

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

25 JUNE 2021

DAY 417



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 25 JUNE 2021

CHAIRPERSON: Good morning Mr Chaskalson, good morning everybody.

ADV CHASKALSON SC: Morning Chair.

CHAIRPERSON: Moring Mr Holden.

MR HOLDEN: Morning Chair.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Chair as – as we mentioned on Tuesday today we will be following the flow of funds relating
10 to the purchase of the Optimum Coal Mines and we will be doing that in great detail because of the typical symbolic importance of that transaction for the commission.

Obviously everyone knows Chair that the purchase of the Optimum Coal Mine was the primary subject matter of the Public Protector’s State Capture Report that gave rise to this commission.

The relevant diagrams that describe that flow of funds starts in Bundle 20 at page 321 Chair and before we get to those – to taking you through those diagrams I just
20 want to ask Mr Holden to correct two errors on those diagrams which do not accurately reflect the narrative of his report which describes the flow of funds.

CHAIRPERSON: Yes. Yes.

ADV CHASKALSON SC: Mr Holden can you take the Chair to...

CHAIRPERSON: Before we do that yesterday the Registrar had to remind me that we did not administer an oath to a witness so at least today I must show that I remember. Please administer the oath again or affirmation.

REGISTRAR: Please state your full names for the record. Please state your full names for the record

MR HOLDEN: Paul Edward Holden.

REGISTRAR: Do you have any objection to making the prescribed affirmation?

10 **MR HOLDEN:** I do not.

REGISTRAR: Do you affirm 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, I truly affirm.

MR HOLDEN: I truly affirm.

CHAIRPERSON: Thank you Mr Holden. Mr Chaskalson we drawing to a close with regard to oral evidence of just in general for the commission so it feels good to be where we are in terms of we are about to finish.

ADV CHASKALSON SC: Yes.

20 **CHAIRPERSON:** The hearing of oral evidence which has – which started in August 2018. Yes so ...

ADV CHASKALSON SC: Mr Holden can I – can I ask you just quickly to take the Chair to the corrections that need to be made and I understand they are on pages 321 and 332 and can – can you start with 321.

MR HOLDEN: Certainly. Should I – should I bring up the diagram on my screen?

ADV CHASKALSON SC: Please.

CHAIRPERSON: That would be helpful.

ADV CHASKALSON SC: Please do.

CHAIRPERSON: Yes please.

ADV CHASKALSON SC: And can you explain to the Chair what needs to be changed on this diagram.

MR HOLDEN: Certain Chair. I mischaracterised and almost
10 labelled two of the payments and their routes and the first
relates to the entry that it is tagged R56 179 799.00 which
is – flows from Transnet to Trillian Asset Management which
I am going to have here – that forms part of what I call the
Albertime stream.

That amount did not come from Transnet it came from the Transnet 00:04:20 to find Benefit Fund and that amount travels straight from – it does not travel straight to Trillian Asset Management it rather goes to Regiments Securities from where it is distributed.

20 **ADV CHASKALSON SC**: So – so Mr Holden if I understand you correctly that arrow – the problem can be corrected if the arrow that runs from Transnet to Regiments Securities is crossed out.

MR HOLDEN: Correct.

ADV CHASKALSON SC: And in its place an arrow is taken

from the box above Regiments Securities which is the TSDBF.

MR HOLDEN: Correct.

ADV CHASKALSON SC: So – so the arrow that runs from Transnet to Regiments Securities should instead run from TSDBF to Regiments Securities.

MR HOLDEN: That is correct.

ADV CHASKALSON SC: And maybe if you – for everyone to see if you could trace the direction of where the arrow
10 should run?

MR HOLDEN: I am not sure if you could see my cursor.

ADV CHASKALSON SC: We can.

MR HOLDEN: You can. It should run down that way from TSDBF Nedbank down to Regiments Securities.

ADV CHASKALSON SC: Thank you. And then the second correction on this page.

MR HOLDEN: The second correction on the page is that I effectively put first soft fee where club loan fee should be on this current diagram. So where it reads 4 December
20 2015 R56 179 799.00 that should actually read 4 December 2015 R93 400 000.00 and that is the club loan.

ADV CHASKALSON SC: And then can – can we go to page 331 where the same transactions are reflected in closer detail. Sorry 332.

MR HOLDEN: Certainly Chair. So to go to this one more

time the first of all I thought the simplest change the line running from Transnet...

ADV CHASKALSON SC: Sorry Mr Holden can you just wait for a moment the Chair is getting to ...

MR HOLDEN: Absolutely.

CHAIRPERSON: I initially thought you said 322 so I discovered that it is 332 is that right?

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Ja I am there. Thank you. Yes Mr
10 Holden.

MR HOLDEN: So in the first instance we have the Transnet funds here and the arrow pointing downward to Trillian Asset Management the – that amount that I have recorded there which is R36 million should be crossed out and replaced with the amount that flows to the left from Transnet. So that line from Transnet to Trillian Asset Management should read R93 400 000.00 in relation to the club loan.

CHAIRPERSON: Mr Chaskalson I am not doing anything on
20 my pages on the assumption that there will be replacement pages.

ADV CHASKALSON SC: We will – we will have them provided.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: By Monday morning Chair.

CHAIRPERSON: Okay all right.

ADV CHASKALSON SC: Mr Holden can you just briefly describe the second change that needs to be reflected on this page?

MR HOLDEN: Certainly. The line that used to run from Transnet down to Trillian Asset Management which is the first soft fee it should instead run from a new box or (indistinct) from a box that was on the first page of my diagram which was TSDBF.

10 **ADV CHASKALSON SC:** So there needs to be a new TSDBF box.

MR HOLDEN: And that runs – that runs to Regiments Securities.

ADV CHASKALSON SC: Thank you Mr Holden.

MR HOLDEN: And that is in the amount of R56 million.

ADV CHASKALSON SC: Thank you Mr Holden and we will get replacement copies of those two pages produced by – over the weekend.

20 Finally just for the record Chair I – I would like to confirm that the correct details of these transactions are in the main body of the report and maybe Chair the references to – to note there are Bundle 9 page 438 – 438 paragraphs 782 and 784.

CHAIRPERSON: Paragraph 7?

ADV CHASKALSON SC: 82

CHAIRPERSON: 82

ADV CHASKALSON SC: And 784.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Mr Holden before we get into the detail of the money flows can you give the Chair an overview of the process that we are going to see illustrated by this flow of funds.

MR HOLDEN: Certainly Chair. I think we have a three step process witness by – witness in relation to this entire
10 transaction.

The first step is that the Gupta Enterprise makes use of its access to the state to make an asset available which is the Optimum Holdings asset and the commission has had considerable evidence about how that was done to the benefit of the Gupta Enterprise on the part of individuals like Mosebenzi Zwane, the Department of Mineral Resources and Eskom as well.

The Gupta Enterprise at the second step then uses criminal funds that derives from state capture to raise the
20 capital to purchase the asset that has just been 00:10:42 as Optimum and he uses this criminal funds as a form of written capital and – (bad audio) the Gupta Enterprise by the resource at that time and then finally what (bad audio) what

CHAIRPERSON: Mr Holden.

MR HOLDEN: That is important that the Gupta Enterprise ..

CHAIRPERSON: Mr Holden.

MR HOLDEN: Yes.

CHAIRPERSON: There was a time when you broke – I think there was some technical glitch we could not hear you. You want to just go back a little bit and then continue.

MR HOLDEN: Certainly. I will start from the beginning.

CHAIRPERSON: Ja.

MR HOLDEN: Thank you Chair.

10 **CHAIRPERSON**: Ja.

MR HOLDEN: So the first step that the Gupta Enterprise uses the state to make an asset to purchase the evidence that the commission has heard in relating to the role of Mosebenzi Zwane, the Mineral Resources and Eskom important to the Optimum sale the facts is relatively well-known.

20 The second step is that the Gupta Enterprise then uses criminal funds derived from state capture to 00:11:50 capital to purchase the asset that is Optimum through a system that effectively sees criminal money from the state being used as a form of proof finance advanced to the Gupta Enterprise.

Then the third step is that the Gupta Enterprise then uses that asset that it now bought using criminal funds and that is used to pay the bridging funds that had been raised

from criminal funds earlier.

The effect is that the state ends up paying for over half of this 00:12:21 and suffers a huge amount of collateral harm in doing so.

ADV CHASKALSON SC: Thank you Mr Holden. Just briefly to recap some of the players here. Can you remind us first of all who Griffin Line is.

MR HOLDEN: Certainly Chair. As I was discussing on Tuesday Griffin Line is a company registered in Dubai and it
10 is under the effective control of 00:12:54 as shown from the Gupta Leaks.

ADV CHASKALSON SC: And then can you remind us about the relationship between Griffin Line Central Holdings Centaur Ventures and Centaur Mining.

MR HOLDEN: Certainly. The key entity for our discussions is Centaur Ventures and Centaur Ventures is 50% owned by Aakash Garg – Aakash Garg is short for Aakash Gehajgaria [?] and Aakash Gehajgaria is an in-law of the Gupta's who was married to Vega Gupta in the – in the infamous Sun
20 City wedding.

The other 50% is held by Centaur Holdings Limited and Centaur Holdings Limited is fully controlled by two individuals Simon Howe and Daniel McGowan. Centaur Ventures which is based in Bermuda held 100% share of Centaur Mining In Mauritius and Centaur Mining in Mauritius

had 100% shareholding in Centaur Mining South Africa.

The effect of this is that Centaur Ventures owns 100% of Centaur Mining which means that 50% of Centaur Mining is effectively owned and controlled by Aakesh Gehaj [?] or the Gupta Enterprise and the other 50% is controlled by Centaur Holdings Limited.

The relationship between Griffin Line and Centaur Ventures and Centaur Holdings is that the funds that are moved into South Africa to fund the purchase of the
10 Optimum Mine are sourced from a loan given by Griffin Line to – to Centaur Ventures in Bermuda. The loan is valued at 100 million dollars and on that basis Centaur Ventures then seeks and receives Reserve Bank approval to extend the – R1.5 billion loan Centaur Mining in South Africa. Effectively all you have and I will show this more clearly on the visualisation is Centaur – the entire stream of funds running from – that is used by Centaur to purchase Optimum actually derives from Griffin Line and Griffin Line is a criminal enterprise controlled by the Gupta's.

20 **CHAIRPERSON:** Mr Chaskalson I am not sure where he was reading from now.

ADV CHASKALSON SC: He was not.

CHAIRPERSON: Oh he was not. Okay. Okay.

ADV CHASKALSON SC: The – we – for the – when we get to specific parts of the report and

CHAIRPERSON: You will let me know yes.

ADV CHASKALSON SC: I will – I will let you know Chair.

CHAIRPERSON: Okay all right.

ADV CHASKALSON SC: Mr Holden maybe if we can now go to the first overview of this whole process which is the diagram on page 321 of Bundle 20 and I see you have it up here. As we go further through these diagrams you are going to speak of – speak of four different streams. The streams that you speak of are the Centaur stream, the
10 Trillian stream, the Albertime stream and the Eskom stream.

Can you just mark on this overview diagram where – where the Centaur stream – what is the Centaur stream?

MR HOLDEN: Certainly Chair. What we have on the far left of the diagram running from the first entry at the top is Griffin Line Trading. It then moves downwards.

CHAIRPERSON: I am sorry did you say 320?

ADV CHASKALSON SC: 321 Chair.

CHAIRPERSON: 321.

ADV CHASKALSON SC: And Chair can I just check. I
20 understood that there would be A3 pages made available for you today. I just want to check that you have a large diagram.

CHAIRPERSON: I have got 321 I am not sure whether that is large enough.

ADV CHASKALSON SC: It is. It is as large as we can do

it.

CHAIRPERSON: Okay all right. Okay now I can see because I was comparing with what I see on the screen. Now I can see – ja I am at 321.

ADV CHASKALSON SC: And Mr Holden if you can just identify for the Chair what the Centaur stream is – what you will later describe as the Centaur stream.

MR HOLDEN: Certainly Chair. So this is the full overview that you will be seeing in front of you. The far left column
10 as it were and I will zoom in on that so you can see it is – starting at Griffin Line Trading and then running all the way down until it reaches Tegeta Exploration and Resources and Optimum Coal. That is what I considered the – the Centaur stream.

ADV CHASKALSON SC: And can you give the Chair the references in the main body of the report where what you have described – what you have depicted in this diagram is described in a narrative.

MR HOLDEN: Certain Chair. In relation to the Centaur
20 stream the reference is Flow of Funds 9 page 445 paragraphs 797.

CHAIRPERSON: One second. Bundle 9 page 45??

MR HOLDEN: 445.

CHAIRPERSON: 445. Paragraphs

MR HOLDEN: 797

CHAIRPERSON: Yes.

MR HOLDEN: To Flow of Funds 9.

CHAIRPERSON: Yes.

MR HOLDEN: Page 458.

CHAIRPERSON: I am sorry.

MR HOLDEN: Paragraph...

CHAIRPERSON: I am sorry – I am sorry. In terms of paragraphs it is 797 to what paragraph?

MR HOLDEN: 840

10 **CHAIRPERSON:** To 840.

MR HOLDEN: Yes.

CHAIRPERSON: Okay. Right. Okay I have got it.

ADV CHASKALSON SC: Then can you zoom out onto the whole diagram and describe what you are going to refer as – to as the Trillian stream.

MR HOLDEN: Certainly Chair I am just – so the Trillian stream is the middle column as it were that runs – starting at TSDBF this entry over here and then moving downwards. And as you can see as it moved downwards that enters into
20 various Trillian accounts until it reaches Tegeta Exploration and Resources.

ADV CHASKALSON SC: And can you give the Chair the main report references for the Trillian stream.

MR HOLDEN: Certainly Chair. That is Flow of Funds 9 page 440.

CHAIRPERSON: Yes.

MR HOLDEN: Paragraph 787.

CHAIRPERSON: 887.

MR HOLDEN: 787 Chair.

CHAIRPERSON: Oh 787 Yes.

MR HOLDEN: And that runs to Flow of Funds 9 – 445.

CHAIRPERSON: Yes.

MR HOLDEN: And concludes with Table 259 which sets out all of those transactions.

10 **CHAIRPERSON:** That is Table 200 and?

MR HOLDEN: 59 Chair.

CHAIRPERSON: 259 yes. Okay.

ADV CHASKALSON SC: And then can we do the same for the Albertime stream. Can you identify the Albertime stream on the overall diagram?

MR HOLDEN: Certainly I am going to zoom out again so you can see it in relation to everything else. The Albertime stream is the third column seeding downwards and I will zoom in on it.

20 It starts with this Transnet box here which will obviously need to be corrected and follows by that 00:21:25 there and then runs down via Regiments and into Albertime and then into Tegeta Exploration Resources.

What is added onto the Albertime stream and I will explain in depth is that the Albertime then – stream then

moves to all of this information on the right hand side which runs to the right of Albertime's Bank of Baroda current account entry and it is quite a complicated laundry here.

The reason that is included is because the Albertime funds once they are liberated as bridging finance then get pushed through the local laundromat that I described on Tuesday and some of which ends up paying out back to Griffin Line Trading and obviously I will go through that in quite a lot of depth.

10 **ADV CHASKALSON SC:** And again the report references for the Albertime stream.

MR HOLDEN: For the Albertime stream it is Flow of Funds 9 page 438 paragraph 781.

CHAIRPERSON: I am sorry. It is Bundle 9 Flow of Funds page?

MR HOLDEN: 438.

CHAIRPERSON: 438. Yes.

MR HOLDEN: Paragraph 781.

CHAIRPERSON: Yes.

20 **MR HOLDEN:** To Flow of Funds 9.

CHAIRPERSON: Yes.

MR HOLDEN: Page 440.

CHAIRPERSON: Yes.

MR HOLDEN: And that concludes with Table 258.

CHAIRPERSON: 258. Okay.

ADV CHASKALSON SC: And the last stream that you describe is the Eskom stream. Can you show where that appears on the overall diagram.

MR HOLDEN: Certainly Chair. The Eskom stream is at the very bottom of the diagram and starts with the stream box over here which I will zoom into. This would be Eskom stream here and I trace all the funds flowing from Eskom to Tegeta Resources, 00:23:59 Coal Mine and to Optimum Coal.

10 **ADV CHASKALSON SC:** And again the reference in the main report.

MR HOLDEN: Is Flow of Funds 9 page 437.

CHAIRPERSON: Yes.

MR HOLDEN: Paragraph 780.

CHAIRPERSON: Yes.

MR HOLDEN: Chair as I am – as I think you have not – you need to correct that error of what I might do is when I deal with each individual stream I will put on the review diagram the references as well so they will be available on the
20 diagram for everyone to cross-reference.

CHAIRPERSON: Okay all right. Did you complete your reference to the main report in regard to the Eskom stream? I have got Bundle 9 page 437 paragraph 780.

MR HOLDEN: That is correct Chair.

MR HOLDEN: Okay all right.

ADV CHASKALSON SC: Now Mr Holden we know that the total amounts that was paid to Werksmans to facilitate the purchase of Optimum on the 14 April 2016 was R2 084 210 206.10. Can you tell the Chair what amount of that R2 billion odd you derive – you calculated being derived from criminal funds in a way that you are going to describe when we go through these diagrams.

MR HOLDEN: Certain Chair. The figure that I arrive is R1 826 942 861.16 and for the transcriber that is
10 R1,826,942, 861.16.

ADV CHASKALSON SC: And again can you give the Chair a reference in your report where you deal with that – that figure and its calculation.

MR HOLDEN: Certainly. We have – it is at Flow of Funds 9 page 435 paragraph 778.

CHAIRPERSON: 778.

MR HOLDEN: That is correct.

CHAIRPERSON: Okay.

MR HOLDEN: And ending with the Table that appears at
20 the end of paragraph 779.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And what proportion of this purchase price is paid by Eskom?

MR HOLDEN: Certain Chair. I think up until we conducted this analysis our original sense was that the amount that

Eskom had paid was lower than what I discovered. My calculations showed that Eskom eventually and ultimately contributes R1 046 522 865.79 again for the transcribers that is R1,046,522,865.79 and this could be split into two amounts.

The first amount is paid to Tegeta prior to the purchase of Optimum and quite a lot of evidence has been heard in relation to that. And that total amount is R728 211 861.16 so that is R728,211,861,16.

10 Subsequent to the purchase of Optimum Eskom makes payments that are then used to be paying this bridging finance to a total of R318 311 004.63 so that is R318,311,004.63. The result of which is that Eskom effectively pays for more than half of this R2 billion asset for the Gupta's.

ADV CHASKALSON SC: Can I then ask you to start with the Centaur stream which is at page 322 and can we go slowly through the Centaur stream. You have identified where it sits on the big diagram now we are going to go
20 slowly through it. And maybe before you take the Chair through the Centaur stream can you – can you explain what the particular significance of what you are about to say in relation to the Centaur stream is in relation to asset recovery from the Gupta's.

MR HOLDEN: Certainly Chair. As I am sure the

commission is well aware Optimum was the most significant asset in the country and that is the – the disposition of the asset has been fought through the courts and through business rescue. What I wish(?) is that the central components of that asset and Centaur is now laying a claim of a significant amount of money against that asset, actually derives from criminal funds on which basis and that ...[indistinct] status is frustrating, attempts by Eskom to recover its own losses in relation to ...[indistinct]

10 I believe that the evidence that I will be showing would give grounds for the assets ...[indistinct] unit(?) to conserve(?) the proceeding with an asset seizure in relation to this and that may allow this asset to be returned to Eskom, either to settle its loan or be returned to the state. It would, effectively, mean that the last assets of the Gupta Enterprises trying desperately to move(?) from South Africa, would be rightfully returned to the government.

ADV CHASKALSON SC: Now you are just talking about
20 assets. I think we need to explain the scale of what we are talking about. Can I ask you to go to Bundle 16, page 28 which is the Bermuda judgment?

MR HOLDEN: [No audible reply]

ADV CHASKALSON SC: And can you read the little paragraph, Roman one, from that judgment on page 28?

MR HOLDEN: Certainly. At paragraph Roman numeral 1, it says:

“On 19 February 2018, OCM... [that is Optimum Coal Mines] ...became distressed and entered into a process of business rescue, CVL, which is Centaur Ventures Limited, had previously entered into coal trading contracts with Optimum Coal Mine, OCM, and was owed, approximately, 74.5 million by OCL...”

10 **ADV CHASKALSON SC**: That is 74.5 million Dollars which is the claim that Centaur is asserting against Optimum Coal. What is that translating into rands?

MR HOLDEN: You are putting me on a spot here, slightly. It would be equal to the current exchange rate to approximately a hundred-and-forty – R 1.4 billion.

ADV CHASKALSON SC: I think you might be overstating it, but it is certainly more than a billion.

MR HOLDEN: I need to check what the exchange rate is at the moment, but I think it is a ten rand. Then it should
20 be R 745 million.

ADV CHASKALSON SC: I will stay with my – a bit more than a billion. We will get today’s exchange rate and work out what 74.5 million is, but we are talking about a very, very substantial claim. To your knowledge, is there any other Gupta Enterprise asset approximating this claim

remaining in the country?

MR HOLDEN: No. No, Chair.

ADV CHASKALSON SC: Right. So, then let us go and look at what you call the Centaur stream against the background of this context that it is linked to the last remaining asset of note of the Gupta Enterprise in the country. An asset worth more than a billion rands. Can you take the Chair through page 322 and the series of the diagrams that follow?

- 10 **MR HOLDEN**: Certainly, Chair. I trust that the diagram is on the screen. The Centaur Venture stream, that is step one of the entire process, begins with Griffin Line Trading right at the top here, which gives a one hundred-million-dollar loan to Centaur Ventures, which is then made available to Centaur Ventures, Bermuda.

Against that, on purchasing loan, Centaur Mining in South Africa then takes out R 1.5 billion loan against that one hundred-million-dollars and that loan – a portion of that loan and... I should add that close to the full
20 amount is eventually withdrawn and drawn down, but that funds other streams that we are not focus on that now, but in relation to this particular purchase, between the 26th of February 2016 and the 1st of April 2016, R 885 449 000,00 is drawn down from the Centaur Mining loan facility and paid into Centaur Mining's Standard Bank

accounts 22670866.

So, in very broad summary. We, effectively, have a loan from Griffin Line Trading being drawn down to various intermediary loans into Centaur Mining's Standard Bank accounts. We then proceed to the following page. The second is that once the amounts are being drawn down and paid in Centaur Mining's Standard Bank account.

Centaur Mining then transfers an amount of R 885 300 000,00 between the 9th of March 2016 and the
10 4th of April 2016 and pays... [Speaker unclear – distortion present in video link] ...bank account. I do not ...[indistinct] that number here but it is in the report. I am sure we can get that ...[indistinct] ...[intervenes]

CHAIRPERSON: Mr Holden, we have technical glitches again.

MR HOLDEN: [Speaker unclear – distortion present in video link]

CHAIRPERSON: Maybe just step back. First, step back and start about four sentences that you had already done
20 and then you continue.

MR HOLDEN: Certainly. So, can I proceed the beginning of this step?

CHAIRPERSON: Okay, ja. We did not hear some sentences.

MR HOLDEN: Apologies, Chair. So, to begin again.

Once the loan has been drawn down from Centaur Mining and paid into Centaur Mining's Standard Bank account, it immediately then transfers of that amount R 885 300 000,00 between the 9th of March 2016 and the 4th of April 2016 into Centaur Mining's Bank of Baroda current account.

Once those amounts have been received into Centaur Mining's Bank of Baroda current account on the 12th of April 2016, it then transfers – it opens a new fixed
10 deposit account with the Bank of Baroda, which is 03/641 and it pays an amount of R 886 559 781,00. This amount is made up of the capital amount that was transferred to Centaur Mining, Centaur Mining's Bank of Baroda current account and the interest, it accrued on that capital amount.

And the flowing down here. On the 14th of April 2016, the Bank of Baroda issues a loan facility for Tegeta Resources and Exploration. That loan facility is 06/467 and that secured against the Centaur Mining fixed deposit account 03/641.

20 The relevance here and the importance here, is that you, effectively, have through these back-to-back loans... moved a hundred million dollars from Griffin Line, which is a Gupta Enterprise entity into a loan facility controlled by Tegeta Exploration Resources.

ADV CHASKALSON SC: Can I just clarify what you are

saying before you presented that last overview? That the fixed deposit of Centaur Mining, the 842 million fixed deposit of Centaur Mining was used to secure a loan, not Centaur but to Tegeta?

MR HOLDEN: That is correct, Chair.

ADV CHASKALSON SC: Was any security provided to Tegeta for that loan? Sorry, provided to Centaur for that loan.

MR HOLDEN: No, Chair.

10 **ADV CHASKALSON SC**: And can I take you to Bundle 16, page 48 to see who, on behalf of Centaur, decided that they would put up 842 million to facilitate a loan to Tegeta? Page – Bundle 16, page 48.

MR HOLDEN: I am afraid I do not have the stream(?). I think it has been – the Tegeta stream, I think it has been ...[indistinct] So, it gives an indication when ...[indistinct] has reached that point.

CHAIRPERSON: Yes, I am on page 48.

ADV CHASKALSON SC: And the Chair is there. It is
20 Annexure 106. Can you describe to the Chair what you – what Annexure 106 is?

MR HOLDEN: Certainly, Chair. This is an excerpt from the minutes of a meeting of the Board of Tegeta(?) [Speaker unclear – distortion present in video link] ...Centaur Mine, South Africa, which is held by telephone

conference, initiated from Dubai on the 12th of April 2016.

The – with dilution is that the company, which is Centaur Mining, allow Tegeta Exploration and Resources Limited to avail a loan of 842 231 000,00 against the deposit of the company for 886 559 781 by Mr Akash Dal in his capacity as the authorised signatory of the Company B and is hereby authorised to sign the documents in this regard.

So, the short answer, Chair, is that this loan to
10 Tegeta from Centaur, this unsecured loan, is signed off by Akash Dal, an in-law of the Guptas.

ADV CHASKALSON SC: And maybe if you can also read that last sentence as well before we see “certified approved copy”.

MR HOLDEN: Certainly.

“That the company pledge a deposit as security to the Bank of Baroda for the duration of this facility...”

ADV CHASKALSON SC: So, can you just explain what
20 that means?

MR HOLDEN: Certainly. That as long as this loan is outstanding, the Tegeta Exploration and Resources’ loan is outstanding, Centaur Mining will not close its fixed deposit accounts that contain this amount. So, that if Tegeta was to default on the loan, the Bank of Baroda would be able to

seek compensation from this fixed deposit account held by Centaur Mining.

ADV CHASKALSON SC: Thank you, Mr Holden. Let us – can you then go back to the diagrams at page 324?

MR HOLDEN: Certainly, Chair. So, once the Tegeta Exploration and Resources' loan has been funded in this way – I move to the following page – and on the 14th of April 2016 ...[intervenes]

CHAIRPERSON: Are we ...[indistinct] ...[intervenes]

10 **MR HOLDEN:** ...draws down ...[intervenes]

CHAIRPERSON: I am sorry. Are we back at 323?

ADV CHASKALSON SC: 324, Chair.

CHAIRPERSON: 324. Okay, I am there.

MR HOLDEN: Thank you, Chair. So, once that loan has been extended, Tegeta Exploration and Resources from that full(?) loan amounts and R 842 231 000,00 is then transferred into Tegeta Exploration and Resources' Bank of Baroda current account which is 02/042 and that is done on the 14th of April 2016.

20 That amount then coincide(?) with the other ...[indistinct] [Speaker unclear – distortion present in video link] ...shortly. To then fund the total payments to ...[indistinct] on the 14th of April 2016 of two billion eight-four million two hundred and ten thousand.... [Speaker unclear – distortion present in video link]

If I may? I think what is very notable at this trans(?) is that you, effectively, have three back-to-back loans that are opened ...[indistinct], effectively, in order to move funds to Tegeta Exploration and Resources... [Speaker unclear – distortion present in video link] All of those ultimate... [Speaker unclear – distortion present in video link] and ...[indistinct] was being designed in part to discover Griffin Line Trading's involvement ...[intervenes]

CHAIRPERSON: Sorry, sorry ...[intervenes]

10 **MR HOLDEN:** [Indistinct]

CHAIRPERSON: Sorry, Mr Holden. Is Mr Holden out of the country or far away from Gauteng? I think these technical glitzes are frustrating.

ADV CHASKALSON SC: He is ...[intervenes]

CHAIRPERSON: The type of evidence he is giving is very important and when one reads the transcript, one should not have too many inaudible's because otherwise you will not follow. So, I am very concerned about, to what extent with these technical glitzes, where we do not hear some
20 sentences, we might end up with that and that would be quite frustrating.

ADV CHASKALSON SC: Chair, I am afraid he is long way out of the country. He is in London.

CHAIRPERSON: Oh, okay.

ADV CHASKALSON SC: Maybe we – if we could take the

tea adjournment now. I think ...[intervenes]

CHAIRPERSON: Yes.

ADV CHASKALSON SC: I think that the problem lies in our internet connection in this building.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And maybe if we could try to resolve that at the tea adjournment.

CHAIRPERSON: Yes. No, that is fine. We can do that. It is just that the evidence is such when one reads it in the transcript, I think one should not lose anything. Otherwise, you misunderstand the journey of the funds and how it came about. So...

ADV CHASKALSON SC: Indeed, Chair.

CHAIRPERSON: Yes. Okay, let us take the tea adjournment now then. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV CHASKALSON SC: Thank you, Chair. Mr Holden, you have taken us through the process by which 842 million is made available of finds its way into the Werksmans' account to purchase the Optimum Coal Mine through a series of back-to-back loans. Before we finish on the Centaur stream, is there is anything further that you want to say before we move over to the Trillian stream and track the flow of the money into the Werksmans' account

via Trillian?

MR HOLDEN: Yes, thank you, Chair. The one thing I would like to add is and to remind the Chair is that the Centaur loan – sorry, apologies, the Griffon Line trading loan to Central Ventures, as I had discussed on Tuesday, is also an unsecured loan. So you can have a series of unsecured loans for this vast amount of money eventually being used to purchase Optimum.

ADV CHASKALSON SC: Right. Your diagrams that - on
10 the succeeding pages actually track what happens to the fixed deposits later on. Before we get there, I think I would like us to follow the flow of all of the money into the Werksmans' account and then come back time permitting to see what happens to the fixed deposits after the mine has been paid for. So let us then move to the Trillian stream which is your diagram on page 329 and can you take the Chair through that diagram but maybe before we get into the flow of funds, it is important to deal with the source of these funds which on your diagram is the Transnet second
20 defined benefit fund. Can you just talk through some of the implications of the fact that it is the Transnet second defined benefit fund that is the source of this stream?

MR HOLDEN: Certainly, Chair. This stream and all the streams are outrageous. This is particularly egregious because this is effectively stealing money from a fund that

funds pensions on which a lot of people rely. The average annual pension paid by the fund is R32 198 which equates to R2 683 per month. Most of the fund's beneficiaries of these payments reliant highly on this payment to survive. The theft of funds from TSDBF to fund this purchase is effectively stealing money from some of the most hard-up and needy people in the country.

ADV CHASKALSON SC: Can you just give the Chair the reference to those figures that you have just quoted, an
10 average monthly pension of R2 683.17.

MR HOLDEN: Certainly, Chair, the reference there is – it is at annexure 12 and that is flow of funds 9, page 654.

CHAIRPERSON: Yes, I have got that.

MR HOLDEN: Paragraph 4.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And that document is the affidavit of Mr Maritz who is the principal office of that pension fund. Mr Holden, can you then take us through the flow of funds in relation to the Trillian stream?

20 **MR HOLDEN**: Certainly. The stream begins with TSDBF Nedbank account which at this stage, as I am sure that the Chair has heard lots of evidence on already, that account is effectively under the control of Regiments. It transfers the second, third and fourth top fees arising from its interests points swap transactions into Regiments

Securities Nedbank account between the 8 March 2016 and the 11 April 2016, R171 264 215 is paid to Regiments Securities through this group and you could see – if my cursor is showing up on the screen, I am now circling those three items closer. These are the three streams that make up the amount of R171 million stolen from the TSDBF.

Once that amount reaches the Regiments Securities account, it is then transferred to Trillian Financial Advisory's ABSA bank account and using that funds that
10 has just been paid, Regiments transfers R169 525 161.30, is transferred to Trillian Financial Advisory's ABSA account between the 11 March 2016 and the 14 April 2016.

Following step, all of those funds or a substantial portion of those funds are transferred to Trillian Management Consulting's Bank of Baroda account and there Baroda current account was O2/512. In total the amount transferred to TMC arising from these funds is R160 679 269. As you can see here, three of the payments went from straight from Trillian Financial
20 Advisory's ABSA account into Trillian Management Consulting. There was one payment, however, that passed through two additional Trillian accounts before reaching Trillian Management Consulting but the primary take away here is that all of these funds paid into Trillian Management Consultants' Bank of Baroda account here are

effectively stolen from the TSDBF.

ADV CHASKALSON SC: And then what happens to all of the money that lands in the Baroda account?

MR HOLDEN: Certainly, Chair. The next step is that once the amount has been paid into Trillian Management Consulting's account from the 14 April 2016 and that is also the day of the purchase of Optimum. Trillian Management Consulting uses those funds to open up a Bank of Baroda fixed deposit account and it transfers a
10 total amount of R160 246 000 into the new Baroda fixed deposit account. That Baroda fixed deposit account is 03/643. On that same day Tegeta Exploration and Resources then opens – then takes out a new Bank of Baroda loan and that loan is 06/468. That amount is taken out against the Trillian Management Consulting's fixed deposit account, as you can see here, that was a line going down and on the 14 April, the same day, the fixed deposit account and an amount of R152 000 000 is drawn down from that Tegeta Exploration and Resources Bank of
20 Baroda loan and paid into Tegeta Exploration and Resources Bank of Baroda current account, 02/042, where it comingles with the other streams to then fund the payment of over R2 billion to Werksmans.

ADV CHASKALSON SC: So can I just clarify, we have another case of money flowing through various entities

ostensibly belonging to third parties ending up in a third party deposit at the Bank of Baroda against which Tegeta is allowed to borrow money from the Bank of Baroda using that third party deposit as security, is that correct?

MR HOLDEN: That is correct, that is an excellent summary, Chair.

ADV CHASKALSON SC: And have you been able to find any security that any of the Trillian companies demanded for putting up a fixed deposit or for pledging a fixed
10 deposit of 160 000 000 as security for a loan from the Bank of Baroda to Tegeta.

MR HOLDEN: No, Chair, I have not.

ADV CHASKALSON SC: And maybe we should go to annexure 101 which is the Trillian resolution to facilitate this transaction to see who was responsible for it. Can I ask you to go to bundle 15, one five, page 719?

MR HOLDEN: I am there and I also put up the annexure on the screen as well.

ADV CHASKALSON SC: And can you take the Chair
20 through this annexure?

MR HOLDEN: Certainly, this is, as you can see from the letterhead, this is an excerpt from the minutes of a meeting of the board of the directors of Trillian Management Consulting (Pty) Ltd, the company, held at Sandhurst on the 13 April 2016. I will read the resolution:

“That the company allows Messrs Tegeta Exploration and Resources (Pty) Ltd to avail a loan of R152 000 000 against the deposit of the company, that is Trillian management consulting, for R160 240 000.

That Mr Mark Chipkin, in his capacity as the authorised signatory of the company be and is hereby authorised to sign all the documents in this regard.

10 That the company pledge the deposit as security at the Bank of Baroda for the duration of the [indistinct – dropping voice]”

And that is then certified a true copy and signed by Eric Anthony Wood on the 14 April 2016.

ADV CHASKALSON SC: Now, I am not sure if you can put up that resolution and the central resolution on your screen simultaneously. Are you able to do that relatively simply? If not, then we do not need to do that, we can just achieve the same result by me asking you a question. Can
20 you put the two up simultaneously?

MR HOLDEN: I will do my best and I guarantee nothing.

ADV CHASKALSON SC: If I give you the reference for the – the Centaur resolution is in volume 16, page 48. I think let us just ask the question, it may be simpler.

MR HOLDEN: Yes, I am afraid I have them both (indistinct

– recording distorted) but I do not quite know how [indistinct].

ADV CHASKALSON SC: Is there anything that strikes you about those two resolutions?

MR HOLDEN: The wording is exactly the same.

ADV CHASKALSON SC: Exactly, yes. Let us get to the third component of this process which is the Albatime stream and that you deal with at page 332. And maybe to begin with, if you can just refresh our memory on the two
10 changes that need to be made to this diagram.

MR HOLDEN: Certainly, Chair, the two changes are that – easiest to change first is that the amount flowing from Transnet down to Trillian Asset Management Investec which I am able first swap fee, that amount needs to be deleted from the specialization and the rest of the amounts over here, which is 4 December 2015, was R93 400 000 for the club loan.

So what we have is the club loan entering into [indistinct] amounts of money from Investec account and
20 what we should additionally have is a box above Regiments Securities which appears in the overall diagram which is TBF and the entry that I did have running from Transnet down Trillian Asset Management, that has now been deleted, should then be put into that flowing from that amount into Regiments Securities and that amount is

R56 179 799 and also dated the 4 December 2015. That included – what effectively happens is that two amounts that are paid out from the two different sources, the amount that is paid in relation to the club loan is paid to Regiments Securities Nedbank account and from there it is then transferred on the 7 December 2015, an amount of R50 million, gets transferred into Regiments Capital's Standard Bank account ...[intervenes]

ADV CHASKALSON SC: Sorry, Mr Holden, I have to
10 correct you on that front. With your corrections the amount that goes into Regiments Securities is not the club loan amount it is the first swap fee.

MR HOLDEN: Yes, apologies, yes. Sorry, Chair, it is the first swap fee of 56 million and then after that 56 million swap fee the 50 million is then transferred from Regiments Securities to Regiments Capital Standard Bank account and then returning to the above, the club loan is paid into – the club loan amount is 93 million, is transferred Trillian Asset Management Investec account and on the 9
20 December of that amount of R90 million odd, R74 784 000 is then transferred from Trillian Asset Management's Investec account into Albatime's Bank of Baroda current account and the account number with Bank of Baroda is 02/452. Two days later the amount that emanated from the first swap fee, the TSDBF fee and effectively from some of

the country's most needy pensioners is paid from Regiments Capital, of that amount R42 million is paid into Albatime's Bank of Baroda current account on the 11th and 12 December 2015.

The essence of what I have just described is effectively money moving from TSDBF and from Transnet and being placed into Albatime's Bank of Baroda current account. Again on the 14 April, which is the day of the purchase, Albatime transfers 110 million from its Bank of
10 Baroda current account 2/452 into a newly created Albatime fixed deposit account, I think can see what happened here, and that Bank of Baroda account is 03/644.

On the same day Albatime – oh, Tegeta Exploration and Resources takes out a Bank of Baroda loan, 06/469 issued against the Albatime fixed deposit account and again on the same day, the Tegeta Exploration and Resources loan is drawn down so that the full amount of R104 500 000 is paid into Tegeta Exploration and
20 Resources Bank of Baroda account 02/042 where it comingles with the other streams I have already identified and the Eskom stream I will deal with next, to then fund the payments of R2 084 210 206.10 to Werksmans to fund the purchase of Optimum.

ADV CHASKALSON SC: And can I then ask you to go to

bundle 15 at page 707 to see the Albatime resolution for this pledging of 110 million to secure a loan made from Baroda to Tegeta?

MR HOLDEN: Certainly, I am there, I am just waiting to hear if the Chair is there.

CHAIRPERSON: Yes, I am there, thank you.

MR HOLDEN: What this annexure shows, Chair, is an extract from the minutes of the meeting of the board of directors of Albatime (Pty) Ltd, the company, held at
10 Johannesburg on this 14th day of April 2016. I will read the resolution:

“That the company allows Tegeta avail a loan of R104 500 000 from Bank of Baroda against the term deposit of R110 million and Mr Kubentheran Moodley in his capacity as a director of the company be and is hereby authorised to do all the necessary documents/formalities required in this regard, the said term deposit serving as security to the bank for the duration of this facility.”

20 That is then signed, certified a true copy by Mr Kubentheran Moodley.

ADV CHASKALSON SC: Then can we move to the Eskom stream which is addressed at page 337.

MR HOLDEN: Certainly, Chair. I am now at that ...[intervenes]

CHAIRPERSON: I am sorry, Mr Chaskalson, I was – you drew my attention earlier on, you and Mr Holden, to the identity of the wording in those two resolutions and I was now looking at 707 and 706.

ADV CHASKALSON SC: It is very close but it is not identical in the way that the other two are.

CHAIRPERSON: Yes, ja. Okay, to what page should we go now?

ADV CHASKALSON SC: 337, Chair.

10 **CHAIRPERSON:** On the same bundle?

ADV CHASKALSON SC: Bundle 20, yes.

CHAIRPERSON: Bundle 20?

ADV CHASKALSON SC: Oh, sorry, bundle 20, yes.

CHAIRPERSON: Okay, alright. 337 on bundle 20?

ADV CHASKALSON SC: Indeed, Chair.

CHAIRPERSON: Okay, I am there.

MR HOLDEN: Alright, Chair, I have tuned it so that I can see the whole screen but the essence of this stream is very simple. Apologies, I have gone to the next page.

20 From Eskom, different place, the diagram. On the 13 April 2016 Eskom transfers two amounts to Tegeta Exploration and Resources FNB account 621173566990. Those two amounts are R659 558 079.38 and then a second amount of R68 653 781.78.

On the same day Tegeta Exploration and Resources

transfers two amounts to its Bank of Baroda current account 2/042, the two amounts that are transferred are 600 million on the 13 April 2016 and a second amount of R68 million on the 13 April 2016 and the following day, the one set is comingled with all the other funds that are coming from the other streams, it then funds the purchase of purchase payments to Werksmans on the 14 April 2016 of R2 084 210 206.10.

CHAIRPERSON: Just to remind me, Mr Holden, on these
10 diagrams when we started on your first day of dealing with them, green was where the money originates from and red is where it ends up, is that correct?

MR HOLDEN: That is correct, Chair, the green is for go and red is for stop.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: Now a couple of questions in relation to this Eskom stream. We have heard evidence that the 659 million that was paid was the prepayment for coal from Optimum. Where does that 659 million get paid
20 by Eskom, does it get paid to Optimum or to Tegeta?

MR HOLDEN: It gets paid to Tegeta, Chair.

ADV CHASKALSON SC: We have also I think heard evidence in an attempt to defend the rationality of that prepayment. I think Mr Koko has given that evidence in the Commission as good value for money and more

generally, when we deal with the proceeds of the fixed deposits and the repayment of the loans and the freeing up of the fixed deposits with Eskom funds, an argument could be put that well, Eskom is paying for coal from Optimum and Eskom is receiving coal from Optimum so what is the problem with Eskom making these payments? Do you have any answer to that argument?

MR HOLDEN: Certainly, Chair. As the Chair may hear where Eskom is now seeking considerable damages in
10 relation to these transactions, Eskom has indicated that it suffered huge losses on these contracts partially because it did not receive the required quantities of coal on time and partially because the quality of coal was a poorer quality that had been contracted for. Eskom did not receive those original claims, penalty claims against Optimum and I am sure we will turn to it shortly.

The application for compensation, the SIU application indicates that Eskom had to spent pretty vast amounts of money to cover itself because of those failures
20 of the Optimum coal deliveries.

ADV CHASKALSON SC: Well, maybe we should go to that SIU summons. It is in bundle 20 at page 361. Chair, can we give it an annexure number because it has not been introduced as an annexure. I think we are on...

CHAIRPERSON: I do not recall where we are with the

numbering, but you said 361?

ADV CHASKALSON SC: It is page 361, can we provisionally number it VV10i?

CHAIRPERSON: V for Valentine?

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: And then B Beatrice?

ADV CHASKALSON SC: No, no, VV, double V.

CHAIRPERSON: Valentine, ja, okay. Ja, VV...?

ADV CHASKALSON SC: Ms Mosilo tells me it should be
10 VV10j, we already have an i.

CHAIRPERSON: Oh, okay, and this is the summons?

ADV CHASKALSON SC: It is the summons issued by Eskom and the SIU against various former Eskom executives and various members of the Gupta family and Salim Essa.

CHAIRPERSON: Yes, the summons in the High Court of South Africa, Gauteng Division, Pretoria, case 35689/20 in the matter between Eskom Holdings SOC Limited and Special Investigating Unit, 1st and 2nd Plaintiffs
20 respectively and Brian Molefe and others is admitted as EXHIBIT VV10J.

SUMMONS HIGH COURT GAUTENG DIVISION, CASE 3568/20 IN THE MATTER ESKOM HOLDINGS SOC LIMITED AND SPECIAL INVESTIGATING UNIT (1ST AND 2ND PLAINTIFFS) VERSUS BRIAN MOLEFE AND OTHERS

(DEFENDANTS) HANDED IN AS EXHIBIT VV10J

ADV CHASKALSON SC: Can I ask you to take the Chair to page 403, paragraph 96?

CHAIRPERSON: I am there.

ADV CHASKALSON SC: And, Mr Holden, are you – can you take us through the first component of the Eskom claim which relates to historical penalties, that is paragraphs 96 to 101.

MR HOLDEN: Certainly at paragraph 96 it reads on or
10 around 13 March 2017 Daniels was an Eskom employee, this is a memorandum recommending that the outstanding penalties on the Hendrina CSA in respect of the period 2012 to 2015 – and I should emphasize that CSA is calcified medium which had been claimed from OCM Optimal Coal Mines under ...[indistinct – distortion] control in the amount of R2 176 530 611,99 be settled for an amount of R577million.

At paragraph 97 it reads ...[indistinct] Daniels recommendation on 14 March 2017 and Koko approved the
20 recommendation on 14 March 2017, at paragraph 98, on 16 March 2017 Eskom dispute with OCM and Tegeta over the outstanding penalties was settled for an amount of R577 839 105,42 and the settlement was made, an award by the arbitrator and the dispute between Eskom and OCM and Tegeta Advocate Solomon SC at paragraph 99 at the

time of the settlement of the penalty claims Daniels, Singh and Koko knew that Eskom's actual justified penalty claim was R1 166 164 713,37 but deliberately settled the lower amount of R577 839 105,42 to further the interests of Tegeta in accordance with the conspiracy.

As appears from Annexure 11 when regard is had to penalties already deducted by Eskom on payments to OCM the balance due by OCM/Tegeta was R255 400 819,18, OCM and Tegeta have failed to pay Eskom an amount of
10 R133 781 381,48 and therefore at paragraph 101 the total penalty related loss caused to Eskom by the conspiracy accordingly comprises R722 106 989,43 and then it sets out the calculation just described above.

ADV CHASKALSON SC: So Eskom in relation to unpaid historical penalties is alleging that it has lost R722million on this Optimum deal. Can we then go to the next paragraph, 102 and 103 which deal with the separate head of damage claimed by Eskom in relation to poor quantity and quality of coal that was delivered while Optimum was
20 under Tegeta control.

MR HOLDEN: Certainly Chair, paragraph 102 reads over the period September 2016 to 31 December 2018, being termination date of the Hendrina Coal Supply agreement OCM was under the control of Tegeta consistently refused alternatively was unable, alternatively failed to meet the

coal delivery quantity and quality obligations specified in the Hendrina coal supply agreement at that time that Tegeta purchased OCM and then on the following page paragraph 103, as a result of OCM's refusal, alternatively inability, alternatively failure to deliver coal the quantity of coal specified in the Hendrina Coal Supply Agreement at the time of Tegeta's purchase of OCH Eskom had to incur additional costs in the aggregate amount of R2 441 161 443 to procure coal resources other than OCH
10 for the Hendrina Power Station and that is set out in a spread sheet attached as Annexure 12 of the SIU ...[indistinct].

ADV CHASKALSON SC: And that – so that is quantity going to quality in paragraph 104.

MR HOLDEN: As a result of OCM's refusal alternatively inability, alternatively failure to deliver the quality of coal specified in the Hendrina Coal Supply Agreement at the time of the Tegeta purchase of OCH Eskom suffered losses in the aggregate amount of R89 335 464,07 being the
20 aggregate amount of penalties that Eskom did not deduct from purchase payments to Tegeta but would have fallen due to Eskom under the terms of the Hendrina CSA as at the date of the Tegeta purchase, such penalties being an accurate proxy for the cost to Eskom of receiving coal below the contract ...[indistinct] specified standard, and

again there is a spreadsheet that is attached as I ...[indistinct] to set out those bands.

ADV CHASKALSON SC: So this isn't evidence, but what it is, is – it is a statement of a claim that essentially says that in relation to the coal that was supplied Eskom, and in relation to the historical penalties that weren't recovered from Optimum once it passed to Tegeta's control Eskom has suffered losses of over R3billion?

MR HOLDEN: That is correct Chair.

10 **ADV CHASKALSON SC:** I do want to emphasize it is not evidence, that is what Eskom is claiming. Having said – well can we at this point go back to see what has – what happened to the fixed deposits that were used to free up the loan finance for the purchase, we tracked all of it the money into the fixed deposits and see how they were deployed by Centaur, Albatime and Trillian to free up amounts which ultimately were more than a billion rands that were lent by Firoda to Tegeta to facilitate the Optimum purchase. Can you give the Chair an overview of what
20 happened to those fixed deposits after Optimum was purchased. I am just conscious of time and I would like us to get to some of the recommendations that addressed in the report that was submitted as an annexure, I forget the annexure number, I do want us to be able to have some time to address those before one o'clock which is when

your evidence will end.

So with that in mind I think the overview may have to be relatively high level as opposed to detailed, we can cross-refer to the references in the report where the detail is to be found.

MR HOLDEN: Certainly Chair. At a very high level all of those fixed deposit accounts subsequent to the purchase of Optimum are closed and the proceeds paid back into the original ...[indistinct] under the fixed deposit accounts, so
10 for example with Centaur we can see very briefly here on the 6th of April 2017 ...[intervenes]

ADV CHASKALSON SC: Sorry if you can give the Chair – are you at page 325?

MR HOLDEN: I have to ...[indistinct]

ADV CHASKALSON SC: Sorry Mr Holden we have got a technical problem on this side. It is working yes.

Thank you Chair. No, no my microphone is working. Chair can you ...[intervenes]

CHAIRPERSON: Oh okay it is back, okay. Okay no thank
20 you. I wanted to double-check now what page that is because I think I missed that Mr Holden was on.

ADV CHASKALSON SC: 325 Chair, 325 of Bundle 20.

CHAIRPERSON: Okay, alright. Thank you, you may continue. 325 or 335?

ADV CHASKALSON SC: 325.

CHAIRPERSON: 325, okay. Okay you may continue.

MR HOLDEN: Thank you Chair. To reiterate at a very high level all of those fixed deposit accounts are closed and the proceeds paid back into the original client accounts from which they were paid. In the example of Centaur we see for example that on the 6th of April 2017 an amount of R886 559 781 was transferred into Centaur Mining's bank current account and that is because of the closure of the ...[indistinct] deposit. There is a very
10 important point to raise here which is that at this stage the Tegeta loans has been issued and which Centaur had security at the Bank of Baroda of 842million had not been paid back in full and in fact only a portion, a very small portion of it had been paid back, so for reasons I cannot fully discern or understand the Bank of Baroda allowed Centaur Mining to close down the only asset that was giving Bank of Baroda security over really a pretty vast amount of money.

Once that money is then deposited into the fixed
20 deposit accounts – sorry once the fixed deposit accounts are closed the amount of ...[intervenes]

ADV CHASKALSON SC: Sorry Mr Holden can I – you just said something very significant, that – can I just clarify that I got it correctly. That Bank of Baroda had granted the original loan to Tegeta, against security of the 800million

plus fixed deposit of Centaur Mining.

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: But then on the 6th of April 2017, that's almost a year after the event, Bank of Baroda allowed Centaur to take this asset that had been pledged in their favour and to move the funds into its current account before Tegeta had repaid its loan, is that correct?

MR HOLDEN: That is correct Chair, at the point of which that fixed deposit account it is closed only one payment
10 had been made to the loan account of R242million but ultimately derived from payments from Eskom leaving more than I think roughly two thirds of the original loan unpaid and effectively unsecured.

ADV CHASKALSON SC: Okay so be that as it may R868million makes its way into the Centaur current account and what happens to it there?

MR HOLDEN: Chair once its paid into the Bank of Baroda current account it is then paid over the course of the month into Centaur Mining's Standard Bank account, from
20 Standard Bank, from Centaur Mining Standard Bank account which has received R905million it transfers all of that R905million into Centaur Ventures Bermuda account and then it becomes increasingly complicated because as soon as those payments are made into Centaur Ventures Bermuda, Centaur Ventures Bermuda then immediately

returns substantial portions of that amount, although not the entire amount, that is important, to Optimum Coal and I highlight how that happens here on the diagram. You have here where I am circling you have an amount of R905million going to Centaur Ventures Bermuda account and then running down here to the left I have shown funds moving from Centaur Ventures ...[indistinct] account in three ...[indistinct]

ADV CHASKALSON SC: Sorry Mr Holden are you on
10 page 327 now?

MR HOLDEN: Let me double check, yes.

Once those amounts are then paid from Centaur Ventures they are paid into Optimum Coal Mining's Bank of Baroda account to 253, portions of that amount is transferred from Optimum Coal's account into Tegeta Exploration and Resources Bank of Baroda account. We have a total amount transferred of R470million that is transferred from Optimum Coal to Tegeta Resources –
20 then transferred to Tegeta Explorations and Resources loan account to settle some of those loan facilities.

At this stage in time chronologically it left an amount outstanding of R122 632 445,96. To give a very high level summary of what we effectively see is the fixed deposits are closed, the funds are paid to Centaur

Ventures immediately recycled by Optimum Coal and a portion of the recycled funds are then used to pay back Tegeta Exploration and Resources. The key element of this discussion is that it is not the entire fixed deposit amount that gets paid back, it is only a portion of that amount, so realistically speaking if we were to look at the total true cost of the ...[indistinct] of Optimum while Trillian paid capital, sorry not Trillian, Centaur paid capital of R842million it actually in real terms only paid R470million
10 for the purchase of Optimum and the rest is sourced from multiple sources, three sources and in particular one being Eskom and the second being Glencore.

ADV CHASKALSON SC: And very briefly to describe the Eskom and Glencore payments?

MR HOLDEN: I need to go back I am afraid in the diagram to page 326 and there is effectively two streams, there's two Eskom payments that are made to satisfy this portion of the diagram. On the 5th of April you see two amounts ...[indistinct] one is an amount that is paid to
20 Koorfontein Coal Mine which had formed part of the Optimum assets but Tegeta Exploration and Resources purchased, it is paid an amount of ...[intervenes]

CHAIRPERSON: I am sorry Mr Holden – I am sorry Mr Holden did you say 326, did you say page 326?

ADV CHASKALSON SC: It is 326 Chair.

CHAIRPERSON: Because I am trying to look at
...[intervenes]

MR HOLDEN: At the very bottom of the page Chair.

CHAIRPERSON: Oh, okay, okay, no I was looking at the
top, okay, alright, yes.

MR HOLDEN: Thank you Chair.

CHAIRPERSON: Okay, continue.

MR HOLDEN: So on the 5th of April transfers
R168 241 108,28 to Koornfontein Coal Mines Bank of Baroda
10 account and immediately on the same day of that amount of
R168million Koornfontein Coal Mines transfers R162million
to Tegeta Exploration and Resources Bank of Baroda
current accounts, then follow a stream that ...[indistinct] from
Eskom, again on the same day it pays an amount of
R81 048 290,26 and it pays that to Optimum Coal's account
at Bank of Baroda 02253 and again on the same day that
then funds a transfer of R80million from Optimum Coal to
Tegeta Exploration and Resources. Those two amounts
comingled then funds a repayment of R242 231 000 to
20 Tegeta Exploration and Resources so in very high level
terms you actually see the real cost borne in a purchase of
Optimum in relation to the Centaur stream R242million here
derives from Eskom. There is then a second and final
Eskom stream which I will ...[indistinct] quickly.

ADV CHASKALSON SC: Mr Holden are you not

...[indistinct] the Eskom payment in the Trillian stream?

MR HOLDEN: I am apologies Chair, I am getting the two confused. These are the only Eskom payments that are used to settle Centaur loan.

ADV CHASKALSON SC: Maybe very briefly to take the Chair to the Eskom payment on the Trillian stream which is at page 331.

CHAIRPERSON: Yes I am there.

MR HOLDEN: Chair as you can see here the very bottom of
10 the page has the Eskom stream, the left of that is Glencore International and what it shows is that on the 16th of January an amount of R67 578 027,59 is paid from Eskom into the Optimum Coal's bank of Baroda current account, 022253, it is joined there by a payment made the following day by Glencore International in an amount of R103 080 442,82. Optimum Coal then draws on those two amounts on the payment of R130million into Tegeta Exploration and Resources Bank of Baroda account and then finally on the
17th of January 2017 over here Tegeta Exploration and
20 Resources uses that plus additional amounts that are residual in that account to pay R152 592 268,63 to Tegeta Exploration and Resources.

I should point out Chair that I have adopted a more conservative accounting in terms of how much Eskom ultimately pays in relation to this amount. I have assumed

that of the R130million that is transferred I have assigned R403million to the Glencore payment and the amount outstanding to the Eskom payment, although it would be equally true to say that it was that R130million is made up of the Eskom R67million deposit and the remainder of the Glencore deposit but I think in ...[indistinct] caution and not overstate the case I have opted for the lower figure from Eskom to satisfy the purchase, the payment.

CHAIRPERSON: Okay.

- 10 **ADV CHASKALSON SC:** Can you take the Chair through steps 9 and 10 to see what happens when Tegeta then uses these funds from Glencore and Eskom to pay off the loan that was secured against the Trillian fixed deposit and the Trillian fixed deposit goes back to Trillian.

- MR HOLDEN:** Certainly what you have here is – I have just noticed a typo that needs to be corrected I am afraid, it reads the 18th of January 2016, it should be the 18th of January 2017 and that's the funds from the Bank of Baroda fixed deposit account to Trillian Management Consulting but
20 in any event on the 18th of January 2017 R116 246 000 is transferred from a closed fixed deposit account into Trillian Management account by Trillian Management Consultants Bank of Baroda bank account, on the same day that amount is then transferred and it is this wiggly line that goes up and around ...[indistinct] and over to the left.

Trillian Management Consulting then transfers an amount of R116 246 000 which is the exact same amount that has just been paid in on the fixed deposit account into Centaur Mining Standard Bank account and again on the same day Centaur Mining then transfers exactly the same amount, R116 246 000 back into Centaur Ventures ...[indistinct] account and I think there's two indications here that need to be emphasized, the first is that very obviously at Eskom recovering the true real cost for the purchase of
10 Optimum for a certain value here.

The second is that what this effectively does is it allows original, funds that were originally sourced from a criminal source, which is Griffin Line, to re-enter the Gupta Enterprise to be used at their discretion going forward.

ADV CHASKALSON SC: Can I make a third observation, what you have described in relation to the Trillian stream is that funds that originally are stolen from the Transnet second-defined benefit fund make their way through to Trillian where a fixed deposit, a Trillian fixed deposit at
20 Baroda is used to secure a loan in favour of Tegeta to purchase Optimum and a year or so later when that fixed deposit is released the funds immediately flow back to Centaur Ventures in Bermuda, is that correct?

MR HOLDEN: That's correct Chair, you effectively funds stolen from pensioners to provide capital so that the Gupta

Enterprise can buy Optimum and then subsequently be effectively stolen and transferred into Centaur Ventures in Bermuda.

ADV CHASKALSON SC: Very briefly – I don't know if it is possible to do it briefly but as briefly as possible to deal with what happens to the Albertime stream fixed deposit and I think the starting point will be page 333.

CHAIRPERSON: Yes I am there. Yes Mr Holden.

MR HOLDEN: In this regard again and this is actually
10 particularly interesting because of the date, on the 20th of
April 2016 Albertime closes its fixed deposit account but
...[indistinct] had been created ...[indistinct] issued, and the
proceeds are then paid back into Albertime's bank
...[indistinct] from there then transfers amounts into three
personal laundry entities ...[indistinct] Consultants and
...[indistinct] Projects, of which a certain amount and I have
the full amount right here is transferred into what I call an
intermediary laundry vehicle called ...[indistinct] Group and
the total funds that ultimately derive from Albertime the total
20 amount are R9.5million is paid Samat Bullion by Majul,
R3million is paid Fortime and ...[indistinct] pays R8 714 178
and that is all done between the 21st and the 22nd of April, so
if we move to the following slide, which is page
...[intervenues]

ADV CHASKALSON SC: 334?

MR HOLDEN: 334, thank you. Of these amounts that are deposited into Samat Bullion's account funds are then transferred into an account by the name of Zocubyte which I did address briefly on Tuesday and Zocubyte is a bleeder account that collects funds then pays them onto offshore registered ...[indistinct] on the 22nd and 26th of April 2016 Zocubyte transfers R3 536 970,06 to Marlozone at Sasfin Bank and Marlozone is an onshore/offshore bridge and then if I zoom out you can see that at the top of the page
10 Zocubyte then transfers of that amount R245 416 ...[intervenes –distorted]

ADV CHASKALSON SC: Dollars, it is dollars, not rand.

MR HOLDEN: 245 416 dollars to Griffin Line on 6th of April on the 26th of April 2016. So again in brief [indistinct] we have funds part of which were stolen from pensioners is another part from the Transnet problem being used to provide the bridging capital by Optimum and once that criminal end has been achieved, the funds are then moved through a compliant, local laundry and eventually a portion
20 of it is paid out to Griffin Line and if we move to the following page, and I do not want to overstay my welcome on this part of the evidence, and I will remind the evidence leader to give me the page number.

ADV CHASKALSON SC: 335.

MR HOLDEN: We can see a second amount transiting to

Griffin Line and the way that works is that of the funds paid to [indistinct] by [indistinct] an amount of four million rand is transferred on the 21st of April 2016 to Shazari Trading, where it commingles with other amounts that have been paid in by [indistinct].

Shazari Trading is the feeder account which collects bulk funds from multiple different sources and then pays them onto an onshore offshore bridge, in this case it makes a payment of R5 867 450-00 to Seattle Grain of which 4.5,
10 sorry R4 574 959-40 ultimately derives from the payment from Samed Trillian and therefore from overtime, and then again the very top of the page and following it round on the 22nd of April 2016 Seattle then makes two transfers of a hundred thousand dollars each, equal to two hundred thousand dollars and that is paid to Griffin Line Trading.

ADV CHASKALSON SC: And would those two Griffin Line payments be the same payments that we discussed in your evidence on Tuesday in the context of which you pointed out to us that roundabout this time there was a Gupta
20 wedding taking place.

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: Very briefly, the last diagram that discusses the disposition off shore of the Alba Ton stream funds, that is on page 36.

MR HOLDEN: Certainly Chair, this is quite complicated,

but I will try make it as simple as possible. Effectively what you have is of the remaining amount that has been paid to Samed Bullian Group by [indistinct] 2.85 million rand which is drawn from the second Majul payments is paid to an entity by the name of Studio de Pablo.

Studio de Pablo is a particularly active onshore offshore bridge and it then transfers on the 22nd of April 2016 an amount of two hundred and eight thousand four hundred and fifty six dollars into the account of an entity
10 by the name of Fly Bridge DMCC.

Fly Bridge DMCC may ring a bell because it was the only account and the only company that received payment from Regiment Asia Sequester Group and Morning Star by HSBC in Hongkong. Then of the remaining amount of these payments, between the 21st of April and the 22nd of April 2016 1.5 million rand is paid into an entity by the name of Zacs Radio and TV, which I deal with at length in my report and appears to be quite a key part of a large local laundromat.

20 On the 25th of April finally to deal with the final stream, one million and fifty thousand rand is paid to the account of CMC Distributors. CMC Distributors is again a feeder account for an onshore offshore bridge. That one million rand is co-mingled with other amounts to pay CCE Holdings on the same day of three million seven hundred

and forty eight thousand five hundred and eighty five rand and then it is transferred onto various Hongkong and Chinese accounts that I believe are part of what I call the Hongkong China laundromat.

I should make the point here which I have not raised already but they are disclosed in my report. All of the onshore offshore bridges that I have mentioned here, CCE Holdings, Valazone and Seattle Grain form the subject of extensive investigations by the Reserve Bank and in
10 each case the Reserve Bank was able to secure a forfeiture of funds based on the fact that they had committed violations of the extent controls regulations.

ADV CHASKALSON SC: Just to tie up this section relating to the flow of funds per, on the Optimum purchase. At page 338 you have a diagram where you depict the total Eskom contribution to the purchase. Can you take the Chair through that?

MR HOLDEN: Certainly Chair. This is a very simplified version of what I have been describing in relation to the
20 Eskom stream. At the very top you have the entry for Eskom and I will zoom into it. I have noted at the top the effective Eskom contribution to the purchase of Optimum is one billion forty six million five hundred and twenty two thousand eight hundred and sixty five rand and seventy nine cents and that is paid in three separate streams.

The first stream is the stream on the left going that way down, and those are amounts paid straight to Tegeta Declaration and Resources. Those are amounts that are paid to finance purchase, before the purchase takes place. this happened on the 13th of April.

The total amount transferred is seven hundred and eighty two million two hundred and eleven thousand eight hundred and sixty one rand and eighty cents. At the second stream is the Centaur stream, which I have then
10 illustrates to reiterate Eskom makes two payments.

One to Constantine and one to Optimum Cole. Those payments are then used to transfer ultimately into Tegeta's and the Paroda counter account and from there to pay the loan account 06467. I have highlighted these two payments here in red because that is the amount derived from Eskom that it ultimately paid back to settle those loans.

Then the final stream runs to the right hand side next to Trillian stream, where Eskom pays an amount of
20 R67 758 027-00 to Optimum Cole which funds the payment of 130 million rand to Tegeta Resources and that funds in part the repayment of the Bank of Baroda loan, and that effectively subsidises the transfer of 160 million rand to Central Ventures.

As I have mentioned earlier I assumed in the most

conservative analysis that in this stream Eskom contributed R22 311 004-71.

ADV CHASKALSON SC: Sorry at the top of that right hand column you say 103 million from unknown source. I understand you have subsequently been able to ascertain who that unknown source was.

MR HOLDEN: That is correct yes. The subsequent of this diagram would be, I asked the Commission to identify the source and they were confirmed the Glencoe International.

10 **ADV CHASKALSON SC:** And can you briefly explain to the Chair what these, this is the second Glencore payment that we have seen in this process. What are these payments for?

MR HOLDEN: I am afraid the evidence leader has caught me out. I am actually not too certain what they are for.

ADV CHASKALSON SC: Well, we will put up a document that shows that they were for the purchase of coal in terms of contracts that have been concluded with the business rescue practitioners before the Guptas took control of
20 Optimum.

Mr Holden, that concludes out evidence in relation to the Optimum purchase. The last topic that I would like you to address is the more general issue of remedies and action that might be taken to try to avoid these sort of events happening again in the future, and in that context I

would like to ask you to go to the submission from Shadow World and Open Secrets, that I think was Annexure H to your report.

Unfortunately I have lost my reference for it, so I need the ... I may need indulgence here. the ...[intervenes]

MR HOLDEN: I have it as the flow of funds 20, page 340.

ADV CHASKALSON SC: Thank you very much, 340. Now we only have half an hour left. Maybe, I mean the start of
10 that submission deals with social harm caused by State Capture and mechanisms that might be put in place to make it more difficult and to avert that social harm in the future.

Can you very, very briefly give an outline there and then maybe we can get into more detail in relation to very specific recommendations that you make in relation first to recovering some of this money, means in which some of this money might be recovered and secondly in relation to systems or sanctions that might ensure that corporations in
20 particular are less likely to enter into these sorts of transactions in the future.

MR HOLDEN: Certainly Chair. I think my evidence ...[intervenes]

ADV CHASKALSON SC: No, I am happy for you to go. To go there.

MR HOLDEN: Thank you Chair, this report looks at two different themes as it were of anti-corruption enforcement post factor and the first section looks at social harm caused by the grand corruption in State Capture. We have identified three I think pretty uncontroversial elements of social harm in relation to State Capture.

The first is that it arose on the ability of the state to deliver on their constitutional obligations, to better the lives of ordinary South Africans and deliver on the socio
10 economic rights. A good example of that is the effective collapse or certainly the significant deterioration of the services provided by PRASA.

The second cost is the social cost of money being diverted from service delivery and other useful social expenditure to pay bribes to criminal enterprises. A good example here is the Transnet locomotive contracts which had to include an increase in the price to facilitate the 20% or 21% depending on the contract bribe margin that was paid effectively to the Gupta enterprise and as I show my
20 report that equals about 7.8 billion rand loss to the state.

That then has a [indistinct] effect as the state has to then inject funds into the GO's at a time now particular economic strain, and it needs to cut into other areas, for example the most recent budget, reduced the budget for the NPA and also reduced the budget for the SIU, which is

clearly problematic, and then finally the social harm that comes from the failure of the state to deliver services, creates its own economic and social harm and has indirect effect, but it also may [indistinct] businesses or entrepreneurs from investing their commonly peer of corruption and State Capture.

Now I think these are all very uncontroversial points. Where we think this discussion could go most fruitfully is that there are a number of international
10 examples where social harm is considered specifically in relation to civil actions around compensation and here I will point just to some very quick references.

First is Article 34 of the United Nations convention against corruption which states that in accordance with the fundamental principles of its domestic law, state should address the consequences of corruption and in this context state parties may consider corruption a relevant factor and legal proceedings to annul or rescind the contract that was drawn for concession or similar instruments, and I think
20 this is the emphasis here, or take any other remedial action.

We have seen this approach adopted in Costa Rica in a very interesting case, a very prominent and controversial corruption case that took place in Costa Rica, and what happened there was that upon the conclusion of

the criminal investigation the attorney general brought a civil claim against the company that had paid the bribes, and that civil claim effectively enumerated the cost, the actual economic cost of that social harm to the state and sought, I think it was over a hundred million dollars in relation to that specific cost and the way they did that was to appoint economic experts to make an assessment on what the costs were, both in terms of the cost to average and ordinary citizens, and their quality of life and potential
10 economic opportunities, but also what they saw is a knock on effect in the degradation of citizens belief in their own democracy and how that led to them not engaging with the electoral process.

That process eventually led to a settlement but I think it is a very interesting example. one final point should be made in relation to that, is that impact which is the [indistinct] against corruption. When acknowledging social harm, recognises that it is a broad category of individuals and people would suffer harm that is beyond
20 just the state and state institutions and it recommends very clearly that and I will read the recommendation here because I think it is so important:

“While the convention does not provide the definition of who is a victim of corruption, it is important to adopt a broad and inclusive approach, recognise

individuals, entities and states and it consider victims of corruptions and furthermore civil society and non-governmental organisations play an important role in ensuring that victims are represented in corruption proceedings and as such ...”

And I think this is the key point:

“Should be able to report crimes, give evidence, represent victims or bring public interest litigation.”

That brings us to the recommendations flowing from
10 that section which appear at page 346 of Bundle 20.

CHAIRPERSON: Yes.

MR HOLDEN: And here I would like to emphasise the first two recommendations. [indistinct] and Chatter World Investigations, we believe that the Law Commission should research collective social harm that results in State Capture, another economic crime and who can institute legal action specifically to provide additional grounds for legal standing when claiming damages or restitution on behalf of an SOE and that is a recommendation we have
20 made to the Law Commission, and then the second recommendation I would like to highlight here is that we would recommend the Department of Justice and Constitutional Development, develop reporting mechanisms for members of the public to participate in reporting and addressing State Capture and other forms of grand

corruption and it should be brought in line with international best practice.

That is the social harm aspect of the submission.

ADV CHASKALSON SC: The next topic that you address in this submission is remedial action for, to be taken by SARS under Section 23O of the Income Tax Act, and can I ask you first to explain what 23O of the Income Tax Act says?

MR HOLDEN: Certainly Chair. I will read the relevant
10 paragraph if I may. Section 23O of the Income Tax Act reads as follows:

“Deductions ...”

23 is headlined that:

“Deductions are not allowed in determination of taxable income, and we have no deduction ... no deduction shall in any case be made in respect of the following matters namely ...”

At subparagraph O:

“Any expenditure incurred ...”

20 Subparagraph O1:

“Worth a payment of that expenditure or the agreement or offer to make that payment constitutes an activity contemplated in Chapter 2 of the Prevention and Combating of Corrupt Activities Act 2004 at point 2, which constitutes a fine charged or a penalty imposed as a result

of an unlawful activity carried out in the republic or any other country if that activity would have been unlawful had it been carried out in another republic ...”

And then finally at 3:

“Any expenditure incurred constituting fruitless and wasteful expenditure as defined in Section 1 of the Public Finance Management Act determined in accordance with that Act and in very broad summary it means that tax payers of individuals and companies, cannot claim as
10 deductions any payments they make in fulfilment of corrupt activity.

ADV CHASKALSON SC: And why is it ... okay. What are the implications of this and what are you suggesting that SARS should be doing?

MR HOLDEN: Certainly. I have been very interested and heartened by the action that SARS has taken in relation to Regiments, and in that action what has happened is that SARS has declared payments that Regiments made to First Level Laundry entities to be non-deductible and Regiments
20 had actually deducted those amounts from their taxable income.

The potential for the state to recoup funds there is quite promising, and I would very, very strongly urge SARS to consider looking at all the evidence presented in my report and in particular to approach those companies that

pay any amount to First Level Laundry entities to see if they deducted it from a taxable income and to take the appropriate action and to follow that [indistinct] of accountability any entity that received payments from First Level Laundry entities should also be subject to an investigation in that regard.

ADV CHASKALSON SC: Can I ask you in that regard to go to page 434 of Bundle 20.

MR HOLDEN: I am there, 434.

10 **ADV CHASKALSON SC:** 434 and can you identify that document to the Chair?

MR HOLDEN: Certainly Chair, this is a letter being sent from SARS to the public officer of Regiments Capital, 35 Burgerson Road in Illovo, and for the attention of Mr Bernard Mofakeng and what it sets out is a finalisation of the audit.

I should rather refer to it as a memorandum rather than a letter, but it indicates the finalisation of an audit that SARS has undertaken into Regiments Capital for the
20 years 2014 and 2016.

ADV CHASKALSON SC: Chair, I wonder if we could ask for this document also to be introduced as an exhibit.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: We are at BV10K.

CHAIRPERSON: So the letter from SARS addressed to

Regiments dated 31 March 2021 is to be admitted as an exhibit and will be marked as Exhibit, did you say BV?

ADV CHASKALSON SC: K.

CHAIRPERSON: BVK, as BBVK. Thank you.

ADV CHASKALSON SC: And just very briefly to describe, I do not want you to take the Chair through this document. Just describe what it is that this audit concludes in relation to issuing, well recommending increase tax liability for Regiments Capital.

10 Sorry Mr Holden, I am not sure if you heard my question?

MR HOLDEN: Certainly Chair.

ADV CHASKALSON SC: So can you very briefly describe what this ...[intervenes]

MR HOLDEN: [indistinct] I did.

ADV CHASKALSON SC: Thank you. Can you then answer the question?

MR HOLDEN: I will answer that. The, what the memorandum sets out in summary is that SARS has found
20 that Regiments made very large payments to First Level Laundry entities Home X, amongst others and has found that those, that Regiments then deducted those payments from a taxable income as expenses and SARS has now ruled that those cannot be deductible expenses, and on effectively two grounds.

The first ground is that it constitutes corrupt activity under PRACA and therefore [indistinct] that ...[intervenes]

CHAIRPERSON: I guess you will have to repeat that sentence Mr Holden. Sorry Mr Holden, I guess you will have to go back to maybe three sentences back because there was a technical glitch. We could not hear some of the things you said.

MR HOLDEN: Apologies Chair. The essence of the audit is that Regiments were making payments to First Level
10 Laundry entities and declaring those payments as deductible expenses. SARS have now ruled they are definitely not deductible expenses, first because they are, they constitute the violations of PRACA on their own terms and second because deductions were in actual services been provided and [indistinct].

CHAIRPERSON: We are not succeeding. I think one of the things I thought we could consider Mr Chaskalson, is that after Mr Holden has finished, maybe the transcript could be made available to him as soon as possible so he
20 could go through and pick up where there are inaudibles that make it difficult to follow what he is saying, and while everything is fresh in his mind, he could assist to fill up or fill in those gaps.

What do you think of that?

ADV CHASKALSON SC: I, if he would be willing to do

that, I would strongly support.

CHAIRPERSON: Or if there is another way, I am just concerned that in the end the transcript we have, should be one where one can reasonably follow what he was saying.

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: So if there is another way that is fine, as long as in the end that whatever gaps there may be which make it difficult to understand what he is saying can be
10 fixed.

ADV CHASKALSON SC: Between our team and Mr Holden, we will ...[intervenes]

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Find a way of curing that problem, but ...[intervenes]

CHAIRPERSON: Yes.

ADV CHASKALSON SC: For now we are right at the end of his evidence. It would be good if we could find a way just to complete it.

20 **CHAIRPERSON:** Ja, no. Let us continue. Yes Mr Holden.

MR HOLDEN: Apologies Chair, I am not quite sure where I got cut off, but I will say again what the SARS order found ...[intervenes]

CHAIRPERSON: I think you had, I am sorry. I think I had heard the first ground on which you said SARS said those

amounts were not deductible. I am not sure that you had got to the second ground, but at least if you did, then I did not hear that part.

MR HOLDEN: Thank you Chair. So as I said the first ground is that they constituted violations under PRECA. The second ground is that deductions could only be made where legitimate services are provided and none of the companies provided legitimate services.

CHAIRPERSON: Okay.

10 **ADV CHASKALSON SC**: Now can I ask you to go to table 113 of your report at Bundle 9, which is total payment to First Level Laundry entities by State Capture. It is where you itemise the origin and destination of the 1.2 billion odd that went to First Level Laundry entities.

MR HOLDEN: Can I get a page reference?

ADV CHASKALSON SC: It is 194.

MR HOLDEN: Certainly, I am there.

ADV CHASKALSON SC: Now would the logic of the SARS audit letter in respect of Regiments supply equally to every
20 one of these cases that you list in table 113?

MR HOLDEN: Absolutely Chair.

ADV CHASKALSON SC: Thus far you have confined yourself to First Level Laundry entities. Can I put another example to you? We heard on Tuesday that two systems made payments of over 300 million to Seshaba after being

directed to do so by Salim Essa.

Is that something that SARS in your opinion should be investigating in relation to see whether those payments were deductible systems taxable income?

MR HOLDEN: Absolutely Chair.

ADV CHASKALSON SC: And if you were to categorise more generally the examples like that Key Systems example, that do not relate to payments directly to First Level Laundry entities, how would you characterise them?

10 **MR HOLDEN**: I would characterise them as payments made by state contractors to recipients who formed part of the Gupta enterprise or intermediaries for the Gupta enterprise, where those payments were linked to the award and fulfilment of that contract.

ADV CHASKALSON SC: Now I have not done my preparation, but I suspect that there is a table in your report which brings them all neatly together. If we can briefly go to your list of tables in your report and identify what table that would be.

20 The list starts on page 12 and ...[intervenes]

MR HOLDEN: The list, and are you referring to total payments made by the state?

ADV CHASKALSON SC: No, I am looking above total payments made to the Gupta enterprise.

CHAIRPERSON: Did you say page 12?

ADV CHASKALSON SC: It is where the list of tables start.
I am just hoping to be able to identify our ...[intervenes]

CHAIRPERSON: Okay.

ADV CHASKALSON SC: The relevant table that we can
ask SARS to look at.

CHAIRPERSON: That cannot be Bundle 9, you have
moved to another one.

ADV CHASKALSON SC: It will be Bundle 9 Chair.

CHAIRPERSON: Oh. That what I see at page 12 is a
10 continuation of a list that started much earlier.

ADV CHASKALSON SC: Indeed. I think it is at page, if
we go to page 225. I think I found what will be our table.

CHAIRPERSON: Okay. At page 225, that is where we find
table ...[intervenes]

ADV CHASKALSON SC: No, I am ... maybe we ... maybe I
must abandon this project. I have got, there will be a table
there. We can ask Mr Holden just to identify that table
after the event.

CHAIRPERSON: Yes.

20 **ADV CHASKALSON SC:** But you were talking about
payments that were made to Gupta identified, that were
made by contractors with the state to subcontractors
essentially placed there by the Gupta enterprise. Is that
correct?

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: I am afraid our signal is
...[intervenes]

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Is dropping again.

CHAIRPERSON: Yes.

MR HOLDEN: That is correct Chair.

CHAIRPERSON: Okay, okay it is back.

MR HOLDEN: And I fortunately found the reference that
you are referring to. It is table 134.

10 **ADV CHASKALSON SC:** And the page number for that?

MR HOLDEN: Table 134 starts at 226 for the relevant
[indistinct] table is at page [indistinct].

ADV CHASKALSON SC: So it is from page 226, sorry. It
is from page 227 onwards?

MR HOLDEN: [indistinct], ja.

CHAIRPERSON: Ja. 226 at the bottom.

ADV CHASKALSON SC: And the section would be the
section headed payments by state contractors derived from
State Capture contracts at page 227 as opposed to direct
20 payments to the Gupta enterprise.

MR HOLDEN: That is correct. It actually [indistinct].

ADV CHASKALSON SC: Yes, FO9, 228. So it is payments
by state contractors derived from State Capture.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: The next issue that you deal with

in terms of remedial action is debarment. Can you explain what you mean by debarment and what you are recommending in that regard?

MR HOLDEN: Certainly Chair. Debarment is a tool that allows the state to designate an individual company or supplier that have committed a violation of the practice for governance, usually the violation of PRECA or failure to deliver a contract, and then effectively it makes sure that the state issues no further contracts to that company, for
10 an extended period of time.

What we found in our very long period of work in relation to anti-corruption enforcement around the world, is that the issue that most alarms, the shareholders of large corporations is not necessarily the payment of fines which may become the cost of doing business in many of them, but it is the idea of losing potential future income, and a strong debarment regime is I think fundamental to creating a system where you do not have a repetition of State Capture and corruption and in this regard I am very
20 pleased to see that the draft act [indistinct] exact name.

The draft public procurement act actually envisages the creation of a centralised debarment process overseen by an independent regulator and which I think would be a really great step forward for South Africa. The one nuance I would add, is that I do believe that the draft public

procurement act should consider including some mechanism to which the regulator is empowered to create a proactive investigation unit that would proactively monitor procurement as they take place, as a preventative tool.

I fear that without that indicative, independent investigative mechanism the regulator may not detect all of those payments and of course there is way for that to be decided, for example it could be that procurement over a certain value, say ten million rand, would immediately
10 trigger a compliance check and a monitoring process by the regulator.

I think that would be a great addition to and a great intervention intern sharing goods, published [indistinct] practice.

ADV CHASKALSON SC: Can I ask you to go to page 524 of Bundle 20, just so that we can identify the draft public procurement bill that you are talking to. Page 524.

MR HOLDEN: I am there.

ADV CHASKALSON SC: And can, is that the document
20 that you are referring to when you talk about the draft public procurement act?

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: Chair, can we admit is as an annexure?

CHAIRPERSON: Yes. That would be ...[intervenes]

ADV CHASKALSON SC: BV10L, L for Lema.

CHAIRPERSON: The draft public procurement bill will be admitted, which appears at page 524 will be admitted as Exhibit BB [indistinct].

ADV CHASKALSON SC: And just to clarify, if you go to page 543, Section 22 of the draft bill, that is the proposed debarment regime in the, in the draft bill. Are there any comments in relation to that proposed debarment regime that you would make to the Chair?

10 **MR HOLDEN:** Certainly. I think to reiterate, I think that debarment function would work best in those cases where the regulator has a proactive investigative function and that can act as a break on potential pure procurement practices.

I think it would make a very substantial difference to South Africa. I should mention that I think two further recommendations should be considered. I think it should be, and I imagine that it would be, that the regulator should be empowered to create a publically available
20 database of all companies who has been placed under debarment or being investigated for debarment, because it does actually, the Act does allow for a temporary suspension or temporary debarment.

The detailed reasons for that debarment and suspension and I think in the case, obviously publically

available to all citizens to be able to read and interrogate, that will also allow accounting officers to very easily investigate whether the companies are added to that database.

This may be adding too many things to their wish list, but I do think there is some power in the state where it places a multinational company on debarment, to alert the authorities in its home country that it has been placed under debarment and whether they want to take similar
10 action as well.

ADV CHASKALSON SC: Now there is one issue that I do not see in this draft bill, which is that as I read the draft bill, debarment consequences apply only to the entity itself that has been found to have contravened the various or to be guilty of one of the various grounds of debarment, not to the individuals who control that entity or who are the beneficial owners of that entity.

Is there any way in which this sort of issue is addressed elsewhere in the world, of which you are aware?

20 **MR HOLDEN:** In a lot of different procurement processes, and I am referring there to the UN in particular, is that directors of companies have to indicate their past and previous directorships in any tender process, which will then allow them to allow the accounting officer in this case to identify whether they have been involved in any other

company that has defrauded the state in some way.

I could see very easily how it would be a very straight forward process for people to be debarred for their work in company A, and then spend not very much money to form company B, to get around those debarment issues, and that should obviously be factored into the public procurement regulations, but it should also extend to directors and that it should explicitly call for accounting officers to ascertain the history of the directors and their
10 previous companies in relation to that.

ADV CHASKALSON SC: I am aware that we are running short of time, but we are literally maybe five or ten minutes before the end. Chair ...[intervenes]

CHAIRPERSON: We can continue.

ADV CHASKALSON SC: Thank you very much Chair. In the submission Annexure VVH, VV10H there is a discussion of the role of settlements in civil and criminal claims and deferred prosecution agreements. Do you want briefly to or can you briefly address the Chair on those submissions?

20 **MR HOLDEN:** Certainly Chair. The reason that we traversed those issues, is partially because of our work in monitoring how settlements are used and abused throughout the world when it comes to anti-corruption enforcement.

There is a very much a very live discussion and

anti-corruption community about what settlement actually achieve. In the US they have a regime called the foreign [indistinct] practices act regime, SCPA, which is enforced quite aggressively.

But it is enforced through what they call deferred prosecution agreements, which are effectively non-criminal settlements or an agreement to defer a prosecution and for that entity to pay a fine and what we have seen is a lot of cause for a lot of countries to adopt a similar process, 10 because it is seen as a way of expediting anti-corruption procedures and it is seen as a way of expediting the state to recouping funds from corruption.

But what we have actually seen in these jurisdictions and I am talking here to the experience in the US and increasing the experience in the UK as well, is that those acts do not deter corruption at all. In fact there is an incredibly high rate of ...[indistinct] for companies that are issued deferred prosecution agreements, increasingly it seems that companies and I am talking here about very 20 large international companies, may consider paying a bribe just a cost of doing business and considering that the [indistinct] detection for corruption is quite low in the international community, they may consider that good business and that is the exact opposite of what you want to achieve.

It also creates a system where you have effectively due to your justice system, where somebody who is arrested and prosecuted you know, faces far harsher sentences for shoplifting a loaf of bread than an executive in corporate who perpetrates a fraud of great scale against their country or [indistinct].

That is clearly not acceptable on an act of justice. Two other features of property spheres that are very problematic is that generally speaking they will only
10 include a limited disclosure of the offence and the information of the offence in the public domain, which may preclude other jurisdictions who are interested in that company from proceeding with their own criminal investigations.

You almost never see executives in those companies how to account in any possible way they are never prosecuted for or they are prosecuted as an extreme rarity and it does seem to me very obvious deterrent a crime, is that the executives of those companies who have
20 been involved in State Capture face real criminal consequences for their actions and then finally the introduction of [indistinct] where it may allow the state to earn a certain amount of money.

It does not create a criminal record, and that means that the debarment function which I think is absolutely

fundamental in challenging corruption can no longer be used. So where the state may be compelled to consider the introduction of PPA's we would very, very, very strongly argue against that but it is not to say of course that we do not think plea agreements could be useful, because plea agreements do accelerate the process of corruption and can allow for a settlement of a potentially difficult corruption case more speedily and the recovery of funds, but the difference there is that a criminal plea agreement is

10 ... has judicial oversight first of all.

So a judge can decide whether it is fair, and it means that there is a fair exchange in the sense that a company or an individual may receive a lesser sentence in return to something else, which is usually a full disclosure of all the information of the act, and that can be fundamental to further prosecutions and also to help in international prosecutions as well.

So we would strongly recommend, we think that plea agreements are a potentially very useful means of

20 pursuing corruption, and we would argue very strongly against an out of court settlement of any kind and deferred prosecution agreements.

ADV CHASKALSON SC: And the last topic that you deal with in relation to fighting corruption is the need for more transparency. Can you very briefly describe to the Chair

what you are proposing in that regard?

MR HOLDEN: Certainly Chair. I think the phrase used to be Sunlight is the best disinfectant, but I have been informed that Sunlight does not disinfect anything. Never the less transparency is absolutely vital to attack the corruption in all its forms and I think there is a number of key areas where the transparency or I think South Africa should really join what is becoming a bit of a transparency revolution around the world, and I think there is a couple of
10 sites where that could be implemented.

I think one is with the companies and intellectual properties commission. As it stands right now, it costs South African citizens quite a lot of money to check for the existence of a company and who its directors are and what their ID numbers are.

That is actually very unusual in the international, in international experience where it is generally free at the point of access for all citizens to check who directs the company. I also think and I would very strongly argue that
20 that should become a freely available public database and obviously there can be discussions about how the income that CIPC might lose from that could be all set, but I think the game to transparency would be absolutely enormous.

The second thing that myself and a lot of other investigators and investigative journalists have really

struggled with is the issue of finding out the beneficial ownership of companies. It is now very common around the world that all companies have to declare their beneficial owner.

I think that should become a part of the CIPC's disclosure regimes, it is not just the directors who may be normal directors in any event, but it should be established who actually owns the company or what other companies or trust companies own that company.

10 Then the last recommendation on my wish list and I know I am going through a lot of [indistinct], but as it currently stands, there is a real problem trying to establish the shareholding in a company. If you are a member of the public.

As it stands under the Companies Act, the share registers of the companies reside with the company auditors and in my experience I have tried, I do not know how many times, to write to company auditors of the companies themselves and say under the Companies Act
20 you need to supply us on request of the share registers and they are never delivered.

Actually this is quite a strange way of organising things, because in multiple of the jurisdictions in fact all of the jurisdictions that I was accessing records in compilation of this report, the share registers are similar to

the registry of companies.

So I would recommend that the share registers or at least [indistinct] setting out the ownership as soon as it has been said, the CIPC on a routine basis and that citizens should be allowed to access that information, either by paying to download an annual return or potentially create the point of views.

I think that would make an absolutely huge difference to understanding, identifying the real onus and
10 the real movers behind special purpose vehicles that are used throughout, I think it would be incredibly important to do that.

ADV CHASKALSON SC: And finally transparency in relation to public contracts and decision making processes as an SCU address.

MR HOLDEN: Certainly. There is, and I am hesitant to use NGO [indistinct] anti-corruption speak here, but there is a bit of a, there is an over contracting revolution that is happening in many places where as standard, huge
20 amounts of information are made for free available to the public about contracting.

That information runs from the issuing of tenders to the award of tenders. So if I was to use an example, the European union has a system called TED or tenders electronic daily. Every single tender or award that is

issued by a state anywhere in the EU, full information is put online for that tender.

So the tender award is publicised. You can download it and it is there forever. The tender award is also announced and that is very important, because what is disclosed in that tender award are things like who the winning bidder is.

What the total amount they paid, was. How many other people were bidding for this contract. If it was a single bid contract, why was it a single bid contract. What is envisaged under that contract, whether and I think this is really key here, whether that contract allows the primary contractor to use any subcontractors and how much will they eventually spend on contractors and it seems in relation to the Gupta enterprise that that was a common theme of how they procured State Capture in the Free State in particular was effectively bogus subcontractors on contracts to the state.

It also includes a very useful breakdown of the rationale behind the award, and that includes describing the scoring criteria and how those scoring criteria were reached, and also provides the actual score of different bidders under those different sub domains.

Obviously there is a degree of limitation of what is disclosed under commercial confidentiality, but a common

thing that is done there, is to not only list the number of tenderers, but to indicate the highest and lowest value offered by different service providers in relation to that contract.

You will see there is a big discrepancy between the amount that is actually awarded and the lowest possible bid. Now I do not believe, those are not always going to be silver bullets in fighting corruption but I do think having a system like that in place and I understand there will be
10 technical issues there and there would be an achievement figure in running, but I think it would massively improve the ability of the state themselves, of companies and people doing business and ordinary citizens to understand how the taxpayer money is spent and to use those documents to ensure that corruption is [indistinct].

I think to myself how much earlier would the Estina Frieda Dairy scandal have been caught if all, if the procurement process and the tender documents and the contract award were placed on a publically available
20 website.

I think it would have been detected far earlier and it would have stopped the frivolous theft of vast amounts of money from some of the poorest people in the country, and I think that sort of level of transparency could make a huge and fundamental difference to the health of South Africa's

democracy.

ADV CHASKALSON SC: Mr Holden, is there anything else that you would like to address the Chair on at this point?

MR HOLDEN: At this point Chair, I was going to raise a potentially very controversial point, which I have now decided not to pursue because I think I might become the least popular person in South Africa. I will put it out there for discussion, if I may rather than making a recommendation.

10 Is that in certain countries around the world and Norway is a very good example, there is a system whereby every single individual and every company in the country's tax returns or a summary of those tax returns are made available publically on a database.

 So every citizen in the country can check what the prime minister or their minister of foreign affairs or whatever issue they want to, and they can actually even check their neighbour if they want to, what the total amount of taxable income was and how much they actually
20 paid in tax.

 It is a very brief summary but there is a ... there will be a number of different surveys and investigations interacted in the Norway which has shown that that massively increases the trust of citizens in the public officials, but it also detects ... it detects income that

cannot really be justified.

It is almost like a thumbnail lifestyle or I am not going to say I recommend that be introduced into South Africa, but I think it would be an interesting thing for the Commission to consider that and for the broader public maybe discuss the pro's and cons of a system like that, and how it could improve transparency.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Mr Holden, you have given us
10 some extraordinary testimony over a period of several months, thank you very much for that. Is there anything that we had missed that you would want to say as a last, as a sort of parting shot or can we finally say goodbye and thank you?

MR HOLDEN: If I may, I would like to beg the indulgence of the Chair if I may. While I was preparing this evidence, my father died very unexpectedly and very suddenly in South Africa. He died at the age of 68 and because of Covid I have not been able to go back and pay my last
20 respect.

I know he was very excited about my evidence before the Zondo Commission and very proud and to the extent that this evidence is useful to the Commission, I would like to dedicate it in his name.

CHAIRPERSON: Thank you very much Mr Holden. Our

condolences about the passing on of your father, and we ...
you mentioned that he passed on while you were engaged
in this process of assisting the commission and that he was
proud of your role in that regard.

I just want to take this opportunity to thank you for
the evidence you have given. Quite clearly there was a lot
of investigation and research that has gone into all of this.
I really thank you. Your evidence is very enlightening and
certainly it helps South Africans to understand a very
10 important part of what was happening with regard to their
money that was used in certain transactions, in a way to
say the least that is questionable.

Thank you very much. We really appreciate it. I
accept that this might be the last time that you appear to
give evidence, but I suspect that we are still going to need
you to interact with the Commission for quite some time in
regard to matters that you have covered.

Thank you very much, and once again our
condolences to you and your family. Thank you Mr Holden.

20 **MR HOLDEN**: Thank you Chair, thank you very much.

CHAIRPERSON: Thank you. You are now excused, thank
you. Mr Chaskalson, it is obvious that you and your team
worked extremely hard in regard to bringing before the
Commission, before me this evidence. So I think your
team has worked very hard over what, over three years or

even more.

ADV CHASKALSON SC: Yes, the team was there before I came there. They have been at it since the very beginning Chair.

CHAIRPERSON: Yes, over the whole period of the Commission. Thank you very much. We are going to adjourn now and after lunch I will have counsel appearing for various MP officials who will appear before me and deal with summaries of the, their versions in response to the
10 evidence of certain witnesses.

But I would like to see you before you go in chambers Mr Chaskalson.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Hulley, good afternoon everybody.

ADV HULLEY SC: Good afternoon Mr Chairperson.

CHAIRPERSON: Are you ready?

ADV HULLEY SC: Thank you very much Mr Chair. Mr
20 Chair we are going to be leading the evidence of Mr Mzila this afternoon. His evidence touches upon some of the evidence that was given by Mr Mike Mabuyakhulu.

CHAIRPERSON: Yes. And he is going to be ...

ADV HULLEY SC: He is going to be testifying essentially about two affidavits that he deposed to.

CHAIRPERSON: Ja.

ADV HULLEY SC: Relating to the two donations – sorry to the – to the donations that were eventually received from Dr Savoi.

CHAIRPERSON: Okay and he is going to make use of an interpreter.

ADV HULLEY SC: He will be testifying through an interpreter Mr Chair. We made available the oath.

CHAIRPERSON: Please give me that file for interpreters.

10 **CHAIRPERSON:** Is our interpreter Mr Mzoto?

ADV HULLEY SC: He is available. Please stand up Mr Mzoto. Please state your full names for the record.

MR MZOTO: My name is Kulegane [?] Mzoto.

CHAIRPERSON: Do you have any objection to taking the prescribed oath or affirmation?

MR MZOTO: I do not Chair I will take the oath.

CHAIRPERSON: The oath okay. Do you consider the oath binding on your conscience?

MR MZOTO: I do.

20 **CHAIRPERSON:** Okay. Do you swear that you are proficient in English and in Isi-Zulu and that you are able to interpret and translate from English to Isi-Zulu and vice versa?

MR MZILA: I do Your Worship.

Do you swear that 00:03:17 interpret in these proceedings

from Isi-Zulu to English and from English to Isi-Zulu you will do so honestly and to the best of your knowledge and ability?

I do Chair.

CHAIRPERSON: Please raise your right hand and say, so help me God.

So help me God.

CHAIRPERSON: Thank you. You are duly sworn in.

ADV HULLEY SC: Thank you Mr Chair.

10 **CHAIRPERSON:** Okay.

ADV HULLEY SC: If we can have the witness sworn in.

CHAIRPERSON: Then the Registrar – good afternoon Mr Mzila.

MR MZILA: Good afternoon Chairperson.

CHAIRPERSON: Ja. Thank you for making yourself available once again. Are you legally represented today?

MR MZILA: Yes I am legally represented (Inaudible) my legal (inaudible) but I am legally represented.

CHAIRPERSON: Okay what is the position Mr Hulley?

20 **ADV HULLEY SC:** Mr Chair as I understood the position certainly his legal representative was not going to be available. I am not sure if he is available today.

CHAIRPERSON: Oh.

ADV HULLEY SC: But he was certainly not going to be available when Mr Mzila was scheduled to testify. He said it

was not necessary for him to be available.

CHAIRPERSON: Okay. Do you confirm that Mr Mzila? Did you hear Mr Hulley?

MR MZILA: Yes.

CHAIRPERSON: You confirm that?

MR MZILA: Yes. Yes Chairperson.

CHAIRPERSON: Okay no that is all right. The Registrar will now administer the oath or affirmation to you Mr Mzila and the interpreter will interpret as the Registrar
10 administers the oath.

REGISTRAR: Please state your full names for the record.

MR MZILA: Delani [?] Mzila.

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

MR MZILA: I have no objection Chair.

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

MR MZILA: I do.

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

MR MZILA: So help me God.

CHAIRPERSON: Thank you. Okay Mr Hulley.

ADV HULLEY SC: Thank you Mr Chair. Mr Mzila can you

tell the Chairperson where you currently employed?

MR MZILA: I am currently in the employ of the African National Congress KwaZulu Natal based in Durban.

ADV HULLEY SC: And in what capacity are you so employed?

MR MZILA: I am employed in the capacity of assisting the Treasurer as the finance manager. Yes.

ADV HULLEY SC: Now in 2009 were you also employed by the African National Congress in the capacity as a financial
10 manager assisting the Treasurer?

MR MZILA: Yes Chair I was.

ADV HULLEY SC: And in that – in that period of time that you were in the employ of the ANC as the financial manager you deposed to two affidavits which are the subject of your testimony today. I would like you to turn with me to Bundle RR4 at page 1843.

ADV HULLEY SC: Page 1843.

CHAIRPERSON: Are you there?

MR MZILA: Yes.

20 **CHAIRPERSON:** Yes he says yes.

ADV HULLEY SC: No, no

MR MZILA: I am at 4.

CHAIRPERSON: It is your first affidavit.

ADV HULLEY SC: This is what I will refer to as your first affidavit.

MR MZILA: Yes. Yes Chair I am on it.

ADV HULLEY SC: And then you also deposed to a second affidavit which is two pages on in that bundle at page 1845.

MR MZILA: 184.

CHAIRPERSON: It comes immediately after the first affidavit.

ADV HULLEY SC: Yes 5.

MR MZILA: Yes.

CHAIRPERSON: Have you found it? Let me see.

10 **MR MZILA:** Chair on the second affidavit I have from paragraph 1 through to 7.1, 7.2 and until 7.3 of the second affidavit.

ADV HULLEY SC: Yes.

CHAIRPERSON: Do you not have paragraph 8?

MR MZILA: I do – I do Chair.

CHAIRPERSON: Okay it looks like you have got the whole affidavit.

ADV HULLEY SC: Thank you – thank you Mr Chair.

MR MZILA: Yes.

20 **ADV HULLEY SC:** Now before we get into the content of the affidavit Mr Mzila can you tell us insofar as the first affidavit is concerned that one which is at page 843 could you explain to the Chairperson of the circumstances in which you deposed to that affidavit?

MR MZILA: Chair –

CHAIRPERSON: Okay just give the – (speaking in vernacular). The interpreter will interpret before he goes too far. Okay.

MR MZILA: Chairperson the first affidavit was given to me to sign. This was to show or to confirm that there were monies that were paid to the ANC as a donation. I was asked to sign this affidavit by an attorney who said I must sign it on behalf of the ANC to show that we had received a donation.

10 **ADV HULLEY SC:** Do you recall the name of the attorney?

MR MZILA: Sibusisiwe Ngubane. Yes.

ADV HULLEY SC: And when Ms Ngubane contacted you and asked you sign this affidavit did she explain to you the background to why it is that you were required to sign it?

MR MZILA: Chairperson she advised me to sign this document on behalf of the ANC indicated to me that I was signing this document because it was an administrative process and she further indicated to me that this will then be taken to the investigators. And she asked me to sign
20 because I was at the time full time in the office in my employ with the ANC.

ADV HULLEY SC: Now did you consider the information in the document in the affidavit that she sent to you?

MR MZILA: I did look at the document Chairperson and I did not have reason to doubt what was contained therein

because I had been informed by the Treasurer at the time that there are certain things that had been paid for is in the donation so – because the Treasurer had told me that I had no cause to be concerned or to doubt that that – the Treasurer did not indicate to me some of the amount of the donation and he did not inform me who donated said money.

CHAIRPERSON: Just before you proceed Mr Hulley. When Mr – when Ms Ngubane approached you about the matter that she put to you did you know something about the matter already or were you hearing about the matter from her for the first time?

MR MZILA: Before Ms Ngubane came to me the Treasurer had briefed me – had spoken to me briefly about the fact that there are certain things that had been paid for but that such things had not been paid from the account of the ANC they had been paid for by means of a donation although he had not specified the amount of the donation and who the donor was. I then when Ms Ngubane approached me I thought to myself she is coming to me pursuant to what the Treasurer had told me.

CHAIRPERSON: Can you try as far as you are able to just tell me the conversation between you and the Treasurer that you are talking about? How did it come about that you had that conversation and what was the gist of what he had told you?

MR MZILA: Chair I cannot remember what led to the Treasurer telling me these things but I do remember that he told me that there are certain things that have been paid for and certain things that had been done that had not been paid for using the ANC account. And I also knew that was things that had been done that had not been paid for by the ANC account because at the time I was office based and I am the one who that time who was still using a cheque book and the one who would carry the cheque book. So I knew
10 that some things had been done but had not been paid for by the ANC. So he told me that those things had in fact been paid for through a donation.

CHAIRPERSON: Now when you had a conversation with Ms Ngubane how long after your discussion with the Treasurer was it?

MR MZILA: Chair – Chair it happened quite – it happened sometime after my conversation with the Treasurer because it was after our conference. I am not able to say how it was but I remember that when I spoke to Ms Ngubane the
20 Treasurer had at that time vacated that position of being a Treasurer.

CHAIRPERSON: Was it a matter of days, was it weeks, was it months that you had had the conversation? In other words the two conversations you had one with the Treasurer the other one with Ms Ngubane were they weeks apart or

months apart?

MR MZILA: Chair it is going to be difficult for me to be able to say how far apart the two conversations were because these were conversations that were not done in a formal setting perhaps in a meeting. I remember that when the Treasurer explained to me that there were things that had been paid for not with the ANC account he told me that in an office and I cannot be able to say how long then after that I had the conversation with Ms Ngubane.

10 **CHAIRPERSON:** And then can you try as far as you can to give me the conversation that took place between you and Ms Ngubane when Ms Ngubane introduced this matter to you for the first time? Okay just give the interpreter a chance. Okay (speaking in vernacular).

MR MZILA: Chairperson Ms Ngubane gave me a call and she then informed me that there is a matter of a donation that is being investigated. She further indicated that that matter was concerning a donation that had been received by the ANC from one Mr Savoi

20 **CHAIRPERSON:** Savoi.

MR MZILA: Savoi I beg your pardon. She then further indicated that I would have to sign an affidavit on behalf of the ANC.

CHAIRPERSON: Okay continue and how did the conversation continue? What did you say and what else did

she share with you about this matter?

MR MZILA: Chairperson she then emails me this affidavit which she asked me to sign. I asked her though as to why was it necessary that I am the one who was to sign this affidavit. She then indicated to me that this – that was the case because this related to an office matter and that I am the one who had to sign the said affidavit. I also remembered that the Treasurer had told me that there were certain things that for the ANC conference that had been
10 paid for using a donation. So I was not too alarmed by her request. She sent through the affidavit using an email and then I signed the affidavit.

CHAIRPERSON: Mr Hulley do you want to take it from there?

ADV HULLEY SC: Thank you Mr Chair. Now what is the name of the Treasurer to whom you referring?

MR MZILA: Michael Mabuyakhulu.

INTERPRETER: Name is Michael Mabuyakhulu, Chair.

ADV HULLEY SC: And you said that in your discussion
20 with him that you have had before the discussion with Ms Ngubane, you have indicated that certain items had been paid for, but not from the ANC account. Is that correct?

MR MZILA: That is correct.

CHAIRPERSON: In fact, they have been paid for

donations?

MR MZILA: Yes, that is what I thought.

ADV HULLEY SC: And do you recall, which items he was referring to?

MR MZILA: Yes, I do.

ADV HULLEY SC: Can you tell us?

MR MZILA: Chair, it was the T-shirts, bags, caps, accommodation, some of the transport, catering, as well as the venue.

10 **ADV HULLEY SC**: Thank you, sir. And had you seen the money that was used to pay for these different items?

CHAIRPERSON: Okay.

MR MZILA: I did not. Chair, those were paid for by the Treasurer. There are certain meetings where the Treasurer would not be present in and I would attend those meetings, representing the Treasurer and then I would then report to the Treasurer what had happened at the prep-meeting, and I would tell him the discussions that were held.

20 And then the Treasurer would tell me of the things that were discussed in the meetings that these things will happen, and these would not be able to happen and those things that will be discussed in the meetings, he would tell me about those that would have to be paid for by the ANC and then I would refer those back to the meeting.

But if I may, Chairperson, is to beg your pardon

and rectify what I have said earlier. Amongst the things that were paid for by the ANC includes the venue that I had said that was paid for through the donation, the ANC paid for the venue, decoration...

INTERPRETER: [Speaking vernacular]

MR MZILA: And the ...[indistinct] commission.

ADV HULLEY SC: Are you saying that those items, the venue, and the decoration, those were paid for by the ANC and not by donations?

10 **MR MZILA:** Yes.

ADV HULLEY SC: Now, you subsequently deposed to a second affidavit which I have asked you to look at page 1845.

MR MZILA: One, eight...?

ADV HULLEY SC: Four, five. It is still Bundle RR-4, Mr Chair.

CHAIRPERSON: [No audible reply]

ADV HULLEY SC: This is your second affidavit.

CHAIRPERSON: Well, Mr Hulley ...[intervenes]

20 **INTERPRETER:** [Speaking vernacular]

CHAIRPERSON: Mr Hulley?

ADV HULLEY SC: Yes, Chair?

CHAIRPERSON: There is a question you had asked earlier which you did not get an answer because I then asked certain questions. That was an important question.

ADV HULLEY SC: Yes.

CHAIRPERSON: You had asked a question, whether he did look at the contents of the affidavit, the first affidavit before he signed. I do not believe you got an answer because I intervened.

ADV HULLEY SC: My apologies.

CHAIRPERSON: Or did you get an answer.

ADV HULLEY SC: I thought he had answered it, but... So, if we can go back to page 1843. Before signing this particular affidavit, this is your first affidavit, did you
10 consider the contents before doing so?

MR MZILA: The first affidavit?

ADV HULLEY SC: Yes.

MR MZILA: Chair, I did read through the affidavit and having read it, I then posed the question as to why it was necessary that I be the one to sign the said affidavit. When I – I was then advised that the reason is that I am the one who is based at the office of the ANC and that I should sign this affidavit on behalf of the ANC.

20 That, as well as the fact that the Treasurer had briefed me about the fact that there was certain items that were not paid for from the account of the ANC but rather from the donation. After that, I then – for those reasons that I then signed the affidavit. But what somewhat puzzled me are the questions that followed afterwards.

ADV HULLEY SC: If you refer to the questions that followed afterwards, what questions are you referring to now?

MR MZILA: Chairperson, the questions that followed were now questions that were somewhat detailed, and they wanted me to give details as to what did the money look and what did I do with the money, how did I handle the money. It was then, Chair, I deposed to a second affidavit, stating that the best person who could be questioned about
10 those details is the Treasurer because he is the one that handled the donation because I had not seen the money myself.

I had been told by the Treasurer that we had received some donation, but he had not told me how much it was or any detail insofar as the particularity of that donation. So, I told them, because now, they are asking as to: Was it notes? Was there notes of hundred rands, fifty rands, twenty rands and the like?

It was then that I had indicated that perhaps the
20 investigators of this matter should get more clarity insofar as those details are concerned. They best speak to the Treasurer because he is the one that handled the donation.

ADV HULLEY SC: Now before we get to the actual letter that was sent to you. Just to wrap up insofar as the first affidavit is concerned and for the benefit of the

Chairperson. Just consider page 1840 again and tell us which aspects of that document you had personal knowledge of, and if there are any aspects that you did not have personal knowledge of.

CHAIRPERSON: I am sure we can skip paragraph 4, Mr Hulley. [laughs]

ADV HULLEY SC: I am sure we can, Mr Chair.

CHAIRPERSON: Ja, he can go straight to two.

ADV HULLEY SC: Can you go to paragraph 2, sir?

10 **CHAIRPERSON:** Is there anything in paragraph 2 that you have no personal knowledge of?

MR MZILA: I would like to think, Chair, that you are referring to the matter of the money and where it came from?

CHAIRPERSON: Well, I want you to read paragraph 2 of your first affidavit and tell me which parts, if any, of that sentence do not fall within your personal knowledge and did not fall within your personal knowledge at that time.

20 **MR MZILA:** Chairperson, in relation to paragraph 2. I did not have personal knowledge of the million rands. I also did not have personal knowledge that it was from Dr Savoy. I only saw those facts in the affidavit, but I also remembered that the Treasurer had indicated to me that there were certain things that had been done through the use of donations.

So, when I was called concerning this matter, I forward – it related to the same thing that the Treasurer had spoken to me about earlier. And I also thought to myself that the attorney that had advised me had, in fact, made some investigations to that effect. So, I did not know those – those things were not within my personal knowledge at the time.

CHAIRPERSON: In that paragraph, he also said that a donation of one million rand was received by the African
10 National Congress. Did you know – do you have personal knowledge whether such a donation had been received by the organisation or not?

MR MZILA: No, Chair, it was not within my personal knowledge at the time.

CHAIRPERSON: Thank you. Mr Hulley, with regard to the rest. It might be quicker if you just break them up and put it to him.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Ja.

20 **ADV HULLEY SC:** Then in paragraph 3, it says here that:

“Mr Siphon Shabalala had advised the organisation that such a donation had been made...”

Before I go on to the rest of it. Were you aware of such advice been given by Mr Siphon Shabalala?

MR MZILA: Chairperson, perhaps to just put it like this. The information contained in my first affidavit is not and was not within my personal knowledge. These are the things that I was told by the attorney and the attorney further told me why it was necessary that I will be the one who would sign that affidavit but the contents of my first – of the first affidavit are not within my personal knowledge.

ADV HULLEY SC: Thank you, Mr Chair. If you could then, before we move on to the second affidavit. You have
10 explained that the reason why you deposed to the second affidavit was because you had received a number of questions that asked you for further details relating to the first affidavit and it is as a result of that that you deposed to the second affidavit. Is that correct?

CHAIRPERSON: Mr Hulley?

ADV HULLEY SC: Yes, Chair?

CHAIRPERSON: It cannot be true, Mr Mzila, that it was the attorney who told you about paragraph 4, is it not? In paragraph 4 you say:

20 "I am aware that the money was utilised to pay various service providers for items related to the Provincial Congress held in August..."

You cannot, actually, due to that to something that you were told by the attorneys here, because I think you said you were told by the Treasurer. Is that correct?

MR MZILA: Chairperson, it is correct that the first affidavit was brought to me by an attorney. It is further correct that I did have conversation with the Treasurer where he informed me that some donation had been received and that that donation had been used to pay for certain things pertaining to the conference.

It is true that when I was now approached by the attorney concerning signing of the affidavit, I thought to myself that what this affidavit speaks about is also the
10 same thing that the Treasurer had spoken to me about, but what is also correct is that, when this affidavit was brought to me, it had already been written. Its contents were not written by myself.

It was then – it was for that reason, Chairperson, that when I was asked to give further details containing the contents of the first affidavit, I deposed to the second one to say that those were not within my personal knowledge and that they should be referred to the Treasurer.

CHAIRPERSON: Is it – going back to paragraph 3 where,
20 among other things, you say:

“Mr Shabalala got the money to our offices in cash....”

Is that one of the things you had no knowledge of?

MR MZILA: Yes, Chairperson.

ADV HULLEY SC: Thank you, Mr Chair. Now, if you

would turn with me to Exhibit RR-7.7? Mr Chair, it forms part of Bundle LEA-27.

CHAIRPERSON: H'm?

ADV HULLEY SC: And the relevant page, sir, is at page 233.

MR MZILA: Okay.

CHAIRPERSON: Is that a different bundle?

ADV HULLEY SC: That is a different bundle. That is the bundle that is for Mr Mabuyakhulu. It is Bundle LEA-27,
10 Mr Chair.

CHAIRPERSON: Oh, I thought you would go to the second affidavit first or ...[intervenes]

ADV HULLEY SC: The witness has referred to a document in this and I wanted to identify the document.

CHAIRPERSON: Oh, okay. It is RR-7?

ADV HULLEY SC: [No audible reply]

CHAIRPERSON: It is RR-7?

ADV HULLEY SC: It is RR-7.7.

CHAIRPERSON: And page?

20 **ADV HULLEY SC**: It is page 233, Mr Chair.

CHAIRPERSON: The bundle that I have is RR-7, but I think you said point seven.

ADV HULLEY SC: It is part of Exhibit RR-7.7 but it is RR-7, Mr Chair.

CHAIRPERSON: Okay, what is the page number?

ADV HULLEY SC: Page 233.

CHAIRPERSON: Is that the SAPS letter?

ADV HULLEY SC: It is the SAPS letter, dated the 7th of September 2009.

CHAIRPERSON: Ja, okay.

MR MZILA: Just bear with me.

CHAIRPERSON: Okay. Page 233, the black – using the black numbers at the top left corner of the page.

ADV HULLEY SC: Sir, this is the letter that is dated the
10 7th of September 2009. It is from the SAPS, and it is addressed to Ngubane Wills Incorporated Attorneys.

CHAIRPERSON: Have you found it?

MR MZILA: [Speaking vernacular]

CHAIRPERSON: Oh.

MR MZILA: [Speaking vernacular]

CHAIRPERSON: Okay.

MR MZILA: [Speaking vernacular]

CHAIRPERSON: Yes, no that is ...[intervenes]

MR MZILA: [Speaking vernacular]

20 **CHAIRPERSON:** Okay, no, that is fine. Mister, do you want to interpret that?

INTERPRETER: Yes, Chair.

CHAIRPERSON: H'm.

MR MZILA: Chair, I seem not to be able to find that particular letter. What happened is that I was told to print

out the two affidavits in preparation for this hearing. There was a mix-up when we were preparing the papers in a hurry this morning, but perhaps if the advocate could be able to just ask me questions pertaining to that letter, I think I will be able to answer them because in relation to those questions that I had said should be referred to the Treasurer because I would not be able to answer them.

CHAIRPERSON: I think, Mr Hulley. From his answer, I think he suspects that the answer – the letter you are
10 referring to is the one that came with the questions for him, from what he has said. And I think you wanted him to identify the letter.

ADV HULLEY SC: Yes, Chair.

CHAIRPERSON: If he cannot find it, it is not a train smash.

ADV HULLEY SC: Okay.

CHAIRPERSON: Ja, he – we know that this letter wanted certain questions to be dealt with. We know he has said that he – after he had signed the first affidavit, there were
20 lots of questions.

ADV HULLEY SC: That is right.

CHAIRPERSON: And that is why he did the second affidavit. I think we should just get on to the second affidavit.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Ja, ja.

ADV HULLEY SC: If you could turn with me, sir, to page 1845? This is your second affidavit.

CHAIRPERSON: That is the other bundle, ja?

ADV HULLEY SC: Pardon me, Mr Chair. This is Bundle RR-4.

CHAIRPERSON: Bundle with double RR-4?

ADV HULLEY SC: Double RR-4.

CHAIRPERSON: Ja, okay. Let us continue.

10 **MR MZILA:** Yes, which is paragraph ...[indistinct]

ADV HULLEY SC: So at paragraph 4, you say:

“I previously deposed to an affidavit in this matter in August 2009...”

Now, which affidavit are you referring to when you say you previously deposed to an affidavit in this matter in August 2009?

CHAIRPERSON: I think he is done, Mr Interpreter.

INTERPRETER: [Speaking vernacular]

CHAIRPERSON: Okay, can I just intervene? I know that
20 you have not heard, Mr Hulley, what he is saying. Mr Mzila, the question is. In your second affidavit, you refer to a previous affidavit that you say you had signed. Mr Hulley’s question was. Which previous affidavit are you referring to?

MR MZILA: Chairperson, there are two affidavits that I

deposed to. I think there was a mistake here. The second one was made in 2010. There is a first one and then there is a second one. There only two affidavits that I made.

CHAIRPERSON: So, the one – the first one was done in 2009. Is that the one you were referring to when you said you referred to a previous affidavit?

MR MZILA: If the Chari can just bear with me? I am going to look at the dates of the first and the second affidavits so that I would speak with certainty.

10 **CHAIRPERSON:** Okay. Mr Mzila, there is a stamp. I think it is a police stamp on the affidavit of two – your first affidavit. The one we were dealing with earlier. The police stamp indicates 2009. Is that your first affidavit? The one we were dealing with earlier?

MR MZILA: Yes, Chair, the first one was in April of 2009.

CHAIRPERSON: Okay. Mr Hulley, continue.

ADV HULLEY SC: Thank you, Mr Chair. You go on to say:

20 “The said affidavit is with the investigating officer in this matter, Superintendent Du Plooy. Subsequent to my affidavit, a sea of questions have been to ANC KZN’s attorneys, Ngubane & Wills Incorporated on 7 September 2009...”

MR MZILA: That is correct, Chair. There were a series of questions that were forthcoming, wanting me to explain

further about the first affidavit.

ADV HULLEY SC: And then at paragraph 8 of the same affidavit, to continue with the same – with this present theme. Under paragraph 8, after you have answered certain issues, you go on to a heading called Answers to Questions. And then you have got paragraphs A, B, C and D. And on the following page, paragraph E. Are these the answers to the questions that have been posed to you in the letter of the 7th of September 2009?

10 **MR MZILA:** Yes, Chair. These were answers in which I tried to explain as to the circumstances that led me to signing the first affidavit and why I signed the first affidavit.

ADV HULLEY SC: Now, in paragraph A of the questions, the following questions are posed to you regarding paragraph 1 of your affidavit of your previous affidavit. That is the first affidavit.

20 “Personal and business contact details and addresses of the witness must please be providing in the first paragraph of the statement.

Then Mr Delani Mzila needs to elaborate on what his duties and responsibilities as the ANC’s Finance Manager of the Kwazulu-Natal Province entail, and specific mention must be

made here of the procedures and processes he follows when he receives donations...”

If you turn to page 1847 in your answer to the question.

You have responded to that particular query ...[intervenes]

CHAIRPERSON: Mr Hulley?

ADV HULLEY SC: Yes, Mr Chair?

CHAIRPERSON: In terms of the answers he gave, that might not be so important for our purposes. More important for our purposes are the circumstances under
10 which he did the first and the second affidavit.

ADV HULLEY SC: [Indistinct]

CHAIRPERSON: Because... Ja, in terms of answers, I do not think that – and the investigating officers of SAPS would be interested in that, but I do not think that I want us to go into details about that.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: But what I am interested in, which might be mentioned there, which I was going to ask, and maybe you can ask, is what he deals with in his last sentence of
20 his second affidavit. He says:

“When we receive donations, we follow ANC internal processes...”

I would like to hear about those.

ADV HULLEY SC: Thank you, Mr Chair. Now, you have said here, sir, in your – if you look at paragraph 3 of your

affidavit at page 1845.

MR MZILA: I see it.

ADV HULLEY SC: You say there:

“As the Financial Manager, my duties and responsibilities involved financial management and bookkeeping...”

You also say:

“When we received donations, we follow ANC internal processes...”

10 Can you explain to the Chairperson what those internal processes entail?

MR MZILA: Chair, when we receive donations from whosoever would like to assist the ANC. Some would deposit their donations through a bank whilst others would make their donations in cash. What we then do as the ANC is. After receiving those donations, we then write letters to our donors, thanking them for their donations.

Some of our donors would also require us or ask of us that we give them documentation for tax purposes where
20 they would submit to SARS concerning the donation that they would have made, but there are others who would tell us not to bother about those documents.

What then also happen is – but what primarily happens when I speak of the internal processes is that we thank the donors, we write them letters and that letter of

the gratitude is signed by the Treasurer as well as the Secretary.

CHAIRPERSON: You mean that all that you are required in terms of internal processes of the ANC to do if you get given a cash donation by somebody is just to send a letter, saying thank you for the donation? There is no obligation to bring the money to somebody within the ANC and have a receipt issued and have the money deposited into the ANC's bank account?

10 **MR MZILA:** Chairperson, what would happen is. If a person brings a cash donation, that amount of money will be taken and will be counted. The Treasurer have received the money. It will then be counted and then it would be taken to the bank and be deposited in an ANC bank account. What we then do afterwards is.

We write those letters of gratitude's in which we then mention the amount that had been donated especially for those who want to utilise that for tax return purposes. We then acknowledge them for their donation. That is the
20 internal process of the ANC that when a donation has been received, we write a letter and acknowledge those who would have donated to our organisation.

CHAIRPERSON: Is there somebody within the ANC, maybe yourself as Finance Manager, who must see all the money that has been brought in donations that has been

brought in whether by way of cheques or cash, so that he can then make sure that the record of the organisation correctly reflects all cash donations that have been received?

ADV HULLEY SC: Mr Hulley ...[intervenes]

MR MZILA: Chair, what happens is. If a person brings about a donation. Since I do not work by myself in the office, there are others as well, we count the money. Having counted the money, we will then take it to the bank
10 and then we prepare a letter of gratitude. That letter of gratitude has the amount of money that would have been received. It also serves as a receipt to say that we have received this amount of money and we thank you for that, but that letter is not signed by myself, but it is signed by the members of the leadership.

CHAIRPERSON: I sometimes forget that you are not understanding isiZulu version. [laughs] You might be understanding some parts.

ADV HULLEY SC: Fair enough.

20 **CHAIRPERSON:** But once I have heard, sometimes I forget the interpreter must still interpret. Yes, continue if you still have ...[intervenes]

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: I know we do not have much time, but ...[intervenes]

ADV HULLEY SC: Those are ...[intervenes]

CHAIRPERSON: Those were the questions?

ADV HULLEY SC: [No audible reply]

CHAIRPERSON: Okay, I think I have got one more questions for Mr Mzila. Mr Mzila, you – I understand that you have a Bcom degree. Is that correct?

MR MZILA: Yes, Chair.

CHAIRPERSON: And you did have that qualification at the time of deposing to the first affidavit. Is that right?

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

CHAIRPERSON: And you did say you have read the affidavit, the draft affidavit before you signed it. Is that right?

MR MZILA: Yes, Chair.

CHAIRPERSON: Did you know at the time that signing an affidavit is a serious matter?

MR MZILA: [Speaking vernacular] ...[intervenes]

CHAIRPERSON: Just stay still, Mr Mzila.

MR MZILA: [Speaking vernacular]

20 **CHAIRPERSON:** Please stay still. You are moving as you are talking.

INTERPRETER: [Speaking vernacular]

CHAIRPERSON: Yes. I want to see you as you are answer the question. Please, respond to the question, but let me mention – put the question to you again. At the time

of signing the first affidavit, did you know that signing an affidavit is a serious matter? That is all I am asking.

MR MZILA: I knew, Chair.

INTERPRETER: Oh, I beg your pardon.

MR MZILA: I did not.

CHAIRPERSON: Did you think signing an affidavit is not a serious matter?

MR MZILA: I did not know, Chair.

CHAIRPERSON: How could you not know that Mr Mzila?

10 You are a finance manager of a big organisation in KZN, the ANC. You are the Finance Manager. You have a Bcom. You say you did not know that signing an affidavit is a serious matter?

MR MZILA: Chair, I signed this affidavit because I was told that I should sign it because I was office based and I am the one who dealt with administrative matters added to that because the Chairperson, I beg your pardon the treasurer had in fact indicated to me that we had received some donation and I also knew that there were certain
20 things that we had done that had not been paid for by in the office and I thought to myself that this was known by the ANC and that I was to sign on behalf of the ANC.

CHAIRPERSON: Did you take an oath before the Commissioner of Oath before you signed the, your first affidavit?

MR MZILA: Chairperson, the attorney sent me the affidavit. I then took the affidavit to the police station to have it commissioned.

CHAIRPERSON: But did you take an oath before you signed it before the police? You cannot remember?

MR MZILA: Chair, I cannot remember.

CHAIRPERSON: Well, the police officer before whom you signed acknowledged in this certificate that you had taken the oath and you said you considered the oath binding on
10 your conscience. Do you, are you not sure that you took the oath?

MR MZILA: I cannot remember Chair, but as to what is contained in the first affidavit, it was not written by myself. I was asked to sign it and then have it commissioned.

CHAIRPERSON: Well, it does not matter who wrote it. If you put your name to it and you signed, by doing so you were saying what is written there is yours and you said in the first paragraph where you say you were stating this under oath, that is what just before paragraph 1 that is
20 what you said.

Anything you say under oath is serious, is it not?

MR MZILA: Chairperson, one of the reasons why I signed the affidavit or I did not have suspicions that there was something untoward about it, is the fact that I was advised by an attorney to sign it and so I assumed that whatever is

contained here has been investigated and is above board.

CHAIRPERSON: Next time you sign an affidavit Mr Mzila, make sure you do not sign an affidavit and say things that you have no personal knowledge of, unless if you have heard them from somebody, you state so in your affidavit that you heard them from somebody or unless they are contained in records that are under your control.

Otherwise, when you say anything that you have no personal knowledge of in an affidavit, you must make it
10 clear that you do not have personal knowledge of that. If you say anything in an affidavit that is false that is perjury and you can be criminally charged.

You understand that?

MR MZILA: Chair, thank you for your advice and I do receive your advice and I thank you.

CHAIRPERSON: Okay. We are going to excuse you now. Thank you for availing yourself and thank you to the interpreter. You are both excused. I guess Mr Hulley I must also excuse, or I must not excuse you. You still have
20 work to do?

ADV HULLEY SC: No, no I am afraid I am still here.

CHAIRPERSON: You still have work to do. Okay, alright. Let us, we have delayed counsel for the NPA officials. So let us start with that.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Yes. Well, let him just ...[intervenes]

ADV HULLEY SC: Perhaps Mr Matabedi, I am not sure if he is, I see he has arrived.

CHAIRPERSON: Hm?

ADV HULLEY SC: I see Mr Matabedi, the counsel for the NPA officials has arrived.

CHAIRPERSON: Ja, ja, ja.

ADV HULLEY SC: I could not recognise him with ...[intervenes]

10 **CHAIRPERSON:** Ja. Okay, alright. Let him ...[intervenes]

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Come to the podium. They will just sanitise first. While they are sanitising, let me deal with the application that was brought by Mr Sogo and Mr Kodwa. That application was for them to be allowed to be served with the summaries that were going to be presented by the NPA officials and to respond.

20 That application is dismissed. It is dismissed because one, the summaries are meant to be summaries of affidavits that would have been served on them and they would have had a chance to respond to those affidavits already.

The summaries are not meant to introduce anything that is not in the affidavits already that they have been served with and two, they have had a chance to give oral

evidence whereas the NPO officials are not going to be giving oral evidence.

This exercise is, I have authorised this exercise in order that the public knows what the just of their response is to the evidence that has been given by certain witnesses against them. So that application is dismissed but I always retain a right, if later on I realise that there is something in the summaries that requires their response, I can always give a direction but at this stage there is no reason to give
10 them an opportunity to respond to summaries.

Whether in writing or verbally. Yes. Mr Matabedi.
Good afternoon Mr Matabedi.

ADV MATABEDI SC: Chairperson, in the previous appearance we gave an undertaking that we will ensure that we file the summaries today by ten o'clock to enable the matter to be heard at two o'clock.

CHAIRPERSON: Yes.

ADV MATABEDI SC: Chairperson, unfortunately we are mindful of the you know, the in confidence and the time
20 constraints that we, that this Commission is operating under, but at the same time, we have a responsibility wherein we have to go through the affidavits of eight applicants, and the transcript and the affidavits of the persons that accused them of having been captured, either for political or for corrupt reasons.

We are asking that we be given an indulgence that definitely by tomorrow at mid-day we will file those affidavits, because what we are doing, we are trying our level best to trim down the summaries, only to include what is necessary for the purpose of the summaries.

I really apologise for that Chairperson.

CHAIRPERSON: Well ...[intervenes]

ADV MATABEDI SC: And also the manner in which we are trimming down the summaries will also reduce the time
10 period for the reading of the summaries.

CHAIRPERSON: Well you have addressed one problem. You have not addressed the other one. Maybe, maybe because you think it is implied. You were supposed to file the summaries by ten o'clock.

ADV MATABEDI SC: That is correct.

CHAIRPERSON: But at two o'clock we were supposed to start with the presentation, the oral presentation of the summaries. Of course I was informed that you were having some challenges, and I then said well, let us start with this
20 other witness.

Otherwise this other witness I was going to shift to somewhere, some other time. I was told that you are having some challenges and I thought well, maybe you can deal with a delay of an hour which ended up being more than an hour and maybe by then you might say look, the

summaries are here.

We are sorry we did not hand them in by ten but they are here and we ask that we still be allowed to deal with them orally today. But from what you are saying it does not look like that is what you are saying. You are saying can we file them tomorrow and by implication maybe you are asking that your opportunity to present the summaries orally be postponed.

ADV MATABEDI SC: Chairperson, I thought in my
10 submissions I have answered both but that is the situation.

CHAIRPERSON: Ja, no, no you did not say so expressly but that is why I said maybe you think it is implied, but well, you see the ... what was the date? It was the 16th, one six when we dealt with ... well, some of them we dealt with on the 15th, not so of June?

ADV MATABEDI SC: That is correct Chairperson.

CHAIRPERSON: And on the morning of the 16th you appeared and that is when we finalised, if I recall correctly, or maybe they were all postponed from the 15th to the 16th,
20 I cannot remember. But I do remember that on the 16th that is when you stood before me and we postponed.

Today is the 25th. So that gives you about ten to ten or nine days during which there has been an opportunity to make the summaries and of course then we may have, we may have learnt to use Monday because you

remember my original understanding was that I had given you Monday and then there was an understanding that no, I have given you today, but after we concluded that the summaries would be handed in at ten AM today, this morning, and these summaries would be presented orally at two this afternoon, I then filled up Monday.

Because there are always demands for witnesses. So there is that difficulty as we speak. Yes?

ADV MATABEDI SC: Chairperson, I think I need to
10 indicate to the Chairperson that the manner in which we are summarising and scaling down, we are not going to need more than two hours to make the presentations.

CHAIRPERSON: Okay. I think let us do this. Let me say provide the summaries like yesterday. So even tomorrow at the earliest opportunity, but I am not going, I cannot give you anything more than that for now. Let us see the summaries and there are eight officials?

ADV MATABEDI SC: That is correct Chairperson.

CHAIRPERSON: Ja. I cannot promise okay, I cannot
20 promise but I will have a look at the schedule and see whether we can squeeze in somewhere between Monday, Tuesday and Wednesday somewhere. We might, if we can find one space where maybe there is two hours, maybe we will do that, but if we cannot find one space we have just got two hours.

We would then give you one hour there and another hour there, but I think that we just would have to come back to you after we have seen the summaries. It would be important to obviously if once I have seen a space, we would let you know as soon as possible. But obviously this is an arrangement where you just have to juggle with your diary and try and fit in with our situation as much as you can.

ADV MATABEDI SC: Chairperson, it is understandable.

10 **CHAIRPERSON:** Yes.

ADV MATABEDI SC: That we have also have to bear in mind you know, the time constraints within which the Commission work.

CHAIRPERSON: Yes.

ADV MATABEDI SC: But we really appreciate the Chairperson's understanding and also we have the situation wherein you know, I think it is in the interest of our client that at least that version should be put before the Commission and they should not be you know, blamed
20 because the legal team could not you know, finish the summaries within the time that we thought we were going to finalise that.

CHAIRPERSON: Yes, what I do want you to and your clients to appreciate is that I would be ... I would authorise if this has not happened already, but it is unlikely to have

happened because they have not given evidence yet. Your clients.

I would authorise that their affidavits which respond to the affidavits of the witnesses who implicated them can be put on the Commission so that the public has access to their full version. So that can be done and then of course because the real reason for the summaries, it is more about to inform the public in the same forum where the evidence implicating them was at.

10 So that idea there, the summaries as you would know, will not have any evidential value. What has evidential value is their affidavits which they have filed in response to those people who have implicated them, but the summaries when they are read out or they are dealt with, openly in public, they serve the purpose of informing the public what your clients have to say about these allegations which is important.

ADV MATABEDI SC: We really appreciate that Chairperson, also taking into account that there are some
20 members of the public who would not be, you know interested in what is on the website or some people do not have the facilities to can go and check what the version of the applicants are.

CHAIRPERSON: Ja, no, no.

ADV MATABEDI SC: We really appreciate that

Chairperson. I think that I will make sure this time that those affidavits finds their way by tomorrow.

CHAIRPERSON: Ja, okay. No, that is fine then. Let us leave it at that and then you might hear from Mr Hulley over the weekend if a space comes up. If I identify a space on Monday or you might hear from him on Monday if the space is on Tuesday.

ADV MATABEDI SC: Thanks Chairperson. I think I must thank Mr Hulley. He is always you know, cooperative.

10 **CHAIRPERSON:** Yes.

ADV MATABEDI SC: I will get in touch with him whenever there are challenges.

CHAIRPERSON: Yes.

ADV MATABEDI SC: Thanks Chairperson.

CHAIRPERSON: No, no, no that is fine but I must also say that apart from the challenges you have heard with regard to filing these summaries, within the deadline I think that you have been very cooperative as well. So maybe the two of you are working well together.

20 **ADV MATABEDI SC:** Well Chairperson, that is in the interest of our clients and also of the you know, country at large that we should cooperate.

CHAIRPERSON: Ja.

ADV MATABEDI SC: Thanks Chairperson.

CHAIRPERSON: Okay, thank you. Okay, we are going to

then adjourn until Monday. For the benefit of the public, I mentioned that on Monday the Commission will hear the evidence of Mr Zizi Kodwa in the morning. We adjourn.

INQUIRY ADJOURNS TO 28 JUNE 2021