty with asking you to make
a ruling now is that I am not privy to what the evidence
20 leader has prepared today and I do not know what areas he
intends to traverse and it may put the evidence leader in a
bit of a tricky position if he suddenly to find himself in a
position where he has to quickly involve himself in matters
that he anticipated would be dealt with in cross-
examination on behalf of Mr Van Loggerenberg.

CHAIRPERSON: Well, I can decide for you. [laughs]

ADV HUTTON SC: [laughs]

CHAIRPERSON: Let us defer it but the – so that you can take a view after Mr Moyane has finished his evidence.

ADV HUTTON SC: Yes.

CHAIRPERSON: Take a view whether you pursue it or not and then we can take it from there but we are not contemplating – I am not contemplating that there would be much to say after that in terms of argument but you might
10 have one or two points to make arising out of mister or the evidence that Mr Moyane would have given as to how it impacts on the application.

ADV HUTTON SC: Yes.

CHAIRPERSON: Ja.

ADV HUTTON SC: Yes. Thank you, Chairperson. I think that that is probably the sensible way to do it.

CHAIRPERSON: Ja, ja.

ADV HUTTON SC: And at least by the time that the evidence is complete ...[intervenes]

20 **CHAIRPERSON:** Ja.

ADV HUTTON SC: ...I will have clarity ...[intervenes]

CHAIRPERSON: Yes, ja.

ADV HUTTON SC: ...as to whether there is – there are points still to be dealt with.

CHAIRPERSON: Ja.

ADV HUTTON SC: And there will certainly, I imagine, be some narrow doubt(?) ...[intervenes]

CHAIRPERSON: Ja.

ADV HUTTON SC: ...a broad, broad canvass ...[intervenes]

CHAIRPERSON: Ja.

ADV HUTTON SC: ...there might be. One stream or one – maybe just a few questions ...[intervenes]

CHAIRPERSON: Ja.

10 **ADV HUTTON SC:** ...on those aspects.

CHAIRPERSON: Ja-no, that is fine. That is fine. Alright.

ADV HUTTON SC: Well, then I place my leave for the moment.

CHAIRPERSON: Ja.

ADV HUTTON SC: I will return to my place.

CHAIRPERSON: Ja. [laughs]

ADV HUTTON SC: And I will listen very carefully.

CHAIRPERSON: Ja, so this application is still not done until Mr Moyane has finished evidence.

20 **ADV HUTTON SC:** Thank you, Chair.

CHAIRPERSON: Okay alright. Let me have the other application.

ADV FOURIE: Good morning, Chairperson.

CHAIRPERSON: Good morning, Mr Fourie.

ADV FOURIE: Chair, in light of the route that entire

application has taken.

CHAIRPERSON: Yes.

ADV FOURIE: I would ask that this application also stand down ...[intervenes]

CHAIRPERSON: Yes.

ADV FOURIE: ...in conclusion of the evidence leaders ...[intervenes]

CHAIRPERSON: Yes.

ADV FOURIE: ...leading Mr Moyane.

10 **CHAIRPERSON**: No, I think that makes sense.

ADV FOURIE: Thank you.

CHAIRPERSON: Yes, thank you. This application is also stood down until Mr Moyane has completed his evidence. Thank you. Good morning, Mr Moyane.

MR MOYANE: Good morning, Chair.

CHAIRPERSON: Thank you for availing yourself to give evidence. You did say that you would come and you would give evidence and you would avail yourself for questioning. So thank you for availing yourself.

20 **MR MOYANE**: Thank you very much, Chair.

CHAIRPERSON: Mr Franklin.

ADV FRANKLIN SC: Thank you, Chair. Chair, would it be of any assistance if I would give my indication in relation to the applications to cross-examine now, just very briefly?

CHAIRPERSON: Yes, I think it might help. Ja.

ADV FRANKLIN SC: Thank you. In brief, Chair. The attitude that I take as Evidence Leader is that I would support both applications for the simple reason that it will facilitate the completion of the testimony of Mr Moyane. It will not, as matters are planned, impel the likelihood of finishing or not. At the end of the day, we only have a day, as you know.

The preparation has been done on that basis, on that assumption, perhaps, whether it was correct or not.

10 And if I am entitled to cross-examine on the topics, then I take it there – it is permissible for my learned friends to likewise do so. You, as Chair, of course, would not allow duplication in respect of topics that I have already covered.

So in due course, when you make a final decision on it, I would certainly request that the applications be granted on that basis and on the basis and understanding that there will be very limited and focussed cross-examination on particular topics.

20 **CHAIRPERSON:** If you can, I would like you to cover everything that should be covered because that is what normally happens. Obviously, if you have covered everything that should be covered and if leave to cross-examination is granted, then the cross-examination can focus on really important aspects. So rather than that

areas are left out when you question. So if you are able to, I would like you to cover everything but obviously if I grant leave to cross-examine, then I would take it that would facilitate things.

ADV FRANKLIN SC: Thank you, Chair.

CHAIRPERSON: Ja. But if there are challenges, you would let me know.

ADV FRANKLIN SC: Thank you.

CHAIRPERSON: Okay. Yes.

10 **ADV FRANKLIN SC:** Mr Moyane to be sworn in.

CHAIRPERSON: Yes. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

WITNESS: My name is Thomas Swabihi Moyane.

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

WITNESS: No.

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

20 **WITNESS:** Yes.

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

WITNESS: So help me God.

THOMAS SWABIHI MOYANE: (d.s.s)

CHAIRPERSON: Thank you, Mr Moyane.

EXAMINATION BY ADV FRANKLIN SC: Thank you, Chair.

Good morning, Mr Moyane.

MR MOYANE: Good morning, sir.

ADV FRANKLIN SC: You can confirm that you are testifying today pursuant to a subpoena which was served on you on the 19th of May of 2021?

MR MOYANE: Yes, I do. But I would like to address the
10 Chair before I do.

CHAIRPERSON: Yes. Okay. No, that is fine. I think your counsel had indicated in chambers that you would make a request to address me in an opening statement for about ten minutes or so. Please do so.

COUNSEL: Thank you, Chair.

MR MOYANE: Chairperson ...[intervenes]

CHAIRPERSON: I am sorry. I have not seen what you are
20 shaking your head to suggest that it does not implicate anybody. Is that right.

MR MOYANE: That is right, Chairperson.

CHAIRPERSON: Okay alright. That is fine. And you keep your mic on throughout. Ja.

MR MOYANE: Chairperson, thank you very much for your

welcoming address delivered this morning which I found a bit contradictory to the letter that I received. Firstly, addressed to someone in this meeting. I did convey to the lady who called me on Wednesday, considering that all material times I and the team, my legal team, presented ourselves when we were requested to do so.

I, through my counsel, indicated that I am willing to assist the Commission at all times. So to be discharged of responsibilities in the manner that the constitution
10 allows it. Chairperson, I would like to put it on record. I found as somewhat confrontational(?). [Speaker unclear]

From my first affidavit deposed in September 2018, at all subsequent submissions I affirmed my willingness to support you, Chairperson, and the Commission and my counsel has counsel has also on several occasions affirmed this position in the appearances that we made.

The question that begs to be answered is that why the summons this time around and the rule of the law
20 to be used against me as a criminal. The man who dragged my name into the Commission has under oath admitted that there was no evidence and relied entirely on gossip. I incurred legal expenses of such a gossip.

During the first cross-examination of Mr Gordhan, my legal counsel was given an hour and it looked

very odd to me that this man, the Minister, had made serious and unfounded allegations levelled against me. He was given limitless time so that he can rant and cast my name and reputation.

Let me address my appointment as a Commissioner of SARS. I was appointed as a Commissioner for SARS on the 25th of September 2014 by the former President Jacob Zuma. Chairperson, let me deal with my removal as a Commissioner. My removal from
10 SARS was a well-orchestrated process.

On Saturday afternoon on the 16th of March 2018, I received a call from my office that the President, Mr Ramaphosa wishes to meet with me on Sunday, the 17th of March 2018 at his private residence at 22:00. I duly confirmed my attendance.

Later that afternoon, I saw an article on News24 written by a person, René(?) Bodnoches(?) and Sam Kokele(?) Bloomberg, titled: “Expect to Soon See New Leadership at SARS – Gordhan” In this article – I am
20 reading it, Gordhan is quoted:

I quote:

“It is out there in the public domain that leadership team has lost credibility and the time for change, it should be sooner rather than later.”

Further down the line the articles alludes, I quote:

“Moyane’s removal from SARS is imminent and he will be put to Cabinet.”

This was based on a Business Day Newspaper report on 14 March without saying where it got the information. The meeting between me and the President on Sunday evening, ominous timing, did confirm in not so many words this plot. There was no discussion about my
10 performance or lack thereof between me and the President. The President, Mr Cyril Ramaphosa simply intimated or projected outcome as per the outgo had already outlined. Low and behold on March 2018, I was suspended.

Let me address issues around Judge Nugent’s inquiry and report.

ADV FRANKLIN SC: Chair, I am sorry to interrupt.

CHAIRPERSON: Ja.

ADV FRANKLIN SC: I am not certain what the purpose of this so-called opening statement is.

20 **CHAIRPERSON:** H’m.

ADV FRANKLIN SC: There is no provision for a witness to give an opening statement. Of course, it is graphically permissible for a witness’s counsel to place matters on record but it appears that Mr Moyane now wishes to use this opportunity to traverse a number of topics and gives

his version on it. With respect, that is not permitted. He is here to be lead and his evidence to be placed before the Commission and he can give his answers in the course of that. But he has begun with an attack or criticism of the Commission for having summonsed him.

Then he has followed with an attack on Minister Gordhan and then it appears he wishes to criticise the President for removing him as Commissioner. None of that is legitimate, with respect. And I would object to him
10 continuing with such a statement.

CHAIRPERSON: H'm. Well, I have allowed to people to make, what some have called opening remarks or opening statements, and in regard to that, they have touched upon some of the issues that they would be giving evidence on. I think, my assessment is that Mr Moyane has probably used about five minutes and is left with another five minutes. I would allow him, as long as it sticks within the issues that relate to him and SARS. But jus bear in mind, Mr Moyane, you promised me that it will not implicate
20 anybody. Okay alright.

MR MOYANE: Chair, as far as I am concerned. I have just up to thus far, I have not implicated anybody.

CHAIRPERSON: Okay. Well, let – continue.

MR MOYANE: Chairperson, Judge Nugent was instructed to follow the script. He met secretly with Minister Gordhan

to discuss the outcome. “Get Tom out as soon as possible”. In that commission I was belatedly invited and I was the cause of the establishment of that unit. It is common cause, Chairperson, that on the 5th of October 2014, just when I was just been appointed, media reports and exposé convened.

I convened an urgent... where I requested that I to be taken the court in confidence about this matter around the Rogue unit, share the outcome with the
10 Minister. He was quite upset about the developments as it impacted negatively on the institution and the reputation thereof. A week later, on the 12th of October 2014, another exposé was published.

I met with the Minister, Nene, in the evening at O.R. Tambo Airport. I was extremely angry and annoyed about this report. I informed him that I now had a sense that I have exco members that are shielding each other over the wrongdoing that was happening within the organisation and at the time I cannot be able to rely on
20 their advice and cooperation.

The reports by Muzi Sikhakhane and Peter Richer, investigative journalists were insightful and worrisome on the reputation of the organisation. The report by Advocate ...[indistinct] on the 14th of August into multiple allegations of impropriety within the organisation

was deemed inconclusive and Advocate Muzi Sikhakhane's panel was appointed on the 5th of September 2014 by Ivan Pillay immediately, submitted a report but indicated that there was a *prima facie* evidence of the existence of a rogue unit.

The establishment of the unit without taking the requisite statutory authority was unlawful, *prima facie* evidence that the unit may have abused its power and resources by engaging in activities but residing the other
10 agencies of government in which they had no lawful authority.

Chairperson, I want to confirm here that I literally walked into a middle of a storm that has been brewing over a long time. I had the opportunity, over time, to meet some, if not all, of those members who were mentioned. All members of this unit were issued with fake identity cards, signed by the commissioner then which shielded them from being on doing their illegal activities in the event they were caught out.

20 I have a copy of such a document that indicates they had fake documents. There is a copy, Chairperson, which I will give it to yourself.

CHAIRPERSON: Well, I am not sure about that part, Mr Moyane. That might be implicating people in wrongdoing that part of what you have said but continue.

MR MOYANE: Well, that actually was given to your – to the team as an annexure ...[intervenes]

CHAIRPERSON: H'm?

MR MOYANE: ...in my previous affidavit.

CHAIRPERSON: Okay alright.

MR MOYANE: Chair, I would like to indicate that the rogue unit members did approach me and two of them and two submitted where they have said there is a criminal, they thought that only death would save them. The
10 confession was elaborated in detail on how they embarked, intercepted, listened and then video-recorded activities of the NPA's offices, leaders of the SAPS and Scorpion Project Codename Sunday Evening. These colleagues were instructed by Ivan Pillay to collaborate with the conspiracy leaders whose name is mentioned in the recording who provided the funding in the operation, the sum total of one million was used for this operation.

The transcript of this confession is provided to the Commission for ease of reference. Perhaps if these were
20 provided in to the media in an audio form, South Africans will be able to wake up to the [indistinct] lies that were daily fed. It is in this Commission that Mr Gordhan admitted during cross-examination under oath that this unit existed after fruitless attempts to deny and shield its existence.

Chairperson was dragged into this state capture meeting and there was no substantiated evidence to provide evidence to that effect. It is said that I lay charges against Mr Gordhan to the police and the Hawks and falsely so, that I was in pursuit to the end of the state capture and more specifically in the execution of conspiracy master-minded by the former President to remove him from the position of the minister which I denied emphatically and which was denied here in your presence.

10 I am extremely aghast at this brazen attempt to place me as a proponent of state capture and tarnish my reputation and image to suggest that I influenced the former President to fire him as a Minister of Finance is just preposterous because I have no authority or power over the President. He appoints and dismisses ministers at his will.

Quickly, Chairperson, during my tenure at SARS for three consecutive years I was able to deliver and perform sterlingly and these are tabulated as follows.

20 During the 2014/2015 financial year SARS collected 906 billion against the target of 979 indicating a surplus of 7.3 billion. This translated to 9.6% growth from the previous year and tax to GDP ratio was 25.7%.

In the 2015/2016 financial year we collected 1.69 trillion against a target of 1.69.7 indicating a surplus of

200 million, 8.5 growth from the previous years and the tax to GDP rose to 26.2%.

During the 2016/2017 financial year SARS collected 1.144 trillion against a target of the same number which means we were on target and this indicated we had a growth of 6.9 on the previous year and the tax to GDP was 26.1.

And finally, just when I was removed as a Commissioner of SARS the results were as follows:

10 2017/2018 financial year SARS collected 1.216.6 trillion against a target that had only missed the target by mere 700 million.

Chair, in conclusion, I want to affirm here that I want to indicate that on the 29 September when I was Commissioner for SARS I had a very funny call from Mr Gordhan instructing my team and my PA to come to him to be congratulated as a Commissioner but due to the activities that I had at the time I could not do so.

20 Lo and behold on the 23 October 2015 at a medium term budget policy statement which was to be delivered by the former Minister Nene, Mr Pravin walked into the National Assembly and approached the box which the DGs were sitting, he was shaking hands with everyone. When it was my turn, I stood up and extended my hand, he passed me and he greeted everybody. When all was done, he

came back to me and he said:

“Tom, it is not done”

In a visibly angry tone...[intervenes]

CHAIRPERSON: He said?

MR MOYANE: Yes.

CHAIRPERSON: Ja, please repeat what that...

MR MOYANE: Tom – when he had done the greetings of

everybody he came back to me and he said, I quote:

“Tom, it is not done”

10 In a visibly angry tone and my response was:

“What is it that is not done, Sir?”

And his response was:

“Why did you not return my call or contact me?”

I was shocked. Little did I know that this episode was to repeat itself on the 15 December 2015 a day after his appointment as the Minister of Finance by the former President Jacob Zuma. I received a call from his office that the minister want to have a one-to-one meeting with me at SARS around ten o'clock.

20 I wait for him outside my office together with the Deputy Minister then Mcebisi Jonas. Upon his arrival I extended my hand to greet him. He shouted at the top of his voice in full view of staff that are gathered outside:

“Do not shake my hand! Shake the DM first!”

Then – whom I had already completed formalities with – I contained my disbelief and anger at being treated as a leper. He said to me:

“Did you not know that I would be coming back?”

This was confrontational and an abuse of power at the highest order and I was not going to accept and allow it to go unchallenged. He moved away momentarily to attend to a phone call. I expressed my displeasure to Mr Jonas and I told him in my own language that [speaking in the vernacular].

10

Literally translated:

“Deputy Minister he will never again repeat this type of attitude.”

And I said to him, I am disappointed with you, DM, for keeping quiet in view of such unbecoming behaviour of the Minister. I had to indicate I had acrimonious relationship with Mr Gordhan from the time he returned at SARS. He was always shouting and I finally retaliated in kind when his uncouth behaviour showed itself again in a recorded telephone transcript provided to the Commission, I had irrefutable proof that the man is a vowed racist and [indistinct] condescending.

20

In conclusion, Chairperson, I appeal to the Chair that in your report to pronounce and make a

determination that Mr Gordhan spoke from gossip and jealously blinded by his racist attitude towards me. Mr Gordhan must not make his problems with the former President my business. I thank you.

CHAIRPERSON: Okay, thank you, Mr Moyane. Just for clarification, you know, I allow these opening statements, opening remarks simply because I see them as part of the people or witnesses getting a chance to put across the main points of what is of concern to them or their side of the story so I have allowed others, so you have been allowed as well.

Okay, we can continue. I think the one thing which I should say something about and maybe Mr Franklin might or might have something to say about is the issue of a summons. I think you expressed concern as to why you were served with a summons in the circumstances where for a long time you had made clear that you would make yourself available to the Commission.

There have been other witnesses who have expressed the same concern. One of them is Mr Brian Molefe because he said also he was surprised that he was served with a summons in circumstances where he had made it known to the Commission that he wanted to come and give evidence.

The reason may well be that because we are – we

have time constraints now, if we do not serve you with a summons, although you may be willing to come and assist the Commission, that date might be a date where you prefer to do something else and then we do not want to get in lengthy discussions about dates so that you would only ask for another date if really there is something serious that prevents you from coming that day. So it might – it probably has nothing to do with thinking that you would not come, it is a question of trying to use our time properly and
10 making sure that unless somebody really has a serious and valid reason they would come. So that would be my thinking in terms of the summons. As I said earlier on to you, I do know that you have made it clear in your affidavit before this Commission and to your counsel that you will avail yourself to give evidence and to be questioned on the matters that the Commission is looking into. Okay, Mr Franklin?

ADV FRANKLIN SC: Thank you, Chair. If we could then proceed, Mr Moyane? You were the former Commissioner
20 of the South African Revenue Services, we will describe as SARS, if you can confirm that?

MR MOYANE: Yes, I was.

ADV FRANKLIN SC: And you held the position from September of 2014 until October of 2018, a period of just over four years.

MR MOYANE: Correct.

ADV FRANKLIN SC: You have deposed to a number of affidavits before the Commission. I would like to go to some of those please. You will have around you a number of bundles and I am going to refer you to various bundles and ask you to look at them and no doubt ...[intervenes]

CHAIRPERSON: Somebody will assist you, Mr Moyane, to find those files.

ADV FRANKLIN SC: Yes, the first one I will ask you to
10 look at, there is SARS bundle 03.

CHAIRPERSON: You might wish to use that space because you do not have a lot of space there, you might wish to move some of the files – ja, okay.

ADV FRANKLIN SC: Please will you turn to page SARS-03-012 and just for your orientation, whenever I refer to page numbers, I refer to the black numbers on the top left hand side of the page. Do you have page 012? Top left?

CHAIRPERSON: That should be the beginning of your affidavit. I think Mr Moyane – can you help him, it is page
20 12, black numbers at the top left corner of the page, it is written SARS-03-012.

ADV FRANKLIN SC: Do you have that now?

MR MOYANE: I am now familiar.

ADV FRANKLIN SC: Good, that is a witness statement of a Mr Thomas Moyane, that is your name, is it?

MR MOYANE: Yes, it is.

ADV FRANKLIN SC: Please turn to page 36 of the same bundle.

MR MOYANE: Yes.

ADV FRANKLIN SC: There is a signature at the bottom of the page, is that your signature?

MR MOYANE: It is.

ADV FRANKLIN SC: And do you confirm the truth and accuracy of the contents of this affidavit?

10 **MR MOYANE:** Yes, I do.

ADV FRANKLIN SC: Chair, may I ask that it be admitted as EXHIBIT WW6, the witness affidavit of Mr Thomas Moyane?

CHAIRPERSON: The affidavit of Mr Thomas Swabihi Moyane that starts at page 12 is admitted as an exhibit and will be marked as EXHIBIT WW6.

AFFIDAVIT OF THOMAS SWABIHI MOYANE STARTING AT PAGE 12 HANDED IN AS EXHIBIT WW6

20 **ADV FRANKLIN SC:** Thank you, Chair. Can I ask you please, Mr Moyane, to keep that particular volume and that particular affidavit open in front of you because I will be referring to it on a number of occasions.

I would now like to identify certain further affidavits. Chair, it does not appear to be necessary that they be admitted as exhibits but just for the witness' orientation

and yours, may I place these on record?

CHAIRPERSON: Okay.

ADV FRANKLIN SC: Mr Moyane, you probably do not remember the dates, etcetera, but if you wish to look at any of the affidavits that I am about to list then please let me know. Firstly, you brought an application to cross-examine Minister Gordhan in December of 2018, correct?

MR MOYANE: Yes.

ADV FRANKLIN SC: And you filed an affidavit in founding
10 in that application on the 13 December 2018. I am going to give the reference. That is in application bundle N for November 3 and it is from pages TSM3 to 15. It is not necessary for you to go to each of them unless you want you. I am just going to identify them Do you recall a founding affidavit in that application?

MR MOYANE: I take that you are correct and you will direct me in the right direction.

ADV FRANKLIN SC: Thank you. Then on the 1 February
20 2019 you deposed to a supplementary affidavit in the same proceedings and that too is in application bundle N3, the page is TSM260 to 268, that is the second. The next is the replying affidavit on the 5 March 2019, that is also in application bundle N3, page TSM690 to 709 and then the fourth, as I have it, is dated the 15 January 2020, that is in application bundle N3A at page TSM944 to 974.

Now returning, Mr Moyane, to the witness affidavit – I will call it the witness affidavit, that I first pointed you to and which you have open in front of you.

I just want to ask you some preparatory questions in relation to that. Can you confirm to the Chair at the time you deposed to that affidavit on the 3 March of 2021 you had received so-called Rule 3.3 notices that you were implicated in alleged wrongdoing by Mr Williams of Bains. Do you recall that?

10 **MR MOYANE:** I recall that.

ADV FRANKLIN SC: And Mr Symington of SARS. Do you recall that?

MR MOYANE: I recall that.

ADV FRANKLIN SC: And Mr van Loggerenberg, a former employee of SARS. Do you confirm that?

MR MOYANE: Yes.

ADV FRANKLIN SC: And you were given the relevant parts of their respective affidavits for you to consider, correct?

20 **MR MOYANE:** Correct.

ADV FRANKLIN SC: And you took those allegations into account when compiling your witness statement in order to answer those allegations as best as you could, is that correct?

MR MOYANE: Correct.

ADV FRANKLIN SC: And that is what you have done in your witness statement, you have various introductory comments and then your understanding of state capture and then you have separate parts of the affidavit in which you deal with allegations made against you by Minister Gordhan, firstly, and then also Messrs Williams, Symington and Van Loggerenberg under separate headings, is that correct?

MR MOYANE: Correct.

10 **ADV FRANKLIN SC:** And you are aware, Mr Moyane, that all three of the people that I have mentioned who have testified here under the SARS work stream, that is Williams, Symington and Van Loggerenberg, have testified in this Commission on the 24th, 25th and 26 March. Can I ask did you listen to their testimony when they were giving it on live streaming?

MR MOYANE: I was not well, as you could see that there was document that was even here, so there was no way that I could hear, I did not follow their...

20 **ADV FRANKLIN SC:** So you did not follow.

MR MOYANE: No.

ADV FRANKLIN SC: But subsequent to that, the transcript of their testimony has been uploaded to the Commission's website, you are aware of that?

MR MOYANE: Yes, I am.

ADV FRANKLIN SC: And I take it you have read those transcripts?

MR MOYANE: I had opportunity to.

ADV FRANKLIN SC: Alright and then all three of those gentlemen also provided statements to the Commission and I understand that the statements of Mr Williams and Mr Symington have been uploaded to the Commission's website and have you similarly had the opportunity to read those statements?

10 **MR MOYANE:** Yes, I have.

ADV FRANKLIN SC: Alright. If I could then ask you to look at your witness affidavit. Firstly ...[intervenes]

CHAIRPERSON: And that is EXHIBIT WW6?

ADV FRANKLIN SC: That is correct.

CHAIRPERSON: Ja.

ADV FRANKLIN SC: I will call that your witness affidavit, Mr Moyane, that is what you have called it so you know what I am talking about. Would you look please at paragraph 7 firstly? And there you say:

20 "The main purpose of these submissions is to support my strongly held assertion that at all material times:

1. I was never involved in fraud, corruption, money laundering and similar crimes.

2. I am certainly not guilty of state capture, as I

understand the term, or as it is generally understood, and

3. On the contrary I was privy to information which is likely to implicate some of my accusers in some activities which may or not fall under the general rubric of state capture.”

That is what you have said and then please look at para 72 on page 36, right at the end of the affidavit. You have said there and I quote:

- 10 “I therefore humbly request that any allegations of state capture, corruption or fraud (or any other crime) levelled against me by these accusers must accordingly be specifically rejected and that a finding to that effect be made in the Commission’s report that will go a long way towards restoring my human dignity which has been maliciously tarnished, most probably for the sake of political expediency.”

- 20 Do you stand by those statements which you made in your affidavit?

MR MOYANE: Yes, I do.

ADV FRANKLIN SC: And the essential message that you convey to the Chair is that you maintain your innocence and you deny any involvement in state capture, is that correct?

MR MOYANE: Correct.

ADV FRANKLIN SC: Mr Moyane, you will know by now that the stance that you take in which you maintain innocence and a denial of any involvement is in stark contrast to what the SARS witnesses have said. You understand that?

MR MOYANE: I am not sure what the SARS evidence – SARS witnesses said.

ADV FRANKLIN SC: Well, when I talk about the SARS
10 witnesses, I am talking about Mr Williams, Mr Symington
and Mr van Loggerenberg. You say you read their
testimony.

MR MOYANE: Yes.

ADV FRANKLIN SC: And at placed in their testimony they make allegations against you in relation to your conduct at SARS which are negative and which they say demonstrates that you were involved in state capture. You are aware that that is what they allege?

MR MOYANE: Yes, which I refute.

20 **ADV FRANKLIN SC:** Yes.

CHAIRPERSON: Just to clarify, Mr Franklin, although you include Mr Williams when you say SARS' witnesses of course he was not from SARS, it is just that he testified under the SARS work stream.

ADV FRANKLIN SC: Thank you for the clarification,

Chair, I have simply used that label for the witnesses who testified under the SARS work stream.

CHAIRPERSON: Ja.

ADV FRANKLIN SC: But you understand the point the Chair is making, Mr Williams was a former Bain Consulting employee. You know that?

CHAIRPERSON: Yes.

ADV FRANKLIN SC: So that is the first group of people and then you are probably aware and I will take you to this, 10 that Bain Consulting – I will simply call them Bain, have themselves publicly said in South Africa that their role in SARS was a disaster and that you yourself had a particular agenda. I take it you read those statements in late 2018 which were put out in the media?

MR MOYANE: Yes, I read, it is just unfortunate that Bain has to make that statement, it is just unfortunate.

ADV FRANKLIN SC: I am sorry, I did not hear?

CHAIRPERSON: I am sorry, just repeat?

MR MOYANE: I am saying it is unfortunately that they 20 made that statement.

ADV FRANKLIN SC: Alright and then the third category that I would refer to is the findings in the Nugent Commission final report which was issued in December of 2018. You have referred to it in your opening statement. I take it you have read that report and you have seen what

findings were made against you.

MR MOYANE: Yes, ja, it is his findings. I do not think that there is any merits because I was not part to it.

ADV FRANKLIN SC: Sorry, I did not ...[intervenes]

MR MOYANE: As I indicated that it was a well-orchestrated process, I was not party to it, it was a decision taken by Nugent and his team.

CHAIRPERSON: As you testify, Mr Moyane, if you can try and fact me.

10 **MR MOYANE:** Okay.

CHAIRPERSON: So that – because I am the one you are telling the story.

MR MOYANE: Okay.

CHAIRPERSON: Okay.

ADV FRANKLIN SC: Thank you.

CHAIRPERSON: Okay, of course, the evidence leader is asking the questions I am not saying do not look at him, so – alright.

20 **ADV FRANKLIN SC:** Yes at this stage I simply wanted to establish that you have read that final report and you confirm that you have, correct?

MR MOYANE: I was not given the final report.

ADV FRANKLIN SC: But I thought you said you had read it.

MR MOYANE: Yes but the report was not given to me

ADV FRANKLIN SC: Right but not – despite it not being given to you, you got access to it and you read it?

MR MOYANE: No, I did not have time to read it because I felt that it had nothing to do with me, it was a meeting that – an inquiry that was done outside my scope.

ADV FRANKLIN SC: Mr Moyane, unless I am mistaken, a few moments ago you said you did read the report. Did you or did you not?

MR MOYANE: No, I read the reports of the two
10 gentlemen, the three people who came here and testified, Van Loggerenberg, Williams and [indistinct – dropping voice]

CHAIRPERSON: Okay, I am sorry, I just want to make sure I understand. Are you saying that you read what some of the witnesses who testified said about what the report says?

MR. MOYANE: Yes.

CHAIRPERSON: You did not read the actual report?

MR MOYANE: No.

20 **CHAIRPERSON:** Okay.

ADV FRANKLIN SC: Just so that there is no I misunderstanding about that, Mr Moyane, are you telling this Commission that as you sit here on the 26 May 2021 you have still not read the final report dated the 11 December 2018 of the Commission of Inquiry into Tax

Administration and Governance by SARS which we call the Nugent report? Is that what you are saying?

MR MOYANE: That is what I am saying.

CHAIRPERSON: And the interim report, did you read that one?

MR MOYANE: No, I did not read it.

CHAIRPERSON: You also did not read that one.

MR MOYANE: Yes.

ADV FRANKLIN SC: You were the sitting Commissioner
10 of SARS at the time ...[intervenes]

CHAIRPERSON: Just one second, Mr Franklin? I thought that – I understood when I was dealing with your application for leave to cross-examine Mr Gordhan I understood that your position was that either you were intending to take that report on review or you had already launched a review. I am not sure which one. So based on that I would have assumed that you had read the report, that that was a I misunderstanding?

MR MOYANE: Chair, let me clarify, thanks for bringing
20 that to my attention. When the report was finally – whatever the interim, the final report was made, I met with my counsel and they gave me a résumé of what the report is all about.

CHAIRPERSON: Ja.

MR MOYANE: I, as Tom Moyane, did not read that.

CHAIRPERSON: Okay, okay. No, that is fine.

ADV FRANKLIN SC: Alright, I had highlighted for you that on the one hand you have said that you are innocent and on the other there is this body of evidence against you and therefore it is necessary to explore this please. So if I may just concentrate firstly on Bain. You are familiar with the company Bain Consulting?

MR MOYANE: Yes, I do.

ADV FRANKLIN SC: They were appointed as a service
10 provider to SARS firstly in January of 2015, correct?

MR MOYANE: Correct.

ADV FRANKLIN SC: And then their contract was extended on various occasions thereafter in 2015,2016 and 2017 and that they performed services for SARS for approximately three years in total, correct?

MR MOYANE: Yes.

ADV FRANKLIN SC: And this was all why you were Commissioner of SARS, correct?

MR MOYANE: Correct.

20 **ADV FRANKLIN SC:** You said to the Chair that you recall that Bain made public statements in 2018 and I want to take you please to one of those and I am going to ask you please to take out SARS bundle 01. Do you have that? Please turn to annexure AW45, that is at page SAR01-252. Just to orientate you, Mr Moyane, these are annexures to

Mr Williams' statement.

MR MOYANE: You say SARS0..?

ADV FRANKLIN SC: 01, page 252. You have that?

MR MOYANE: Ja.

ADV FRANKLIN SC: Thank you, that is a public statement issued by Bain on 17 – on or about 17 December 2018, so this is what the consulting company put out into the public domain, you are free to read the entire document if you wish, but I just want to highlight certain
10 parts of it. On the first page, 252, on the left hand side of the page, this is how they open:

“The past few months have been a highly challenging and sobering period for Bain South Africa and Bain globally through public testimony and documents submitted at the Commission of Inquiry headed by Judge Nugent, it has become painfully evident that the firm's involvement with the South African Revenue Service, SARS, was a serious failure for South Africa, and SARS and
20 clearly for Bain too. The Commissions hearings and the final report published last week, have laid bare the disarray in which SARS now finds itself with both morale and performance severely damaged.”

I am just stopping there. What is your reaction to that

conclusion by Bain, what do you say about that?

MR MOYANE: Chair as I said, it is an unfortunate statement because the work that I have been able to do during my tenure and the time that I was given this opportunity, the results are very clear that it was through their counselling and assistance that we have been able to achieve the results that we were able to report here to yourself.

So I do not see why this could be seen as a serious
10 failure when the results are glaringly clear, to everybody. That it is through the work that they have done with this that we achieved this sterling work. So as I said, it is unfortunate, misinformed.

ADV FRANKLIN SC: Alright, so you say that...[intervene]

CHAIRPERSON: Hang on one second, Mr Franklin. Try and not be too far from the mic because I think as you speak, some words do not come through and we want them to be recorded, okay, continue Mr Franklin.

ADV FRANKLIN SC: Thank you, so I understand you to
20 disagree with that conclusion, is that correct?

MR MOYANE: I do.

ADV FRANKLIN SC: Then please turn to page 254 on the right hand side, there is a heading absence of public sector protocols. Do you have that?

MR MOYANE: H'm.

ADV FRANKLIN SC: Now the following is said:

“Only a small proportion minus 5% since 2010 of our work in South Africa is for the public sector. As a result, there was a lack of strong public sector capability or understanding of public sector protocols.”

And this is the important part:

10 “In hindsight, there is evidence to suggest that Mr Moyane was pursuing a personal political agenda at SARS. Proper due diligence on Mr Moyane may have identified this risk.”

So once again, there is a specific allegation that is made publicly by Bain which was the service provider during the time that you were Commissioner against you, and what is your reaction to that allegation?

MR MOYANE: Preposterous:

“That in hindsight there is evidence to suggest that Mr Moyane was pursuing a personal political agenda at SARS.”

20 **ADV FRANKLIN SC:** Yes.

MR MOYANE: I think they could have done much better to provide clear aspects as to what this political agenda is all about, it is too general.

ADV FRANKLIN SC: So you disagree with it...[intervene]

MR MOYANE: Completely.

ADV FRANKLIN SC: Right, in fact, if one looks at your witness statements, back to that one, which I hope you have handy, at paragraph 66.

MR MOYANE: Chair, with your permission Mr Franklin, let me address you to this.

CHAIRPERSON: Ja.

MR MOYANE: I find it very hard that...[intervene]

CHAIRPERSON: You are speaking to this paragraph?

MR MOYANE: Ja, in hindsight, there is evidence to
10 suggest that Mr Moyane was pursuing a personal political agenda at SARS. SARS is a revenue service not a political institution, clearly defined tasks and responsibilities. So it should have been very clear for them to provide that type of line of thinking as to what political agenda that I was pursuing.

I was dealing with tax payers, I was dealing with business, captains of industry. So there is not time for politics at SARS. We deal with technical issues that relate to the lives of South Africans, especially from a financial and
20 fiscal aspect. So that statement is just unfortunate, also.

CHAIRPERSON: Okay, Mr Franklin.

ADV FRANKLIN SC: Alright. I had asked you to look at your witness statement paragraph 66.13, it appears at SARS 03/034.

MR MOYANE: 66?

ADV FRANKLIN SC: Point 13.

MR MOYANE: Got it.

ADV FRANKLIN SC: Alright, and here having dealt with...[intervene]

CHAIRPERSON: I am sorry, is the page 66?

ADV FRANKLIN SC: No, no it is 34, Chair.

CHAIRPERSON: Page 34, yes, you can continue.

ADV FRANKLIN SC: Thank you. I want to read just part of this paragraph, you can read the whole lot if you wish
10 and it starts:

“However, I can assure the Commission that there was nothing untoward or irregular about Bain’s subsequent appointment. Indeed, I can state without any fear of contradiction that the Bain/SARS relationship yielded the best results ever recorded in the entire history of SARS.”

So stopping there Mr Moyane I understand you to say that, the far from being this being a disaster for the country, and for SARS and for Bain in fact, it was a great success, is
20 that correct?

MR MOYANE: It was a great success, Chair but let me underpin the following. In my opening statement Chairperson, I did indicate that during those financial years, we produce sterling results, which are historical and therefore I find it very strange for somebody to come and

say here, that it was a disaster.

It was historical and everybody accepted that the team at SARS had worked and put a shoulder into the work. Now, to make this curious allegations that we did not - we made, we made great strides to put South Africa where it is supposed to be and these figures are not thumb sucked and this figures are not from Moyane. These are figures from the organisation and these were accepted by the National Treasury and the country. So it is not
10 numbers that were crunched somewhere for expediency of the particular person or individuals here. I therefore, stand by my statement that that relationship was beneficial to the country.

ADV FRANKLIN SC: You see what is apparent, Mr Moyane and what is of course of interest to the Commission, is the enormous disconnect, that there appears to be between, for instance, what Bain said publicly, and what witnesses have said in this Commission and what you maintain. You accept that there is a vast
20 chasm between your version on the one hand and what Bain and the SARS witnesses have said on the other, do you accept that?

MR MOYANE: I accept that because we are talking from different perspectives.

ADV FRANKLIN SC: Alright, then as far as the Nugent

Commission is concerned, could I ask you to look at the application bundle. I am sorry, there is a lot of files and not much space. In 3, Application Bundle there are two files, please look at the second file.

MR MOYANE: Which one?

CHAIRPERSON: Someone will assist you. He will tell you again, what the numbers are, please just repeat the numbers Mr Franklin.

ADV FRANKLIN SC: Sorry, Chair, there seems to be a
10 problem getting, locating that file, but extra one for present purposes and I will retrieve it.

CHAIRPERSON: Yes, okay. Are you managing with the space there Mr Moyane?

MR MOYANE: It will come right, sir.

CHAIRPERSON: Okay, alright. What is the page number, Mr Franklin?

ADV FRANKLIN SC: Thank you, it begins at TSM 448.

MR MOYANE: Yes.

CHAIRPERSON: 488?

20 **ADV FRANKLIN SC:** No, 448, Chair.

CHAIRPERSON: 448, yes I have got it.

ADV FRANKLIN SC: Thank you. You will see that that is the first page of the Nugent Commission Report, do you see that?

MR MOYANE: Yes.

ADV FRANKLIN SC: And I wish to just put briefly certain of the conclusions that were reached by the Commission. Firstly, on page 451, paragraph 4 at the bottom of the page, do you have that?

MR MOYANE: 451, yes.

ADV FRANKLIN SC: Right. So, under the heading, the terms of reference and the Commission's primary conclusions in paragraphs 4 and 5, which I will take you to the following it said:

10 “The conclusion we reach at the end of this inquiry is that there has been a massive failure of integrity and governance at SARS and all else follows from that what SARS was and what it has become is sufficient proof in itself, that integrity and governance failed on a massive scale.”

Then in paragraph 5:

20 “I reported in my interim report, that that was brought about by at least reckless mismanagement on the part of Mr Moyane. We have heard much evidence since then, what has become clear is that what occurred at SARS was inevitable the moment Mr Moyane set foot in SARS. He arrived without integrity and then dismantled the elements of governance one by one. This was more than mere mismanagement; it was seizing control of SARS as

if it was his to have.”

Now were those findings brought to your attention?

MR MOYANE: Yes, they were, can I comment on that?

CHAIRPERSON: Yes, you may comment.

ADV FRANKLIN SC: You may.

MR MOYANE: The conclusion that is a massive failure of integrity in governance at SARS, I dispute. We did put governance measures at SARS, let me cite an example Chairperson. On my first Exco meeting on the 29th of
10 September 2014, which was labelled familiarisation meeting with Exco, which means no business to be discussed, to understand who is who in the organisation. Right towards the end of that session one member of Exco said, sir, Commissioner we would like to approve an advanced payment of more than 100 million to a company that is going to start work in 2014.

That is flouting governance principle. You do not pay three years in advance for work that is yet to be done and I asked politely, what is it that merits such payment in
20 advance? What if this company goes belly up? Sir, because we have had a discussion with this company for discounts, if we do not take them now, they will go away. It is preposterous and that was refused and rejected.

So if this type of attitude is not advanced to say governance principles and processes must be followed

then you are landing into an organisation where things are not done properly and I was supported by the auditor, the head of audit, that it cannot be done.

So to say, integrity and governance, and then I ran this organisation as my own, this report for fails to understand the fundamentals of what management is all about. I do not take decision unilaterally on my own. There was a collective here, decisions were made, debates were made were entered into. So as I said, I do not take
10 this report as serious, it was a report that was prepared in order to tarnish my organisation. It says, he arrived without integrity, how could he determine that I had no integrity?

ADV FRANKLIN SC: Thank you.

MR MOYANE: And he said, I dismantled the elements of governance one by one and this was more than the mere management, it was system control of SARS as if it was his to have. Chair I can confirm here without contradiction, I ran a consultative organisation where in everything that was discussed, it was put before a team for discussion and
20 approval.

So I never took a dictatorial position. All those who testified here, they should be able to talk the truth and not cast dispersions. So I refute this type of report and therefore that is as I said I did not take this report as serious because it was mere rubberstamping a decision

taken in order to tarnish my image that I walked without integrity, I had walked without - Chair, I submit that this statement, any person who reads it will see that it is unfounded.

ADV FRANKLIN SC: Right, we will get on to some of the detail later. Then could I also asked you to look at page 47...[intervene]

ADV FRANKLIN SC: Oh, is this a convenient time Mr Franklin?

10 **ADV FRANKLIN SC:** Yes, thank you.

CHAIRPERSON: Let us take a break, it is quarter past, we will resume at half past 11, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Franklin.

ADV FRANKLIN SC: Thank you Chair. I understand from my fellow evidence leader Mr Chaskalson that there is something that he wishes to put on record at the commission and may I stand down while that happens?

20 **CHAIRPERSON:** Yes that is fine. Mr Chaskalson. Somebody must sanitise the podium. Where is the person who normally does that – he is not here. Somebody will come to sanitise it just now. Ja, ja, okay. Thank you.

ADV CHASKALSON SC: Thank you Chair. Chair there has been coverage in the media overnight of the settlement

reached by Transnet and McKinsey following McKinsey's commitment at this commission to repay Transnet and SAA all of the fees it earned at those SOE's in contracts where it worked alongside Regiments Capital.

Now on Monday the secretary of the commission received a letter from McKinsey's legal representatives Norton Rose Fulbright. I did not refer to it on Monday or indeed yesterday because the settlement had not yet made public but with your leave Chair I would like to refer to it
10 now.

CHAIRPERSON: Yes you may do so.

ADV CHASKALSON SC: And Norton Rose write –wrote to the secretary

“Dear Sirs”

And it was written on Monday.

“During today's viva voce evidence by Mr Paul Holden to the commission he referred to table 73 of his statement and amounts paid by Eskom, Transnet and SAA to
20 McKinsey. The evidence leader Mr Chaskalson SC drew to the attention of the commission – drew the attention of the commission to the fact that McKinsey had repaid the amounts in question to Eskom and had undertaken to pay the other

amounts to Transnet and SAA. Mr Holden was asked whether he had any knowledge of whether any other entity had likewise made such commitments. We are pleased now to advise the commission and ask you to pass the information onto the evidence leader Mr Chaskalson that Transnet and McKinsey have in fact entered into an amicable settlement agreement in terms of which

10 McKinsey will be repaying to Transnet an amount of R870 million within the next few days. This amount is fully inclusive of all interest.”

Then yesterday Chair Transnet and McKinsey issued a joint press statement which reads as follows: It is date stamped 25 May 2021.

“The Transnet SOC Limited and McKinsey and Company announced that they have finalised the settlement of the fees

20 McKinsey committed to return to Transnet at the Judicial Commission of Inquiry in December 2020. The full and final settlement of R870 million includes the fees paid to McKinsey in respect of the project taken – undertaken with Regiments Capital

plus interest.”

So Chair by the end of this week McKinsey will have repaid to Eskom and Transnet all of the fees that they earned in contracts tainted by state capture with interest. These are the fees in relation to contracts where they worked alongside Regiments at Transnet and alongside Trillian at Eskom.

McKinsey has done that Chair as their statements confirm because that is what a responsible corporate citizen
10 should do – oh a responsible – responsible counsel should switch his phone off when he makes a statement like this.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: But the point that I would emphasise Chair is that if one goes to table 73 of Mr Holden’s report the amounts that McKinsey has repaid are less than 3% of the total amounts that are listed on table 73 and the companies listed on table 73 include – well they include some Gupta Enterprise companies from which we cannot expect voluntary repayment but they include a series
20 of South African and multinational companies who are responsible for vast sums of money on contracts that were linked to state capture.

And Chair those companies have now got Mr Holden’s report and McKinsey has shown what a responsible corporate citizen does in these circumstances.

I – I am looking forward to seeing what those other companies do.

Thank you Chair.

CHAIRPERSON: We issued a media statement some time last year which was to the effect that at that stage as a result of discussions that had been held between McKinsey and the commission's legal team you were leading that work stream McKinsey had committed itself to a I think it was R650 million I am not sure but that was not the final amount
10 because they were still to be – they were still going to look at issues of interest and so on.

I guess that this amount of R870 million is now inclusive of the – of interest and whatever other monies they had not been finalised with them. Is that right?

ADV CHASKALSON SC: Yes Chair in particular the press statement and the McKinsey letter both make it clear that it includes interest.

CHAIRPERSON: Yes. Yes. Well once again I think that even though it is not the commission's mandate to have
20 these amounts recovered obviously that is what everybody in South Africa would like to happen but I think that when some people criticise this commission for the costs that have been incurred through its work they remember that at least here is this one occasion where as a result of discussions between a unit of the commission and McKinsey

a substantial amount of money has been – or will be repaid within a few days as a result of their commitment made to the commission at the time.

So this is R870 million – it might be a small percentage of the entire amount but nevertheless it is quite something.

ADV CHASKALSON SC: Thank you Chair and I would hope that the other companies on that list are taking notice and that the R870 million may grow.

10 **CHAIRPERSON:** Yes, no I would encourage the other companies on that list who also benefitted from contracts that have been tainted to do the same.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: Thank you. Mr Franklin.

ADV FRANKLIN SC: Thank you Chair.

CHAIRPERSON: Yes. Yes we may continue.

ADV FRANKLIN SC: Thank you. Mr Moyane before the break you will recall that I had taken you to various findings in the Nugent Commission Report and you have disagreed
20 with the conclusions that were set out there. Correct.

MR MOYANE: Yes I did.

ADV FRANKLIN SC: And I understood in the course of your opening statement for you to say that you were most unhappy and aggrieved that you were removed as Commissioner by President Ramaphosa, is that correct.

MR MOYANE: That is correct.

ADV FRANKLIN SC: And you said that no performance issues were raised with you, correct.

MR MOYANE: That is correct.

ADV FRANKLIN SC: You do understand that the President was acting on a recommendation of the Nugent Commission to remove you. Did you know that?

MR MOYANE: I note what you are saying.

ADV FRANKLIN SC: And that brings me to a topic which I
10 would like to deal with briefly in relation to your lack of participation in that commission. You know that the commission held hearings in 2018 and finally issued its report on the 11th of December 2018 and as is recorded in there it heard evidence from some 64 witnesses most of them as I understand it SARS employees or former employees. You would accept that that is correct.

MR MOYANE: No I will not say it is correct. I do not know how many people participated but yes there were people who participated.

20 **ADV FRANKLIN SC:** Yes but if the commission itself reports that there were 64 witnesses you do not dispute that.

MR MOYANE: Well it has no impact on me. I have no interest in that.

ADV FRANKLIN SC: That is not what I asked you. If the

commission records in its report that it heard evidence from 64 witnesses do you accept that or not?

MR MOYANE: Why should I accept Sir?

ADV FRANKLIN SC: And why should you not?

MR MOYANE: Chair I think I am – I need protection.

CHAIRPERSON: Let ...

MR MOYANE: Why should I accept something that ...

CHAIRPERSON: Let us put it this way.

MR MOYANE: Yes.

10 **CHAIRPERSON**: Do you intend making an issue of the numbers or not?

MR MOYANE: No.

CHAIRPERSON: No. Okay all right.

MR MOYANE: That is what I said in the beginning Sir.

CHAIRPERSON: Yes. Yes no that is fine.

ADV FRANKLIN SC: All right in your replying affidavit in the application to cross-examine Minister Gordhan I can take you to the actual page if you would like it but it is not necessary unless you wish me to. What you say in
20 paragraph 43 and I will give you the reference and we can come back if you would like to see it. It is page TSM702 in Application Bundle N3. What you say there you say:

“Thirdly I was denied the right.”

CHAIRPERSON: I think he would like to see it.

MR MOYANE: Yes let me see it.

CHAIRPERSON: Ja.

MR MOYANE: Yes.

ADV FRANKLIN SC: Please give Mr Moyane.

CHAIRPERSON: Mr Moyane somebody will assist you Mr Moyane.

MR MOYANE: Bundle 3.

CHAIRPERSON: Somebody will come and assist you. Just make sure you do not unduly increase the number of files that are there because he has got many already. So use
10 the ones that he has got there. Okay all right.

ADV FRANKLIN SC: Just to orientate you Mr Moyane.

MR MOYANE: Yes Sir.

ADV FRANKLIN SC: At page 692 that is the start of your replying affidavit in the application to cross-examine Minister Gordhan. And I am referring you to paragraph 43 on page 702. Do you have that?

MR MOYANE: I have that Sir.

ADV FRANKLIN SC: Yes you were dealing with under your heading Misconceived Reliance on Irrelevant Opinions of
20 the SARS Commission. And in para 43 you said:

“Thirdly I was denied the right of participation in the SARS Commission and subsequent to my lodgement of legal objections to its processes I was legally precluded from such participation.”

I just – stopping there. Is that correct? Do you accept that you were invited to testify but you chose not to?

MR MOYANE: Chair I think if we read this correctly.

“Thirdly I denied – I was denied the right of participation.”

And that should – if that is understood I was not given an opportunity.

ADV FRANKLIN SC: Just let me ask you again.

CHAIRPERSON: Yes.

10 **ADV FRANKLIN SC**: Do you accept that the Nugent Commission invited you on more than on occasion.

MR MOYANE: No the...

ADV FRANKLIN SC: Can you just wait until I ...

MR MOYANE: The Nugent Commission did not invite me.

ADV FRANKLIN SC: Please wait until I finish my question.

MR MOYANE: Okay my apologies – my apologies. I withdraw.

ADV FRANKLIN SC: Do you accept that the Nugent Commission invited you to testify before it and that you
20 declined to do so.

MR MOYANE: May I answer?

ADV FRANKLIN SC: Yes.

CHAIRPERSON: Yes you may answer yes.

MR MOYANE: Once again Chairperson I put it on record I deny that I was invited.

CHAIRPERSON: Hm.

ADV FRANKLIN SC: All right and...

MR MOYANE: I did not receive any invitation.

CHAIRPERSON: You know whether your lawyers received any invitation. Do you know whether your lawyers received any invitation from the – from that commission?

MR MOYANE: Well Chair on – on the record I would not know now but if that question could be raised with them but in the event they did they would have informed me.

10 **CHAIRPERSON:** Yes.

MR MOYANE: Because when we went with Advocate Dali Mpfu, Eric Mabuza and I think Ms – Advocate Seboko. We went there – there was invitation on a particular matter so I want to put it on record that a formal invitation to participate in the whole inquiry I am not aware of – I have never received it. Should have been directed to me also because I was an employee of SARS. I was at the centre of what was being investigated. At the time I had not lost – I was on suspension so I just want to cor...

20 **CHAIRPERSON:** Okay so – so the position as I understand it and you must tell me if my understanding is correct is that you are accept that there was an invitation that was given to you either directly or to your legal team to come and deal with a specific issue at that commission. But you say you never received any invitation to participate in the

commission as a whole, is that correct?

MR MOYANE: That is correct Chair.

CHAIRPERSON: Yes. But you say you are not aware whether your attorneys or your lawyers received any such general invitation but you would have expected that if they had received it they would have told you and they did not tell you.

MR MOYANE: No.

CHAIRPERSON: Okay. Sorry.

10 **ADV SEBOKO**: (Inaudible)

CHAIRPERSON: I cannot hear you I think speak closer to the mic Ja.

ADV SEBOKO: I beg your pardon for interrupting you, my learned friend and the witness. If I just – if I may just speak from memory from that Nugent Commission. I think what had happened is because it was running at the same time as the disciplinary hearing Mr Moyane attended the attorneys were themselves in – I suspect the attorneys wrote a letter to the commission and asked the commission
20 to hold the processes of Mr Moyane 00:17:49 at that moment the feeling of the legal representation was that a commission was canvassing the same issues as the disciplinary committee. In response...

CHAIRPERSON: I am sorry. I think it is because the mic not close to you I hear some of the things you say I do not

hear others. Oh okay I think now it is going to be better.
Please start afresh.

ADV SEKOKO: Okay. I beg your pardon that I interrupted.

CHAIRPERSON: Ja please started afresh ja.

ADV SEKOKO: On the issue that Mr Moyane is trying to remember I just need to try and assist from a point of memory. Chairman would be aware now from the reports that the – Mr Moyane at the same time was attending a disciplinary hearing and at the same time the Nugent
10 Commission was also running. I think the attorneys then wrote to the Nugent Commission and asked the Nugent Commission to suspend their work in respect of Mr Moyane because the feeling at the time was that the commission was traversing the same issues as the commission. In response to that letter I think then the invitation came.

CHAIRPERSON: The general invitation.

ADV SEKOKO: Correct. I do speak under correction. I do not have those papers (inaudible).

CHAIRPERSON: Okay. Mr Franklin. Please switch off the
20 – that mic – ja.

ADV FRANKLIN SC: Yes thank you Chair. Mr Moyane I am surprised to hear what you say. I would like to take you to the Nugent Commission Report please and I would ask you to look at TSM page 465. I understand that the file before you...

CHAIRPERSON: Maybe – maybe let me put this to Mr Moyane and maybe that is what you are going to Mr Franklin. You – did you understand what your counsel was saying? She was saying there was a general invitation that was sent to your lawyers by the commission but the legal – your legal team took a certain approach to it namely to request that because there was a disciplinary hearing taking place at the same time the commission should not deal with the same issues. I think that is what she was saying. You
10 understood that?

MR MOYANE: Apologies Chair – yes I understood that.

CHAIRPERSON: Okay. Okay all right. Mr Franklin.

ADV FRANKLIN SC: All right. Thank you. So you do accept that you were invited to attend but you declined to do so on a particular basis.

MR MOYANE: If I go with what my counsel is saying I want to concur with what she said.

ADV FRANKLIN SC: Good. Could I ask you then to look at the part of the Nugent Report that I referred to under the
20 heading Response to the Commission of the Former Commissioner of SARS. Do you have that?

MR MOYANE: On which?

CHAIRPERSON: In which bundle is that?

ADV FRANKLIN SC: It is in ...

CHAIRPERSON: Is that the Bain Statement?

ADV FRANKLIN SC: No it is the – it is one of the application bundle N3.

CHAIRPERSON: Oh SARS Bundle 3?

ADV FRANKLIN SC: No it is the Application Bundle N3.

CHAIRPERSON: Oh. Oh I have got it ja.

MR MOYANE: Is it page 425?

CHAIRPERSON: I have got it ja.

ADV FRANKLIN SC: Yes it is – you have that Mr Moyane?

MR MOYANE: Yes which page is that?

10 **ADV FRANKLIN SC:** So paragraph 45 ...

CHAIRPERSON: What page?

ADV FRANKLIN SC: And you will see on page 465. Okay. Thank you. Right and what is recorded by the commission is this in paragraph 45:

20 “The former Commissioner of SARS Mr Tom Moyane kept away from the commission from inception appearing on one occasion only and then only to disparage an attempt to derail the inquiry which has continued relentlessly since then. It is clear that Mr Moyane does not have and never had – has had any intention of accounting for what occurred during his tenure at SARS or of confronting the evidence the commission has received.”

And then 46:

“Mr Moyane was pertinently notified each time public hearings were held but neither he nor any representative on his behalf was ever present except on the occasion I have mentioned. Indeed on that occasion he protested at evidence being heard in his absence but then left the hearing before the next witness was called. He was pertinently
10 asked whether he wished to respond to evidence that had been given in public much of which was damning of his management of SARS but he declined. Prior to the submission of the interim report he was afforded the opportunity to make submissions on why it should not be recommended that he be removed from office which he spurned instead he remained in the shadows defiantly spewing invective
20 at the commission through his own mouth and through that of his attorney. His conduct throughout the inquiry fortifies our view that he is and was not fit to be Commissioner of SARS. The correspondence between the commission

and Mr Moyane's attorney in that regard is appendix 2."

So were you aware of that particular section of the report?

MR MOYANE: Chairperson with your permission and with due respect the Chairperson did ask me a few minutes ago as to whether I concur with my legal counsel explained to yourself here. That there were two things running concurrently. And therefore the allegations that I spurned, I
10 rejected, I refused, does not have merit because it is clearly stated in what was being said here and I remember very well Chairperson subject to correction that some of these things were taken place when I was appearing to Advocate Carrim am I right? It was Advocate Carrim.

CHAIRPERSON: The Chairperson of the disciplinary inquiry.

MR MOYANE: Ja the Chairperson of the disciplinary inquiry yes. Now to say that I was sitting in the shadows defiance, spewing infective – invective at the commission. I want to
20 say it is for the first time I am speaking here. For the last three years Tom Moyane has been silent. I have never issued a press statement. Never have I addressed any media. So this statement has no merit whatsoever.

ADV FRANKLIN SC: You will see that the Nugent Commission referred to an appendix 2 and that you will find

also in the bundles before you. Chair it is Application Bundle N3 I think it is N 3(c) at page TSM1740 to 1777. 1777. Do you have that?

MR MOYANE: Chair if you will repeat the TSM numbers Sir? I have appendix 2.

ADV FRANKLIN SC: Thank you.

MR MOYANE: Yes I have that appendix.

CHAIRPERSON: I think it is 2 I have got.

ADV FRANKLIN SC: Thank you. Mr Moyane that is a
10 bundle of correspondence between the commission and your attorneys Mabuza Attorneys. You can page through it to see that. I am not going to waste time by going through all of these letters but I what I want to put to you that it is quite apparent from these letters that you were given specific and when I say you I mean through your attorneys specific personal invitations to attend and testify at the commission. Would you accept that?

MR MOYANE: I am looking at the documents Sir. If I may ask what comment do you want me to make Sir?

20 **ADV FRANKLIN SC:** Yes I understood you to accept on the basis of what your counsel put that you were invited to testify.

MR MOYANE: I see the correspondence.

ADV FRANKLIN SC: Yes.

MR MOYANE: Yes.

ADV FRANKLIN SC: You were also given the transcript of the hearing from time to time and asked to respond and if you want to look to specific documents look at page 1753 for instance. You see that letter?

MR MOYANE: Yes I see the letter.

ADV FRANKLIN SC: The first paragraph.

“I write to enquire whether your client wishes to respond to the evidence given at the commission’s public hearings. A transcript of which is attached for your convenience or
10 wished to present evidence on any other matters relevant to the inquiries. Should he wish to do so he is entitled to make arrangements to meet with counsel for the commission ...”

CHAIRPERSON: He is invited.

ADV FRANKLIN SC: Sorry it should be wished.

CHAIRPERSON: Is this entitled (indistinct).

ADV FRANKLIN SC: I am sorry.

CHAIRPERSON: Invited.

ADV FRANKLIN SC:

20 “Should he wish to do so he is invited to make arrangements to meet with counsel for the commission to enable counsel to assess the evidence he wishes to present to identify in what respect and to what extent there is a basis for the evidence and to secure

documents that might be relevant to the evidence.”

So that is self-explanatory. That is an invitation and also to testify and also an invitation to respond to the evidence which had been given thus far. Not so? Do you agree?

MR MOYANE: I note what is contained in the document.

ADV FRANKLIN SC: Yes but do you agree with my question?

10 **CHAIRPERSON**: Just repeat the question Mr Franklin?

MR MOYANE: What is the question Sir?

ADV FRANKLIN SC: You agree that that is an invitation to you to testify and to make comments on or respond to the evidence which had been given thus far and you were given a transcript of the evidence for that purpose.

MR MOYANE: Yes I – I take cognisance of that.

ADV FRANKLIN SC: Right. You did not take up either invitation did you? You neither testified nor responded to the evidence that had been given up to that point. Correct.

20 **MR MOYANE**: Correct but I think there was an explanation as to why we could not attend and why we had so many things that we had to attend to as a team.

ADV FRANKLIN SC: And then I want to ...

CHAIRPERSON: I am sorry was that explanation that there was a disciplinary process going on at the same time.

MR MOYANE: Correct Sir.

CHAIRPERSON: Yes. Do you have a recollection of – from when to when the disciplinary hearing went or you – in terms of months not necessarily the dates or the month.

MR MOYANE: I would like to defer this to counsel because I do not want to mislead the Chair.

CHAIRPERSON: Ja. No, no that is fine.

MR MOYANE: I will be able to come back to you on that as to when.

10 **CHAIRPERSON**: Ja okay, okay.

MR MOYANE: Yes Chair.

CHAIRPERSON: That is fine.

ADV FRANKLIN SC: Yes then if I could refer you to a further letter and may (speaking over one another).

CHAIRPERSON: Maybe but a – I am sorry Mr Franklin. But I can ask this question. You did say earlier on that if your lawyers had received an invitation, you are sure they would have told you. Now that you have seen the correspondents address by Judge Nugent to your then attorney, does that
20 jog your memory that maybe they did tell you about it or is your recollection that they did not tell you about it?

MR MOYANE: No, my memory is now drawn to the fact that they did tell me and we were busy with something.

CHAIRPERSON: Okay.

MR MOYANE: Yes.

CHAIRPERSON: Okay. Mr Franklin.

ADV FRANKLIN SC: Thank you. And do you recall as well that the Commission wrote to you on the 7th of September 2018 and I am not referring to page 1756 to 9? It wrote to you to say that:

“The Commission is required to submit an interim report to the press by no later than the end of September 2018.

10 You will be aware from the transcripts that had been furnished to you of the evidence that has been given thus far in public hearings and of documentary evidence in the public domain the report from KPMG commissioned by your client and the record of court proceedings initiated by your client.

Your client has been advised on more than one occasion to respond to the evidence but has failed to respond to those invitations.

20 The commission is considering reporting to the President that the evidence disclosed as the facts summarised below, which have not been contradicted by any submissions received or by contrary evidence...”

And then there follows a summary of that evidence. And on the last paragraph of page 1759, Judge

Nugent says to your attorneys:

“Should your client wish to make submissions on why the commission should not report to the President on the terms summarised above, he should do so in writing by no later than 21 September 2018, so that his submissions may be considered before the commission reaches its conclusions...”

So you see you were invited specifically to
10 comment on the commission’s proposed findings. You see that?

MR MOYANE: Yes, I do.

ADV FRANKLIN SC: And you did not take up that invitation either, correct?

MR MOYANE: I think this question has been answered in the previous admission, as I said.

ADV FRANKLIN SC: Ja, just answer the question. You did not take up that invitation, did you?

MR MOYANE: We did not, yes.

20 **ADV FRANKLIN SC**: And then, do you know of that – your counsel appeared and I think you were there on the 29th of June 2018. You were given an opportunity to make objections to the inquiry and that is what your counsel did on your behalf. Do you recall that?

MR MOYANE: On the 29th of June?

ADV FRANKLIN SC: Yes, the date is not important but that is the date, the 29th of June 2018. I am sure you cannot ...[intervenes]

MR MOYANE: And my counsel rejected it?

CHAIRPERSON: That is the two of you. Well, maybe not the two of you. But he is saying, on that date you and your counsel appeared before the commission – that commission. He is asking whether you remembered that to raise objections to the commission?

10 **MR MOYANE:** But I cannot recall, Chair.

CHAIRPERSON: You cannot recall. Okay. But you do recall being there with your counsel as the proceedings of the commission on some occasion?

MR MOYANE: Yes.

CHAIRPERSON: Yes. You recall what the purpose was of your presence on that day?

MR MOYANE: Chair, it is three years down the line.

CHAIRPERSON: Or you cannot remember?

20 **MR MOYANE:** Three years down the line. I cannot recall that.

CHAIRPERSON: Okay. No, that is fine.

ADV FRANKLIN SC: Well, let me remind you. The commission issued a ruling in relation to the objections which you raised. It is dated the 2nd of July 2018 and it appears at page TSM-436, still in the Application Bundle

M3, Annexure BG-2.

CHAIRPERSON: Is that a different bundle?

ADV FRANKLIN SC: It is in my second file, Chair. I am not sure if it is in the same file for you.

CHAIRPERSON: But what is it, then maybe I will know?

ADV FRANKLIN SC: It is Annexure PZ-2 to Mr Gordhan's affidavit and it is page TSM-436.

CHAIRPERSON: Have you found it?

MR MOYANE: Yes.

10 **CHAIRPERSON:** Oh, okay. Well, I will do without. Hopefully, I can follow.

ADV FRANKLIN SC: Thank you.

CHAIRPERSON: Okay continue.

ADV FRANKLIN SC: Thank you. Chair, that is a ruling which the commission made on the 2nd of July, as you can see from page 447. And what the commission did was to refuse all of the rulings and relief that you sought. And to establish what it is that you sought, please look at paragraph 13. You have that on page 439?

20 **MR MOYANE:** H'm. Yes.

ADV FRANKLIN SC: And what is recorded is this:

“Before turning to the submissions that were made, it is convenient to deal with the rulings that were sought.

I was asked to make five rulings that were

expressed as follows...”

And there are the various rulings. The first of which is a discontinuation of this commission. Alternatively, a stay of its proceedings pending the outcome of a disciplinary inquiry. And then there were various others which you can read through if you wish.

MR MOYANE: [No audible reply]

ADV FRANKLIN SC: Does that job your memory?

MR MOYANE: Yes, it does.

10 **ADV FRANKLIN SC**: So the objections you raised were dismissed on the 2nd of July but you still did not appear at the commission thereafter. We know that. Correct?

MR MOYANE: Correct.

ADV FRANKLIN SC: And then if I could refer you to the last letter that I wish to refer to. And that is at page 173 – sorry, 1772 dated the 12th of November 2018 still in Appendix 2.

MR MOYANE: Ja.

ADV FRANKLIN SC: Alright.

20 **MR MOYANE**: Paragraph?

ADV FRANKLIN SC: [No audible reply]

CHAIRPERSON: Which bundle is that? Is it still one of the application files?

ADV FRANKLIN SC: Yes, it is. It is on the application bundle and ...[intervenes]

CHAIRPERSON: We need to have, all three of us – well, of course, counsel as well, who are present and other people. At least the three of us must have the same ...[intervenes]

ADV FRANKLIN SC: Yes.

CHAIRPERSON: ...bundle, so that it is easier when you say bundle so and so. I think the application files are the ones seem not to be numbered or given a particular letters to identify them.

10 **ADV FRANKLIN SC:** Yes ...[intervenes]

CHAIRPERSON: Maybe ...[intervenes]

ADV FRANKLIN SC: Chair, that is correct. I am sorry. We have established during the course of this testimony ...[intervenes]

CHAIRPERSON: Yes/

ADV FRANKLIN SC: ...that there seems to be a dissonance.

CHAIRPERSON: Yes.

ADV FRANKLIN SC: The page numbers are the same.

20 **CHAIRPERSON:** Ja.

ADV FRANKLIN SC: But the file numbers are not.

CHAIRPERSON: Maybe for convenience what we should do is. We can do one of two things. We can take a short adjournment and you – when I come back you are able to say let us mark that one, this - let us mark that one there,

so that we just need to say bundle whatever. Then we all can find it easily. Or if it is convenient to you, you can postpone asking questions relating to this until after lunch and during the lunch break that can be sorted out.

ADV FRANKLIN SC: Yes, I ...[intervenes]

CHAIRPERSON: I am easy whichever you prefer.

ADV FRANKLIN SC: Thank you, Chair. I think it would preferable to do it during the lunch adjournment ...[intervenes]

10 **CHAIRPERSON:** Ja, oaky.

ADV FRANKLIN SC: ...so that there is time. I will simply ask one in relation to one more letter which I understand the witness has.

CHAIRPERSON: Ja, okay.

ADV FRANKLIN SC: Which is at page 1772 and it runs to page 1777. You have that, Mr Moyane

MR MOYANE: Yes, I have.

ADV FRANKLIN SC: Dated the 12th of November 2018 and this is a further letter from the commission to you.

20 **CHAIRPERSON:** Oh, by chance I have it in front of me too.

ADV FRANKLIN SC: Oh, great.

CHAIRPERSON: Ja, okay.

ADV FRANKLIN SC: And this is another invitation to you, Mr Moyane, to consider the potential findings which are

summarised in the letter and to respond to them and to say why those findings and recommendations should not be made. You see right at the end of the letter it is said:

“Your client is invited to furnish written submissions to the commission as to why the above findings and recommendations should not be made.

Should he wish to furnish submissions, he should do so no later than 23 November 2018...”

10

Do you see that?

MR MOYANE: Yes, I do.

ADV FRANKLIN SC: And you would accept that you did not take up that invitation either?

MR MOYANE: Yes.

ADV FRANKLIN SC: So, Mr Moyane, the position we have then is that a special commission of inquiry was set up in order to investigate SARS but it had to proceed to issue its final report without the benefit of the testimony of the sitting commissioner. Correct?

20

MR MOYANE: Yes.

ADV FRANKLIN SC: And I think the question I have and perhaps the Commission have and perhaps the public may have is. Why did you not simply tell your story?

MR MOYANE: Why did I tell my story?

ADV FRANKLIN SC: Yes, why did you not go before the Nugent Commission and refute the testimony that had been given by the 64 witnesses who had been, most of them, highly critical of you? Why did you not go and tell Judge Nugent that what they were saying about you is untrue?

MR MOYANE: Simply put and unequivocally so. It was very clear from our perspective that there were two running parallel and I needed to clear my name from a disciplinary perspective so that when I go to the Nugent Commission
10 we had a very clearly defined platform upon which we can argue matters. And I think my counsel did write a letter to say that the issues that they wanted to be clarified in the letters that were sent between the two institutions.

We are now talking about the water under the bridge but ja, a decision had been taken. That inquiry took place in the background of the fact that as much as it took a decision that the President must make a decision, my fate had been decided on the 18th of March 2108.

ADV FRANKLIN SC: Well, Mr Moyane, that is an
20 extraordinary statement to make, with respect. Are you saying the whole commission was a sham?

MR MOYANE: I am not putting words in your mouth. I – it is – you may turn it the way you want, sir.

ADV FRANKLIN SC: No, I am asking you.

MR MOYANE: I never said so.

ADV FRANKLIN SC: Well, why would you not then present yourself as the sitting commissioner and give the commission the benefit of your testimony in relation to the events that they were investigating. You were the prime witness, surely.

MR MOYANE: My opening statement did indicate, Chair. I think I need to reiterate. But it was impossible for us to be able to deal with these matters. Two parallel processes taking place. And also there were issues that we were not
10 happy with and those matters were not addressed and given attention to. We did say that there was conflict of interest by one of the members. I think it is Katz(?) and other members of the team. So we wanted them to recuse. And those matters were not attended to.

ADV FRANKLIN SC: Yes but the commission heard your objections and ruled against you. Once it had ruled against you, why then did you not tell your story? You realised that the commission was not going to uphold your objections. Were you not very concerned to tell the truth
20 so that the Commission would not ultimately make misguided findings?

MR MOYANE: I do not want to ask you a question sir but it is a rhetoric question. With your permission, Chairperson?

CHAIRPERSON: H'm?

MR MOYANE: What truth was the commission seeking? The matter of the fact that I ran that organisation to the best of my ability. The situation changed dramatically when there was a new minister who came into the organisation. That is all what happened. Is that, there was nothing that I hid. There was nothing that was illegal that I committed in that organisation. What truth? There was nothing I was hiding. Everything I did was above board.

10 **ADV FRANKLIN SC:** But that is not what the witnesses said and you were told what the witnesses said and you were given the transcripts of what the witnesses said but you choice not to refute it. That is what I am exploring. That is what the Commission wants to understand. That is what the public wants to understand. Why did you not use the opportunity to tell the truth?

CHAIRPERSON: In other words, Mr Moyane. Mr Franklin is saying. Once you saw the transcripts of what the witnesses were saying, if you took the view that those
20 witnesses were being untruthful about you in what they were saying, one would have expected that you would want to go to that commissioner and tell the commissioner: This is not true. Here is the correct picture. Here is what happened.

And you put your side of the story before the

commission reaches its findings. He is saying, why did you not choose to do that because then the commission would have had the benefit of your side of the story and then it would be – it would have been in a better position to decide what was true and what was not true.

COUNSEL: Mr Chairman. I beg your pardon, sir.

CHAIRPERSON: Ja?

COUNSEL: Before the witness answers. My learned friend's earlier question was that 64 witnesses testified at
10 the commission. And I think as we proceed, the impression is then made that all 64 witnesses should have – or may have implicated Mr Moyane.

CHAIRPERSON: Oh, okay.

COUNSEL: I do not think that is true.

CHAIRPERSON: Okay.

COUNSEL: So if the question is asked. Can we just ...[intervenes]

CHAIRPERSON: Just some ...[intervenes]

COUNSEL: Yes.

20 **CHAIRPERSON**: Okay. No, that is fine. Mr Moyane, you heard my ...[intervenes]

MR MOYANE: I heard your line of – Mr Chair.

CHAIRPERSON: Yes.

MR MOYANE: And I thank you for elucidating this matter. But Chair, I would like to, at this point, to reserve my

comment on this matter.

CHAIRPERSON: H'm, h'm.

MR MOYANE: And the Commission may take a position on it.

CHAIRPERSON: H'm. Okay, Mr Franklin.

ADV FRANKLIN SC: Mr Moyane, reserve it until when? You are testifying the Commission now. The Commission has asked you a question. Do you not want to answer it now?

10 **MR MOYANE:** No, I do not want to answer it.

ADV FRANKLIN SC: But I am asking you to answer it.

MR MOYANE: I am saying, I am not answering, sir.

ADV FRANKLIN SC: Well, it is not really for you to decide.

MR MOYANE: I have no comment.

ADV FRANKLIN SC: So you ...[intervenes]

MR MOYANE: I have no comment. I think... It is a little bit unfair. I have no comment.

ADV FRANKLIN SC: Right. The ...[intervenes]

20 **CHAIRPERSON:** Ja, I think that is good enough.

ADV FRANKLIN SC: Yes.

CHAIRPERSON: Because it is been clarified exactly what your question was and it called for an explanation why he did not go to the commission and put his side of the story. He does not have a comment.

ADV FRANKLIN SC: Thank you.

CHAIRPERSON: H'm.

ADV FRANKLIN SC: You did earlier in response to the Chair deal with the question of your intention to review the Nugent Commission report and can you confirm that you said at a point in a time that you intended to review and set it aside or bring an application to court to review the Nugent Commission report and set aside?

MR MOYANE: Yes.

10 **ADV FRANKLIN SC:** And – but you did not ever proceed with that?

MR MOYANE: Well, it is not like it might not take place.

ADV FRANKLIN SC: Okay.

MR MOYANE: It does not, necessarily, mean that we preclude that opportunity to take place.

ADV FRANKLIN SC: You have not persuade a review application, correct?

MR MOYANE: Yes.

20 **ADV FRANKLIN SC:** Alright. Could I then ask you to go back to your witness statement? [Speaker moves away from speaker] ...where to find that now with all the files around you but it is SARS Bundle 03.

MR MOYANE: Yes.

ADV FRANKLIN SC: You have that?

MR MOYANE: I have it, sir.

ADV FRANKLIN SC: One of the topics you deal with is your appointment as commissioner. And could I ask you to please turn to your statement, affidavit at paragraph 66 starting at SARS 03-031?

MR MOYANE: [No audible reply]

CHAIRPERSON: I am sorry. Please repeat the page.

ADV FRANKLIN SC: It is SARS Bundle 03. It is page 031.

CHAIRPERSON: Page 31?

10 **ADV FRANKLIN SC:** Ja.

CHAIRPERSON: Okay that will be page 31.

ADV FRANKLIN SC: Do you have that Mr Moyane?

MR MOYANE: Which – yes, I – she did indicate which one. Which part?

ADV FRANKLIN SC: Paragraph 66.

MR MOYANE: Yes, 66 I have.

20 **ADV FRANKLIN SC:** Good. So that is from your statement. And I just want to go through certain parts of paragraph 66, please. Here you set out your version of events regarding how you were appointed as SARS Commissioner. And you say you want to do that to put at rest the absence of any possible state capture motives on my behalf. Correct?

MR MOYANE: Which line are you referring to so that I can ...[intervenes]

ADV FRANKLIN SC: So at paragraph 66, the opening words.

CHAIRPERSON: Where it says: “I nevertheless wish...”? Is that where you are, Mr Franklin?

ADV FRANKLIN SC: Yes.

CHAIRPERSON: Ja. Right at the top of ...[intervenes]

MR MOYANE: Ja, I see it now, Chairperson.

CHAIRPERSON: Ja, okay.

MR MOYANE: Yes.

10 **ADV FRANKLIN SC:** Right. I wanted to just go through the chronology, please, of certain of these events. Firstly, you said:

“Sometime, probably in the second half of 2013, the position of SARS Commissioner was advertised in the mass media...”

Correct, is it not?

MR MOYANE: Yes.

ADV FRANKLIN SC: Then you say:

20 “In or about early September 2013, I submitted a formal application.

I did not do so at the instigation...”

Sorry.

“...the suggestion or instigation of any person.

By then, I was already a veteran civil servant having held several key positions in the Civil

Service...”

Can you confirm that as well?

MR MOYANE: Yes.

ADV FRANKLIN SC: Then you say in 66.3:

“At some point in the very early part of 2013,
the President informed me...”

If I can just stop there. Is that former President
Zuma?

MR MOYANE: Yes.

10 **ADV FRANKLIN SC**: Yes.

“...the President informed me in strict
confidence that he intended to appoint me to
the position of SARS Commissioner for which I
had applied.

He explained that his intention should be kept
under wraps as he only intended to formalise it
if he was still in office after the general
elections which was scheduled to take place in
May of 2014...”

20 Is that correct?

MR MOYANE: Correct.

ADV FRANKLIN SC: And then point 4:

“I fully understood that the decision was
obviously on the condition upon the happening
of three individual or constitutional events,

namely:

- (1) That the ruling ANC would win an outright majority in the 2014 Elections. (This was not complete due to dramatic changes in the political landscape at that time.)
- (2) If the ANC was successful, as generally expected, that it would fill the sitting president as its candidate in Parliament. (This was almost guaranteed following a natural catastrophe.)
- (3) The ANC candidate would be go on sufficient votes in Parliament to be the next president. (This was dependent on the first issue i.e. the outcome of the elections.)...”

10

And then 5:

“Indeed I kept the information to myself and only shared it with my wife whom I trusted implicitly...”

20

I would like to just pause there if I may and just ask you to confirm that I understand on your version and... So you and President Zuma knew in very early 2013 that you, Mr Moyane, would be appointed commissioner provided the conditions set out in para 66.4 were complied with. Is that correct?

MR MOYANE: Yes, taken into effect – into account that President Zuma accounts the head of SARS. [Speaker unclear]

CHAIRPERSON: Just repeat, please.

MR MOYANE: Taking into account that he was the one who was going to appoint the commissioner.

CHAIRPERSON: Ja, he was the authority.

MR MOYANE: Yes, he had the authority to do so.

CHAIRPERSON: Yes.

10 **MR MOYANE**: Yes.

ADV FRANKLIN SC: Yes, but otherwise you confirm the correctness of what I have put here?

MR MOYANE: Yes.

ADV FRANKLIN SC: So the two of you knew many months in advance of the country that you would be appointed as commissioner so long as the ANC won the election and Mr Zuma got a second term, correct?

MR MOYANE: Yes.

20 **ADV FRANKLIN SC**: And you planned accordingly, as I understand your statement, and let me refer you to paragraph 66.9 on page 33. Alright. You talk about a low-key preparation and the like. And then you said:

“It was in this context that the presentations referred to and attached by Mr Williams in his affidavit were made...”

So am I correct to say that once you and the former President had this discussion, you effectively planned with your appointment in mind? Is that correct?

MR MOYANE: Yes. But let us go back a bit. Besides that I have already applied for this position. So when this was brought to my attention, then I had to think on my feet as to how I would be able to attend to this particular position and familiarise myself to the full extent of what the opportunities are going to be and in relation to the
10 organisation I will be deployed to.

CHAIRPERSON: Well, going back to paragraph 66. There seems to be a little bit of some inconsistency between – or in paragraph 66.3. I think what you have said is that it was in the early – very early part of 2013 that the President informed you that he intended to appoint you as SARS Commissioner. Is that right?

MR MOYANE: It is correct, Chairperson.

CHAIRPERSON: But in 66.1, you say:

“Sometime, probably in the second half of
20 2013, the position of SARS Commissioner was advertised in the mass media...”

And then in 66.3 you say the President told you this that he intended to appoint you. You say to appoint you for the position as SARS Commissioner for which you had applied. I take it that there is ...[intervenes]

MR MOYANE: Yes.

CHAIRPERSON: Ja.

MR MOYANE: Chair ...[intervenes]

CHAIRPERSON: Not applied when he approved you.

MR MOYANE: Correct, Chair. That is correct, Chair.

CHAIRPERSON: Ja. You applied later?

MR MOYANE: Yes.

CHAIRPERSON: Okay alright. Thank you. Mr Franklin.

ADV FRANKLIN SC: Just to get that sequence. Are you
10 saying that the President told you this and then you
applied or the other way around?

CHAIRPERSON: No, he is saying he was approached by
the President in the very early part of 2013 when he
informed him that he intended to appoint him as SARS
Commissioner but the advertisement of the position
happened thereafter, probably in the second half of 2013
and then he applied. Is that correct, Mr Moyane?

MR MOYANE: No, let me correct, Sir.

CHAIRPERSON: Ja, okay, okay.

20 **MR MOYANE:** Mr Myburgh(?) is correct, Chair.

CHAIRPERSON: Okay.

MR MOYANE: Yes. And what happened is that the first
part is correct.

CHAIRPERSON: H'm?

MR MOYANE: I had applied in the early part – second

half of 2013.

CHAIRPERSON: H'm?

MR MOYANE: Let me say, I have already left Correctional Services. That was around September the 13th when I applied – submitted. The President told me after. It was just coincidence. I have already applied.

CHAIRPERSON: H'm?

MR MOYANE: Unbeknown to me that this would happen by the President. I had already applied. The post was
10 applied. And if you go to the records of SARS, it was closing around the 12th or 13th of September, around there. I had already applied for the position.

CHAIRPERSON: H'm.

MR MOYANE: So the six point – 66.3 is not properly crafted.

CHAIRPERSON: H'm.

ADV FRANKLIN SC: Alright. So with that correction, as I understand your evidence then, it was – am I correct, shortly after you had applied that you had this discussion
20 with the President?

MR MOYANE: Yes.

CHAIRPERSON: The only thing, of course, with that is that the first line of 66.3 appears to be quite clear that you say it was in the very early part of 2013. Can you see that?

MR MOYANE: That is why I am saying there is an error.

CHAIRPERSON: Yes.

MR MOYANE: It should be the later part of 2013.

CHAIRPERSON: Yes.

MR MOYANE: After. It was after September.

CHAIRPERSON: Yes.

MR MOYANE: Yes.

CHAIRPERSON: Okay. Mr Franklin.

ADV FRANKLIN SC: Alright. Thank you. Perhaps just to
10 give some more certainty to the chronology. Minister
Gordhan made a witness statement and it is in Bundle N1
and it is at paragraph 33, page 14. I just take you to that
please.

MR MOYANE: Which page?

ADV FRANKLIN SC: 14. Do you have paragraph 33, Mr
Moyane?

MR MOYANE: Yes, I do have, Sir.

ADV FRANKLIN SC: Thank you. And you can read that
for yourself but there the minister says that Mr Magashule
20 resigned as Commissioner on the 12 July 2013. Mr Pillay
then took over in an acting position, I am just summarising,
and then the position of Commissioner was advertised in
late 2013 and the ministry received – I think it says plus or
minus 120 applicants, correct?

MR MOYANE: Yes.

ADV FRANKLIN SC: And do you accept that that is correct?

MR MOYANE: What is correct, Sir?

ADV FRANKLIN SC: What he says there.

MR MOYANE: Well, that is what he says, that the ministry received 120 applications.

ADV FRANKLIN SC: Yes, that Mr Magashule resigned on a particular date, Mr Pillay took over, position was advertised in late 2013 and the ministry received
10 approximately 120 applicants. You accept that?

MR MOYANE: Yes, I think mine was amongst them.

ADV FRANKLIN SC: Alright. So the position is that ...[intervenes]

CHAIRPERSON: Well, you talk in your affidavit – might not matter, you talk in your affidavit about the advertisement having been probably in the second half of the year 2013. Mr Gordhan seems to talk about applications having been received already while he was Minister of Finance and he would have ceased to be
20 Minister of Finance in – or he would have ceased only in 2014, May.

MR MOYANE: Correct, yes.

CHAIRPERSON: Okay, alright.

MR MOYANE: Yes.

CHAIRPERSON: Okay. Okay, no, I see that he actually

says also the advertisement of the post was in the latter half of 2013. Ja, okay.

ADV FRANKLIN SC: Yes and if the Chair or the witness wishes to look at it, the advertisement is an annex 4, page 77 of that same bundle and it has a closing date of 13 September 2013.

CHAIRPERSON: Okay, okay.

ADV FRANKLIN SC: Does that sound right?

CHAIRPERSON: That is the last day that you are talking
10 about.

MR MOYANE: That is the day I submitted, yes.

CHAIRPERSON: Ja. Well, except that if that was the last day to submit applications, then it cannot be – okay, I may have I misunderstood you. So you say the President spoke to you after you had submitted your application?

MR MOYANE: That is correct.

CHAIRPERSON: Okay, alright.

MR MOYANE: Yes.

ADV FRANKLIN SC: Right, so, Mr Moyane, am I correct
20 at this point in time when you applied in 2013 you had no experience in running a revenue service or any experience in matters of taxation, is that correct?

MR MOYANE: You say did I have experience in running a revenue service?

ADV FRANKLIN SC: Yes.

MR MOYANE: No, I never had experience of running a revenue service.

ADV FRANKLIN SC: Alright. The President – let me just take you rather – yes, at the end of paragraph 66.8 on page 33 you said:

“Like some of previous appointees including Mr Gordhan and although I felt well-qualified for the position I did not have any experience in taxation but I was a generalist manager or senior executive
10 in the public sector.”

Correct?

MR MOYANE: Which page is that, Sir, my apologies?

ADV FRANKLIN SC: Sorry, that is page 32 to 33 of your witness statement.

CHAIRPERSON: I guess to be more precise, Mr Franklin, is 32 and 33 of the bundle.

ADV FRANKLIN SC: Yes.

CHAIRPERSON: Because 32 and 33 of the statement will be other 30s.

20 **ADV FRANKLIN SC:** Yes, Chair is quite correct.

CHAIRPERSON: Ja.

ADV FRANKLIN SC: Do you have that?

MR MOYANE: Refer me to which – I have found it now.

ADV FRANKLIN SC: It is at the top of page 33 of the bundle.

CHAIRPERSON: The black numbers, 32 and 33 of the bundle that had got your witness statement. You have got it?

MR MOYANE: My apologies, Chair.

CHAIRPERSON: Ja, okay.

ADV FRANKLIN SC: Yes, I just direct your attention to that because you say there you did not have any experience in taxation but you were a generalist manager or senior executive in the public sector. You were up
10 against 120-odd applicants. Do not know who they were but I presume there were some very deserving candidates. Do you know why the President chose you?

MR MOYANE: Firstly, I am an economist in whatever position that I held that had aspects of economics, I put my mind an my attention to what was required of that responsibility so I did see any difficulty but I would land in the process and also familiarise myself with the environment.

CHAIRPERSON: Well you have just said you are an
20 economist, maybe in the meantime to cover what your qualifications were or are?

MR MOYANE: Yes, I am an economist.

CHAIRPERSON: Ja.

MR MOYANE: I did my junior degree, I did not complete my studies in 1976 because of the political upheavals at

the University of Turfloop. Then I left the country in November 1976. I then was accepted in Mozambique.

I was requested then by the Mozambican government and senior party officials at the request of the African National Congress to be seconded to the largest poultry farm in Mozambique and run that during the difficult times of Mozambique given the fact that when independence was granted Mozambique had close to 60, 70% of illiteracy and they had a very low level of qualified and experienced people, not that I was among the head of – I advanced in terms of I did not know the job but there was this understanding that that you understand the whole set of economics and all of it, you would assist because we have people on the ground. But I made it very clear that my assistance to the Mozambican government would be limited because I am a member of the African National Congress, as long as they want to be able to assist I will do so but my primary objection is to study. And I agreed with the Minister of Agriculture and Rural Development in Mozambique at the end of 1977 I will go back to university. I started from scratch, I did my economics in Mozambique, I completed my bachelor's degrees in economics in Mozambique, I was then again ...[intervenes]

CHAIRPERSON: Was the B.Com?

MR MOYANE: B.Com, yes.

CHAIRPERSON: Yes.

MR MOYANE: B.Com Economics.

CHAIRPERSON: Okay.

MR MOYANE: Then I was then again requested to be transferred and work with the Mozambican government as the head of the cashew nut sector which was the cornerstone of the economy because Mozambique at the time was a world leader in cashew production to secure that sector that was devastated by the war. I worked – by
10 1985 I was made head, as a foreigner, head of the department that dealt with restructuring of the cashew nut sector supported by the World Bank and the African Development Bank. I transformed together with a team into a well-running institution in Mozambique and in 1991, just before we came back I was seconded to the government of the Government of Guinea-Bissau, attached the Ministry of Rural Development also to deal with the challenges that they had.

When I completed that I came back, so I had a
20 number of positions that I worked in.

CHAIRPERSON: Okay.

MR MOYANE: Yes.

CHAIRPERSON: Mr Franklin.

ADV FRANKLIN SC: Yes, thank you. I really just wanted to understand for the Commission's benefit what

particularly qualified you for the post of Commissioner of SARS. I understand your background as an economist and the various positions that you had but do you know why President Zuma thought you were the person for the job?

MR MOYANE: I might not have been able to understand what was in his mind but institutions that I led in whatever capacity, I led them in good stead.

Secondly, I want to put on record I went to study at London School of Economics and I did my intermediate
10 micro-economics certificate and I did further studies in South Africa as far as university. So I think in his mind the fact that I was able to meander through the various sectors of institutions in South Africa I have a capacity, I ran the Government Printing Works as a CEO, I am the one who produced the first top passport in South Africa, passport that all of us have here. I went to Correctional Services, transformed and then I think my track record speaks volumes about me, I cannot say what I did but I think the capacity to land and be able to be part of the team to do
20 what was required in that sector.

ADV FRANKLIN SC: Right, this affidavit which was filed on the 21 March of this year, as far as I have been able to see, this is the first time you have said publicly, please correct me if I am wrong, that the President told you in advance that he intended to appoint you so long as these

conditions in paragraph 66.4 were complied with. When was that – or was that ever made public before this affidavit?

MR MOYANE: Come again, I am aware [indistinct – dropping voice]. What is the question again, Sir?

ADV FRANKLIN SC: You had said in this affidavit that the President told you in strict confidence that he intended to appoint you in a position of SARS Commissioner for which you had applied, correct?

10 **MR MOYANE:** Yes.

ADV FRANKLIN SC: That revelation, was that made public at any stage before this affidavit in 2021? I am just not aware of it, you might be.

MR MOYANE: Public by the President?

ADV FRANKLIN SC: Or you.

MR MOYANE: No, it was not made public by the President.

20 **CHAIRPERSON:** Let me ask this question. When Mr Gordhan gave evidence before the Commission, I think it must have been his first appearance, and dealt with his term of office as Minister of Finance, he said that he had initiated the process that should lead to the appointment of a new Commissioner, the advertisement. And, of course, we just looked at the paragraph where it said 120 applications were received. His evidence was to the effect

that when he spoke to the President about the process the President said something to the effect that – I do not want to put words into Mr Gordhan’s mouth – but my impression that he, the President, was not interested in the process of advertisement because he wanted to exercise his authority to just appoint whoever he considered to be the person he should appoint. My impression from Mr Gordhan’s evidence was that the President would not have used any of that process or those names and so on. Now if that is
10 so then it may well be – I am wondering about your application but it may well be that the President had identified the person that he thought was suitable, which happened to be you, and he was to appoint that person and not necessarily get involved in the process of considering other candidates. Are you able to say anything about this?

MR MOYANE: Chair, the question is very difficult but I will try to give a sense.

CHAIRPERSON: Ja, you might not be able ...[intervenes]

MR MOYANE: Yes, yes.

20 **CHAIRPERSON:** Ja. Basically what I am asking is whether to your knowledge you were the result of a competitive process? In other words, whether the President selected you among others that he had considered. Now you may or may not know the answer to that question.

MR MOYANE: Yes, I think you just – well, the words into my mouth correctly, so I would not know as to whether there was a number of people that he was considering.

CHAIRPERSON: Yes.

MR MOYANE: And in the process applied his mind that this is the person that I want.

CHAIRPERSON: Ja.

MR MOYANE: But secondly, Chair, we do not know as to when the discussion between the President and Mr
10 Gordhan took place.

CHAIRPERSON: Yes.

MR MOYANE: Considering, of course, a point that you are raising that it was about 120, very competitive.

CHAIRPERSON: Yes.

MR MOYANE: So we do not know the timeframe.

CHAIRPERSON: Ja.

MR MOYANE: Certainly that, to me, was not an issue that was discussed between me and the President.

CHAIRPERSON: Ja.

20 **MR MOYANE:** His rationale and the thinking resides with him.

CHAIRPERSON: Ja.

MR MOYANE: I think he could answer it if he was to be coming here, come here and say what was the rationale.

CHAIRPERSON: No, that if fair enough. What you do

know is that you had applied for the position as well.

MR MOYANE: That is hundred percent correct, Chair.

CHAIRPERSON: Ja, okay, alright. Mr Franklin?

ADV FRANKLIN SC: Thank you, Chair. Then if I could continue with the chronology with reference to paragraph 66 of your affidavit, please look at paragraph 66.6, you said that you kept the information only to yourself and your wife and then you say:

10 “During a follow-up visit to the President to discuss the matter I happened to find him in a meeting with the Chairman and CEO of Telkom in the presence of the managing director of Bain who introduced himself as a Mr Massone.”

Just pausing there, are you able to put a date to that meeting?

MR MOYANE: I cannot put a date and a month, I think it was 2014, could be, because bear in mind the application was in September, so it was beginning of 2014 or so, so I cannot ...[intervenes]

20 **CHAIRPERSON:** Would it have been after you had submitted your application?

MR MOYANE: After I had submitted my application, Sir.

CHAIRPERSON: And do you know whether it would have been after the President had confided in you?

MR MOYANE: Yes, it was after the President had

confided with me, yes, that is why I was going to see him.

CHAIRPERSON: Yes.

MR MOYANE: He called me, yes.

CHAIRPERSON: Okay.

ADV FRANKLIN SC: Alright, as we shall see later, according to Bain the two of you met, that is you and Mr Massone, sometime in October of 2013. Would that sound around the right time?

MR MOYANE: Where is that...?

10 **ADV FRANKLIN SC:** I will come to that but I am just telling you the [inaudible – speaking simultaneously]

MR MOYANE: I cannot recall the date and month.

ADV FRANKLIN SC: You are not sure.

MR MOYANE: Yes, ja.

ADV FRANKLIN SC: Alright. As regards Bain, you recall Mr Massone? Do you remember Mr Massone?

MR MOYANE: Yes, I know him, yes.

ADV FRANKLIN SC: You had extensive dealings with him and he was the lead person for Bain in South Africa during
20 the time that you interacted with him at SARS, is that correct?

MR MOYANE: Yes.

ADV FRANKLIN SC: And he gave evidence on one occasion at the Nugent Commission but not again, so he did testify at the Nugent Commission. You know that?

MR MOYANE: I would assume that he did, yes, he certainly did testify.

ADV FRANKLIN SC: Right. At a point in time you told Bain as well that you had been earmarked by President Zuma at the time for the post of Commissioner of SARS subject to the election victory and Mr Zuma getting a second term. Can you confirm that?

MR MOYANE: Not to Bain, to Mr Massone.

ADV FRANKLIN SC: Alright, sorry, to a specific
10 individual, Mr Massone.

MR MOYANE: Yes.

ADV FRANKLIN SC: Alright. So let us just look please at SARS bundle 01, that is the bundle which contains the witness statement of Mr Williams together with its annexures.

CHAIRPERSON: Have you mentioned the page, Mr Franklin?

ADV FRANKLIN SC: No, not yet, Chair.

CHAIRPERSON: Okay.

20 **ADV FRANKLIN SC:** Yes, I would like to direct you please to annexure AW67 page 420. I am sorry to do that to you, it is in fact not the right one, please look at page 470. It is annexure AW6 to Mr Williams' affidavit. Do you see that?

MR MOYANE: Yes.

ADV FRANKLIN SC: That is an email from Mr Massone to

his colleague Mr Franzen. Do you remember Mr Franzen from Bain?

MR MOYANE: Page 471?

ADV FRANKLIN SC: No, 470. There is a reference to a Mr Franzen, Fabrice Franzen.

MR MOYANE: Are we still on the same WW1A, AW471?

ADV FRANKLIN SC: Are you looking at the top left hand page?

MR MOYANE: Oh, top left.

10 **CHAIRPERSON:** SARS bundle 1.

ADV FRANKLIN SC: Do you have it?

MR MOYANE: Yes.

ADV FRANKLIN SC: There are four separate emails, please look at the last one, Mr Franzen says to Mr Mazzone:

Ciao, just wanted to check how your “big meeting” went yesterday? Take care.”

And then the response from Mr Mazzone is:

20 “Thank you, Fabrice, it went very well, SARS is a go right after the elections.”

So just pausing there, you would accept that at least by this date, that is the 4 April of 2014, Bain were aware that they were going to be appointed to SARS. Would you agree?

MR MOYANE: I am not sure is to where the inference is

because he says:

“Ciao, just wanted to check on your “big meeting”
went yesterday? Take care.”

Where the appointment, as people who are going to assist
us, I do not see it here, where is it ...[intervenes]

ADV FRANKLIN SC: Well, do you have any idea what he
means when he says:

“SARS is a go right after the elections?”

MR MOYANE: I do not know. I do not know what was in
10 his mind. Yes, I can see where it is, yes.

ADV FRANKLIN SC: Alright, would you accept on the
basis of the testimony that you have given thus far about
Mr Zuma earmarking you for the position and you then
meeting with Bain and telling Bain that news, would you
accept that you, President Zuma and Bain all knew many
months in advance of the rest of the country that you were
going to be appointed as Commissioner as long as the ANC
won the election?

MR MOYANE: Well, correction, not President Zuma,
20 myself and Bain.

ADV FRANKLIN SC: Mr Massone.

MR MOYANE: Yes. So Mr Massone at that time he knew
because I spoke to him in strict confidence so it is not the
whole of South Africa knew.

ADV FRANKLIN SC: Yes, so it was only in fact Mr and

Mrs Moyane, President Zuma and Massone who knew this, is that correct?

MR MOYANE: Yes.

ADV FRANKLIN SC: Thank you. Is that a convenient time?

CHAIRPERSON: Let us take the lunch adjournment, it is about one minute to one.

ADV FRANKLIN SC: Thank you.

CHAIRPERSON: We will resume at two o'clock. We
10 adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let's proceed.

ADV FRANKLIN SC: Thank you Chair. Before lunch Mr Moyane I had been dealing with the fact that prior to the announcements to the country of your appointment as Commissioner of SARS you were aware, and former President Zuma was aware and Mr Massone of Bain was aware that you were earmarked for the position, do you
20 recall that?

MR MOYANE: Yes I do.

ADV FRANKLIN SC: I have asked for two files to be placed before you, I will be referring to them most often and so could you look firstly at your witness affidavit at Bundle 03, and in particular page 32. And here I am

continuing with the chronology that you had set out in your account in paragraph 66 so having described how the President informed you that he intended to appoint you and that you kept this information only to yourself and your wife you then in paragraph 66.6 to 8 say the following:

10 “During a follow-up visit to the President to discuss the matter I happened to find him in a meeting with the Chairman and CEO of Telkom in the presence of the Managing Director of Bain who introduced himself as a Mr Massone.”

Just pausing there, I understand your version to be that this was just a chance meeting, it wasn't an arranged meeting between you and Mr Massone?

MR MOYANE: Yes.

ADV FRANKLIN SC: There ...[intervenes]

CHAIRPERSON: I am sorry, you refer to the Chairman, is he of Telkom, was that one and the same person or there were two people, one being Chairman and one being CEO.

MR MOYANE: Two people.

20 **CHAIRPERSON:** And who were they at the time?

MR MOYANE: Can I mention the names?

CHAIRPERSON: Ja.

MR MOYANE: Okay, Mr Jabu Mabusa and the current CEO of Telkom is ...

CHAIRPERSON: Mr Siphon Maseku?

MR MOYANE: Yes.

CHAIRPERSON: Okay, alright, thank you.

ADV FRANKLIN SC: Thank you, then 66.7:

“he, that is Mr Massone I take it, informed me that he was assisting Telkom with strategy with great results. I took his business card or we exchanged telephone numbers. All this happened in the waiting area where I was awaiting my turn to go inside.”

10 Then 66.8:

“On a subsequent date and after doing my own research on his company I contacted the gentleman and informed him confidentially that I was earmarked to potentially take up the position of SARS Commissioner if the President was to serve a second term as explained above.”

Just stopping if I could. Your version is that this was just a chance meeting with Mr Massone, I just want to take you please to what Mr Massone said about this and would you
20 please turn to Annexure AW50, this you will find on the other file I asked you to have handy, that is at Bundle 01 and please to page 276. Do you have that?

MR MOYANE: H'm.

ADV FRANKLIN SC: That is an affidavit that was submitted by Mr Massone to the Nugent Commission and I

want to point out paragraph 7 on page 277 where Mr Massone says:

“after consultation of my records and to the best of my recollection I have had the meetings or encounters with Mr Moyane as set out below. I was introduced to Tom Moyane by Duma Ndlovu, I was told by Ndlovu that Moyane had approached him and asked him for an introduction to Bain because he had heard Bain’s successful work at Telkom and
10 wished to understand more about how Bain worked.”

He says, Mr Massone, that the two of you were introduced by Mr Duma Ndlovu. Do you have any recollection of that?

MR MOYANE: Yes.

ADV FRANKLIN SC: Is that correct?

MR MOYANE: Correct yes.

CHAIRPERSON: Ja, go closer to the mic.

MR MOYANE: Sorry, correct.

ADV FRANKLIN SC: Alright thank you. As far as when that happened we discussed that a little earlier and I think
20 you were not entirely sure of when you were first introduced and I wanted to just suggest to you based upon what Bain have said that it was during or about October 2013, and why I say that is because of the press statements that I took you to earlier at AW45, still in the SARS 01, page 252. Page 252, bundle 01. It’s 1, not

sure which one you are in.

CHAIRPERSON: I think you might wish to pull the mic closer to you once you are done with the files Mr Moyane so that your answers will be recorded. If you pull it – I think it does move but I don't know how much.

Ja, okay.

MR MOYANE: Which page.

ADV FRANKLIN SC: 252, that is the beginning page of a press statement which Bain issued and I would like to take
10 you to page 253 on the left hand side, 253, do you have that.

MR MOYANE: Yes.

ADV FRANKLIN SC: The second paragraph what Bain says publically is:

“In October 2013 Mr Massone was also introduced to Mr Tom Moyane who later became the Commissioner of SARS by Mr Duma Ndlovu, an external advisor to Bain at that time. It would appear that Massone understood Mr Moyane was
20 the President's intended appointee to be SARS Commissioner well before it happened.”

Now just – I refer you to the date, October 13, does that sound about right in the chronology?

MR MOYANE: I can't recall ...[indistinct]

ADV FRANKLIN SC: Alright, but it doesn't sound out of

place does it?

MR MOYANE: I don't know, as I say I cannot recall.

CHAIRPERSON: Is your recollection that you met Mr Massone before the end of 2013 or is it that it was in 2014?

MR MOYANE: It was in October when I was working at SETA, so I can't recall, I was working at SETA, I was seconded at SETA, I can't recall conclusively.

CHAIRPERSON: Yes, yes.

10 **MR MOYANE:** Because Minister Sisule brought me to [audio faulty]

CHAIRPERSON: Okay, okay.

ADV FRANKLIN SC: Alright, so are you saying you are not particularly sure about that? Mr Moyane?

MR MOYANE: Yes, I said I cannot recall sir.

ADV FRANKLIN SC: Alright.

MR MOYANE: Yes.

ADV FRANKLIN SC: Could I then refer you to another document please ...[intervenes]

20 **MR MOYANE:** Pardon

ADV FRANKLIN SC: AW, the same bundle, I will tell you when to change thank you. It is AW67 page 420.

CHAIRPERSON: Page?

ADV FRANKLIN SC: 420 Chair. This is another Annexure to Mr Williams statement and it is a partner self-

assessment by Mr Massone dated 6th of December 2013 and this is a document which was given to Mr Williams as part of his investigation. Could I ask you to look at the second paragraph, you are welcome to read the first if you wish, but this is Mr Massone telling his superiors as I understand it what he has been doing in South Africa, and he says:

“as a halo effect of the relationship with Siphos and the role we played in the Phoenix Project.”

10 Can I stop there, do you know what the Phoenix Project was?

MR MOYANE: No I don't know what the Phoenix Project is all about sir.

ADV FRANKLIN SC: We have been involved in preparing a high level inside/out strategic turnaround document on the ...[intervenes]

CHAIRPERSON: I am sorry Mr Franklin outside/in, you said inside/out. Whatever – what difference it makes I don't know.

20 **ADV FRANKLIN SC:** Outside/in strategic turnaround document on SARS, the person we prepared the document with and who pitched it to the S A President is most likely to be appointed as the Commissioner in the next few weeks/months and Bain will be assisting him should he get the job.

SARS is one of the largest and highly estimated government agency and a large Bain client in the previous dispensation, back in the 90's. So this is just again if I could the date is 6 December 2013, it would appear from what Mr Massone is writing here that the two of you were well known to each other by – at least by December 2013, would you agree?

MR MOYANE: Chair with due respect I can't recall conclusively, but all I can say is confirm that Mr Massone
10 and Duma were people who ...[indistinct] so I am not sure how I feature there.

CHAIRPERSON: Ja, but would you take any issue with his recollection of what – when you met.

MR MOYANE: When he speaks about a halo effect and project Phoenix I am just speaking under oath, I don't know what Project Phoenix is all about and if I knew I would confirm and collaborate with you here on this matter ...[indistinct]

CHAIRPERSON: Ja, alright.

20 **ADV FRANKLIN SC:** Alright, he then talks about preparing a document with you and you pitching it to the SA President, we will get onto those presentations in due course, but can you confirm that was the ...[Indistinct] SARS 100 days document, would you agree?

MR MOYANE: Where is the SARS 100 days?

ADV FRANKLIN SC: No it doesn't say that, he says we have been involved in preparing a high level outside/in strategic turnaround document on SARS, personally prepared the document with and who pitched it to the SA President is most likely to be appointed as Commissioner in the next few weeks or months.

So that must be referring to you, do you accept that?

MR MOYANE: Yes they may be referring to me but I might
10 not have been part of that ...[indistinct] what they were preparing that document for, I don't know.

ADV FRANKLIN SC: So you don't know precisely which one ...[intervenes]

MR MOYANE: I don't know Project Phoenix because if there was a project called Project Phoenix I wouldn't know.

CHAIRPERSON: I think Project Phoenix relates to probably Telkom if I am not mistaken based on what – because he says to – he refers to Siphos whom I take to be Mr Siphos Masego because he has referred to him, is that
20 your understanding as well Mr Franklin?

ADV FRANKLIN SC: Yes it goes a little wider than that, I think it is all State owned entities.

CHAIRPERSON: Oh it might be many more, okay, okay.

ADV FRANKLIN SC: But in any event as I understand it Mr Moyane you can't recall precisely when you first met but

you accept that the meeting took place via the introduction of Mr Duma Ndlovu. I want to just refer you to a contract please at AW18, page 176.

CHAIRPERSON: That's 176 of the same bundle.

ADV FRANKLIN SC: Correct.

CHAIRPERSON: That is SARS Bundle 1. It is – it helps to mention the bundles when we are using many bundles so that we know which one we are in at any particular time.

ADV FRANKLIN SC: Yes, so it is just Bundle 1, page 176.

10 **CHAIRPERSON:** Yes, you said the page is 176

ADV FRANKLIN SC: Correct.

CHAIRPERSON: I've got it.

ADV FRANKLIN SC: Now that is agreement
...[intervenes]

CHAIRPERSON: Have you got it Mr Monyane?

MR MOYANE: Yes I think I have got it.

CHAIRPERSON: At page 176 of SARS Bundle 1.

ADV FRANKLIN SC: Right and if you look please at the heading, Business Development and Stakeholder
20 Management Contract and then the opening words are:

“This document defines the context, the content
...[indistinct] governance, timing and financial terms
of the collaboration between Bain and Company
South Africa Inc and Ambrorite Limited in a
business development and stakeholder management

mandate.”

Now are you familiar with the company Ambrorite?

MR MOYANE: None at all.

ADV FRANKLIN SC: Did you know Mr Duma Ndlovu
...[intervenes]

MR MOYANE: Yes I said that.

ADV FRANKLIN SC: You did. And in what context did
you know him?

MR MOYANE: He is a musician, he is a playwright and we
10 went to school together, he was a classmate of my younger
brother.

ADV FRANKLIN SC: So what you say he is a musician
and a playwright?

MR MOYANE: Yes.

ADV FRANKLIN SC: Right, now once Mr Ndlovu had
introduced you to Mr Massone am I correct that there were
then regular meetings between you and Mr Massone and in
at least some of those meetings you discussed
presentations which had been compiled in relation to
20 SARS, is that correct?

MR MOYANE: Ja, but I won't understand where does
Ambrorite company come in here with myself on this
matter.

ADV FRANKLIN SC: Yes well as we understand it that
was a contract that was concluded between Bain and

Ambrorite and the point of it was in para 1, do you see that?

MR MOYANE: Yes ...[indistinct – mumbles]

ADV FRANKLIN SC: And you can read para 2 as well if you wish, but it appears that Bain contracted with Ambrorite in order to identify government and state-owned enterprise sectors a strategic priority and to introduce people to them, it was their purpose and then para 3 sets out the content and objective of the contract, and for
10 instance – there are many different objectives but look at the bottom of the page, at 177, facilitate the introduction or directly introduce Bain partners to those key leaders and decision makers. Do you see that?

MR MOYANE: ...[Indistinct – mumbles] yes.

ADV FRANKLIN SC: So are you surprised that Mr Duma Ndlovu, who you knew as a musician and a playwright was engaged by this international consulting firm to introduce them to key leaders in business?

MR MOYANE: I wasn't aware that Duma Ndlovu was
20 involved in consultants, all I knew about him he is a playwright and somebody who was in the entertainment sector, so this part comes as a surprise to me, I don't know about it.

ADV FRANKLIN SC: Alright.

CHAIRPERSON: Just one second. I just want to find out

from the transcribers whether they can hear Mr Moyane clearly for purposes of transcript? Is there somebody who can give me an indication there? Looks like there is nobody.

MR MOYANE: I will try to ...[intervenes]

CHAIRPERSON: Yes ...[intervenes]

ADV FRANKLIN SC: Yes Chair I am told by Ms Sithemba of the Commission that she is having difficulty for instance hearing from her vantage point, so Mr Moyane you need to
10 speak up please.

CHAIRPERSON: Yes, I think initially when you start talking one can hear but towards the end your lower your voice so you swallow the words. I also see that we seem not to have certain admin staff that normally perhaps when there are these challenges but let's continue, maybe somebody will come in. Okay.

Try Mr Moyane to speak up, I know that when you have to read a document that is not on the desk you are further from the mic, just try and speak up, okay. Let us
20 continue.

ADV FRANKLIN SC: Yes thank you, Mr Moyane had said that he was surprised to see that Mr Ndlovu was involved in a contract of this nature.

CHAIRPERSON: H'm.

ADV FRANKLIN SC: Right I then put to you that once you

had met Mr Massone you had a number of meetings with him firstly and I must also ask you with others at Bain and you together compiled various presentations and had meetings about those presentations in relation to SARS, is that correct?

MR MOYANE: Correct.

ADV FRANKLIN SC: Now I would like to take you to certain of these presentations and ask you to identify whether you are familiar with them and firstly I want to
10 point out to you in paragraph 66.9 page 3-33 of your affidavit, so that is in SARS Bundle 3 ...[intervenes]

MR MOYANE: Which page?

ADV FRANKLIN SC: 33, thirty three, paragraph 66.9 ...[intervenes]

CHAIRPERSON: Will you be going back to his affidavit?

ADV FRANKLIN SC: Yes, just momentarily.

CHAIRPERSON: Okay that's fine, 33 page – paragraph 66.

ADV FRANKLIN SC: You said:

20 “Indeed we embarked on the agreed low-key preparation and coaching covering general CEO and leadership training but also obviously targeted towards my forthcoming potential posting at SARS. In the process I received and also generated a lot of researched information. It was in this context

that the presentation [S] referred to and attached by Mr Williams in his affidavit were made.”

Alright, do you have any recollection of how frequently you met with Massone and anyone else from Bain before you pick up the position as Commissioner?

MR MOYANE: Yes not Mr Massone I think with Mr Franzen, ...[Indistinct] Franzen.

ADV FRANKLIN SC: Yes. And how frequently did you meet, was this a regular thing?

10 **MR MOYANE:** Perhaps once or twice in a month.

ADV FRANKLIN SC: Once or twice in a month, from when you first met him, we are not sure when that is, until you were appointed in September of 2014, is that correct?

MR MOYANE: Yes, I don't know when we started but I met him ...[indistinct – dropping voice]

ADV FRANKLIN SC: Alright, I ...[intervenes]

CHAIRPERSON: I am sorry, is your recollection that from whatever time it was when you met him for the first time from the right through to your appointment you were
20 meeting him maybe once or twice ...[intervenes]

MR MOYANE: Yes, once a month.

CHAIRPERSON: Once a month.

MR MOYANE: Yes.

ADV FRANKLIN SC: And in that paragraph that I took you to you say it was in this context that the presentations

referred to and attached by Mr Williams in his affidavit were made. I want to take you to those presentations because I take it that you looked at them when you compiled your witness statement. I am going to go through a list of them please and unfortunately you are now back in Bundle 01. The first one is AW55 page 318.

MR MOYANE: 155?

ADV FRANKLIN SC: AW, that's the annexure number and the page number is 01 page 318. Do you have that?

10 **MR MOYANE:** H'm.

ADV FRANKLIN SC: And that is called Fizekelo Reshaping South African Economy dated 11th of August 2012, is that a presentation which you discussed with either Bain or then President Zuma?

MR MOYANE: I don't know sir because it speaks about different organisations, there is no SARS here, and it is dated the 11th of August 2012 and when you look at it, ...[indistinct] it speaks about the ICT landscape. I would not have – yes I would not have discussed ICT matters.

20 **ADV FRANKLIN SC:** Alright, then the second one is AW56 page 323. That is headed Project Phoenix Reshaping South African Economy dated 23 August 2012, again are you familiar with that, did you see it at the time and discuss it with Bain?

MR MOYANE: No, no. Perhaps I need to draw your

attention to that diagram Expo ...[indistinct] re Strategic Pillars for South African Economy, you would see that it is really about broadband so it would have – it would relate to Telkom.

ADV FRANKLIN SC: Yes.

MR MOYANE: So I had nothing to do with Telkom.

ADV FRANKLIN SC: I just want to take you through it because you didn't in your statement, you referred to presentations without restricting them so I just wanted to
10 make sure.

MR MOYANE: No correct.

ADV FRANKLIN SC: Alright let's – let me then take you to AW91 which is at page 484, 1484, but that is a document headed SARS 2.0 Sunday 13 October 2013, I take it this one you are familiar with?

MR MOYANE: I note.

ADV FRANKLIN SC: Right then please look at AW92, SARS01 page 491.

CHAIRPERSON: Just before you move away from Page
20 484 Mr Franklin, Mr Moyane if that date at page 484 for that document, that is written SARS 2.0 Sunday 13 October 2013, if that date reflects the date when the document was written would you accept that it is likely that by that date you would have been – you would have met with Mr Massone and you would have started to have your

interactions with him.

MR MOYANE: It would be Chair because I would like to deny and...

CHAIRPERSON: Ja.

MR MOYANE: Push everything on the side.

CHAIRPERSON: Ja but ...

MR MOYANE: As we speak I will be able to pick up and once and the trajectory.

CHAIRPERSON: Ja, no, no I – I understand that you –
10 some of the things you cannot remember but you do not necessarily dispute but you just cannot remember. Okay all right Mr Franklin.

ADV FRANKLIN SC: Thank you. So that was the first one. The second one is that it is annexure AW92 and it at SARS 01 page 492. That is called TM First 100 days May 26th 2014. That one I take it you are familiar with as well?

MR MOYANE: Yes this one I am familiar with.

ADV FRANKLIN SC: And do you – do you agree that either
20 this SARS 2.0 and or TM First 100 Days was presented by you to President Zuma?

MR MOYANE: No I did not present anything to President Zuma. It was a discussion between myself and Mr Massone.

ADV FRANKLIN SC: All right we will come back to that. Then the next one that I want to identify is AW100 and that is at page SARS 01 page 534. That is dated August 2014

and is titled SARS 2.1 – What has to be done. Once again is that one that you familiar with?

MR MOYANE: Sorry which one? 534?

ADV FRANKLIN SC: Yes.

CHAIRPERSON: Yes page 534.

MR MOYANE: I have something different here.

CHAIRPERSON: You do not have SARS 2.0 What has to be done.

ADV FRANKLIN SC: Are you looking at the top left?

10 **MR MOYANE**: Oh.

CHAIRPERSON: Have you found it?

MR MOYANE: My apologies Chair.

CHAIRPERSON: Okay.

ADV FRANKLIN SC: Thank you. So just to be clear.

MR MOYANE: May I just – ja.

ADV FRANKLIN SC: SARS 01 page 534 entitled – the document is entitled Present – I am sorry SARS 2.0 – What has to be done August 2014. Is that similarly a presentation with which you are familiar?

20 **MR MOYANE**: Yes. Yes.

ADV FRANKLIN SC: And then the last one I want to refer you to is AW97 which is at SARS 01 page 513.

CHAIRPERSON: 513.

ADV FRANKLIN SC: Correct.

MR MOYANE: Yes.

ADV FRANKLIN SC: That is headed Review of SARS Operating Model and Structure.

MR MOYANE: Yes.

ADV FRANKLIN SC: August 2014. Is that also a presentation with which you are familiar?

MR MOYANE: Yes I am.

CHAIRPERSON: Can I take you back to page 534 Mr Moyane?

MR MOYANE: 534.

10 **CHAIRPERSON:** 534 the one we were looking at a few minutes ago. The one that is written SARS 2.0 What has to be done.

MR MOYANE: I am on there Chair.

CHAIRPERSON: You are there okay all right. If you are familiar with this one it would seem that in August 2014 Bain have been already working on some documents relating to SARS in August 2014 would you agree?

MR MOYANE: Yes.

20 **CHAIRPERSON:** Yes. And bearing in mind – oh the advertisement was 2013 not 2014.

MR MOYANE: Correct.

CHAIRPERSON: But the appointment was 2014.

MR MOYANE: September.

CHAIRPERSON: September so it took about a year advertisement before the appointment was made.

MR MOYANE: That is correct.

CHAIRPERSON: Okay no, no then I understand.

ADV FRANKLIN SC: Just – just to clarify Chair. The first of the SARS presentations which I identified for the witness is dated 13 October 2013.

CHAIRPERSON: Yes. Yes. Ja. I remember that.

ADV FRANKLIN SC: So I think you accepted earlier Mr Moyane that once you had been introduced to Bain that you and Mr Massone and perhaps Mr Franzen commenced
10 preparation for you being appointed to SARS. Correct.

MR MOYANE: Correct I think it is important also to inform the Chair that when I was informed by the President – former President I therefore starting doing my own research because in the event or that this happens should not find me wanting and therefore ...

CHAIRPERSON: Which you 00:06:27 like you did not know.

MR MOYANE: Yes.

CHAIRPERSON: Ja.

MR MOYANE: And I took this seriously but it was subject to
20 this (inaudible).

CHAIRPERSON: Your appointment.

MR MOYANE: Yes it was subject to.

CHAIRPERSON: Ja.

MR MOYANE: And I need to emphasise here – I should – there is one wherein it speaks about operating model.

CHAIRPERSON: Yes.

MR MOYANE: The operating model. I had gone to the SARS website and I read the annual performance plan of 2013 – 2014/2015 and there on page 27 it says:

“SARS had committed to cabinet or to government that operating model that they were using would have to be changed by 2015.”

So I was just looking as to what operating model was
10 it so I was reading.

CHAIRPERSON: Yes.

MR MOYANE: So I am just giving you context Chair.

CHAIRPERSON: Yes.

MR MOYANE: So that these discussions were not discussions that were taking place in a vacuum.

CHAIRPERSON: Ja okay.

ADV FRANKLIN SC: They were preparatory to you taking over as Commissioner.

MR MOYANE: In the event yes.

20 **ADV FRANKLIN SC:** Right. And you have said in your witness statement at paragraph 66.8 SARS 03 page 32.

MR MOYANE: SARS?

ADV FRANKLIN SC: 03 page 32.

CHAIRPERSON: That is Bundle 3.

MR MOYANE: Which bundle would this be?

CHAIRPERSON: Bundle 3

ADV FRANKLIN SC: Bundle 3.

CHAIRPERSON: Ja.

MR MOYANE: Page.

CHAIRPERSON: Page 32.

ADV FRANKLIN SC: Do you have it?

MR MOYANE: Yes Sir.

ADV FRANKLIN SC: Starting on the fifth line you were
dealing here with your interactions with Mr Massone and
10 you say:

“He – that is Massone – in turn informed me
about a program of CEO coaching in which I
expressed an interest to undergo as I was in
any event doing extensive research on the
workings of SARS like some of the previous
appointees including Mr Gordhan and
although I felt well qualified for the position
I did not have any experience in taxation but
was a generalist manager or senior
20 executive in the public sector.”

And 66.9.

“Indeed we embarked on the agreed low key
preparation and coaching covering general
CEO or leadership training but also
obviously targeted towards my forthcoming

potential posting at SARS. In the process I received and also generated a lot of research information. It was in this context that the presentations referred to and attached by Mr Williams in his affidavit were made.”

Now could I just ask you there. I have taken you to the various SARS presentations. We will get to them now. But they are very detailed documents. Would you agree
10 with me that they go beyond mere CEO coaching or an attempt to assist you with your position and they contain detailed plans for SARS in the event that you were to take up the position?

MR MOYANE: I would not understand why he say they want detail. When you do a research you go deep into the analysis of what you want to achieve.

ADV FRANKLIN SC: No I said they were detailed – I am sorry. Were detailed.

MR MOYANE: Pardon.

20 **ADV FRANKLIN SC**: I said they were detailed.

MR MOYANE: I could not hear properly.

ADV FRANKLIN SC: Yes.

CHAIRPERSON: Oh he is – he says he did not say they were not detailed he said they were detailed.

MR MOYANE: Yes.

ADV FRANKLIN SC: So you would agree that they were – they contained the product of your input and Bain’s input in relation to a plan for you in the event that you were to take over as Commissioner. You agree.

MR MOYANE: Correct subject to once (inaudible).

ADV FRANKLIN SC: Yes. And let me take you please to the document which I identified earlier and that is the TM First 100 Days. That is AW92 page 01-491.

10 **CHAIRPERSON:** That is Bundle 1 and what is the page number?

ADV FRANKLIN SC: Yes and the page number is 492. Right this is headed First 100 Days that is self-explanatory and on the left hand side in the middle of the page Proposed New Vision and Ambition for SARS a New Transformation Agenda must be set up. And then over the page on page 493 in the middle of the page Key Immediate Actions for Discussion.

1. Keep the ball rolling.

2. Gain the high ground.

20 **MR MOYANE:** Sorry Sir. I do not want to lose you.

CHAIRPERSON: Did you say 93.

MR MOYANE: Did you say 493?

CHAIRPERSON: Yes on the (talking over one another)

MR MOYANE: 493 for me is Annexure AW94.

CHAIRPERSON: Oh that should not be like that.

MR MOYANE: Could you kindly help me when you say 493 black or 403 red.

ADV FRANKLIN SC: Yes as I – as I indicated to you Mr Moyane I will always refer to the black numbers in top left.

MR MOYANE: Okay 493 yes.

CHAIRPERSON: Well we may have confused you Mr Moyane because I think there was a bundle that at least in a certain section only had red numbers and we used red numbers then. So – but most of the time it will be black
10 numbers when it is different he says – gives you the page number but if it is a red number he will announce. Have you found the page?

MR MOYANE: I did. I am on the page Sir.

CHAIRPERSON: Okay.

ADV FRANKLIN SC: Right so I had identified for you what was written on page 493 in the middle of the page on the left hand side. Key Immediate Actions for Discussion.

1. Keep the ball rolling.
2. Gain the high ground.
- 20 3. Taking control.

You see that.

MR MOYANE: Yes.

ADV FRANKLIN SC: And can I just take you to para 3 Take control. There are number of bullet points there and you say in the third bullet point rather small.

“An testing BH and assessing performance of competence of COO parameter.”

You see that.

MR MOYANE: Yes I have.

ADV FRANKLIN SC: You would – BH refers to Barry Hore is that correct? He was the COO at the time.

MR MOYANE: Yes.

ADV FRANKLIN SC: And then you say:

“Launch forensic investigation”

10 And then you say:

“Create one leadership spine, quickly colour code the exec and management team – top 100 and reshuffle.”

Then you say:

“Assess key roles where it is introduced new people.”

Then you say:

“Set up transformation program office.”

Then you say:

20 “Apply a new system.”

Now at this stage am I correct you had not of course done – you had not been into SARS. You had not been able to do an independent review of the SARS situation. Correct.

MR MOYANE: Correct.

ADV FRANKLIN SC: And nor had Bain. Correct.

MR MOYANE: Come again.

ADV FRANKLIN SC: Nor had Bain done that exercise.

MR MOYANE: I do not know but I would assume so.

ADV FRANKLIN SC: You assume they would not. You were discussing with them.

MR MOYANE: Well I do not know they might have done their – I mean big companies have systems as to how they conducted their analysis of various companies.

ADV FRANKLIN SC: But as far as you knew they had not
10 yet been let into SARS they had not yet been appointed.

MR MOYANE: Correct.

ADV FRANKLIN SC: And then you say on the second part of the page also in the middle

“Build a healthy sponsorship spine to
accelerate change and identify individuals to
neutralise.”

So just pausing there you contemplated in this plan that there would be – am I correct – a dramatic change to SARS if and when you got there?

20 **MR MOYANE**: Ja I took advantage of the fact that the APP spoke of a re-organisation of SARS so which means Parliament in its wisdom was aware of certain shortfalls that were happening within that environment. So if I may refer to you Chair it is APP of 2014/2015 if you may allow me to read it for...

CHAIRPERSON: APP stands for?

MR MOYANE: Annual Performance Plan.

CHAIRPERSON: Oh okay.

ADV FRANKLIN SC: Sorry what – what document are you reading from bundle?

MR MOYANE: No I am just giving example.

CHAIRPERSON: Oh ja.

MR MOYANE: It is a document that is official.

CHAIRPERSON: Yes but...

10 **MR MOYANE**: It is a reference.

CHAIRPERSON: But you got a copy

MR MOYANE: Yes I can

CHAIRPERSON: You have got a copy.

MR MOYANE: I have it on my phone.

CHAIRPERSON: That is ...

ADV FRANKLIN SC: Yes but we need to – if it is not in the bundles then...

MR MOYANE: That is fine point taken.

ADV FRANKLIN SC: If you want to.

20 **CHAIRPERSON**: Yes but – but you can arrange for us to get it – copies.

MR MOYANE: I will get it copied for you.

CHAIRPERSON: Yes. But you wanted to make a certain point. Do you want to make that point?

MR MOYANE: Ja I am making that point.

CHAIRPERSON: Make that point.

MR MOYANE: That it does indicate that SARS was obligated.

CHAIRPERSON: Ja.

MR MOYANE: In any form that by 2015 March.

CHAIRPERSON: ja.

MR MOYANE: It should have a new operating model.

CHAIRPERSON: Yes.

MR MOYANE: Yes.

10 **CHAIRPERSON**: Okay. And you say that was the Annual Performance Plan of SARS as in 2014?

MR MOYANE: 2015.

CHAIRPERSON: 2015.

MR MOYANE: 2014/2015.

CHAIRPERSON: 2014/2015.

MR MOYANE: Yes.

CHAIRPERSON: Okay. All right.

ADV FRANKLIN SC: Yes well that document has not featured yet so I am not – not sure of it Mr Moyane but if
20 you wish to produce it please do so. I was referring you to the middle of the page on page 493

“Build a healthy sponsorship spine to accelerate change and identify individuals to neutralise.”

I think you accepted that the plan envisages a far reaching

change, was that correct?

MR MOYANE: Well an operating model by nature presupposes that there will be fundamental changes in the organisation.

ADV FRANKLIN SC: Right and then you say

“Identify individuals to neutralise.”

What do you – what did you mean by the neutralise?

MR MOYANE: Well the term is unfortunately used there it should not have been in that context.

10 **ADV FRANKLIN SC:** Well what does...

MR MOYANE: To accelerate change in order to – to consolidate structures of the organisation.

ADV FRANKLIN SC: Yes but this was – this appears in the plan and the word neutralise was included and I am just trying to find out why that word was used in this plan.

MR MOYANE: I think if I had my notes with me on this matter I would have written on this – on the document but this might not be – because this is the document presented it does not necessarily mean that you accept everything that
20 is there. There are changes that happen in the discussion you make your notes and the discussion takes place.

CHAIRPERSON: Sorry Mr Franklin.

ADV FRANKLIN SC: Sure.

CHAIRPERSON: Oh now I see. Yes now I see where you are. I – I have lost you so I have seen now. Okay.

Continue.

ADV FRANKLIN SC: All right and then you said earlier that the word neutralise I think you said was unfortunate, is that correct?

MR MOYANE: Ja that is correct.

ADV FRANKLIN SC: And why do you say that or what connotations about it are unfortunate?

MR MOYANE: Perhaps the context in which it has been used here.

10 **ADV FRANKLIN SC:** Yes but what is the meaning that you find unfortunate?

MR MOYANE: Well I did explain that it should not have been this. My writing would be to identify measures to put a stratified measures in the organisation not neutralise. Neutralise is creating a very what you call a confrontational removing people and creating an organisation that is unstable. Mine was to build not to come into strife.

ADV FRANKLIN SC: I see. Then at the bottom right hand corner you have got three bullet points.

20 “Identify positive change sponsors bottom up.”

Second one is:

“Leverage external influences.”

And thirdly:

“Identify individuals that could hamper change :- watch outs – to neutralise.”

Now you will agree with me that that last bullet point suggests that it was part of your plan to identify individuals at SARS who might hamper the changes you wish to introduce and there were people who you would label watch outs and they were people that you would wish to neutralise. Would you agree that that is what appears in the writing?

MR MOYANE: No.

ADV FRANKLIN SC: Well what...

10 **MR MOYANE**: What appears there is not what in reality in life happens.

ADV FRANKLIN SC: Yes but that is a different point.

MR MOYANE: Ja I am saying...

ADV FRANKLIN SC: What I am asking you.

MR MOYANE: It is a presentation. It is a presentation that is not what I envisaged going to that organisation.

CHAIRPERSON: I think Mr Franklin's question Mr Moyane is more about what meaning one gets when just one reads what is written.

20 **MR MOYANE**: Yes.

CHAIRPERSON: Irrespective of whether that is what was intended or not. If you view the question in that light what – what would you say. Would you agree?

MR MOYANE: But in any organisation Chair change brings uncertainty. There will be resistance to change. Nothing

happens in a changeless environment and therefore in the context of that I was aware in my mind there will be those who would be saying they do not want this – it is a natural reaction. But I am saying in that context you need also to have a strategy to bring them in not to leave them outside.

CHAIRPERSON: Yes.

MR MOYANE: So the word neutralise is not.

CHAIRPERSON: ja.

MR MOYANE: As I am saying here change is a little
10 difficult, man, human beings by their nature.

CHAIRPERSON: Ja.

MR MOYANE: Are not ...

CHAIRPERSON: Did these – do you understand what neutralise to include remove or something like that?

MR MOYANE: No, no.

CHAIRPERSON: You do not understand it that way?

MR MOYANE: No. You do not go to an organisation Chair to remove people.

CHAIRPERSON: Yes.

20 **MR MOYANE**: You first make an assessment.

CHAIRPERSON: Yes.

MR MOYANE: I had no authority at all given that because I do not have that 00:22:45 as to who is there or does what.

CHAIRPERSON: Ja.

MR MOYANE: Mine is to say yes there will be changes that

have to take place. There will be resistance. There will be those who are amenable to change and all those factors will have to be taken into account. Those who will be slow, those who will be resistant and you need to have a process because some of them might be key in the organisation but they might see change as a threat. You need to find a strategy to bring them in.

CHAIRPERSON: Hm. What would you say to an interpretation that says neutralise would include that if
10 certain people are not going along with the change that is proposed but they are powerful or influential you need to reduce their influence.

MR MOYANE: Chair.

CHAIRPERSON: Would you say that that is a fair meaning to give or would you say not?

MR MOYANE: No Chair I think we will be practical on this matter for the purpose of this organisation – there are people who when I was there they did not see some of the changes as practical and they voiced their mis – mis – their
20 apprehension about it. And you have to find a measure to understand why and how do you take them along. It does not happen overnight and that is a process which you have to engage on on an ongoing basis. Because I might be wrong they might be right therefore you cannot have your views superseding any other views in the organisation. We

have that and it happens in organisation of all sorts.

CHAIRPERSON: Okay. Mr Franklin.

ADV FRANKLIN SC: Thank you. Mr Moyane there are two different points that I want to clarify then. I have directed your attention to the bottom right hand corner of page SARS 01 493 the last bullet point. Identify individuals. You know that? You have seen it.

MR MOYANE: Yes.

ADV FRANKLIN SC: And you said no that is not what you
10 intended and that is not what actually happened, is that correct?

MR MOYANE: Yes.

ADV FRANKLIN SC: I am asking you however to read the words and assist in understanding what is written here whether you intended it or not but do you accept that as it is written there what it conveys is that you would identify people – individuals who might hamper change – they would be regarded as watch outs and you would then have to neutralise them. Is that correct? That is what is written
20 here. We will get onto what you did.

MR MOYANE: Ja I – I do understand. I am not sure who prepared this document but you must 00:25:44 that Mr Massone is not an English speaking he is an Italian so context and the manner in which – he might have been in English but at times when you do a presentation he could

have in his thought process this is what they intend. But in my discussion there was never a time wherein there was to neutralise anyone.

ADV FRANKLIN SC: But can you get back to my question. Do you agree with the interpretation I have given whether it was...

MR MOYANE: No I do not agree.

ADV FRANKLIN SC: Wrongly included.

MR MOYANE: I do not agree with your interpretation that
10 there was an intention to neutralise anyone. I do not agree with you.

ADV FRANKLIN SC: Well I am sorry the word is used to neutralise.

MR MOYANE: Yes I am saying.

ADV FRANKLIN SC: I am asking you

MR MOYANE: Sorry.

ADV FRANKLIN SC: I am asking you to fix on the words and help us with what it means in this presentation. I know your evidence is that that is not what you intended. I am
20 asking you simply to accept.

MR MOYANE: I do not accept – I do not accept that there was any intention to neutralise. That is what is written here but there was never any intention to neutralise anybody.

CHAIRPERSON: Hang on Mr Moyane. Let us accept for present purposes that in your own mind you did not intend

that this should mean this and Mr Massone in his own mind also did not intend what you did not intend. What Mr Franklin is simply asking is but not knowing what was intended by Mr Moyane or Mr Massone when you read this what does it tell you – what is the meaning you get? It may be that when you say to Mr Moyane but how could you say this? Mr Moyane might say but I – that is not what I intended it is just an unfortunate word but I understand when somebody reads it and thinks it means this. You
10 understand what I am saying?

MR MOYANE: I do understand Chair.

CHAIRPERSON: Yes.

MR MOYANE: It gives a very bad connotation.

CHAIRPERSON: Connotation.

MR MOYANE: Yes.

CHAIRPERSON: I think Mr Franklin is looking for that – that connotation on your understanding to say the connotation it gives the bad connotation is the following. Do you want to address that?

20 **MR MOYANE**: Yes I am saying in the manner it is written.

CHAIRPERSON: Yes.

MR MOYANE: The connotation is very wrong.

CHAIRPERSON: Yes.

MR MOYANE: And unacceptable.

CHAIRPERSON: Yes.

MR MOYANE: Because in a normal course of any event any leader worth his salt would not get into a situation where he neutralise especially considering the fact that you are coming to a new organisation.

Secondly even if they are there for some time you do not neutralise people you have a discussion – an engagement with them. So I am saying I did say Chair that it is unfortunate the usage of the language in the terms. So I am not trying to malign.

10 **CHAIRPERSON**: Yes.

MR MOYANE: I am just trying to explain that.

CHAIRPERSON: No, no, no.

MR MOYANE: In my mind.

CHAIRPERSON: Yes.

MR MOYANE: Personally I would not.

CHAIRPERSON: Yes.

MR MOYANE: And I think possibly even when Mr Massone wrote this taking into account I am just – it is a hypothetical.

20 **CHAIRPERSON**: Ja.

MR MOYANE: Being Italian he in Italian could have been – because if you say in (speaking Italian) it might not mean neutralise in the same way as in English.

CHAIRPERSON: Mr Franklin.

ADV FRANKLIN SC: Thank you Mr Moyane I think that you

agree with the proposition I put ultimately as to what the words would mean in their ordinary context and I understand you to say that that was not what you intended. I do not have any SARS First 100 Day Plan where that wording was changed. Are you aware of any plan in which that wording was changed?

MR MOYANE: Unless you direct me to it Sir I am sitting here with documents.

ADV FRANKLIN SC: Yes.

10 **MR MOYANE:** But certainly that would have not have been the measure of transforming an organisation using such terms as neutralisation of people.

ADV FRANKLIN SC: My question is are you as the person who was party to this plan.

MR MOYANE: Yes.

ADV FRANKLIN SC: Aware of any amendment to the plan where these words were deleted?

MR MOYANE: These were working documents sir, and therefore they were not part of the official implementation in
20 the organisation, these were documents outside and therefore subject for a discussion, and unless there is a document after or post my appointment that speaks about then you can measure me in the context of the words that had been used.

ADV FRANKLIN SC: Yes, but my question is a simple one,

you were party to the discussions with Mr Massone and Mr Franzen, but prior to you taking up your position, I am asking you are you aware of any updates to this plan where these offending words were deleted.

MR MOYANE: None whatsoever in my time and nature, I don't remember seeing a document or such documents, cannot recall really.

ADV FRANKLIN SC: Right, then could you ...[intervenes]

CHAIRPERSON: I am sorry, did you – after your
10 appointment did you have an official document of the first
100 days that ways that was guiding you ...[intervenes]

MR MOYANE: Yes.

CHAIRPERSON: ...as to what to try and achieve?

MR MOYANE: Yes, yes.

CHAIRPERSON: Yes, okay. I know it is in these bundles
...[intervenes]

MR MOYANE: I am not sure.

CHAIRPERSON: You have not come across now?

MR MOYANE: No.

20 **CHAIRPERSON:** Okay, and are you able to say whether it
its basis was this it came from these discussions and this
documents, in other words it was prepared against the
background of these discussions?

MR MOYANE: Well, the document sets a vision.

CHAIRPERSON: Ja.

MR MOYANE: Once you are there, you are able to measure ...[intervenes]

CHAIRPERSON: Ja.

MR MOYANE: ...the mood. So the document might not be mirror reflect what is happened – that it has to be modified in accordance to the conditions that are objective on the ground.

CHAIRPERSON: Yes.

MR MOYANE: So what it discussed before and what you
10 discussed when you are ...[intervenes]

CHAIRPERSON: Ja.

MR MOYANE: ...would not be the same because the environment is different, Chair.

CHAIRPERSON: H'm. Do you remember whether when you started on your first day, you already had that or you developed it after you had ...[intervenes]

MR MOYANE: We developed it after.

CHAIRPERSON: Okay alright.

MR MOYANE: Yes.

20 **CHAIRPERSON:** Okay.

ADV FRANKLIN SC: And in referring to the same page. Why was it necessary to test *Barry Hore*? [Speaker not clear]

MR MOYANE: I – certainly, I do not know.

ADV FRANKLIN SC: Yes but ...[intervenes]

CHAIRPERSON: Under what goes that, Mr Franklin?

ADV FRANKLIN SC: It is on page 491. I took the witness to it. It is on the left-hand side of the page. On the lower side of the page under the heading: Taking Control.

CHAIRPERSON: 5491 is ...[intervenes]

ADV FRANKLIN SC: 493.

CHAIRPERSON: 493?

ADV FRANKLIN SC: Ja.

CHAIRPERSON: You want to direct me whereabouts?

10 **ADV FRANKLIN SC:** The lower part of the page, left-hand side.

CHAIRPERSON: H'm?

ADV FRANKLIN SC: Paragraph 3: Take Control. Is the third bullet point.

CHAIRPERSON: There are ...[intervenes]

ADV FRANKLIN SC: Does the Chair have it?

CHAIRPERSON: I have got 493. That is – oh, Take Control, bullet point 3? Is that right?

ADV FRANKLIN SC: That is right. It is Take Control.

20 **CHAIRPERSON:** Oh, is it BH? Is it BH?

ADV FRANKLIN SC: That is correct. It is the third bullet point.

CHAIRPERSON: Yes, okay alright. And that BH you say stands for?

ADV FRANKLIN SC: Barry Hore

CHAIRPERSON: It is Barry Hore?

ADV FRANKLIN SC: It is spelt H-o-r-e.

CHAIRPERSON: Yes?

ADV FRANKLIN SC: Who was the then Chief Operator Officer.

CHAIRPERSON: Ja. Okay continue.

ADV FRANKLIN SC: Yes. Mr Moyane, why in your planning, did you believe it was necessary to test Barry Hore?

10 **MR MOYANE:** There was no intention to test Mr Barry Hore. This finding(?) of the organisation inched on the IT component because SARS by its nature is IT intensive. So as to why it says test. They have done their assessment. They might have know what is happening within the organisation. There was no mandate whatsoever to test anyone.

ADV FRANKLIN SC: But it is written there. That is the point.

20 **MR MOYANE:** Yes, I am saying, sir. It is written. We keep on going to this thing that it is written.

ADV FRANKLIN SC: Yes.

MR MOYANE: I accept but there was nothing to indicate that there was a need for us to test Mr Barry Hore because if you are going to the hundred days – to go SARS and ask for the documents, there was nothing of that nature.

CHAIRPERSON: H'm. Did you ask Mr Massone why he put in "test Barry Hore here"?

MR MOYANE: That is the right question. He says: This organisation revolves around this particular individual.

CHAIRPERSON: H'm?

MR MOYANE: And therefore the of running this mammoth organisation is around what you call a robustness of the IT system's ability to interact and need to face with taxpayers.

10 **CHAIRPERSON:** H'm?

MR MOYANE: So I do not recall why this individual has to be tested. It was looking as to what is it that happens in that environment, how it is run, what needs to be done. That is the intent of what happened because indeed when I went to SARS, I discovered that the whole organisation rotates on a very efficient IT system. So you cannot go and tinker with something that brings revenue to the country.

So the context, perhaps, it is misplaced here.

20 And I want to put it on record. Mr Barry Hore left on his own accord. Hardly three months on my post. And I can put it on record. He came to me and said: Commissioner, now that you have been appointed, it has been my intention to leave the organisation. And I had a long discussion with him.

Because I thought it very strange that I am new here. Here is a man who is the core around which around this organisation revolves, he is leaving. I persuaded him and he told me that he has been here for a long time and he wanted his own time. No acrimonious relationship. He made the call(?) here. We never had any fights.

And therefore, I think he had already – he said: I had already discussed this with the acting commissioner then but as soon as the new commissioner arrives, I will be
10 leaving.

CHAIRPERSON: Okay. Mr Franklin.

ADV FRANKLIN SC: Yes. You see, Mr Moyane, that is, with respect, the problem is that Mr Barry Hore was neutralised, was he not? He left in December ...[intervenes]

MR MOYANE: No, but Chair ...[intervenes]

ADV FRANKLIN SC: [Indistinct]

MR MOYANE: I disagree ...[intervenes]

ADV FRANKLIN SC: [Indistinct]

20 **MR MOYANE:** But no ...[intervenes]

[Parties intervening each other – unclear]

CHAIRPERSON: Let him finish. Let him finish. Then you respond.

ADV FRANKLIN SC: He was neutralised. He left in December 2014, less than three months after you had

taken up your post. The COO of this organisation who, as I understand it, was a leading light, left within three months of you arriving. That, with respect, appears to reflect exactly the intention that is recorded on page 493 on which you now wish to distance yourself from.

MR MOYANE: I take ...[intervenes]

ADV FRANKLIN SC: [Indistinct]

[Parties intervening each other – unclear]

MR MOYANE: ...about this. Serious homage and I feel
10 offended to be told that I neutralised him. He was marginalised. I, seriously, Chair take exception to this statement because Barry Hore left the organisation at his own accord. Are you telling me that when somebody when he joined the organisation leaves a month thereafter is precisely because of your nature and demeanour? People leave for various reasons. And I want, therefore, to believe that what Barry told me was a lie.

ADV FRANKLIN SC: Yes.

MR MOYANE: I took it on good faith that this man is
20 leaving because he said he had spoken to the previous commissioner. And I did – on record, Chair, I went to the Minister. I went to the Minister and then I said: Minister, I have a problem in my hands here. You can tell Mr Nene to come here.

I said: Minister, there is a serious problem here.

Barry Hore says to me he is leaving. How do I address this matter? The whole intellectual property of this organisation rotates around him. So there is no succession planning. So, sir, I would like that statement to be retracted. I did not marginalise him. He left on his own accord. He wrote.

ADV FRANKLIN SC: You see, there, the difficulty that – is I have with respect and which this Commission will have to grapple with and certainly the difficulty which the Nugent
10 Commission had was, this was not an isolated departure, was it?

MR MOYANE: What do you mean when you say isolated departure?

ADV FRANKLIN SC: Well, let me just take this – yes. Mr Barry Hore, the Chief Operating Officer resigned within the two to three months you of you becoming Commissioner in December of 2013. Correct?

MR MOYANE: Correct.

ADV FRANKLIN SC: Mr Ivan Pillay, the acting
20 Commissioner, resigned in May of 2015. That is within a few months of you taking over. Correct?

MR MOYANE: Yes. But let us not – let us go back – let us not side takes.

ADV FRANKLIN SC: Let us ...[intervenes]

MR MOYANE: Why did they leave? What are the

reasons?

ADV FRANKLIN SC: Just stop Mr Moyane. I am going to give you the people and the dates.

MR MOYANE: Okay.

ADV FRANKLIN SC: And then you can get back to. So that is – so from Mr Hare, Mr Ivan Pillay. Thirdly, Mr Peter Richer who was... Sorry, Mr Pillay was acting Commissioner. I told you. Mr Peter Richer was the Group Executive, Strategic Planning and Risk, acting Chief
10 Officer, Strategy Enablement and Communications. A very long job title. He left in May of 2015. Correct?

MR MOYANE: I am listening.

ADV FRANKLIN SC: Well, is that correct?

MR MOYANE: Yes, they left. I cannot remember the dates and the ...[intervenes]

ADV FRANKLIN SC: When Mr Gene Rovelli(?), Chief Officer, Tax and Customs Enforcement Investigations resigned in May of 2015. You agree?

MR MOYANE: H'm?

20 **ADV FRANKLIN SC:** Is that a yes?

MR MOYANE: Yes, I agree.

ADV FRANKLIN SC: Mr Johann van Loggerenberg, Group Executive, Enforcement Investigations also left in February of 2015. Do you agree?

MR MOYANE: Yes. February 2015? I am not sure. Ja,

but he left.

CHAIRPERSON: Early 2015?

MR MOYANE: Ja.

CHAIRPERSON: H'm.

ADV FRANKLIN SC: Mr Adriaan Lackay who was the Spokesperson for SARS, resigned in March of 2015.

MR MOYANE: Yes.

ADV FRANKLIN SC: Correct?

MR MOYANE: [No audible reply]

10 **ADV FRANKLIN SC:** So Mr Hare was not an isolated case. There are many others but this is six people from the top echelons of SARS who left before one year was up of your tenure. Do you accept that factually?

MR MOYANE: H'm. Yes, they left.

ADV FRANKLIN SC: And that is why I press you on the content of your plan where you said you should take control – you could take control by testing Barry Hore. That is one of the things to do and that you were to identify individuals that could hamper change and neutralise them.

20 And it would appear from the facts that that is what you did. What do you say to that?

MR MOYANE: I deny this with all the contempt that goes with. Perhaps we may need with you Chairperson to deal with individual case by its merit.

ADV FRANKLIN SC: But is that not rather coincidental

that six senior people left?

MR MOYANE: Coincidence should not but let us speak about the merits because here it is semantics.

ADV FRANKLIN SC: But ...[intervenes]

MR MOYANE: Because you are saying Barry Hore left because I as the Commissioner pushed him aside. That is the inference that you are putting it to me. I am saying he left and resigned, citing personal matters. Who am I suppose to say? Am I suppose to say no? He said he was
10 leaving. He gave reasons. And I went to the Minister, Chair. And I said yes – I am giving one. Here, this person says he is leaving. He needs to come back and says this is what I did to him.

CHAIRPERSON: H'm. Do we, by any chance, have any affidavit from Mr Barry Hore?

ADV FRANKLIN SC: No.

CHAIRPERSON: We do not. Okay.

ADV FRANKLIN SC: Thank you. Could I ask you to look at AW-900 ...[intervenes]

20 **MR MOYANE:** No, let us – I would like us to continue on this. Let us not skip this.

ADV FRANKLIN SC: We ...[intervenes]

MR MOYANE: Let us go to Pillay.

ADV FRANKLIN SC: Sorry, Mr Moyane. I will ask you the questions and I ...[intervenes]

MR MOYANE: But you are casting assertions that he left because of me.

ADV FRANKLIN SC: I am getting to – I am dealing with it and I will give you the opportunity to say what you want. I am dealing with Mr Barry Hore.

MR MOYANE: Okay.

ADV FRANKLIN SC: Please refer to AW-95.

CHAIRPERSON: And what is the page?

ADV FRANKLIN SC: And that is page – SARS-01-507.

10 There are three brief emails there. The first – the second one in the middle of the page ...[intervenes]

MR MOYANE: Which one? AW....?

ADV FRANKLIN SC: AW-95.

MR MOYANE: Okay. Sorry.

ADV FRANKLIN SC: Page 507.

MR MOYANE: Ja?

ADV FRANKLIN SC: And in the middle of the page, Mr Franzen emails Mr Massone on the 3rd of December 2014 and he says: “Goodbye, Barry

20 Hore...” Do you see that?

MR MOYANE: Yes.

ADV FRANKLIN SC: I presume that is a reference to his departure. And then above that is an email from Mr Massone to Mr Franzen and he says the following”

“Now I am scared by Tom.

This guy was supposed to be untouchable and it took Tom just a few weeks to make him resign.

Scary...”

Do you see that?

MR MOYANE: Yes.

ADV FRANKLIN SC: So I do not think it requires much interpretation, Mr Moyane. Mr Massone, with whom you have been dealing now for many months, says of day of his
10 departure: Now I am scared by you, Tom. Do you accept that he is talking about you?

MR MOYANE: I hear what you are saying.

ADV FRANKLIN SC: Do you accept that he was talking about you?

MR MOYANE: Yes, I see that he is talking about me.

ADV FRANKLIN SC: This guy... You accept that he is talking about Barry Hore, correct?

MR MOYANE: Yes.

ADV FRANKLIN SC: Okay.

20 “This guy was supposed to be untouchable and it took Tom just a few weeks to make him resign.

Scary...”

So what Mr Massone with whom you have been dealing now for months, meeting regularly and planning.

His take of Barry Hore's departure is anything but benign.
Would you agree?

MR MOYANE: But what?

ADV FRANKLIN SC: He says it is very sinister. Would
you agree?

MR MOYANE: He says it is sinister?

ADV FRANKLIN SC: Yes. In other words ...[intervenes]

MR MOYANE: That Barry Hore is leaving?

ADV FRANKLIN SC: Yes, he sees it as you driving him
10 out.

MR MOYANE: That is your interpretation, sir.

ADV FRANKLIN SC: Well, what interpretation, other than
that, can you give?

MR MOYANE: No.

ADV FRANKLIN SC: What interpretation can you give
other than that?

MR MOYANE: I cannot think on his behalf what
Mr Massone was thinking here.

ADV FRANKLIN SC: I could ...[intervenes]

20 **MR MOYANE**: Because when Barry Hore was leaving it
was public knowledge. He was telling everybody that he
was leaving. So. As to where they picked it up, that is not
part of my -my ...[intervenes]

ADV FRANKLIN SC: Yes.

MR MOYANE: ...my problem.

CHAIRPERSON: Would you agree, Mr Moyane, that this email from Mr Massone to Mr Franzen reflects that Mr Massone thought that you took him out, that is Barry Hore? That is what he thought. You would accept that, that is what the email suggests?

MR MOYANE: On the face of it, yes.

CHAIRPERSON: Yes.

MR MOYANE: Yes, on the face of it.

CHAIRPERSON: Ja.

10 **MR MOYANE:** On the face of it.

CHAIRPERSON: Ja. You are not necessarily saying you agree that that is what happened but that is what he seems to have thought.

MR MOYANE: But another thing, Chair, if I may ...[intervenes]

CHAIRPERSON: Ja.

MR MOYANE: ...perhaps maybe comment here?

CHAIRPERSON: H'm?

20 **MR MOYANE:** When people make their own assessment, they assess everybody that they know in whatever form or shape and they might have their own opinion on the individual. As to whether I was untouchable, I do not know.

CHAIRPERSON: H'm, h'm.

MR MOYANE: All I know, which I can confirm here, that

he was a firm man what he wanted and he wanted to be done.

CHAIRPERSON: Ja.

MR MOYANE: So that is all I can take about him. He was whatever he wanted. Of course, I would engage and we would have a discussion on this matter like any other person.

CHAIRPERSON: H'm. Let me just mention to you the impression that I get from this so that you can comment on
10 it. When one reads it together with that plan of hundred days that we dealt with earlier. You have that part which was saying test Barry Hore. Testing Barry Hore. You remember that part?

MR MOYANE: Yes, sir.

CHAIRPERSON: That gives me the impression, together with what you said about him, that he was quite ...[intervenes]

MR MOYANE: Passionate, yes.

CHAIRPERSON: Uhm ...[intervenes]

20 **MR MOYANE**: [Indistinct] [Speaker unclear]

CHAIRPERSON: ...important on ...[intervenes]

MR MOYANE: Yes.

CHAIRPERSON: ...on SARS, you know. That gives me the impression that the plan had some focus on him, the hundred days, had some focus on him. Maybe that was

inevitable if he was so important in the organisation but had some focus on him and contemplated that he needed to be tested whatever that testing meant but to be tested. But that Mr Massone now thinks that: Shu, Tom has - I think he refers to you - is so powerful. He - is this - this is what he has done to this man that we thought was untouchable. I am saying, that is the impression I am getting. And I just want to give you a chance to comment on this impression.

10 **MR MOYANE**: Chair, I would not agree with you but the context into which you are painting it ...[intervenes]

CHAIRPERSON: You are understand?

MR MOYANE: I do understand it.

CHAIRPERSON: Yes.

MR MOYANE: But the fact of the matter is that. The organisation, as I said, hinged on what they call the modernisation of SARS. That was the heartbeat of the organisation. And that you have your systems in place. What do you call...? You needed to have people who
20 understand what the tax organisation functions with respect to either interface with valid stakeholders. That is where the heart of the organisation was.

CHAIRPERSON: H'm.

MR MOYANE: And therefore, you needed to be able to have someone like him who understand this.

CHAIRPERSON: H'm?

MR MOYANE: Someone who is able to defend the territory. Someone who says this is what I see happening in other jurisdictions in the world. So, credit is given to him. Credit is due to him. And nowhere in the organisation, in my pronouncements, have I said this man was a scum. He was this. This matter was continuously elevated to a level that we cannot go back lower to what the standard has been set.

10 And indeed, when this happened, for me it was a big shock. And I want to emphasise. It was a big shock. He was not a man who talked a lot. He was a man who was doing, who was practical. He needed things to be done. He would ask for it and the chance you disagree that in the manner in which it is being done is not right. Let us look at this, let us look at that. But to engage. So if there was an agenda on my side, I would not have taken this matter to the Minister.

CHAIRPERSON: Okay. Mr Franklin.

20 **ADV FRANKLIN SC:** Yes. Mr Moyane, I must just suggest to you. Reading these documents, that it looks as though this was the execution of a plan. You tested Barry Hore and you neutralised him.

MR MOYANE: No, you are still putting this – you are trying to throw as much mud that it sticks. I am saying to

you I did not. I did not, with due respect, make Mr Barry Hore to leave. Because the way you are putting it is that I did finally made this push that he must go.

ADV FRANKLIN SC: That is ...[intervenes]

CHAIRPERSON: What was the date of Mr Barry Hore's departure or is there a particular date in December towards the end?

ADV FRANKLIN SC: Yes, the 3rd of December.

MR MOYANE: 3rd of December, yes.

10 **CHAIRPERSON:** Yes. 3rd of December?

MR MOYANE: 3rd of December.

CHAIRPERSON: Oh, okay, okay. No, that is fine.

ADV FRANKLIN SC: Mr Moyane, just to give further context. Am I correct that within two weeks of taking over in September of 2014, you had disbanded SARS's Exco?

MR MOYANE: Correct.

ADV FRANKLIN SC: That is quite a dramatic move, is it not?

MR MOYANE: Yes, it is.

20 **ADV FRANKLIN SC:** You felt that after two weeks that there was a proper basis to get rid of the, am I correct, apart from the board, the most senior body, decision making body?

MR MOYANE: No, I did not – let us get – let us role this movie a little bit back. I was appointed on the 25th. I

started my duties on Monday, the 29th. On Thursday or Friday of that week, I think it was the 4th or the 3rd of October, there was a media enquiry that came through Mr Lackay about a rogue unit. He copied me and he said: Sir, these are the questions. These are the problems that we have that comes from the Sunday Times.

I was not aware but I did ask Mr Pillay about this. This thing was at the back of my mind and this was a big thing. He was really big eyes. Was worried about it. I
10 said: Well, I do not know. You guys have been here longer. These questions are not coming up now. If there is a way of answering them, go ahead. And I did.

And he went together with another gentleman, whose name I will not mention here so that I do not implicate anybody. And I said draft a response because when media asks questions they want a response. He went as the Head of Communication and Media to draft a response and they came back and I said: Whatever you put forward, I hope this covers the organisation because
20 these questions are very, very problem(?). It ended there. I did not intervene.

Sunday, the 5th, the Sunday Time had an exposé about a rogue unit. Chair, the rogue unit did not start with me. This things was being investigated sometime back. The world and South Africans are made to think that I came

with a rogue unit narrative. I gave Lackay the latitude to respond in a manner that management would have liked to respond to this because he said to me: We have received similar questions before.

So they responded. When I saw this, on Sunday, that very Sunday, I requested Exco members to come back. Let us discuss this matter. All of them came. I asked, Chair: Would you, gentlemen and the lady, explain to me? What is this? There were murmurs amongst them. Denial,
10 denial. This is an attack on SARS, on this, on that. And I said: But I was not given – I was not taken into your confidence by yourselves. I hope and trust that this matter ends here. We left that matter.

The Minister called and said: What is happening? I said: Well, sir, I do not know. I was given the assurance that this is just allegations against the organisation. A week later, again, questions were filtered(?). Through whom? Mr Lackay. Guess what? That Sunday, SARS prostitutes blah-blah-blah. I was lived
20 about this.

Taking into account, Chair, that I had raised this matter with the Minister also. On that Sunday the Minister was in Durban in Natal. We agreed to meet at the airport to discuss briefly on this matter because it is a worrisome matter. SARS is an institution of that has huge integrity

and... Its reputation was being dragged by this inference or that press that is being written about it.

And I said to the Minister: How do we...? He says: It seems, Commissioner, that you have not been given a true story about this thing, bearing in mind that there is an investigation that is taking place on the matter that is happening in the organisation. And I said: How do I trust people who do not tell me what needs to be discussed?

10 And I said to him: Minister, I think I will need to go and talk Exo that I think we do not need to have exco meetings in the manner in which we are. For the moment, we shall stand but operations will continue in the manner in which they are. I never took decisions unilateral if it is a matter that has to do with enforcement. I would have a discussion with the enforcement authority.

I communicated my displeasure, but it was not permanently. That was in November/October. By December, we had to reinstituted the Exco. So it was not
20 done in the absence of taking into account that we need leadership on the ground or sending message, like in, let us have a discussion here. Let us be open with one another of what is happening in the organisation.

What gave me a sense that people are telling me that the rogue unit matter does not exist. Forget about it.

I did not initiate it. And as testimony would be given here. Why did I have two people coming to me in 2015 to tell me about the rogue – that they were part of the rogue unit? I saw the equipment.

I interacted with them. And I think I should not be used as a scapegoat for the bad things that happened. We must admit that there were wrong things that happened in the organisation. I did not call Mr Sikhakhane to the organisation to do an investigation as to what was
10 happening. I did not call Advocate M Khanyane, the predecessor to Mr Sikhakhane.

All these investigations were taking place with the full cooperation of the Minister and the acting Commissioner. Chair, I am not sure as to where this discussion is going but I guess it may give you a sense that this organisation is not as holy as it seems to be. There were problems in the organisation.

CHAIRPERSON: Mr Franklin, continue.

ADV FRANKLIN SC: Yes, thank you. Mr Moyane, where it
20 is going is that the facts appear to suggest that you executed upon a plan which we see in writing before you even got into SARS. That is what I am suggesting to you. And what to, please, refer you to. I took you to the Nugent Commission's report. That is in the files of – the bundles that have been labelled for all of us now Chair. N3B of the

application bundle has the mentioned Commission report at the beginning of page 448.

CHAIRPERSON: You must remember at some stage, Mr Franklin, that Mr Monyane wanted to talk about the other officials.

ADV FRANKLIN SC: Yes, that is what I am getting on to.

CHAIRPERSON: Ja, okay.

ADV FRANKLIN SC: Do you see that, Mr Monyane?

CHAIRPERSON: The bundle, is it N3B, the application
10 bundle?

ADV FRANKLIN SC: N3B.

CHAIRPERSON: Ja, okay.

ADV FRANKLIN SC: It starts at 448, I am referring to page 522 to 542. There is a chapter devoted to the resignation of senior employees.

CHAIRPERSON: Just one second. Yes, Mr Franklin?
Page 525?

ADV FRANKLIN SC: Yes, 522.

CHAIRPERSON: 522.

20 **ADV FRANKLIN SC:** 542 And so Mr Monyane, this is Nugent Commission's analysis of the department of these six people that I named for you and it also deals with the disbandment of the executive and it sets out here the circumstances which led to each person's department. Those are findings that have been made by the Nugent

Commission.

CHAIRPERSON: I am sorry, Mr Franklin, for some reason I do not have pages 518 to 522. I have 517 and then the next page is 523. I do not know whether they are mixed somewhere.

ADV FRANKLIN SC: I am not sure if they have been misplaced, Chair.

CHAIRPERSON: But maybe if you, maybe if you read while somebody tries to get me the right pages, you can
10 continue and while you read I would ...[intervenes]

ADV FRANKLIN SC: Thank you, and what I had put to Mr Monyane is this is the chapter from the Nugent Commission report which details the circumstances of the departure of the six people and I do not intend going through it. This is evidence that was given and these are findings that have been made, but Mr Monyane, you said you wished to say something about that.

MR MONYANE: Chair, not to sound ridiculous, let us start with [indistinct] was resigning because of personal reasons
20 and if this Commission does not accept it, it is just a decision that you make. He may be called here. Kosilo was ready, leaving the organisation.

CHAIRPERSON: Who is that?

MR MONYANE: Kosilo, Kosilo, the Chief of Saliga. I think he was going on retirement because of age, so he

said he was leaving and therefore I see no reason why, and also in his case I approached the Minister and I approached him to stay a little bit longer.

Gene Ravele, he left because he wanted to leave, he said he was resigning, so these people put their reasons that they are resigning on personal reasons, I have no authority to stop them. Ms Elisabeth Khumalo she was there on a temporary basis, she was Head of HR, she did indicate to me that as soon as we start the process of
10 struggling the organisation she will be leaving. She left, she was coming I think from Telkom or so, she was there as Head of HR.

Bob Head is a British National who came here during Mr Gordhan's tenure, he came with his girlfriend who was given a job here and therefore he was also about to leave and he said he wanted to leave and I allowed him to leave.

Peter Richer, he was implicated in the Rogue Unit matter and he said he wanted to leave, so I do not see why
20 I am being brought down here into these matters, because as I said, I have no role except to be able to understand what was happening in the organisation and for me to be drawn to, especially on paragraph 4, having read the report on the Sunday Times Mr Monyane called together the members of ExCo, which I had said to you Chair, before I

read this and I demanded to know what this report about the Rogue Unit is all about.

All members [indistinct], it is incredible that this [indistinct]. They knew the Rogue Unit existed. Chair, just for a moment, they knew, why would then have gone into this deep analysis by Sikakane? They knew about this.

So there was cynicism on the part of the leadership protecting one another and I could not understand why they said they do not know, there was no, to say they
10 disavowed the knowledge of the existence of the Rogue Unit it is farfetched. They knew. They might have known it as HR whatever, high whatever, research unit, whatever it is, but the fact of the matter is that for them to say they do not know this unit, but the people were there.

Mr Gordhan here under oath accepted that the Rogue Unit existed. Perhaps the word makes people uncomfortable, but that unit which existed was there.

ADV FRANKLIN SC: Yes, thank you Mr Monyane. Could you please now turn back to a document which I took you
20 to earlier?

MR MONYANE: Which one?

ADV FRANKLIN SC: It is at page 513, so it is SARS
...[intervenes]

CHAIRPERSON: Mr Franklin, if your team would just remember to make sure I have got missing pages.

ADV FRANKLIN SC: Yes.

CHAIRPERSON: And my Registrar would remind them of it.

ADV FRANKLIN SC: Yes. I am sorry. Let me give you that reference again. It is AW100 and in the next break, Chair, we will attempt to get those missing pages for you.

CHAIRPERSON: Yes, okay.

ADV FRANKLIN SC: Would you look at AW100 which commences on page SARS01, page 534? Do you have it?

10 **MR MONYANE:** AW100?

ADV FRANKLIN SC: Yes.

MR MONYANE: Yes.

ADV FRANKLIN SC: That is the presentation which you identified earlier, SARS2.0, what has to be done, August 2014.

MR MONYANE: Yes.

ADV FRANKLIN SC: Now I want to take you to page 535 and in the middle of the page this is what the plan says:

20 “In terms of transform SARS into an innovative revenue and customs agency, SA Government will have to run a profound strategy refresh and focus on execution to reach SARS’ full potential.”

That was part of the plan which you and Bain had discussed in advance of you taking up your position,

correct?

MR MONYANE: Yes.

ADV FRANKLIN SC: Now what is interesting about that and which I would ask you to comment on is that you, from the outside, you and Bain believed that SARS would have to undergo a profound strategy refresh in order to transform it into an innovative revenue and customs agency and that was your objective as written here, is that correct?

10 **MR MONYANE:** Yes, underpinned by the decision by SARS to do an operating [indistinct].

ADV FRANKLIN SC: Well, this is more than an operating model change, it is to transform SARS into an innovative revenue and customs agency, correct?

MR MONYANE: That is what it says. That is what it says, but changing operating model it means you have to do a radical change in the organisation.

ADV FRANKLIN SC: Now you have accepted this before, neither you, nor Bain had been within SARS at the time
20 this was written, correct?

MR MONYANE: Yes.

ADV FRANKLIN SC: And I must put it to you, you have accepted yourself you had no revenue authority experience and I must just tell you that Mr Williams who gave evidence here told the Commission that the Bain leadership team

that ultimately was appointed by SARS as consultants had no revenue authority experience either. Do you accept that?

MR MONYANE: I do not know. They should have appointed people who understood the environment. I think when you have a consulting company they must attach people who have a sense of what the organisation needs.

ADV FRANKLIN SC: Did you at any stage ask Mr Massone or Mr Franzen about their experience in revenue
10 authority consulting?

MR MONYANE: Well, from the discussion I had they have done consultancy with other organisations, they have done benchmarking with international revenue organisations in the world.

ADV FRANKLIN SC: Well, that is I am afraid not what Mr Williams says.

MR MONYANE: Pardon?

ADV FRANKLIN SC: Not what Mr Williams told the Commission. He told the Commission that the three people
20 on the team had expertise in telecommunications, financial services and banking, but none of the working with tax authorities anywhere in the world. Are you able to dispute that?

MR MONYANE: Well, that is what he says, but they were able to interact with my people on a meaningful position on

issues that pertained to the sector, so I would not know that they did not have experience in that field.

ADV FRANKLIN SC: And then what I also want to point out to you is the evidence that was given both to the Nugent Commission and to this Commission by Mr Symington and Mr van Loggerenberg, and tell me if you have any cause to dispute it, and that is that Mr Symington said that the Commission by 2008, 2009, sorry, that SARS by those dates was recognised internationally as one of
10 the best and most efficient tax administration services in the world. Would you dispute that?

MR MONYANE: No.

ADV FRANKLIN SC: And Mr van Loggerenberg, you said, but there is a tax administration diagnostic assessment tool which is used internationally as a measurement instrument and in 2013 SARS scored amongst the top five revenue and customs authorities using this tool. Would you accept that?

MR MONYANE: Yes.

20 **ADV FRANKLIN SC:** In other words, the organisation into which you were appointed was regarded by objective measures as being world class. Do you accept that?

MR MONYANE: That is true, but that does not mean that it was lacking in other areas that needed to be strengthened.

ADV FRANKLIN SC: Well, one would always attempt to strengthen an organisation, but what is apparent from your plan is that you intended a profound strategy refresh and a transformation of the organisation into something, you used the term innovative revenue and customs agency and what I had asked you to explain to the Commission is why was it necessary to put SARS through a profound strategy refresh at the time when it was world class and you had no particular knowledge about revenue authorities, why that
10 plan?

MR MONYANE: I think that question would be answered simply by the following, why would SARS have accepted that there is a need for a new operating model that looks into the organisation in a profound manner if everything was as high level and without the need to change? There were reasons for that.

ADV FRANKLIN SC: Well, you refer to those documents Mr Monyane, I have not seen them.

MR MONYANE: Pardon?

20 **ADV FRANKLIN SC:** I have not seen the document that you refer to. We discussed that earlier. Do you understand?

MR MONYANE: Well, I said even if you do not have a copy, but it is there in the document, it is official. It is called APP2014/2015, reorganisation of SARS.

CHAIRPERSON: Can I take you back a few minutes ago, Mr Monyane, about whether Bain or the people from Bain that you were dealing with, whether they had any experience relating to the type of business that SARS is in. Did you at any stage as for the profiles of the people concerned to understand what kind of experience they have got to be able to advise you or SARS as to what to do in terms of tax collection? Did you get their profiles to see whether they did have the experience?

10 **MR MONYANE:** Do you mean before or after I was appointed, Chair?

CHAIRPERSON: At some stage before you started at SARS, ja.

MR MONYANE: Well, with respect to before, no.

CHAIRPERSON: Ja.

MR MONYANE: I depended entirely on the knowledge that Mr Massone will attach people who understand the sector. Post when they were appointed I was not involved directly in the appointment of the organisation, but I took it on
20 good faith that the teams that he has put in place, given the fact that SARS was a world class organisation, would not come and have people who are seconded who does not have the understanding or the background of the organisation, what the organisation is all about and what future prospects you want to put in place. I must say here

no, I did not.

CHAIRPERSON: Okay.

MR MONYANE: But I took it that the people who were seconded to do these things, one way or the other they must have experience in the field.

CHAIRPERSON: Okay. Mr Franklin?

ADV FRANKLIN SC: Thank you, Chair. Mr Monyane, could I ask you please to look back at your statement, your affidavit rather, which is in SARS bundle 3, and I would
10 want you to look please at paragraph 29.

MR MONYANE: Which one?

ADV FRANKLIN SC: Paragraph 29 on page SARS0320.

MR MONYANE: Yes.

ADV FRANKLIN SC: Now this, in this section you deal with a heading, you say ‘the Rogue Unit and State Capture’. Now just to get the terminology correct, when you arrived at SARS there was one of many units, one was called the High Performance Unit and this is the label that was given to it once the press reports came out, is that
20 correct, the label Rogue Unit?

MR MONYANE: Yes.

ADV FRANKLIN SC: And you have said in paragraphs 29 and 30:

“Finally I wish to state categorically that the formation an dope of the so-called Rogue

Unit, the existence of which Mr Gordhan has subsequently confirmed, and based on the objective evidence before the Commission, were illegal and probably amounted to a form of State Capture.”

And you say:

10 “The unit was certainly formed and operated against the clear provisions of the law in breach of the PFMA and other relevant statutes, more particularly in that public funds were received under false pretence that the unit would be housed at National Intelligence Agency when in fact it was housed at SARS.”

And then there are two further paragraphs that you deal with, but am I correct in surmising from those paragraphs that as you sit in the witness box in March of 2021 you, although you are not a lawyer, but your understanding and your perception is that the Rogue Unit, as you call it, was
20 unlawful and its formation was against the clear provisions of the law, as you said? Is that what you, is that your standpoint?

MR MONYANE: Yes, that is the standpoint I have.

ADV FRANKLIN SC: I imagine you have followed the litigation that has taken place inter alia between Minister

Gordhan and the Public Protector and you were aware of judgments that have been given in those proceedings. Would you agree?

MR MONYANE: Well, I hear what you are saying. I think when my counsel was here he discussed this matter with Mr Gordhan and I think it was on record as to what the outcome of those judgments were all about.

ADV FRANKLIN SC: Yes, well not much point would be served in reading out the judgment, but what I want to just
10 tell you, we do not have the judgments here, not readily at hand, but the full bench of the High Court in Gauteng gave a judgment on the 7th of December of 2020 in the matter of *Gordhan v Public Protector & Others*, it is reported in 2020(JOL) 49105GP, and you do not have it before you, but what I want to put to you is that the full bench of the High Court in Pretoria found unequivocally that the finding of the Public Protector that the so-called Rogue Unit was unlawful, was simply wrong.

In fact, they found it was not only wrong in law, but
20 irrational and falls to be reviewed and set aside. Now every leg upon which the Rogue Unit rested, such as the Sunday Times report, the Sikakane report, the Kroon report, all of those have either been withdrawn or discredited.

So I need to just, as you sit here now you still

adamantly insist that this unit was unlawfully established, why do you have that approach to this unit?

MR MONYANE: Chair, I have not had, I have interacted with Advocate Sikakane after the interview with the cross-examination on this matter. As far as she is concerned this assessment was not in any way seen as out of, not placed in terms of what he discovered at SARS and I am not sure as to why the Rogue Unit matter is so controversial to people here when it is very clear that the bugging of
10 offices by SARS has nothing to do with tax. You bug offices, that is not tax matter.

The matter that I was exposed to that I still hold, I still stand on what I am saying, but there may be that decision, I am not aware of that decision. My legal counsel would have to inform me as to the outcome what happened, but the fact of the matter is that I as the Commissioner I was approached by members of that particular unit that they did some of the things that are illegal that were outside the ambit of tax authority.

20 I am not sure as to why this question says it is a, why do we still stick with this. I still stick with this matter. The Rogue Unit existed unlawfully, that is what was the outcome. Now you are saying the Kroon Commission, the Kroon Commission it was one man that decided that he distances himself with the report, Judge Kroon, but he did

not consult the other people. The Advisory Committee consisted of other people, not him only, so it was a personal opinion, not a decision that was taken by the Advisory Committee.

ADV FRANKLIN SC: Yes you see Mr Monyane, the difficulty is that a court has pronounced, and it really does not matter what anyone thinks of it, a court has pronounced and you, I would have thought that you would have looked at that and seen it, but it has pronounced in
10 clear and unequivocal terms that there was nothing unlawful about the establishment of this unit and in fact what the court found was that the Public Protector in making a finding that the unit was unlawful allowed her important office to be used to try and resuscitate a long dead, fake news propaganda fiction. Now that is a court... You shake your head. Three Judges found that, so whatever you think of it is irrelevant, so that is what I am putting to you.

CHAIRPERSON: I am sorry Mr Franklin, had you finished
20 what you were putting first?

ADV FRANKLIN SC: Yes, I have one further proposition to put.

CHAIRPERSON: Okay no, okay let me hear.

FEMALE SPEAKER: The objection is as follows, Chair. Mr Franklin is putting to the witness that the full bench in

Pretoria found or made certain findings against the Public Protector in the matter of *Pravin Gordhan v The Public Protector* and therefore my learned friend proceeds, it does not matter what everybody else says, in other words it does not matter what Sikakane found, it does not matter what Kroon found, those findings by the full bench in Pretoria still stand, and I do not think that it is correct.

If Mr Chairman would remember, even during the cross-examination of Mr Gordhan he was quizzed about the
10 finding and the utterances of the full bench where he was concerned and the things he said. So if my learned friend says to Mr Monyane it does not matter what Sikakane says for the full bench judgment, I do not think that is correct and I think Mr Monyane has a good point when he says, when he reminds my learned friend that in fact Kroon apologised for saying and, for saying things without having consulted who was concerned.

Maybe my learned friend would want to rephrase the question, but we cannot have it, we cannot have him
20 saying to Mr Monyane what the full bench said nullifies every other finding when we all know that for example the Sikakane report has not been reviewed by anyone.

CHAIRPERSON: Let me put it this way, Mr Monyane, various people and panels expressed views on whether this unit was lawful or unlawful. Is that right?

MR MONYANE: Yes.

CHAIRPERSON: And that includes the Sikakane report, the Kroon Panel and what Mr Franklin is saying is that you articulated a view, I think earlier on, that the unit was unlawful, I hope my recollection is right, but he was now putting to you that there has now been a judgment of three Judges in the High Court of Pretoria who have decided that there was nothing unlawful about the establishment of the unit and he asked you whether you still stood by your view, and I think you said you still stood by your view and you said you spoke to Advocate Sikakane and he said something to you, I cannot remember what he said, but I got the impression that you were saying that based on with he said to you it meant that you did not change your view about the unit that it was unlawful. Is that correct?

MR MONYANE: Yes, Advocate Sikakane stands by what his findings were.

CHAIRPERSON: Yes, yes, yes, and you have not read the judgment that Mr Franklin is referring to.

20 **MR MONYANE:** No sir, I cannot argue with him. That is what the Judges are saying.

CHAIRPERSON: Yes.

MR MONYANE: But what has to be answered Chairperson, is if it is unlawful, it is not unlawful, what is the lawfulness of what happened by these members when

they are bugged... I hear what you are saying.

CHAIRPERSON: Ja.

MR MONYANE: When they bugged government entities, that is an issue. That is the matter that I am raising here. This is not something that is, I am dreaming about, it is a reality of fact. So he can say what he wants to say, but I as the Commissioner was subjected for a two and a half confession, open, unsolicited, so I do not understand. He can say whatever he does, but that is fine.

10 **CHAIRPERSON:** Ja, okay.

MR MONYANE: If it is unlawful that is what the law says, so it means there are things that are unlawful that become lawful.

CHAIRPERSON: I do not think Mr Monyane would be able to contribute much in terms of whether the unit was lawful or not, because he is not a lawyer. He has said he phoned Mr Sikakane and Mr Sikakane said, he stood by what he said. So he, I think you depended on advice on whether it was lawful or not, is that right?

20 **MR MONYANE:** Yes.

CHAIRPERSON: Ja.

ADV FRANKLIN SC: Yes M'Lord, Chair, absolutely. There is no point in debating the legality and nor did I intend to do so.

CHAIRPERSON: Ja.

ADV FRANKLIN SC: The point I make is simply that there has been a definitive finding by a three member bench as to the lawfulness of the Rogue Unit.

CHAIRPERSON: Ja, yes.

ADV FRANKLIN SC: But despite that, Mr Monyane in March of 2021 still maintains that it was unlawful and that is the only thing I, and there is no point of debating my learned friend's objection either and a full reading of the judgment will show that the court dealt with each of the
10 various ...[intervenes]

CHAIRPERSON: Grounds.

ADV FRANKLIN SC: Bodies that investigated this and disagreed and said that they were wrong.

CHAIRPERSON: Ja, okay.

ADV FRANKLIN SC: But I have made my point. Just a final thing for now on the Rogue Unit. You earlier said words to the effect you are not sure why, I am using my words now, why the fuss and why people are still debating the issue of the Rogue Unit, is that correct? Is that what
20 you said?

MR MONYANE: Chair, with your permission may I request that we move further? Because this is not going to advance any discussions, my points and his points and other points, so.

CHAIRPERSON: Ja, but he, I think he wants to follow up

on what you said, he wants to make sure that he understood you correctly first. I think you were saying something along the lines that you did not understand why this issue of the unit was being brought up in the Commission, that was the impression of, or my impression of what you were saying. Is that correct, or not?

MR MONYANE: Yes, the Rogue Unit was brought to your attention, cross-examination happened here and there was an acceptable by Mr Gordhan that yes, the Rogue Unit
10 existed. So other parts that we are arguing about here, if there is a judgment, a court judgment about the lawfulness of the unit, let us leave it there and let us proceed.

CHAIRPERSON: Mr Franklin?

ADV FRANKLIN SC: Yes, thank you. The last proposition I want to put is that it is, I find it strange that you should express that sentiment, because is it not correct that a number of the steps which you took whilst you were Commissioner was based upon a view that there was a unit which got the label Rogue Unit which was unlawful?

20 **MR MONYANE:** Mr Franklin, with due respect, are you saying that the two people who came and confessed about wrong activities that they did, was lawful?

ADV FRANKLIN SC: Mr Monyane, I am not ...[intervenes]

MR MONYANE: No, I am asking.

ADV FRANKLIN SC: No, do not ask me anything. I am

saying to you that you as Commissioner based a number of your decisions and actions on the assumption that there was an unlawful Rogue Unit, not so?

MR MONYANE: Which decisions did I take? I did not take any decision about the Rogue Unit. I was dealing with matters of administration in the organisation. The Rogue Unit was just a different matter altogether.

ADV FRANKLIN SC: Did the disbandment of ExCo not follow from the news of the so-called Rogue Unit?

10 **MR MONYANE**: The disbandment of ExCo was in line with the decision that we discussed with the Minister, and it was re-established.

ADV FRANKLIN SC: And did the departure of a number of people that I referred to not, was it not connected with the so-called Rogue Unit?

MR MONYANE: No, again you are wrong, not the departure of people. Barry Hore did not leave because of the Rogue Unit, Kosilo did not leave because of the Rogue Unit, Ms Khumalo did not leave because of the Rogue Unit.

20 So that assumption is wrong.

ADV FRANKLIN SC: Yes, well as I have seen the documentation I must put it to you that the Rogue Unit loomed large during your tenure at SARS and you raised it at every turn as a justification for your actions.

MR MONYANE: I disagree with you. I think you are

completely missing the point here, Mr Franklin.

I did not run SARS on the basis of the Rogue Unit, I ran SARS on the basis of what needed to be done at that time and this assertion is completely unacceptable for me, Chairperson, because I did not run SARS based on the Rogue Unit. The Rogue Unit was a sideshow that was a distraction, that was not necessarily in the organisation and I repeat, Barry Hore, Kosilo, Ma Khumalo and others left at their own volition. It had nothing to do with the
10 Rogue Unit.

Now you lumped everybody around the Rogue Unit, I am not sure where you take that point and Chair, I take, my line of thinking if this is right, it is not correct what Mr Franklin is saying.

CHAIRPERSON: H'm, no, no, you are right to give your response. If you, you say what is put onto you it is not correct that is legitimate for you to say, just as it is legitimate for him to put to you his interpretation of the fairness of the facts as he sees it and then give you a
20 chance to respond. Shall we take the adjournment?

ADV FRANKLIN SC: Thank you.

CHAIRPERSON: For 10 minutes.

ADV FRANKLIN SC: Thank you.

CHAIRPERSON: Okay, we take a 10 minutes break. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Franklin?

ADV FRANKLIN SC: Thank you, Chair. Chair, I am mindful of the hour.

CHAIRPERSON: Yes.

ADV FRANKLIN SC: And I am also mindful of the fact that you deferred the two applications to cross-examine and so I have not covered the topics that I wished to.

10 **CHAIRPERSON:** Okay.

ADV FRANKLIN SC: There is a very narrowly circumscribed issue, which Mr Fourie wishes to deal with in relation to Mr Symington, if you give leave.

CHAIRPERSON: The problem might be if I do not grant him leave.

ADV FRANKLIN SC: Yes.

CHAIRPERSON: So that is why I said you must cover what you need to cover so that irrespective of what the outcome is ...[intervenes]

20 **ADV FRANKLIN SC:** Certainly.

CHAIRPERSON: We do not say something was not covered.

ADV FRANKLIN SC: Certainly. Ja, he is simply better placed to deal with the specific issue.

CHAIRPERSON: Ja, ja, but from you right side you have

covered.

ADV FRANKLIN SC: Yes.

CHAIRPERSON: Okay.

ADV FRANKLIN SC: And then I think obviously Mr Hudman will address you to the extent that he wishes to.

CHAIRPERSON: Yes, yes okay, okay.

ADV FRANKLIN SC: Thank you.

CHAIRPERSON: No, thank you, Mr Franklin. I guess
10 Mr Hudman should be the first one to come back.
Somebody must sanitise the podium.

MR HUDMAN: Thank you, Chairperson.

CHAIRPERSON: Yes.

MR HUDMAN: I will not go on at length.

CHAIRPERSON: Yes.

MR HUDMAN: Chairperson, in essence the evidence leader has covered, in addition to the main topics he has covered broadly the areas that I would have wanted to traverse in cross-examination with Mr Monyane.

20 **CHAIRPERSON:** Yes.

MR HUDMAN: I am satisfied at this stage. The matter that I would now raise in addition to what he has covered are relatively, I do not want to say nitpicking, but they would be correct, they would correct factual inaccuracies.

CHAIRPERSON: Yes, yes.

MR HUDMAN: And would obtain concessions in relation to that, but would not in any way change the ...[intervenes]

CHAIRPERSON: In the bigger scheme of things.

MR HUDMAN: The bigger scheme of things.

CHAIRPERSON: Ja, ja.

MR HUDMAN: And the nature of the responses of Mr Monyane thus far.

CHAIRPERSON: Yes.

MR HUDMAN: We have one, my client has, and I share
10 one concern and that is that thus far my client's affidavits have not been placed on the website of the Commission.

CHAIRPERSON: Oh, okay.

MR HUDMAN: The transcript of his evidence on, I think it was the 24th of March, is up.

CHAIRPERSON: Ja.

MR HUDMAN: But not his affidavits and his affidavits, well his first affidavit and his second affidavit, I will speak of those for the time being, those affidavits traverse in epic detail much of the ...[intervenes]

20 **CHAIRPERSON:** The issues that ...[intervenes]

MR HUDMAN: Well, all the issues that had been in debate.

CHAIRPERSON: Yes.

MR HUDMAN: They deal with all sorts of things such as the legality of the unit, the fact that the existence of the

unit was never denied by anybody, what was denied is that it was rogue, that it was illegal.

CHAIRPERSON: Yes, ja.

MR HUDMAN: And that is not, you know what is put that Mr Gordhan confessed to supposedly, he confessed to the existence of the Rogue Unit. My understanding is that there was a unit, that unit existed.

CHAIRPERSON: Yes, ja.

MR HUDMAN: Not that it was rogue.

10 **CHAIRPERSON:** Okay.

MR HUDMAN: So those issues are all dealt with and if the publication takes place then we are satisfied that the full picture has been placed before the Commission. So in those circumstances it would seem to me to be somewhat less than accommodating to the time that the Commission has for me to now embark on cross-examination.

CHAIRPERSON: Yes, yes okay, no, that is fine. Of course you can speak to Mr Franklin, particularly if the affidavit has been redacted, there should be no problem
20 with it being put on the website of the Commission.

MR HUDMAN: Yes. I assume that the reason why it had not gone up was that the issue of redactions had not yet been finalised, but you know, if I simply place on record that we would expect that the affidavits go up.

CHAIRPERSON: They go up, ja.

MR HUDMAN: As soon as possible.

CHAIRPERSON: Ja, and that should be no problem as far as I am concerned, but Mr Franklin and his team would check if there is any problem.

MR HUDMAN: It seems to me, Mr Chairperson, that it is simply a matter of administration.

CHAIRPERSON: Yes, ja. No, it is a matter of administration.

MR HUDMAN: Thank you very much.

10 **CHAIRPERSON:** So I can take the application as withdrawn.

MR HUDMAN: I am just not pressing.

CHAIRPERSON: Ja, I understand. I understand you.

MR HUDMAN: No, I cannot withdraw it, because my affidavit, albeit the second affidavit, is in, it has two purposes. We want to put up further ...[intervenes]

CHAIRPERSON: You are not asking me to make any order.

MR HUDMAN: We want to put up the further evidence.

20 **CHAIRPERSON:** Ja.

MR HUDMAN: And to motivate the application, so the affidavits cannot disappear.

CHAIRPERSON: Ja, ja, but you are not asking me to make any order.

MR HUDMAN: I am not asking you to make an order.

CHAIRPERSON: Okay.

MR HUDMAN: But thank you.

CHAIRPERSON: Okay, alright. Mr Fourie?

MR FOURIE: Thank you.

CHAIRPERSON: Yes, Mr Fourie?

MR FOURIE: Chair, this is an application for leave to cross-examine Mr Monyane in respect of limited aspects relating to the evidence provided by my client, Mr Flock Symington at a previous sitting.

10 **CHAIRPERSON:** Yes?

MR FOURIE: Chair, the application ...[intervenes]

CHAIRPERSON: And obviously based on what went on in the morning, you are aware of the remarks that I have made in the other application in the morning.

MR FOURIE: Yes, and I take note of the comment that was made that this is not the correct forum and there is no time to simply indulge people coming to refute allegations that they have been less than truthful, particularly if they have not been implicated in any way in State Capture and
20 certainly Chair, my client has not been implicated by anyone in anything to do with State Capture.

He was really a victim of circumstances, happened to stumble across what we say, we submit is glaring evidence, a thread, which when pulled indicates, gives one a glimpse into the abyss of State Capture, but why I submit

his, allowing very limited cross-examination, and I am happy to commit to a limited time period of say 45 minutes, why I submit that may be in the interest of the Commission, it may assist the Commission in evaluating the credibility of Mr Monyane's evidence and also the probabilities of his version as compared to the numerous competing versions they have that are before the ...[intervenes]

CHAIRPERSON: What areas did you want to cover?

MR FOURIE: In particular if I could draw your attention,
10 Chair, to ...[intervenes]

CHAIRPERSON: What I do recall clearly about your client is the incident of his, I think kidnapping might not be an inappropriate word.

MR FOURIE: Correct, correct.

CHAIRPERSON: When he was denied, refused the opportunity to leave a particular room.

MR FOURIE: That is correct.

CHAIRPERSON: That is the one thing that is upper most in my mind about ...[intervenes]

20 **MR FOURIE:** Quite correct, Chair, and that really is the heart of the matter.

CHAIRPERSON: Yes.

MR FOURIE: What I would seek leave to explore under cross-examination of Mr Monyane is why my client, who is a tax lawyer, who spent his whole career at SARS, shuns

any kind of limelight, why it was that he found himself in this dramatic situation where he is held against his will by members of the law enforcement and the Commissioner's own bodyguard and where a document which was inadvertently handed to him, of which he was unaware at the time of any significance of it, was taken from him by force by members of the Hawks.

CHAIRPERSON: But you would pursue that questioning on the basis that it would achieve what you are seeking to
10 prove in the end.

MR FOURIE: Well, where I submit it may go ...[intervenes]

CHAIRPERSON: Ja, where will it lead us?

MR FOURIE: What it will show, Chair, I submit is that Mr Monyane was instrumental in suppressing exculpatory evidence about Mr Pillay, Mr Magashula and Minister Gordhan and that he was instrumental in withholding that evidence, the exculpatory evidence from the NDPP. Had the NDPP been given that evidence, as they should have
20 been, they probably would never have been charged as broad. That is where I have to go in the examination, the cross-examination of Mr Monyane.

CHAIRPERSON: And then what would that mean in the context of the terms of reference of the Commission?

MR FOURIE: Well, it would, I would submit, a strong

indication of participation in the State Capture Project, being ...[intervenes]

CHAIRPERSON: Well, speak more about that.

MR FOURIE: Very well. Being the deployment of Mr Monyane into SARS by former President Zuma to achieve certain goals, one of which is being, getting rid of people who are obstacles to the State Capture Project, namely enforcement officials who pose a risk to other beneficiaries or funds of State Capture or officials such as
10 Mr Pillay and potentially Minister Gordhan who are simply obstacles to the broader State Capture Project. Now Mr Symington has been called a fantasist by Mr Monyane and ...[intervenes]

CHAIRPERSON: What allegations has Mr Monyane made against your client?

MR FOURIE: What he says is, there are two primary allegations he makes, Chair, in Mr Monyane's affidavit ...[intervenes]

CHAIRPERSON: Well, let us go to your client's
20 application. Where does he says what it is that, what allegation Mr Monyane has made against him?

MR FOURIE: Chair, my client ...[intervenes]

CHAIRPERSON: Because such an application must be prompted by allegations made by the witness against the applicant.

MR FOURIE: Yes. Chair, on behalf of my client my attorneys filed a notice in terms of Rule, I think it is 3(4) of the Rules of the Commission, to cross-examine various people, including Mr Monyane and the notice is not accompanied by the affidavit which sets out exactly who said what and what issues we seek to cross-examine on. It simply refers to Mr Simmington's founding and replying affidavit in the commission. Now both those affidavits were filed prior to Mr Monyane filing his affidavit.

10 **CHAIRPERSON:** You see, you have got to make your case in your founding affidavit, so your client has got to make his case for leave to cross-examine Mr Monyane in his affidavit, he need to say this is what Mr Monyane has said about me or against me and this is why it is so important in terms of the context of the function and or objectives of the Commission and terms of reference and this is how it affects me and this is how it will benefit the Commission if I am allowed to, if I am granted leave to cross-examine.

20 So I would look at the affidavit to see what case is made out, that is why I say what allegation made by Mr Monyane against him is he relying on?

MR FOURIE: Chair, I cannot point to an affidavit by Mr Symington, to answer the Chairperson's question. What I can do is, if allowed, from the bar point to Mr Monyane's

affidavit simply to show the two key allegations which I seek leave to test in cross-examination.

CHAIRPERSON: But he does not rely, your client does not rely on those allegations.

MR FOURIE: My client has not deposed to an affidavit in which he says, in which he responds to Mr Monyane's affidavit.

CHAIRPERSON: Yes. You see, that is going to be problematic, because I look at his affidavit to see what
10 case he has made out, you know, and one of the things I look at is; why does he want to cross-examine this particular witness? What has this witness alleged against him and what does he have to say about those allegations?

MR FOURIE: Yes, yes.

CHAIRPERSON: And if he does not say this is what this witness has alleged against me and this is my response then there is a problem. Do you understand?

MR FOURIE: I do, Chair. I must submit that Mr Simmington's version is fully before the Commission,
20 both and his two affidavits and also in his extensive evidence that he has given.

CHAIRPERSON: Yes.

MR FOURIE: And I certainly will not seek to put any proposition ...[intervenes]

CHAIRPERSON: You accept I will not, I will not go around

looking for all the affidavits here as filed in the Commission when I want to look at what his case is.

MR FOURIE: Yes.

CHAIRPERSON: I have to look at his affidavit which is filed in support of his application for leave to cross-examine.

MR FOURIE: Yes. Chair, may I, I do Chair, but I do submit that there is a bit of a lacuna in the Rules of the Commission when it comes to this type of application to
10 cross-examine by someone who has not been implicated in State Capture. The Rules deal with giving people the right to reply who have been implicated.

CHAIRPERSON: Well, the Rules seek to give only people who are implicated by a particular witness the right to apply for leave to cross-examine.

MR FOURIE: Yes.

CHAIRPERSON: Again the right to apply, not the right to cross-examine, so you have got to bring yourself within the Rules, Rule 3(3) or Rule 3 to say I am an implicated
20 person, I have been implicated by this witness and part of what I was saying in the morning is if you have been implicated in acts of corruption, fraud or State Capture your case might be much more easier than if your complaint is this witness has implicated me in lying, you know, because he says this is what I said. Really in the

context of what we are talking about it does not go into the big picture, you see.

MR FOURIE: Chair, I cannot rely on the Rules.

CHAIRPERSON: Ja.

MR FOURIE: I have to rely on the Regulation which give the Chairperson or the Commission an overriding discretion.

CHAIRPERSON: Yes.

MR FOURIE: And the key, the key factors ...[intervenes]

10 **CHAIRPERSON**: Of course I will ...[intervenes]

MR FOURIE: Are whether the evidence will be of assistance to the Commission.

CHAIRPERSON: Ja, ja.

MR FOURIE: That really is the key, Chair and I submit to you that you would have a discretion and the power to grant leave to a witness who has given evidence, but he is not personally implicated in State Capture, to cross-examine and I understand it is a discretion that you could exercise either way.

20 **CHAIRPERSON**: Yes.

MR FOURIE: Lastly Chair, if I could perhaps just remind you that you mentioned this morning that the right of an individual should always be taken into account.

CHAIRPERSON: Ja.

MR FOURIE: My client was totally innocent, he stumbled

accidentally onto a thread which, as I have said when pulled, exposes a glimpse into the abyss. He was kidnapped, he was held against his will by law enforcement and then he was subject to bogus charges and then he lost his job.

CHAIRPERSON: But of course you accept that he has taken the stand, he has put ...[intervenes]

MR FOURIE: I do.

CHAIRPERSON: The facts as he knows them..

10 **MR FOURIE:** I do.

CHAIRPERSON: The public is aware of his version.

MR FOURIE: And you gave him a fair and adequate hearing.

CHAIRPERSON: Yes.

MR FOURIE: There is no doubt about that.

CHAIRPERSON: Ja, ja.

MR FOURIE: It really would be then just to challenge Mr Monyane with the heart of Mr Simmington's version.

CHAIRPERSON: Ja.

20 **MR FOURIE:** Thank you.

CHAIRPERSON: Okay, alright thank you. I am not going to give reasons, but if reasons are asked for they will be provided. This application is dismissed. You were done, Mr Franklin.

ADV FRANKLIN SC: Yes.

CHAIRPERSON: Ja, let me ask counsel for Mr Monyane whether she wishes to ask any clarificatory questions or re-examination on Mr Monyane?

UNKOWN COUNSEL: Mr Chairman, thank you. There are no questions from me. Actually I was going to ask if Mr Monyane can then be excused from the cold seat there where he is. There are no questions.

NO FURTHER QUESTIONS

CHAIRPERSON: There are no questions, okay. Thank
10 you. Mr Monyane, we have come to the end of your evidence and questioning. Thank you very much for availing yourself. We are going to... Let me allow Mr Franklin to come back. I take it that you have nothing further to say.

ADV FRANKLIN SC: No, that concludes the questioning, thank you.

CHAIRPERSON: Yes, okay. We are going to adjourn for the day and in terms of the public I will just mention that we do not have any evening session this evening, but
20 tomorrow and Friday I will hear the evidence of Mr Anoj Singh again in relation to the Transnet work stream, so there is no evening session this evening.

ADV FRANKLIN SC: Thank you, Chair.

CHAIRPERSON: Thank you to everybody. We adjourn.

INQUIRY ADJOURNS TO 27 MAY 2021