

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

28 JUNE 2021

DAY 418



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 28 JUNE 2021

ADV CHASKALSON SC: Morning Chairperson.

CHAIRPERSON: Good morning Mr Chaskalson, good morning everybody.

MR KODWA: Good morning DCJ.

CHAIRPERSON: Good morning, good morning can everybody hear me?

ADV SIKHAKHANE: I can hear you from this side DCJ.

CHAIRPERSON: Yes. Well it appears Mr Chaskalson does
10 not hear me.

ADV CHASKALSON SC: Well I can – I can Chair. I can.

CHAIRPERSON: Oh okay all right. I am sorry about this slight delay. We – there will always be some delays where there are these technical things that must be done. So I am sorry about that. All right are we ready Mr Chaskalson.

ADV CHASKALSON SC: We are ready Chair.

CHAIRPERSON: Yes and Mr Sikhakhane represents Mr Kodwa I understand.

ADV SIKHAKHANE: Yes – yes Chair I represent Deputy
20 Minister Kodwa in these proceedings.

CHAIRPERSON: Well thank you very much. Otherwise you are ready Mr Chaskalson for Mr Kodwa to be sworn in.

ADV CHASKALSON SC: I am Chair yes.

CHAIRPERSON: Okay but maybe for the benefit of the public before Mr Kodwa is sworn in you might wish to just

give the public an idea of the context of his evidence or his appearance.

ADV CHASKALSON SC: Thank you Chair there was previously evidence from Mr Powel who has conducted a forensic investigation at EOH and there was evidence of certain payments made by Mr MacKay of EOH and an EOH subsidiary TSS to Mr Kodwa and evidence of communications between Mr MacKay and Mr Kodwa relating to a Department of Home Affairs IT contract. There was
10 also evidence of accommodation expenses for Mr Kodwa paid by EOH and today's hearing is really to hear Mr Kodwa's response to that evidence. Mr Kodwa has furnished an affidavit setting out in brief his response and it may be a convenient way to commence by asking Mr Kodwa to read his affidavit into the record and essentially to – to say anything else that he wants to say in amplification of the – of what he said in his affidavit before the questioning commences.

MR KODWA: Chair.

20 **CHAIRPERSON:** I seem to have – I got the impression towards the end of last week that apart from the affidavit that Mr Kodwa had deposed to which was in support of his application for a postponement there may have been another affidavit filed that deals with the issues, is that correct or the only affidavit we have is the one that was

filed in support of the application?

ADV CHASKALSON SC: Chair Mr Sikhakhane may make – should feel free to correct me but the only affidavit I am aware of is the affidavit filed in support of the postponement application. But it also indicated that it was – it had a dual purpose.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: It was a response to also to the Regulation 10.6 Directive.

10 **CHAIRPERSON:** Yes. Mr Sikhakhane do you confirm?

ADV SIKHAKHANE: Chair I do confirm.

CHAIRPERSON: Yes.

ADV SIKHAKHANE: I even thought that maybe for a minute or two because this may well be the shortest you have seen of the testimonies.

CHAIRPERSON: Yes.

ADV SIKHAKHANE: That I would introduce the issues but we had confirmed that that is the only affidavit we have got.

CHAIRPERSON: Yes. Okay. Not that is – that is fine.

20 Well in that event unless – unless there is something you wanted to say Mr Kodwa – Mr Sikakane before Mr Kodwa is sworn in.

ADV SIKHAKHANE: Yes.

CHAIRPERSON: I would ask the Registrar to swear him in.

ADV SIKHAKHANE: Chair do not...

CHAIRPERSON: Is there something? Yes.

ADV SIKHAKHANE: Yes Chair.

CHAIRPERSON: Is there is something you want to say>

ADV SIKHAKHANE: Yes unusually it is no – it is not a complaint it is to assure the commission that first of all thank you Chair we got the documents in time. And thank you for the postponement. What I wanted to say is that we – because we are acutely mindful of the time constraints that the Chairperson is facing I have spoken to my learned
10 friend Mr Chaskalson that this may be one of those moments when the – the opening statement instead of wasting your time will actually expedite and make us finish earlier. So I would – I would request – because I want to make no interventions or interruptions in this – is that the Deputy Minister will make a statement which is short but I can assure the Chairperson it is at the end of the statement because of his approach that the Chairperson will see we may save hours.

CHAIRPERSON: Ja.

20 **ADV SIKHAKHANE:** Of the time we would have wasted. That is all we will do Chair.

CHAIRPERSON: Ja.

ADV SIKHAKHANE: And then allow him to – to take the stand and be sworn in.

CHAIRPERSON: Yes. Okay all right. Okay. No, no that is

fine. I propose that he be sworn in first and then he can make the opening statement or remarks.

ADV SIKHAKHANE: Yes.

CHAIRPERSON: And then proceed to read his affidavit.

ADV SIKHAKHANE: Chair for the record because he is sitting he is going to be using my – my gadgets I – I assume that you will see my name.

CHAIRPERSON: Yes.

ADV SIKHAKHANE: So he will have the opportunity of
10 being called Mr Sikhakhane for today but in order not to confuse the public it is not me.

CHAIRPERSON: Yes. Ja okay. All right, okay. Registrar Mr Kodwa.

MR KODWA: Morning Chairperson.

CHAIRPERSON: Good morning Mr Kodwa.

MR KODWA: Good morning Chairperson.

CHAIRPERSON: Thank you very much for availing yourself.

MR KODWA: You are welcome thanks very much Chairperson for the opportunity.

20 **CHAIRPERSON:** Thank you. I will ask the Registrar to administer the oath or affirmation at this stage and then we will take it from there. Registrar will you administer the oath or affirmation?

REGISTRAR: Good morning will you be taking the oath or the affirmation?

MR KODWA: Oath.

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

MR KODWA: Ncediso Goodenough Kodwa.

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

MR KODWA: No.

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

10 **MR KODWA**: Yes.

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

MR KODWA: So help me God.

CHAIRPERSON: Thank you very much. Mr Chaskalson are you?

ADV CHASKALSON SC: Chair I understood that Mr Kodwa was going to ...

20 **CHAIRPERSON**: Yes I just wanted to confirm that there is nothing further you want to say before Mr Kodwa makes his opening remarks?

ADV CHASKALSON SC: Not at all if I – If I have questions they will come out in time.

CHAIRPERSON: Ja okay all right. Mr Kodwa.

MR KODWA: Thank you very much and good morning to you Chairperson.

CHAIRPERSON: Yes good morning. Let me just understand. Do you propose to do some opening remarks before you – you read your affidavit or you will just be reading your affidavit?

MR KODWA: I propose to do an opening remark Chairperson.

CHAIRPERSON: Okay all right. That is fine go ahead.

10 **MR KODWA:** Thank you very much Chairperson. Deputy Chairperson let me commence by expressing my sincere gratitude and appreciation for affording me the privilege and opportunity to appear before you.

Not only Deputy Chairperson – Deputy Chief Justice not only are you burdened with a thankless and mammoth task of diagnosing the sickness of corruption that just sits right in the belly of our democracy and the national democracy.

20 You are also tasked to provide us with a new trajectory of ethical leadership that our country needs so much. As a young learning leader of the ANC and our government I have taken to heart your relentless and repeated calls for those of us working for the state to come and share their experiences.

I have understood your call not as condemnatory a

condemnatory call but a genuine call asking us to ask ourselves difficult questions about our own actions and how they are perceived.

I come before you not because I am guilty of any crime of corruption. At the outset as I accept some lack of judgment in my own conduct I want to state it categorically Chairperson that I have never engaged in corruption or facilitated corruption in my relationship with Mr MacKay or any other person.

10 I must hasten however Chairperson to state that I did not come before you to personally present myself as a spotless or that my acceptance of financial assistance from friends or are in business may not have been perceived as a benefit coming my way because I am a member of the ruling party.

The work of the commission is fundamental in the agenda to build a capable development on an ethical state to deliver on its mandate.

20 In the evolution of a democratic project we must therefore accept that it endures among others our own evolution as leaders of our democratic state.

I see the questions that have been raised to me Chairperson not as accusations per se but important questions from which one is called upon to reflect differently about one's conduct even if such conduct is not

strictly criminal or corrupt.

I must sincerely thank you for the manner you carried yourself in particular under very difficult serious conditions Chairperson.

I am particularly remorseful of that although the issues raised with me relating a period when I was not working for the state and had no influence on how the state did its business that I accepted assistance from friends could lend itself to perceptions that we use our proximity to
10 power to remunerate our own individual financial difficulties rather those of our people.

Always remember Deputy Chairperson – Deputy Chief Justice when the whole world is silent even one voice becomes powerful. When we do not acknowledge our own errors of judgment as leaders we leave an indelible mark of impunity on the psyche of society.

We shall fail to take responsibility to learn from our errors and to lead society. I therefore welcome the – and appreciate the opportunity presented to you by you – to me
20 by you Chairperson.

However some of the accusations against me require me to explain some of the challenges that accompany our new role as leaders of what not so long ago was a liberation movement routed in the objective conditions and leave the realities of our people particularly the poorest of the poor.

The role of the ANC imposes painful responsibilities and challenges on us as leaders. The multitudes of our people who see the ANC as their liberator and a source of hope approach us certainly in my case demanding access to their leaders some of whom have created a dangerous social distance between themselves and ordinary people they ought to serve.

As a consequence in the results Chairperson when they see us the people they demand that we facilitate
10 access to their learners. They do this for genuine reasons arising from their dire conditions of poverty and need for identity documents, passport, food, jobs in many 00:15:18 that face them.

Of course some approached us to facilitate access to those leaders of the ANC that occupy positions within the state for their business interests.

I hasten to state that it is our obligation as leaders to assess when our people ask for access to their leaders such facilitation is lawful and appropriate or is it
20 inappropriate – or is it for an inappropriate purpose. Even if it is appropriate as it is in my case one still has to manage the fact that in politics Chairperson perceptions are as powerful as reality.

This is a hard lesson I have come to learn from your pronouncements Deputy Chief Justice. I have also realised

that just as I know that all the payments or assistance I received from friends who are more financially fortunate than I am I need to be more circumspect about perception that such relations may create in the eyes of the public.

As I said Chairperson the ANC occupies a very unique position in the history of South Africa. Its relations with ordinary masses is indeed unique and a special one.

From inception, it was and it continues to be our people's hope to successfully confront our unfortunate past,
10 which deprived us of our humanity and dignity.

Sometimes we do disappoint them when we do not watch our conduct in the implications of our own proximity to power. When the ANC was founded it was correctly coined as a people's Parliament which would be responsible – responsive to their needs.

This character remains with us to date and we must always maintain closeness and empathy with the citizens. As a person – as an activist I have had a privilege to serve as a leader, a public servant and an ANC staff member.

20 This has given me inviolable perspectives on how this organisation operates as a leader of society. It has also meant that I meet different people and they require different things from me as a leader of the ANC that I am young and developing and have learnt great and hard lessons in the process.

As I started here – as I stand here today I do so with a clear understanding of the need to subject ourselves as leaders to 00:15:42 as a way of upholding what we deem to be the revolutionary standard befitting the leaders of society.

I came here before you Chairperson not to be sanctimonious or pious that we share my perspective as well as lessons I continue to learn.

I stress that payments into my accounts from a friend carried no intent on my part to be corrupt.

10 While I vehemently deny that such payments were a quid pro quo for anything. I am unaware – I am not unaware that such payments carry with them a perception of abuse of our position in power.

These payments for – to me or the ANC were not corrupt or designed to influence any tender process or encourage any unlawful acts where our members work within the state.

20 During the relevant period when the payments took place I never worked for government or state. I previously an much earlier had a brief stint in an advisory capacity in the Presidency during the years 2009 to 2011.

I then spent most of the time at the employment as a National Spokesperson of the ANC. The position exposes me exposes one to the public as they see me as a face of their organisation. They approach you when they need –

when they need to see their leaders.

However many people Chairperson who could no longer access our leaders buried in the face of bureaucracy and behind the ever solid red tape turn to us to facilitate such access or to remind their leaders of their promises to them.

I must confess that this role requires boldness because not all those who approach you know what is appropriate and not appropriate for you to do.

10 Many a time I will tell them – I will tell people straight that I can assure that they need a comrade, a Minister but I will do more – I will do not more than facilitate such a meeting.

More often business people seek access in order to facilitate their own business opportunities. It is our job to tell them what is appropriate and not appropriate to do.

I did this most of me when people who were friends and doing business with government assumed that their friendship with me or proximity to me meant that I could
20 help them to get businesses.

It was my duty to tell them to follow set government processes in terms of Section 217 of the constitution which governs procurement of goods and services by the state.

Allow me Deputy Chief Justice to share my humbling and lasting experiences. People come to the ANC

leadership seeking help and advice. Even ask to make people who they think you know and you have access to. Our shared in the revolutionary view within the ANC formations is that the ANC is a – the ANC government is a people's government and it is – and it must listen and be responsive to the people. To that extent we carry the responsibility as an organisation to actualise that view.

By virtue of being the national spokesperson I have been the voice and the face of the ANC as well as a leader
10 that people looked upon to assist in confronting their daily challenges. I became a go to person for people who with grievances and issues to raise with the ANC leadership.

This came from ordinary people, business people and all sectors of society. My daily struggle as a leader was to reinforce the grass between the trust people have in the ANC and to do what is appropriate without creating a social distance between the people and the leadership.

It is a duty of leaders to meet with people at all time to resolve their problems. If Amandlamene in Soweto
20 Umhlazi or 00:20:43 wants to meet a Minister or anyone from the leadership I saw it as in a duty to assist to the extent possible appropriate and lawful.

It is often difficult to draw the requisite line between the responsibilities as a leader in the party and a leader in government and many ordinary people do not see this line.

Obviously now as a Deputy Minister of State Security I remain accessible but will be more circumspect even if I had similar difficulties or needs to manage perceptions of undue favouritism.

The challenge though is that people's problems still need government to deal with them. Business people are more difficult bridge to deal with as they come in different forms and with different motives. However there is no need to discriminate against people simply because they happen
10 to be successful business people.

We should encourage them to pursue their businesses lawfully and ethically, accordingly I would help them meet whoever they need to meet if such a meeting was appropriate in my own assessment.

However I was always forthright with them when I thought the demand was inappropriate. In any event I told them to follow the correct and the lawful channels.

Allow me to return to my original argument that as leaders of society we cannot be indifferent to the people
20 when they cry out for legitimate attention owing to their difficulties and challenges.

Having said this there are sometimes challenges in resolving all their problems due to legislative or regular 3 impositions. As I stated Deputy Chief Justice I do not come before you to pull wool over your eyes or deny that I

often received payments from a friend identified in the questions sent to me by the secretariat of the commission.

I came to assure you that such payments were indeed financial help from a friend and yes they sometimes involve figures that seem high. However I assure you that it was due to my financial difficulties and sometimes need for accommodation as I travelled.

And none of the payments or catering accommodation were offered me to facilitate any unlawful
10 act or my part to Mr MacKay.

I am the first to acknowledge that some of the assistance including accommodation and catering may well seem excessive and extravagant hospitality offered to me whenever we occupied or visited MacKay's property or those which he had access to.

I fully accept that it is the hospitality I was offered and I accepted. I also acknowledge that I knew that and I got involved in my case donations in assistance in the ANC in its activities or events.

20 I stress that I know no event when such donations offer each other assistance to the ANC was given on condition that Mr MacKay or any of his entities will receive – who receive preferential treatment by government.

I appear before you acknowledge to – I appear before you to acknowledge the lesson you seem to give us

every time you have an opportunity to encourage us to appear and that is when need to be circumspect about our relations and how they are perceived as leaders.

One of that lessons I have now learnt as I consulted with my own comrades and my own legal representatives in this matter is the need to take responsibility honestly and head on. The need to acknowledge that while I committed no crime or facilitated no crime the needs of leadership are that I must avoid situations that lend themselves to
10 perceptions that as a leader I am being bought or favoured.

In my main affidavit I have declared the payments and assistance received from Mr MacKay to the best of my recollection.

I have sought not to waste your time Deputy Chief Justice with denials and these would be an indictment on my own leadership inability to learn great lessons and responsibility that I have come – that governs leadership.

I must state categorically that all the payments were nowhere – there was no exception that I would facilitate –
20 there was no expectation that I would facilitate anything to Mr MacKay to be preferred.

Mr MacKay never once assisted me or offered accommodation on condition that I should facilitate or influence a certain business opportunity.

This is all because he knew my views about issues

of state and procurement and even when he raises some of the frustrations regarding his tender I categorically told him that I was not – I was in no position to influence such decisions nor did I have any inclination to do so.

Had I perceived that his assistance to me was based on such expectations I would have had – I will not have accepted – I will never have accepted it. To his credit he has never made such conditions.

He assisted me in my time of need and when I
10 sought accommodation in my travels often the hospitality was indeed generous.

I may be asked as to the wisdom of obtaining such significant financial assistance from one person. Well the wisdom of it we can debate Chairperson that I categorically state that it was never intended to facilitate any crime or unlawful conduct.

Deputy Chief Justice I have made these opening remarks because I have observed your task is made difficult by us as leaders who continue to refuse to accept criticism
20 about our own failures to be circumspect.

I do lament and regret the tendency in our society to approach the scourge of corruption in such 00:27:02 terms. We seem to approach it in a manner that fails to acknowledge that it is a pandemic even if it is committed by those we like or prefer we should reject it and treat it with a

contempt it deserves wherever it comes from.

Lastly Deputy Chief Person I reiterate that I will never refuse to facilitate accessibility of our leaders to those they lead the people. Such facilitation should never be perceived as criminal.

Having said that I accept my responsibility to be circumspect in how I relate with people or seek assistance or hospitality from them.

In particular now that I work for the state I assure
10 the commission and our people out there that I will never betray their trust in me and their movement – the ANC.

I continue to learn because I am a young leader and accept my imperfections. I have learnt and continue to learn great and enduring lessons from my current role as a Deputy Minister, my people and even from this commission.

I hope when I leave this commission, this room I shall have learnt even better and greater lessons about our responsibilities and obligations as leaders.

I thank you and I hope to – I hope to assist the
20 commission to the best of my abilities and without wasting its time.

Thank you very much Chairperson.

CHAIRPERSON: Thank you very much Mr Kodwa. Thank you – thank you very much. I will let Mr Chaskalson take it from there but thank you very much for – for your opening

statement. Mr Chaskalson.

ADV CHASKALSON SC: Thank you Chair. Thank you Mr Kodwa. Mr Kodwa you have given the commission an affidavit which covers some of the ground that you – you address in your statement but you know what you said, I know what you said, the Chair knows what you said but the public do not. So I think that probably the best way to commence would be to ask you to read that affidavit into the record of the commission so that everyone is aware of
10 what you have set out in that affidavit. So can I ask you to do that?

MR KODWA: Thank you very much Chairperson.

CHAIRPERSON: Before he – before he does that Mr Chaskalson I just want to put on the heater in this room it is very cold. I – so let us – do not go away I will just – just going to do that but you – I do not know if it is going to interfere in any way with audibility whether we will not be able to hear each other or not so I am looking at my Registrar to see if she gives me any indication. She does
20 not think it will. I will – I will switch it on but if it does interfere you must let me know and then I will switch it off. I just want to switch on the heater and then you can close the door. Okay if it interferes and you cannot hear me or hear somebody speaking please let me know so that I can switch it off. Okay all right Mr Kodwa you can continue

then.

MR KODWA: Thank you very much Chairperson.

“I, the undersigned Ncediso Goodenough Kodwa due have my”

CHAIRPERSON: I am sorry Mr Kodwa, I am sorry. Mr Chaskalson I do not think that he needs to read everything in that affidavit because I would imagine part of it relates to the postponement application. I guess what you want him to read are those paragraphs that deal with the payments.

10 **ADV CHASKALSON SC:** Yes. Well maybe from paragraph 8 onwards Chair.

CHAIRPERSON: Yes. Okay all right. Mr Kodwa you can – Mr Chaskalson you can check where I think at page – at paragraph 20 he seems to talk about the postponement application. Maybe it is from paragraph 8 to paragraph 19.

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Yes. Okay Mr Kodwa I think you can read from paragraph 8 to paragraph 19.

MR KODWA: Thank you very much Chairperson.

20 “I met Mr MacKay during the year 2013 and we became friends around that period. I continued to interact with him as a friend as I have done since we met.

Such contact is indeed limited currently because of my engagement as a Deputy Minister. However

MacKay and I did communicate via email but I have not been able to retrieve any of those emails so far.

I will endeavour to search of such correspondences before my appearance at the commission.

Although I do – although I do not at this point have all the details of payment into my account I however confirm that several payments were made by Mr MacKay into my personal bank account.

10 I will endeavour to compile details of specific payments into my account before my appearance at the commission.

Given my time constraints I have not been able to do so. What I can confirm is that none of the payments had anything to do with the government procurement by MacKay or any of his companies.

I submit that such payments were made on request at times when I had financial difficulties. I also confirm that such payments were not quid pro quo for any assistance then or even in the future.

20 I have often turned to friends like MacKay as and when I face financial difficulties. I extend the same to friends and relatives as and when I am so requested. I confirm that at some point I did request Mr MacKay to assist with groceries for one of the ANC branches and to pay for T-Shirts at some stage.

I never requested any further payments from him. I am aware however that he may have been – he may have made other donations to the ANC but these may not have done at my request or instance.

In regard to EOH I never received payments or any payments from EOH into my personal account or in my personal – for my personal use.

10 When the ANC sought funding or donations from EOH I am aware that Mr MacKay gave the ANC the name of the EOH official responsible for such endeavours.

I do confirm that I obtained a loan a sum of R1 million from Mr MacKay, 890 of which went to the purchase of a Jeep vehicle and as identified in the questions during the – during June 2015.

20 I confirm this was a loan from a friend and no strings attached. I obtained at the time of financial difficulties and will not have been able to secure a bank loan. It was also flexible for me as MacKay indicated that I did not have to rush making payments until I felt my finances had been stabilised.

It is not correct that Mr Mackay paid for my hotel accommodation whatsoever. Mr Mackay has several properties in Cape Town. As a friend, I often slept

at one his properties as and when I needed to.

He had made his homes or properties available to him – to me when I visited Cape Town, whenever I visited Cape Town.

As I stated above, he also made available properties of which he had access to. Even this were not of his own.

I understand that he had access to varied properties in the area of Cape Town.

10 As I understand it, not all the properties he had access to, were his own or were in his own.

I confirm that there was nothing untoward in his allowing me to visit his home or spent the night or nights at any of his properties.

He specifically demanded no payment for the time I spent at the time of his – I spent at any of his homes.

I played no role in any of the tenders identified in the directive of any tender whatsoever.

20 This includes SASSA Bid, the Eastern Cape Department of Education, and the Department of Home Affairs.

I have never personally or through any entity been involved in these tenders at all.

There was a time where Mr Mackay was frustrated.

His tender was disqualified and requested my assistance since I was in the ANC, and he had hoped that I could make some enquiries.

He sent me the documents in this regard and I, categorically, advised him that I was in no position to assist him at all.

This is the only instance in which he asked for assistance from me.

10 Since then, he understood that I viewed interference with tender processes in a negative light and do not involve myself in such matters, as I was not responsible for any tender process in government or in a department organ of state.”

Thank you very much.

CHAIRPERSON: Thank you Mr Kodwa. Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. Thank you, Mr Kodwa. Can we start just clarifying in relation to the payments? And can I ask you to go to Bundle 16, page 293 where there is a list of payments?

20 **MR KODWA:** Two...?

ADV CHASKALSON SC: 293.

CHAIRPERSON: That would be black numbers, Mr Chaskalson?

ADV CHASKALSON SC: That is correct, Chair. Top left-hand side of the page, black numbers.

MR KODWA: Yes, Chairperson

ADV CHASKALSON SC: Chair, do you also have that page, 293?

CHAIRPERSON: Yes, I have got it. Thank you.

ADV CHASKALSON SC: Mr Kodwa, you will see on that page a list of payments that runs from 28 April 2015 to 2 February 2016. The first question is. Are there any payments on that list that you do not agree or made, either from Mr Mackay or TSS, into your account?

10 **MR KODWA:** What I do confirm, Chairperson, is that, because of my correspondences were with Mr Mackay. I never received any payments from any of his entities. All my payments and financial assistance came from Mr Mackay.

CHAIRPERSON: H'm.

ADV CHASKALSON SC: And Mr Kodwa, are you – you are – I mean, I accept that you perceived the money as coming from Mr Mackay. As a matter of fact, the bulk of it, in fact, was paid out of TSS, not Mr Mackay. Do you
20 dispute that?

MR KODWA: Well, I - Mr Mackay, I am sure, he can answer better, that question. All what I know is that the assistance I got was from Mr Mackay.

ADV CHASKALSON SC: I see. But you do not dispute – you will see that there are three-line items. 28 April 2015,

there is an amount that says M G Kodwa, ANC Donor JM. That is the one million payment related to your car. That amount, factually, was paid out of the account of TSS. So, do you accept that?

MR KODWA: Yes.

ADV CHASKALSON SC: And then, 22 September ...[intervenes]

CHAIRPERSON: Mr Chaskalson, just one second. I do not know whether, technologically, somebody can make
10 sure that everybody – I can hear everybody? I can hear everybody well, but I would like the voices to be a little bit higher than they are. The volume. I do not know if the registrar is listening to me.

REGISTRAR: [No audible reply]

CHAIRPERSON: Is there a button to be touched or pressed to make sure the volume is higher whenever everybody speaks? I think, I am probably the only one speaking with a higher volume because of the nature of my voice. [laughs]

20 **REGISTRAR**: [No audible reply]

CHAIRPERSON: Oh, that should do it. Oh, what happened?

REGISTRAR: [No audible reply]

CHAIRPERSON: Okay, alright. Okay, Mr Chaskalson. I understand the volume will be better now. Okay.

ADV CHASKALSON SC: Good, Chair. Is this an improvement?

CHAIRPERSON: But much less than what I expected but I think we can continue. Maybe there is a lot that would be involved in order to achieve what I want, but I can hear everybody. It is just that the voices are a little lower than what I would like. Of course, maybe, I can just ask everybody to try and speak up a bit.

ADV CHASKALSON SC: Of course. Chair, I will do my
10 best.

CHAIRPERSON: Ja, that is very good. That is very good. Okay, alright.

MR KODWA: I will do my best as well, Chairperson.

CHAIRPERSON: Yes, thank you. Okay, alright.

ADV CHASKALSON SC: Okay. Mr Kodwa, please accept that I am not shouting at you. [laughs]

CHAIRPERSON: [laughs]

MR KODWA: [laughs]

CHAIRPERSON: Well, Mr Kodwa must be have seen that
20 although Mr Sikakane(?) said – this thing will show him as Mr Sikakane, it does show Mr Kodwa talk, Mr Sikakane. So... [laughs]

MR KODWA: Yes, it does. Yes, it does.

CHAIRPERSON: [laughs] Yes, okay. Well, you see, Mr Kodwa, if – it is good that they put your name, because if

people thought you were Mr Sikakane, they were going to think you are senior counsel. You have a lot of money.
[laughs]

MR KODWA: [laughs] I did not know that my counsel have got a lot of money, Chairperson ...[intervenes]

CHAIRPERSON: [laughs] Okay, alright. Mr Chaskalson, please proceed.

ADV CHASKALSON SC: Thank you, Chair. Mr Kodwa, the – not included on this list is one payment that was
10 missed. Can I ask you to go to page 298? 298 of that same bundle.

MR KODWA: Yes, Chairperson?

ADV CHASKALSON SC: And there at the foot of page 298, you will see a – sorry, Chair, do you have the ...[intervenes]

MR KODWA: Yes, I do. Yes.

ADV CHASKALSON SC: At the foot of that page, you will see there is a transaction for R 35 000,00 from Mr Mackay into your account on the 10th of July 2015.

20 **MR KODWA:** Yes, I see.

ADV CHASKALSON SC: And you accept that that is a correct reflection of a transaction that was paid from Mr Mackay to you?

MR KODWA: I accept that.

ADV CHASKALSON SC: Then there is one further

transaction that I should ask you about and for that purpose, can we first go to page 318? 318.

MR KODWA: [No audible reply]

ADV CHASKALSON SC: And... No, I... I must apologise.

I have got my reference wrong. It is... I am talking about

a... Let us try 321. No, it is not going to be 321 either.

Can I ask you to go instead to – well, because I have lost

the reference. Can I ask you about a payment that was

made to a Mr Joshua Mannde? M-a-n-n-d-e? By

10 Mr Mackay. Do you know who Mr Mannde is?

MR KODWA: Yes, I know.

REGISTRAR: Note that the DCJ is ...[indistinct] just for a few minutes.

ADV CHASKALSON SC: Sorry, DCJ. Are you back?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Ja, I think we must just pause at this point.

MECHANICAL INTERRUPTION IN VIDEO LINK

REV STEMELA: You are muted, Mr DCJ.

20 **CHAIRPERSON**: [No audible reply]

ADV CHASKALSON SC: Sorry, Chair. We did not hear you because you were on mute, but we paused at this point. Can you take yourself off mute?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Ah.

CHAIRPERSON: Okay, alright. I am sorry. You can hear me now?

ADV CHASKALSON SC: We can, yes.

CHAIRPERSON: Okay alright. I think the problem was on my side in terms of technology. That is why we had a break but let us continue. I think this interfered with you while you were asking a question, Mr Chaskalson, or Mr Kodwa was just about to start answering.

ADV CHASKALSON SC: Yes, DCJ. In the break, it just
10 occurred to me that we have not admitted Mr Kodwa's affidavit or the Regulation 10.6 Directive as an annexure. Can I ask that we do that before we commence the questioning?

CHAIRPERSON: Ja, let us do that. I guess we should start with the directive?

ADV CHASKALSON SC: The directive would be VV-11 and maybe if we can just make a capital A for the directive and then a capital B for the affidavit?

CHAIRPERSON: The Regulation 10.6 directive, directed
20 to Mr Ncediso Goodenough Zizi Kodwa which starts at page 601 is admitted as an exhibit and will be marked as Exhibit BB(sic)-11(A).

CHAIRPERSON: Is that the Exhibit number you propose, Mr Chaskalson?

ADV CHASKALSON SC: It is, Chair.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: And then, can we make the affidavit BB-11(B)?

CHAIRPERSON: Oh, actually, Mr Chaskalson. I think I missed something, and you did not hear. I think you intended VV for Victoria and I was saying BB for [No audible reply]

ADV CHASKALSON SC: [Indistinct]

CHAIRPERSON: Ja, but now ...[intervenes]

10 **ADV CHASKALSON SC:** V for Victoria.

CHAIRPERSON: Ja. So, it is VV-11(A), that is the directive and then the affidavit of Mr Ncediso Goodenough Zizi Kodwa that starts at page 610, will be admitted as an exhibit, and will be marked as Exhibit VV-11(B).

THE REGULATION 10.6 DIRECTIVE TO NCEDISO GOODENOUGH ZIZI KODWA IS ADMITTED AND MARKED AS EXHIBIT VV-11(A)

AFFIDAVIT OF MR NCEDISO GOODENOUGH ZIZI KODWA IS ADMITTED AND MARKED AS EXHIBIT VV-11(B)

20 **ADV CHASKALSON SC:** That is correct, Chair.

CHAIRPERSON: Yes. Okay, that is done.

ADV CHASKALSON SC: Mr Kodwa, maybe if we could go to page 436 of Bundle 16, where there is an email exchange between yourself and Mr Mannde. And first, can – when you get ...[intervenes]

MR KODWA: The number again?

ADV CHASKALSON SC: 436, 436.

CHAIRPERSON: Are you moving back to the – to Bundle 16?

ADV CHASKALSON SC: Bundle 16, yes. Bundle 16, Chair.

CHAIRPERSON: Oh, okay. And the page number is?

ADV CHASKALSON SC: 436.

CHAIRPERSON: 436.

10 **MR KODWA**: Yes, I have got it.

ADV CHASKALSON SC: And what it is, it is an email forwarded from the – that you... to Mr Mackay on 25 November 2015 and the forwarded email comes from Mr Mannde to you, the previous day. Do you recognise this email?

MR KODWA: Yes, I do, Mr Chairperson.

ADV CHASKALSON SC: Can you explain the context for the Chair?

20 **MR KODWA**: Chair, firstly. I have no reason to doubt the Commission's documents and I think that document is very important. I have no doubt reason to doubt the documents, which are – some of the questions are based on. Secondly. The person mentioned here, there was a fitting that needed to be done in the car and he is the only person who knew where it was and hence the payment was done to

him. Thank you, Chairperson.

ADV CHASKALSON SC: And the payment that you described – if we can just go to page 310?

CHAIRPERSON: Just one second, Mr Chaskalson.

ADV CHASKALSON SC: [No audible reply]

CHAIRPERSON: [Chair in conversation with registrar]
Okay, thank you. You may proceed.

ADV CHASKALSON SC: Thank you, Chair. Mr Kodwa, can you – are you on page 310?

10 **MR KODWA:** Yes. Yes, sir.

ADV CHASKALSON SC: And if you see three lines from the bottom of that bank statement. It says 26 November, FNB OB payment. And then there is an FNB reference, and it says: April Streetwise Zizi, R30 000,00.

MR KODWA: Yes.

ADV CHASKALSON SC: You accept that that is the payment that was made from Mr Mackay to Mr Mannde in respect of that fitting on your car?

MR KODWA: That is correct.

20 **ADV CHASKALSON SC:** So, if we go back to page 239, which is the table of payments, and we add in the R 35 000,00 from 10 July and the R 30 000,00 to Mr Mande ...[intervenes]

CHAIRPERSON: You go to what page, Mr Chaskalson?

ADV CHASKALSON SC: 293, Chair.

CHAIRPERSON: 293?

ADV CHASKALSON SC: 293, yes.

CHAIRPERSON: Okay, yes, I am there.

ADV CHASKALSON SC: You will see there is a total at the bottom of the table that say R 1 6045 000,00. You see that, Mr Kodwa?

MR KODWA: Yes, I see that.

ADV CHASKALSON SC: And if we add the R 35 000,00 from the 10 July transaction that is missing from the table and the R 30 000,00 for the payment for Mr Mannde, we see that the total comes now to R 1 710 000,00. Do you accept that? It is not on the table.

MR KODWA: Yes, correct.

ADV CHASKALSON SC: ...but the – addition...

CHAIRPERSON: Sorry. It comes to how much, Mr Chaskalson?

ADV CHASKALSON SC: R 1 710 000,00

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Now, I just want to clarify. I understand that you say that the R 1 million that was paid on the 28th of April was a loan.

MR KODWA: Correct.

ADV CHASKALSON SC: Was that true of all of the other amounts as well or those loans from Mr Mackay?

MR KODWA: No, the others were just assistance.

ADV CHASKALSON SC: You do not expect – you did not expect him to ask you to pay any of these amounts back?

MR KODWA: No, not at all.

ADV CHASKALSON SC: Including the R 250 000,00 amount on the 22nd of September 2015.

MR KODWA: Not at all.

ADV CHASKALSON SC: In relation to that loan of a million. Can I ask you to go to page 325 of Bundle 16?

MR KODWA: [No audible reply]

10 **ADV CHASKALSON SC:** And you will see on the top of page 125, it is an email from Mr Mackay to you on the 24th of April and it attaches a document called TSS Loan Agreement template. So, we could go down to page 326, and you will see this loan agreement template.

MR KODWA: I see that.

ADV CHASKALSON SC: Well, first of all. Did you receive that email at the time?

MR KODWA: No, I must have received it, Mr Chair. I must have received it.

20 **ADV CHASKALSON SC:** But then, did you ever conclude a written loan agreement along the lines of this template with TSS?

MR KODWA: No, I do not have any loan and I have no communication with TSS. The communication I have was and is – was Mr Mackay. And the understanding of a loan

was between me and Mr Mackay.

ADV CHASKALSON SC: Okay, but you accept that the email that he sent you attached to form related to a loan from TSS.

MR KODWA: I accept that.

ADV CHASKALSON SC: Did you conclude any written loan agreement with Mr Mackay?

MR KODWA: No. No, Chairperson.

ADV CHASKALSON SC: If we look at this template. It
10 provides for repayment with interest at the prime rate. Did you discuss interest with Mr Mackay?

MR KODWA: Not at all.

ADV CHASKALSON SC: I understand that this loan that Mr Mackay made you attract interest.

MR KODWA: No ...[intervenes]

ADV CHASKALSON SC: Or is it interest free?

MR KODWA: No, this just a draft in which we did not sign. The understanding between Mr Mackay and I, Chairperson, was that to the extent that you, my friend, you need
20 assistance. I will give you a loan with the understanding that when your finances stabilises, you will - me.

And I can assure you that even if I have to speak to him today, I will still assure him that as soon as I get a stable job – the job I have today is a very political appointment. I can be removed tomorrow. So, I cannot

commit that I will pay him to remain as a deputy minister but the commitment he knows as a friend that the commitment is there to pay him back.

CHAIRPERSON: Well ...[intervenes]

ADV CHASKALSON SC: So as I understand ...[intervenes]

CHAIRPERSON: Well ...[intervenes]

ADV CHASKALSON SC: Sorry, Chair.

CHAIRPERSON: I wanted to say. Mr Kodwa, I think you
10 are – you may be right in saying: Well, the job you have is a political one and maybe its stability is questionable. But I guess as long as you are in politics that will remain the position for a long time.

MR KODWA: [laughs]

CHAIRPERSON: [laughs] Is it not?

MR KODWA: I may consider other options, Chairperson, given what you have just said.

CHAIRPERSON: [laughs] Ja, okay, alright.
Mr Chaskalson, continue.

20 **ADV CHASKALSON SC:** Mr Kodwa, do I understand from your arguments – not from your answers, from your answers that thus far you have not repaid any amounts of that one-million-rand loan?

MR KODWA: Correct.

ADV CHASKALSON SC: Are you ever – if Mr Mackay ask

for the money tomorrow, would you be able to pay it back to him?

MR KODWA: This is a conversation between friends. He knows very well if I woke up one morning in my house and say: Do you have my one million? He knows very well that I will not have that one million tomorrow. So, this is a conversation which is not a normal loan agreement with strict conditions. That is why it is flexible between friends.

CHAIRPERSON: Well, friendship sour, Mr Kodwa. If the
10 friendship sours, could it be demanded immediately, and would you be able to pay it back?

MR KODWA: That was never been the basis of our friendship. He knows very well, there are things that he can do – he can say to me, and he knows my view on certain things.

CHAIRPERSON: Ja, Mr Chaskalson.

ADV CHASKALSON SC: No, I – well, let me put my question differently. Assuming Mr Mackay changed character tomorrow and arrive on your doorstep and said:
20 More than five years ago, I gave you a million. I want it back tomorrow otherwise; I am suing you for it. Would you be in a position to pay it back?

MR KODWA: That will be not the Mackay I know. That character is not ...[intervenes]

ADV CHASKALSON SC: That is not – I am asking you to

make an assumption that Mr Mackay changes character and asks you to pay back the one million tomorrow.

MR KODWA: Obviously, I will negotiate new terms if he would to come – to become this unexpected character of him. I will be negotiating new terms with him.

ADV CHASKALSON SC: If you could not new terms, would you be in a position to pay a back a million on demand?

MR KODWA: No. I mean, he knows that, if he –
10 Mr Chaskalson, as I leave this room now and I find him and waiting outside this room and he wants a million, he knows that he will not get a million. The only reasonable thing is for him and I to meet and discuss new terms.

ADV CHASKALSON SC: Okay. Can I take you one further issue in relation to that loan of a million? Can I ask you to turn to page – to Bundle 20 this time? Bundle 20, page 619.

MR KODWA: I do not have that.

[background discussions]

20 **MR KODWA**: I am just searching the file, Chairperson. I do not seem to have...

CHAIRPERSON: Bundle 20 ...[intervenes]

ADV CHASKALSON SC: It is in that supplementary bundle that was sent to your attorneys I think on Friday. The bundle with your statement. It is at the back of your

affidavit.

MR KODWA: Oh, yes. Oh, yes. Correct. Thank you.

ADV CHASKALSON SC: And what you will see on page 619 is a bank statement of TSS, the company and if you go to 28 April 2015, you will see that there is a reference for a payment of a million and the reference says: ABSA Bank, Entry: Kodwa; ANC dona, d-o-n-a, which I presume to be donation, -JM.

MR KODWA: Correct.

10 **ADV CHASKALSON SC**: Now, you are clear that this is not a donation, it is a loan?

MR KODWA: You are correct.

ADV CHASKALSON SC: And it is loan from Mr Mackay, it is not a loan from TSS?

MR KODWA: Absolutely correct.

ADV CHASKALSON SC: So, if Mr Mackay had told TSS that this was an ANC donation and it made the money out of – and it paid the money out of TSS on the basis that it was an ANC donation, that would be incorrect, would it
20 not?

MR KODWA: Well, I would not know the conversations that he would have had with TSS. Like I said, my limited conversation, very strictly, was with Mr Mackay. My understanding is that the loan I have is with Mr Mackay.

ADV CHASKALSON SC: I know what your understanding

is, but to the extent that this, which is the TSS bank statement, reflects this as a payment of a million from TSS as a donation to the ANC. That is incorrect?

MR KODWA: That is incorrect.

ADV CHASKALSON SC: And if any person told TSS that this payment was a donation to the ANC that the company was making, they would be misrepresenting the truth?

MR KODWA: Absolutely.

ADV CHASKALSON SC: Now, in April 2014, before this
10 payment. Did you have a car?

MR KODWA: 2014?

ADV CHASKALSON SC: Sorry, 2015. April 2015. Before you received this payment from Mr Mackay, did you have your own car?

MR KODWA: I think I should have. Chairperson, firstly, it is quite a long time, but I think I should have.

CHAIRPERSON: Yes.

MR KODWA: I should have had a car. I should have had a car.

20 **CHAIRPERSON**: H'm, h'm.

ADV CHASKALSON SC: Now, because I understand from your affidavit that all of these amounts that you have received from Mr Mackay, you say are amounts that you received when you were in financial difficulties. Is that correct?

MR KODWA: Correct.

ADV CHASKALSON SC: And I suppose the real question I want to ask you is. If you are in financial difficulties, why in April 2015, why did you go out and spent R 890 000,00 on a car?

MR KODWA: Well, of which I made in the statement, whether to spent ten thousand or twenty thousand, is it reasonable? It is a wish stone that you can debate. And I do not think it is a matter, Chairperson, that I could justify.

10 That perhaps I should have thought of a smaller car of twenty thousand, a Corolla, instead of a bigger car. It is wish stone that we can debate.

ADV CHASKALSON SC: To do that, you had to put yourself in debt to the tune of a million rands to Mr Mackay.

MR KODWA: Again, I mean, that is a wish stone. I – you see, when you ask for assistance to a friend, Chairperson. At the back of your mind, if you – true friends, you do not have this notion of a debt, that you are entering into a
20 debt. You have this notion that I am in difficulty. A friend, a true friend is here to help me.

So, what then becomes not just of a relationship. How do you pay back? That is something that I think – again, these are the lessons, Chairperson, I referred to in the opening statement. These are the lessons of leaders

that must be circumspect as and when you interact with of business in particular and to what extent those issues may be perceived as issues a leader of the ANC that has gone binging extravagant.

And yet the perception is very important and very powerful in politics. And I think the question that has been asked is exactly the issue you are addressing about, us as leaders managing the perception.

CHAIRPERSON: H'm. Maybe, can – let me put this
10 question to you, Mr Kodwa. Would it be correct to understand you to be saying: Look, I should not have spent eight hundred-and-fifty thousand or whatever on a car. Certainly when I was in financial difficulties. Maybe you might go beyond that. But I did spend it and when I look back, it was wrong. It is a lesson. It should not have happened.

Or are you saying: Look, I do not know whether I should not have, but I did and, but I am able to say maybe if there is a debate, I might end up changing my view. And
20 saying: Look, I think I can see it was not right. So, I am just wanting to establish where you stand on it.

MR KODWA: We just summarise the statement I made, Chairperson.

CHAIRPERSON: Yes.

MR KODWA: That part of the evidence I presented to you

today is about a lesson.

CHAIRPERSON: H'm?

MR KODWA: And these are the lesson that, if you look back and you realise that we ought to be circumspect as leaders, not because our conduct is criminal and corrupt. No. But because of the perception that it carries. You may think that what you are doing is right, but in the eyes of the public it may carry a very significant perception about the influence of leaders and their proximity to power.

10 **CHAIRPERSON:** H'm, h'm. Okay, alright. Mr Chaskalson.

ADV CHASKALSON SC: Chair, I have just seen the time. I am about to move to a slightly different topic. I wonder if this would be a convenient time to take the tea adjournment?

CHAIRPERSON: Okay, alright. Let us take the tea adjournment. It is about – nearly half-past eleven. We will resume at quarter to twelve. We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

ADV CHASKALSON SC: ...my head that is going like this.

MR KODWA: No, no, no, it is not me.

CHAIRPERSON: Okay, un-mute it now. Okay, let us resume.

ADV CHASKALSON SC: Chair, I just wanted to check

that my screen is presenting a stable image of me. Mr Kodwa's ...[intervenes]

CHAIRPERSON: It is very stable now, I think once Mr Kodwa spoke it would have stopped. Okay, alright, no, it is stable.

ADV CHASKALSON SC: Then, Mr Kodwa, can we go to page 342 of bundle 16?

CHAIRPERSON: You said page 300 and...?

ADV CHASKALSON SC: 342.

10 **CHAIRPERSON:** 342, okay. Yes, I am there.

ADV CHASKALSON SC: And, Mr Kodwa, have you got that email from Mr Mackay to yourself on 5 August 2015?

MR KODWA: On 342.

ADV CHASKALSON SC: Yes, if I can just read it so that people understand what it says. It says:

20 "My brother, address the letter to EOH Mthombo (Pty) Ltd, attention Jehan McKay, executive director, JehanMackay@EOH.co.za. If you need a draft letter let me know but I am sure he will be fine with the content. It would simply state that the movement humbly request assistance in the form of sponsorship for R1 million for (whatever the purpose) something like that, either from Matigi(?) himself or Jerry or any other authority. Let me know if you need any other info."

So first can I ask you to explain the context for this email?

MR KODWA: Well, this email – firstly, I do not think it will be related to a loan, Chairperson. Secondly, it probably had to do with the donations which were one or another, it has been a long time back, it is a donation that maybe somebody – because not only is he talking to me here, he is also referring to somebody that it should simply state that the movement humbly request, I do not write letters on behalf of the organisation for donations. Probably he was
10 talking about somebody – as you know in the correspondences there is no letter from me with respect to this email, to make a request for donation, it is only this email to me and as to whether what happened to it, I still cannot recollect, Chairperson.

ADV CHASKALSON SC: But this email is clearly a response to something. It says my brother and it is addressed to you, address the letter to EOH, Mthombo. So on its face it looks like there had been some sort of exchange between you and Mackay before hand in relation
20 to a letter that would be a request for a donation of a million. Obviously I am not talking about any payments to you personally, I am talking about a donation for the ANC and this letter seems to be a response to that. Does that not sound correct to you?

MR KODWA: It is possible, Chairperson, but only

speculation at the moment because there is no evidence to indicate that there was a conversation before this email, but it is possible that he would have spoken about donations but, as I say, my recollection about his donations to the ANC, I would not have known exactly who wrote to him, whom he spoke to and so on.

ADV CHASKALSON SC: Ja but, Mr Kodwa, he is writing this letter to you.

MR KODWA: Yes.

10 **ADV CHASKALSON SC:** And he telling you to address a letter to somebody or to him in fact.

MR KODWA: Yes.

ADV CHASKALSON SC: Are you unable to shed any further light on this, why was he writing this letter to you on 5 August 2015?

MR KODWA: Well, let me tell you my relations with Mr Mackay , like many other people in business because there are so many people sometimes who present themselves to be speaking on behalf of the ANC. So what you will find,
20 Mr Chairperson, is that a donor would actually, if he knows of somebody in the ANC, would actually want to confirm if you know of such a request, do you know this person, do you know these people? It happens a lot and it happened quite often when I was at Luthuli House because there are so many who would take chances and say they are raising

funds on behalf of the ANC. That could be but one instance when Mr Mackay would have wanted at least to confirm if this request for donation – as you can see that there was no request from me certainly in terms of the facts before the Commission and I have no doubt, again, like I said, to doubt the documents from the Commission and the fact that you do not have that letter because it simply means there was never a correspondence on my part at least to say we request because I was no
10 authorised to do so on behalf of the organisation.

ADV CHASKALSON SC: I understand the scenario that you were speaking about where chancers seem to pretend to be raising money on behalf of the ANC and we will get to some examples shortly where people say they are raising for the ANC but the money has to be paid into a Taxi Association or company. But this seems to be a different situation because it is not Mr Mackay saying what should I do with this request for a donation, it is Mr Mackay telling you who you should write to and what you
20 should put in the letter to be sent by the TG or Jerry requesting a donation. So what would – are you unable explain the background to this?

MR KODWA: I am not able to explain the background to this, Chairperson, at least that I know it did not come to me personally but as to the context of it, I really – I am not

able to explain the background.

ADV CHASKALSON SC: Do you know who – I mean, the TG is presumably the Treasurer General, is that correct?

MR KODWA: I assume.

ADV CHASKALSON SC: Do you know who Jerry would be?

MR KODWA: No. Not to my recollection.

ADV CHASKALSON SC: Mr Kodwa, I appreciate that nobody wants to, you know, create difficulties for anybody
10 else, any of their comrades but, I mean, I find it difficult to believe that you would not know who Jerry was when this letter from Mr Mackay comes to you and tells you that you must write a letter requesting a million rand donation and the letter must come from the TG himself or Jerry. Surely you can identify a Jerry in that context to whom this letter would refer?

MR KODWA: And I am certain that Mr Mackay himself could identify but I cannot recall, specifically dealt with many – or, as I dealt with many people, Chairperson, I
20 dealt in that period with many people because of the position I have alluded to in my opening statement. So there could be a Jerry, there could be a Jerry and Tom, but really some of the names were not – maybe I was using a different name to refer to this very same person. But, like I say, this email does not come from me, it comes from Mr

Mackay , I would not know which Jerry is he talking about here.

CHAIRPERSON: Is there a Jerry within the ANC or was there a Jerry within the ANC in 2015 who would have had anything to do with maybe the office of the Treasurer General or who would have had anything to do with the raising of funds for the ANC or writing letters requesting donations?

MR KODWA: Not to my recollection, Chairperson, not to
10 my recollection, I would not know. To an extent that there was a distance between me and that office I will not even know who had authority to write letter to what and so on.

CHAIRPERSON: Mr Chaskalson?

ADV CHASKALSON SC: Can I ask you then to go down to page 346? Are you at 346?

MR KODWA: Just a second? Yes.

ADV CHASKALSON SC: This is an email from Mr Mackay to you a week after that previous email, so on 12 August 2015 and it attaches a proof of payment to an organisation
20 called the election agency. If you go down to page 348 you will see that EOH has paid the elections agency a million rands.

MR KODWA: Correct.

ADV CHASKALSON SC: Can you remember what this donation was for or what this payment was for?

MR KODWA: Elections agency is an organisation that runs elections particularly on conferences. I would not know the specifics of the event but I know the organisation.

ADV CHASKALSON SC: And the ANC and the alliance organisations presumably would use the elections organisation to manage elections at their conferences?

MR KODWA: Please repeat the question, Mr Chairperson?

ADV CHASKALSON SC: The ANC and its associated alliance organisations would use the elections agency to
10 manage elections at their conferences, is that correct?

MR KODWA: Correct.

ADV CHASKALSON SC: So on its face this seems to be a payment of a millions rands to the elections agency made by EOH on behalf of the ANC or to pay a bill of the ANC. Would that be correct?

MR KODWA: I see from the documents but I am no position on behalf of the ANC to confirm receipt of donations from any other body including Mackay or EOH. I am not in any position to confirm on behalf of the
20 organisation the receipt of donations but I see it from the documentation of the Commission that a certain amount was paid to the election agency.

ADV CHASKALSON SC: But it was not just that it was paid, proof of payment was copied to you by Mackay , why would you do that?

MR KODWA: The point I made earlier, Mr Mackay , in his life as a businessman, he would have come to what you referred to, Mr Chaskalson, as chance takers. So sometimes he will do out of courtesy not because he wants me to do anything about it, that as a proof that I have done the following to the right organisation or to the right individual, so that is the only reason, I would imagine, that he was doing – or sometimes he will call and share that information. Sometimes he will send a proof of payment.

10 **ADV CHASKALSON SC**: But at the very least we can assume that if Mr Mackay is sending that proof payment to you, it is because he understands it to be proof of the payment of an amount for the ANC.

MR KODWA: Maybe I can understand the question much better you can just rephrase your question?

ADV CHASKALSON SC: So do you accept that Mr Mackay was sending that payment to you or that proof of payment to you to show that he had made a payment on behalf of the ANC?

20 **MR KODWA**: Correct.

ADV CHASKALSON SC: Can we go to some of these examples that you described earlier of transit and can we go to page 413? Sorry, actually the 413 is not the example that I was thinking of but let us stay with 413.

MR KODWA: Okay.

ADV CHASKALSON SC: 413 is an email from Mr Mackay to you on the 30 September 2015.

MR KODWA: Correct.

ADV CHASKALSON SC: And it says:

“My brother, do you know about this? Your thoughts?”

And if you – so there is an internal EOH email that is forwarded to Mackay and what it forwards is an email from someone called Mziwamadoda Siophilis Mhlauli to a range
10 of people, one of whom is ThandiKokolo@ EOh.co.za who is the person who forwarded that email to Mr Mackay .

MR KODWA: Okay.

ADV CHASKALSON SC: And the email from Mr Mhlauli says:

“Dear all, as per ANC treasury office, humble request the below quote is the latest account allocated to us for purposes of settlement on or before 10 a.m. tomorrow 1 October. Discussions taking place as to at least settle half this amount
20 before the above deadline, settle the remainder before the delegates arrive 13h00 of same date, i.e. tomorrow, 1 October.”

MR KODWA: I see that.

ADV CHASKALSON SC: Now do you know who Mr Hlahule is?

MR KODWA: No. Probably he is one of our comrades from one of the offices. The email is not addressed to me.

ADV CHASKALSON SC: No, I appreciate that but it is forwarded to you.

MR KODWA: Ja, but Mr Chaskalson, I am sure you can just have an idea of the period and the conversations between so many people. Just you can see the number of recipients on that email, that not all of them I would know because of the size of what is called the African National
10 Congress. I do not know everybody in today, and I do not know who talks to who but to an extent possible – I must make this point, Chairperson – to an extent possible where a met a donor when I was still at Luthuli House, if I met somebody independent, voluntarily wants to donate to the ANC, I will gladly – I will gladly say to that person yes, donate and things, I have done so, so many times. So I do not want as if I am denying the fact that I probably would have met a lot of people including Mr Mackay who would have wanted to check certain people as chance takers to
20 say I have made this donation, can I make this donation? Knowing that his capacity that he can make that donation, I would gladly say yes, Sir, go ahead, for the sake of the African National Congress.

ADV CHASKALSON SC: Can I ask some more questions about this email? It is addressed to someone called

Dumisani Mapu. Do you know Dumisani Mapu?

MR KODWA: To my recollection I think that person is late. I do not know if we are talking about the same person which is why, I mean, if you look at the recipients of that email, many of them could be administrators. As a leader of the ANC I do not interact with administrators, I would not know. That is why the difficulty, Chairperson. I cannot comment on emails I do not write. I cannot comment on emails that were not even sent to me for my comment
10 except being forwarded for whatever reasons. But the difficulty is that I am asked to comment on emails I did not write.

ADV CHASKALSON SC: But my question was did you know Dumisani Mapu?

MR KODWA: I have answered, Chairperson.

ADV CHASKALSON SC: Yes, okay, who was Dumisani Mapu?

MR KODWA: I said to the extent possible, to my recollection, if I remember, because many people shared
20 the name and surname, that person is late, he was a member of the ANC.

ADV CHASKALSON SC: Which province?

MR KODWA: Province?

ADV CHASKALSON SC: In which province.

MR KODWA: Eastern Cape.

CHAIRPERSON: Free State?

MR KODWA: No, Eastern Cape.

CHAIRPERSON: Eastern Cape, okay.

MR KODWA: Correct.

ADV CHASKALSON SC: And was he a member of the Treasurer General's office at the Eastern Cape?

MR KODWA: We do not have a Treasurer General's office, only in provinces – we only have one Treasurer General's office which resides at the head office at Luthuli House. In
10 provinces we have Provincial Treasurers. Now themselves, they have got a lot of other people they interact with, I may not be aware of that, perhaps the person who was in the office of the Treasurer General nationally, those are the people that he interface with, may know better about those people but certainly on my part I would not know everybody who works in the Provincial Treasurer's offices.

ADV CHASKALSON SC: What about Mongezi Dyala? Did you know Mongezi Dyala?

MR KODWA: It could be one of the staff members, maybe,
20 I do not know, maybe working for the ANC.

ADV CHASKALSON SC: Again in the Eastern Cape I see the email address is MDyalaAncEasternCape.org.za.

MR KODWA: Yes, it is possible, Chair.

ADV CHASKALSON SC: Can I take you up the email chain that was forwarded to you?

MR KODWA: Yes.

ADV CHASKALSON SC: Up to the email that Thandi Kopololo writes to Mackay .

“Eish, my brother, I cannot seem to shrug these guys off. They were using our recent submission to arm wrestle with us. 700 000 for accommodation at the PGC, can LN or MX do something? I see that our esteemed partner ELCB are also copied.”

Now do you know who ELCB was?

10 **MR KODWA**: No, Chairperson.

ADV CHASKALSON SC: ELCB were the partners of EOH in a bid for the Eastern Cape document management tender which was ending at the time. Did you not know that at the time?

MR KODWA: I would not know about it, I had nothing to do with their tenders and procurement in government.

ADV CHASKALSON SC: Well, that is only what you say but, I mean, this email was forwarded to you for your comments.

20 **MR KODWA**: Certainly, what I say, as a matter of fact, actually, forwarded to something else but I would not even know what ELCB is because they knew or whoever forwarded to me knew that I had no influence or decision-making powers to influence anything in a [indistinct – dropping voice]

ADV CHASKALSON SC: It also says:

“They are using our recent submission to arm wrestle with us.”

MR KODWA: [inaudible – speaking simultaneously] what their recent submission was about.

ADV CHASKALSON SC: We know that it was about a tender for the Eastern Cape document management contract. So they are using that tender to arm wrestle with us, say EOH and this gets forwarded to you and you ask do
10 you know about this, your thoughts?

MR KODWA: Like I said, I have no reason to doubt the documents including the emails but I can only comment to an extent that an email was written by me but emails that were forwarded and so on and the [indistinct] you will see that even receiving these emails there is no communication back from me about anything that the email says. So we can just speculate about what was an expectation, why it was forwarded to me and it just ends there, speculation.

CHAIRPERSON: What can happen though, Mr Kodwa, is
20 that if somebody sends you or forwards you an email it may be that he or she does so because he or she knows that you know something about the content of the email and, of course, if you do not know why they are sending it to you and you know nothing about the content you might say to them why are you sending me this, it has got nothing to do

with me? Or you might say – you might have a comment. So when Mr Chaskalson asks you certain questions about emails that you did not write it is on the basis that because they were sent to you, you might know something about the content that is why they were sent to you and therefore you might assist us to understand what was going on or why – what the issues were and why the sender or the forwarder thought that it was important that you knew about such an email. So that is the context of why he is asking you. So

10 even if you have not written the email yourself but you might know about something about the content or you might say I remember this email, I do not know why they sent it to me, I subsequently phoned them and say why are you sending me this and they could not satisfy me or they clarified and once they clarified I understood. I did not respond by way of an email but I did phone and said a, b, c, d. Or you might say well, look, I know about the content although I am not the author. In terms of what I know about eh content, this is the position. So that is the

20 reason why Mr Chaskalson is asking.

MR KODWA: Thank you very much, Chairperson, I really appreciate that context, it is very important.

CHAIRPERSON: Yes.

MR KODWA: Let me just, in answering the question, Chairperson, let me just say firstly, my attitude around the

issues of procurement in the state, I have said it in my statement, I have got a very clear attitude towards those issues, to an extent that if people were to ask for assistance the it is linked to a government procurement, I always expressed a view. You will see in some instances, the fact that there is no reply email in some of the emails that were sent to me or forwarded, it does not mean I do not have the view, but the fact that there is no email back or to acknowledge receipt, again it does not mean I would
10 not have expressed an opinion about it. But you must remember, essentially to me, as a leader of the ANC, what was important in that conversation was the desperate need of this email to help in the meeting which was organised. That is where I wanted to assist.

To an extent that I wanted to assist lawfully and appropriately. The content about other things, Chairperson, I would not know about the content of, there were certain issues which were related to the submission of ELCB, I would not have known. But as a leader of the
20 ANC, working for the organisation that convenes an event and it needs immediate assistance, that is where my interest would have been as a leader.

CHAIRPERSON: Mr Chaskalson?

ADV CHASKALSON SC: So, Mr Kodwa, are you then saying that you would tried to persuade EOH to help out by

paying for this provincial conference?

MR KODWA: No, like I said earlier, I have never interacted with EOH and that is the basis of my statement. The person I interacted with is a person who is my friend called Jehan Mackay , so I would not have had interaction with EOH about payment to the event of the ANC.

ADV CHASKALSON SC: You interacted with Jehan Mackay to arrange payment of the PGC conference?

MR KODWA: Correct.

10 **ADV CHASKALSON SC**: And do you recall interacting with him in relation to this conference?

MR KODWA: I would recall, Chairperson, or I cannot because it has been a long time. As you can see that most of our conversation was really telephonic, that is why you do not see any emails here because most of our correspondences – I say “correspondences” as friends, we do not keep correspondences, Chairperson, because we rely on trust as friends. That is why you send me an email, I call you back and I do not keep that call in storage that at
20 some point I think that maybe something else could be asked about this conversation and that is the kind of relationship with a lot of business people including Mr Mackay , it is based on trust, not that because we must keep in storage some of our correspondences because at some point we will be asked about it.

ADV CHASKALSON SC: No, I appreciate that you do not have any access to what response you made at the time but are you telling the Chair that it is likely that you would, having received this email, have engaged with Mr Mackay to try to persuade him to help out and pay for the PGC accommodation?

MR KODWA: Absolutely, I would have certainly persuaded him to help with the ANC Eastern Cape.

ADV CHASKALSON SC: Because, Mr Kodwa, my problem
10 with that is that the email that is forwarded to you, on its face suggests that the ANC Eastern Cape are pressurising EOH in relation to their pending bid to try to persuade them to pay this money. Do you not see that?

MR KODWA: I do not see that to an extent, Chairperson, you must remember the point I made, Chairperson, and I say this respectfully, the ANC is an organisation organising a meeting would not get involved in tender procurements of government, that is done through a department or organ of state or those who work in government. So if those who
20 donate to the ANC they have got an expectation that the ANC, as an organisation or as a leadership in a province or wherever, it will have some influence – you are missing the point, the ANC does not influence or participate in tender procurements of government and that is a point I am making even here, if there was an expectation that by

putting a pressure on whoever and therefore the ANC it will argue in favour of Mackay , which is why the point I made earlier, Chairperson. To the extent that I kept my relationship with people and the businesses they do is that sometimes if I introduce you, Chairperson, to somebody and the Minister as I am carrying my obligation, what happens between you and that minister, it cannot come back to me and attribute it to me, even if it is inappropriate because I would have done, I would have done what I think
10 is correct as a leader to do, I introduce you to the President, you want to see the President. Why do you want to see the President? What happens in your conversation, you get involved with something inappropriate, it cannot be attributed to me in terms of the decisions that would have arisen out of that conversation.

CHAIRPERSON: Unless, of course, the person who wants you to facilitate a meeting with the President tells you quite clearly that he wants to get the President to do something inappropriate, you might refuse to facilitate that
20 meeting would you not?

MR KODWA: Absolutely, that is why I said we have an obligations as leaders to make that assessment, that is appropriate and that is not appropriate.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Mr Kodwa, is that not what is

happening here because the email that is forwarded to you tells you that EOH believe that the ANC Eastern Cape are using the pending tender to try to squeeze money out of EOH. That is what the forwarded email says.

MR KODWA: Let me just say, Mr Chaskalson, I appreciate that you may have your views about the ANC but I assure you that I will never facilitate corruption. I understand your supposition, Mr Chaskalson, but they are not true and I say this respectfully because even Mr Jehan Mackay , he
10 may not know the intricacies of how the ANC operate and all what I have just said to you is how the ANC operated and how it continues to operate as an organisation, that nobody, certainly not me, I would have facilitated corruption in the organisation but more so, the ANC does not participate in procurement tenders of government as an organisation and that point, it is very important to understand how the ANC operate. It may have a perception in public, of course, the point I made earlier, that certain issues or certain individuals were given
20 tenders because they associated with ANC proximity and so on. That is something different. But, as a matter of fact, the ANC does not participate in government procurement.

CHAIRPERSON: Well, Mr Kodwa, one of the important things that emerged in your opening statement was

certainly that it is important – and I am putting this in my own words now, not in your words, it is important that leaders reflect on how they do things or how they have done things in the past and do so honestly and be prepared to say we went wrong there, we should not have done that. Here we did right, we can continue doing things this way because this is right.

Now for me that is very important for our country in the situation which it is because you cannot be part of
10 correcting wrong things unless you acknowledge that they are wrong so the starting point is always to say what are the wrong things that have happened, why did they happen, what were the circumstances under which they happened?

If we accept that they are wrong, what needs to be put in place to make sure that chances that they would happen again are minimised and, if possible, they do not happen again. That is a line that I like when – it is consistent with what I have said in this Commission, you
20 know, because then one says people who adopt that approach are people who are genuinely interested in making sure that whatever wrong may have happened does not happen again.

Those who deny and deny everything, you know, it is difficult to see how they can be part of correcting things

because they do not see – they do not see things that have happened that are wrong as they do not see those things as wrong.

So I mention that because I want to ask you this question. Leave out what Mr Chaskalson might think, maybe – ja, what Mr Chaskalson might think. Is the position not that when you look at that email from Ms Thandi Kopololo, the position is that if what she is saying in that email is true then it would have been wrong for anybody within the ANC to do what she is talking about.

Now we are not saying that the ANC or an official of the ANC who was asking for donations linked the donation to a tender bid that had been made by EOH, we were not saying as a matter of fact that is what happened, but Ms Kopololo says – or certainly had the impression that that is what was being done. Now if her impression was correct and if indeed somebody within the ANC had done that, in other words asking donations on the basis of linking them to certain tenders of bids for tenders, would you not accept that that would have been wrong?

MR KODWA: Thank you, Chairperson. Chairperson, I must just once more assure you, I am happy making reference to the statement I read out to you, Chairperson.

CHAIRPERSON: Yes, yes.

MR KODWA: I said I am [indistinct] leader on the ANC. I

do think one in future must be more circumspect, particularly as leaders because sometimes our conduct, it does not have to be criminal or corrupt but in the eyes of the public the relationship between and the proximity to power, it lend us to a situation where the public sees us as being favoured or being bought. In that perception, it may not have an element of criminality but it requires leadership and this is what the point I made earlier in the statement that this Commission, I have always wanted to
10 come before you because I have always admired how you have placed about this notion of a renewal, that we must look at ourselves and reflect. Of course we are human beings. Most human beings do not want to accept their own weaknesses because when you do that in public it is a sign of a weakness and yet, in my view, it is a sign of strength.

I really appreciated and took to heart your comments about how we should conduct ourselves including the perception by the sender of the email, that
20 somebody would have created this impression that the ANC had power to influence a tender and therefore she was panicking, somebody was panicking that could likely to lose a tender. If that were to be true, it is some of the things that we must change because it cannot be that we are associated with abuse of power, abuse of authority on

the basis of proximity to power and therefore, the way we relate with the state, particularly certain business people, Chairperson, I say this with greatest respect, we must be more circumspect, not because we must discriminate them because they are successful. Those who are successful, we must encourage them to do more but to an extent that they may abuse the office, your office, as well, it must not also in the intervening period, Chairperson, create what I call social distance between the people and the leadership.

10 The leadership must always be there to live among the people, resolve people's challenges, we cannot run away when people seek assistance from us as leaders because we are worried about the conflict of interest. It is an issue that we must manage. I thank you very much, Chairperson, for emphasising that point. I agree with you that if that were to be true in terms of that email, then there is something wrong with it, you must change – it is an attitude that you must change about the perception that exists with people. Thank you very much.

20 **CHAIRPERSON:** H'm and then one can take it one step further Mr Kodwa, one can say a leader of the ANC who became aware that an entity that had been asked by an ANC official or by the ANC to make a donation that that leader thought that the ANC was linking the donation to a tender should have said I want to know why this person

thinks like this because if it is true it would be wrong and I want to find out who said what to her that made her think that an ANC official or the ANC is linking a donation to a tender, because I want to speak to that official and say did you do this, did you say this, why did you say that because if the organisation once you do that you are sending the message that if these people donate to the ANC they must hope to get this tender and obviously that is something totally wrong, what would you say to that, to that perspective, in other words to say it should not be a situation where when something like this appears to be happening according to somebody, even if at that stage you don't know the facts whether that is true.

If it appears to be happening according to somebody you shouldn't just focus on the donation part and say well the ANC needs money, there's a conference coming up, I must just ask Mr MacKay or this entity to donate the money, I am not going to talk about these other things, but you should actually say well I want to know because this is wrong, if it is true, and actually once you establish maybe that indeed there appears to be something that was said you might actually say look I don't think the ANC should pursue this donation because if this donation is made and this entity gets that tender there is going to be an impression that the ANC used its influence, an ANC

official used his or her influence to make sure that that tender went to this organisation which had made a donation to the ANC and of course if within the ANC the official who was pursuing this donation is somebody maybe who doesn't appreciate that this is wrong, or maybe appreciates that it is wrong but he thinks or she thinks that the organisation is in such a fix you know they need the money, that person may well think well if that tender were to go to this entity that entity will know when we ask for
10 donations in the future that when you donate to the ANC there are rewards in terms of tenders, they can influence tenders, all of which is wrong, but that is where a leader of the ANC who becomes aware of this ought to appreciate all of that and should actually even say you know let's not continue asking for this donation because it is going to be viewed as a corrupt arrangement, let us go to other entities and everybody in the ANC must know that they cannot link requests for donations to tenders.

Do you want to say anything about my expectation
20 of what the right leader should say when faced with this situation?

MR KODWA: I cannot agree more with you Chairperson, I think your expression and your views are shared by millions of South Africans, certainly I do share with yours but I do think that when you look back with hindsight there

are things that as leaders we could have done better. It is just that we now have this Commission chaired by you Chairperson, I am sure as leaders if we accepted our own subjectivism way earlier we wouldn't be having this Commission, but this Commission lays a foundation for us to renew ourselves, reflect on our conduct as I said earlier to renew and reflect on your conduct Chairperson is not just about committing any criminality and sometimes we quickly run to defend when asked to reflect on ourselves, 10 but I think this Commission, the indictment of this Commission it will leave an indelible mark to our country, because we are also reflecting to us as leaders, what we could have done better, including the issue we raised that why at a certain point we did not raise it there, and I am saying with hindsight these are the lessons, of course you can only learn from experience because experience is the best teacher.

Those who refuse to learn it means by refusing to accept any of the experiences, experience by its nature is 20 not all good things, there are things in your life that you look back and say I could have done better and it is part of learning and I think you provide that kind of wisdom because Chairperson we are outside of this political realm formations, you don't like a party person, you don't think in party politics, you think in terms of the outside, have an

opportunity to look inside and see what could have been done differently because at the end Chairperson I am certain that whatever findings you would make you ...[indistinct] to wanting to find ourselves where we are now.

Whatever mistakes were committed must never be repeated.

CHAIRPERSON: Yes, thank you. Mr Chaskalson?

MR KODWA: Thank you very much.

10 **CHAIRPERSON:** Mr Chaskalson? Mr Chaskalson?

ADV CHASKALSON SC: Sorry I had muted myself accidentally.

CHAIRPERSON: Yes okay.

ADV CHASKALSON SC: Can we go to another dimension, page 426 and what you see at page 426 is a – maybe we can start down at page 427, the request from the ANC Eastern Cape to make a donation to the PGC and it is addressed to the Manager of EOH, Ntombo, and at 426 we see Jehan Mackay addressing an email to one of the
20 people who work under him, Ruwe de Gille saying please pay this donation asap and please ask Rene to keep a special account for EOH related expenses which includes the R6million we paid to Gallagher and the R6million we paid Spindrift and Project Ingroup as we are going to add it to the Barnstone acquisition.

Now the first question – and we have subsequently seen evidence that EOH made a R1million donation to the Eastern Cape ANC in relation to this PGC.

The first question to you is did you know about this R1million donation from EOH to the Eastern Cape ANC for the PGC?

MR KODWA: In extent that it is reflected on the email which was forwarded to me I would have been aware about firstly the ANC's request and secondly a donation to the
10 ANC.

ADV CHASKALSON SC: Okay, did you know that EOH in its internal accounts treated this one million donation as an expense under what it called Project Ingrid, which were treated as expenses related to the SASSA EOH Oracle tender?

MR KODWA: No, not to my knowledge.

ADV CHASKALSON SC: Can I show that to you? If you go to page 517, it started at page 516 which has the covering email which explains it.

20 **MR KODWA:** Okay.

ADV CHASKALSON SC: 516 it says, there's an email in the middle of the page, Jehan Mackay to Reno Barrie:

“Hi guys,

Can you send me a summarised recon of the Project Ingrid account.”

And we have heard that Project Ingrid was a list of expenses that the EOH made for the ANC that was subsequently treated in the EOH books as expenses related to the SASSA EOH Oracle contract so if you go down to 6th of November 2015 you will see an amount ANC fundraising accounts R1million, so that R1million donation to the Eastern Cape PGC was treated as one of these Project Ingrid expenses which in EOH's accounts were treated as expenses relating to the EOH SASSA Oracle
10 contract.

Now can you think of any reason why EOH would treat a donation to the ANC as a legitimate expense relating to a tender for the SASSA EOH Oracle contract?

MR KODWA: No I cannot think of any reason Chair.

ADV CHASKALSON SC: And if those – assuming you know a legitimate reason that it could be treated as such, would you agree with that?

MR KODWA: Say it again Mr Chaskalson.

ADV CHASKALSON SC: There is no legitimate reason to
20 treat a donation to the ANC as an expense related to the SASSA EOH Oracle contract.

MR KODWA: I don't know Chairperson, honestly I wouldn't know, I wouldn't like to mislead the Commission, I don't want to speculate.

CHAIRPERSON: So I guess all you can say is you know

nothing that would justify it but you are not saying that there is nothing that justifies it in case somebody else puts up something?

MR KODWA: If there is an ...[indistinct] yes Chairperson but I ...[intervenes]

CHAIRPERSON: In terms of your knowledge you don't know.

MR KODWA: From my knowledge, no.

CHAIRPERSON: H'm, okay.

10 **ADV CHASKALSON SC:** Let's get to your accommodation expenses, can we go to page 423.

MR KODWA: 400 and?

CHAIRPERSON: 23, 423.

MR KODWA: Yes Chairperson.

CHAIRPERSON: H'm, Mr Chaskalson?

ADV CHASKALSON SC: Now this is a list of expenses that we understand were paid – if you go up to the top you see it says reference invoice 76, and the – sorry number is invoice 76 and the reference is Mr Z Kodwa.

20 **MR KODWA:** Right.

ADV CHASKALSON SC: And if you look down at these descriptions of the accommodation do you recognise these as places where you stayed in Cape Town on the dates in question, so Barledos[?]

MR KODWA: Yes I do.

ADV CHASKALSON SC: Now this is an invoice that was sent to EOH for that accommodation and you will see that the total amount that EOH was billed for that accommodation was R656 200, EOH had a credit with the travel agents so the amount due was only R426 200 but the amount that was charged for that accommodation was R656 000. And that is all in a space of time from 23 December 2015, sorry from 29 October 2015 to 5 January 2016, so it is less than three months.

10 I see in your affidavit that you didn't – you understood that this accommodation was provided to you by Mr Mackay.

MR KODWA: Correct.

ADV CHASKALSON SC: Is that correct? So you understood it to be Mr Mackay's personal gesture to you, it came from Mr Mackay.

MR KODWA: ...[Indistinct] Yes.

ADV CHASKALSON SC: And it was his gesture as opposed to EOH's gesture as far as you were aware.

20 **MR KODWA:** Correct.

ADV CHASKALSON SC: Did you know at the time that this accommodation did not belong to Mr Mackay and that somebody was going to have to pay for it?

MR KODWA: No.

ADV CHASKALSON SC: Do you accept now that

somebody did have to pay for it and the amount paid was R656 200?

MR KODWA: Well like I said Chairperson but I have no reason to doubt the documents from this honourable Chair, Commission but let me just give a context.

ADV CHASKALSON SC: Yes.

MR KODWA: Mr Mackay has an number of properties as far as I understand around Cape Town, he has got, sometimes if he will not be able to accommodate me during
10 the period that we are talking about he will tell me that he has got other properties that he has got access to, in other words it is not in my instance that I will go to a property that is so-called extravagant or luxury and say I want that property, that is the first thing. The second thing is that Mr Mackay if you look at one of his properties, number 5 Nettleton. Number 5 Nettleton is his house, it is not a guest house, it is not a rental house, so whether what happens arrangement he has in terms of his services as part of providing or offering hospitality I wouldn't know but
20 what I know is that I never asked Mr Mackay that I will need accommodation can you pay for this because my understanding was that he was not paying for that accommodation, I was using some of his properties and therefore Chairperson the difficulty about hospitality if you visit me I decided to be this extravagant, it is not – I

cannot say no it is not ...[indistinct] it is hospitality, you accept hospitality for what it is but I thought I should just give a context to it because I saw how Mr ...[indistinct] very dramatic where he tried to explain this luxury accommodation as though there is a certain Mr Kodwa who went on a binge of extravaganza in Cape Town to drive a political statement in my view by Mr ...[Indistinct] that to refer to an accommodation in an area in Cape Town called Camps Bay for me it is extravagant, it is a luxury, but when

10 he refers to other people it is normal for other people to stay there, it is because of this apartheid separate development, because a person like me whether I can afford it or not I shouldn't be staying in Camps Bay in the first instance and this is where the issue about luxury, issues about extravagance he was demonstrable and very dramatic when he was making that point, and I could see he was driving a very strong point in terms of public narrative of these leaders who live beyond their means, very binge and extravagant and therefore I also want to re-

20 emphasize the point that 5 Nettleton it is Mr Mackay's residence, the fact that on that weekend it was not available it was him who said I will look for other place. I would not have asked is it one of your properties or not because I have always for years stayed in his properties.

ADV CHASKALSON SC: Let's explore the implications of

what you have just told us Mr Kodwa, if you look at this invoice which is an invoice to EOH, for your first trip to Mr Mackay's , to 5 Nettleton, which you say is Mr Mackay's residence, EOH was charged R100 000. Do you see that?

MR KODWA: Yes.

ADV CHASKALSON SC: 15 to 16 October. For your second trip to 5 Nettleton 7 to 9 November EOH was charged R150 000, so in total when you spent three nights at Mr Mackay's house EOH got charged R250 000, now
10 who would be charging R250 000 to EOH if that was Mr Mackay's house?

MR KODWA: Well we can just speculate Chairperson, like I say before this Commission in reference to the question there is nothing that says Mr Kodwa you went to Mr Mackay, you know very well that Mr Mackay or any of his entities will have to pay for your accommodation. This was hospitality that I have always, that was always offered to me by a friend who owns properties and whenever he was in Cape Town or whenever one of his properties was
20 available. What arrangements he had about maybe the third party I was not involved and I would not have been aware about the payments except for [c] that indeed ...[indistinct] payments, but the nature of those payments how they came about, for an example there is an issue about a private chef, he has always had a chef so there

was no special arrangement for me, he has always had a chef in his properties, so it is not like there was this extravaganza of a chef that was arranged for me because of my staying there, he has always had them, so these are the difficulties that sometimes when you accept an offer of hospitality you can't explain where did you buy the goat, where did you buy the sheep and why are ...[indistinct] and these are difficult questions when you receive hospitality offerings.

10 **ADV CHASKALSON SC:** Well Mr Kodwa I am not asking about you at this stage, I am putting to you that you on your version went to stay at Mr Mackay's private residence which you understood to be his gesture to you.

MR KODWA: Correct.

ADV CHASKALSON SC: And in the process EOH got billed R250 000 for the five days that you spent there plus another roughly R15 000 for the private chef who Mr Mackay always employs on your version, do you accept that, because that's what this invoice says?

20 **MR KODWA:** I have no reason Chairperson again to dispute the facts before me.

CHAIRPERSON: H'm.

MR KODWA: I do not really know how Mr Mackay reflected this internally in his company. We can debate that whether it was extravagance or something else, but I

accept that Mr Chairperson is your version.

ADV CHASKALSON SC: Well it is not my version, it is what the invoice says.

MR KODWA: Yes.

ADV CHASKALSON SC: Now do you know when in the EOH accounts these payments, the R656 200 were also reflected as expenses on Project Ingrid that were booked as EOH expenses relating to the SASSA EOH Oracle tender.

10 **MR KODWA:** Mr Chaskalson through Chairperson to be fair to me, and I think to be fair to Mr Chaskalson Mr Mackay is best placed to explain some of these questions.

ADV CHASKALSON SC: I agree with you completely on that one, but I do need to put these questions to you because they are going to be relevant to a question that I put to you at the end of this question.

MR KODWA: Okay.

ADV CHASKALSON SC: Did you know at the time that these expenses were going to be treated as EOH company
20 expenses relating to the SASSA Oracle tender?

MR KODWA: No, certainly no.

ADV CHASKALSON SC: And do you accept – or let me ask the question again, were you aware of any legitimate reason why these expenses of R656 200 relating to your stay at Mr Mackay's residence and other residences in

Cape Town that he made available to you could be booked in the accounts of EOH's legitimate expenses relating to the SASSA Oracle tender?

MR KODWA: I wouldn't know of any reason, of any legitimate reason for that Chairperson.

CHAIRPERSON: What is your reaction to the discovery that your stay in these places, which you regarded as Mr Mackay's personal hospitality to you as a friend were linked by EOH, a company in which he was involved, to a
10 tender on their part. Let's assume for present purposes that at that time you knew nothing about that, you enjoyed what you regarded as his personal hospitality to you as a friend.

When you discovered that there was payment, firstly not by him but by a company and not just by a company but a company that was linked to certain tenders, but that payment for your accommodation in their books is linked to a tender. What is your reaction to that discovery?

20 **MR KODWA:** Well firstly Chairperson I wouldn't want to pre-empt Mr Mackay's version if the Commission may want some answers from him, I am ...[indistinct] in the matter, he has got a version of his own.

CHAIRPERSON: Yes.

MR KODWA: From Mr Powell, but I must state

Chairperson that for the first time I saw when Mr Powell made the presentations of this discovery when he appeared before this Commission, in other words all along it is not that I knew 2015 about the payments, no, it is only when the presentations, when Mr Powell was led in his evidence in chief at this Commission the repayments. Of course that to me as a leader I should have been worried about it, I should have been worried and these are the issues that I indicate that sometimes a very difficult ...[indistinct] to
10 deal with in the interaction between the people and the leadership is that of business, because you don't know behind what they do and it may have a reflection on your own conduct as a leader and these are the issues that I say with hindsight, it is important to reflect and it would become circumspect, even when you at the time of a meet I think with hindsight you ought to be able to manage certain issues, including for an example to ask a question, which is a very uncomfortable question to a friend, where is it coming from.

20 And you know Chairperson as I do that many of us we rely, particularly us, generally black people, we rely on borrowing, we are brought up, we are who we are because somebody else assisted on the route. We don't ask Mathlalini next door when we ask for sugar or toilet paper, these are the things that as we go along you begin to

question and ask, the kind of assistance you ask for and the kind of assistance that gets offered to you.

CHAIRPERSON: Just for the sake of completeness, the reason why I asked you that question what your reaction is or was when you discovered this is that on the face of it, it says certainly EOH who made the payment viewed the payment as connected with a certain tender, you know, so you might go and stay in accommodation, you are happy, you say your friend is being hospitable to you and then
10 when they do their books they link it to a tender. Anyone who then sees that says well there's a link you know, so that is why I was asking because she request it might be that it is something that you will find unacceptable when it does happen, when you get to know to say well had I known it would be linked to a tender I wouldn't have accepted that.

MR KODWA: Absolutely, correct Chairperson.

CHAIRPERSON: H'm, Mr Chaskalson?

ADV CHASKALSON SC: Mr Kodwa can I ask you have
20 you spoken to Mr Mackay since you heard Mr Powell's evidence and you realised that – and you learnt that EOH had linked these payments to a tender.

MR KODWA: How must I say Chairperson, I have always had an understanding and that understanding even exists today, that I have no – I had no interaction with EOH or

any of its entities. The person I always interacted whether in terms of assistance or anything is Mr Mackay, so when information came that there were certain things that having spoken to him that it will be going to another third party or whatever, and I did indicate it to him after Mr Powell that I would like to come to the Commission which was a point made by my legal representative here, Mr Sikikhane, that I have always had a wish that I want to come before you and put myself my story, the version which I am really grateful
10 that today I have had that opportunity.

ADV CHASKALSON SC: My question is slightly different Mr Kodwa, it is did you raise with him what Mr Powell was saying which is that this accommodation which you always regarded as his personal gesture to you, had actually first cost R626 000 for EOH, and second had been in linked in the EOH accounts to the SASSA Oracle tender, have you raised those questions with Mr Mackay?

MR KODWA: My understanding in my conversation with Mr Mackay Chairperson is that he has got his own version
20 and I don't want to prejudice him, I don't know what interaction he has with the Commission, but we had agreed on one thing, that you he was interacting with me as a friend, but he has got his own explanation about the question that is being asked by Mr Chaskalson as to the payments that came from that entity or that entity.

CHAIRPERSON: Is your answer that you ...[intervenes]

ADV CHASKALSON SC: ...[Indistinct] sorry.

CHAIRPERSON: ...you raised this with him but you are reluctant to say what he said to you?

MR KODWA: Absolutely Chairperson, correct.

CHAIRPERSON: Mr Chaskalson.

ADV CHASKALSON SC: Our problem Mr Kodwa is that Mr Mackay got a notice of Mr Powell's evidence and got invited to put his version before the Commission and to
10 apply to cross-examine Mr Powell, he chose not to. So we haven't heard his version yet, but I understand your reluctance because he is a friend, but I must ask you to tell the Commission what did he tell you to explain this situation? You understood that you were getting hospitality from a friend, it turns out that what was actually happening is that EOH were being billed R626 000 for your accommodation and they were treating in their accounts as an expense against the SASSA Oracle tender.

MR KODWA: Well to the best of my knowledge
20 Chairperson I think this Commission has tried even the most difficult witnesses to find whenever you need them, I am sure Mr Mackay if you can just put more effort the Commission will find him, but I think it will be unfair of me to present his version to the Commission, except to an extent that Mr Mackay in his own understanding and my

understanding is that there was no relationship between me or some of his entities including EOH, I had a relationship with Mr Mackay.

ADV CHASKALSON SC: So Mr Mackay confirmed your understanding which was that you have no relationship with EOH, your relationship was with him and did he confirm that this was his personal hospitality to you?

MR KODWA: Correct.

ADV CHASKALSON SC: Chair I am aware that we have
10 reached just past one o'clock, my estimate is maybe we have half an hour to go, I am in your hands Chair we can – if you would like to take the adjournment now we can – I can't see us running more than half an hour more.

CHAIRPERSON: I think if it is about half an hour let's adjourn and then we are going to resume at five past two, but let me just say that there is a possibility that we might not resume at five past two, there might be some delay, if that is going to happen all parties are going to be informed during the lunch break. When I come back i will mention –
20 I may mention why, but there is something that might need my time so it is just that I am only going to know during the lunch break whether I have got to attend to that commitment or not, so – but if there is a delay it might be a delay of about 30 minutes from when we are supposed to start, to resume, but it may be that if you don't get any call

then you must know we will resume at five past two.

Okay, alright, we will then adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good morning everybody once again. Yes, I am sorry we had to start later than ten past or five past two. I went to, I had to go and get my first jab. So I have just come from getting vaccinated, so I have got my first jab.

10 I will get the second one later in due course. So that is the reason why you, I have delayed you but I am sure you are saying it is an acceptable reason. Mr Chaskalson, Mr Chaskalson ...[intervenes]

ADV CHASKALSON SC: We are just envious DCJ.

CHAIRPERSON: Well, I was about to say you look envious.

ADV CHASKALSON SC: Yes.

CHAIRPERSON: No, it, this thing goes according to who came to be stabbed first. Okay, alright. Let us continue. Let us continue, okay.

20 **ADV CHASKALSON SC:** Thank you Chair. Mr Kodwa, can we go to page 328?

CHAIRPERSON: 348?

ADV CHASKALSON SC: Three two eight, 328.

CHAIRPERSON: 328, okay.

MR KODWA: Okay.

ADV CHASKALSON SC: Now this is an email that comes from Mr Mathe to you on the 14th of July 2015 and it reads as follows:

10 “My brother I hope you are good. If it is possible, please can you ask the Chair to look into DHA, RFB 1303/2014. There are games being played. Initially we were number one. Then Phandalane and the head of procurement decided to re-evaluate the bids and now it seems we are disqualified. The total value is about 360 million. Also, please do not forget to talk to the regional funding coordinator to understand what their funding requirements are. Thanks my brother.”

 Now do you recall receiving this email from Mr McKay?

MR KODWA: Correct Mr Chaskalson.

ADV CHASKALSON SC: And he says:

20 “If it is possible, please can you ask the Chair.”
 Who is the Chair to whom he is referring?

MR KODWA: I do not have given the passage of time, I do not remember that specifically who is he referring to. But I think I would have spoken to him following this email that it is one of those things that unfortunately I cannot help.

ADV CHASKALSON SC: But my question is different. Who

is this Chair that he is referring to? Chair of what do you think?

MR KODWA: I do not know. I would not know Chairperson.

ADV CHASKALSON SC: Would you have known at the time?

MR KODWA: Say it again?

ADV CHASKALSON SC: Is it that you just cannot remember now because it is six years ago or is it something that you would not have known at the time?

10 **MR KODWA**: Well, it is possible that I would know at that time. that is the point I am making that with the passage of time, sometimes I mean the emails, the conversations is about five, six years back. You may not even remember the context of some of those conversations including the image.

ADV CHASKALSON SC: Yes. Who could the Chair have been? Are we talking about, one of the possible positions of Chair that he could have been referring to here?

MR KODWA: I do not want to speculate Chairperson, I do not want to speculate quite frankly.

20 **ADV CHASKALSON SC**: Well ...[intervenes]

MR KODWA: For me Chairperson and I say this with respect to Mr Chaskalson. Regardless of who the Chair was, I would not have done it. I would not have done such a thing where I am requested to interfere with procurement. So and I say this respectfully not because I do not

remember the exact person that he is referring to, but I would not have done it.

ADV CHASKALSON SC: I am not getting to that at this point. I am just trying to establish what this email is actually asking you to do, and one of the things it is asking you to do is to ask the Chair to look into DHA RFB.

MR KODWA: Yes.

ADV CHASKALSON SC: So I am trying to find out who Mr McKay thought he could ask you to interfere in the tender
10 process with.

MR KODWA: I have no recollection of this Mr Chaskalson.

ADV CHASKALSON SC: Well, would it be the Chair of the provincial ANC? What Chair positions are there that Mr McKay might have thought that you had access to?

MR KODWA: The difficulty Mr Chaskalson is that I must now somewhere try to give these answers on behalf of Mr McKay. I have no recollection or certainly the Chairperson of the ANC, whether in the province or in the region will have nothing to do with the government tenders.

20 **ADV CHASKALSON SC:** I appreciate that.

CHAIRPERSON: Continue Mr Chaskalson.

ADV CHASKALSON SC: I appreciate that and the Chair in the region should have nothing to do with tenders. So Mr McKay clearly thought that somebody was and he asked you to speak to that person. You are saying ...[intervenes]

MR KODWA: It is possible for business people, my apologies Mr Chaskalson. It is possible for business people to think that person or that person may assist them to achieve their business objectives. [00:06:18 – no sound].

CHAIRPERSON: ... that I said because I do not know if it was recorded. Oh. It says recording in progress so I hope that ... I was saying that whoever the Chair was, that Mr McKay was talking about, he obviously thought that it was somebody who could do something about their predicament
10 and their predicament as it articulates in that email was that whereas they had initially been placed as number one in regard to the tender, they had since been disqualified.

So that might mean somebody within the Department of Home Affairs, because I think DHA stands for Department of Home Affairs if I am right about that and that that was a tender relating to Home Affairs or if it was somebody not within Home Affairs, it must have been somebody that he never the less thought could influence and change their placing and maybe get them back to be number one on the
20 list.

That seems to be quite clear. Mr Kodwa, would you say you also understand that email along those lines as well?

MR KODWA: It is possible Chairperson that it could have been Mr McKay's impression.

CHAIRPERSON: Yes.

MR KODWA: Within whatever space ...[intervenes]

CHAIRPERSON: Ja.

MR KODWA: With influence in one way or another.

CHAIRPERSON: Ja.

MR KODWA: But if it were to come my way I would not have done it.

CHAIRPERSON: Yes. Mr Chaskalson?

ADV CHASKALSON SC: Thank you Chair. He then
10 ...[intervenes]

CHAIRPERSON: Maybe what I would like to know is in relation to the other email where, if I recall correctly Mr Kodwa said he told Mr McKay he does not, he did not get involved in tender matters, whether this was ... this email at 328 was after that or before that.

Probably you might know Mr Chaskalson, but Mr Kodwa might also know. Mr Kodwa, do you know whether this was after you had told him that you do not get involved in such matters or was it before?

20 **MR GABARONE:** I think this would have been the very specific email that I was responding to among others.

CHAIRPERSON: Yes.

MR KODWA: I would have told him specifically on this email and his request that it is something that unfortunately I cannot do. Like I have just said, it is a matter that was

outside of my scope. I was not within government. I was not within the state and the ANC has no capacity.

Certainly a spokesperson to influence tender, tender procurement in government.

CHAIRPERSON: Yes, but what I was asking, I hope my recollection is correct. My recollection is that before lunch one of the emails we dealt with was an email from him which sought your assistance in regard to some tender and my recollection was that you told him that you did not get
10 involved in such matters.

So I am wondering whether if I am correct in that recollection, this one was a situation where he was coming back to you, asking you to ask somebody to get involved in tenders, despite the fact that you had told him that you did not get involved or whether this was the first time you got a chance to tell him.

MR KODWA: No, there was and I think you are referring to the Eastern Cape Department of Education.

CHAIRPERSON: Yes, yes I think so.

20 **MR KODWA:** I do not know the sequence, which one came first, but I would have said the same thing even in [indistinct]

CHAIRPERSON: Ja, Mr Chaskalson?

ADV CHASKALSON SC: Just to clarify the sequence, this is 14 July 2015, the Eastern Cape emails were I think

September. They are on page 413.

CHAIRPERSON: Oh.

ADV CHASKALSON SC: You can see the exact date.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: 30 September 2015. So it is
...[intervenes]

CHAIRPERSON: [indistinct] first ja.

ADV CHASKALSON SC: This is the first one.

CHAIRPERSON: Ja, okay. Okay. Okay. Thank you.

10 **ADV CHASKALSON SC:** My next question Mr Kodwa is on
this email at 328 he says:

“Can you ask the Chair to look into DHA RFB
1303/2014.”

So he refers you to a very specific bid. Why would
he have assumed you knew anything about that bid?

MR KODWA: Well I do not know and again Mr Chaskalson,
with the greatest respect, I would have ... he would have
tried if there was a possibility that I talked to somebody but
my response to him, to an extent that for example I only got
20 to know about such a tender in terms of the reference given
here, when it was presented by Mr Powel.

I have never seen this before. Whether the email he
sent to me, my response would have been clear, with the
same email ... similar email which was sent about
education. That unfortunately this is where I draw a line in

terms of friendship, but if there is an expectation that our friendship is such that we would be able to assist one another on issues of state procurement, this is a matter I would have said no, unfortunately I cannot help.

ADV CHASKALSON SC: It is what you say. Then clearly you did not get the message because he came back to you asking for more help at the end of September.

MR KODWA: Well, I think you can read between the lines. Whether he did not get the message or he was trying his
10 chance again.

ADV CHASKALSON SC: The ...[intervenes]

CHAIRPERSON: I am sorry Ms Chaskalson. At 328 the second line or not line, the fourth line, he says:

“Also please do not forget to talk to the regional funding coordinator to understand what their funding requirements are.”

That give me the impression that he is talking about donations made unwrong. Do you have an understanding what he was talking about there?

20 **MR KODWA:** It is possible Chair that he was talking about donations, but as I said ...[intervenes]

CHAIRPERSON: Yes.

MR KODWA: I do not even remember or recall a regional funding coordinator. We do not have such a person in the structures of the ANC. So sometimes the email, the

structure it creates problems, but I can appreciate being a businessman you may not understand the structures of the African National Congress.

CHAIRPERSON: Mr Chaskalson?

ADV CHASKALSON SC: Just picking up from the Chair's question, do you accept that last sentence:

“Please do not forget to talk to the regional funding coordinator, understand what their funding requirements are...”

10 Is an invitation to get back to him with a request for a donation to the ANC?

MR KODWA: Certainly not from me. The request was certainly not from me. Of course, he is referring to a certain person, that if they have got any funding requirements, he may come back to him.

ADV CHASKALSON SC: But why would you have to talk to that funding coordinator?

MR KODWA: I mean, like I said even in my statement and which is a matter that I can never deny Chairperson. That
20 whenever it was appropriate and lawful, where a donor or the structure of the ANC may want assistance from somebody I will gladly assist that structure.

I have not denied that. So if here there was an impression from him certainly, that if I could talk to a certain structure and so on, but again it does not mean on

my part there was any expectation. Could be on his part, but certainly on my part, if I would have done so not because there was any expectation that I influence a tender in favour of Mr McKay.

ADV CHASKALSON SC: I want to put to you that on reading this email, you must have realised that there was that expectation on his part, that he was asking you to do something about tender DHA RFB1303/2014 and he inviting you to speak to the regional funding coordinator to
10 understand funding requirements, essentially inviting you to start a process that would result in a donation to the ANC.

That the two in this email are linked. What is your response to that?

MR KODWA: Thanks Mr Chaskalson for asking that question. I have got great appreciation that you asked that question, because your supposition, there is a constituency out there, that holds that view. That holds the view that to be a politician to be the leader in government, to be the member of the ANC, there is no space for errors and
20 whatever you do is corrupt.

I do not think the view and the supposition you have just asked now, and I am not say I am trying to throw a battle at you. I think, I do not think we should dismiss that supposition that there is a constituency where we have a responsibility as legal, to the point that I made earlier,

where we must be circumspect because it is precisely that constituency that makes us to look as leaders as corrupt, as abusing power and abusing authority.

But again it is not true. But the fact that it is not true, it does not mean we must not circumspect that our conduct, to an extent that it may create an impression, which is created by this email, that we might have facilitated tenders by virtue of our positions in leadership.

So I do respect the fact that you raise that question.

10 It is not true, but there is no facts about it, but of course it is not an illegitimate concern. There is a constituency out there that holds that view, as leaders we have a responsibility to deal with that notion without being defensive.

ADV CHASKALSON SC: Mr Kodwa, I want to take ...[intervenes]

CHAIRPERSON: Just one second Mr Chaskalson. I think it would be important Mr Kodwa, that this kind of situation not just be looked at from I think the ANC's side or from the
20 point of youth leaders of the ANC as something that comes from somewhere in society.

There is a group of people who think like that. I think that it is a situation which demands that the ANC and its leaders say to themselves are there some among us who do things that give rise to this perception or this thinking by

some people in society?

What are those things that some of us are doing whether they do them with a full appreciation or not, but what are those things that they are doing which make people think along these lines with regard to the organisation or some leaders within the organisation.

So that it can be dealt with properly, rather than in a manner that seeks to say well, it is just some people who think like that. we accept that we must deal with it, but I
10 think an in what looking approach also might be helpful, but I wanted to also say the one reading of this email is definitely that Mr McKay is really here linking the two.

Now maybe somebody else might say well, maybe he might have linked it incidentally if he was writing to you about the first card, their problem. It is just unfortunate that he wrote about the funding in the second paragraph, but a very legitimate interpretation is, seems to be that he is saying I have a need or we have a need.

Somebody is disqualifying us from getting 360
20 million rand in circumstances where at one stage we were number one. But I also know that is now if we, if we read the second paragraph as referring to the ANC or the region of the ANC or the branch or whatever.

But if we read it to be funding relating to the ANC, that he is now saying but I know that the ANC also has

needs. Maybe I can take care of the ANC's needs, but they must take care of my needs as well. So I am saying somebody reading this, might legitimately take that interpretation to say that is how it comes across now.

Is that something you accept as legitimate understanding of the email?

MR KODWA: I certainly agree with your sentiments Chairperson.

CHAIRPERSON: Yes. Yes, and of course when one looks
10 at that within the context of this matter, one is forced to go back and think of that lady who was sending a message I think to him, at some stage saying I think the ANC in the Eastern Cape saying they were arm wrestling them, because they had made a submission.

You know, so it connects and then that becomes ... it becomes quite a concern. Thank you. Mr Chaskalson?

ADV CHASKALSON SC: Yes Chair. I want to raise another concern which is it is clear from this email that Mr McKay has access to confidential information about a tender
20 process. He says:

“Initially we were number one. Then Phandalane and the head of procurement decided to re-evaluate the bids and now it seems we are disqualified.”

Now that information is information that should be

confidential to a tender process, because we know that the tender process had not been decided at this point. Did it not concern you that Mr McKay seemed to be getting leaks from inside the tender process about what was going on?

MR KODWA: Mr Chaskalson, to an extent that I have never been involved in tender procurement, I would not know if as a bidder, what information we have access to or not. So I would not know whether it was confidential or it was given to him.

10 I will not make an appropriate comment about it.

ADV CHASKALSON SC: He refused to Phandalane, who he assumes you know about. Do you know who this Phandalane is?

MR KODWA: No.

ADV CHASKALSON SC: So are you saying you never knew or you cannot recall at this point?

MR KODWA: I do not know Phandalane Chairperson.

ADV CHASKALSON SC: Any Phandalane.

20 **MR KODWA:** I am sure with the few friends, the people I know as Phandalane, but certainly this Phandalane who is involved in tender procurement of the department, I do not know Chairperson.

ADV CHASKALSON SC: Did it not strike you as strange that Mr McKay writes you a letter talking about Phandalane, and you do not know who he is referring to?

MR KODWA: Precisely. The assumption about business people and associate sometimes, they think of you and they think that you know of somebody and in reality we do not know everybody and it is not for us to know everybody. Our responsibility as leadership is to help people to resolve their problems, but I think the assumption is that perhaps he thought at that stage I knew of somebody called Phandalane and I do not know this person.

ADV CHASKALSON SC: The Chair took you through the
10 email and suggested to you that on its face, the email can be interpreted to suggest that he was requesting some sort of action to influence the tender process and linking that to assistance to the ANC in the form of a donation.

You accepted that that was an interpretation that flowed from the email?

MR KODWA: I agree with your sentiment Chairperson.

ADV CHASKALSON SC: Are you aware that if that is what he was doing, it was a crime under the prevention and combating of corrupt activities act, on his part. I am not
20 saying on your part. I am saying on his part.

MR KODWA: I really do not know how do you expect me to answer Chairperson, if he was committing a crime on his part. I think it is a matter that he can deal with. At least, I am happy you say not a crime certainly on my part.

ADV CHASKALSON SC: No, no but it remains an important

question because are you aware that it is a crime to offer anything in return for influencing a tender process?

MR KODWA: Yes, I know about it. I know about it.

ADV CHASKALSON SC: It is not that you have to give it, just offering it is the crime.

MR KODWA: I know about it.

ADV CHASKALSON SC: Now you have said that you told him that you cannot help. That this is where your friendship does not go this far. How did you tell him that? In an
10 email, on the phone, in person?

MR KODWA: I am sure if there was any email, the Commission would have got hold of that email because the Commission did some forensic and the emails are now part of the documents. I must have called him or we must have spoke through meetings and so on, but if you were to ask me how did I convey a message six years ago, I would not recall Chairperson.

ADV CHASKALSON SC: But you are very clear that you did convey that message?

20 **MR KODWA**: Absolutely, in no uncertain terms.

CHAIRPERSON: And what was his reaction when you conveyed that, do you recall?

MR KODWA: I cannot remember if you had to ask me verbatim what he said, but I think he has always appreciated my principle stance on these matters, because I

never elevated myself to be this person who suddenly has authority on matters of state, who actually did not reside with me when I was outside of state.

I am sure he would have appreciated that honestly from my part.

CHAIRPERSON: Okay, Mr Chaskalson?

ADV CHASKALSON SC: I want to take you back to the chronology. If you, this email was the 14th of July. How, if you told him you could not do this, how soon after this
10 would you have told them? The same day, the next day, the next week, what are we talking about?

Is this something you would have reacted to very quickly?

MR KODWA: May I just make this point Chairperson? I think, I find it a bit difficult because I have been very candid with the Commission. That is the approach I took with my legal [indistinct] guided me and I think there is a very clear conscious on my part.

It does appear to me that Mr Chaskalson is looking
20 for something wrong, which unfortunately I cannot find. It is exactly this reason, I would make that supposition that other people may come and be reluctant to be as candid as possible before the Commission because the answers I am giving in as far as Mr Kodwa is concerned, the questions about other people Chairperson, not so much because I do

not have answers, but because I think other people can give their versions and answer those questions that relate to their conduct.

What I can do to the best of my ability to the Commission is to help the Commission in as far as Mr Kodwa is concerned.

CHAIRPERSON: Well, no I understand what you are saying Mr Kodwa, but you know you do know of course that not everyone is happy to help this Commission.

10 **MR KODWA:** Absolutely.

CHAIRPERSON: And Mr Chaskalson did mention earlier on that your friend, Mr McKay ... I mean on the one side you are so prepared to come to the Commission and put your side of the story and actually take responsibility for some of the things that you may look back now and say maybe I should have done differently because they could give rise to certain perceptions.

But he was given notification of Mr Powel's evidence and all of these emails, and he was not forthcoming to say
20 these emails, I am happy to supply a statement and put my side of the story, particularly saying well, maybe some of them might put a wrong understanding on my friend, Mr Kodwa's role in our interactions.

So I must be forthcoming. He has not done that from what Mr Chaskalson says. So unfortunately those who

appreciate the important of the Commission and want to help it, are the people from whom we try and get as much information as possible, because those who do not want to help the Commission, even when they are brought here screaming and kicking, they will refuse to answer certain questions and therefore will not be so helpful and yet it is very important for this Commission to gain as much understanding as possible as to why, how certain things happened and why they happen in order to find
10 recommendations as to what should be done in the future to avoid certain things.

So the question that Mr Chaskalson is asking you, requires nothing more than for you to just say what you remember. Obviously, doing the best you can to remember what you can, and ... so the idea is let us try and get as much information as possible to make sure we can understand are we dealing here with a situation where some people who are linked to certain companies that sought tenders from government institutions, where they may have
20 sought to use their proximity to certain people within the ANC, in order to get those tenders, are the people within the ANC who may allow themselves to be used like that.

Are the people within the ANC who might not have appreciated that they are being used by business people for certain tenders, but that is what was happening. So we

need to try and understand what the situation is. As I say, some situations it may be that somebody within the ANC is working in cahoots with business entity and is doing what they are not supposed to do.

You know, by for example maybe talking to people in a certain government department and saying, I am just making an example. saying you people you must please in regard to that tender you must please remember so and so, or remember that company because that company is good to
10 the organisation.

It donates a lot of money to the organisation so you must remember it when you decide that tender. Now obviously that should not happen but there might be people who do things like that. Then there might be people who some business people have identified within the ANC, and they come close to them.

They seek to use them, but maybe those people are not aware that they are being used. So it is important to try and just understand, I am sure there are other categories of
20 situations. So Mr Chaskalson's questions are meant simply to enable us to try and understand.

Certainly there is full appreciation of the approach you took this morning.

MR KODWA: Very much Mr Chairperson.

CHAIRPERSON: Okay, alright. Mr Chaskalson?

ADV CHASKALSON SC: So Mr Kodwa, how quickly would you have responded to this request by Mr McKay to interfere in the tender, to let him know that this is not what you did?

MR KODWA: Well I, I mean it depends when I was in receipt of the email itself. Could have been immediately, could have been few days after or if it was when we met, or it could have been a call and so on. So that is why maybe a time difference and the fact that you will not recall
10 everything, and a specific even, what you said when to who.

ADV CHASKALSON SC: Can I put to you that this is something that I would have expected you to respond to very quickly, so that no one was left under the impression that they could rely on you to interfere with tenders? Is that not how you would have seen it?

MR KODWA: I do not know what quick means, because if the email was sent on the 14th of July, and I received it on the twenty something of July, and I do not know what quick that will mean, but all that I am saying is that what was
20 important for me is that I did convey the message and that message was very unequivocal.

ADV CHASKALSON SC: Because if I look at the chronology, I see this is the 14th of July and you say on receipt of this email, whenever that would have been, you conveyed a very clear message to Mr McKay. On the 5th of

August, if we go back to page 342 which we have dealt with already, that is the letter where he writes to you. Saying:

“If you need a draft letter let me know but I am sure you will be fine with the content. It should simply state that the movement humbly requests assistance in the form of sponsorship of one million for whatever the purpose.”

Something like that, either from the DG himself or Jerry or any other authority. Now that is three weeks after
10 he has asked you to interfere in a tender in the same letter that he has invited you to ask for money, and a day after that or sorry, it is not a day after that.

It is if I recall correctly it is a week after that on the 12th of August, there is a one million donation in the form of a payment to the elections agency that we have already discussed. Can you comment on that?

MR KODWA: I really have no comment to make on that Chairperson.

ADV CHASKALSON SC: Then we saw that on the 30th of
20 September he was speaking to you again in relation to year age tenders. The Eastern Cape tenders. You said again that you would have at the time made it clear to him that you could not interfere.

MR KODWA: Absolutely correct.

ADV CHASKALSON SC: You see, and then if we go

forward to 2 November, if you go to page 329 ...[intervenes]

CHAIRPERSON: 329?

ADV CHASKALSON SC: 329.

CHAIRPERSON: Hm.

ADV CHASKALSON SC: After you have told him in no uncertain terms that you cannot interfere in Home Affairs, after you have told him in no uncertain terms that you cannot get involved in the Eastern Cape tender, on 2 November he is sending you copies of the letter in relation
10 to Home Affairs that says that the tender has been cancelled. You see that?

MR KODWA: I see that.

ADV CHASKALSON SC: What was your response to this?

MR KODWA: I do not think there would have been any need for a response. I think he was just sharing information with me on that. I do not think he was requiring, he was expecting a response from me.

ADV CHASKALSON SC: Why would he share that information with you if you have made it clear to him on two
20 separate occasions now that you wanted nothing to do with EOH tender business?

MR KODWA: Like you see in the correspondence, there is no reply correspondence from me in response to this. I would not know in absolute terms why he would have sent, for what purpose and what was the motive.

ADV CHASKALSON SC: Well, we have seen in the accounts of EOH, he is consistently recording payments to the ANC. Accommodation payments in respect of your payments as costs relating to tenders. So it seems to me that if you did convey the message to him that you did not want to get involved in any EOH tender business, either he did not get the message or he was misrepresenting the situation to his colleagues at EOH.

What is your response to that?

10 **MR KODWA:** Well, I mean absolutely I cannot say in absolute terms that because the difficulty Mr Chaskalson, is that I do not know this other third party persons that he was dealing with internally within the organisation or entities. So my engagement and interaction starts and stops with him.

What he does after that, that is something which I see some of those things on record here, and that is the difficulty about to give an absolute answer to some of the questions that you are asking.

20 **ADV CHASKALSON SC:** But what you say, but can you say with confidence that he got the message from you? You made that message absolutely clear to him?

MR KODWA: I made that message, I made that statement since the morning.

ADV CHASKALSON SC: But he knew ...[intervenes]

CHAIRPERSON: Of course, I am sorry Mr Chaskalson. Of course if you had told him in July after he had sent you that message of 14 July 2015, that you did not get involved in tenders and in effect he should really refer any matters relating to tenders to you.

Then by November when you got this email where he was telling you about the cancellation of that tender, I take it you must have been upset by then to say does he not get the message? I do not want to deal with anything relating
10 to tenders.

Is that a fair expectation or not really?

MR KODWA: No Chairperson, I am happy you are reading my mind. But let me just say Chairperson. Business people are very persistent. Sometimes until they get what they want, duck of blow, but it is ...[intervenes]

CHAIRPERSON: Yes.

MR KODWA: But at least I am clear in my conscience ...[intervenes]

CHAIRPERSON: Ja.

20 **MR KODWA:** That I would have conveyed this message.

CHAIRPERSON: Yes.

MR KODWA: But of course it is in the nature of business people.

CHAIRPERSON: Ja.

MR KODWA: They are very persistent.

CHAIRPERSON: Ja.

MR KODWA: Especially in places where they think that you know certain individuals, not because you can influence, maybe because you know certain persons in a certain department and so on. They are very persistent about that.

CHAIRPERSON: Ja, okay. Mr Chaskalson?

ADV CHASKALSON SC: You continued to be his friend for years thereafter. You still describe him as a good friend.

MR KODWA: Correct.

10 **ADV CHASKALSON SC:** Is that not correct?

MR KODWA: Correct.

ADV CHASKALSON SC: So you were happy to keep a friend, even though that friend kept on trying to involve you in tender matters despite your repeated attempts to make clear to him that this was something that you would not do.

MR KODWA: Ja, no. Mr Chaskalson, I am sure we can debate the issues about moral judgements. I mean it is a matter that you can always debate but I do not think there should be any suggestion of a criminal nature by keeping a
20 friend who you know yourself, have not done anything outside of what is appropriate or outside of what is lawful.

ADV CHASKALSON SC: I am not trying to pass a criminal judgement on you. I am trying to understand as to why you still regard this man as your friend if he repeatedly tries to involve you in tender matters, despite your best efforts not

to get involved, not to let him involve ...[intervenes]

MR KODWA: I keep him because he has failed to get me involved in tenders.

ADV CHASKALSON SC: Well, okay. Can I, we will come back to that shortly, but there are really just two sets of questions left that I wanted to ask you. You said at the start of your evidence today, in your statement, you have been quite forthright on the need to acknowledge errors that you have made, errors of judgments and mistakes and the
10 like, and of the importance of acknowledging errors.

But it is not clear to me what errors you are actually acknowledging, so I would like to ask you. Can you actually specify what mistakes you say you made in relation to the events that we have been discussing, but quite specifically which particular act that you took do you think were mistakes and if you had the change to do it again, how would you do it this time?

MR KODWA: Mr Chairperson, maybe that gives me an opportunity to clarify.

20 **CHAIRPERSON**: Yes.

MR KODWA: You know, I read the affidavit of Mr Powel.

CHAIRPERSON: Yes.

MR KODWA: But I must say I am disappointed that Mr Powel as a lawyer, he ventures and offer and opinion that the payments were in exchange of [indistinct]. In his

affidavit he makes a conclusion about the whole idea of [indistinct] and it is not based on any evidence before this commission.

It is an opinion that is expressed and I thought I should start and make that point, because nothing could be further from the truth. It is his opinion, and it is not based on any facts and his supposition, but let me make the point.

I am hasting to make the point that in my statement I refer to issues of judgment as leaders. That as we reflect
10 on our own conduct, that reflection, it must not be on the basis of criminality or an act of corruption. Like I said, perception in politics is as powerful as reality.

Even if what you do you think is right, but in the eyes of the public, it may be seen to be wrong and it is important. It is a difficult line to draw as an individual. That you could have asked for assistance from a friend, not because there was anything wrong or criminal about it.

But in the eyes of the public because in majority
Chairperson we are leading very poor people in this
20 country. We should not be seen as leaders being different in terms of our living standard and livelihood and so on. These are the issues of the conduct I am talking about. Not so much about criminality.

These are the issues that I was reflecting upon Mr Chaskalson, that as leaders certainly myself, you look back

and you say is it possible that perhaps I should have done this and that. You know, one of the issues that is raised by one of my friends Mr Chairperson, to an extent that I knew I was not doing anything wrong, I provided ... I offered my personal bank account.

A lot of people condemned me for that. A lot of people. Why do you give personal account. I said because I was not doing anything wrong, because you are expecting if you ask for a donation there must be this black bag you
10 carry around.

I knew in my mind, very clear that I was not committing any crime. I was asking for financial assistance from a friend. Therefore, so that even this commission can easily find any transaction between the two because there was no illegality.

There was no issues that I think we committed a crime. These are the issues of moral judgment Mr Chaskalson. I am talking about when we say this is a moment of reflection as leaders of this country. Certainly
20 there must be redemption after renewal and reflections.

There must be a change, and unless if we stick to what went wrong, what we think ourselves we must do, there must be a line now between how leaders relate to business people and maybe the issues of protocol, whether as leaders of the ANC or as leaders of government we must

learn to what extent can we relate, to what extent can we be circumspect that our names can be used and misused for other ulterior motives.

These are the issues that as legals we must continue to learn. We must reflect so that when we talk about ethical leadership, we talk about our own experiences because people look at us as individuals and that is a context of what I spoke about when I talk about learning from our witnesses, learning from our own mistakes.

10 It was not a suggestion that there was an admission of anything wrong, that even what that which you think is right in the eyes of the public may be wrong.

ADV CHASKALSON SC: Mr Kodwa, I still do not understand what it is specifically that you say was an error, an error of judgment. Not a crime, but an error of judgment. What is it that you say you acknowledge was a mistake and that you would do differently next time round?

MR KODWA: For an example now that I know from the documents in this Commission, that my stay in hospitality in
20 Cape Town, there were payments that were done which I do not know. To be circumspect, it would mean even if you were to find yourself under those difficulties and ask for hospitality, now with hindsight you have got to know what you find yourselves, what you were putting yourself against.

In other words you have got to ask some of the

uncomfortable questions. I made an example earlier if I were to host you and give you and offer you hospitality and I slaughter a goat, it means now you must ask where did you buy that goat, because it could be a stolen goat.

It could be a stolen goat. You may not be aware and I am saying as leaders we have got to ask this difficult because we must circumspect ourselves so that we do not land the perception in public that we are indifferent from the rest of the people who live in squalor and the conditions of
10 poverty.

ADV CHASKALSON SC: Okay, I appreciate that. Is there anything else in particular that you would identify in that regard as something ... [intervenes]

MR KODWA: There is none Chairperson.

ADV CHASKALSON SC: So it is just the accommodation payment?

MR KODWA: I was just making an example of what it means the issues of managing friendship. The issues of managing the crowd, things that may land yourself as a
20 leader. That is a specific example where a certain payment was done and you were not aware that there was a payment being done.

You accepted an offer of hospitality from a friend, and I am just making that one example. Including the impression that could have been created, that as an

individual you have got certain authority to influence government tenders which you did not have.

Certainly in my case, I did not have any authority to influence, I would not have influenced any tender processes or procurement in government and these are the issues of leadership that we must circumspect. We must reflect on our conduct and the difficulty which the Chairperson captured quite in his summary earlier, that it could land us into problems, because we come here, we deny and we
10 defend ourselves because we think we are right.

Yes, we may be right but in the eyes of the public, the public may perceive us differently.

ADV CHASKALSON SC: So how are you suggesting that those sorts of situations should be handled?

MR KODWA: Well, it starts with individuals Chairperson. I am a member of the National Executive Committee of the governing party, the ANC. Since our 2017 conference we adopted a program to renew the African National Congress, because among others, if you look at what you presented as
20 a diagnostic report in 2017 before the conference was to look at some of the strange phenomenon's that have got robbed in the organisation.

The issues about manipulation of membership. Wrong things that are associated with ANC leadership and membership. Including this notion I was referring to earlier,

that to the member of the ANC, to the leader of the ANC to be in government is equal to corruption.

These are the perceptions that we have got to look back and say what went wrong and it starts with individuals and it is that notion that I made in the statement, that if we are to renew ourselves, if there is to be redemption we have got to accept that there must be a starting point, and the starting point is that with hindsight now, had we done things differently as leadership, we would not have this
10 commission because we will not have the scale of corruption that we see in the country.

We will not have the scourge of corruption, this pandemic we see in the country. We will not have this perception of the leadership of our people, their own leadership that by virtue of being positioned in government we are abusing the power, we are abusing the authority.

Therefore we are inherently corrupt. These are the issues that as we go along, we have got to find the way, the values, the system that we must manage our own conduct in
20 order to restore the integrity and credibility of our people to the leadership of the African National Congress and to the leadership of the country.

ADV CHASKALSON SC: I am still struggling to understand in specific terms what you are actually suggesting. Let me give you an example. You have talked about managing the

friendship with more circumspect. So what are you suggesting would have been a better way to deal with the situation in relation to your need for a place to stay in Cape Town?

I mean, if next week you have to go to Cape Town, what are you going to do differently?

MR KODWA: I am a deputy minister Mr Chairperson. I am a deputy minister of state. There are certain matters that within the state are well regulated, and beyond that
10 because it is difficult sometimes to regulate behaviour, but some of the lessons that certainly one I spoke about in my statement, assess that when such issues come your way, you have got to be able to manage the perception.

In 2015 I was not in government, where some of this hospitality was given. In 2017 I was not in government. In 2021 I am part of the national executives of the country and that of the ruling party. How sometimes we relate on issues that may give rise to the wrong perception which may destroy the very same standing and revolution values which
20 we represent, those are the issues that as you go into Cape Town, if you were to go to Cape Town tomorrow, unfortunately we are locked in Gauteng.

I cannot leave for Cape Town. Otherwise, if I were to go to Cape Town, I will certainly make sure that those issues are well managed.

ADV CHASKALSON SC: But I am looking for specifics. Let me ask you a very specific question. If next time after the lockdown is lifted and when you are on holiday, you need to go ... you want to go on holiday in Cape Town and Mr McKay offers his house, are you going to take it or not?

MR KODWA: Mr Chaskalson, I have got a number of friends. Very good friends, very genuine and they mean genuine, when many of them they offer hospitality. I am certain you have got such friends, whether in Cape Town or
10 anywhere else.

Many of them I do not have to suspect them. They are genuine friends who really comes from the heart. Many of them it is because of their conditions Chairperson. How they were brought up themselves. They know what it means to help.

Because they themselves, to be where they are, they were helped by others and this notion in our relations sometimes as human being we must not forget because we must not create a social distance between ourselves and
20 those that are in need and those who are our friends.

I am not suggesting that you must accept anything that your friendship, your friends are giving to you. For example, a good friend now being the member of a deputy minister, there are certain things that you must declare. You are required to declare.

So beyond that, you know that you cannot just accept anything, because in government there are certain things that you must declare.

CHAIRPERSON: Well, maybe Mr Chaskalson is not putting this as directly and maybe as it should be. We do not have Mr McKay's version about these matters. But that is because he has chosen not to give the Commission any version, but on the face of what we see here and what you have come to see here as well, it would appear that he may
10 well have expected you or asked you to assist him or his entity to get tenders in circumstances where he or his entity was going to make some donations to on or other structure of the ANC, or and he may have thought that because he has assisted you as a friend you could agree to play a role in assisting him.

Now on your version he continued to do that even after you had told him you do not get involved in tenders. So I think Mr Chaskalson may be wanting to establish whether you would still place yourself in a situation where
20 you ask for assistance from somebody who is going to ask you to get involved in tenders even when you have told them you do not get involved in tenders.

I think that is, at least I think that is what he is having in mind. So in other words do you have a principled position that says if somebody has acted like this, then I am

not going to ask for their assistance or is the position that look, I do not know.

I will see, I will look at the situation as it arises or what the position is. I think that is what he is trying to establish. Whether one of the things you would do differently going forward would be that if you know that, if I ask for assistance from this person, this person might be having an expectation that in return I will do something that I am not prepared to get involved in, you would rather not
10 ask for assistance from that person.

Or how you would handle the situation going forward.

MR KODWA: Thank you very much Chairperson for that clarity. You have put it in much more clearer terms. I must say that my principle is captured in my statement Chairperson. I am unambiguous about issues of influencing tender procurement within the state, using proximity and I must state that my relationship with Mr McKay or any other person is not a procure relationship or anything.

20 There was never on my part an expectation of gratification or reward or a kickback. There was not. In the absence of his version to the Commission, it is possible that the sentiment that you are expressing Chairperson is possible in the absence of his version.

CHAIRPERSON: Yes.

MR KODWA: But I do not think that, there should not be any doubt about where I stand on issues of state procurement and how business people would persist to use their proximity. I have always made it very clear to my friends, that our friendship is sometimes based on values.

Not on material things what you have and so on. We may from time to time say a few things, but we share certain values of friendship. So the very clear principle, I would not put myself in a situation where I have to find
10 myself to answer about government telling us, arising out of our relationship.

CHAIRPERSON: Okay. Mr Chaskalson?

ADV CHASKALSON SC: I want to put another difficulty to you, and it is an issue that I find very troubling. You have explained earlier that you owe Mr McKay a million rand. You have explained earlier that if he were to come to you tomorrow and say alright, I have had enough of waiting, you must pay, that you would not be in a position to pay.

That gives him a huge amount of power over you.
20 Because it means that he holds in his hands, the power to sequestrate you. You appreciate that? To make you insolvent. Which means you lose your job as member of parliament and you lose your job as deputy minister.

MR KODWA: I can assure you that he will never do that.

ADV CHASKALSON SC: Well, that is what you say and

that is what you believe and I am sure it is what you hope. But the evidence that we have heard at this Commission, suggests that there is at least a strong *prima facie* case that Mr McKay has been guilty of repeated counts of fraud and contraventions of the prevention of corrupt activities act.

Prevention and combating of corrupt activities act. At the very least, what we have seen today is that he has been accounting for personal payments to you and
10 donations to the ANC, as legitimate company expenses relating to tenders.

Now that is a fraud on the company and it is probably a fraud on SARS as well. Now I want to put to you that it is an untenable position to have a deputy minister of intelligence who is behold to a person who is at risk of prosecution, at serious risk of prosecution for fraud and corruption.

What is your response to that?

MR KODWA: I agree with you Mr Chaskalson and these are
20 the issues of perception I was talking about. That as leaders as we interact and interface with certain individuals, where they found themselves as you just described now, it does have an impact on us.

So that perception is an issue that it is a burden on me, that is an issue that I have to manage.

ADV CHASKALSON SC: Well, how do you propose to manage it? I am not sure there is a way of managing it, short of asking to be redeployed somewhere.

MR KODWA: No. I am not sure if that question is fair and appropriate Chairperson. Who must be deployed?

CHAIRPERSON: No, what Mr Chaskalson is saying is this. Your response was that you would need to manage the situation. So he is asking how you would propose to manage the situation and he is saying in effect as long as
10 you are in government he cannot see how you would manage it.

Maybe if you asked to be deployed somewhere else, that might be different. His point is simply this as I understand it, but he will tell us if I misunderstood his point. His point is it is a situation that should be avoided to be indebted to somebody in so be it an amount over a long period without paying it back, particularly where and I am adding this.

Mr Chaskalson did not add it, where on the face of
20 it, it would appear that this person does have expectations for you to do certain things about tenders affecting his entity and on your version, he continues to harbour those expectations even when you have told him you do not want to get involved in tenders.

He continues to send you emails. He wants you to

be up to date about what is happening about tenders that relate to his entity. So what Mr Chaskalson is saying, this is a dangerous situation to be in, when you are in government, particularly at executive level.

Because while you might say I know him, he will not do A, B, C, D, maybe that might not be a good answer. Just to be in that situation, is something that should be avoided because people to change. I mean your own brother can change that you think you have known all your life.

10 So people do change. What if he got into a fix himself, and now said well, this is what I demand, otherwise Mr Chaskalson made the example, that when you owe somebody money and they demand payment, you failed to pay.

That is a ground for them to bring an application to the High Court to have you sequestered and if you get sequestered, you cannot continue to be a member of parliament. You cannot continue to be a member of the executive.

20 So it is a threat. It is something that somebody in his discretion can use any time, if he wants to achieve something. Mr Chaskalson is saying it is difficult to see how you would manage this situation, should Mr McKay do what you do not expect him to do.

MR KODWA: I agree, I accept that sentiment Chairperson.

CHAIRPERSON: Yes, yes. Yes.

ADV CHASKALSON SC: I want to put it a little bit more strongly. It is, if we are talking at the level of perceptions, there is a very real risk that Mr McKay may threaten to do that which you think he will not do, and because he holds power over you in that respect, the public can never be completely confident that he is not exerting that power to make you do things that you do not want to do.

That to me, seems to be a real problem.

10 **MR KODWA:** I think I accept to an extent that as an opinion Mr Chaskalson. I know Mr McKay has got power over me and I do not think I want to make further point about it. He has no power over me, in the same way I have no power over him.

We are just friends and I think you were just expressing your opinion.

ADV CHASKALSON SC: [indistinct]

CHAIRPERSON: I cannot hear you Mr Chaskalson.

ADV CHASKALSON SC: Chairperson, it is my opinion that
20 it is something that I would put to you as a very well, I mean you have given ... I put it to you as an untenable situation. You have given me your response. I do not think we need to take it further than that.

But I certainly stand by my submission that it is an untenable situation.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Chair and Mr Kodwa, I do not have further questions beyond those that I have already asked.

CHAIRPERSON: Okay. Thank you Mr Chaskalson. Mr Sikakane, Mr Kodwa your counsel would be entitled to re-examine you. That is to ask you some questions of clarification where he thinks there is a need to clarify at this stage.

10 Mr Sikakane, do you have any re-examination? Can you hear me Mr Sikakane?

ADV SIKAKANE SC: Thank you, I can hear you. It is not Mr Kodwa now, it is me.

CHAIRPERSON: JA.

ADV SIKAKANE SC: Chair, judging by the approach taken by the witness and as candid as he was, it would spoil anything for me to ask him questions. I think we must be greatly that he is candid and not be punished for it. I would not like to punish him for being candid with further
20 questions.

CHAIRPERSON: Okay.

ADV SIKAKANE SC: That would be all from us.

CHAIRPERSON: Okay, no that is fine. Mr Kodwa, we have reached the end of ... we have reached the end of your evidence. So unless you have something to say, a last

thing to say, I am ready to excuse you.

MR KODWA: Thank you very much Chairperson. Thank you very much for this opportunity. A very rare opportunity and a privilege to come before you. Like I said in my statement, I am quite inspired by the manner in which you carry yourself, in particular Chairperson.

Including as we engage with these difficult questions, that your call is not a condemnatory call. You do not call us to appear before you because you condemn our
10 action. As a Commission, part of its mandate is to enquire, is to investigate and make findings.

So it is possible that indeed people may pass judgments on the basis of the witness's version and I think we must continue to support you until you come with a final report Chairperson. I want to also thank you Mr Chaskalson for the very difficult questions you have asked and put me through today.

I must say that they were not easy questions, but you had to ask those questions because it was important of
20 me and important for the people of South Africa and for this Commission to get the side of my version, because a lot has been commented about, has been written about and I think today those who care to listen would know what is an extent of my version.

But I dealt with issues beyond just what may appear

to be implicating me. I do want to thank the Mabuza attorney, particularly Mr Sikakane for his leadership guidance. As we were coming here, many of them I consulted with them, they were not available.

I want to thank Mr Sikakane and Mr Mabuza for their guidance. I want to thank you very much Chairperson, I wish you all the best.

CHAIRPERSON: Thank you very much Mr Kodwa. Thank you, you ... thank you very much Mr Sikakane. You are now
10 excused Mr Kodwa.

MR KODWA: Thank you very much Chairperson.

CHAIRPERSON: Thank you. Mr Chaskalson, thank you to you as well. I hope you can still hear me.

ADV CHASKALSON SC: I can Chair, and I was about to ask if I could be excused to.

CHAIRPERSON: Yes, no you are also excused. Just for the benefit of the public, I am going to take a break when Mr Seleka will come in. The next witness I will be hearing is an expert who will give some evidence in relation to
20 Eskom.

That will be the next witness. So I will adjourn, we take a break so that they can come in, but otherwise Mr Chaskalson, Mr Sikakane, Mr Kodwa, you are all excused. Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: No put him on the screen not – not the witness. Mr Seleka why are you running away? Am I muted? Oh I am – why are you running away Mr Seleka?

ADV SELEKA SC: I was closing the door DCJ.

CHAIRPERSON: For the five minutes – past five minutes she is trying to get you on the screen.

ADV SELEKA SC: Oh.

CHAIRPERSON: Good afternoon.

10 **ADV SELEKA SC:** Good afternoon Chairperson.

MR POON: Good afternoon Chair.

CHAIRPERSON: Yes. Good afternoon Mr Poon. Are you ready?

MR POON: I am Chair.

CHAIRPERSON: Okay all right. Mr Seleka do you want to just make a few points to assist the public to follow what Mr – what necessitated Mr Poon's evidence and what it relates to before he gets sworn in?

20 **ADV SELEKA SC:** Yes thank you Chairperson. I will indeed do so. Mr Poon is called as an expert witness to testify on the four – three suspension letters that had been tendered into evidence by Mr Zethemba Khoza particularly to testify on the properties of those letters and the location of the letters which would mean that where those letters either originate or where he was able to find them in the

backed up computer data of the relevant witnesses.

And this particular exercise by Mr Poon was done as a result of Mr Koko's request for these letters to be searched for in the backed up data – computer data of Ms Daniels, of Mr Koko himself and of Mr Zethemba Khoza.

So the expert.

CHAIRPERSON: But maybe that is not the whole story. I think that the investigators and the legal team were asked – I certainly said there must be an investigation into the
10 computers of certain Eskom personnel to try and see whether there was support – I said there should be further – further expert to look at the report that was made by some previous experts before Professor Lawrence. I said in order to establish their origin and then as a result of that Professor Lawrence came and gave evidence. He did not complete giving his evidence because I asked him to go and look at further evidence. But Mr Koko did say when he was told about Mr – Professor Lawrence evidence in relation to the – those pre-suspension letters. He did say why or
20 challenge the commission or the investigators to go and look at his computer because I think wither he said expressly or it was implied that they would not find anything of relevance to the issues in his computer. I think that – that is my recollection of how it came about.

ADV SELEKA SC: Yes, no that is correct Chairperson. I

was going to go into the Chairperson's request but the Chairperson has articulated it that is correct.

CHAIRPERSON: Yes.

ADV SELEKA SC: And Mr – or Professor Lawrence rather has done the subsequent follow up to the Chairperson's request and in that process we then got to involve Mr Poon as well.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Yes okay all right. The – Mr Poon the Registrar will administer the oath or affirmation to you right now.

MR POON: Thank you Chair.

CHAIRPERSON: Registrar.

REGISTRAR: Mr Poon will you be taking the oath or the affirmation?

MR POON: Affirmation please.

REGISTRAR: Please state your full names for the record.

MR POON: My name Lance Poon

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

MR POON: Not at all.

REGISTRAR: Do 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 POON: I truly affirm.

CHAIRPERSON: Thank you very much Mr Poon. Thank you for availing yourself to assist the commission. Mr Seleka will then lead your evidence.

ADV SELEKA SC: Thank you Chairperson. Just for housekeeping purposes Mr Poon's affidavit is found in Eskom Bundle 19 on page 427 of the hard copy. Mr Poon will be using the electronic bundle. Mr Poon in the electronic it is found on page 895.

10 **MR POON:** Thank you.

ADV SELEKA SC: The affidavit Chairperson runs from page 427 to 439 – electronic bundle.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes. Electronic Bundle Mr Poon is 907 the last page.

MR POON: I have it.

ADV SELEKA SC: You have it. On page 438 the hard copy page 906 Mr Poon there is a signature just above name Lance Poon, you see that?

20 **MR POON:** Yes I do.

ADV SELEKA SC: You confirm that to be your signature?

MR POON: That is my signature.

ADV SELEKA SC: Do you confirm this also to be your affidavit?

MR POON: Yes I do.

ADV SELEKA SC: You confirm the correctness of the contents of the affidavit?

MR POON: I do.

ADV SELEKA SC: Thank you. Chairperson may I beg leave to have the affidavit of Mr Poon on page 427 of the hard copies together with the annexures thereto admitted as Exhibit U44 .1.

CHAIRPERSON: Thank you just to – for the sake of accuracy Mr Poon you confirm the contents of your affidavit
10 to be true and correct to the best knowledge of your – to your best knowledge and belief?

MR POON: I do Chair.

CHAIRPERSON: Okay. The affidavit of Mr Lance Poon that starts at page 427 will be admitted and will marked as Exhibit – just repeat it Mr Seleka?

ADV SELEKA SC: U44.1

CHAIRPERSON: U 44.1. Okay thank you.

ADV SELEKA SC: Yes. Thank you Chairperson.

CHAIRPERSON: Yes you may proceed.

20 **ADV SELEKA SC:** I will proceed. Mr Poon has explained in the introductory remark – you have been called as an expert to give evidence in the field of information technology particularly in regard to the properties that befall suspension letters and the location thereof. The computer imaged data base. You understand that.

MR POON: Yes I do.

ADV SELEKA SC: Yes. Just by way of background could you tell the...

CHAIRPERSON: Just one second Mr Seleka. Registrar I do not know whether you have adjusted anything previously I would see on the live screen the person speaking at a particular time right now I have Mr Seleka on the large screen when Mr Poon speak or responds I do not see him. So when Mr Poon speaks he should be on the large screen
10 and when Mr Seleka speaks he comes back. Will you do that now? Okay all right. Okay all right continue Mr Seleka.

ADV SELEKA SC: You should not make me all famous Chair. Mr Poon – Mr Poon what is – just explain to the Chairperson what is your occupation.

MR POON: Chair I am a Digital Forensic Investigator.

CHAIRPERSON: Hang on one second.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: You see at the moment Mr – yes this is
20 how it should be. When you respond Mr Poon you have – your face should to – be on the large screen and Mr Seleka goes to the back. When he asks the question he comes to the front and you go back. That is how it should be. Now I think it is going to be like that. Okay all right. Please respond Mr Poon.

MR POON: Thanks Chair. Mr Seleka as I was saying I am a Digital Forensic Investigator as well as an eDiscovery Practitioner. I consult in areas that relate to the forensic collection and analysis of electronic install information.

Insofar as it eDiscovery is concerned I manage the process as well as assistants. My two assistants that support the review and analysis of – as well as the electronic 00:12:02 information that is typically considered in an investigation.

10 **ADV SELEKA SC:** So in summary Mr Poon do you – your field is in computers.

MR POON: Correct.

ADV SELEKA SC: Your field of work. And as a Digital Forensic Investigator.

CHAIRPERSON: Cover his academic profile Mr Seleka.

ADV SELEKA SC: Yes that is correct Chair. As a Digital Forensic Investigator what are your qualifications Mr Poon.

MR POON: I have a Bachelor of Commerce and Information Systems which I obtained from Wits University and in
20 addition to that over the years I have obtained certifications relating to with respect to eDiscovery as an example I have a clear 00:12:54 certified administration certification and as for Digital Forensics I obtained a certification as an In case certified forensics examiner and in addition to that not directly related to IT forensics I kind of also have a

certificate in forensic law which I obtained from the North West University.

CHAIRPERSON: When did you obtain your B.Com degree in information systems?

MR POON: Oh Chair I think that was in 2000.

CHAIRPERSON: And from which university did you get it?

MR POON: University of the Witwatersrand.

CHAIRPERSON: Okay. And the certified clearwell eDiscovery Administrator Certificate when did you get that?

10 **MR POON:** I do not have the date. I do not have the exact year but I think that was around 2011/2012.

CHAIRPERSON: And in order to do that certificate what are the requirements? Must you have a degree already? Must you have matric? What do you need to have?

MR POON: No so those particular certifications were purely IT related and they are associated with IT systems. So it involved – it involved me going in – in providing formal training with the various institutions that provided that certification and – and then writing an examination in order
20 to successfully obtain the certification.

CHAIRPERSON: And what is its duration in terms of how – how long do you study for it before you get it – or training?

MR POON: Well I mean – ja there is – there is a week long course associated with that Chair and then however much time it then requires to go through the material subsequent

to that and then leading up to the examination.

CHAIRPERSON: Yes and ...

MR POON: So if the subs.

CHAIRPERSON: Yes.

MR POON: Sorry Chair. It is not like a university degree that carries on for a number of years.

CHAIRPERSON: Yes okay. And what does it help – what skills does it or knowledge does it give you in the IT or Digital Forensic sector?

10 **MR POON:** It assists with the understanding of IT and in relation to the data that is used in a forensic investigation. It helps to identify all – or become familiar with the meta data associated with the files, how to manage specific files dependent on the type of files they are, how to look at and analyse the – the content and how it then fits in relation to where the documents were found or the files were found for that matter.

CHAIRPERSON: Yes. Mr Seleka let you continue.

ADV SELEKA SC: Thank you. Thank you Chair. Perhaps
20 Mr Poon you could share some light also in regard to B.Com Information Systems. Is it also related to information technology?

MR POON: Yes it is. That – that particular B.Com course was focussed on an information systems specifically was focussed on the analysis and development of computer

systems which it also involved then the coding and programming surrounding the development of such.

ADV SELEKA SC: I see. So does it also have a bearing on digital forensics?

MR POON: No not specifically with digital forensics.

ADV SELEKA SC: Okay. Then you have the Incase certificate examiner.

MR POON: Yes.

ADV SELEKA SC: Is that also a course or is that a
10 designation?

MR POON: That is also – I suppose it could be regarded as both in order to get that designation you also have to go through a training programme which was in the Incase situation I think was at least two weeks' worth of formal training person to person training which then led up to the study material and leading up to the exam in order to qualify for the certification.

ADV SELEKA SC: Yes. So in digital forensics what would
20 you say has been the length of your experience or how much experience do you have in digital forensics?

MR POON: Well I have been operating within the digital forensics industry for a little over fifteen years now. Initially I spent – if I may speak to my work background
Chair?

CHAIRPERSON: Ja.

MR POON: So of that fifteen years initially I spent about nine almost ten years at KPMG forensics as an IT digital forensic investigator. Subsequent to that in 2015 I had left KPMG and I was then employed by Ernst and Young where I led their digital forensics practice for a period of four years which then led me up until the beginning of 2019 and from there I have been operating as a sole proprietor – or sorry still within the – within digital forensics with eDiscovery.

ADV SELEKA SC: I see so right now you are self-
10 employed?

MR POON: Right.

ADV SELEKA SC: You ...

CHAIRPERSON: And – please continue Mr Seleka.

ADV SELEKA SC: You operate your own company Mr Poon.

MR POON: That is right.

CHAIRPERSON: The – the Incase certified examiner tell me more about that.

MR POON: That also is aligned with a particular piece of software that is used within digital forensics industry Chair.
20 So within – within that course they go through how do you identify digital forensic devices which may contain potentially relevant information to a particular investigation as an example. It then includes the collection or forensics acquisition of that data. How to do it in a correct manner so that you do not – that you do not then spoil or contaminate

the evidence. And then it proceeds – and again this is specific to a piece of forensics software but it teaches you how to then use that forensic software in order to then analyse forensic data over a number of used cases within an investigation.

CHAIRPERSON: I take it you write a – some examination in order to get that certificate?

MR POON: That is correct Chair.

CHAIRPERSON: And before you write that exam how long
10 would you have – would you be required to undertake the training?

MR POON: As I had mentioned earlier Chair that particular training course I think is conducted over a period of two weeks.

CHAIRPERSON: Ja.

MR POON: Ja.

CHAIRPERSON: And in order to – to undertake that course is there some academic requirement or requirements that you must meet or some work related experience that you
20 must have achieved – so many years in the sector for example?

MR POON: No prerequisites as far as I can recall insofar as the education is concerned. But I do recall that there is a prerequisite on the number of years that you are required to – to work within the industry before the certification is

provided. And the employer where you are working for – or who you are working for at the time needs to provide a statement to attest to that.

CHAIRPERSON: Ja.

MR POON: And support that.

CHAIRPERSON: Excuse me did you say the B.Com Information Systems is not linked to Digital Forensics?

MR POON: Yes Chair I said that. The information Systems is more directly related to the development of computer
10 systems.

CHAIRPERSON: Oh okay all right.

MR POON: Ja.

CHAIRPERSON: Continue Mr Seleka.

ADV SELEKA SC: Thank you Chair. So does it mean Mr Poon that you would have ventured into digital forensics after your studies of B.Com Information Systems?

MR POON: Not directly. After I graduated from university I initially went to work for another company before KPMG that was a company called EDS and I was there for about
20 three/four years before I went to KPMG and whilst I was at EDS I was involved in the development of IT systems.

ADV SELEKA SC: So your experience or exposure to digital forensics would have started when you were at KPMG.

MR POON: That is correct.

ADV SELEKA SC: And that spans from that time onwards it spans a period of over fifteen years you say?

MR POON: That is correct.

CHAIRPERSON: So what year would it have been when you started at KPMG?

MR POON: I think that would be 2006 Chair.

CHAIRPERSON: Okay. And – and you left – when did you leave KPMG?

MR POON: At the end of 2014 and then I started – I am
10 sorry.

CHAIRPERSON: So from 2005 to end of 2014 you were at KPMG?

MR POON: That is right Chair.

CHAIRPERSON: And during the time that you were there how much of your work related to forensic digital forensics?

MR POON: On a full-time basis Chair that was – that was my role.

CHAIRPERSON: Ja. 100%.

MR POON: Correct.

20 **CHAIRPERSON:** And from 2006 to 2014 would be – is it eight years?

MR POON: I think that is nine I think Chair.

CHAIRPERSON: Nine years.

MR POON: Ja.

CHAIRPERSON: Okay, all right continue Mr Seleka.

ADV SELEKA SC: Yes. And from there on Mr Poon you joined Ernst and Young that would be 2015.

MR POON: Yes that is right.

ADV SELEKA SC: Would be right. And were you continuing to be working in the field of digital forensics at Ernst and Young?

MR POON: That is correct. So as I mentioned earlier I was the – I led that – their digital forensic practice. So I was the partner in charge of digital forensics at Ernst and Young.

10 **ADV SELEKA SC:** I see.

MR POON: For that period of four years whilst I was there.

ADV SELEKA SC: Yes. Well you – you did not specifically mention that in your affidavit.

MR POON: I did mention that I held directorships at Ernst and Young.

ADV SELEKA SC: Yes. But that you led the digital forensics were you – you undercutting yourself there.

CHAIRPERSON: What positions did you hold at KPMG?

MR POON: I am sorry Chair could you please repeat that?

20 **CHAIRPERSON:** What positions did you hold at KPMG?

MR POON: I started off when I joined KPMG in 2006 I think I started off as a junior IT investigator and then over the years I proceeded – I got promoted to senior IT investigator, manager, senior manager and ultimately when I left – when I left KPMG I held the position of associate director.

CHAIRPERSON: Hm. Okay and that – Ernst and Young how long were you there from when to when?

MR POON: From the beginning of 2015 up until I think it was January or February of 2019. So that was – that would have been about four years.

CHAIRPERSON: Yes and – and your positions there?

MR POON: I was the partner or director.

CHAIRPERSON: Yes. Where did that put you in – in the – in regard to the hierarchy of the unit which dealt with digital
10 forensics? Were you the head of such a unit or department or where were you in the hierarchy?

MR POON: Yes I was the head of that particular unit Chair.

CHAIRPERSON: Okay and for how long were you the head?

MR POON: For four years.

CHAIRPERSON: Oh when they appointed you they appointed you to that position.

MR POON: That is correct.

CHAIRPERSON: Okay all right. And for the sake of
20 completeness are you by any chance able to indicate more or less how many digital forensics you have done in your life?

MR POON: I do not think I would be able to quantify that Chair. It – as I indicated before it was my full-time role at KPMG and then obviously at Ernst and Young as well.

CHAIRPERSON: Yes.

MR POON: And there were many projects that we were involved in.

CHAIRPERSON: To try and give me a picture because I want to have some picture. You know if you talk about a police officer you could say how many cases have you investigated – they might say I think over 1000 or they might say I do not know but it cannot be less than X number. I am trying to establish the extent of your
10 experience in this field. Are you able to assist in that regard?

MR POON: I am not sure I would be able to Chair there were many engagements where they ran for – for many months and then some that ran just for a week or two. So it would be very difficult to actually quantify that.

CHAIRPERSON: Yes. Well there are sizes also differ. Some would be small investigations

MR POON: Correct.

CHAIRPERSON: Others would be medium, others will be
20 quite big.

MR POON: Correct.

CHAIRPERSON: Anything you can tell me in regard to those things that could assist me. I made an example about a police officer I should make an example maybe about a Judge as well. You can ask a Judge how many judgments

have you written? Or how many cases you have heard? You know. And a Judge would be able to say well I have written no less than so many judgments. He or she might not be able to give you the exact number but he or she can tell you at least not less than X number. So are you able at all to give me any indication?

MR POON: That again Chair would be very difficult. I will – that number that comes to mind if I had to hazard a guess you know at least 100 but how far over 100 or over 200 if ...

10 **CHAIRPERSON**: You do not know.

MR POON: It would be difficult to say.

CHAIRPERSON: Yes.

MR POON: If I had known that I would one day answer this question I would have taken more note.

CHAIRPERSON: Okay no, no that is all right. Well maybe we should tell you why we ask these questions and you may know already. We just need to – to see what experience you have in this particular field so – but let me allow Mr Seleka now to continue.

20 **MR POON**: Thank you Chair.

ADV SELEKA SC: Thank – thank you. Mr Poon right now you say you own your own consulting firm EM Discovery PTY LTD. Is it digital forensics that your consulting firm is engaged in or something else?

MR POON: It is engaged in digital forensics as well as

eDiscovery which is – which is a related – related task.

ADV SELEKA SC: Yes. You will just ...

CHAIRPERSON: You may have asked this Mr Seleka but just in case you did not if you did not you can let him talk about his connection with the commission.

ADV SELEKA SC: Yes. No I have not asked him that. Thank you Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Then Mr Poon you could explain your
10 connection with the commission or service to the commission.

MR POON: Yes. Chair from probably the middle of 2018 in the very early days of the commission I was – and at that time I was still working at Ernst and Young. I was appointed by the commission and contracted the commission to perform amongst other things digital forensics and eDiscovery type services. And I have been part of the – you would be aware of the DFT team.

CHAIRPERSON: Ja.

20 **MR POON:** The Digital Forensic Technology team. I have been a part of that team since the – the start of my appointment.

CHAIRPERSON: Ja. Okay. And you continue to be part of the – of the – of that – of the DFT?

MR POON: That is correct Chair.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Mr Poon you will explain in a moment what the legal team had asked you to do pursuant to the Chairperson's request but can you explain that what you were asked to do relates or fits in the digital forensic field?

MR POON: Yes it does fit.

ADV SELEKA SC: You understand my question.

MR POON: Yes that is correct. It does fit within a digital
10 forensics field. I mean it involved the – the extraction of digital evidence from even just that were required and involves the analysis of data that is contained within those images which is very much a digital forensics task.

ADV SELEKA SC: Okay. So to use the analogy if a person has committed a crime, theft or murder you look for a criminal lawyer because whatever offence the person has committed falls squarely within a criminal – the criminal field of law.

MR POON: Right.

20 **ADV SELEKA SC:** So is it the same exercise that you were required to do that if fell squarely within the digital forensic field?

MR POON: Yes that is what my understanding of that would be.

ADV SELEKA SC: Yes and just before I ask you that I see

that you mention in your affidavit you are a full – a full member of the Institute of Commercial Forensic Practitioners.

MR POON: Yes.

ADV SELEKA SC: Can you explain to the Chairperson what is that institute?

MR POON: The Institute of Commercial Forensic Practitioners is an NGO within South African which has a membership of – I have left them quite some time ago so I
10 am not too sure how big the membership is but it is a membership body which – which tries to self-regulate themselves within the – the forensic industry and it is not limited to you know it evolves or includes all types of commercial forensics. So you have commercial forensic accountants. Forensic attorneys with legal backgrounds and then it also includes then memberships from digital forensic investigators.

ADV SELEKA SC: Is it like..

MR POON: So..

20 **ADV SELEKA SC**: Go ahead.

MR POON: No I was just going to add that I was co-opted onto that board whilst I was still at KMPG and I spent four years as a non-executive director while I was at ICFP.

ADV SELEKA SC: I see. Is it similar to a professional body like SICA for accountants?

MR POON: I suppose it would be similar. I think the – in many respects they try to achieve the same thing in that they want to maintain a high standard of forensic practitioners within South Africa.

ADV SELEKA SC: Yes. Your ethics, the professions, the
00:34:48.

MR POON: That is correct.

ADV SELEKA SC: How (talking over one another).

MR POON: That is correct.

10 **ADV SELEKA SC:** I see. Now let us – let us deal with what you were asked to do. In this case just explain what you understood was the requirement in – from your – from our part to yourself and the exercise that was required for you to do.

MR POON: Okay. Well as yourself and Chair had previously spoken about Professor Cecil Louwrens testified here at the commission earlier this year and – where he spoke about you know certain – a certain four pre-suspension documents that he had analysed which were
20 attachments to an email that a Mr Zethembe Khoza from Eskom had sent to Ms Veneta Klein and within that email there were obviously the four attached emails relating to the suspensions of four individuals. And during his testimony Professor Louwrens included his analysis of certain meta data that he had found relating to those four documents.

But Chair as you had mentioned earlier there was some questions – additional questions that you asked which required – which were unanswered and required further analysis and you effectively sent him to do some extra homework with the analysis of computers.

So following that due to you know resource constraints Professor Louwrens requested me to assist him in identifying the very same four documents – pre-suspension documents on other sets of data that included
10 backup folders or user backup folders and email archives relating to Ms Suzanne Daniels as well as Mr Zethembe Khoza and Mr Motshela Koko from Eskom which had previously not been considered.

So that was what I understood my task to be.

ADV SELEKA SC: Well are you able then – do you confirm to the Chairperson that you were given sufficient information to do the exercise you were required to do?

MR POON: Insofar as the brief is concerned?

ADV SELEKA SC: Yes.

20 **MR POON:** I believe so yes.

ADV SELEKA SC: Yes. And did you have to use any IT tools to perform the task you were required to do?

MR POON: I was not required to but obviously it becomes part and parcel when you come to – to analysing digital evidence and in this case I utilised a forensic tool –

analysis tool called Newix Workstation and I had extracted the – the evidence which the commission had acquired into this tool and ingested that data into the tool in order to then facilitate my analysis of the data contained within them.

ADV SELEKA SC: Yes. Okay. So thank you – so once – once that is done you could – so you have the four letters and you were required to locate the whereabouts of these letters, the origin of the letters, the properties of the letters. Could you then explain to the Chairperson in respect of the
10 specifically the backed up computer data of the individuals which you had to look into what your findings were in relation to at least three of them we have Ms Daniels, Mr Koko and Mr Zethembe Khoza and you can take them one by one.

MR POON: Okay.

CHAIRPERSON: Maybe before – maybe before that Mr Seleka but you must tell me if I misunderstood your question. Before that I think it would be important for the benefit of the public to be told what these letters, pre-
20 suspension letters dealt with, who were they addressed to, what was – and what were they saying to the addressees and who are those addresses. There are four of them, is it not?

ADV SELEKA SC: There are four, Chair.

CHAIRPERSON: Ja. So, you might just say because the

evidence has been led. You must – you may just do that yourself and say: There is letter. This is what – this is – it was addressed to so and so. This is the gist of what it said. And then move on and then you can take it from there. Just so that the public knows what are these pre-suspension letters that we are obsessed with. Okay?

ADV SELEKA SC: Thank you.

CHAIRPERSON: Otherwise, they just keep on hearing, you know, this aspect, went and look and come back and
10 was sent back and then this one came back, but they do not know what these pre-suspensions letters are all about.

ADV SELEKA SC: Yes-no, correct. Mr Poon, we might have come to touch on that, but let me do the exercise as the Chairperson requires. You were provided with two copies of pre – titled pre-suspensions letters in respect of four Eskom Executives back in March 2015. The one letter was addressed to Mr Dan Marokane and that letter purported to allege – to make certain allegations about misconduct on his part, and that related to – I am looking
20 at the letter now at page 440 of the bundle, page ...[intervenes]

CHAIRPERSON: ...11 March 2015.

ADV SELEKA SC: Correct, Chair. Page 908 of the electronic bundle. That letter is dated 11 March 2015, as the Chairperson points out. And it reads:

“Dear, Mr Marokane.

Invitation to a pre-suspension meeting.”

Paragraph 1 reads:

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

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

10

And three sub-paragraphs 4, the first one:

“1.1 As the Chairperson of the Emergency Committee, you have been negligent in the management of the electricity system during the times of emergency that resulted to unnecessary load-shedding.

1.2 You were grossly negligent in managing the broad programme for Medupi that resulted in delays and costs overruns.

20

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

Paragraph 2:

“The company has not completed its investigations.

The purpose of the investigations is to

establish whether they have grounds for disciplinary action.

Having had regard to the seriousness of the allegations and the possibility that your presence may jeopardise the investigation into the alleged misconduct, the company is of the view that you should be suspended on full pay pending the finalisation of the investigation.”

Paragraph 3:

10 “You are temporarily suspended until further notice.”

Paragraph 4, says:

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

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

And paragraph 6(sic)...

Should I continue there, Chairperson?

CHAIRPERSON: Maybe because – to the extent that the
20 others are the same as this one, except for the allegations
of misconduct ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...you can complete – continue up to 7.

ADV SELEKA SC: Okay.

CHAIRPERSON: And – ja. And then when you go to the

others, if I am right in saying what is different is the allegations of misconduct ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...you will just say that they are the same except in regard to so and so, the following are the allegations.

ADV SELEKA SC: Thank you, Chair. I get that, Chairperson. Then paragraph 6 reads:

10 “During the meeting, you have the following rights:

6.1 You are entitled to be present at the meeting.

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

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

20 6.4 You are entitled to confer if your representative had reasonable times before, during or after the meeting.

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

And then the last paragraph, paragraph 7:

“We envisaged that our investigation should be completed within a period of four weeks.”

And then there is provision for people to sign. The second letter on the hard copy at page 442 is addressed to Ms Tsholofelo Molefe, the Finance Director at the time. Also dated 11 March 2015. It is also an investigation(sic) to a pre-suspension meeting and paragraph 1 ...[intervenes]

CHAIRPERSON: Not investigation.

10 **ADV SELEKA SC:** [No audible reply]

CHAIRPERSON: I think you should investigation. It says invitation.

ADV SELEKA SC: Invitation, yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Sorry. Thank you. Also an invitation to a pre-suspension meeting. Paragraph 1 reads:

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

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

1.1 You have violated the tender process by being in contact with a bidder during an active tender process.

1.2 You acted negligently by procuring finance for Eskom at inflated rates, thereby adversely impacting Eskom:

Paragraph 2, says:

“The Company has not ...[intervenes]

CHAIRPERSON: Is that not – is the rest not the same?

ADV SELEKA SC: The rest then reads similarly to the letter read before ...[intervenes]

CHAIRPERSON: Yes.

10 **ADV SELEKA SC:** ...about the seriousness of the allegations and when the meeting is also called to be on the 12th of March 2015.

CHAIRPERSON: Ja, only the times may be different for the meeting.

ADV SELEKA SC: Indeed, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Okay. Then you have the third letter, also dated 11 March 2015. This time, it is a letter addressed to Mr Matshela Koko, the Group Executive,
20 Technology and Commercial.

CHAIRPERSON: And I think you – after mentioning that the heading is the same.

ADV SELEKA SC: Correct.

CHAIRPERSON: Everything is the same, even with regard to his, except the allegations.

ADV SELEKA SC: Yes.

CHAIRPERSON: I think you can just go straight to those allegations.

ADV SELEKA SC: So ...[intervenes]

CHAIRPERSON: Say the rest is the same, except for the time of the meeting, but the date is the same.

ADV SELEKA SC: The date is the same, yes. In his case, the allegations of misconduct as set out are as follows:

10 “1.1 As the Head of Engineering, you caused the appointment of Alstom to execute...

Alstom is a-l-s-t-o-m.

“...to execute the control, an instrumentation contract for Medupi and Kusile...”

I see they have spelt it incorrectly, Chair. K-u-s-i-l-e.

“...Kusile Projects when they were not technically qualified to do the job.

This caused a delay on both the Medupi and Kusile Projects.

20 1.3 You were grossly negligent by failing to control the welding quality issues at Medupi Power Station. This resulted in a three-year delay for the Medupi Project and a significant increase in costs overrun...”

Then the rest of the allegations are the same about the

seriousness of the alleged misconduct.

CHAIRPERSON: Basically, not the allegations, the rest of the contents of the letter, I think.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because the allegations were the ones you have read.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: And then the next one is Matona.

ADV SELEKA SC: The next is and last one is that
10 addressed to Mr Matona who was the Chief Executive
Officer at the time. The letter is also dated 11 March 2015.
Exactly an invitation, also, to a pre-suspension meeting.
The allegations in regard to him were stated as follows.
Well, there is only one.

“1.1 Failure to satisfactorily to perform job requirements as set out in the job description or work plan which cost or resulted in a serious adverse impact on Eskom.”

Again, the contents are similarly worded as the previous
20 letters. His meeting was set to be on 12 March 2015 at
09:00. So, those are ...[intervenes]

CHAIRPERSON: These are the pre-suspension letters, when we talk about the pre-suspensions letters. Is that right?

ADV SELEKA SC: That is correct, Mr Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes, that is correct, Chair.

CHAIRPERSON: Now what I have – what confuses me now a little bit is that, in the evidence that was led before the Commission. I cannot – what I cannot remember is whether the letters that were issued to the four executives on the 11th by the board or the Governance, People in Governance Committee ...[intervenes]

ADV SELEKA SC: Yes?

10 **CHAIRPERSON:** ...were these letters or they were different letters. What raises that question is that, as you will recall, Mr Seleka, the board members who testified said that the board's approach in making a decision to suspend these executives was that they were not suspended pending any investigation into the allegations of misconduct on their part. That was the evidence that was given.

ADV SELEKA SC: Correct.

20 **CHAIRPERSON:** But I do recall that Mr Koko did, in giving his evidence, says that some allegation was made against him about sabotage and so on and he felt very strongly about that, but I have not had a chance to go back and compare the letters that were actually given to the executives upon their suspension and these letters. So, as we speak, I do not know whether these pre-suspension

letters we have here, which you have read ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...are copies of the letters that were given to the executives when they were suspended, or they are letters that may have been prepared in advance, but were never given because, ultimately, the decision that was taken was that the suspension had nothing – the suspensions had nothing to do with allegations of misconduct.

10 **ADV SELEKA SC:** Yes. The ...[intervenes]

CHAIRPERSON: ...again.

ADV SELEKA SC: Yes. No the latter is the correct position, Chairperson. These letters that we are busy with now were never used.

CHAIRPERSON: Yes.

ADV SELEKA SC: They were never used. Different letters ...[intervenes]

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Different letters were used with the assistance of Mr Nick Linnell.

CHAIRPERSON: yes.

ADV SELEKA SC: Those letters do not or did not have individual – or allegations or specific misconduct in relation to each executive.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ja, they did not have that.

CHAIRPERSON: Yes. But were the board members who testified asked what they knew about these pre-suspension letters that were never issued to the executives?

ADV SELEKA SC: There are two board members who have each reduced these letters.

CHAIRPERSON: H'm.

ADV SELEKA SC: So, the other board members were not asked about these letters.

10 **CHAIRPERSON:** H'm.

ADV SELEKA SC: And it would – well, it does not appear to me that the other board members were aware, but it is not something I can categorically affirm.

CHAIRPERSON: Ja.

ADV SELEKA SC: But the two board members who have introduced these letters, which is Mr Zethembe Khoza and Ms Venete Klein ...[intervenes]

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** ...were asked about the letters insofar as they introduced them and, of course, they had a purpose why they were introducing them, which was, according to them, to show the meter data that links Ms Daniels to the drafting of these letters and the modifier being Mr Salim Essa.

CHAIRPERSON: H'm.

ADV SELEKA SC: So, that is the connection they sought to use but ...[intervenes]

CHAIRPERSON: H'm.

ADV SELEKA SC: But they did confirm that these letters were not used.

CHAIRPERSON: And in terms of how they came to be – well, as I understand it – as I understand the position. Mr Khoza sent them to Ms Klein.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Did Ms Klein – did Mr Khoza accept that she sent them to Ms Klein and did Ms Klein accept that she received them from him?

ADV SELEKA SC: Yes. Yes. In fact, Mr Khoza is the one who tells us in his affidavit ...[intervenes]

CHAIRPERSON: Yes.

ADV SELEKA SC: ...that he forwards these letters – that he forwarded these letters ...[intervenes]

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** ...on the 14th of March 2015 to Ms Venete Klein.

CHAIRPERSON: Yes. And where does he say he got them from?

ADV SELEKA SC: Ja ...[intervenes]

CHAIRPERSON: How does it come to be in possession of the...?

ADV SELEKA SC: It is an important question, Chair. And I am going to read from his affidavit.

CHAIRPERSON: Yes.

ADV SELEKA SC: He says ...[intervenes]

CHAIRPERSON: Please do, ja.

ADV SELEKA SC: Ja.

CHAIRPERSON: You know, one has been hearing a lot of evidence. So, sometimes some of the issues come back and you have question marks.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: [coughing] Excuse me. Yes.

ADV SELEKA SC: Then just for the record.

CHAIRPERSON: Ja.

ADV SELEKA SC: But when... It is Eskom Bundle 14(a) on page 283.

CHAIRPERSON: Yes. 283?

ADV SELEKA SC: 283, yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Paragraph 46.

20 **CHAIRPERSON:** Yes.

ADV SELEKA SC: Ja. And he says:

“I do not recall exactly when and cannot find a record of same, but Tsotsi sent me pre-suspension letters for Marokane, Molefe, Koko and Matona which alluded to their alleged

misconduct...:

CHAIRPERSON: H'm.

ADV SELEKA SC: So, he does not recall exactly when and he cannot find a record of same.

CHAIRPERSON: H'm.

ADV SELEKA SC: And then it goes on:

“At that time, I thought that the letters were prepared by Linnell in order to assist the board.

10 However, as the board did not charge the executives in any way, these letters were ultimately never utilised...”

CHAIRPERSON: H'm.

ADV SELEKA SC: Yes.

“As I was relieved from my role as the Chairman of the People in Governance Committee, I transmitted copies of these letters to Klein on 14 March 2015.

20 A copy of this email is annexed hereto, marked ZK-9.”

So that is paragraph 46.

CHAIRPERSON: Yes.

ADV SELEKA SC: And then he goes to explain:

“While preparing the affidavit, I noticed that the pre-suspension letters were actually

prepared by Daniels and edited by Mr Salim
Essa.

The properties of the document show this as I
have now discovered.

Again, I did not know how to check who has
authored it or edited the Word document prior
to now...”

And then he attaches those pre-suspension letters.

CHAIRPERSON: Yes. Now – and has Tsotsi responded to
10 these evidence by Mr Khoza to the effect that he has got
these letters from him, these pre-suspension letters from
him?

ADV SELEKA SC: Yes, Chair. We – he has denied ever
...[intervenes]

CHAIRPERSON: Yes, anything like that.

ADV SELEKA SC: He denies having anything to do with
these letters, nor sending them to Mr Khoza.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Yes. Okay. Well, he needs to be asked
whether he had – I think Mr Poon will deal with this. He
had computer – what, an Apple or something computer?

ADV SELEKA SC: Yes, Apple computer.

CHAIRPERSON: Ja, Apple computer.

ADV SELEKA SC: Is that ...[intervenes]

CHAIRPERSON: Ja, and what we need to know about the Apple computer also. Is whether within Eskom there were people who used such computers because if there were no people using those computers, that type of computer ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...then it may well be that the conclusion would be that the Apple computer that was used, according to Mr Poon, that that computer may well have been from
10 somebody outside of Eskom.

ADV SELEKA SC: Yes, yes.

CHAIRPERSON: Okay, alright. I think that is fine. Now, let us continue. What I think you could do, if you are able to, now that we have asked about a comparison of these pre-suspension letters that came from Mr Khoza, and the actual letters of suspension that were given to the executives, we could not indicate where those are to be found for the four executives, the actual letters that were given to them. You could do that later if it is not already
20 attempt.

ADV SELEKA SC: Yes.

CHAIRPERSON: Just so that whoever reads the record who wants to compare, they know where to find them.

ADV SELEKA SC: Okay, Chair, I will do it later.

CHAIRPERSON: Ja, okay. Your junior could be looking in

the meantime.

ADV SELEKA SC: The junior is now away, Chair.

[laughs]

CHAIRPERSON: [laughs]

ADV SELEKA SC: Yes.

CHAIRPERSON: Well, maybe she is listening somewhere.

[laughs] While doing something else, and she will send you a message ...[intervenes]

ADV SELEKA SC: Yes.

10 **CHAIRPERSON**: Okay, alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, you can then continue with Mr Poon.

ADV SELEKA SC: Thank you, Chair. Mr Poon, the -so, we have traversed the letters, the contents of the letters and you were asked to do an exercise in regard to those letters to locate where they could have originated. Can you then take us through the exercise or your findings in regard to each individuals whose backed up data you
20 looked at? Let us start with Ms Daniels.

MR POON: Sure. Chair, before I do that. Just to sort of set the scene of how I got to identify various documents within the forensic analyses tools that I spoke about earlier, the New(?) X(?) Tool. I ran various search criteria which included, first of all, the names of the files as they

had appeared within Mr Khoza's email to Venete Klein as well as the MD5# signatures of ...[intervenes]

CHAIRPERSON: Well, one second, Mr Poon. Certainly from my assistance because I am not good with technology. Certainly from my assistance, it would help if you are able to say before you explain what you actually did.

MR POON: Yes.

CHAIRPERSON: To say, when you got an instruction or request, such as find the origin of a particular letter
10 ...[intervenes]

MR POON: Yes.

CHAIRPERSON: ...where it came from and what has been its journey during the different stages of modification and corrections and whatever, where – within the digital forensic world, what does that require? It requires you to engage in the following steps, A, B, C, D, whatever. This is how you find out and in this case, this is what you did to find out. That would help me.

MR POON: Yes, Chair, I will do that.

20 **CHAIRPERSON**: Ja.

MR POON: So, insofar as the – or should I say, after the request had been made to assisting in finding these documents, what I did was, the Commission has an evidence, a digital evidence register and maintains a digital evidence register of all the digital evidence that has

been acquired and/or collected by the Commission over the duration of the Commission.

So, what I had done was to then search the evidence registers for data that had been collected in relation to or put – data that was acquired – what the letter of Eskom. Excuse me. And to then search specifically for the data section which contained data relating to Ms Daniels, Mr Khoza and Mr Koko.

So, from there, looking up those or searching for
10 those individuals within the evidence register, I then identified the various hard drives, electronic hard drives which contained the data that had been collected and thus, subsequently, been stored on those hard drives.

I went into then the evidence storage location where those hard drives are kept, checked those out of them the evidence store and then I had then mounted or had attached them to the computer systems that the Commission utilises for those purpose.

Within those data sets then specifically looking for
20 those three individuals, backup data as well as their email archives, and it is from that point where I then ingested them into the *New X* application, which I mentioned earlier.

So, once the data had then been ingested into *New X*, I then ran a number of search terms or search – or executed some search criteria which, as I started to

mention earlier, included the files names of the document attachments which are the pre-suspension letters that were attached to the email that in the email that Mr Khoza had sent to Mr Klein on the 14th of March of 2015.

In addition to using the file names, I also searched for the MD5# signatures of those files. And to pre-empt your question to what an MD5# is, Chair.

CHAIRPERSON: Yes.

MR POON: If I may just explain very briefly what they are.

10 **CHAIRPERSON:** Yes, please, yes.

MR POON: So, an MD5# for a – for any piece of data is, effectively, or essentially a digital feeder print for a piece of data. So, it is calculated by a programme and what you will then do is, the programme would read that data. In this case, it is the four pre-suspension documents. It would calculate and it has its own algorisms and calculations.

And it would then calculate the information based on its algorism and it would then result in a 32-character
20 value which represents that digital fingerprint of that document.

So, documents which are identical to each other will have the same digital fingerprint. Documents which do not or have different content will have different MD5#'s. And so... So, as I mentioned, I then searched for the

MD5#'s ...[intervenes]

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

MR POON: Yes.

CHAIRPERSON: You talk about, what, a digital fingerprint or something. [laughs] So, would that – would you then do a comparison? Or does this relate to a comparison that happens in this way, that if you have been asked to investigate the origin of a certain document, like a letter, if you use whatever tool you are using, let us say in regard
10 to a certain laptop or computer.

Then if that computer or laptop does have in its backup data or whatever, or if that document has gone through that computer at some stage or another, then when that document is tested, using whatever tool you use in regard to that computer, then the computer or your tool will tell you that this document - it has got features which are identical to a document that has been in this computer or has been used in this computer in way or another, or has been typed in this computer? Is that more or less that an –
20 is that a correct way of putting it for a lay person?

MR POON: That – more or less, Chair, that will ...[intervenes]

CHAIRPERSON: So, what I am having in mind is that. For example, you are talking about a fingerprint. If a computer has got my fingerprint and then I come and

maybe put my fingerprint or my fingerprint is brought, then the computer will say, I have got this fingerprint. It is the same fingerprint. So, if you are not supposed to bring this fingerprint two times or it is not supposed to store two of the same fingerprints, then it will tell you: No, I already have got this. Then you know that it is the same fingerprint. Is that kind of explanation correct for what you are talking about?

MR POON: More or less, Chair. So, in ...[intervenes]

10 **CHAIRPERSON**: That is for a layperson's way of explaining it. [laughs]

MR POON: Yes, Chair. If I may maybe just elaborate on then the task of finding those documents.

CHAIRPERSON: Ja.

MR POON: You know, with these identified. I think it will illustrate how it ...[intervenes]

CHAIRPERSON: Yes, ja.

MR POON: So, just taking another step backwards. When I had ingested all of the data which I had identified the
20 backup data as well as then the email archives. Once I had ingested that into the *New X* application, automatically in the process of ingesting that data into the application, the application automatically calculates this digital signature for all of the files that are contained within the data which I had put into the system, alright?

CHAIRPERSON: H'm.

MR POON: So, every single file, as I said, would have an associated digital fingerprint with it. So, when it comes to then searching. What I did. Obviously, Professor Louwrens within his testimony, he had identified already what those digital fingerprints were for those four files. So, using those signatures that he had attested to, I then knew what the digital fingerprints I needed to search for.

I then would enter those fingerprints or the values,
10 MD5#'s into the system and then the system would then filter and tell me, you know, yes, these files are here, or no these files are not.

CHAIRPERSON: H'm, h'm.

MR POON: Does that help explain that?

CHAIRPERSON: Yes, ja, no, that does help me. That does help me, definitely.

MR POON: So, you are quite right. It does do a comparative exercise between what it knows and what it then is provided.

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

MR POON: Okay. So, in addition to those searches, being the file names and the MD5#'s. In addition to that, what I also did ...[intervenes]

ADV SELEKA SC: Can I ...[intervenes]

MR POON: Yes, Commissioner?

ADV SELEKA SC: Can I also – can I ask this question?

MR POON: Sure.

ADV SELEKA SC: Which I think the Chairperson is also asking. If I do a document on my computer and I remove that document and save it in a different computer of Mr X, and there is a document that also Mr X has which comes, not from me, but from Mr B. The document deals with the same issue, but they originate from two different machines. Are you able to tell which of the two documents come from
10 my machine when you are looking at Mr X's machine?

MR POON: Not specifically, no. So, if a document does no – is no longer stored within a machine, as you put it, and that document has been completely erased and there is evidence of – or there is no remnant of that document that appears. When we put that into the – or use the tools to calculate the files, because that files is no longer there, it would not find that signature. Insofar as data that may have come from other machines, we try to analyses the meta-data to try and give us indications where it may have
20 come from but having said that. There are no fields that specifically go – move along with files to say it came from originally machine A or machine B or machine C.

ADV SELEKA SC: Okay.

MR POON: There are only the meta-data which Professor – if I may remind you – Professor Louwrens then spoke to

about insofar as the author or the last author of the documents. Those meta-data that is giving an indication where it may have come from, but it does not necessarily mean that it definitively came from a particular machine.

ADV SELEKA SC: Okay.

MR POON: Does that help answer that?

ADV SELEKA SC: Yes, but I assume for a moment, the information, the trail of information is not deleted. Assume for a moment I still have the document.

10 **MR POON**: If you still have the document, the signature that can then be calculated and we could – would then be able to find it.

ADV SELEKA SC: Okay.

MR POON: But again, if there are different versions of the document which may sit on your – on a particular computer, then that would have a different MD5# associated with it.

ADV SELEKA SC: Oh, I see. I see.

MR POON: Which I think will lead me to the next set of
20 search criteria which I performed.

ADV SELEKA SC: Okay.

MR POON: If I may move into that.

ADV SELEKA SC: Yes, please.

MR POON: Okay. So, as I mentioned, I looked for the file name, I looked for the MD5#, but in addition to that, what I

did was, I took the four pre-suspension letters and I tried to find common streams of text that appeared commonly within in all four of those files. And I identified four pieces of text which we referred to as streams of text, and I then used that, also, as search criteria. And the purpose of that would be to attempt to identify varied versions. Not necessarily one hundred percent having contained the entire content, but varying versions, hopefully, which may contain the common pieces of text which I then identified.

10 **ADV SELEKA SC**: So, this would be like your search words?

MR POON: Correct.

ADV SELEKA SC: Ja ...[intervenes]

MR POON: In this case, I... Yes, that is correct. So, then utilising the letters which we are aware of already. I extracted terms and phrases from those letters to then search for additional – with altering versions of them or different versions of them.

ADV SELEKA SC: Yes. Okay, carry on.

20 **MR POON**: Alright. So, by applying those search criteria, I was then presented with 12 documents and three associated emails with those documents. I think I have that in Annexure LP...

ADV SELEKA SC: Yes.

MR POON: ... if I am not mistaken.

ADV SELEKA SC: Can you use the word – a different word for presented? So, you were able to – your search results showed – came up as 12 documents?

MR POON: Yes. So ...[intervenes]

ADV SELEKA SC: Yes.

MR POON: ...what was responsive to those search criteria ...[intervenes]

ADV SELEKA SC: Yes.

MR POON: ...the tools then presented those or filtered
10 the files and presented those to me.

ADV SELEKA SC: Okay?

MR POON: So, it is almost like if you are using an Excel document, an Excel spreadsheet.

ADV SELEKA SC: Yes?

MR POON: And there are filters enabled on that and you put the various conditions within the filters out of all the various records that may appear in your spreadsheet, once you apply those – it is just criteria's, the spreadsheet would then filter and would only show you those records
20 which are responsive to those search criteria.

ADV SELEKA SC: Yes.

MR POON: So, similarly, the forensic software does the same.

ADV SELEKA SC: Yes. Chair, just before Mr Poon proceeds. May I give the Chairperson reference to – where

to find the suspension letters that were given to the executives. It would be Eskom Bundle 7, page 627. And I think it is... It might be 7(a). If Mr Tsotsi has two bundles. You got it, Chairperson?

CHAIRPERSON: [No audible reply]

ADV SELEKA SC: I think – did we lose the Chairperson?

CHAIRPERSON: [No audible reply]

ADV SELEKA SC: Ja. Mr Poon, I think we have lost the Chairperson.

10 **MR POON:** [No audible reply]

ADV SELEKA SC: Is that right?

MR POON: It appears to be so.

ADV SELEKA SC: Yes. Ja, it says the Chairperson has dropped off.

MECHANICAL INTERRUPTION IN VIDEO LINK

INQUIRY RESUMES

CHAIRPERSON: Okay, thank you, let us continue. Mr Poon, can you hear me? He cannot hear me.

MR POON: I can, Chair.

20 **CHAIRPERSON:** Oh, you can. Okay, Mr Seleka, can you hear me? Mr Seleka? Oh, maybe he has muted himself. Okay, continue, Mr Poon.

MR POON: Chair, I think where I left off, I spoke about how I applied the search criteria.

CHAIRPERSON: Yes.

MR POON: To the forensics software and based on how that search criteria matched any documents which was contained within the system and data which had been processed in it, it then returned the 12 documents and three associated emails that matched ...[intervenues]

CHAIRPERSON: Just hang on, Mr Poon? Just hang on, we do not see Mr Seleka. Mr Seleka can you hear me?

ADV SELEKA SC: Yes, I can hear you.

CHAIRPERSON: Okay, alright. Okay, Mr Poon, let us see
10 or am I frozen. Mr Poon?

MR POON: I can hear you, Chair.

CHAIRPERSON: Okay, continue.

MR POON: Okay.

CHAIRPERSON: You might wish to start a few sentences
back.

MR POON: No problem, Chair. Again, I had applied the search criteria which I had spoken about earlier against the data which had been ingested into the application, the forensic application and based on that criteria the
20 application then returned documents which matched that criteria in which case it returned 12 documents and three associated emails to those documents. So that is in essence the bulk of the analysis which I had performed which I will then speak to going forward.

CHAIRPERSON: Ja, okay.

MR POON: So, Adv Seleka, insofar as your questions related to the funds I had for the three individuals, I will start with Ms Suzanne Daniels. So, within her date, her email archive, I found two emails that were sent by Ms Daniels to Mr Koko on the 25 and 26 February of 2015.

The first email, which was sent on the 25 February was sent at approximately 6 p.m. in the evening and it contained a Microsoft Word document which appeared to be a pre-suspension letter, based on its content, that was
10 addressed to a Malesela Sekhasimbe and within the document, the document reflected Matshela Koko as the issuer of the document.

Then with regard to the second email that was sent the day after ...[intervenes]

CHAIRPERSON: Hang on one second?

MR POON: Yes, Chair.

CHAIRPERSON: In your affidavit you have made that first email annexure LP8, is that correct?

MR POON: That is correct, Chair.

20 **CHAIRPERSON**: Okay, continue, tell us what annexure you have assigned to each email.

MR POON: I will do so, Chair.

CHAIRPERSON: Okay.

MR POON: So, as you had correctly stated, the email I had assigned annexure LP8 to it and the document

attachment to that email I had assigned annexure LP9 to it.

Then with regard to the second email that I had identified, that was ...[intervenes]

CHAIRPERSON: I am sorry, you have just spoken about LP8 and LP9.

MR POON: Yes, Chair.

CHAIRPERSON: Annexure LP8 is the document that you are talking about as a document that Ms Daniels appears to have send to Mr Koko that related to the pre-suspension
10 meeting of Mr Sekhasimbe, is that right?

MR POON: That is correct, Chair.

CHAIRPERSON: Okay, that is LP8 and what is LP9?

MR POON: Is it the document, the actual letter that was attached to the email, Chair.

ADV SELEKA SC: So LP8, Chair, is the email and LP9 is the document attached to the email, so maybe ...[intervenes]

CHAIRPERSON: Oh, was LP8 a covering email in other words?

20 **ADV SELEKA SC**: Correct, Chair.

MR POON: That is right, Chair.

CHAIRPERSON: Okay, so the LP8 was the covering email from Ms Daniels addressed to Mr Koko?

MR POON: That is correct, Chair.

CHAIRPERSON: And then the actual pre-suspension

letter that related to Mr Sekhasimbe you assigned the LP9 as its annexure, so it is annexure LP9 to your affidavit.

MR POON: Correct, Chair.

CHAIRPERSON: Okay, now I understand. Continue.

MR POON: Okay.

ADV SELEKA SC: Chair, the page – maybe Mr Poon could refer to the page numbers and the documents themselves. Chair, it is 455 of the hard copy.

CHAIRPERSON: Yes.

10 **ADV SELEKA SC**: Mr Poon, for yourself, it is 923. 455, Chairperson and 456.

CHAIRPERSON: Yes, and I think you are right, Mr Seleka, as you go along it is important to go and have a look at the letter. Do you want to take him through that or Mr Poon, on my page 455 on the hard copy, that is annexure LP – that is marked annexure LP8.

MR POON: Yes, Chair.

CHAIRPERSON: It is an email from Suzanne Daniels, Danielsm@eskom.co.za , it was sent on Wednesday 25
20 February 2015 at two minutes past six and the subject is Sekhasimbe documents, and it says:

“Attachments 2150223 and then says memorandum, execution copy.docx:2015.02.25, Invitation to Pre-suspension Meeting, Execution Copy.docx. High importance, Confidential, regards Suzanne.

Is that the covering email you are talking about that you say you found in Ms Daniels' computer?

MR POON: That is correct, Chair.

CHAIRPERSON: Okay.

MR POON: And to elaborate, the attachment that I am referring to, Chair, is the one that you read out now.

CHAIRPERSON: Yes.

MR POON: Which starts with the 20150225 invitation to pre-suspension meeting, executioncopy.docx. That is the
10 attachment I am referring to in the affidavit.

CHAIRPERSON: Yes, the - on page 456 of the hard copy there is a letter addressed to Malesela Sekhasimbe, general manager Commodity Sourcing, Group Commercial, Eskom Holdings Soc Ltd, it is dated 25 February 2015, it says:

“Dear Malesela, invitation to a pre-suspension meeting.”

And on page 457, hard copy, it is not signed but where – just below the line where the signature is supposed to
20 appear, it is written Matshela Koko, Group Executive Technology and Commercial (Acting) and then below that it says:

“I, Malesela Sekhasimbe, acknowledge receipt of this notice to attend a pre-suspension hearing.”

But it is not signed by either Mr Koko or Mr Sekhasimbe.

And it says it invites – it tells Mr Sekhasimbe that:

“The company was conducting an investigation to allegations of misconduct allegedly committed by you.”

That is the first sentence under 1. Then it says:

“The allegations of misconduct which would be investigated relate to among others, the following.”

Then there are three – there is 1, 2 and 3. 1.1, 1.2 and 1.3 where the allegations are made and then in paragraph
10 3 it says:

“You are invited to attend a meeting to discuss your possible suspension.”

And then number 4 it says:

“The meeting will be held on Monday 2 March 2015 at eleven o’clock, 11h00.”

And then under paragraph 5 it tells him what rights he would have during the meeting. Is that document starting on hard copy page 456 and going up to hard copy 457 the document that you have – that you found in Ms Daniels’
20 computer that you marked as annexure LP9?

MR POON: That is correct, Chair. However, Chair, I did not find it in her computer, I found it within her email archives.

CHAIRPERSON: Oh, in her email archives, okay. And that is the same with the covering email?

MR POON: Correct, Chair.

CHAIRPERSON: Okay, alright. Mr Seleka, you can take it from there or he can continue.

MR POON: Yes, thank you, Chair. So that deals with the first email and the attachment to that email that I had found which was sent on the 25 February of 2015. The second email, which I had identified, Chair, just to be clear the covering email is LP10.

CHAIRPERSON: I am sorry, Mr Poon, to take you back
10 again, I am a layperson with technology. You sought to make a distinction between finding – saying you found these documents in Ms Daniels' computer and saying you found them in her archives.

MR POON: Correct, Chair.

CHAIRPERSON: Do you want to explain that to a layperson like me?

MR POON: So ultimately, the way similar is that they are both backups of data, so that is they are similar. However, the distinction that I speak to in my affidavit between an
20 email archive and a user backup is that the email archive – and Chair, I was not - you know, I was not involved in the collection of this data.

CHAIRPERSON: Ja.

MR POON: But from what I can see is that the email was specifically exported from Eskom's systems as email files.

CHAIRPERSON: Ja.

MR POON: So specifically, the emails were exported, and the Commission had collected that, so that speaks to the archives. Insofar as the user folders are concerned, which I referred to in my affidavit, the user folders is effectively like in your own computer, Chair, the data that is contained under your own user profile.

CHAIRPERSON: Yes.

MR POON: And that would include your desktop, that
10 would include your documents folder, your pictures folder, your videos folder, etcetera. That date I referred to then as the user folder's backup.

CHAIRPERSON: Okay.

MR POON: So, in this case the email that I referred to which I identified from Ms Daniels' archive came from the specific emails that were exported out of Eskom systems before we applied it.

CHAIRPERSON: Okay, alright. Thank you, you may continue.

20 **MR POON:** Thank you, Chair. Then moving to the second email that was sent by Ms Daniels to Mr Koko the day after, which was the 26 February 2015, the covering letter, Chair, I have allocated annexure LP10.

ADV SELEKA SC: It is on page 458.

MR POON: Yes.

ADV SELEKA SC: Of the hard copy, 926 of the electronic pagination.

MR POON: Would you like me to elaborate on the cover letter, Chair?

CHAIRPERSON: Let me just get there, where is the cover letter on the hard copy?

ADV SELEKA SC: 58.

CHAIRPERSON: 458?

ADV SELEKA SC: 458 yes.

10 **CHAIRPERSON:** Just read into the record what is contained in the cover email, Mr Poon.

MR POON: Yes, certainly, Chair. The covering letter is basically a forward of the email which we spoke of earlier which was sent the previous day. So, if you look at the bottom of that email, you will see it says there from Suzanne Daniels sent on Wednesday 25 February 2015 at 6.02 p.m. and that refers to the email that was sent the day before, okay? Insofar as the portion of the email, which was applicable to the 26 February 2015, that email again
20 was sent from Suzanne Daniels with email address Danielsm@Eskom.co.za which was sent on Thursday the 26 February 2015 at 8.22 in the morning, and it stated that it was sent to Matshela Koko with subject:

“Re: Sekhasimbe documents.”

And it contained an attachment which is named 20150225,

Invitation to pre-suspension meeting, executioncopy.docx and the email indicates the importance as high and the sensitivity as confidential.

CHAIRPERSON: Okay.

ADV SELEKA SC: And the message in the email?

MR POON: Yes, it just says:

“Cleaned up copy, regards Suzanne.”

ADV SELEKA SC: Thank you.

MR POON: Okay. And, Chair, the attachment that was
10 contained within that cover email, I have allocated annex
LP11 which is on page 459 of the hard copy.

CHAIRPERSON: Yes?

MR POON: And Chair, I just wanted to point out that this
file, this letter had the same file name as the file name that
was sent the previous day by Ms Daniels.

CHAIRPERSON: Yes.

MR POON: And when I had opened up this particular
document, I noticed that it appeared to be an updated
version of the one sent to Mr Koko by Ms Daniels the day
20 before.

CHAIRPERSON: Yes, okay.

MR POON: Correct. So basically, LP1, annexure LP11,
was an updated version of LP8.

CHAIRPERSON: Are you able to identify where the
differences were?

MR POON: I did, Chair. So, when comparing LP9, which is the letter from the day before to LP11 which is the letter from (indistinct – recording distorted), the date on the letter that was sent on the 26th, it reflects 26 February 2015 as opposed to 25 February 2015 on a previous version and the majority of the letter is mostly the same, Chair, so I will just refer to the specific differences that I identified, if that is, okay?

CHAIRPERSON: Ja, that is fine.

10 **MR POON**: So, within annexure LP11 in point 1.2 which is the section that deals with the allegations against the recipient of the email or the intended recipient of the email. It reads:

“Disregarding or wilfully failing to carry out a lawful order given to you by a person authorised to do so, more specifically failing to ensure that the transaction...”

And the rest of the sentence:

“following transaction.”

20 Is what was updated in LP11, Chair.

CHAIRPERSON: Okay.

MR POON: So, continuing on that sentence it says that:

“Failing to ensure that the transaction is properly authorised in terms of the prescribed procedures.”

CHAIRPERSON: Okay.

MR POON: So, the portion that says:

“...properly authorised in terms of the prescribed procedures”.

Is what was added to the document or updated from the previous version.

CHAIRPERSON: Okay. So, from:

“...is properly authorised.”

MR POON: Correct.

CHAIRPERSON: What were the new words?

10 **MR POON**: The new words:

“...is properly authorised in terms of the prescribed procedures”.

CHAIRPERSON: Oh, okay, alright.

MR POON: Okay. And then there is a third difference that I identified Chair. That is on page 2 of annexure LP11 which is on page 460 of the hard copy.

Under the section where it shows the issuer of this document, it shows Matshela Koko as being the issuer of this document.

20 **CHAIRPERSON**: Yes.

MR POON: And beneath that it says – it refers to his title being Group Executive Technology and Commercial.

CHAIRPERSON: Yes.

MR POON: Now in the previous version, that phrase, Group Executive Technology and Commercial was on the

same line as Matshela Koko.

CHAIRPERSON: Yes.

MR POON: And on the previous version it also had the word (Acting) after the title. Which in this copy has now been removed?

CHAIRPERSON: Yes.

MR POON: Okay, so that is the extent of the differences that I had identified within the two documents, Chair.

CHAIRPERSON: Yes.

10 **MR POON**: Okay.

CHAIRPERSON: Okay, alright, continue?

MR POON: Alright, so – and once I had identified those differences, Chair, I looked at the metadata of both documents specifically to do with the author or the original author and last author metadata fields of both documents and they both reflected Suzanne Daniels as the original author and last author of both documents.

CHAIRPERSON: Okay.

20 **MR POON**: Okay. And, Chair, the significance of these ...[intervenes]

CHAIRPERSON: What does that mean in the context of the fact that we know from your affidavit that you say she sent them to Mr Koko, when you say they reflect Ms Daniels as the last author, what does that mean in that context?

MR POON: Well, I think, Chair, it just means that it is consistent with the events that had taken place or appeared to have taken place. So, in the first email Ms Daniels had sent Mr Koko the documents as an attachment.

CHAIRPERSON: Ja.

MR POON: Within that email, within the metadata of the document that was attached, it shows that she was the author of the document, and she was the last author of the document.

10 **CHAIRPERSON**: So (indistinct – recording distorted)

MR POON: Well, one cannot tell if there were additional people in between the first and the last author of the document.

CHAIRPERSON: Oh, okay.

MR POON: It only shows you the first one and then the most recent one.

CHAIRPERSON: Okay.

MR POON: Okay. And that occurred similarly within the second document which was attached to the email sent on
20 the 26th. So, what I am trying to just convey there, Chair, is that the consistency of the metadata in relation to the events as we understood took place.

CHAIRPERSON: Okay, continue.

MR POON: In terms of the significance of these documents, Chair, I will in the next section when I refer to

the documents that I find on Matshela Koko's user data, I will elaborate on what the significance of these specific documents are.

CHAIRPERSON: Okay.

MR POON: So, Adv Seleka, that is the extent of my findings insofar as Ms Suzanne Daniels is concerned. I will now, with permission, move on to the findings as it related to Matshela Koko's data.

ADV SELEKA SC: Ja, okay.

10 **CHAIRPERSON**: Yes, do so unless Mr Seleka has questions on the section that you have just dealt with.

ADV SELEKA SC: No. Thank you, Chair, maybe there is a question leading to the next item. Mr Poon, you said that you found the emails and the attachment in the email data of Ms Daniels. Did you also find them in the email data of Mr Matshela Koko?

MR POON: Yes, I indeed do that, Adv Seleka, so I found both emails within both archives, that of Ms Daniels and Mr Koko.

20 **ADV SELEKA SC**: Yes. Did you find what might have been the uncleaned copy because in the second email Ms Daniels says:

“Find the cleaned up copy.”

Could you find one with track changes?

MR POON: So those exact – no, there were not any track changes in any of the documents that I [indistinct – dropping voice]

ADV SELEKA SC: Okay. Okay, in other words, what I am trying to ask you is whether after the email of 25 February 2015 from Ms Daniels to Mr Koko...

MR POON: Yes.

ADV SELEKA SC: Did you find a reply to Ms Daniels from Mr Koko with a document that had track changes?

10 **MR POON**: No, there was no reply from Mr Koko to Ms Daniels.

ADV SELEKA SC: I see.

MR POON: In relation to those letter that I could find.

ADV SELEKA SC: Okay, you may proceed.

MR POON: Thank you.

ADV SELEKA SC: So, in regard to Mr Koko, you say you found these documents, the emails and the attachments also in his email archives. You can explain to the Chairperson then from there.

20 **MR POON**: Right, thank you. So, moving on to the next section of findings, Chair, which deals with the documents which I had found within Matshela Koko's user backup folders, right?

So based on the search criteria, which I have spoken of earlier, I found two documents within Mr Koko's

backup data which appeared to be relevant to this matter in that they were very similar to the pre-suspension letters.

The first document, which I have allocated annexure LP12, which is found on page 461 of the hard copies, Chair. From pages 461, it continues until 462.

CHAIRPERSON: Yes.

MR POON: Okay.

CHAIRPERSON: I have got it.

MR POON: That file I found in Mr Koko's user backup
10 folders, and it was specifically found within a folder that was labelled Matshela's Stuff which was located on the desktop.

CHAIRPERSON: So, this is – annexure LP 12 is a letter addressed to Malesela Sekhasimbe, general manager, Group Sourcing Group Commercial, Eskom. It is dated 26 February 2015 and the author is Matshela Koko, Group Executive Technology and Commercial. It says Dear Malesela, and the heading is invitation to a pre-suspension meeting. Yes continue.

20 **MR POON:** Yes Chair, so similarly to the documents which were discussed and identified to date this file had again the same file name as those which were attached in the emails from Ms Daniels to Mr Koko, which I had spoken about earlier which was sent on the 25th and 26th of February of 2015.

CHAIRPERSON: You made a reference earlier on to Mr Matshela Koko's desktop, just go back to the point – what was the point you were making?

MR POON: Just that it was not found within an email it was found as a loose file within a folder on his desktop Chair.

CHAIRPERSON: Oh, okay, alright, continue then.

MR POON: Thank you. So, when I opened this document Chair and looked at the contents it appeared, also to be,
10 as you have read out, a pre-suspension letter and it was consistent in content with the previous two letters which we had already discussed but there were some minor alterations to it okay. If I may, would you like me to work through those alterations again Chair?

CHAIRPERSON: (Indistinct – distortion), ja please.

MR POON: Okay so essentially what I'm doing now, Chair, is I'm comparing Annexure LP12 which is the letter that I found on Mr Koko's desktop in a folder on Mr Koko's desktop and we're comparing it to the previous letter which
20 had – which was Annexure LP11 which Ms Daniels had sent to Mr Koko, again Chair, there are documents – majority of the document is – the content is very similar and identical. The only part of the document now that has changed, if I can refer you to paragraph 1.1 in that letter of Annexure LP12.

CHAIRPERSON: H'm.

MR POON: It reads,

“Contravention or failure to comply with Eskom’s procedures, directives and applicable statutory requirements, more specifically causing the Chairman – and there Chair, you see the word “of”, that precedes Eskom Holdings SOC, that word “of” was not included in the draft okay”.

CHAIRPERSON: Okay.

10 **MR POON:** That “of” was not in a previous draft and then what follows,

“Eskom Holdings SOC Limited to commit and the words following commit which is, Eskom Holdings SOC Limited to a payment of ZAR60 506 852.00 to Sumitomo Corporation (Japan) which he was not authorised to do so”.

So that portion of the sentence was modified in this version of the documents, Chair. The previous version did not have – did not include the words “to a payment of
20 ZAR60 odd million to Sumitomo Corporation of Japan.

CHAIRPERSON: Okay, okay ja.

MR POON: And that was the extent of the alterations to this version of the document Chair.

CHAIRPERSON: Okay, alright.

MR POON: Okay, then proceeding, Chair, the letter was

still addressed to Malesela Sekhasimbe as it was in the previous version that we had discussed and also Matshela Koko was still reflected as the issuer of the document, right.

CHAIRPERSON: Yes.

ADV SELEKA SC: When I looked at the metadata for this file Chair, I looked at the last modified date/time and this document had been last modified on the 26th of February of 2015 at 10h57am in the morning which was the same day
10 that Ms Daniels had sent the previous version to Mr Koko, but it was two and a half hours later. Insofar as the metadata that relates to the authors of this document Chair, the original author reflected as – was reflected as Suzanne Daniels but now the last author instead of Suzanne Daniels as was in the previous versions, it now reflected Matshela Koko.

CHAIRPERSON: Yes.

MR POON: So, based on this metadata, Chair, it appears that then this document was modified by Mr Koko or at
20 least it was modified on his computer, Chair. Some two and a half hours after he had received it from the email that Ms Daniels had sent him earlier in that day.

CHAIRPERSON: Okay.

MR POON: Okay, so Chair that deals with the first document which I had found on Mr Koko's computer, okay.

I'll then move on to another document which I had found.

CHAIRPERSON: Yes.

MR POON: So, the second document that I had found which I have allocated, Chair, the Annexure numbered LP13, Annexure LP13 which is on page 463 of the hard copies.

CHAIRPERSON: Yes.

MR POON: Okay, now this document, Chair, it again it had the same file name as the previous files we had
10 discussed, that being 2015/02/25 invitation to pre-suspension meeting execution copy.docx and I had found this...[intervenes].

CHAIRPERSON: Sorry, you said once again [indistinct – distorted] the document you are now talking about at 463 hardcopy.

MR POON: Yes, Chair.

CHAIRPERSON: 463 or 465?

MR POON: 463.

CHAIRPERSON: Oh, okay I've got it, I just wanted to
20 make sure I've got it right, okay continue.

MR POON: Yes, Chair and it continues onto page 464.

CHAIRPERSON: Yes okay.

MR POON: Right, so Chair, this particular document as I said had the same file name as the file names which I spoke of earlier. This file, however, I found in a different

location within Mr Koko's backup data. I had found it within the route which is the top most folder within his user profile that was contained in that backup data. So, it's just to say that it was found in a different location, Chair.

CHAIRPERSON: Yes, now you read a file number...[intervenes].

MR POON: Yes, a file name.

CHAIRPERSON: A file name I don't see that on this – on this, is that because you noted that somewhere else, I
10 don't see the file name appearing on 463, is that because it's not supposed to appear there anyway?

MR POON: No, it wouldn't because the letter in 463 is the content of the file Chair, you wouldn't – when printing the file out you wouldn't see the file name.

CHAIRPERSON: Okay, alright, okay continue.

MR POON: Okay, so in this particular Chair, again looking at the metadata the last modified date in this instance was the 10th of March of 2015, modified at approximately a quarter past three in the afternoon which
20 is ...[intervenes].

CHAIRPERSON: Before you get there, let's deal with what it says, Annexure – the document you are talking about that you – is a document you marked Annexure LP13 in your affidavit and it is a letter addressed to Matshela Koko, Group Executive...[indistinct – distorted] 2015 it says,

“Dear Matshela and then the heading is invitation to a pre-suspension meeting, and it says, 1) the company is presently conducting an investigation into allegations of misconduct allegedly committed by you. The allegations of misconduct which will be investigated relate to, amongst others, the following:

10 1.1 As the head of Engineering, you caused the appointment of ...[indistinct – distorted] to execute the control and instrumentation contract for Medupi and Kusile projects when they were not technically qualified to do the job. This caused the delay on both the Medupi and Kusile projects.

20 1.2 You were gross negligent – I guess that’s supposed to be ...[indistinct – distorted] it says you were gross negligent for failing to control the welding quality issues at Medupi Power Station. This resulted in a three year delay for Medupi Project and a significant increase in cost overrun and then at the end of – and then it says, paragraph 2, the company has not completed the investigations, the purpose of the investigation is to establish whether there are

grounds for disciplinary action, and it says,
having regard to the,

2.1 seriousness of the allegations and,

2.2 the possibility that your presence...[indistinct
-distorted] does the investigation into alleged
misconduct the company is of the view that you
should be suspended on full pay pending the
finalisation of the investigation and,

4. The meeting will be held on Monday 2 March
2015 at 11,

5. Explains the rights that the addressee would
have at such a meeting, and it says,

6. We envisage that our investigation should be
completed within a period of four weeks and the – it
purports that it is not signed, there is a line for
signature and a line for a date then it says,
Matshela Koko, Group Executive Technology and
Commercial (acting).

Okay, take it from there then.

20 **MR POON**: Thank you Chair. Insofar as the content that
you've read out, Chair, what I had noticed was that the
content was similar to two documents and I'll take you
through to each of them, Chair, which will then – you'll
then understand the significance of them. The first
document I had compared this to was the document that Ms

Daniels had initially sent to Mr Koko via email on the 25th of February 2015.

ADV SELEKA SC: That's LP9.

MR POON: That's correct, that was LP9. So, Chair, I compared it to that document and what I found were – was that it appeared that this document, LP13 was a modified version of LP9 okay and what led me to that Chair, assertion, was that if you look at LP13 page – the second page of LP13 which is on page 464 of the
10 hardcopy...[intervenes].

CHAIRPERSON: 464.

MR POON: Yes.

CHAIRPERSON: H'm.

MR POON: Point number 4, where it says,

“The meeting will be held on Monday 2nd of March 2015 at 11.00 am”,

That is the same date and time as it had appeared in the letter of NHLP9 which was addressed to Malesela Sekhasimbe and then further...[intervenes].

20 **CHAIRPERSON:** [Indistinct – distorted] paragraph 4 and it appeared at paragraph 4 of the – of Annexure LP9 just as it appears at paragraph 4 of Annexure LP13 is that correct?

MR POON: That's correct, Chair.

CHAIRPERSON: H'm.

MR POON: And further to that, Chair...[intervenes].

CHAIRPERSON: So...[intervenes].

MR POON: Yes, Chair?

CHAIRPERSON: So, the – in LP13 the document, the letter to Mr Koko which would have – which is reflected as coming from Mr Koko is dated 11 March, but it says – it invites him to a pre-suspension meeting, and it says the pre-suspension meeting is on the 2nd of March 2015?

MR POON: That's correct, Chair.

10 **CHAIRPERSON:** Is that right?

MR POON: That's correct.

CHAIRPERSON: Yes okay, continue.

MR POON: Okay, then again on Annexure LP13 on the second page of that document at the bottom where it indicates the issuer of a document, it says there, Matshela Koko, Group Executive Technology and Commercial (acting). Now, Chair, if you recall, I referred earlier to, when I compared two of the previous documents...[intervenes].

20 **CHAIRPERSON:** Our connection seems to be – Okay, Mr Poon there seems to be instability in the connection, but I think you are back – I think you are back – oh it, this is what it says, oh it says been restored – okay you were saying something about – go back to earlier, you were saying something about acting?

MR POON: Yes, Chair if you recall when I had mentioned previously when we compared two versions of the documents, we had previously spoken about I mentioned that there was the word “acting” in brackets after the title of Matshela Koko which had subsequently been removed in a modified version. In this instance of this letter of Annexure LP13 we see that it indicates, and it shows acting again. So, what that then led me to think was that this document of Annexure LP13 was a modified version of
10 Annexure LP9 in which that word “acting” after the title of Matshela Koko originally appeared.

CHAIRPERSON: H’m.

MR POON: Okay, so, that is what just gave me a clue, Chair, to narrow down which document I believed this was a modified version of.

CHAIRPERSON: Yes, okay.

MR POON: So, Chair as I indicated earlier, I compared Annexure LP13 to documents, so I had just spoken about the first one being Annexure LP9. The second document I
20 had compared Annexure LP13 to is the document which I have allocated as LP3 and Chair, this document – if I can just get the page number for you...[intervenes].

ADV SELEKA SC: 444.

MR POON: Thank you Advocate Seleka you beat me to it, yes, page 444 Chair, which is Annexure LP3...[intervenes].

ADV SELEKA SC: Mr Poon.

MR POON: Yes, Advocate Seleka?

ADV SELEKA SC: You know, sometimes one remembers – one is visual, and you remember things better when you see them. I think you need to show the Chairperson these...[indistinct – distortion] you're talking about the designation of Mr Koko in LP9, LP11 and LP13 because it's easily identifiable. Chair, if you – just before Mr Poon...[indistinct].

10 **CHAIRPERSON:** H'm.

ADV SELEKA SC: LP9 is on...[intervenes].

CHAIRPERSON: Annexure LP9?

ADV SELEKA SC: Yes LP9, if you go to the...[intervenes].

CHAIRPERSON: I've got it, page 456.

ADV SELEKA SC: 456, Chair, go to 457.

CHAIRPERSON: Oh, where I've already seen it, that acting, I went there, I went there, I've even gone – I've even checked elsewhere as well, so I've gone ahead of him
20 but you're right, I wanted to check and see, I saw, yes and I saw that in the one of 26, acting is not there as Mr Poon said ja. Okay, no thank you Mr Seleka, yes Mr Poon?

MR POON: Thank you Chair. So, as I indicated earlier, I initially compared LP13 to LP9 but then I subsequently compared LP13 to Annexure LP3 which was on page 444 of

the hardcopies.

CHAIRPERSON: Yes.

MR POON: And Chair, this document – this document that appears on page 444, Annexure LP3, that is the original document which was attached to the email that Mr...[indistinct] had sent to Ms Klein on the 14th of March of 2015.

CHAIRPERSON: Well, before you proceed, let's make sure the public knows what Annexure LP3 is, Mr Seleka, do
10 you want to take care of that?

ADV SELEKA SC: Yes, thank you Chair.

CHAIRPERSON: In terms of the contents, what it is all about so that the public can follow?

ADV SELEKA SC: Yes, the Annexure LP3 it's also an invitation to a pre-suspension meeting. The Annexure is dated – the letter is dated 11 March 2015, this time around it's addressed to Mr Matshela Koko as the Group Executive Technology and Commercial, it says,

20 “Dear Matshela, paragraph 1 then is similarly worded, the company is presently conducting an investigation into allegations of misconduct allegedly committed by you. The allegations of misconduct which will be investigated relate, to amongst others, the following:

1.1 As the head of Engineering, you caused the

appointment of Alstom to execute the control and instrumentation contract for Medupi and Kusile Projects when they were not technically qualified to do the job, the caused the delay on both the Medupi and Kusile projects.

1.2 You were grossly negligent by failing to control the welding quality issues at Medupi Power Station. This resulted in a three year delay for the Medupi Project and a significant increase in cost overrun”.

10

So, the public will recall, this sounds similar.

exactly the same, rather, as one of the letters we have already read, and the rest of the contents are also ...[indistinct] or repeat of what is already read out except that, in this case, the date for the meeting is changed to 12 March 2015 at 11h15 which is paragraph 5. In the previous letter it was 2 March 2015 at 11.00 and then at the end of – the person meant to sign the letter it is still Mr Matshela Koko it says,

20

“I Matshela Koko”,

Oh no sorry.

CHAIRPERSON: No, no.

ADV SELEKA SC: No that’s not the...[indistinct – distorted].

CHAIRPERSON: Ja, there is a line where somebody

would have written the letter to Mr Matshela Koko would have signed and a line, which I assume would have been a line for the date of signature but there is no name or position indicated of the person who would have written this letter to Mr Koko but below where the person would have signed and where the person's position would have appeared there is a line that says,

“I Matshela Koko acknowledge receipt of this notice to attend a pre-suspension hearing”,

10 So – and then a signature for employee and date so that's when he would have signed that says,

“I hereby certify that the above rights have been read and explained to the employee and there's a space for signature and a date for – a line for the date and it says – below the line for signature, signature of person serving notice”.

Yes, okay, continue.

ADV SELEKA SC: Yes, Mr Poon then...[indistinct] LP3 and how you compared it with LP19 what do you want to
20 tell the Chairperson.

MR POON: Yes, thank you and I just want to re-emphasise Chair, that the Annexure LP3, that is as we understand it to be the, I suppose, final letter or the letter that I was requested to search for which was attached to the email from Mr Khoza to Ms Klein.

CHAIRPERSON: Okay, so are you saying that this letter, Annexure LP3 is identical to one of the pre – one of the four pre-suspension letters that you had been asked to investigate?

MR POON: Yes, Chair, that is correct.

CHAIRPERSON: Yes, and identical is the right word?

MR POON: Yes, that is right, Chair.

CHAIRPERSON: Okay, alright, continue.

MR POON: So, in comparing Annexure LP13 which is the
10 second document which I had identified and found on Mr Koko's backed up data and comparing it to then Annexure LP3, what I found was that the section that deals with the validations as it appears in Annexure LP3 is almost identical to that – to the corresponding allegations as appearing in Annexure LP13 that was found on Mr Koko's backup data.

CHAIRPERSON: Okay, let me go to Annexure LP13 okay, the allegations,

20 "As the head of Engineering you cause the appointment of blah, blah, blah".

MR POON: Yes.

CHAIRPERSON: Okay, you say, 1.1 and 1.2 of Annexure LP3 is the same as paragraph 1.1 and 1.2 of Annexure LP13 in particular but you say, you say, there are more – there's more commonality than just that?

MR POON: Ja, Chair if I may, so if you look at paragraph 1.1 of both letters, LP13 and LP3, 1.1 in both versions are identical, word for word.

CHAIRPERSON: Yes.

MR POON: In LP – sorry in paragraphs 1.2, however, in both documents the – and if I may read out, Chair, starting with the version that is in Annexure LP13 again which I found on Mr Koko’s backup data, it reads there,

“You were gross negligent”,

10 Now on the word gross and you read it out yourself earlier, Chair, which you indicated that it should read, “grossly negligent”, in the document of LP13 it just says gross whereas in LP3 it says grossly, okay.

CHAIRPERSON: Yes.

MR POON: So, reading that sentence further,

“You were gross negligent for failing to control the welding quality issues at Medupi Power Station”,

Okay that’s the first sentence in that paragraph, the second sentence reads,

20 “This resulted in a three years and years written in plural, three years delay for Medupi Project”,

Whereas in paragraph 1.2 of Annexure LP3 that sentence reads,

“This resulted in a three year delay”,

So, the plural of year was changed to singular and

then following that in LP3 it says for “the” Medupi Project.

CHAIRPERSON: H’m.

MR POON: And then following that in LP3 it said for the Medupi Project. So the word that was omitted in the annexure of LP13.

So Chair apart from those differences which I had pointed out those three differences between the two versions in essence the rest of it insofar as the allegations are concerned are identical. Right.

10 **CHAIRPERSON:** Okay well you say allegations is it not that except for those three differences which are in the allegations under 1.1 and 1.2.

MR POON: Yes.

CHAIRPERSON: The contents of the two documents namely annexure LP13 and annexure LP3 are identical.

MR POON: No I am – in this comparison Chair I am only referring to paragraphs 1.1 and 1.2.

CHAIRPERSON: Okay. Is that because you did not undertake a further exercise.

20 **MR POON:** No.

CHAIRPERSON: Or is it because you did undertake it but you found that they were not identical.

MR POON: No so if I may Chair. If you recall annexure LP13 if I may re-summarise.

CHAIRPERSON: Ja.

MR POON: LP13 I had found it on Mr Koko's backed up – backed up data. Right.

CHAIRPERSON: Ja. Ja.

MR POON: And when I had opened this file and then performed my various comparisons I first compared it with the version of the letter which Ms Daniel's had sent Mr Koko.

CHAIRPERSON: Ja.

MR POON: On the 25th of February 2015. So the point that
10 I want to make in comparing those two documents Chair and in highlighting the similarities between those documents based on this and the – the content the similarities it appears that then Mr Koko had modified the version from Ms Daniels' email right and had modified that particular copy of that document and had then drafted the document of LP13.

CHAIRPERSON: Yes.

MR POON: Okay so that was the first point I wanted to make Chair. The second point Chair is that given that in
20 comparing annexure LP13 to then LP3 given that the allegations as specified in the two documents are so similar and except for those three little spelling differences or grammatical differences those allegations were the same in essence.

CHAIRPERSON: Yes.

MR POON: So what the point I am trying to make Chair is that as it appears and we will talk about the meta data in a couple of moments which then you know supports – supports my comment but what I am trying to say is that the annexures LP13 was modified from a version of the document that Ms Daniels had sent to Mr Koko and it would then appear that annexure LP13 was then subsequently then used to then draft and finalise the version that appears in LP3.

10 **CHAIRPERSON**: Okay.

MR POON: Which was the version of the pre-suspension document that was attached to the email that Mr Khoza had sent to Ms Klein.

CHAIRPERSON: Okay. Okay.

MR POON: Does – does that make sense Chair?

CHAIRPERSON: It does thank you very much. Continue.

MR POON: Thank you Chair. So as I had said insofar as the meta data is concerned for annexure LP13 I noted ...

ADV SELEKA SC: Sorry Mr Poon.

20 **MR POON**: Yes Mr Seleka.

ADV SELEKA SC: The Chairperson was trying to determine whether there were any other differences between the letters. I see the – that LP3 has seven paragraphs whereas LP13 has six paragraphs. And the – the time for the meeting I also indicate that is – in LP3 is different from the

– I think the date and time for the meeting in LP13.

MR POON: Correct.

ADV SELEKA SC: So you may – draw those distinctions also to the Chairperson’s attention.

MR POON: So. Yes.

ADV SELEKA SC: Or if you pick them up because I see that – I mean it is – it appears on the face of it that there is a paragraph 3 in LP3 which is not in LP13.

MR POON: Yes that is right. So the point that I was trying
10 to make Advocate Seleka is that annexure LP13 – LP13 is not as a document as a whole a duplicate to LP3.

ADV SELEKA SC: Yes.

MR POON: Just in the comparisons.

ADV SELEKA SC: Yes. No I understand your...

MR POON: I am not – not as a document as a whole – yes sorry.

ADV SELEKA SC: No I understand your point and your emphasis in regard to the allegations because that is the substance of the document.

20 **MR POON:** Correct.

ADV SELEKA SC: The alleged issues of misconduct but just to answer the Chairperson’s question I thought you could point out that there are those differences as well whether or not they are material the Chairperson will make that decision.

MR POON: Oh okay. All right.

CHAIRPERSON: Yes I see for example that in LP13 what appears to be missing in terms of paragraphs is the paragraph which we find in LP3 which says

“You are temporarily suspended until further notice.”

That paragraph is paragraph 3 in annexure LP3. In annexure LP13 paragraph 3 does not say you are temporarily suspended until further notice but it says

10 “You are invited to attend a meeting to discuss your possible suspension.”

I do not know whether any of you are able to pick up that the sentence paragraph saying “you are” have not picked it up but probably cannot be the (bad audio) because this one says effectively come and let us discuss your possible suspension. So they cannot say you are suspended immediately in the same letter.

ADV SELEKA SC: Chair – Chairperson LP...

CHAIRPERSON: But I – I think – I think for all intents and
20 purposes subject to the number of paragraphs and maybe one or two things that we might not have picked up LP13 is substantially the same as LP3 and in many respects identical but there are some differences. I think one can summarise it like that.

MR POON: Yes thank you very much Chair for doing it as

you have.

ADV SELEKA SC: (Inaudible) Chair can we just point this out to the Chairperson?

CHAIRPERSON: Ja.

ADV SELEKA SC: Chair what is – paragraph – what is paragraph 3 in LP13 it is paragraph 4 – is paragraph 4 in LP3?

CHAIRPERSON: What is in paragraph 3 in LP13 is paragraph – oh that makes it quite awkward. Well in other
10 words in LP3.

ADV SELEKA SC: Yes.

CHAIRPERSON: There is this anomaly that it says you are temporarily suspended in paragraph 3 but in paragraph 4 – no, no I am sorry – did you say paragraph 4:

ADV SELEKA SC: Yes.

CHAIRPERSON: No, no it is not exactly what I was thinking of when I was talking in the context of LP13 because LP – in paragraph 3 in LP13 says you are invited to attend a meeting to discuss your possible suspension. In other
20 words you have not been suspended as yet.

ADV SELEKA SC: Yes.

CHAIRPERSON: But come and let us discuss. In paragraph 4 it says – oh you are invited to make representation.

ADV SELEKA SC: Yes.

CHAIRPERSON: To the chairperson of the board of directors. Well I guess – I guess the – I guess what it – what it says is that you are given 01:09:54 after you – the decision has been made.

ADV SELEKA SC: That is right.

CHAIRPERSON: Yes. Ja. No, no you are right. Okay let us continue. Let us continue.

MR POON: Okay. Are we – are we happy within the comparisons Chair?

10 **CHAIRPERSON:** Ja.

MR POON: Okay, great thank you. So in looking then at the meta data of annexure LP13 specifically to do with the – the author and last authors of that document. The last author of that document is reflected as Matshela Koko. Okay. So then going back to then to summarise the points I am trying to make Chair is that based on the contents and comparisons.

CHAIRPERSON: One second. One second. The point that you just made about Mr Matshela Koko just repeat it.

20 **MR POON:** The author – the last author meta data value Chair.

CHAIRPERSON: Ja.

MR POON: Reflects Matshela Koko as the last author as in the last person to have saved the document.

CHAIRPERSON: Okay. Now when you say that it reflects

Mr Koko as the – the last author and you say as the last person to save it whose name to that because it was his computer – it was his desktop – it was his emails back up.

MR POON: Yes.

CHAIRPERSON: Or is there something else technologically that makes you say that. In other words if somebody else used his computer.

MR POON: Right.

CHAIRPERSON: That you cannot – you cannot exclude
10 that.

MR POON: No not at all Chair.

CHAIRPERSON: Is that correct?

MR POON: That is correct and that is – that is 100% correct. So what I was going to say is that...

CHAIRPERSON: So you – you make the conclusion – you make the conclusion that he was the last person to – because the computer was that – was the one used by him.

MR POON: No not necessarily Chair. I am not saying that if he was the last user of the computer where this data
20 originated from. All I am saying is that insofar as...

CHAIRPERSON: No, no I mean the – I mean what I am saying is are you saying that on the basis that the computer or the backup is one that was generally used by him or that is associated with him?

MR POON: It is more – it is a – yes. It is more than it is an

association or associated with him Chair.

CHAIRPERSON: Yes. Ja, ja.

MR POON: But what I wanted to say Chair was although the meta data reflects Matshela Koko as the last author of the document obviously based on what the meta data says it would appear that Matshela Koko authored the document.

CHAIRPERSON: Ja.

MR POON: But the point I want to make and you quite rightly say it does not necessarily mean that he himself was
10 the individual sitting behind the keyboard.

CHAIRPERSON: Yes.

MR POON: Of that computer at that point in time who then modified the document and clicked save.

CHAIRPERSON: Yes. And that point – and that point you make holds true also in regard to whatever you have said with regard to Ms Daniels and the emails that you have said she seems to have sent to Mr Koko and so on.

MR POON: Yes Chair that is correct.

CHAIRPERSON: Yes.

20 **MR POON:** And with – within digital forensics we can never – one can never attest to – to you know saying that even though a specific individual is reflecting within the meta data as such one can never actually say that he indeed or she indeed were the authors of that – with that document.

CHAIRPERSON: What you can say for sure is which

computer was used to do that.

MR POON: Correct. Correct Chair.

CHAIRPERSON: And that – and if that computer is one that is generally used by the person that is just an inference that can then be made or a determination that can be made based on whatever else but in terms of the technology all you can say is this was created on this – this was last offered in this particular computer that is associated with so and so.

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

CHAIRPERSON: Okay, all right. Thank you. Continue.

MR POON: And so Chair you made my point exactly so I think that is going to then conclude this particular set of data as - as it relates to what I had found on Mr Koko's data.

CHAIRPERSON: Okay all right. Okay.

MR POON: Then

ADV SELEKA SC: Just before ...

20 **CHAIRPERSON**: Maybe let me ask this question. Are you able to say having maybe done many investigations involving tracing documents and so on – are you able to say how reliable it has been – it has been proved to be in your experience that if a document was offered on your investigation on a particular computer used generally by a particular person that – are you able to say in your

experience most of the time the position would be that that person is the person who did it – who wrote the document or who was the last one to write something on it or say it or are you only able to say, look in my experience it is more or less 50/50 sometimes it is that person but sometimes it is not.

Or are you able to say, well certainly in the- my experience what has been shown has been that it is most of the times it is not the person it is who authored – somebody
10 else did.

Or is your experience that it really depends. In some places where people share computers maybe this is what you will find and where usually the computer is used by one person then this is what you find. Is that something that you are able to deal with or is that something that you are not able to deal with?

MR POON: Well Chair what I can say is that particularly with the author and the last author meta data values those two fields generally speaking is not relied upon on its own.

20 **CHAIRPERSON**: Okay.

MR POON: Right.

CHAIRPERSON: Okay.

MR POON: And – and the reason for that Chair is because those two – the values which is contained within those two fields can be changed to reflect differently to something

else.

CHAIRPERSON: Something else.

MR POON: Right. So as an example Chair if – if a document that was originally drafted by me and originally saved by me that meta data would reflect Lance Poon right. If subsequent to that to me drafting that letter you get hold of it at some point in the future and you wish to then modify it and use it for completely different purpose however there are certain sections or maybe even the formatting of the
10 document you want to reuse you are able on your side to change the name completely – my name – as the original - as the original author.

CHAIRPERSON: Yes.

MR POON: Okay. So that is completely alterable and it can be easily done so as well.

CHAIRPERSON: Yes

MR POON: Insofar as the last author value is concerned the – that is generated or that gets filled by the application that is used to modify that document or to – that edited that
20 document. Now in the case – in the case that we are speaking about we will be – we – the application that was used was Microsoft Word right.

So Chair when your computer is configured for the first time – in other words the installation of Microsoft Word is done on your computer there is a section during the

installation where you can specify what name you want to – to apply and make it appear within these of contexts.

So hypothetically speaking Chair if – if and that value you can change even after it has been configured during installation. So theoretically Chair what I could do is on a document that you had saved and you had sent to me I can change my profile to say something completely different than Lance Poon. I can change it to Mickey Mouse for that matter and...

10 **CHAIRPERSON**: Ja.

MR POON: And after having saved that document it would then reflect Mickey Mouse as the last author of the document.

CHAIRPERSON: Yes.

MR POON: So – so that is the extent to which these values can be altered to – to show something different from reality. So Chair going back to ...

CHAIRPERSON: But – but it seems from what you say that anybody change – who changes it would do so deliberately
20 and intentionally.

MR POON: Correct Chair.

CHAIRPERSON: The – there is little chance of such a change being oversight or negligence.

MR POON: That is my view Chair. It is a (talking over one another).

CHAIRPERSON: Ja somebody who – somebody who would make a decision I am changing this.

MR POON: Correct.

CHAIRPERSON: They would not be doing something else and then it changes and puts somebody else's name by – by mistake. Is that right?

MR POON: Well that is – that is my take on that Chair.

CHAIRPERSON: Yes. Okay all right. Continue. Mr Seleka.

10 **ADV SELEKA SC:** Yes. Mr Poon and that question I mean it must be asked of you specifically because of the statement you make in your affidavit that the last author – the field of the last author although it can be altered is not an activity that is done in the normal course of editing a document. mean it must be asked of you specifically because of the statement you make in your affidavit that the last author – the field of the last author although it can be altered is not an activity that is done in the normal course of editing a document.

20 **MR POON:** Yes that is right Advocate Seleka.

ADV SELEKA SC: No because ...

MR POON: Now...

ADV SELEKA SC: That is why when you need to make the Chairperson understand the statement you were making but also I think the Chairperson understands what you are

saying that is why he is saying to you the change must be made consciously. So a person must take steps to go change the field of the last author is not something that changes automatically by itself from the last author to somebody else.

MR POON: Yes that is correct.

ADV SELEKA SC: Okay.

CHAIRPERSON: Okay thank you. Okay continue.

MR POON: So – so – sorry if I may just add insofar as my
10 affidavit is concerned I mention that it would then base on the analysis of the content and the meta data would appear that – and I specifically mention either Mr Koko had altered the document or at least the computer was used 00:24:12 to that document and necessarily then the person behind – behind the computer which we cannot prove – we cannot verify.

CHAIRPERSON: Of course somebody who would be able to change that – the – who the author was would need to know some – something if he or she was going to do so without
20 Mr Koko's permission – would need to know how to – to – what do you call this – not the pin –

ADV SELEKA SC: Yes the password of accessing the computer of somebody else.

CHAIRPERSON: What do you call it again?

MR POON: The password.

ADV SELEKA SC: The password.

CHAIRPERSON: Ja and so on. Is it – the –

MR POON: That is right Chair.

CHAIRPERSON: Yes so they would need to do that.

MR POON: That is – and I mean it depends how that computer is configured which – which we do not know. I do not have access to that and obviously the analysis of thereof could not be done Chair. And also you know it speaks to then the potential behaviour of the user of the
10 computer as well. To what extent is that person or to what extent does that person safeguard the access to the computer. How easy or how difficult is a password that is applied and – you know but generally speaking and I do not want to make an – an over exaggerated statement but generally speaking the computer that is assigned to you is generally used by you.

CHAIRPERSON: Ja.

MR POON: For a majority of the time.

CHAIRPERSON: Ja. Okay. Okay you may continue.

20 **MR POON:** Okay thank you Chair. So that then concludes then the section that deals with what I had identified in Mr Koko's data. I now then move over to the – to what I had identified in Mr Zethembe Khoza's back up data. Okay. So again based on the certain criteria that I had earlier mentioned I had found all four of the documents that I had –

that I was tasked to identify that being the four pre-suspension documents that had been contained or that were attached to the email that Mr Khoza had sent to Ms Klein on the 14th of March 2015. And these files matched by file name as well as MD5# the electronic signature which I referred to earlier Chair.

So the files that I had found on Mr Khoza's back up data were identical to those that were found in the email that he had sent to Ms Klein. Okay.

10 Except in this instance that I am speaking of I did not find them within an email. I found them as loose documents in a folder that was called Today which was located within the documents folder of Mr Khoza's back up data. Okay.

The last modified dates of these documents were varied before the four documents with the earliest being 25 past 6 in the evening and the latest modified time was about 6 minutes to 7 in the evening of the 10th of March of 2015. Okay.

20 Now given that these files were identical to those which were found in the email which Professor Louwrens had previously testified to it is very possible that these are the very documents that he had then used and had attached to the email that he had sent to Ms Klein on the 14th of March 2015. Okay. Chair – ja –

ADV SELEKA SC: Sorry you will not forget what you want to say hey?

MR POON: No, no.

CHAIRPERSON: Well I wanted to – to say because I do not know if I have missed this Mr Poon. What is the earliest date that these pre-suspension letters that you investigating are associated – associated with Mr Khoza's computer. Whether they are originated from there?

MR POON: Yes I will – I will speak to that in.

10 **CHAIRPERSON:** You will speak to that okay.

MR POON: Yes Chair. So I just wanted to sort of set out the discussion that I had identified those four files as loose files within a folder on Mr Khoza's back up data which were identical to those that were contained in the email to Ms Klein.

So following that Chair the location where these documents were found I had a look at the other files that were also contained within this – within this folder. Chair I think we have lost Advocate Seleka. Oh okay he is back.

20 **CHAIRPERSON:** There he comes back ja.

MR POON: Okay. So Chair as I said I had looked at the other files that were also contained within that very same folder and I noticed within that folder that there were other files that looked out of the ordinary to me than that the file names all started with a dot underscore followed by the

original file names of those very same four documents. So in other words Chair in addition to those four documents which were pre-suspension MK pre-suspension DM pre-suspension FD and pre-suspension TM doc doc x for all of them I had also found files that looked – that were similar in file name except they all had a dot underscore preceding that – those file names. Okay.

So that is what drew my attention to those files Chair because the – it was a very unusual to – to see a file
10 starting with dot underscore. So initially I had thought that perhaps they were just different versions of those documents and when I attempted to open them the Microsoft Word application could not open them and the – it returned with a message saying something to the effect that the files were not recognised and therefore could not be opened. Okay. So following that Chair I then went back to the 01:33:29 application which I had ...

ADV SELEKA SC: Sorry that part is what you are dealing with in paragraph 49 of your affidavit. Can you check that.

20 **MR POON:** Yes it be moments.

ADV SELEKA SC: Paragraph 49 on page 435.

MR POON: That is correct.

CHAIRPERSON: Yes continue.

MR POON: Thank you. So Chair I went back to the 01:32:58 application to see what additional information

01:33:03 could provide me in relation to these documents and I found that the documents were described as Apple Double Files. So ordinarily the word document it would be regarded as a Word document or a document in general but these files were being referred to by the 01:33:25 application as Apple Double Files which I was not familiar with the term Chair. Now what was seemingly obvious to me was that the Apple Double Files related in some way to an Apple system as – as the name is – the name refers to
10 Apple Double and Chair however you know I am not and I specify as such within my affidavit I am not an Apple expert. The majority of places and investigations, digital investigations that I have worked on were, primarily, Microsoft based.

ADV SELEKA SC: Yes.

MR POON: And it is very on a, you know, on very scarce occasion that you would come across an Apple device for investigation. But be that as it may, Chair. I did some research into what these Apple double files were and my
20 understanding, based on the research, was that these files - when files are created on an Apple computer and an Apple file system, the Apple file system – and Chair, just tell me if I lose you. I will try and explain this as best as I can.

CHAIRPERSON: Ja.

MR POON: The Apple file system – within the structure of an Apple file system, it caters for additional information which is specific only to an Apple file system or an Apple machine, right? So, just as a hypothetical example, Chair. If you save a Word document, it may have additional information about maybe the size of the file or the location of the file. And I am just saying this hypothetically.

But essentially, it is additional information relating to that file, right? So, whereas in other file systems which
10 might have been- which is predominantly or may often be used within a Microsoft environment, those file systems may not cater for that additional information that an Apple system would cater for that Apple – for that additional information within its structures, right?

So, what I - based on the research, Chair. I found that when a document that was created or saved on an Apple system is copied off of the Apple system onto another file system, as I indicated earlier or alluded to, one that is more typically compatible with Microsoft
20 Windows system.

During the copy process, what the Apple system will do is, it will save that additional information, which is only specific to Apple systems, in a separate file. It will save it in an Apple double-file.

And based on the research, it confirmed that that

additional file, it would name the file as a dot underscore, followed by the rest of the normal file name.

CHAIRPERSON: Yes.

MR POON: And what it then – what the – and the purpose of that Apple double file, Chair, is that, in a situation or a scenario in which a file is copied from an Apple system to a non-Apple file system and then back onto an Apple system, the recipient Apple system will then read that Apple double file and reconstitute that additional
10 information that may be related to that file.

CHAIRPERSON: H'm.

MR POON: Okay? So, Chair, what that means to me then is, and based on the research, what that means is that, the pre-suspension documents that I had found in the today-folder which was contained in Mr Khoza's document folder, it appears that because those Apple double files exist, it means that those files originally came from an Apple device prior to it having been saved on Mr Khoza's computer.

20 **CHAIRPERSON**: H'm.

ADV SELEKA SC: H'm.

CHAIRPERSON: Which may mean that there were – they may have originally been written off that – in an Apple device computer or something like that?

MR POON: Ja. Ja, and it does not necessarily mean that

it was modified on that device. It just means that it at some point was saved on that device.

CHAIRPERSON: Okay.

MR POON: So, Chair, I close then ...[intervenes]

CHAIRPERSON: Okay.

MR POON: ...to then summarise or maybe go back to the section wherein I spoke about that document in Mr Koko's data, the one in which was, according to meta-data, last authored by Matshela Koko, which was then addressed to
10 him himself and contained the allegations as it appeared in the document that had been attached to Mr Khoza's email, that the last modified date from Mr Koko's – from the documents in Mr Koko's machine was the 10th of March 2015 at about quarter past three in the afternoon.

CHAIRPERSON: H'm.

MR POON: These documents, as it appears on Mr Khoza's backed-up dated occurred at approximately – around, let us say half-past six of that same day. So, there
20 is a gap, a time ...[intervenes]

CHAIRPERSON: Half-past six in the evening?

MR POON: That is right, Chair.

CHAIRPERSON: H'm?

MR POON: So, there is a period of about, you know, approximately, three hours, give or take, Chair

...[intervenes]

CHAIRPERSON: H'm.

MR POON: ...where- based on the data and the meta-
data, it appears, and also because of the existence of
these Apple double files, it appears that between the
documents, as we had identified in Mr Koko's backup data
and the documents that we had identified on Mr Khoza's
data, it appears that there must have been an Apple device
somewhere in the middle used to at least store or possible
10 modify those documents.

CHAIRPERSON: H'm.

MR POON: And it is ...[intervenes]

CHAIRPERSON: Okay.

MR POON: And, Chair, there is an additional point I just
want to make. That supports this, is that in Professor
Louwrens' testimony ...[intervenes]

CHAIRPERSON: H'm?

MR POON: ...which is on the 21st of April, when he
appeared at the Commission. He mentioned that when he
20 looked at the meta-data of those files, it indicated in the
meta-data that those files had been last modified using
Microsoft Word for Apple or Microsoft Word for Apple
Mcintosh.

CHAIRPERSON: H'm.

MR POON: So, with the existence of the Apple double

files and then meta-data that Professor Louwrens testified to, it would then support the notion that there was an Apple machine or device ...[intervenes]

ADV SELEKA SC: In between.

MR POON: In between and the making of these documents.

CHAIRPERSON: Now, you mentioned – you highlighted the times of around three o'clock in Mr Koko's computer, backup and about six o'clock or thereabout in regard to Mr
10 Khoza's computer. I do not think I understood completely what six o'clock or whatever represented in the context of Mr Koko and the documents. Is that when he received them?

MR POON: Not necessarily, Chair. So, going back to the last modified date of the document that was on Mr Koko's machine being quarter past three.

CHAIRPERSON: Ja.

MR POON: So, if we look at the timeline of events ...[intervenes]

20 **CHAIRPERSON:** H'm?

MR POON: ...or the timeline, as depicted within the modified dates of these documents.

CHAIRPERSON: H'm?

MR POON: So, starting from quarter past three in the afternoon of the 10th of March of 2015, we see that a

document which is very similar to that of the final version, was last modified on – within Mr Koko's data, right?

CHAIRPERSON: H'm.

MR POON: And then we see later in the day that the last modified dates of the documents that we had found, which were the – which were ostensible the final versions of the documents, were found on Mr Khoza's backup data, right?

CHAIRPERSON: H'm.

MR POON: The document from Mr Koko's machine or
10 dated to Mr Khoza's data was modified at that – at some point between those times to lead to the final versions as appears in Mr Koko's data. And then, where I have referred to then the Apple double files, it means that, prior to Mr Khoza having received those files, there was an Apple device that stored those files before it had gotten to Mr Khoza's data, right? Now ...[intervenes]

CHAIRPERSON: Okay. So, somewhere between quarter
20 past three or just after the time given in regard to Mr Koko and six o'clock, they were saved, or something was done using an Apple device to them?

MR POON: Correct. And Chair, I just want to point out that Professor Louwrens in his – unfortunately, he has not, you know, presented his evidence before you prior to me, but in his updated affidavit, he specifies and confirms that based on his analyses, Mr Koko's machine or his computer

was a Microsoft machine. It was not an Apple device.

CHAIRPERSON: H'm, h'm.

MR POON: And similarly with Mr Khoza's data, which I had a look at... I looked at a backup of his data and I did not look at his laptop device per se. So I cannot then confirm that his machine, Mr Khoza's machine was an Apple – sorry, a Microsoft device.

CHAIRPERSON: H'm.

MR POON: But based on the folder structure that was
10 contained within the backup of Mr Khoza, based on the folder structure, I can confirm that his machine was not an Apple device either.

CHAIRPERSON: H'm.

MR POON: Because the folder structure was more consistent or was consistent with the folder structure that you would typically find in a Microsoft based computer system.

CHAIRPERSON: Okay?

MR POON: So, again, between those two points in time,
20 there was an Apple device that was used to then modify the documents potentially, or at least store those documents before it reached Mr Khoza's computer.

CHAIRPERSON: H'm. Okay. Yes. Yes, Mr Seleka.

ADV SELEKA SC: Yes. Thank you, Chair. Mr Poon, could you determine how Mr Khoza might have received the

documents on his machine?

MR POON: So, the – again, Advocate Seleka, I only looked at his backed-up data and not of an image of his machine itself. I do not believe that the Commission has an image of his computer. And it is within that computer image that you would then perform an analyses to see potentially how those documents came to be on – to – from his data.

Now, insofar as what I could see is, whether or not
10 – because there is a number of ways data can get onto a machine, right? Through a USB, through the Cloud or even through email.

Now, based on the information that I had available to me, which essentially is just a data from his backup data as well as his email. From the email, I did not see any email coming in containing those documents.

The only email I found containing those documents was the email that he had sent Mr Venete Klein on the 14th of March. That was the only email, and it was an iPhone
20 email, but otherwise, I was not able to determine how... Ja, but based on the Apple double-files, it suggests that it may have been transferred via a USB, disk of some sorts.

ADV SELEKA SC: I see. You – I mean, to the extent that you found the information in his – in the backed-up data of Mr Khoza. Could one also make a determination as to

when that – these documents could have been saved on his machine?

MR POON: No. So, the – there are two dates that you would consider when analysing the files in general. That would be the created date time as well as the modified date time. Now, the modified date time which would be the last time that the document was saved is reflected, as I have reflected it in paragraph 47 in my affidavit on page 435.

10 **ADV SELEKA SC**: Yes?

MR POON: Now, if I recall. The created date times were the same for those files which then suggest to me that the modification did not occur on Mr Khoza's machine directly. It had been modified on another device and then had been copied onto Mr Khoza's machine.

ADV SELEKA SC: So, modified prior to it being copied on his machine?

MR POON: Ja.

20 **ADV SELEKA SC**: Ja. So. Well, I guess my – what I am trying to determine is whether these letters would have arrived on his machine on the 10th of March 2015 which is before the 11th of March.

MR POON: Correct.

ADV SELEKA SC: Or could they have arrived on his machine thereafter.

MR POON: Well, based on the meta-date, it arrived on his machine on the 10th of March. If – now it is not to say – I mean, one can manipulate a computer for the dates to reflect something differently, but again, similarly to our discussion around the author, you know, the modification of those values, typically that is not ordinarily done ...[intervenes]

ADV SELEKA SC: H'm, yes.

MR POON: ...as a normal circumstance.

10 **ADV SELEKA SC**: Okay. Well ...[intervenes]

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja, let... Chair, I see our time is after seven.

CHAIRPERSON: Yes. No, but we need – this is important evidence. So, we should make sure that Mr Poon ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...deals with all the things that he needs to deal with.

20 **ADV SELEKA SC**: Yes.

CHAIRPERSON: I mean, for – as I see it, he has covered quite a lot. The only things that he might not have covered are maybe some of the technical things that are reflected in some of the matters, but he has, for example, the chain of custody documents. I guess, he would confirmed that

the – what he has written there is correct, but you want to let him deal with that to cover everything to say he confirms that he has satisfied himself that the chain of custody was intact?

ADV SELEKA SC: Yes, Mr Poon, this being the technical information. If you could explain to the us how the information was packaged, received, and that in the manner in which it was received, the information was intact, save to use and reliable to be used by the
10 Commission.

MR POON: Alright. With pleasure, Advocate Seleka. So, going back to the – my comments earlier with regard to when I was provided with a request then to perform the analyses that I had earlier spoken about. As I had indicated earlier, I then searched the Commission's evidence registers for – to identify data which had been collected by the Commission.

ADV SELEKA SC: Yes.

MR POON: And in doing so, there were a number of
20 forensic images which had been acquired by the Commission. It was not by myself. But it had been acquired by the Commission and I – the register then indicated to where they had been stored, which I then proceeded to extract from the – our evidence stores. Now, the data that I have spoken about today. The data was

contained within two forensic images which had been acquired and I referred to these forensic images in paragraph 15 of my affidavit which is on page 429.

ADV SELEKA SC: Yes.

MR POON: So ...[intervenes]

CHAIRPERSON: Yes.

MR POON: Ja. So the data I had referred to within my testimony today. It had been acquired into the two forensic images which is stated in that paragraph. The one being –
10 and it was allocated to evidence numbers. The one being SCCJHB-19022019-TM-008. And then the second one being SCCJHB-21022019-TM-014. Okay.

So, these evidence images, typically what is done and what I did do in this instance as well is that before one uses evidence which had previously been acquired, one would then re-verify them.

And what that mean is that at the point of acquisition, meaning at the point in time at which these – the data was originally acquired, there is a forensic
20 process which acquires that data from the source and the source, I understand, were hard drives that were provided by Eskom to Mr Tshepo Maleka who is a colleague on the DFT Team.

And during the acquisition process, the tools which are used to acquire that data, it creates two MD5#'s. The

first MD5# - and as I have mentioned earlier, Chair, the MD5# is a signature over – that is calculated over a piece of data.

CHAIRPERSON: H'm.

MR POON: So, during the acquisition process which is the capturing of the data that was contained on the hard drives that was provided by Eskom, the forensic software calculates the MD5# of the data that is coming from that hard drive. Once all of the data is captured, the forensic
10 software then recalculates that MD5#.

Except in this instance, it calculates it on the data that was – that was obtained. So, the first one is on the data source hard drive. And the second one is a calculation of the hash which is contained on the data that we had literally collected.

And the purpose of that is to then calculate the – or verify that the data that we had collected was indeed the data that was contained on that hard drive. So... And those two hashes – the first one is referred to as an
20 acquisition has because it is calculated during an acquisition process.

And the second hash is referred to as a verification hash, because it is then calculated on the data that we have already collected. And if those two hashes match, that is an indication that forensically what we have

collected is indeed what was on that hard drive, the source hard drive, okay?

So, when I had identified these images which contained the data that I wanted analysed, I re-verified them. Meaning that the data that was contained within the images, my attempt was to ascertain that the data was indeed the same data that was collected at the point of acquisition when it was first acquired.

And given that the MD5#'s matched, one can then
10 rely on that data. Meaning that that data since acquisition has not changed.

ADV SELEKA SC: Okay. Okay, thank you. Then we also requested you to consider an affidavit of Ms Elsie Phule which had an email or two addressed to Mr Zethembe Khoza on the 11th of March 2015. I would like you to explain to the Chairperson whether there is any feature or factor of significance you found in regard to that in relation to the exercise that you have told us about during your testimony?

20 **MR POON:** Sure. So, in relation to this request. I was requested to search for emails to or from Elsie Phule to Mr Khoza on the 11th of March of 2015. Advocate Seleka, I was not provided with any affidavit or anything in relation to Elsie Phule that she had submitted. It was just that the requested as to find emails that had been sent to or from

her in relation to Mr Khoza.

ADV SELEKA SC: Okay.

MR POON: So, I just wanted to point that out that I did not have anything to reference.

ADV SELEKA SC: Okay.

MR POON: So, what I did then was, I went back into the New X application, and I ran a search for emails which were either sent or received by Mr Elsie Phule to or from Mr Khoza and I ran the search specifically within these
10 email archives.

I ran the search for the period 9th of March 2015 to the 14th of March 2015, and the reason why I did that is just to provide some leeway before the 11th of March, before and after, in the event that there may be some other information that may have related to the events of the 11th of March.

And what I found was, specifically to – or directly on the 11th of March of 2015, I found two emails that was sent from Elsie Phule to Mr Khoza. The first email and I
20 refer that to that document as Annexure LP-19 which is on page 475. If I may describe the cover letter, Chair?

CHAIRPERSON: Yes?

MR POON: It states that it is an email from Elsie Phule to Zethembe Khoza. The subject of the email is: As discussed. Just those two words “as discussed”.

ADV SELEKA SC: H'm.

CHAIRPERSON: H'm.

MR POON: The date of that email is Wednesday, the 11th of March 2015 at 14:29:39 in the afternoon. There are two attachments reflected as being attached to this email. The first one is – the name of the file is: CopyofFbandlistassetsJan2015.xls.

And the second attachment is: Disciplinaryprocess.xlx. Now, based on the – now based
10 on this characters after the file name being xls and xlx, Chair, that indicates that these are two spreadsheet documents or spreadsheet files.

CHAIRPERSON: Yes.

MR POON: Okay. Then speaking to the attachments of that email, Chair, the two attachments, I have got it on page 476 and 477 of the bundle.

CHAIRPERSON: One second? 466 and 467?

MR POON: Sorry, Chair, it is 476 and 477.

CHAIRPERSON: Okay, I was wondering why you had
20 moved away from – yes, okay, from where I thought we would be. I am at 476. Yes.

MR POON: Okay, so the document that is on 476, this document, it appears to be a spreadsheet which lists or outlines a disciplinary process. It specifies at the top of the spreadsheet, it says there project plan – disciplinary

action and in brackets it has a name there of Sal Laher.

CHAIRPERSON: You may proceed, Mr Poon, let us mention that it has got an Eskom ...[intervenes]

MR POON: Logo.

CHAIRPERSON: I do not know if it is an Eskom logo, it has got an Eskom logo, that document at page 476 and below the Eskom logo it is written Urgent Project Plan – disciplinary action and then (Sal Laher). Yes. Continue?

MR POON: Correct, Chair. And within the table that is
10 below that there are three columns, the first column has the heading of Activity, the second column heading of Responsible Person and then the third and last column has the heading of Date.

CHAIRPERSON: Yes.

MR POON: And, as I mentioned, Chair, it appears to be, you know, to outline the disciplinary process for the person Sal Laher which appears on top of the spreadsheet. I am not sure if you want me to then go through the entire document, Chair?

20 **CHAIRPERSON:** Because I might be able to read, I think it might be important to quickly run what activity, who was going to be responsible and the dates because that might be quite important. Do you want to do that? Are you able to read it quickly or otherwise I can read it quickly.

MR POON: Okay, fine, Chair.

CHAIRPERSON: Let me do that. Under Activity, the first item is:

“Institute investigation, appointment internal forensic department, responsible person, line manager, date 17 December 2014.”

Maybe if we do not read everything, (indistinct – recording distorted) number of activities managed there, just some dates of importance. Mr Seleka, have you picked up any dates of importance and activities of particular interest to
10 our inquiry?

ADV SELEKA SC: Chair, I can see the 16 March. The 6 and 9 and the 16 March which are close to the 11 and 10 March but it’s a timeline – the document sets out a timeline of activities to be taken on those particular dates that are projected or mentioned or set out.

CHAIRPERSON: Does this appear to be something relating to Mr Sal Laher?

MR POON: Chair, to me it appears that it relates to a disciplinary action relating to Sal Laher, yes.

20 **CHAIRPERSON:** Ja, okay, alright. Let us move on to the – it does appear like that, let us move on to the next annexure – oh, unless, Mr Seleka, you still have something?

ADV SELEKA SC: No, I was going to say, Chair, I suppose Ms Elsie Pule will enlighten on this document.

CHAIRPERSON: Yes, okay, alright because she sent it, ja.

ADV SELEKA SC: Correct, yes.

CHAIRPERSON: Ja, no, no, that is true. Okay, continue, Mr Poon?

MR POON: Thank you, Chair, and then if you move on to page 477 of the bundle, that contains a screenshot or a copy of the contents of the second attachment.

CHAIRPERSON: Ja.

10 **MR POON:** Which was attached to the email from Elsie Pule to Zethembe Khoza.

CHAIRPERSON: Okay and Ms Pule will explain that to us.

MR POON: Yes.

CHAIRPERSON: Okay.

MR POON: Do you want me to go – describe the document in any way, Chair?

CHAIRPERSON: No, you do not have to...

MR POON: Okay.

20 **CHAIRPERSON:** You do not need to read anything in that document.

MR POON: Thank you, Chair. Then that was the first document that I had found or first email with the attachments which I had found in which Ms Elsie Pule had sent to Mr Khoza on the 11th March.

The second email which I marked as annexure

LP20, which is found from pages – starting from page 478 and if I may speak to the email, the cover email?

CHAIRPERSON: Yes.

MR POON: The cover email starts – it indicates that the email was sent from Elsie Pule to Zethembe Khoza, the subject of the email was Suspension Process and I just want to point out, Chair, that misspelling of suspension was as it was found in the email.

CHAIRPERSON: Okay.

10 **MR POON**: Okay. The date of the email was Wednesday 11 March 2015 and it was sent at approximately six past four in the afternoon.

CHAIRPERSON: Yes.

MR POON: There were three attachments attached to this email the first being the name of the file that was attached, it was Suspension Process 240811 (3) followed by Covering Safety Rules Violations.doc. So that appeared to be a word document and then the second attachment, the name was Confirmation suspension.docx.

20 **CHAIRPERSON**: Yes.

MR POON: And then the last attachment the name was Draft Letter of Suspension.doc.

CHAIRPERSON: Yes.

MR POON: And then in the body of the email it just says there:

“Mr Khoza, additional information.”

CHAIRPERSON: Yes.

MR POON: Okay. That deals with the cover letter and then insofar as the attachments are concerned, starting from page 479 through to 481, Chair.

CHAIRPERSON: Yes.

MR POON: It appears to be – it appears just to be a process document outlining what a suspension process needs to look at or entails. Okay?

10 The second document, which starts on page 482, this appears to be a template letter where the subject of the letter states:

“Notice of Suspension with pay pending an investigation into alleged misconducts and/or disciplinary action.”

Okay, that is the second attachment and then on page 484, which is the third attachment and final attachment to this email.

CHAIRPERSON: Yes.

20 **MR POON**: The subject of this letter also it appears to be a template wherein the subject it states:

“Intention to suspend pending an investigation into allegations of misconduct.”

And that then concludes the second email that I had found, Chair.

CHAIRPERSON: Yes.

MR POON: And it was those two emails, it was only those two emails which I identified had been sent or received from Ms Elsie Pule on the 11 March of 2015. There were some documents or emails that I had found prior to the 11 March but those documents did not appear to be related to the suspensions.

And then also I found some emails that were sent and received by Elsie Pule which I found in Mr Khoza's
10 mailbox after the 11 March and those I had found, based on my reading, they appeared to be internal Eskom emails that appeared to be discussions around corporate communications and within those discussions they referred to the suspension events which I believe took place on the 11 March. So it was really just, you know, how do we then communicate the suspensions to the rest of the staff, basically to that effect.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Mr Poon, would you
20 provide us with those emails as well?

MR POON: Excuse me, Adv Seleka, can you repeat that please?

ADV SELEKA SC: Would you please provide us with those emails as well?

MR POON: Yes, I will do that. Ja, I will do that.

ADV SELEKA SC: Yes, okay, I think, Chair, we will pursue in as far as Ms Elsie Pule's concerned, further questions on this aspect with her. I think on my side I think the issues have been exhausted, Chair.

CHAIRPERSON: Ja. No, that is fine, thank you very much, Mr Poon, your evidence has certainly taken much longer than I think both Mr Seleka and I thought it would take but it is important evidence and it was important that it be dealt with properly. Thank you very much, I will now
10 excuse you.

MR POON: Thank you, Chair.

CHAIRPERSON: Thank you. Then, Mr Seleka, you had Ms Pule lined up for much earlier, is that right?

MR POON: Correct, Chair, correct.

CHAIRPERSON: Yes. We cannot – I cannot hear her evidence now because my registrar needs to leave, so that she does not break the curfew.

ADV SELEKA SC: Break the law, Chair.

CHAIRPERSON: So I think that subject to Ms Pule's
20 availability we should be able to slot her in at some stage in the afternoon tomorrow.

ADV SELEKA SC: Okay.

CHAIRPERSON: So but I think that we will talk and then you can talk to her, we will talk in the morning and you can talk to her once I have an idea as to what time in the

afternoon or early evening, we might be able to slot her in. So let us hope that her situation will be such that she will be flexible because she might have not have been able to do other things that she wanted to do today on the basis that we said she would give evidence and now we did not get to her. So let us see what is possible, I am sure she will do what she can to try and assist.

ADV SELEKA SC: I will. I will let her know, Chair.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** May I advise the Chairperson in regard to Prish Govender?

CHAIRPERSON: Yes.

ADV SELEKA SC: Because it is a positive confirmation of Wednesday at 16h00.

CHAIRPERSON: Ja, okay. No, that is fine. That is fine, thank you. Then for the public I just want to indicate that I think tomorrow morning I will be hearing the evidence of Mr Nyhonyha of Regiments under the Money Flows work stream of the Commission. Okay, let us adjourn for the
20 day then as far as the Eskom work stream is concerned and as far as today is concerned. H'm? Oh, my registrar is actually telling me that I am – tomorrow is Ms Mngoma, I think Dr Cwele – I was under the impression that Dr Cwele is on Wednesday but early in the morning the public will be informed exactly who but according to my registrar,

tomorrow it is Dr Cwele and Ms Mngoma who will give evidence at different times. Ms Mngoma will be later in the day, in the afternoon and Dr Cwele will be in the morning before lunch. Okay, we will clarify tomorrow morning. Thank you, we adjourn.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Thank you very much.

INQUIRY ADJOURNS TO 29 JUNE 2021