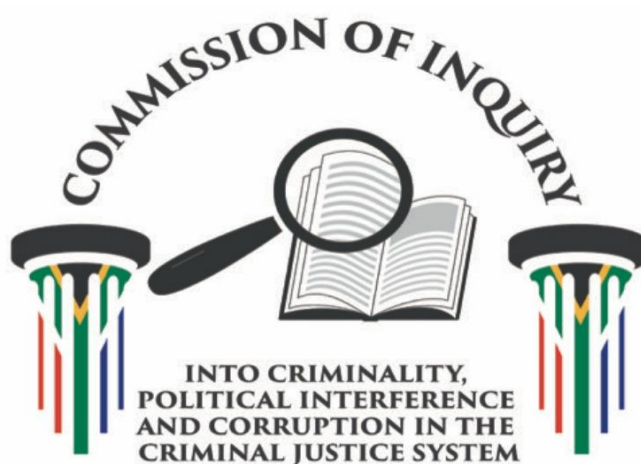


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

14 JULY 2026

DAY 139



PROCEEDINGS HELD ON 14 JULY 2026

CHAIRPERSON: Good morning, Ms Sello. Good morning, Mr Bodlani.

ADV BODLANI SC: Good morning, Chair.

COLONEL PADAYACHEE: Good morning, Commissioners.

CHAIRPERSON: I was still to greet you. How do I address you? Did you relinquish the rank of Colonel or are you just Mr now?

COLONEL PADAYACHEE: I am comfortable with anything
10 the Chair decides.

CHAIRPERSON: Anything. Do people still call you Colonel?

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: All right. Good morning, Colonel.

COLONEL PADAYACHEE: Good morning, Chair.

CHAIRPERSON: Thank you.

ADV SELLO SC: Good morning, Chair. Good morning, Commissioners. Commissioners, we continue today with the next witness in the IDAC stream, and we have on the
20 stand Colonel Brian Padayachee. Before, perhaps first things, before you swear him in.

CHAIRPERSON: Yes, yes. Sorry, sorry about that.

ADV SELLO SC: Thanks, Chair. Chair, before you swear him in, I would like to address some preliminary issues. Over the weekend, in respect of IDAC testimony and

evidence, there had been an application by the IDAC team regarding confidentiality of some of the dockets that have been disclosed to us and that we have presented to the Commissioners.

CHAIRPERSON: I clean forgot about that application because my mind was focused on it yesterday morning, which would have been dealt with before the evidence of ...[intervenes].

ADV SELLO SC: Advocate Johnson.

10 **CHAIRPERSON:** Advocate Johnson, yes.

ADV SELLO SC: That had been the plan, and then the plan was somewhat disrupted, but it is an appropriate time, I believe, to deal with it now. Following the service of that application, which was shared with the Commissioners, there were extensive engagements between us as the Evidence Leaders and the IDAC legal team led by Advocate Bodlani. And we think we have found a practical solution to the concerns expressed.

20 The concerns basically relate to confidential material that may be in the dockets that have been disclosed upon request. And the biggest fear is that our engagement with the contents of the respective dockets does not either undermine ongoing investigations or unnecessarily expose intended witnesses to undue threat of harm.

We have now whittled it down to there are four dockets in total. We have agreed that there are three dockets that are not affected by this concern. There is only one docket. So where we have landed is to advise the Commission that they no longer persist with the application as couched.

We instead approach the Commission to grant us the latitude to exercise restraint when we deal with a particular docket. I beg leave not to deal with the – to
10 identify the docket now. But as we go through the dockets, I will bring it to the Commissioners' attention.

That exercise of restraint would involve, *inter alia*, not identifying the witnesses that would have provided statements. We will deal with that docket specifically in relation to perhaps either an averment made in a statement that Mr Padayachee or Colonel Padayachee has to deal with without identifying who has provided the statement. As regards the rest of the dockets, we do not have that restriction.

20 And the main reason for that is the dockets have been shared with the respective accused in the matters under consideration, and I think we agree that the risk or the risks that have been put forward are not attendant upon the witnesses involved in the respective matters.

Until, therefore, I indicate that we have reached the

point of the sensitive docket, the Commissioners, I say, need not feel restrained to deal with the contents of whatever docket will be before us. And that is how we have decided to resolve the IDAC concerns regarding confidentiality, Chair. Mr Bodlani perhaps might want to address it. Thank you.

CHAIRPERSON: Thank you. And what according to you then should the fate of the application be? Should I just be silent on it?

10 **ADV SELLO SC**: Chair, the application is before you. I think the Commissioners perhaps having conferred may determine if they agree with the suggested approach ...[intervenes].

CHAIRPERSON: I am asking because it will not be easy or practical for me to craft something that says exercise restraint and so on and so on.

ADV SELLO SC: Then if the Commissioners having heard Mr Bodlani are in agreement with the suggested approach as regards the fate of that application before you, I think we
20 can prepare a joint ruling for your consideration.

CHAIRPERSON: All right, all right, all right. I welcome that. Mr Bodlani?

ADV BODLANI SC: Good morning, Commissioners, and thank you. I do not want to regurgitate what my colleague Ms Sello has placed before you. It is so that we have

prepared and served an application which is now before you.

CHAIRPERSON: Yes.

ADV BODLANI SC: We have found each other in respect of the further conduct of that application and how various documents that are to serve before you should be treated ...[intervenes].

ADV SELLO SC: Mr Bodlani, apologies. And I apologise, Chair. There are complaints. I do not think you are
10 sufficiently audible. So perhaps if you draw the microphone closer to you. Thanks.

ADV BODLANI SC: I will start from the beginning.

CHAIRPERSON: Please just continue.

ADV BODLANI SC: Thank you. It is correct that we found each other in respect of the further conduct of the application that we had prepared and filed. It is as stated by my colleague Ms Sello that the concern related to confidentiality, but upon engagement we determined that, in fact, at the stage where we are, those concerns really are
20 relevant in respect of one docket, which she has indicated that when we get to it, she will indicate that this is where the Commission should exercise restraint.

I do agree that it would not be possible for you to then, on your own craft and order, especially in regard to the fact that you were not party to the negotiations I and Ms

Sello had, so that the proper way of dealing with it is that perhaps during one of the adjournments we should put our heads together and put up a document that would then serve before you and subject, of course, to the take that you have in relation thereto. It may then be made your order.

CHAIRPERSON: Thank you, Mr Bodlani.

ADV BODLANI SC: Thank you, Chair.

CHAIRPERSON: I think then we are at the stage where
10 Colonel Padayachee should take the oath.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Thank you. Will you be swearing or affirming, Colonel?

COLONEL PADAYACHEE: I will be swearing, Chair.

CHAIRPERSON: Do you swear that the evidence you are going to give is the truth, the whole truth, nothing but the truth? If so, please raise your right hand and say, so help me God.

COLONEL PADAYACHEE: So help me God.

20 **CHAIRPERSON**: Thank you.

BRIAN PADAYACHEE: (duly sworn states)

EXAMINATION BY ADV SELLO SC: Thank you, Chair.
And good morning again, Colonel Padayachee.

COLONEL PADAYACHEE: Good morning, Counsel.

ADV SELLO SC: You should have before you a file, and

separate you would have a series of other bigger files. I would say for the moment, please do not worry about the bigger files. I want to draw your attention to the specific smaller file before you.

And just to confirm as a start, you received Rule 3 notice from the Commission regarding certain allegations made, in particular by General Mkhwanazi, in his statement to the Commission and during his testimony. And you subsequently received a subpoena from the Commission in
10 response to both of which you submitted statements. Do you confirm?

COLONEL PADAYACHEE: I confirm, Chair.

ADV SELLO SC: Now, in the small file that I referenced before you, it should have on its spine Brian Padayachee's statement and supplemental statement. So if we could turn thereto? It should be divided into three terms. Under the first term is what is headed statement according to the index statement of Brian Padayachee, starting at page 1. If we could turn to page 1 of first term?

20 Page 1, that is an affidavit, in fact, dated the 16th of October 2025. It is a nine-page document. It bears your name and at page 9 it bears a signature. Do you confirm that that is the statement you submitted in October 2025 to the Commission?

COLONEL PADAYACHEE: I confirm, Chair. This is my

affidavit.

ADV SELLO SC: That statement has attached to it a number of annexures that will run in range from Annexure 1 to Annexure 20.

CHAIRPERSON: 29.

ADV SELLO SC: To Annexure 29.

CHAIRPERSON: Yes.

ADV SELLO SC: It will be Annexure 1 to 29 from pages 1 to 107. Do you confirm that those are your annexures to
10 that statement?

COLONEL PADAYACHEE: According to the bundle it is 1 to 24. The annexures is 1 to ...[intervenes].

ADV SELLO SC: No, it is BP29, it is item 24.

COLONEL PADAYACHEE: No problem.

ADV SELLO SC: The index shows BP29 to be item 24.

COLONEL PADAYACHEE: Item 24, understood.

ADV SELLO SC: So, do you confirm that those are your annexures?

COLONEL PADAYACHEE: I confirm.

20 **ADV SELLO SC:** Now, do you confirm the correctness of this statement?

COLONEL PADAYACHEE: I confirm.

ADV SELLO SC: And do you stand by its contents as you are ready to testify?

COLONEL PADAYACHEE: I stand by the contents.

ADV SELLO SC: The second document is a supplementary statement under tab 3. This is, it has in the tramlines supplementary statement is by Brian Padayachee. It runs from page 1 till 6. And that at page 6 appears to be dated the 8th of July 2026. Do you confirm?

COLONEL PADAYACHEE: Where is that on the bundle?

ADV SELLO SC: Under tab 3. The last document in that file.

COLONEL PADAYACHEE: I confirm.

10 **ADV SELLO SC:** And you confirm that the signature at page 6 is yours and that this is the statement that you submitted to the Commission? The supplementary?

COLONEL PADAYACHEE: I confirm, Chair, this is the statement and my signature.

ADV SELLO SC: And do you confirm the correctness of the contents of this affidavit and do you still stand by this affidavit?

COLONEL PADAYACHEE: I confirm the correctness of it, Chair.

20 **ADV SELLO SC:** Thank you. If then we could turn our attention to the first statement? You remember it is under tab 1. Now, you deal extensively in this statement with your academic qualifications, with your experience, and just to place your statement in its proper perspective before you deal with the contents thereof.

It was brought to your attention that amongst other things, General Mkhwanazi made allegations that IDAC, one, IDAC is operating outside its mandate. And secondly, that you, Colonel Padayachee, do not have the requisite experience as a detective and you are a senior investigator at IDAC. And that three, those facts that he alleges are substantiated by how IDAC and yourself as the investigator have handled the, what I will call the Khumalo matter, the investigation into General Khumalo that led to his arrest on
 10 the 26th of June 2025. You know the matter I am referring to?

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: So it is in response to the specific allegations advanced against you that you deal so extensively with your CV, so to speak. So with that context, I will then invite you to deal with your statement. And starting with paragraph 1, you may choose to read the statement or parts of the statement as you choose and to summarise others.

20 In this first leg of your testimony, there will not be any engagement with you to the extent that such engagement would interrogate the allegations that you make. Any engagements that may arise are most likely to be from the Commissioners and still then by way of seeking clarity. So we will adopt that approach until the end of your

first statement and then we will turn to your second statement and adopt the same approach.

Once you have at your leisure gone through both statements, we then will go back to your first statement and then start the real engagement on the matter and the issues that you raise in both statements. Do you understand that?

COLONEL PADAYACHEE: I understand, Chair.

ADV SELLO SC: So then let us turn to tab 1, page 1. That is where your affidavit starts. You may deal with the
10 contents of that paragraph, of the paragraphs from 1 literally to 28, at your leisure and how best works for you, whether you read what you have written or you summarise. I will leave it up to you.

COLONEL PADAYACHEE: Thank you, Chair. I will read it for the purposes of a record, Chair. Thank you. My affidavit:

20 “I, the undersigned, Brian Padayachee, hereby make an oath and state the facts to which I depose herein are, within my knowledge, true and correct. I am an adult male employed at the National Prosecuting Authority as a senior investigator assigned to the Investigating Directorate Against Corruption, IDAC. I am a retired Colonel of the South African

SAPS. I have served the SAPS for 38 and a half years. I attained the bulk of my service and experience in the SAPS and within the Division of Crime Intelligence. I was headhunted and thereafter appointed as a senior investigator in October 2021 on contract by the former Investigating Director, Advocate Herman Cronje, who was the head of the Investigating Directorate at that time. The IDAC was located in the NPA. During this period, I was designated in terms of section 28 of the NPA Act and actively involved in what is known as state capture investigations. I attended several workshops on financial investigations, money laundering, tender fraud, FATF, cybercrime held by the NPA, IDAC, and Association of Accredited Fraud Examiners. The ID, as a result of the NPA Amendment Act, became the Investigating Directorate Against Corruption, a permanent unit within the NPA. I was appointed to a position referred to above by the President Cyril

Matamela Ramaphosa on 1 March 2022.

The appointment was made in terms of section 13(1)(b) of the National Prosecuting Authority Act. In February 2025, I was appointed permanently in the IDAC as a senior criminal investigator. I deposed to this effort in response to a notice issued in terms of Rule 3 of the Rules of the Judicial Commission of Inquiry into Criminality, Political Interference, and Corruption in the Criminal Justice System, arising from the allegations made public by Lieutenant General Mkhwanazi, the Provincial Commissioner of KwaZulu-Natal, on 6 July 2025. The notice requires me to deal with the following issues on which Lieutenant General Mkhwanazi testified. First, I was appointed to a senior position within IDAC despite lacking the required skills, experience, and qualifications. I have used my role to influence and control investigative outcomes, court proceedings, in particular the criminal charges against Lieutenant General

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Khumalo and his co-accused as related to the employment of Brigadier Mokwele. I deal with the issues identified above later in this affidavit.

Before I do so, there are various issues I need first to deal with if my answers to the issues identified above are to be sensible. Thus, I have structured this affidavit as follows. First, I deal with the
10 allegation that I was appointed to a senior position within IDAC despite lacking the requisite skills, experience, and qualifications. Second, I use my role to influence and control investigative outcomes, court proceedings, in particular the criminal charges against Lieutenant General Khumalo and his co-accused. Third, I conclude the appointment, skills, experience, and
20 qualifications. I have already pointed out when I was appointed to IDAC and how long I had previously been involved with investigations at the time. In what follows below, I intend to expand on these aspects.

Insofar as Lieutenant General Mkhwanazi suggested that I am not qualified for my job, I have attached an annexure mark BP1, a copy of my certificate for a detective course that I successfully attended in 1998. For the sake of completeness, I have also attached Annexure BP2, a copy of the allocations of points awarded to me during the detective course. It is worth mentioning that I was awarded the honour of being the top student in my class upon the conclusion of the detective course. I have extensive management experience and operational experience spanning over a period of 44 years...”

The statement says 43. At the time it was made, it was 43.

It is now 44 years:

“...of my law enforcement career. During this period, I completed various investigative courses and attended various investigative workshops on investigations. I have completed two investigative courses hosted by the United States of America and France.

These courses enhanced my operational investigative and management skills. The courses and workshops I attended to also included fraud, money laundering, financial investigations, project approach to specialised investigations, Crime Intelligence, undercover investigative techniques, counterterrorism and financial investigations. I have attached
10 two copies of the certificates marked Annexures BP3 to BP10.”

Commissioner:

“I have a diploma in police administration. It was awarded to me in 1992. I have attached a true copy of my certificate in this regard. It is marked BP11. It remains to indicate that it is graded NQF Level 6. I also have a
20 national certificate in police administration awarded in 1985 and a national higher certificate in policing awarded in 1999. It is marked BP12 and BP13. Now I am at this point, I also make available and attach the advert in response to which I was appointed as

marked BP14. Thus, I put it up front that the allegations that I was appointed to a senior position within IDAC in the circumstances where I do not have the requisite skills, experience and qualifications is void, empty and bereft of a factual foundation. It is baseless.

10 Before my appointment, I have been involved in many successful criminal investigations. It is appropriate for me to mention a few. At the time of my appointment, I investigated and/or had previously been involved the Inchanga Massacre in the year 2000. So involved that I received a commendation from the Provincial Commissioner of KwaZulu-Natal. See Annexure marked BP15.

20 [Indistinct]... project task team. During the violence in the Edendale Plessislaer area in KwaZulu-Natal, there were many people that lost their lives as a result of the violence and gang violence within the area.

I investigated and followed leads which led to successful arrests of suspects for

a double murder. It must be mentioned that this was a closed hold docket. It was initially a MI2P docket, Malicious Injury to Property docket, which I looked at, perused at and later established through further investigation that it was actually a murder docket and not an MI2P.”

The circumstances of that docket was the deceased, the
10 suspects went to the deceased house and first burnt his clothes and at the later stage he was attacked and butchered together with his friend:

“This operation, the suspects were arrested during a coordinated operation which I was involved in. Several other arrests and seizure of firearms resulted in the Plessislaer precinct. As a result, I was awarded a Certificate of Recognition by the
20 Mayor of Pietermaritzburg. A copy is attached marked BP16. The Richmond Task Team, named Opspac two, were well aware of the violence during the Richmond time when I think it was well known throughout

the country on the number of
massacres that took place in
Richmond.”

The ...[indistinct] Massacre, the Dlamini Massacre:

“I was deployed to the Richmond Opspac
two during the violence and mass
murders in Richmond KwaZulu-Natal.

10 The arrest of the wanted suspect in
Western Cape. The murder suspect, a
member of the notorious Cash Money
Brothers, CMB, was involved in several
shootings and had evaded arrest. This
suspect had a habit of shooting people in
the face. In this instance, I investigated,
traced and arrested the suspect in the
Western Cape. The arrest received mass
media attention and commendations were
received from the National
Commissioner, Provincial Commissioner
20 Detectives for the successful arrest of
the suspect. In this regard, I point you to
Annexure BP17.

The attempted abduction and kidnapping
of a businessman's daughter. I refer in
this regard to Annexure BP18. Not only

have I investigated a number of cases I would characterise as high profile, I have also testified in various criminal court proceedings in both the High Court and the Magistrate's Court. I cannot dwell into the merits of the cases which I have been appointed to investigate and which have been mentioned before this Commission as they are *sub judice*. I do not intend to compromise court proceedings concerned with those various investigations. To elaborate on that, I have yet to testify in these criminal proceedings before the Presiding Officer. The charges referred against the respective accused in the cases that I am the lead investigator will therefore be ventilated appropriately by the courts seized with hearing these matters.

I was surprised when General Mkhwanazi mentioned my name in his press briefing and again during his testimony during the Commission. This is because I had prior telephonic contact with him long before his press briefing."

In actual fact, Commissioner, just to pause there, when General Mkhwanazi stood on the podium at the press briefing and he spoke about corruption, I was applauding him. He is one of, in the 44 years that I have been in the service and in law enforcement, he is one of the best that addresses corruption and crime directly. So I applauded him:

“Not only had I had contact with him prior to his press briefing...”

10 Just to recapture:

“I had prior telephonic contact with him long before his press briefings. Not only had I had contact with him prior to his press briefings, I had the occasion to interview him. He also provided me with an affidavit in support of one of the IDAC investigations related to Crime Intelligence investigations. I cannot disclose the details of General Mkhwanazi's affidavit nor provide the same to the Commission as the matter is still under investigation.

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To substantiate my contact and communication held with Lieutenant General Mkhwanazi, I attach hereto

screenshots of the messages and phone calls held with General Mkhwanazi prior to and after he provided me with the affidavit. They are marked BP19 and BP25.”

CHAIRPERSON: Colonel, I have gone through all seven texts. They appear to be neutral in content. You say you are travelling to Durban and that you would like to meet. A few of the chats then mention where you are and you
10 enquire where his office is. You know, it is that kind of conversation. And he, of course, is responding also in that neutral manner.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: What I am interested in is what you are seeking to establish by providing us with these texts.

COLONEL PADAYACHEE: Thank you. Thank you, Chair. The WhatsApp messages and the interactions show the type of communication we had. The reason being is that we had communication, we have an understanding, we have a
20 working relationship, we know each other. The communications do not come across as, you know, like how it is now, if I can say. These were approachable conversations.

During these conversations, he told me where he was. I met him. He was outside the Provincial

Commissioner's office. He had his short pants next to his white bakkie, hands in the pocket. I had my hands in my pocket too, although he was a General, and we were chatting.

We thereafter proceeded to his office where we had a conversation with regards to what I required of him. From there, at a later stage, we met again. This time at his house where we had the same conversation. I had his affidavit. I ran him through the affidavit of the first
10 conversation when we first met, what it is all about. The affidavit was prepared. We discussed the affidavit. The affidavit concerns a Major General who is one of the suspects in my cases and what was outlined in his affidavit. He looked at the affidavit. He confirmed the affidavit. He signed the affidavit.

What is more, when you look at the WhatsApp messages, you can see the greetings. You can see the friendliness in the greetings. You know, a blessed Easter. Hi Brian, first name. A blessed Easter to you and your
20 family. It is not ordinarily how a senior ranking officer will address a subordinate. It will be official, whatever.

But you can see the way we are interacting and relating to each other. During the time at his house in Umhlanga, in his home, we had a cordial chat about corruption and everything that is going. And I was always

in praise of him because we had met on numerous occasions before.

And in that particular meeting, Commissioner, he was aware, because I told him, General Khumalo is going to be arrested. He was aware also that other Generals were going to be arrested too as well. And his response to me was, they must face their own situations. He was comfortable. There was nothing abnormal. He was not angry, and we sat in the lounge for quite some time. And
10 then after, he wished me well, everything, and I took my leave.

So not very long after that, or a while later, the operation on the first matter commenced, which resulted in the arrest of four senior officers from Crime Intelligence. Everything was fine. There was no issues.

CHAIRPERSON: Are you perhaps suggesting that if there was anything the matter, you would have expected him to react differently to you when you made contact through these chats?

20 **COLONEL PADAYACHEE:** Exactly, Chair. From the time of our first meeting, where we chatted in his office, the time that we spent in his lounge, I am invited to his home. Not to his office the second time, to his home. So the scenario itself tells you the trust, in your home, where your family is. So what I am saying here, Commissioner, he was aware.

He had no problems with what we were doing. And when they arrest, the second arrest, or the second takedown operation on the second matter, we have several case dockets and several matters that we were busy at that stage that we are going to follow in a sequence.

So the first matter commenced. There was going to be a break. A second matter would have commenced, a break. Then a third matter would have commenced. When the second matter commenced, I was not involved in the
10 arrest of the accused, but I was at the police station. I need to mention ...[intervenes].

CHAIRPERSON: The first matter, is that the one where you say four Generals were arrested or four senior SAPS members were arrested? Is that the first matter?

COLONEL PADAYACHEE: The first matter is one General and two senior officers and a Warrant Officer at that time.

CHAIRPERSON: Yes. And the General, was that General Khumalo?

COLONEL PADAYACHEE: The first one?

20 **CHAIRPERSON:** Yes.

COLONEL PADAYACHEE: No, that was the CFO, General Lushaba.

CHAIRPERSON: All right, all right. And then the second matter, which one was that?

COLONEL PADAYACHEE: The second matter was General

Khumalo, General Lekalakala, General Lushaba, General ...[indistinct], General Madondo, Brigadier Mokwele, and Brigadier Ncube.

CHAIRPERSON: All right.

COLONEL PADAYACHEE: That was the second matter.

CHAIRPERSON: All right. Thank you. Thank you. If you want to continue, you may, but you have answered me because I just wanted to understand what you are seeking to convey when you refer us to these chats.

10 **COLONEL PADAYACHEE**: No problem.

CHAIRPERSON: Thank you.

COLONEL PADAYACHEE: And because you have touched on it, Commissioner, what I wanted to say is that ...[intervenes].

CHAIRPERSON: And I am not stopping you. If you want to continue, you may.

COLONEL PADAYACHEE: No problem, Commissioner. It is because I am on that point that I just want I know we are going to come back to those annexures.

20 **CHAIRPERSON**: Yes, yes.

COLONEL PADAYACHEE: I just wanted to put it in context that General Mkhwanazi was fine with the first case of General Lushaba. He was fine with the second case of General Khumalo on the 27th. On the 28th, I was at Howick

participating in a combat rifle competition, so my cell phone was on silent. It was off.

During the latter part of the afternoon, this is directly after the arrest of General Khumalo, there were two calls that came, two missed calls, with a couple of minutes in between. Missed calls. So when I got hold of my phone, I saw missed calls, and I sent him a message to say that, General, apologies, I missed your call. I will contact you back ...[intervenes].

10 **CHAIRPERSON**: So the missed calls were from General ...[intervenes].

COLONEL PADAYACHEE: The missed calls were from General Mkhwanazi.

CHAIRPERSON: All right.

COLONEL PADAYACHEE: So what happened is that I sent the message, but it only showed one tick, that he did not read it. So I carried on with what I was doing, and obviously it is a long day and whatever. You know, I did not follow through with that. The message was not read the
20 Sunday and the Monday, and obviously with all the messages now, everything just pushes down and all your later messages come out.

So I did not bother about it until the 6th of July, when I saw the press briefing and General Mkhwanazi giving the press briefing, and I was excited. So I

...[intervenes].

CHAIRPERSON: I think, yes, you are going to get there at a later stage. Maybe we should stop there, and then you continue with – is it paragraph 24?

ADV SELLO SC: It would be paragraph 24. But before you get there, just an issue for clarity so that we dispose of it. In your paragraph 22, you reference the affidavit you obtained from General Mkhwanazi. You indicate that this is in relation to an ongoing investigation into, or it is an
10 ongoing Crime Intelligence investigation, and you beg leave not to disclose the contents of this affidavit. My question is, is this affidavit part of any dockets that IDAC has disclosed to us now, or it is in respect of a different investigation?

COLONEL PADAYACHEE: Thank you, Counsel. Commissioner, this affidavit was made. I took General Mkhwanazi's affidavit, I think it probably was in April 2025, which is about two months to three months before that. That affidavit is in the docket, and I do not think it has been
20 disclosed as yet. It is not disclosed as yet. But I am pretty much sure you have the docket. Yes, it is in the docket that is disclosed to you, the third docket. Thank you. Apologies.

ADV SELLO SC: Okay. Now, just perhaps for some guidance, is it in the quote-unquote confidential docket or

one of the other three?

COLONEL PADAYACHEE: It is in the confidential docket.

That is the ...[intervenes].

ADV SELLO SC: I just want to ...[intervenes].

COLONEL PADAYACHEE: The two Brooklyn matters.

ADV SELLO SC: Okay, thank you. I am clarified.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: You may then continue from paragraph 24.

10 **COLONEL PADAYACHEE**: Thank you, Counsel:

“Thus I am surprised that General Mkhwanazi did not inform the Commission at all about his interaction with me, the affidavit he submitted to me, nor him trying to reach me telephonically a few days before the press briefing. I was subpoenaed to testify the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud in
20 the Public Sector, including Organs of State better known as the Zondo Commission or State Capture Commission, regarding serious corruption and the capture of various state institutions. I refer the Commission to

my Annexures BP26 and BP28.

In this regard, I even had an affidavit compiled and submitted to the Zondo Commission, marked BP29. I draw the Commission's attention to the requirements for the position I occupy. Not only have I had the formal qualifications that were required for it at the relevant NQF levels, I have the requisite experience attained over many decades. This brings me to the conclusion on the questions I was required to answer. I am more than qualified for the work that I am doing as a senior investigator at IDAC. My formal qualifications, 44 years of experience, knowledge, skills and recognitions and commendations, acquired through the years of my service as a law enforcement officer is testament of my credentials which I do not need to defend.

I have taken the trouble to read the transcript of the evidence of Lieutenant General Mkhwanazi. There is no foundation for his conclusion that I use

and/or have used my position to influence and control investigative outcomes and court proceedings. In particular, the criminal charges against Lieutenant General Khumalo, his co-accused as related to the employment of Brigadier Mokwele. Should I be required to answer questions flowing from this affidavit and any matters in respect which
 10 it has been determined, then I will be assistance to the Commission, subject to timorousness notice and the right to legal representation, I would be willing to make myself available for such.”

Thank you, Commissioner.

ADV SELLO SC: Thank you, Colonel. You have indeed made yourself available. Is there anything else you would like to add to the statement before we move to the next one?

20 **COLONEL PADAYACHEE:** I think before we even go there, so that we can get an understanding of the position I am in, the emotion involved in the matters. What we have to understand, Chair, that it has been for more than three decades that Crime Intelligence has been the front in the media space on corruption. There is not a single Divisional

Commissioner that has held his post and stayed there. Most of them were charged for corruption, for allegations of corruption and removed, and there was always acting, acting, acting.

Crime Intelligence is a very closed environment, a dangerous environment too as well. There were inquiries and maybe criminal cases open, but some of them came nowhere. This matter that came to IDAC via a referral led to something unprecedented. It led to the arrest of the
10 executive of Crime Intelligence.

To go to the people, the senior managers of Crime Intelligence, I start with General Khumalo. General Khumalo, I considered him as a friend. That is why I wanted to make this known to the Commission before we go on. I have known General Khumalo since 2006, when he was just promoted to a Captain.

He often used to come out of the Provincial Office buildings and we used to chat. He used to greet me, Hi Brian, how are you? We interact. But it was a short while,
20 and then he moved on. I think he was promoted and came up to Pretoria. I know him well. So for several years, we never had contact.

In 2022/2023, he was appointed as the Acting Divisional Commissioner of Crime Intelligence, and I was excited for him. Bearing in mind, I was not involved in the

investigation or the investigation had not started. In 2023, they reached out to me for assistance to assist General Khumalo as he had been served with an interdict.

General Khumalo, when he came to Crime Intelligence, started to clean up the rogue agents that were collecting salaries but not doing anything. So when he started to clean up, they brought interdicts and applications against him. So I was called and I was requested to assist with particular rogue agents because of my knowledge and
10 experience.

So we had a Teams meeting. In the Teams meeting, he was present, the Head of Legal Services, State Attorney, Brigadier Matroos, I think she was there, and other people there. We went through this as to what the interdict was about and the applications. So I said I will assist.

I requested the applications, the documents, in order to prepare a responding affidavit. I prepared the requisite documents and submitted them, and as a result,
20 that interdict was dismissed. Together with the main case where two agents that were in the programme since 2004 that were resurfaced in 2012 but never reported on duty. He stopped their salaries.

So the main matter there, these two policemen wanted to be released on early retirement and be appointed

as full Colonels, and then they were also on the Teams meeting and in documents known as Mr X and Mr Y. So my input at that meeting was, why are you calling them Mr X and Mr Y? They are resurfaced, they are policemen, they are on the system as so-and-so and so-and-so. They are on the PERSAL system. They have palmette cards. They are known as policemen.

So after that meeting, just as it was about to close the Teams meeting, General Khumalo greeted me and said
10 how is it, Brian? And I said hi, General. How are you? Fine. And then he gave me his number. I took his number and I said we will meet. But after that, because when I messaged him or spoke to him, he is in a meeting, I am not in the province, so it eventually just went out. When it came to the time when the investigation started and all these statements and allegations started, I was very surprised.

We come to General Madondo. I was General Madondo's mentor. I had known General Madondo from the
20 2000s. I watched her grow in the police as a Commander and going through the ranks. So it was another thing that impacted on myself. This is somebody I mentored.

General Lekalakala, we have a long working relationship since the 2000s. We interacted on PECs and NECs. I know him personally. And it was indeed difficult.

So when this investigation started, you can imagine the night of the arrest as it was. So I went to General Khumalo. I greeted him, and I just said to him, I am part of a team. I went to General Madondo. I put my hand on her shoulder and I said, are you okay? Just be strong. And I greeted General Lekalakala.

During the court appearances at the Magistrate's Court, I went to them to greet them. Obviously, a few remands later, the protectors blocked me, and then I
10 decided let me pull back. So, Commissioner, you can see, and why I am mentioning that, that there was no malice on my part. These are colleagues, and in some cases, close people that I know. So I thought that would be worth mentioning before we go on to whatever else has to come next. Thank you. Thank you, Chair.

ADV SELLO SC: Thank you, Colonel. And also, before we leave this statement, just to clarify, if you could go back to your paragraph 19 and 20. In those two paragraphs, you indicate that you did not intend to deal with the merits of
20 the cases you have been appointed to investigate because these are *sub judice*, right? And that the detail of those cases will be ventilated in the court hearings.

Now, in these two paragraphs, you argue for non-disclosure on the basis of a certain legal principle that, you know, matters are in court. Now, you will recall that the

application brought by IDAC that we discussed this morning with the Commissioners invoked the same principle. And if you understood IDAC's position, based on the agreement between the Evidence Leaders and IDAC's legal representatives, is they no longer pursue a non-disclosure on the basis of the *sub judice* principle. You understand that?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Now, I am asking to – I asked to check
 10 whether you insist, do you still insist on invoking the *sub judice* principle as you do here in paragraphs 19 and 20, or whether the correct position is that, because this was deposited to in October '25 already, you no longer insist on the application of the principle and you abandon what you state in 19 and 20? Just to check. I want to know where you stand insofar, you personally, you stand insofar as these documents are concerned and the *sub judice* principle. Thank you.

COLONEL PADAYACHEE: Thank you, Counsel. The way I
 20 stand, Chair, Commissioners, I will still be cautious, but I will be guided by the Chair on my responses to the questions. I am not claiming *sub judice*. What I am actually saying in layman's terms, I have to be cautious.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: My criminal case before court

has to be presented and I do not want to compromise anything, witnesses or whatever deeper stuff that I have to present before court. That is all. But I will be guided by the Chair with whatever limits that he wants me to go through. Thank you.

ADV SELLO SC: Thank you so much. I understand your position and it is clarified. With that then, let us turn to your tab 3 of that file, that is your supplementary statement. And this supplementary statement ...[intervenes].

10 **CHAIRPERSON:** Sorry, sorry, Ms Sello. Going through my copy of the supplementary statement, I noticed that what should be page 3 was marked 5 and was actually just before 6, before page 6. I then swapped them around. Is yours correct? In fact, all three of ours were wrongly marked.

COLONEL PADAYACHEE: That is correct, Chair. It actually was my fault.

CHAIRPERSON: Okay.

COLONEL PADAYACHEE: When I scanned and emailed the documents, the page 5 is actually supposed to come
20 ...[intervenes].

CHAIRPERSON: 5 should be 3.

COLONEL PADAYACHEE: Yes, it has to come to ...[intervenes].

CHAIRPERSON: And then, ja, 3, what is marked 3 is 4, and 4 is 5, and then 6 is fine.

ADV SELLO SC: I had swapped them around for myself. I apologise, Chair, that I forgot to highlight that, but that is correct.

CHAIRPERSON: All right, thank you.

ADV SELLO SC: Colonel, will you make the swaps then before we deal with the content of that? Let us put them in their correct order.

COLONEL PADAYACHEE: I have done so.

ADV SELLO SC: Okay.

10 **COLONEL PADAYACHEE:** I have done so, Counsel.

ADV SELLO SC: Thank you, Chair.

COLONEL PADAYACHEE: My apologies for that, Chair.

CHAIRPERSON: No problem at all.

ADV SELLO SC: Then if you could turn to page 1 and then deal with the supplement – no, before we do so, what I wanted to indicate is starting from your paragraph 9, and your paragraph 9 will now be page 4 instead of 3 as reflected on the file, correct?

COLONEL PADAYACHEE: Yes.

20 **ADV SELLO SC:** You specify that from paragraph 8:

“I respond to paragraph 2 of the
summons as follows.”

Then you adopt a way of responding by referring to a particular paragraph. You say, ad paragraph 2.1, and you just state the answer. I think for purposes of your engaging

with this document, you need not reference the ad paragraph 2.1 in the right because it is not immediately available before you, but we know what it is talking about. But I believe the response that you provide is sufficient that you deal with the response without linking it back to a specific paragraph in the summons.

CHAIRPERSON: Is it not best, perhaps, for you to read the paragraph that Colonel is referring to? But when you get there, when you get there. For example, if you look at
10 10, which is ad 2.2.

ADV SELLO SC: Yes.

CHAIRPERSON:

“I deny these allegations.”

Listeners will be in the dark as to what the Colonel is denying.

ADV SELLO SC: Okay. Then perhaps ...[intervenes].

CHAIRPERSON: If you have them. If they are ...[intervenes].

ADV SELLO SC: I can call it up.

20 **CHAIRPERSON:** If they are readily at hand.

ADV SELLO SC: The totality of the story, I understand. But if he adopts the approach where he reads the document into record, then we will have to look at it differently. I accept that perhaps when we get to that part, I would have to indicate what the allegation in paragraph 2.1 was.

CHAIRPERSON: Yes.

ADV SELLO SC: Then he can deal with the response.

CHAIRPERSON: And then he reads.

ADV SELLO SC: I am happy to do so. You understand, Colonel, how we propose to deal with your averments from paragraph 8?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: The response to the summons.

10 **ADV SELLO SC:** So in the interim, please start. I will call up the summons that you had received, and I will deal with each paragraph that you respond to before you go on record to put your response.

CHAIRPERSON: You have not done your usual preliminaries of having the Colonel confirm that this is his statement, or have you?

ADV SELLO SC: I have. Both statements, Chair.

CHAIRPERSON: We did that in respect of both right at the beginning.

20 **ADV SELLO SC:** At the beginning. Yes, Chair.

CHAIRPERSON: I am sorry.

ADV SELLO SC: No, we did. It was precisely to avoid this risk.

CHAIRPERSON: All right, all right. Sorry, sorry.

ADV SELLO SC: Colonel, then you may start with your

supplementary affidavit from page 1.

COLONEL PADAYACHEE: Up until paragraph 9, where you will come in?

ADV SELLO SC: Yes. It is a free read or comment until you get to paragraph 8. And that is when then I interject and introduce each paragraph in the summons that you specifically refer to per paragraph in your statement.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: Okay.

10 **COLONEL PADAYACHEE**: Thank you, Counsel. It is a supplementary affidavit of myself:

20 “Brian Padayachee, hereby testify under oath as follows. I am an adult male employed as a senior investigator assigned to the Investigating Directorate of Corruption within the National Prosecuting Authority. I have personal knowledge of the facts to which I dispose in this affidavit. I dispose to this affidavit in response to a subpoena issued to me in terms of Rule 3(2) of the Commission's Act 8 of 1947 to appear before the Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System

arising from the allegations made public by Lieutenant General Mkhwanazi, Provincial Commissioner of KwaZulu-Natal, on 6 July.

The summons requires me to appear before the Commission on Monday 13 July 2026 for the purposes of giving evidence and be questioned about the following. Matters arising from the

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evidence of Lieutenant General Mkhwanazi during his evidence before the Commission on 17, 18 and 19 September whether criminal syndicates, organised criminal groups, politically connected persons or other unlawful actors have infiltrated, captured, exerted undue influence over or otherwise compromised the South African Police, the NPA, the Directorate for Priority Crime Investigation, Crime Intelligence, Independent Police Investigative Directorate or any other component of the criminal justice system. The nature and extent and consequences of such infiltration, capture, corruption or undue

20

influence, the identity of the individuals, officials, office bearers, intermediaries, entities and organisations whom I contend were involved in, facilitated, benefited from, concealed or enabled such conduct and the factual and evidentiary basis for any allegations I make in relation to the capture, corruption and criminalisation of the components of the criminal justice system.

10

20

I have also been invited to give evidence on the following matters being investigated. Allegations that IDAC operates outside its mandate in terms of prescribed legal constructs, namely section 1(a) of the NPA Act as amended. That IDAC allegedly pursued a criminal case against Lieutenant General Dumisani Khumalo and other officers of Crime Intelligence in the furtherance of ongoing political interference at SAPS. Allegations concerning my role in the interference in criminal investigations and prosecutions. The effect of such

conduct on the functioning, integrity and independence of the criminal justice system. Allegations concerning the existence of a Khan IDAC cabal in the SAPS and my role pursuant thereto as made by Mr Thulani Shongwe during his evidence at the Commission on 30 June 2026, and my relationship with Major General Khan and the allegations I disclosed to General Khan, a SAPS docket relating to an ongoing criminal investigation against him. Any matter falling within the terms of reference of the Commission.

I have in my previous affidavit submitted to the Commission already preferred a response in relation to paragraph 1.1 to 1.5 of the summons and nothing further to add in respect thereof.”

20 I am now at 8.

ADV SELLO SC: Yes. And you say at 8 that from this point you respond to paragraph 2 of the summons, the same summons of the 3rd of July.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: So I will read into the record the

allegation or the issue raised with you in the summons and then you will deal with the response as you have reflected in the statement.

Now at 2.1, the summons required you to deal with the allegations that IDAC operates outside its mandate which is prescribed by section 7(1)(A) of the NPA Act. That was the allegation you were invited to respond to. So you do that at paragraph 9. And if you can deal with that?

CHAIRPERSON: Ms Sello, exactly what I was about to talk
10 about. I wanted to know if there is any particular reason why you are not flighting this today.

ADV SELLO SC: No, but what we are flighting are his responses.

CHAIRPERSON: Yes, yes, that is what I am referring to.

ADV SELLO SC: Yes.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you. Colonel, we are now at your
paragraph 9 in response to paragraph 2.1 of the subpoena that I have just read into the record. So you may read your
20 response thereto.

COLONEL PADAYACHEE: Chair, Commissioners:

“IDAC operates strictly within its
mandate. That mandate is set out in
section 7(1)(A) of the NPA Act as
amended.”

To further on 7(1)(A), the Act provides for, if I could just read it out, the mandate of IDAC:

“It relates to serious high profile, complex corruption, commercial and financial crime cases arising out of commissions referred to IDAC by the National Director of Public Prosecution in terms of section 28.”

Then you have section 27 referrals. And these relate to
10 offences including common law offences of fraud, forgery, uttering, theft, and also it includes statutory offences in terms of Prevention of Corrupt Activities Act, PRECCA, Prevention of Organised Crime Act, the Public Financial Management Act, Financial Intelligence Centre Act. Our mandate, IDAC, is taken from this particular section with the subsections of the offences that they are authorised to investigate, both common law and statutory law.

ADV SELLO SC: Thank you. And looking at section 7(1)(A), I confirm that you have in large part summarised
20 what the section provides.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: Thank you. And then if we could turn to the second question under paragraph 2.2. I will read the question, the issue into record as reflected in the subpoena. You were requested to deal with the issue as stated. I

quote:

“IDAC has allegedly pursued a criminal case against Lieutenant General Dumisani Khumalo and other officials at Crime Intelligence in the furtherance of ongoing political interference at SAPS.”

So that is what is in the subpoena. You provide a response to that at your paragraph 10, page 4. So if you could read that paragraph into the record and speak to the issue raised
10 in paragraph 2.2 of the subpoena?

CHAIRPERSON: Just a minute, Colonel. Please respond, Colonel.

COLONEL PADAYACHEE: Thank you. Thank you, Chair:

“I deny these allegations. They are baseless and devoid of merit. The IDAC has sufficient evidence to sustain the charges on the criminal cases against Lieutenant General Khumalo and other officials at Crime Intelligence. This
20 criminal case is currently pending before the Magistrate's Court Pretoria. I deny as baseless any allegations of political interference or hidden agendas in respect of the investigations that are conducted by IDAC against the senior

officers within Crime Intelligence and
SAPS.”

ADV SELLO SC: Is there anything you would like to add to
that answer?

COLONEL PADAYACHEE: There is no political
interference. And this I say so from my personal
investigations into the matter. I have never received any
calls or placed under any undue pressure. And these
investigations cannot be influenced by investigators
10 because they are prosecution driven. There are processes
in place which are managed by the prosecution team. They
decide who to charge. They decide what charges.

ADV SELLO SC: You say who decides who to charge and
what the charges will be. Who does that? I think I missed
that, if you do not mind.

COLONEL PADAYACHEE: Maybe I must just elaborate on
that.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: When a complaint comes in via
20 a section 27 referral, that referral is taken by the Intake
Committee, which decides whether this falls within the
mandate of IDAC. All the legal prescripts, everything is
there. That referral is then a section 28(13). If it falls
within the mandate and if it still needs more information, a
preliminary investigation in terms of section 28(13) is

authorised.

So from that, a team gets designated. That team consists of investigators, criminal investigators, financial investigators and prosecutors, meaning your state advocates. And then leading that team, you will have a Deputy Director of Public Prosecution who is responsible for that.

So in terms of prosecution, the investigators do the investigation. But in terms of the prosecution, it is guided
10 by the prosecutors. They decide on the evidence, the investigation and evidence collected, who to charge and what to charge.

It is followed by another level, which is the Deputy Director of Public Prosecution and other senior advocates who look at the evidence to support the charges and the accused.

CHAIRPERSON: Did you say this one was a referral? Did you say this one was a referral?

COLONEL PADAYACHEE: Yes.

20 **CHAIRPERSON**: Thank you.

COLONEL PADAYACHEE: A referral. This matter came under a referral in terms of section 27 of the NPA Act. Thank you, sir.

CHAIRPERSON: Who referred it?

COLONEL PADAYACHEE: The section 27 referral came

from a Member of Parliament, Mr Fadiel Adams.

CHAIRPERSON: Thank you.

ADV KHUMALO SC: Just a follow-up question. Good morning, Colonel.

COLONEL PADAYACHEE: Good morning, Commissioner.

ADV KHUMALO SC: Was that referral in terms of section 27, which requires that it be on oath on affidavit or affirmed declaration?

COLONEL PADAYACHEE: As far as I know, it is an
10 affidavit that is submitted.

ADV KHUMALO SC: You have seen it personally?

COLONEL PADAYACHEE: Yes, sir. I have seen it now and it also forms part of the bundle that was handed to Counsel.

ADV KHUMALO SC: Thank you.

ADV SELLO SC: Thank you, Commissioners. Colonel, that then leads us to paragraph 2.3 of the subpoena, which required you to address:

20 “Allegations concerning your role in
 interference in criminal investigations
 and prosecutions.”

I think you deal with that issue together with paragraph 2.4. I will put what paragraph 2.4 of the subpoena stated so that you can answer them together as you do in your statement. At paragraph 2.4 of this subpoena required you to address the, I quote:

“The effect of such conduct on the functioning, integrity and independence of the criminal justice system.”

So those are the two and you deal with those at your paragraph 11 at page 4 of your subpoena statement. Thanks.

COLONEL PADAYACHEE: Thank you, Counsel. My response to it and how the summons, I responded to what is in the summons and my response was:

10 “The allegation is vague. It does not contain evidence in fact showing any interference on my part or on any investigations and prosecutions.”

Then I elaborate that:

 “The IDAC operates on a prosecution investigation methodology which is headed by the Deputy Director of Public Prosecutions. It discounts personal influence on investigations and
20 prosecutions.”

To elaborate on my answer, I am only an investigator that goes out and investigates. I have no authority or power to influence prosecutions. I go out, I am directed by the prosecutors, investigate, collect the evidence, the evidence is presented. There is no way that I can interfere with

prosecutions and who must be prosecuted. That is in the domain of the prosecutors.

ADV SELLO SC: Thank you. If we then turn to the next issue raised in the subpoena, that would have been raised at paragraph 2.5 of the subpoena and it reads, paragraph 2.5 required you to address:

10 “Allegations concerning the existence of
a “Khan IDAC cabal” in SAPS and your
role pursuant thereto as made by Mr
Thulani Shongwe during his evidence at
the Commission on the 30th of June
2026.”

You respond to that contents of that paragraph at your paragraph 12, page 5. If we could turn to that? Thank you.

COLONEL PADAYACHEE: Thank you, Counsel. Chair, Commissioners, I have no knowledge of an existence of a Khan IDAC cabal in SAPS. I also have no knowledge of a Khan IDAC cabal within IDAC. It follows that if such cabal exists, I have no party to it. I have never investigated such
20 because I do not know of it and neither am I involved in it.

ADV SELLO SC: Before we leave that issue or your paragraph 12, is there anything else you would like to add to that answer? Is there anything else you would like to add to what you have stated in paragraph 12 before we leave your response to the question posed to you in the

subpoena?

COLONEL PADAYACHEE: Nothing else except that I have no knowledge. I have no involvement in any of it and I have no knowledge of a cabal or party to anything of that sort.

ADV SELLO SC: Thank you. The last question then was reflected, well the penultimate actually, paragraph 2.6 of the subpoena. I am advised that that question was erroneously posed to you in the subpoena because it does not, and I say erroneously because it does not concern any issue that you
10 are required to testify on or is there an allegation made to you regarding what set out therein. I must however read it into the record because you have formally responded to it.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: It was just with that rider. Paragraph 2.6 of the subpoena required you to speak to:

20 “Your relationship with Major General Khan and allegations that you disclosed to General Khan an SAPS docket relating to an ongoing criminal investigation against him.”

That is what was in the subpoena and you respond to that at paragraph 13 of your supplementary statement, page 5. Like I say, you deal with that issue to the extent, with the rider that I have provided, that it said it was erroneously posed to you particularly insofar as it deals with the

disclosure of a SAPS docket to General Khan by you relating to an ongoing criminal investigation against him. Thank you. You may deal with your contents of paragraph 13.

COLONEL PADAYACHEE: My response, although it was not related to me, counsel, my response for the purpose of the Commission, Chair, Commissioners, is that:

10 “I have never disclosed any investigation
or any docket to Major General Khan. To
elaborate further, I know Major General
Khan is a senior officer attached to Crime
Intelligence at the head office within the
SAPS. He was one of the Crime
Intelligence Components Head. I
previously worked at Crime Intelligence
and was a Provincial Section Commander
of Security Intelligence. Security
Intelligence form part of the portfolio of
Major General Khan as the National
20 Component Head of Counter and Security
Intelligence. Major General Khan often
Chaired our Organised Crime Criminal
investigation projects at the National
Evaluation Committee, NEC, at the head
office of Crime Intelligence. I had strictly

an official working relationship with him.
General Khan is also a state witness in
two of the IDAC investigations that are
pending before the Magistrate's Court. I
am the investigating officer in both these
criminal cases.”

The allegation that I disclosed the SAPS docket to General
Khan relating to an investigation against him, I responded
that it was vague. There is no information. But on it, I
10 have a complete denial that I shared any information and
docket with regards to him.

I must say on this part, Chair, Commissioners, the
General Khan that I know and that I worked with during this
particular time is not the General Khan that I see now with
what is appearing before the Commission. I had my
reservations during my time Crime Intelligence on senior
officers there, but it was not to the extent of what is seen
now. This is indeed not the person I know. Thank you,
Chair.

20 **CHAIRPERSON:** What were those reservations?

COLONEL PADAYACHEE: Chair, I think one that stands
out was within the crime, I must take you to a little bit on
the history of Crime Intelligence. You must remember that
Crime Intelligence was previously the special branch or the
former apartheid intelligence system, and at some stage

they merged with the new dispensation CI, Crime Intelligence, Crime Intelligence Service, and they became one.

At this time there you had seasoned veteran Crime Intelligence officers, as well as from the new Crime Intelligence, which one of them was myself that came in. There were people with long experience, a lot of service and especially in their ranks. And when General Khan came in, he was a Colonel and the next minute there was
10 whispers in the passages that General Khan is now a General.

So within our structure, especially the covert structure, you know, it spreads very quickly and everybody is, how did it happen? So I had my reservations that, you know, how did this happen? And just interactions and as an intelligence trained intelligence operative, I had my reservations and whenever I interact, I do not take anything that is said to me, you know, just on the fore of it.

So that is why it is kept work official and what is
20 said officially, I take what I believe is true and do not worry about the rest. That is what my input is there. Thank you, Chair.

ADV BALOYI SC: So, when you say you had reservations, Colonel, it suggests reservations about malfeasance. That is what it suggests. Your explanation now about General

Khan simply relates to promotion issues. How did he become a Colonel, rather a General from Colonel instead of being a Brigadier first? That is a different reservation from the first impression that you create when you say I had reservations about some of the things that at Crime Intelligence.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Did you want to elaborate?

COLONEL PADAYACHEE: Let me put it into perspective
 10 as I indicated on my Zondo affidavit. There were many things that took place during, and as mentioned by Mkhwanazi, which I support what he says about the corruption within Crime Intelligence.

The possibility of being promoted from a Colonel to a General during that corrupt era, it was possible because you had people being recruited into a system. Some of them worked at supermarkets or wherever, that came into the police and at a later stage, it was uncovered that they came in on the rank of a Captain.

20 So, and a prominent person's wife was also promoted to a full Colonel within the system. So, when you look at it, is it possible that it can happen? Yes, it did happen. It did exist during those times. But the manner in which it was done is questionable.

But there is provisions for it under deviation in

terms of the SAPS regulations where people can be – a deviation from advertising a post and promoting a person. But to go and skip ranks, there are other people too as well that also went from Colonels to Generals.

It is that system or that what happened there, especially starting at CI, that has put us where we are today with a system that has become so corrupt, where people are just willy-nilly promoted. Because you got to ask yourself a question, on what basis did that promotion take place?

10 Here you have people that are sitting 20, 30 years in a particular rank with expertise, experience, hardworking, and you know, suddenly somebody comes in and a while later, they are made a General.

And in that environment, are we talking about people that have been there for 20, 30 years? And you are talking about somebody that has just come in there and he is there for a couple of years? That is my position.

ADV BALOYI SC: All right. We will leave it there for now, but we will come back to it. I think you have not answered

20 my question. The second thing that I was going to ask you is, in your paragraph 15, what you say there, is that a reference to what you referred to earlier as two Brooklyn cases?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Is that what paragraph 15 is about?

COLONEL PADAYACHEE: That is correct.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: Thank you.

ADV KHUMALO SC: Ms Sello, I have a clarity-seeking question. Colonel, it relates to 10 and 11, if you read them together. You say IDAC cooperates on a prosecution-led investigation methodology, it continues, and then you mentioned your relationship with the various Generals that you investigated as part of your investigation, specifically in
10 relation to Ms Mokwele's case, the appointment.

I just want to understand, in terms of procedure, how did you become involved in this investigation and how were you appointed and how was this case specifically allocated to you? How did that all happen?

COLONEL PADAYACHEE: Thank you, Commissioner. Chair, as I mentioned in my evidence-in-chief that the investigation starts from the referral where section 28(13) preliminary investigation starts. The process of the 28(13) is to authorise a preliminary investigation and designate
20 investigators, prosecutors to that particular team.

So within the 28(13), I was designated on that. But I also want to clear out something so we have an understanding ...[intervenes].

ADV KHUMALO SC: [Indistinct]... who designated you and then you can continue with ...[intervenes].

COLONEL PADAYACHEE: I was designated by the investigating director as the head of office.

ADV KHUMALO SC: And who is that?

COLONEL PADAYACHEE: Advocate Johnson.

ADV KHUMALO SC: Yes.

COLONEL PADAYACHEE: So in the investigating team, the word lead investigator is utilised. I am not the lead investigator. I am a docket carrier for that investigation. There are other investigators that assist with that. So there
10 is not one investigator appointed to go with it. There are several and we all have different roles in that investigation. You go deal with that, you deal with that, you deal with that ...[intervenes].

ADV KHUMALO SC: And sorry to interrupt you, who is the lead investigator?

COLONEL PADAYACHEE: Well, when you look at the word lead investigator, because I am the one carrying the docket. So I am labelled now as the lead because most of the administration and everything I am doing. So I am
20 responsible for that docket.

ADV KHUMALO SC: Okay, Colonel, you have to appreciate that we are not familiar with your terminology. So in the course of answering my question, you say things that force me to interrupt you because I do not want to wait until the end and not remember. So just try to explain what

is the difference between a docket carrier and a lead investigator and give us a specific answer and a clear answer. Who in the Mokwele case is the lead investigator?

COLONEL PADAYACHEE: In the team, there is a chief criminal investigator who is responsible for the criminal investigators. The criminal investigators ...[intervenes].

ADV BALOYI SC: Sorry. In this case, who is that? Maybe let us take it step by step. There is a chief criminal investigator that you have now referred to. Who is that in
10 this case?

COLONEL PADAYACHEE: I did not hear you, Commissioner. Do you need the name of the chief criminal investigator?

ADV BALOYI SC: You have told us what you do. You are the docket carrier, so we now have a name. The docket carrier is you, but you also say you have since become the chief investigator. So you have to give us the names so that we get to understand. More than anything, just so that we understand the structure, how it works.

20 **COLONEL PADAYACHEE**: That is clear. That is clear, Commissioner. Chair, the chief criminal investigator, Perumal is our chief investigator in that investigation team. So let me get back ...[intervenes].

CHAIRPERSON: Is that the lead investigator or is that different?

COLONEL PADAYACHEE: He is in charge of the criminal investigators in that team. So let me get back to Commissioner ...[intervenes].

CHAIRPERSON: I want to understand. When Commissioner Khumalo was engaging you, you spoke about a lead investigator and about a docket carrier.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Now when Commissioner Baloyi is engaging you, you are referring to a criminal what? Chief
10 criminal investigator. I want to know whether this is a third functionary or whether it is one of the two you have mentioned already. Is the chief criminal investigator one of the two you mentioned earlier, or is it additional? Is it a paired functionary?

COLONEL PADAYACHEE: You have the criminal investigators, the senior criminal investigators, and the chief criminal investigator in that investigation team. But I think just to get to Commissioner Khumalo, I look at myself as not a lead investigator. I look at myself as a docket
20 carrier. But for the sake of it, lead, docket carrier, one and the same thing. I will accept it as that way, sir.

ADV KHUMALO SC: Colonel, I am talking about a specific case, and that is a case involving the appointment of now Brigadier Mokwele, not the structure within IDAC. So just focus on this specific case. In this specific case, what was

your role? Were you the docket carrier or were you the lead investigator in this specific case?

COLONEL PADAYACHEE: In this specific case, to be clear on it, Commissioner Khumalo, it is not the structure of IDAC that I am explaining. It is in the investigation, the designations, you have a chief criminal investigator whose – that designation is the investigation of the Mokwele case. So in the Mokwele matter, in terms of investigators, you have appointed investigators, criminal investigators, and a
10 chief criminal investigator.

So the chief criminal investigator is responsible for the senior criminal investigators and the investigators. So coming back to your question that the lead investigator, the lead investigator or the docket carrier is myself. But I report to all my work and everything that is done has to pass through the criminal investigator, chief criminal investigator.

ADV KHUMALO SC: And that would be Mr Perumal?

COLONEL PADAYACHEE: That would be Mr Perumal.

20 **ADV KHUMALO SC**: Who designated you? Was it Mr Perumal or Advocate Johnson?

COLONEL PADAYACHEE: Advocate Johnson.

CHAIRPERSON: I must say that up to this point, your testimony was a bit confusing on this aspect as to the investigators. Earlier, I thought you were emphasising the

fact that you were not the lead investigator and that you were just the docket carrier. But in the end, in response to Commissioner Khumalo's last question, you now say you were both the docket carrier and the lead investigator.

COLONEL PADAYACHEE: Yes, I know. I understand.

CHAIRPERSON: You basically are contradicting yourself. Can you give us the final, final word? Are you going back on what you said earlier, which was laying emphasis on you merely having been or being, because I think this is
10 continuing, merely being a docket carrier and not the lead investigator? Are you going back on that now? And are you now saying you are both the docket carrier and lead investigator? Is that what we must understand your testimony to be?

COLONEL PADAYACHEE: Commissioner, I think that is the way we must understand it and take it. The lead investigator was carrying the docket, and that is what I settled at, Commissioner, for clarity's sake.

CHAIRPERSON: All right. Thank you.

20 **COLONEL PADAYACHEE**: Apologies, Commissioner Khumalo.

CHAIRPERSON: Thank you. No problem, no problem.

ADV SELLO SC: Thank you, Chair. Thank you, Commissioners. Then perhaps so we do not, particularly for our sakes, so that we do not get confused, may we not use

the term docket carrier because I accept from what you say that you use that interchangeably with lead investigator for you. It is the same insofar as the Mokwele matter is concerned. So I suggest we drop the title docket carrier and we stick with lead investigator, and we know that is you in the Mokwele matter.

COLONEL PADAYACHEE: Acknowledged, Counsel.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: I know it creates confusion, but
10 we will stick with lead investigator.

ADV KHUMALO SC: Unless, Advocate Sello, he wanted to make a particular distinction which is relevant. I still do not understand why you would have mentioned the docket carrier if you are the lead investigator and it is irrelevant that you are also the docket carrier. What is the relevance of you mentioning that you are the docket carrier?

ADV SELLO SC: Perhaps before he answers, the proposal I made is based on the response he gave to the Chair in trying to clarify whether he was, there is a difference
20 between lead investigator and docket carrier because originally he had said he was just the docket carrier, having identified that there is a lead investigator.

And in his engagement with the Chair, I thought he got to a point where he said for purposes at least of Mokwele, docket carrier and lead investigator, both of whom

are Colonel Padayachee, is the same thing. So I was just requesting that if my understanding is correct that docket carrier and lead investigator is how we should understand it, then we drop any reference going forward to docket carrier and we just speak to about a lead investigator. So that is what I was trying to confirm with him. But Commissioner Khumalo, if you remain unclarified on some issue regarding these terms, perhaps the witness can clarify for you.

10 **COLONEL PADAYACHEE**: Clarified. We will drop that and we will stick with lead investigator. There is no other – sometimes when you are working in a team you use your different terms, but lead investigator, that is it. In order to avoid confusion with docket carrier, we will stick with the lead investigator, the one that is carrying the docket.

ADV KHUMALO SC: I must say the way it came across, it sounded as if you were trying to avoid responsibility about certain things and you were trying to say, oh that is the responsibility of the lead investigator, I am just the docket
20 carrier. You know, like I am the messenger, do not shoot the messenger type of situation.

COLONEL PADAYACHEE: I hear you Commissioner, the inference that can be drawn for it. I think I must get the message across clear, that we leave, drop the word docket carrier, lead investigator, but in the team I report to a chief

criminal investigator. I think that makes it much more understandable from the English point of view, if I can go there. Thank you, sir.

ADV KHUMALO SC: Thanks.

ADV BALOYI SC: I know you would like this to be resolved neatly in the way that you have done, but just to clarify for myself, when the team was first constituted, and this is partly, my question is partly about the structure, but also this particular case, when the team was originally
10 constituted, would you have had a docket carrier and a lead investigator and a chief, what is it called, chief investigating, the position held by Perumal, would you have had a docket carrier and a lead investigator in this particular case?

COLONEL PADAYACHEE: No Chair, I think that is where I am creating the confusion. That is why I dropped the docket carrier. But I think it comes more when you look at that team, that team that is there, there is a number of different investigations.

20 **ADV BALOYI SC:** Yes, my question is simply this. On the Mokwele matter, from the outset you were the docket carrier/lead investigator?

COLONEL PADAYACHEE: Correct.

ADV BALOYI SC: Okay, thank you.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: Thank you, Commissioner Baloyi. And perhaps just to close up this subject, because we are talking about systems and operations, do the lead investigators and the chief criminal investigators get appointed by the Intake Committee, or are they appointed differently? Without unpacking, just for my understanding on how it works.

COLONEL PADAYACHEE: The appointments and designations of the team is done by the investigating
10 director with their management, that is what I know.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: I only get to know about it when the designation comes and you are on the designations, that is where I am at.

ADV SELLO SC: Thanks for the clarification. Commissioners, I am aware of the time, but if I may request, we are almost at the end. We are just left with two paragraphs to close this part of the proceedings. So I think you were at paragraph 16, you are just left with 16, 17 and
20 18, and then you would have completed your supplementary. If I may invite you to deal with those? 16, page 5, bottom paragraph, if you could take it from there into page 6, your supplementary statement?

COLONEL PADAYACHEE: Thank you, Counsel. Chair:

“The allegations that I disclose as SAPS

dockets to General Khan relating to investigation is, with respect, vague. There is no information who made the allegation, which docket, where, when, how, was the docket closed. This is a serious allegation to make, so I would have justified the expected underlying facts to be made available to me, to ensure meaningful engagements therewith and respond. I think the response is given that..." ...[intervenes].

ADV BALOYI SC: Ms Sello, this is the one where you say the question was misdirected.

ADV SELLO SC: Indeed, indeed.

COLONEL PADAYACHEE: The response is there that this did not refer to me with regard to disclosing a docket.

ADV SELLO SC: Yes, thank you. Now, just to confirm that because what you deal with at page 16 is to an issue that was wrongly directed to you, we propose that, as with this in the subpoena, paragraph 6.5, be considered *pro non scripto*, and similarly the contents of this paragraph, and to confirm for the record that you will not be engaged about any issue arising from that subparagraph, which suggests that you disclosed a docket involving General Khan unlawfully to him, just to assure you.

CHAIRPERSON: And that comment, Colonel, applies to 17 as well. Your 17.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Yes, indeed by extension, yes, because the issue flow continues to paragraph 17, yes.

CHAIRPERSON: Yes.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: So, my apologies, Counsel. I was supposed to continue with it. Chair, Commissioners, it
10 remains to state that I do not work with SAPS dockets, neither do I have access to SAPS dockets. I deny that I disclosed any docket to General Khan relating to any ongoing criminal investigation against him.

ADV SELLO SC: Yes. Then, finally, perhaps your paragraph 18.

COLONEL PADAYACHEE: By paragraph 18:

20 “Should I be required to answer questions flowing from this affidavit, any matters in respect which has been determined that I would be of assistance to the Commission, subject to timeous notice and the right to legal representation, I would be willing to make myself available for such.”

ADV SELLO SC: Thank you, Colonel. Before we leave

this supplementary statement, is there anything else you would like to bring to the attention of the Commissioners at this stage?

COLONEL PADAYACHEE: Nothing else, Chair.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Let us adjourn and resume at 11:35.

ADV SELLO SC: Thank you, Chair.

HEARING ADJOURNS

CHAIRPERSON: Yes, Ms Sello?

10 **ADV SELLO SC**: Thank you, Chair. Colonel Padayachee, we have completed the first part of your testimony, which is where you had the opportunity to speak to the statements that you have provided to the Commission and to answer questions for clarification. We now turn to the second part, as is practice of the Commission, process of the Commission, which is to engage you on both statements. Just to perhaps give you the heads up, please appreciate that we may not do so exactly in the order that you have addressed the issues in your statements. We take the
20 contents of your statements in their totality and then we decide how to have an engagement with you. Would that be acceptable to you?

COLONEL PADAYACHEE: Understood.

ADV SELLO SC: Thank you. Before we do so, and is it part informed by the engagement you had with the

Commissioners just before tea, and in response to a question, in response to an issue you had raised about referrals to IDAC, may I perhaps invite you to explain in general terms how the system works so you give us a framework and I suggest we do so with reference to the NPA Act, Act 32 of 1998. I trust you have it before you. You read from it, in particular section 7, sub 1 capital A.

And in that regard, it would help if you took us through section 7, section 27, section 28 and you had
10 reference investigations in terms of section 28, sub 13 and then we get to the Intake Committee, the processes followed until it culminates in a criminal case and eventually into prosecution. Do you understand what I am saying?

COLONEL PADAYACHEE: [No answer]

ADV SELLO SC: So you do not have to give that general understanding with particular reference to any docket. I just want us to get at least a common understanding of how the system works and then we will turn back, we will get back to deal with specific dockets if we must. So that is the
20 request to you and you may start where you think is the logical starting point about how IDAC gets involved in investigations, the process it follows, the process of decision making to culminate in criminal charges being preferred against individuals and eventually the actual prosecution. I will leave it to you. Thank you.

COLONEL PADAYACHEE: Thank you, Counsel, Chair, Commissioners. I think what I will start with is the Act that is relevant to the Investigator Directorate Against Corruption, the mandates and the other flow processes and whatever there. So section 1(A) of the NPA Act sets out the mandate or it is where the Investigating Directorate obtains its mandate from and I want to read it into the recorded, if that is fine.

ADV SELLO SC: Before you do so, may I correct you, you
10 said 1A, 7 sub 1A, section 7 sub 1A, not section 1A.

COLONEL PADAYACHEE: It is section 7(1)(i)(A).

ADV SELLO SC: Yes, you had omitted to mention 7, section 7. Thank you.

COLONEL PADAYACHEE: Apologies. Section 7(1)(i)(A).

“There is hereby established in the office
of the National ...[intervenes]”

CHAIRPERSON: Sorry, there is one 1. You say 7, 1, 1.

COLONEL PADAYACHEE: 7...

CHAIRPERSON: There is only one 1.

20 **COLONEL PADAYACHEE:** Thank you, Chair. We will get it right. Section 7(1A).

“7. Investigating Directorates

(1A) There is hereby established, in the
Office of the National Director, an
Investigating Directorate to be known

as the Investigating Directorate
against Corruption to investigate,
and carry out, any functions
incidental to investigations-

(A) relating to serious, high-profile or
complex corruption, commercial or
financial crime cases-

(i) arising from the recommendations of
commissions of inquiry;

10 (ii) referred to the Investigating Director
by the National Director in terms of
section 28 (1) (b); or

(iii) referred to the Investigating Director
in terms of section 27, subject to
section 26 (2);

(b) relating to additional related
offences or categories of offences,
including common law offences of-

(i) fraud;

20 (ii) forgery;

(iii) uttering;

(iv) theft; and

(v) any offence involving
dishonesty;

(c) relating to additional related

statutory offences or categories of
statutory offences, including
contraventions of-

- (i) the Prevention and Combating
of Corrupt Activities Act, 2004
(Act 12 of 2004);
- (ii) the Prevention of Organised
Crime Act, 1998 (Act 121 of
1998);
- 10 (iii) the Protection of
Constitutional Democracy
against Terrorist and Related
Activities, 2004 (Act 33 of
2004);
- (iv) the Public Finance
Management Act, 1999 (Act 1
of 1999);
- (v) the Local Government:
Municipal Finance
20 Management Act, 2003 (Act 56
of 2003);
- (vi) the Financial Intelligence
Centre Act 2001 (Act 38 of
2001); and
- (vii) any other statutory offence

involving dishonesty...”

So, this particular section of the NPA Act is where the Investigative Director takes its mandate and direction from. So, I will start with a flow process of how complaints come to the Investigative Director in terms of section 27, we call it a section 27 referral, section 27 of the NPA Act.

10 “Section 27 deals with the reporting of matters to the Investigating Director. If any person has reasonable grounds to suspect that a specific offence has been or is being committed or that an attempt has been made or is being made to commit such offence, he or she may report the matter in question to the head of an Investigative Directorate by means of an affidavit or a firm declaration specifying the nature of suspicion, the grounds on which suspicion is based and all other relevant information known to the declarant.”

20 So, that refers to a complaint that is referred in terms of section 27. That is the starting point.

 “Section 28- Inquiries by the Investigating Director. In terms of section 28(1A), if the Investigating Director has reason to believe to suspect that a specific offence has been

or is being committed or that an attempt has been made or is being made to commit such offence he or she may conduct an investigation on the matter in question whether or not it has been reported to him or her in terms of section 27.”

So, when a complaint comes in, it comes in under an affidavit in terms of section 27 from a complainant. The 27 comes to the Head of Office. The Head of Office is the
 10 Investigating Director. It goes to the Case Intake Committee. They will look at this referral and will decide whether it falls within the mandate of IDAC. It is tested within the IDAC criteria. From there, looking at it, there will be two things that will take place.

If there is sufficient information on that referral, a full-blown investigation can be conducted in terms of section 28(1). If there is still further investigation to be done, then a section 28(13) is approved for a preliminary investigation. So, we start with the 27 coming in with a
 20 preliminary investigation on section 28(13). A section 28(13) is approved for a preliminary investigation by the Investigating Director, the Head of Office.

During that authorisation, the preliminary investigation is authorised. It lists out the offences that are going to be investigated. It lists out a designated team of

prosecutors and investigators. There is a list of all these people that are put in there. That is their, that designation is their authority to proceed and conduct the preliminary investigation. So once that preliminary investigation is authorised, the preliminary investigation starts.

So after a period of time, investigation, interviews, subpoenas or whatever is done to confirm that there is a preliminary case here. It is taken back to the Investigating Director. The matter is considered by management and
10 then a full-blown investigation, section 28(1) is approved. So within the section 28(1) investigation, if there is additional expertise, additional investigators or other role players that need to form part of this investigation that has come up now from the preliminary investigation, these additional people are added on to the designation and authorisation of this full-blown investigation.

Thereafter, the team is assembled, the prosecutors, the investigators, and the investigation commences, directed and led by the prosecutors. The investigators in
20 that team, or I should say to list that team, is a Deputy Director of Public Prosecutions. They are senior advocates, junior advocates, depending on availability, one or more, and then there is a chief criminal investigator who is responsible for the senior criminal investigators and the criminal investigators.

They report directly to the chief criminal investigator in that structure. So once that is put together, the chief criminal investigator assembles his investigators, he has got more or less the puzzle on hand of the investigation, and then he tasks the investigators accordingly. So in that specific task, it will be like, for example, myself that is appointed now to conduct this investigation with the assistance of the other investigators.

So you go out, you interview, obtain witness
10 statements, other related evidence, and that is brought back. The team, put together with the prosecutors, look at this evidence, they analyse this evidence, the prosecutors look at it, and if they see that there is sufficient evidence based on facts, then they will start with a charge sheet on who they are going to charge and what charges they are going to put. So a memo is put together, together with a charge sheet.

That charge sheet and the memo is presented to the Deputy Director of that team. He looks at it to see that,
20 okay, the facts, the evidence is supported by facts, that there is evidence and the docket is now ready. That is then now taken to management, is presented before management, management will decide, yes, they agree that it should go on, and then the next step is the matter is ready to be enrolled.

So the enrolment procedure is thus, you look at, the prosecutors, look at the charge sheets, they get the charge sheets ready, they also do a consultation note, which is a note to the Director of Public Prosecutions in the region where the matter is going to be prosecuted. So that consultation note is sent to the Director of Public Prosecutions there, he or she agrees that yes, you can proceed to prosecute the matter in that particular region.

Once that is done, the charge sheet is prepared,
10 then the enrolment processes start where an application is made for J50s, that is your arrest warrants, or your J175s, that is necessary, depending on the circumstances. Then ...[intervenes]

ADV BALOYI SC: You said J175?

COLONEL PADAYACHEE: It is a summons, it is a summons to appear. So once that is done, your warrants are prepared, your affidavit is prepared, your warrants are prepared, and then you are ready for Court. So then you will plan your operation to execute your summons or your
20 J50s. You will also have, depending, during that time, you will pick up, but this is Schedule 5, Schedule 6, then you will start preparing bail affidavits, because with regard to Schedule 5, there are serious offences, and it will be on the accused, onus on the accused to, for him to be released on bail.

So then you make arrangements with the Court, you have the matter enrolled, and then the processes flow from there.

ADV SELLO SC: Thank you. Yes, Chair?

CHAIRPERSON: So are you at the level of process at this stage?

ADV SELLO SC: Yes, I got clarification questions from you.

CHAIRPERSON: All right, all right. But maybe let me, let
10 me ask this. What is your understanding of the, let me say, the triggers or the entry points in accordance with the paragraph A of the subsection, that is 7(1A), capital A, A, the smaller A being paragraph A of the section. What is your understanding of the triggers or the entry points? I know this is a legal question, and we as Commissioners must engage in an interpretative exercise.

But what I want to get an idea of from you, because you apply the section in your daily activities. But as I say, we will have to interpret it for ourselves. It refers to
20 investigations relating to, I would say, three triggers, serious, high profile, or complex. And then the complex corruption, and that seems to relate, the third relates to commercial or financial crimes. But the question I want to raise is, must this be read conjunctively, in the sense that all three triggers must be present?

Or must it be read disjunctively, in the sense that one trigger may be sufficient? You do not have to have a serious, high profile or complex corruption case. If it is serious, that may be sufficient. But it is doubtful that high profile all on its own would be enough, because there is something that is not serious at all, may be high profile in the sense that it is out there in the public domain and the public in general is interested in it, and it is high profile in that sense.

10 So high profile may be doubtful, standing all on its own. But I just want to get an idea of how you apply this in practice. Is it disjunctive? Is it conjunctive?

COLONEL PADAYACHEE: So my understanding of it is that it is just serious and complex corruption. That is how I look at it and how I read it from my perspective.

CHAIRPERSON: So all three triggers, as I call them, must be present. Is that what you mean?

COLONEL PADAYACHEE: When you look at the serious, high profile or complex corruption, any one of the three.

20 Any one.

CHAIRPERSON: So it is disjunctive?

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Thank you.

ADV SELLO SC: If I may follow up...

CHAIRPERSON: But as I said, it is our function to

interpret it.

ADV SELLO SC: Thank you, Chair. If I may follow up on that, and I do appreciate that interpretation is a function for the Commissioners. Perhaps how do you treat section 7(1A) within IDAC? If you are confronted with a section 27 referral dealing with a high profile or complex corruption case, do you require it to be serious or it does not have to be serious? As long as it is a high profile or a complex corruption case, you handle it. What has been the practice
10 thus far at least? Thank you.

COLONEL PADAYACHEE: Well, in terms of the practice that I am used to, it will be serious corruption. I mean, high profile, you know, corruption is corruption. So we look at the serious corruption. You know, I would not balance myself on high profile. I would go more on the corruption and emphasise on the serious corruption and not bother about whether it is high profile.

ADV SELLO SC: Okay. And then how ...[intervenes]

CHAIRPERSON: But it is there. How can you not bother
20 about it because it is there? It is specifically provided for in the section. Sorry, sorry, Ms Sello.

COLONEL PADAYACHEE: I do not want to go into that, Chair, because if I have to just say that maybe because there is too many high profiles involved in corruption. That is why we are bringing it. But no, Commissioner, I go on

serious corruption.

CHAIRPERSON: Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. My question is then, what is the threshold for determining whether the corruption you are confronted with is serious or not? Do you have a particular threshold? Is it monetary? Is it impact? How do you determine that the corruption case before you is serious or not serious?

COLONEL PADAYACHEE: I can only give my own
10 personal view on it, but the Case Evaluation Committee, they have their set criteria on what they will take and what falls in the mandate and what should be there on it. And I think maybe what they decide, we have to go with. But obviously, when I look at certain factors, it is public interest, it is out there, it is high-level government corruption, it is in a space there.

ADV SELLO SC: And perhaps, as the Chair correctly pointed out, you not being a lawyer, I should not get carried away, it might be unfair on you. But I think you gave a
20 good indication of where perhaps we may take this question for our own clarification. You said the Evaluation Committee determines what is serious based on a number of factors that you do not necessarily have to know about.

COLONEL PADAYACHEE: Exactly. And I do not have any authority on that matter.

ADV SELLO SC: No.

COLONEL PADAYACHEE: Because they will decide and it will come down to us.

ADV SELLO SC: I am happy with that. Who constitutes this Evaluation Committee, that is one? And is the Head of IDAC part of this committee or not?

COLONEL PADAYACHEE: Chair, Commissioners, I cannot comment on that because I do not have the in-knowledge of how they operate on management. I am still a couple of
10 tiers below that, so I do not have on that level.

ADV SELLO SC: No, I will insist on my question. If it is a permanent structure within IDAC, you would know about it. Does IDAC have an Evaluation Committee where all these questions go as a general rule, why are you suggesting that the committee gets constituted randomly from time to time? How does it work?

COLONEL PADAYACHEE: I would not say, from my observation, that is why I really cannot comment on it because I only get to know when it is received down to us
20 as investigators. So as far as a permanent structure that is on an organogram or somewhere, it is not there. From what I know is that a Case Intake Committee is put together. It consists of the ID, the Investigative Director herself and her management. So from herself and her management, she will put something like this. But I cannot say because I

have no knowledge on that part of it, of who constitutes that, which particular person or people are involved in. But I know it would be the Head of Office that would constitute such a committee because it stops with the Head of Office.

ADV SELLO SC: And by Head of Office, you mean the ID, and you mean the current ID being ...[intervenes]

COLONEL PADAYACHEE: Yes, the Investigative Director.

ADV SELLO SC: So you are suggesting that we perhaps take the issue up with her when she does come?

10 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: Okay, thank you.

CHAIRPERSON: But, Colonel, you know about the existence of this committee, because if you did not, you would not have mentioned it.

COLONEL PADAYACHEE: Yes, Chair.

CHAIRPERSON: Is this appointed on an ad hoc basis or is it a committee that exists on an ongoing basis? Because not to know about that would be a bit strange.

20 **COLONEL PADAYACHEE:** I speak in terms of a fixed. I do not know about fixed. I think it is something that is ongoing when the need arises or whatever matters come in.

CHAIRPERSON: Surely, surely you get cases all the time, do you not? New cases. You get new cases all the time, do you not?

COLONEL PADAYACHEE: Yes, sir. I know that there are

cases that do come in.

CHAIRPERSON: So seeing that you are mentioning the committee, you would know whether it exists on an ongoing basis or whether the committee gets appointed on an ad hoc basis. You should know that.

COLONEL PADAYACHEE: I can answer that in a sense, Commissioner, and forgive me for my lack on that, is that I would hear the committee. So I would hear. It is not there that I know, okay, this is the committee, this is where they
10 sit and whatever. I would hear it through the channels of how the processes flow when stuff comes in. So basically I am getting that information.

CHAIRPERSON: You said you are a couple of levels down. Can you just, in two sentences or so, give us that hierarchy? Explain you being two levels down. In response to Ms Sello, you said you do not have much detail or you do not know much about the committee because you are two levels down. I just want to understand the two levels down. It is you here and then what other levels are there?

20 **COLONEL PADAYACHEE:** Let me put it in perspective, Chair, Commissioner. You have the Head of Office. Then you have the Deputy Directors of Public Prosecutions. And then you have your chief criminal investigators, chief financial investigators, and your chiefs and the others. So that is the three levels of management. Below that you

have your senior state advocates. You have your senior criminal investigators, senior financial investigators, and below that you have your state advocates, criminal investigators, financial investigators. So that is where I fit in on that level.

CHAIRPERSON: That is what, about fourth or something, third?

COLONEL PADAYACHEE: Yes, third tier.

CHAIRPERSON: So you used couple loosely, not meaning
10 two.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. Thanks, I think, as you suggest, we will take it up with the ID when she might be able to cast light on this.

COLONEL PADAYACHEE: I think she will be better placed to explain it. Thank you, Chair.

ADV SELLO SC: Okay. In dealing with section 7 and section 27 and section 28, you drew a distinction between
20 preliminary investigations, and you then referenced the appointment of this team, including prosecutors, leading up to the drawing of the charge sheet, and then applying for the warrants of arrest, correct? You did that?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Now, I need to understand. The section

27 referral is received. It follows the process as you have outlined. It is considered by the Intake Committee, and they decide whether or not it falls within the mandate, and all those steps. At which point does it convert from being an internal investigation to a criminal case, and what is the trigger for that?

COLONEL PADAYACHEE: Once the, and from my understanding as I explained, once the Intake Committee decides whether or not this falls within the mandate of
 10 IDAC, the Investigating Director, the management and the Investigating Director, authorises a section 28(13) investigation, which is a preliminary investigation. She authorises it, appoints, authorises and appoints.

ADV SELLO SC: When she, section 28(13), that is a preliminary investigation. As I understand, perhaps if we look at 28(13), just so we do not talk at cross purposes, if you could turn to section 28 sub 13, do you have it?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay, it reads, and I quote:
 20 “If the Investigating Director considers it necessary to hear evidence in order to enable him to determine if there are reasonable grounds to conduct an investigation in terms of sub section 1A, the Investigating Director may hold a

preparatory investigation.”

So, at the point where the section 27 complaint goes to the Intake Committee, to get into section 28, what is the outcome of that process? Is there a decision to proceed with a section 28(13) investigation? Or does it then become an investigation, as you said, in terms of section 28(1)(a)? I am trying to...

COLONEL PADAYACHEE: If there is, in the referral there is sufficient evidence, information, everything, then there is
10 no need to go an inquiry, you can go into a full-blown investigation.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: Because the initial part of it, the preliminary, is to verify. Verify that information, do your necessary investigation, and then when you see that, no, there is substance, there is a *prima facie* here, then it goes into a full-blown investigation, which is in section 28(1). So the preliminary is just to confirm, identify this, this, et cetera.

20 **ADV SELLO SC:** I am clarified. Now that we are in an investigation, what is the trigger for it to become a registered criminal case? Or does it become a criminal registered case at that point, when it becomes an investigation, if you could just clarify for me?

COLONEL PADAYACHEE: A criminal case can be

registered during both phases.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: Because while you are busy with the preliminary investigation, you are going to find that there is *prima facie* evidence, et cetera. Then you will register a case.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: So moving into, if you register it in the preliminary investigation, that will be your
10 reference on the 28(1), when you are conducting your investigations. On the preliminary investigation, you will be busy with an inquiry, with an inquiry number.

ADV SELLO SC: Okay, I will catch up at some point. Now, no, thanks, that is quite helpful, because if there are no further generalities as regards the framework to provide to the Commissioners, then I would like to apply what I believe I have learned to specifically the Mokwele investigation, which is what General Khumalo specifically complained about, and on the basis of which you were issued with a
20 Rule 3 notice.

ADV KHUMALO SC: Advocate Sello, before you go there, can I just get clarity from the Colonel? Colonel, IDAC is part of the NPA, right?

COLONEL PADAYACHEE: Correct, sir.

ADV KHUMALO SC: Does it ever happen, and I am not

asking you to interpret legislation, just in practice, what you know. Does it ever happen that when a case is opened by the SAPS, it gets taken over by IDAC? How does it work? If on the same facts, the same issues, somebody went to a police station and opened a case, and a docket is opened, how does that, in practice, reach IDAC? And if there is already a case with SAPS, does it ever happen that IDAC takes over the investigation and runs with it?

COLONEL PADAYACHEE: So, Commissioner, Chair,

10 Commissioner, what I can say there is, we would normally get, if SAPS decides they have a case which they want to refer to the Investigative Director for some other reason, yes, but when you look at a complainant that has referred a matter to SAPS and is not satisfied because alleged corruption or something that he suspects with regards to his case not being investigated properly, so he sets out his facts in that 27 referral, why he did not go to SAPS, the reasons, whatever, and that is where the case Intake Committee, I think that they will look at those factors there.

20 I presume that that is what they do there to decide whether, look, it falls within our mandate, no, this should go to SAPS. So it is all what is there in that referral that is there.

ADV BALOYI SC: So, in the case where there has been a referral first to the SAPS, and then now there is a 27, section 27 referral, and your committee, your Intake

Committee, has decided that this falls within your mandate, the IDAC mandate, and IDAC takes that over, does that now not result in parallel cases? If there is no formal takeover from the SAPS, do you not end up with a case within the SAPS because it has been reported in the SAPS system and it is not been withdrawn, but the same case has now been referred to you by the complainant in terms of section 27. How does IDAC deal with that?

COLONEL PADAYACHEE: Commissioner, the only matter
10 that I can relate to that, with something like that, because I have not had the experience of yet where there is a docket at SAPS and then IDAC takes it over, that particular situation that where I can personally say, okay, because I know of it, is where dockets was opened by a complainant at various police stations and then he was not happy and these dockets, he did not hear about them and these dockets were closed.

So, when that section 27 referral came, we looked at these cases, we requested the case dockets from the
20 SAPS and I think it was the inspector that had the dockets, but the dockets were closed. And then we took those dockets, we requested them and we took those dockets to assist us in our investigations. But in other examples where something is, that SAPS is already investigating, they are running with that investigation.

Like in this particular matter, on one of the legs of the matters that we are busy with, DPCI is already engaged with that, so we are not involved with it because it is also reported that this particular thing took place and when we looked at it, it is in DPCI space, we liaise with them, they are busy with the investigations, so that does not form part of our leg. We stopped there and we said, no, they are busy with it.

ADV BALOYI SC: Still at a general level, but using the
 10 facts, the present facts of the Mokwele matter, but I am still having a general discussion with you. We know the complainant from other evidence, we know that Member of Parliament Adams, he went to police stations to report before this matter of Mokwele gets escalated through, you say, section 27 to the IDAC, but we know that he started at police stations. I am trying to understand that. How do you deal with that kind of situation, which we know is the facts in this case?

COLONEL PADAYACHEE: Am I getting you clear on that,
 20 Commissioner?

ADV BALOYI SC: Let me try again. Member of Parliament Adams goes to a police station to lay a complaint against General Khumalo and others relating to the Mokwele appointment. He does that. And then he decides to refer to IDAC in terms of section 27, the same complaint. He

completes an affidavit and he submits it to IDAC in terms of section 27. My question is, how does IDAC deal with that? Because on the face of it, it looks like you still have an active complaint under the SAPS system, because it has not been closed or withdrawn. But the same complaint is now with IDAC. How does IDAC manage that?

COLONEL PADAYACHEE: In the particular matter, Commissioners, a request is made for the dockets with SAPS. Like I said, the dockets were opened in Cape Town
10 and other police stations, which found its way to the inspectorate. And we requested those dockets. We said to SAPS, we received a complaint and we require those dockets. So the dockets were given over to us. In the dockets, there was hardly anything in those dockets. So what we did, because there is hardly anything in those dockets, we started to investigate further.

ADV BALOYI SC: So you took over the SAPS investigation.

COLONEL PADAYACHEE: Yes.

20 **ADV BALOYI SC:** Does it mean that investigation or that complaint, which was lodged at SAPS, is now closed? Is that how IDAC deals with it? It is now closed? We are now investigating it?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: All right. Thank you.

COLONEL PADAYACHEE: And to add more, Commissioner, on the system, on the SAPS system, it will show that the dockets are now in possession of IDAC. And IDAC is responsible for that docket. And all the processes that flow must be still reported to keep the CAS system or criminal system updated.

ADV BALOYI SC: I guess what I was trying to understand is the principal position of, you do not say, but the matter is already with SAPS. IDAC does not say that. IDAC takes it
10 over.

COLONEL PADAYACHEE: Takes it over.

ADV BALOYI SC: Okay. Thank you.

COLONEL PADAYACHEE: So you do not have like a duplication running on the same matter.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Commissioner. It is a matter I was going to seek your explanation on. But now that Commissioner Baloyi has started, I might as well pose my questions. You say that the dockets, and in this specific
20 case, I would say let us turn to the, I will call it for the Mokwele matter and I mean no disrespect in so terming it, but just for ease of reference.

You say you requested the dockets that Mr Adams had opened in Cape Town and in Gauteng from SAPS and then you assumed responsibility for the investigation. My

question is, in so doing, is it a negotiated settlement between IDAC and SAPS? Or is IDAC asserting its authority that as soon as it receives section 27, the law empowers it to collect the dockets and take charge of the investigation? Can you explain how that happens?

And if you are asserting your authority, it might help if you refer me to a specific section within the NPA Act or any other prescript you can think of. Thank you.

COLONEL PADAYACHEE: Chair, Commissioner

10 ...[intervenes]

ADV SELLO SC: Apologies, let us just give the Commissioners a moment, thanks. Thank you, Chair. Yes, you may continue. Thanks, Colonel.

COLONEL PADAYACHEE: Thank you, Counsel. Chair, Commissioners, when we look at it, IDAC does not just go and take dockets. IDAC is tasked with an investigation into which there are allegations made. And in these allegations, the complainant has said that he is opened dockets, he has not, he believed that his dockets or his cases have been
20 interfered with or whatever from what is there.

We requested those dockets, officially requested those dockets to see and verify what the section 27 or the complainant is saying. So we requested those dockets. When we looked at those dockets and with the referral, we confirmed those dockets do exist. And that those dockets

were not really investigated. It was just that there was insufficient evidence or whatever in those dockets. Was it like six or seven of them?

So from the ...[intervenes]

ADV BALOYI SC: When you say six or seven of them, are you saying there were six or seven different complaints?

COLONEL PADAYACHEE: When I look at it, you know, the Cape Town dockets and the dockets that were opened here in Gauteng, it is about basically one and the same thing.
10 You know, it is like duplicated. When you pull the dockets together, the affidavit in it, you know, it mixed everything up. Like in one affidavit, it is talking about the other docket or the complaint in the other docket. It was like mixed up. But basically, when I narrowed it down, I narrowed it down to four different complaints.

One of those dockets, as I indicated, was already being investigated by, I think it is DPCI. It had to do with something that was purchased. They were busy with that. So that docket there, the actual docket that was opened, we
20 did not interfere with that docket. We took the remaining dockets and, ja, we conducted investigations from there.

ADV BALOYI SC: When you say the actual docket that was opened, we did not interfere with it, you seem to distinguish other dockets that were open or not open. Just explain why the one you speak of it as the actual docket

that was opened, we did not interfere with it. And then the others, we interfered with them or we dealt with them. Just explain that.

COLONEL PADAYACHEE: Let me get clarity, Commissioner, let me give you clarity there. There were three dockets opened in Cape Town and they were ...[intervenes]

ADV BALOYI SC: All of them relating...

CHAIRPERSON: Oh, just a minute. Your mics have gone
10 off. And before that, I thought your voice was also fading.

COLONEL PADAYACHEE: Thank you. Thank you, Chair. The Cape Town dockets was like 1651, 1652, whatever. Then Gauteng, I am going to say Gauteng because it is Orlando station and Villeria.

CHAIRPERSON: I think they are Protea. Protea.

COLONEL PADAYACHEE: Sorry, sir?

CHAIRPERSON: Protea as well.

COLONEL PADAYACHEE: I picked up Orlando and Villeria.

20 **CHAIRPERSON**: Yes?

COLONEL PADAYACHEE: Those were the CAS numbers.

CHAIRPERSON: Maybe I am mixing up different cases. All right.

COLONEL PADAYACHEE: So amongst the dockets that were here, one was already being investigated by DPCI and

they had already commenced with that investigation. But the other dockets were, nothing was being done in it. It was just, I would say no investigation was done in it. So we signed for the dockets. We took over those dockets. We had a look at the dockets, and we put them together, but this docket and this docket is one, it is the same. And that is how we came up with the different CAS numbers.

But what has happened with those dockets, when it was taken either to, the case numbers, there was problems
10 with the case numbers, it means that the complainant went to a police station and registered a complaint there that did not belong to that police station, it belonged to another police precinct. So what happened, that case number was put in that docket and went to the new station, but they did not change the name of the station on that docket. We pick up a particular one, what we will say in, I am going to call it the Lushaba matter. We had an original CAS-404, Villeria CAS-404.

So we conducted our investigation under this CAS-
20 404, and we went through all the processes of it until it came to the part where we now had to start with the enrolment processes, and we checked on the CAS system of the station that this CAS does not exist. So we had to do a search. The investigating officers had to do a search, and then we established that the correct CAS number was 278

for that docket.

So that 404 should have been scratched out and 278 should have been written on the docket. And then the other cases, two as well, 403, 405, they all had Villeria proper CAS numbers. Just the face of the docket was something else.

CHAIRPERSON: Colonel, you say that the complainant, Mr Adams, came to IDAC and complained about the progress or lack of it on the dockets. Did I understand you correctly?

10 **COLONEL PADAYACHEE**: Commissioner, I just want to correct there. I do not know whether he came to IDAC or where.

CHAIRPERSON: Oh, but you did talk about him complaining ...[intervenes]

COLONEL PADAYACHEE: Ja, the complaint.

CHAIRPERSON: ...about the lack of progress.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: And if he did not come to IDAC, how did his unhappiness about the lack of progress come to IDAC?

20 I am sure you have explained this, but I just want to understand because I sort of assumed that the complaint was made to IDAC, which is what brought IDAC into the picture. So if he did not complain, or rather make his complaint at IDAC, did he make it where? At SAPS? And if at SAPS, where within SAPS? I am sorry if you have

touched on this. My question stems from my misunderstanding because, as I say, I thought the complaint was made at IDAC.

COLONEL PADAYACHEE: Commissioner, the complaint, everything is in the referral. So he made his complaint in the referral. So he gave his allegations or whatever and complained, he opened dockets, so it is in the referral.

CHAIRPERSON: A section 27 referral to IDAC.

COLONEL PADAYACHEE: Yes.

10 **CHAIRPERSON**: To IDAC?

COLONEL PADAYACHEE: Yes, why he is bringing it to IDAC. I am bringing this complaint to IDAC because I opened the case, that it is in the section 28 referral.

CHAIRPERSON: So I am correct then when I say the complaint was made at IDAC.

COLONEL PADAYACHEE: Okay, sir. No, when I take it as at, I mean at the office of IDAC, or did IDAC go to him or he came to IDAC. It is just that I was trying to...

CHAIRPERSON: To? The complaint was made to IDAC.

20 **COLONEL PADAYACHEE**: To IDAC, yes, sir.

CHAIRPERSON: Oh, okay.

COLONEL PADAYACHEE: I think it is the 'at' and the 'to'. The complaint was made to IDAC.

CHAIRPERSON: You are confusing me because I thought you were saying no. That is why I wanted to know if not to

IDAC then, who was it made to? So complaint made to IDAC.

COLONEL PADAYACHEE: Complaint to IDAC, sir.

CHAIRPERSON: And as the complaint was being made, it was a section 27 referral.

COLONEL PADAYACHEE: Correct.

CHAIRPERSON: All right, thank you.

COLONEL PADAYACHEE: Correct, Chair.

10 **ADV SELLO SC**: Thank you, Chair. And the complaint to IDAC, was it a complaint about failure to investigate the dockets opened at the various police stations, or is it a different complaint that is now brought to IDAC about the issues actually raised in those dockets? What was the actual complaint?

COLONEL PADAYACHEE: I think the issue of the complaint is that he alleges that he opened cases but nothing, his dockets disappeared. I am just recalling from what was said. And then he alleged the corruption in that referral, which we took our lead from.

20 **ADV SELLO SC**: Okay. So the complaint was not requiring IDAC to investigate the conduct of SAPS by failing to investigate the cases he had opened. That was not the complaint.

COLONEL PADAYACHEE: The way I look at the 27 referral was to look at his complaint of corruption.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: The corruption, not the failure of SAPS to investigate.

ADV SELLO SC: To investigate.

COLONEL PADAYACHEE: He focused on the corruption.

ADV SELLO SC: But he does inform IDAC of the fact that he has opened these dockets at the various police stations.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Now I go back to the question I had
10 asked because I need that clarity. You then become aware
that he actually has opened actual cases with SAPS. So
SAPS is seized with that matter, with those matters.
Whether or not it investigates, we will get to that. At the
point you go to SAPS, as IDAC having received the section
27 referral, I asked, do you ask for the dockets? Is it a
request to SAPS? Or are you taking over those dockets and
asserting your authority over matters contained in those
dockets? What exactly is happening there? And I
desperately need that clarification. Thank you.

20 **COLONEL PADAYACHEE:** Thank you, Counsel,
Commissioner. What I would say from my interpretation is
the dockets were requested from SAPS. It was requested.

ADV SELLO SC: So if they are requested, then it is open
to SAPS to refuse the request. Is that ever an option for
SAPS?

COLONEL PADAYACHEE: Yes, there is a possibility of SAPS refusing.

ADV SELLO SC: Okay. And how is this request expressed to SAPS? Is it in writing maybe to National Commissioner, dear National Commissioner, right, from IDAC? Or is it verbal? Or is it by showing up at the respective police stations and demanding, and requesting the documents, my apologies? How exactly is the request made?

COLONEL PADAYACHEE: I believe that request was done
10 in writing.

ADV SELLO SC: It was done in writing.

COLONEL PADAYACHEE: It was done in writing.

ADV SELLO SC: And it would have been by and addressed to who?

COLONEL PADAYACHEE: It would have been addressed to, I think, during the initial part of this request, I was not on the investigation at that stage. So I am just recalling from what you said. I think it was to the Head of the Detectives, if I can recall, ja, the Head of the Detectives,
20 but I am not too sure. Subject correction, requesting those dockets.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: And those dockets, as far as I can recall, were lying at the inspectorate. And not at the detective or at the station. It was lying at the Police

Inspectorate.

ADV SELLO SC: Okay. So the request is made to Head of Detectives. Of course, you do say subject to correction.

COLONEL PADAYACHEE: Yes, yes.

ADV SELLO SC: But there would be a formal request that we can locate.

ADV SELLO SC: Yes.

ADV SELLO SC: By, would it be correct to assume at that stage, would it be by the ID? Or who within IDAC would
10 address such a request to the Head of Detectives?

COLONEL PADAYACHEE: The request would have come from the Head of Office.

ADV SELLO SC: Okay. That is what we call the ID?

COLONEL PADAYACHEE: Ja. Anything would have to go through the Head of Office before it goes out.

ADV SELLO SC: Okay. We will try and track that down. Thank you so much. That helps.

CHAIRPERSON: IDAC, sorry, Ms Sello, IDAC would not have been entitled to simply go ahead with their
20 investigations. In terms of section 27, it would have had to be satisfied that there were reasonable grounds to suspect that a specified offence has been committed. That is what section 27 says in so many words. So you do not just get into a matter and as you go along, you end up finding that there is indeed something here and you end up formulating

charges and you commence a prosecution. That is not how you do it.

You must be satisfied at the point of entry when the person comes to make a section 27 referral. You must be satisfied that there are reasonable grounds for the person's suspicion.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Is that what happened here? Or did IDAC just take on the matter once Mr Adams came to you to
10 complain about the lack of progress?

COLONEL PADAYACHEE: The allegations made by Mr Adams were serious.

CHAIRPERSON: No, no, no, no, no. This is not about the seriousness of the offences. The antecedent question is, is there in existence or are there in existence reasonable grounds for the suspicion that a specified offence has been committed? You do not start at the tail end, which is, but are these serious allegations? The entry point is, this person coming to make a section 27 referral, does this
20 person have reasonable grounds?

And testing reasonable grounds is objective. So you do not rely on what the person says. The question is, objectively when I look at this, are there indeed reasonable grounds for the suspicion? So that is where my question is, you do not, as you seem to suggest, look at the tail end.

Are these serious allegations? And if they are, we go ahead. There may be serious allegations, but serious allegations may be unfounded. Do you get what I mean?

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: So there must be reasonable grounds for suspecting that a specified offence has been committed and obviously, or implicit in that, is that the offence has been committed by the person complained against.

COLONEL PADAYACHEE: Yes, sir.

10 **CHAIRPERSON**: Do you follow me?

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: Can you now respond?

COLONEL PADAYACHEE: Yes, sir. That referral was sent to the Case Committee. They looked at that referral. They made a decision that it falls within the IDAC space. The decision on accepting it, and that it has grounds, reasonable grounds, or whatever, that reasonableness, the grounds, is determined by that committee that sat there and made that decision, sir. That is the most that I can say on
20 that.

CHAIRPERSON: Thank you. Yes, Ms Sello?

ADV SELLO SC: Thank you, Chair.

ADV BALOYI SC: Before you...

ADV SELLO SC: Yes, Commissioner.

ADV BALOYI SC: Colonel, section 27 says a specified

offence. So it is a specified offence that gets referred in section 27, in terms of section 27, right? Now, you have to look at what is a specified offence, right? It refers to a specified offence, and here, specified offence is a defined term. If you go to section 1, right at the end of that section, just before section 2, it tells you what is a specified offence, and it says:

10 “It means a matter which, in the opinion of
the head of Investigating Directorate, falls
within the range of matters contemplated in
section 7(1), and any reference to the
commission of a specified offence has a
corresponding meaning.”

Now, as Chair pointed out to you, section 7(1) has been deleted. It used to contain what is a specified offence. Now it has been deleted. So when IDAC receives this referral, in terms of section 27 from Member of Parliament Adams, what does it determine to be a specified offence?

20 **ADV SELLO SC:** Commissioner Baloyi, before the colonel
responds, it was brought to my attention, and I forgot in that
short space of time. I think Colonel Padayachee spilled
water on his table, as I understand, and it is suspected that
is what had affected his mics. So the request had been,
can we have a two-minute stand-down to deal with that?

CHAIRPERSON: We will come back in when we are told

to.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV BALOYI SC: ...of IDAC because she is the one that comprises committees, she knows the protocols, she knows what is applicable. So I will not pursue that question with this witness.

10 **COLONEL PADAYACHEE:** Thank you, Commissioner.

ADV BALOYI SC: You heard, Colonel?

COLONEL PADAYACHEE: Thank you, Commissioner.

ADV BALOYI SC: Okay.

ADV SELLO SC: Thank you, Commissioner Baloyi. That was the comment I was going to make, that the ground we are covering now is ground that we had hoped to have covered by yesterday, because that would speak to the mandate, the power, authority of IDAC in general, and that this current witness would then plug in and be specific in
20 the context of the framework already laid out on the documents that have been tendered to the Commission.

So because we did not have the benefit of that evidence yesterday, there was an attempt to at least contextualise what his real evidence and testimony to the Commission is by referring to the Act and its provisions, but

it was never intended to have a legal engagement with him on the Act. Thank you, Commissioner. So the Commissioner is not insisting on an answer to her question. We may park that for Advocate Johnson when she returns. Commissioner Baloyi confirms.

ADV BALOYI SC: I am not a witness. [Laughter]

ADV SELLO SC: If then you do not have to answer that question, I then would like to move on to the actual docket, having understood, as I think I have, or I hope I have, how
10 the system works within IDAC, I would like us to refer to what I call the Mokwele docket that IDAC disclosed to the Commission, and for that purpose, I would like to refer us to, Commissioner CJC377, and that will be in file 3, starting at page 681. The help is coming to locate the correct file, Colonel. That would be CJC377, and it should start at page 681. While we are locating that, may I just, I am looking at IDAC's representatives, and I just want to check something and confirm with Mr Bodlani, do you have the exhibits?

ADV BODLANI SC: I do not. But I was actually trying to
20 find out from my colleague whether he has got the benefit of them, because we have got to follow the evidence as well.

ADV SELLO SC: I think there ought to have been a bundle for you, and a bundle was prepared. It probably is somewhere here in the building, but for the moment, may we loan you Advocate Motlhasedi's bundles until lunchtime,

we will address that. Because an electronic link was, you confirm you were served with an electronic link?

MR BODLANI SC: No. I do not know if there was service, there may have been, but it definitely did not come to our attention.

ADV SELLO SC: I think your junior can confirm that there was service of the exhibit, of the exhibit files. And as it has been growing over the days.

MR BODLANI SC: I am not a witness. [Laughter]

10 **ADV SELLO SC:** Commissioner Baloyi now has given everyone... No, there was an electronic version, these went to print on Monday, when the last docket was provided. No, these went to print from last week, because it is a combined exhibit file, including the witnesses from Friday. So the exhibit file has been growing over time, and as it was growing, it was shared with IDAC's attendees. But we had undertaken to provide them a hard copy version of everything that has been filed in the exhibit. That is why I say, your box must be somewhere in the building, but for
20 the moment, if you could use Advocate Motlhasedi's, I would be thankful. Thank you.

MR BODLANI SC: Thank you.

CHAIRPERSON: So what do you have now is file 3, CJC377.

MR BODLANI SC: We have it, Chair, thank you.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you. Now that I think we are all on the same page. Colonel Padayachee, this docket was received by the Commission from IDAC, and it had been requested specifically. Now, the docket as we currently have it and as appears in the exhibit file is as was received. So it is not a docket that we tendered or we provided. It comes directly from yourselves. You confirm that?

COLONEL PADAYACHEE: I am not sure I get you there,
10 Counsel. Can you?

ADV SELLO SC: Okay, I will try again. The Commission, the evidence leaders requested certain documents from IDAC, and included in that list of requests were certain dockets. The docket appearing as at page 681, bearing CAS number 452/06/2025, and we have marked it CJC377, is a docket received from IDAC. Do you confirm that?

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: Thank you.

CHAIRPERSON: Oh, you confirm that that is the IDAC
20 docket?

COLONEL PADAYACHEE: Yes. I confirm it on here. Brooklyn CAS 542.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Under index 37.

ADV SELLO SC: Absolutely.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: Now, not index 37. Index?

COLONEL PADAYACHEE: No, I am talking about the number of the annexure number.

ADV SELLO SC: 377.

COLONEL PADAYACHEE: 37.

ADV SELLO SC: For the record, you know, just to be clear, please answer, thanks. Now, before we deal with the contents of that docket, how does it work in IDAC? I have
10 come to understand that with any docket opened, the first document is an A1 statement. Now, in this case, it is opened on the strength of a section 27 referral. Correct?

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: So, who opens the docket? Is it IDAC, or who opens that docket? Because now you are seized with the investigation.

COLONEL PADAYACHEE: The docket is opened by IDAC.

ADV SELLO SC: The docket is opened by IDAC?

COLONEL PADAYACHEE: Yes.

20 **ADV SELLO SC:** So, what would be the first document that goes into that docket the moment it is opened?

COLONEL PADAYACHEE: It will be an A1.

ADV SELLO SC: The A1?

COLONEL PADAYACHEE: A1 statement.

ADV SELLO SC: Okay. Where does the section 27

referral go?

COLONEL PADAYACHEE: The section 27, because it covers, you know, not just one investigation, it has different legs to whatever it is there. That section 27 does not go in the docket.

ADV SELLO SC: And if it did, oh, sorry.

COLONEL PADAYACHEE: That section 27 is the complaint. It is there with the Head of Office. We go and physically interview. He has made, referred this complaint.
10 We go to him, we interview him, and we take a statement from him.

ADV SELLO SC: Okay. So, would I be correct then, based on how you had described the process, that somewhere, not in a docket, but somewhere within IDAC, is an investigation file that contains the section 27 referral, the committee decision, and I think the authorisation to investigate and subsequently prosecute. All those documents will not be in the docket, but will be in some other file within IDAC. Would that be a correct understanding on my part?

20 **COLONEL PADAYACHEE:** I only work with the docket, Counsel. So, that referral and correspondence is there on management level, which I believe that the Head of Office will be able to explain more on there.

ADV SELLO SC: You are being unfair on yourself, Colonel. You are a senior police officer. You have spent

enough time in IDAC to know a bit about processes. You get a section 27. You told us that the Intake Committee decides whether it falls within its mandate, the complaint. That must be recorded somewhere. You told us then the investigators and chief investigators are appointed. Then, a decision is made whether or not to proceed to a section 28(13) investigation, or to run a full-blown investigation in terms of section 81. Then, you referenced the authority to proceed. I assume all of these are in written form. My
 10 question is simply, where does one find that whole pack of papers? Surely, you should know that.

COLONEL PADAYACHEE: No, I do not want to appear that I am holding back or anything on that, Counsel. Please understand me.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: Right? I am the investigator in the level that I prescribed. The referral comes in and it comes in to management. It is done. I get a copy of the designation where we designate it on to investigate. So, on
 20 the basis of that, I start the inquiry.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Obtaining statements.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: Then, I compile my docket from there. I do not take the 27 and put it in a docket and start

from there. I start from interviewing people to gather evidence for the criminal docket.

ADV SELLO SC: Okay. No, I understand.

ADV BALOYI SC: Can I just, Ms Sello?

ADV SELLO SC: Yes, ma'am.

ADV BALOYI SC: It is related to this topic. This docket here, it says police station is Brooklyn. Can you just explain? Is that how all your IDAC dockets look like? They record a station as Brooklyn?

10 **COLONEL PADAYACHEE:** It is a normal police docket, Commissioners.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: It is a normal police docket which we get from the station and we write on it.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: And we register it. But it is a police docket.

ADV BALOYI SC: So, it is registered at Brooklyn police station?

20 **COLONEL PADAYACHEE:** It is registered at Brooklyn police station. IDAC does not have access to their own systems of registering dockets. So, it is registered at the police station [indistinct – 0:11:20]...

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Commissioner. So, what we

have at page 681 is the preamble to a statement as Commissioner Baloyi points out. It reflects Brooklyn as a station and then it provides a CAS number 542/06/2025. Can I just share with you what I have come to understand about CAS numbers? Do not always trust my understanding, though. I understand that the last figures, 2025, denote the year in which that case was opened.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: The numbers before the year, 06, denote
10 the month in which it was opened.

COLONEL PADAYACHEE: So, it is the month. It is the register serial number according to the system.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: The month.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: And then the year.

ADV SELLO SC: Correct. And that is how I understood it.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: So, then, based on that understanding, I
20 too had is when I see 542/06/2025, I take it, it is case number 542, opened on June 2025 at Brooklyn police station. Is that fair?

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: And this is then, that then becomes your CAS number going forward.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And that will attach right through to prosecution.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And based on that understanding, I tried to understand, if I scroll down, if you go to the bottom of that document, that tells me this was opened in June 2025. It has got a signature and a date. And the date reflected there is the 6th of January 2025. So, if it bears the date of
10 January 2025, how does it bear a CAS number of June yet to come? You might, I might be confusing myself over nothing, but I was hoping you would be able to clarify this. Taking, and I ask simply because you are the lead investigator in the matter, so there might be a very valid explanation to this.

COLONEL PADAYACHEE: I can give you clarity on that.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: During the preliminary investigation, a number of affidavits are taken in the early
20 stages of the investigation, which is the preliminary investigation, where you are searching for your evidence. So, once you have put together all your evidence, that stage, your witness statement does not have a CAS number.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Right? Nothing is CAS'd. So,

therefore, once you have got all your affidavits and all your evidence, and then you register a case docket, which could be months later, right, then that statement, the CAS number over here, it is on the top. So, it is obvious the CAS number now is on the date when the docket was registered, but the affidavit was taken in January. That affidavit was taken during the preliminary investigations, so that is why the date is January.

ADV SELLO SC: I understood you earlier to say the first
10 document in a docket is the A1. If the A1, that statement of the complainant is taken in January, then the docket is opened with that A1. Is my understanding wrong?

COLONEL PADAYACHEE: No, Commissioner. We are busy with the preliminary investigation. During the preliminary investigation, you will obtain statements, various statements, requests for certain documents, this and this, so you are busy compiling. When you are ready with your docket to have it registered, because it is still an inquiry at that stage, then you would register your docket.

20 **ADV SELLO SC:** You do recall that at some point I wanted an understanding as to when we move from investigation to a criminal case, have a CAS number, and you gave an example, particularly with this one, that you went immediately into a CAS number. So that would have been shortly after you received your section 27. So, or maybe I

have things upside down, topsy-turvy. Please try again.

COLONEL PADAYACHEE: Maybe I can guide you, Counsel, and explain.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: You have a section 27 referral that is sent in, and then your section 28(13) preliminary investigation commences. So it is an inquiry, it is an inquiry stage. So you will go out and interview the complainant, and you obtain his affidavit.

10 **ADV SELLO SC:** Yes.

COLONEL PADAYACHEE: And then you will continue with your investigation to get other supporting evidence or whatever in your preliminary. Your docket is not registered at that stage. So you have that complaint, but now you want to get more on it. So once you have done all of that, and then you are now going into your full-blown investigation, it is now ready, you will register your case docket. That is why when you move further on, you will see that some of the other statements are also taken to a build-
20 up to a case docket.

ADV SELLO SC: Yes, yes, okay. So ...[intervenes]

ADV BALOYI SC: Can I just...

ADV SELLO SC: Yes, ma'am.

ADV BALOYI SC: I am sorry if I interrupt your thought process.

ADV SELLO SC: Not at all, not at all.

CHAIRPERSON: I just want to make sure I understand. Does then it mean that if your investigation – you do not have a case docket yet. You have not opened a CAS on the system.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Does it mean that if your investigation results in you not finding useful information, if you like, are you saying there will never be opened a CAS number?

10 Because my, and I ask from my own experience, which is you go to a police station, you say this has happened, and they give you a case number before they do any investigations, and I now have a case number that I can give to my insurer that I have reported to the police.

You seem to be describing a situation where you conduct an investigation, there is no record of it on the system, on the CAS system, and then you make a determination that there is nothing to see here, and the system is none the wiser about it. That becomes the end of
20 that complaint. Can you just explain that?

COLONEL PADAYACHEE: Okay. With the police and the SAPS, a person goes to the police station, to the Community Service Centre, and they report a complaint, and he registers, and they register his case. With IDAC, with IDAC, we get a complaint, a referral complaint. So, we

first start with an inquiry to verify this complaint, and that starts with a preliminary investigation.

In order to verify, we take statements or whatever, and if there is a *prima facie* case or what the complainant said in the complaint that it is there, and we have conducted this investigation, we conduct it under an inquiry number, right? It would be an inquiry number, and we find during the preliminary investigation, no, we have a *prima facie* case, it is supported by affidavits taken, then we
10 register a docket and go into a full-blown investigation.

Now, if we had to take a complainant, that section 27, and just go and open a case docket, just basically on that, and then at some stage or the other, it is found that no, but there is nothing here, then you have a case that is registered, which adds to the volume of cases in the area in terms of statistics.

ADV BALOYI SC: So, there is an inquiry number for this referral?

COLONEL PADAYACHEE: Yes, there is an inquiry
20 number.

ADV BALOYI SC: On your system?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Okay. Thank you.

ADV SELLO SC: Thank you. So, that inquiry number would suggest there is an inquiry file, and the first

document, I take it, would be the referral affidavit, and then the A1 statement and following.

COLONEL PADAYACHEE: My documents will be the designation.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: Right? And from the designation, I will go and take the affidavit. Everything that I do in that inquiry, because on the designation, it will have the inquiry number.

10 **ADV SELLO SC:** Yes.

COLONEL PADAYACHEE: It will refer to an inquiry, it will be that 28(13) is registered as inquiry, it will have an inquiry number. So, that is the inquiry number that I will use for my investigation, for summonses, to request documents, I will use that. So, once my case is registered, finally at the police station, that inquiry number will fall out, and I will be using a CAS number. That is why you will find in some cases on subpoenas, you will have an inquiry number, and at a later stage, a CAS number.

20 **ADV SELLO SC:** Oh, so that simply tells me that when you issued a summons during an inquiry, it will bear the inquiry number, and if you issued a section 28 summons, after you have opened the case, then it will bear the CAS number.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Thank you. Now, that helps. So, if I just

quickly go to just a small issue before, I am aware of the time, Chair, just to close on this topic. If you go to page 683, stay with the same file, 683.

COLONEL PADAYACHEE: 683.

ADV SELLO SC: At 683 is the statement of, the affidavit of Mr Fadiel Adams, and at page 684, at 684, I see it is commissioned. Do you see that?

COLONEL PADAYACHEE: [No answer]

ADV SELLO SC: Colonel?

10 **COLONEL PADAYACHEE:** I am going down to your document.

ADV SELLO SC: No, no, I thought it immediately follows. We are at 681, looking at the CAS number and them.

COLONEL PADAYACHEE: I am pulling it up on my electronic copy instead of the hard copy.

ADV SELLO SC: I prefer you work on the files before you, then we do not lose each other.

COLONEL PADAYACHEE: Okay.

ADV SELLO SC: Okay. I will assure you, before the
20 Commissioners, that what is in the file is exactly as you gave to the Commission. Nothing has been added and nothing has been omitted. So, you can trust the file. I am at 683. That is the statement of Mr Fadiel Adams, and over leaf at page 684, I see it is commissioned. Correct?

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: I am interested, even before we look at the content, at 684, if we go to that part after Mr Adams' signature, it reads thus, and I hope you can help me.

Quote:

“Thus done and signed at...”

No, I will start again.

10 “Thus done and signed to, at Pretoria, on this, the 6th day of January 2025, by the deponent who acknowledged that she knows and understands the contents of this affidavit. This affidavit was sworn to before me and the deponent's signature was placed hereon in my presence at Cape Town.”

There is a Commissioner of Oaths and it is reflected as Dylan Perumal as the chief investigator. I take it that that is the Mr Perumal, you said, was the chief investigator in this matter.

COLONEL PADAYACHEE: That is correct.

20 **ADV SELLO SC:** My confusion, I guess, arises where it says it was signed at Pretoria and it says his signature was placed hereon in my presence at Cape Town. Reading that, where was this statement taken and commissioned? Pretoria or Cape Town? It cannot be both.

COLONEL PADAYACHEE: Commissioner, Chair,

Commissioners, Counsel, I believe this is probably an administrative thing, so it is not Pretoria. From what I heard, this is Cape Town.

ADV SELLO SC: So it is taken in Cape Town.

COLONEL PADAYACHEE: Cape Town.

ADV SELLO SC: So reference to Pretoria is incorrect.

COLONEL PADAYACHEE: We can rectify that to Cape Town.

ADV SELLO SC: Yes, it might be a function of using...

10 Yes, Commissioner Baloyi?

ADV BALOYI SC: Ja, I do not know that you can make that correction, unless you are telling us you were present ...[intervenes]

COLONEL PADAYACHEE: No.

ADV BALOYI SC: ...when this affidavit was deposed to.

COLONEL PADAYACHEE: Chair, Commissioner, I am just making the inference. So it is just an inference I am making and from what I know, this was not Pretoria.

ADV BALOYI SC: Well, you can only ...[intervenes]

20 **COLONEL PADAYACHEE:** But Mr Chief Investigator Perumal will be able to...

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: Yes, he will be the one.

ADV BALOYI SC: He is the one that must explain what happened here.

COLONEL PADAYACHEE: Correct, Chair.

ADV BALOYI SC: So we are not making any corrections.

CHAIRPERSON: Are you suggesting that when he... So he was physically in Cape Town, that is Mr Perumal?

COLONEL PADAYACHEE: Yes, I believe Chief Investigator Perumal was physically in Cape Town.

CHAIRPERSON: But he is based where, in Pretoria?

COLONEL PADAYACHEE: In Pretoria, sir.

CHAIRPERSON: Does he carry around his Pretoria stamp
10 when he travels? Because look at the stamp there, it says Pretoria.

COLONEL PADAYACHEE: The investigating...

CHAIRPERSON: Pretoria appears twice there, on the date stamp.

COLONEL PADAYACHEE: That is our office stamp, sir.

CHAIRPERSON: I am saying, does he carry it around? Would he carry it to Cape Town?

COLONEL PADAYACHEE: Sir, normally we carry our stamps with us, sir.

20 **CHAIRPERSON**: That is very unusual. But that does not make sense then because you would stamp Cape Town when you are physically in Mussina.

COLONEL PADAYACHEE: Sir, when you...

CHAIRPERSON: Why would you do that?

COLONEL PADAYACHEE: The way I look at it from the

affidavit before me, if you look at the address of the Commissioner who is signing the oath, his office address is given as Pretoria, and that is our office stamp that is next to it. So it is not that it is, you are carrying a stamp to Pretoria to stamp an affidavit in Cape Town, when it should be [indistinct – 0:26:30]...

CHAIRPERSON: From what you are saying, that is exactly what you suggest happened here. Even though he is based in Pretoria, he was physically in Cape Town and the
10 affidavit was commissioned there.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: And he stamped it with a Pretoria date stamp, even though he is in Cape Town. That is exactly what you are suggesting, which I do not understand.

COLONEL PADAYACHEE: Let me get clear on it so I can understand, Chair. Firstly, from what I know, but only Chief Investigator Perumal can expand and confirm on the statement. And this is from what I heard, that the statement was taken in Cape Town. But what I am saying here, on
20 this affidavit, Chief Investigator Dylan Perumal commissioned this affidavit. The address, his address, our office, is Pretoria. So underneath his details, it can be seen, Investigating Director IDAC, Brooklyn, Pretoria. Our office stamp has Pretoria on it. We do not have an office in Cape Town. So he stamped, and therefore the stamp is

Pretoria.

CHAIRPERSON: Did he have to, was it obligatory for him to stamp the document? Stamp it Pretoria when he is not in Pretoria. That simply does not make sense because it is not giving the factual position. It is not stating the factual position. Even, even the indication of the office there. Let me just look. Oh, I guess that is fine because it is relating more to his position.

COLONEL PADAYACHEE: Yes, his position.

10 **CHAIRPERSON**: Yes, so there is no issue there.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: What is typed on there, basically explaining who he is, I guess there is no issue there. But the issue relates to the date stamp.

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: And it sounds very strange to me that you carry your date stamps wherever you travel. What on earth for?

COLONEL PADAYACHEE: Commissioner, the only
20 explanation I can afford, Commissioner, is in the way I see it. Because I also, we do not necessarily put a stamp on the affidavit.

CHAIRPERSON: Exactly, exactly because it is not even obligatory that you should have a date stamp on there. That affidavit would have been complete without a date

stamp. By putting the date stamp on there, or affixing the date stamp on there, you are suggesting that this was commissioned in Pretoria.

COLONEL PADAYACHEE: Yes, Commissioner, that inference can be drawn.

CHAIRPERSON: But which of course would be problematic because you also have Cape Town in manuscript written on there.

COLONEL PADAYACHEE: Yes. I think in the rare cases,
10 Commissioner, the point that you made is taken, but if we are in Pretoria, and we are obtaining statements in Pretoria, our date stamp is not a problem. But if we are taking affidavits in another province, we should keep that in mind. So I will take that advice from you, Commissioner, in good stead. Thank you.

CHAIRPERSON: Thank you.

ADV BALOYI SC: So still on that, and I want to preface it by saying, firstly I accept this is Perumal's affidavit, it is you not that signed, but I want to preface what I am going
20 to say with this, that affidavits have been thrown out of Court for non-compliance on these kind of issues. And one of the problems that there is here, and that Perumal would have to, Chief Investigator Perumal would have to explain, is in that very paragraph which the Chair is discussing with you, in the second line it refers to the deponent as she

knows and understands.

And it has been a serious problem because it raises the question, was the deponent even in front of the Commissioner of Oaths? So that is one of the issues that are problematic about this affidavit, that I accept that he will have to come and explain and persuade that he took this affidavit in the presence of Mr Adams, and it was Cape Town or Pretoria. But to go back to an earlier page at 681, where you say the station is Brooklyn, there is a date issue,
10 there is a case number issue there, but when you look at the bottom of the document, it has a different date.

The bottom of the document, it indicates it was signed on the 6th of January 2025, and then next to it there is provision for member signature, it requires rank, name and surname. None of that information is provided, and I have tried to see whether it could be Mr Adams' signature, which it seems it should not be, because it requires member signature. And when I look at Perumal's signature, it looks completely different.

20 I am no expert about that, but it looks completely different from the signature on page 681, which brings me to the question. Do you go to Brooklyn police station and say we need to open a docket and that is where you get this preamble statement, or is this a form that is kept by IDAC in its office, and then when you get referrals such as section

27, you then complete it and put in the name of the station, in time you will put in the CAS number, but whoever puts in the name of the station on the 6th of January then completes it at the bottom. How does it work?

COLONEL PADAYACHEE: Commissioner, as far as I know, that the preamble of the statement is done when you are taking the affidavit itself.

ADV BALOYI SC: This is a form that IDAC keeps with it?

COLONEL PADAYACHEE: Yes, we have copies of these.

10 **ADV BALOYI SC:** Okay.

COLONEL PADAYACHEE: IDAC is in the process of doing, in terms of the dockets and annexures where it says SAPS, we are continuously deleting SAPS and putting IDAC on it. For example, exhibit bags, IDAC has now got its own exhibit bags, so we are an office in progress where we are getting and moving away from SAPS.

ADV BALOYI SC: So at the bottom of that page where it says member signature and then rank name and surname, I would expect to see the name of whoever created this
20 document and their rank.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Okay. And the date at the bottom would be the date when what happens, because it is a different date from the June 2025 at the top which comes with the CAS. The bottom number, the bottom date, what is that

date supposed to reflect? What does it speak to?

COLONEL PADAYACHEE: The 6th of January 2025?

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: At the bottom?

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: It talks to the day the affidavit was taken.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: It is the same date the affidavit
10 was taken.

ADV BALOYI SC: And you say the affidavit is taken without a CAS number. Is that your evidence?

COLONEL PADAYACHEE: Yes, it still goes on the inquiry, Commissioner.

ADV BALOYI SC: All right, thank you.

COLONEL PADAYACHEE: So what you see here, if you just remove the CAS number, this is still an inquiry. But because the docket at a later stage was registered, in the docket you have got to make sure everything from back to
20 front has got the CAS number.

ADV BALOYI SC: Thank you.

COLONEL PADAYACHEE: And I take your other concern, Commissioner, that a signature must be followed by initial and surname, identifying the signature.

ADV BALOYI SC: Ja, but you accept that we do not know

who opened this on the basis of this document in front of us.

COLONEL PADAYACHEE: That is correct.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Commissioner. Just to close on this topic then, I asked you about this conflict between Pretoria and Cape Town at page 684, because I had understood you earlier to say upon the investigation being initiated, you took the statement of the complainant. That
10 is what you had said. Unless, you say I, unless I meant IDAC in this instance. I thought you personally were present when the statement was taken. Or did I mishear?

COLONEL PADAYACHEE: No, no. The statement of the, I say, I use it in the context that IDAC takes the statement of the complainant. But the particular statement that is before the Commission now, I was not present.

ADV SELLO SC: No, no. That is exactly the point I am making. I take you to this problem at page 684 because I had understood you to have said that in this particular
20 Mokwele investigation, after you got your authorisation, you are appointed as lead investigator. I took the A1 statement. Do you remember a discussion about what becomes the A1 statement? I had understood you to have said that you took the statement. And I am checking, did I mishear you?

COLONEL PADAYACHEE: No, that I will have to correct

myself there. We were talking about the build-up, and it could be in that mix, that our word in that context. But in terms of the actual, what we actually have here, the Adams statement, it does not refer that I took it.

ADV SELLO SC: So your final position is ...[intervenes]

COLONEL PADAYACHEE: It only appears in the processes of what we do.

ADV SELLO SC: What appears in the processes?

COLONEL PADAYACHEE: When I was explaining
10 ...[intervenes]

ADV SELLO SC: No, no, no, sorry. We were already in the docket by the time I understood you. If I am wrong, the transcript will prove me wrong, and I am happy. I will correct myself.

COLONEL PADAYACHEE: I will take it this way, to correct myself, that I did not take the statement.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: So if it is mentioned that I took it, then I am correcting it now. I did not take the statement,
20 and I was not present during the statement.

ADV SELLO SC: No, I accept that, and I accept that I too may have misunderstood you. Just then, lastly, before we leave this document, based on Commissioner Baloyi's questions, at page 681 and 682, the signature at the bottom has to be the signature of the person who takes the

statement. Correct?

COLONEL PADAYACHEE: [No answer]

ADV SELLO SC: Is that how we understand this document?

COLONEL PADAYACHEE: The...

ADV SELLO SC: 681? You are on 681?

COLONEL PADAYACHEE: Ja, on 681.

ADV SELLO SC: And 682, the same signature appears. Am I correct that that is the signature of the person who
10 takes the statement?

COLONEL PADAYACHEE: Yes, that should be the person who takes the statement.

ADV SELLO SC: Okay. Now, on your ...[intervenes]

COLONEL PADAYACHEE: But on the next...

ADV SELLO SC: On your version, the version before you, that signature is not redacted. I would like you to compare that signature at 681, 682, and compare it with the signature at 684, above the name Mr Fadiel Adams. I might be wrong, but it looks like the same signature, and it is
20 markedly different from the signature by Mr Perumal at 684, who is the Commissioner here. Did Mr Adams sign in the wrong place, or should I take that signature to be Mr Perumal's signature, although it does not look like it?

COLONEL PADAYACHEE: I am going to put it in this context, Counsel.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Chief Perumal, who took the statement, is best placed to answer in terms of the signature.

ADV SELLO SC: Yes, no, for a fact, he is. I was just asking you, you are looking at it, you are an investigator.

COLONEL PADAYACHEE: I am looking at it here.

ADV SELLO SC: What conclusion would you draw?

COLONEL PADAYACHEE: The way I see it here, is that
10 the signature is put in the wrong place here.

ADV SELLO SC: It is put in the wrong place, or I am more interested in between the two, who appended the signature at page 681 and 682. Is it Mr Adams, or is it, you call him Chief Perumal?

COLONEL PADAYACHEE: The signature on the bottom of the page appears to be mister, from the way I look at the other signatures that are in the actual affidavit, it appears to be Mr Adams.

ADV SELLO SC: Appears to me.

20 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: And as we understand it, it by right ought to be the investigator or the police officer who takes the statement.

COLONEL PADAYACHEE: No, I am not with you there, Counsel?

ADV SELLO SC: No, I say, do I understand you correctly, that the signature that has to be appearing at 681 and 682 has to be the signature of the person taking the statement.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Not the person giving the statement.

COLONEL PADAYACHEE: Yes, the person taking the statement.

ADV SELLO SC: We just have it the other way around here.

10 **COLONEL PADAYACHEE:** Page 2 should be the person that, the actual, Adams.

ADV SELLO SC: Page 2? Has to be the signature of Mr Adams. The 681 is the signature of the investigator.

COLONEL PADAYACHEE: [No answer]

ADV SELLO SC: Who is responsible for this form? For completion of this form? Is this the complainant or the person taking the statement? I would assume ...[intervenes]

20 **COLONEL PADAYACHEE:** The person that is taking the statement.

ADV SELLO SC: Ja. So their signature, I thought, would appear at both 681 and 682.

COLONEL PADAYACHEE: Ja.

ADV SELLO SC: And that the complainant's signature would only appear in their statement. Am I correct or am I

wrong again?

COLONEL PADAYACHEE: Just give me again the, Counsel, I am not?

ADV SELLO SC: I say, I assume this being an official form, the signature at page 681 and 682 would be the signature of the investigator who takes the statement.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: I am just testing.

COLONEL PADAYACHEE: Yes.

10 **ADV SELLO SC:** And that the only time I would see the complainant's signature is where the complainant signs his own statement. Would I be right?

COLONEL PADAYACHEE: [No answer]

ADV SELLO SC: I might be wrong.

COLONEL PADAYACHEE: On page 2, that is 682.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: That signature at the bottom, that is where the complainant signs.

ADV SELLO SC: Is that for the complainant?

20 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: And the one at 681 is for the investigator?

COLONEL PADAYACHEE: it states their member's signature. So that would be the person who is taking the affidavit.

ADV SELLO SC: Okay. But what we actually have, it would appear at first blush that Mr Adams signed both ...[intervenes]

COLONEL PADAYACHEE: In the wrong place.

ADV SELLO SC: ...page 1 and page 2 and his own statement.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: It would appear and I am willing to be persuaded that it is not his signature but Chief Perumal's
10 signature at page 1.

COLONEL PADAYACHEE: Am I hearing you correctly, Counsellor, when you are saying on page 681 the signature on the bottom of the page is not Chief Perumal's signature but Mr Adams'. Is that what you are saying?

ADV SELLO SC: Yes, I am saying if I compare, if you say the signature at 682 is Mr Adams' signature, I say it looks like the signature at 681, so it is the same signature.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And I say when I take those two
20 signatures and I compare with Mr Adams' statement, it is the same signature above Mr Adams' statement. So the sum total of my interpretation is where Chief Perumal was supposed to have signed on 681, Mr Adams' signed. At 682 where you say the complainant signs, Mr Adams' signed and once again Mr Adams' signed on his statement, the only

time Chief Perumal signs is when he commissions that statement at page 684.

COLONEL PADAYACHEE: Commissioner, Chair, I cannot comment on that and I think Chief Perumal would be best placed because what is there, is the inference that Chief Perumal signed Mr Adams' statement, is that was coming across and I think that will be unfair for me to comment on that, because I am not a handwriting expert and I cannot comment on that but he himself can comment. Did you sign
10 here or did not? If I am understanding you correctly.

ADV SELLO SC: Mine was just a deduction, so I will leave it there and maybe I have seriously, not maybe, encroached into the Commissioner's lunch and perhaps we are all hungry now, so I ask if this might be an opportune moment, Chair.

CHAIRPERSON: Yes. Let us adjourn and come back at 20 past two.

ADV SELLO SC: Thank you, Chair.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Ms Sello.

ADV SELLO SC: Afternoon, Chair. Afternoon, Commissioners. Afternoon, Colonel. Your microphone.

CHAIRPERSON: It seems ...[intervenes].

ADV SELLO SC: Oh, indeed. Thank you, Commissioner.

ADV KHUMALO SC: Colonel, good afternoon. Please go to page 681.

COLONEL PADAYACHEE: 681?

ADV KHUMALO SC: Yes. Are you there?

COLONEL PADAYACHEE: I am here, sir.

ADV KHUMALO SC: It is the document that says “preamble to statement”. What exactly is it? Is it a cover page of a docket? What do you call this?

COLONEL PADAYACHEE: It is the cover page to an
10 affidavit ...[intervenes].

ADV KHUMALO SC: Yes.

COLONEL PADAYACHEE: Of an A1, sir.

ADV KHUMALO SC: Ja, and who completed this document, just looking at it? Do you know who completed it?

COLONEL PADAYACHEE: I am not sure, sir.

ADV KHUMALO SC: Did you not ask? You are the investigating officer.

COLONEL PADAYACHEE: No, I did not ask. During this
20 period of time in January 2026 ...[intervenes].

ADV KHUMALO SC: Ja.

COLONEL PADAYACHEE: I was not around. I was out of the country.

ADV KHUMALO SC: You were out of the country?

COLONEL PADAYACHEE: Yes.

ADV KHUMALO SC: But at some point you came back?

COLONEL PADAYACHEE: Yes, at some point I came back. I did not ask about the completion of the statement, sir.

ADV KHUMALO SC: You did not ask. I am particularly interested in the description of the offence on page 682. Are you on 682?

COLONEL PADAYACHEE: 682, sir?

ADV KHUMALO SC: Yes.

10 **COLONEL PADAYACHEE:** Yes, sir.

ADV KHUMALO SC: Do you see the section that says description of the offence? Just below the particulars of offence there is a date there.

COLONEL PADAYACHEE: Description of offence, yes, sir.

ADV KHUMALO SC: Yes. And it says fraud, corruption, irregular appointment of Brigadier Mokwele. Do you see that?

COLONEL PADAYACHEE: Yes, sir.

20 **ADV KHUMALO SC:** Do you know where that fraud and corruption comes from? Who made the complaint that there was fraud and corruption?

COLONEL PADAYACHEE: Sir, as I said, the person that wrote this affidavit, took this affidavit, will be able to comment on that. I would only assume that from what was in the A1, you have fraud and corruption. In terms of the

case that we have registered, it is fraud and corruption.

ADV KHUMALO SC: I am asking you because you are the, you have said you are the investigating officer and you must have received all these documents, so I am curious to know who said IDAC must investigate a case of fraud and corruption. Who said that? Who made that complaint, do you know? If you do not know, you do not know.

COLONEL PADAYACHEE: No, I am just going to be clear on what you are asking me, Commissioner, so that I can
10 respond accordingly. As I said you know initially that I did not take the statement, so I want to answer you as best as I can. When you look at what is described, the first thing, the first departure point is an irregular appointment. Irregular appointment, misrepresentation, a gratification, so where is fraud and corruption.

So I would presume that based on that, the description that was given here of the offence is given as fraud, corruption, and irregular appointment. But the irregular appointment is not a charge *per se*. It is more an
20 explanation of the actual fraud and corruption.

ADV KHUMALO SC: So my question remains, who made a complaint of fraud and corruption? Who came to IDAC and said, there is a complaint of fraud and corruption that I would like to make and for IDAC to investigate?

COLONEL PADAYACHEE: When you look at the referral,

sir, the Section 27 referral, where it talks about the appointment of a civilian lady, I think that is where it comes in, the irregular appointment.

ADV KHUMALO SC: So IDAC made an inference. It did not come from a complainant. The complainant did not say, I believe that there is a case of fraud and corruption that IDAC should investigate. I am just trying to understand IDAC's thinking, not so much the merits of the case, but IDAC's thinking and how it got to where it arrived at.

10 **COLONEL PADAYACHEE:** What I can gather from what is written on the preambles, it is coming from the A1 statement.

ADV KHUMALO SC: Yes. Can, let us leave it. Let us go to the affidavit on page 683. This is Mr Adams' affidavit on the same day, the 6th of January, 2025. Are you able to put it up, Ms Mothlasedi? Same bundle on 683. I think you have seen the document before. Paragraphs 2 and 3, so paragraph 1, Mr Adams describes himself, Fadiel Adams MP, and then in paragraph 2 he says:

20 “On or about early October 2024, I received information anonymously surrounding alleged fraud and corruption being perpetrated within Crime Intelligence. The allegations related to certain high-ranking police officials being

involved in manipulating promotional and security vetting processes to unduly benefit a civilian person who worked for BMW South Africa, being appointed as a Brigadier in South Africa. She apparently has no policing experience and no management experience and was appointed as Head of the technical support services.”

10 Do you see that?

COLONEL PADAYACHEE: I see that, Commissioner.

ADV KHUMALO SC: So is that where you say the complaint of fraud and corruption comes from?

COLONEL PADAYACHEE: Yes, sir, that is what I would take from here that it is an irregular, a person was appointed irregularly to a post.

ADV KHUMALO SC: And what is the fraud and corruption, if I may ask?

20 **COLONEL PADAYACHEE:** Your fraud and your corruption is the unlawful and intentional misrepresentation of certain facts and which it prejudices the state. That is your fraud.

ADV KHUMALO SC: Okay. In this particular case?

COLONEL PADAYACHEE: In this particular, well, in this particular matter.

ADV KHUMALO SC: Yes.

COLONEL PADAYACHEE: Yes, sir.

ADV KHUMALO SC: What I am struggling with is it is just not clear to me whether somebody is saying a fraudulent CV was submitted or somebody who did not comply with the requirements in the advert was appointed. I am just not clear what fraud and corruption is here. That is where I am, I can see that somebody from outside was appointed and has no management experience. Is that the fraud or is it something else that is not in this affidavit? What is the
10 fraud and corruption other than appointing somebody who is from outside and has no policing experience?

COLONEL PADAYACHEE: Sir, I do not know whether I will be looking at, fraud as fraud. From the affidavit being taken and deriving from the person taking the affidavit, allegations related to officials involved in manipulating promotional and vetting processes to unduly benefit somebody. So manipulation, and the mere, what I grasp out of this, in order to get to this here, something had to be done and misrepresented, you know. That is the way I
20 would see it. I know what Commission is going with it, but this has to deal, when you look at it, promotion, manipulation of promotions, how was it manipulated? What was done? Vetting processes, what was done? This person had no policing experience. What was done to cover up? So these are the things I am taking in to derive where fraud

comes in and where corruption comes in.

Obviously, from the basis of this affidavit, I will take that now and go and look for further evidence, whether it comes from analysis or documents or interviewing with persons to fully understand. But when I look at it, something had to be done. Something had to be manipulated. Manipulated, it borders on misrepresentation of something for somebody to believe such.

And when you look at the post itself and what is
10 mentioned, I mean, that is the way I look at it, sir. But the person that is taking the affidavit, I cannot speak for him.

ADV KHUMALO SC: I think we, I am going to leave it here for now. So, at some point, we will get to the adverts and the CV's and other things. I just needed to understand the two documents and what the complaint was.

COLONEL PADAYACHEE: Thank you, Commissioner.

CHAIRPERSON: Sorry, sorry, sorry, Colonel. You cannot use, because in response to the question by Commissioner Khumalo, you referred to an earlier part, the part that refers
20 to these high-ranking police officials "being involved in manipulating promotional and security vetting processes to unduly benefit a civilian person". that does not say much. Like, if you say, manipulating promotional and security vetting processes, that is a conclusion, a conclusion which must necessarily be based on facts.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: What are the facts? There are none. And then you say, to unduly benefit a civilian person, well, I know you will say the person benefited is the person who worked for BMW and that the benefit is the appointment.

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: But what comes first is the manipulation. What are the facts for saying that there was manipulation? I know it is not you saying this.

10 **COLONEL PADAYACHEE:** Yes.

CHAIRPERSON: But you, as part of IDAC, are investigating this and it goes back to what I said earlier, which is you only start investigating if this is a referral, if there is a basis for a reasonable suspicion.

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: So if all you have are conclusions, manipulating promotional and security vetting processes, what is the manipulation? What form did it take? There is none of that, not on this. Not on this. And it is on that
20 basis that I say you have not answered Commissioner Khumalo's question.

COLONEL PADAYACHEE: Thank you.

CHAIRPERSON: Because in attempting to answer it, you referred to this and this is lacking on facts. There is no factual basis.

COLONEL PADAYACHEE: Thank you, Chair. I will try to explain it in the best I can. This section 27 comes in, it is referred. And then a preliminary investigation starts. At all given time, this is still an allegation. So when the preliminary investigation starts, you only have this to go on, which as Commissioner Khumalo says, but look, there is nothing really much here, manipulation.

CHAIRPERSON: What I say is, what I say is absent a reasonable factual basis, you should not even begin,
10 because that is the basis for the section 27 referral. You do not even begin. I think when I engaged you earlier, I said, you do not start, if the section 27 jurisdictional facts are not satisfied, you cannot say, let us commence with an investigation.

Who knows, maybe we will come across something that will show that an offence covered by section 7(1A) has in fact been committed. That is not how it works. You must first establish whether there are, or rather that jurisdictional facts do exist. If they do not, you do not even begin to
20 investigate. That is where Commissioner Khumalo's question lies.

COLONEL PADAYACHEE: Commissioner, I am trying to answer it in the best way I know.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: And I am not trying to deviate

from something.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: This is how I see it, and what is given to me in the statement on the preliminary investigation, to say, go and look, there is an allegation here that has been made, and where further investigation was conducted in terms of documents and interviewing of witnesses. I hear that there is nothing in here, that this is what is being said, but there is an allegation made here, a
10 serious allegation being made here, that there is manipulation of processes by high-ranking officers giving a civilian with no experience and appointing her in a Crime Intelligence post, so that, for me, is a flag.

Promotions have been manipulated, a civilian into a Crime Intelligence post with no experience, so that, for me, was the red flag, and I was satisfied with, I was satisfied that ...[intervenes].

CHAIRPERSON: You read, Colonel, you read when Ms Sello asked you to basically set out how the process works,
20 you read a number of sections and you went all the way up to, was it 28?

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: Yes. And as part of that, you even read section 27, which sets out the jurisdictional facts for a referral and you say this was a referral.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Do you know what those jurisdictional facts are in accordance with section 27, do you or do you not?

COLONEL PADAYACHEE: According to what is written in 7A, where it says fraud and corruption, so that is ...[intervenes].

CHAIRPERSON: No, no, no, I am talking about the jurisdictional facts in 27 for a referral.

10 **COLONEL PADAYACHEE:** I am still not catching you.

CHAIRPERSON: I am talking about, okay, let me not talk about jurisdictional facts, let me say the bases, as in plural, B-A-S-E-S.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Do you know the bases upon which a referral may be made in terms of section 27?

COLONEL PADAYACHEE: The bases on which the section 27, it shows out that crimes were committed that falls within the mandate on 7(1A).

20 **CHAIRPERSON:** There is an important one. I engaged you on this in the morning. Let us look at it together. Just go there. The reasonable grounds to suspect, reasonable grounds to suspect. Do you remember when I engaged you on that this morning?

COLONEL PADAYACHEE: I do.

CHAIRPERSON: Yes, that is an important one. You cannot leave it out. So my question is, if you know those jurisdictional facts or bases ...[intervenes].

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: And surely you do, now, if you have this manipulating, promotional and security vetting processes with no explanation whatsoever, and even if you look at this together with the other statement, which is actually as part of its heading, refers to section 27 referral, that is Mr
10 Adams' statement, even if you look at that, that at least insofar as I look at this, I do not see how anybody within IDAC, including you, could have held the view that those jurisdictional facts have been satisfied. On what, as you sit there, on what basis do you say those jurisdictional facts were satisfied?

COLONEL PADAYACHEE: Commissioner, I am only going to say that this referral was sent to management who approved the section 27 referral and then authorized a section 28(13) preliminary investigation. So I take my cue
20 from there when that preliminary investigation is initiated. So I take it from there.

CHAIRPERSON: Besides the view that they might have held, as you sit there ...[intervenes].

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: Did you yourself satisfy yourself that the

jurisdictional facts had been satisfied?

COLONEL PADAYACHEE: Sir ...[intervenes].

CHAIRPERSON: Let us leave out what they thought. You, you, you know, you know you referred to the section, you quoted it, and even now as I am engaging you, you appear to know what that section means. As you sit there now ...[intervenes].

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: Are you telling us that as at the time you
10 were satisfied that the jurisdictional facts were satisfied?

COLONEL PADAYACHEE: Sir, I would have took, that is why I continued with the investigation when I was tasked with it.

CHAIRPERSON: Were you, I do not know whether that answer says yes or no. Were you satisfied that the jurisdictional facts were met?

ADV SELLO SC: Chair, Colonel, my apologies, and I do apologize for interjecting. Perhaps before Colonel Padayachee responds, and I say this because I heard him
20 reference the section 27 referral, the document Commissioner Khumalo was considering was the A1 statement.

CHAIRPERSON: No, that is why, that is why I deliberately said, that is why I deliberately said, even if I consider both this, meaning the A1, and the statement which is actually

headed section 27 referral ...[intervenes].

ADV SELLO SC: Then if ...[intervenes].

CHAIRPERSON: So I am including both. It was exactly because I am aware, Ms Sello, that this one was not the referral itself.

ADV SELLO SC: No, no, no, that you are aware, Chair. I have no, it is whether the witness understands where you are.

CHAIRPERSON: Oh, which one ...[intervenes].

10 **ADV SELLO SC:** I wanted to make, which one ...[intervenes].

CHAIRPERSON: Which one I am referring to.

ADV SELLO SC: So I do not know if, as you pose the question ...[intervenes].

CHAIRPERSON: Okay, all right.

ADV SELLO SC: We should call up section 27 referral ...[intervenes].

CHAIRPERSON: I hear you.

20 **ADV SELLO SC:** And then he does not confuse the two statements.

CHAIRPERSON: I hear you. He may not have, he may not, he may have missed my linking ...[intervenes].

ADV SELLO SC: He did. He did.

CHAIRPERSON: My linking of the two.

ADV SELLO SC: Yes.

CHAIRPERSON: Colonel, in referring to the document on which Commissioner Khumalo was engaging you, I also made specific reference to the document headed section, or rather as part of its heading refers to section 27 referral. You heard me make that connection.

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: Or refer to that document as well.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Ja, all right. Now what I am saying is, as
10 you sit there and bearing in mind, in particular that document, that second document, the one which as part of its heading refers to the section 27 referral, as you sit there, are you telling us that as at the time you were of the view that the jurisdictional facts had been satisfied for a section 27 referral?

COLONEL PADAYACHEE: I am going to say yes. Yes, Commissioner.

CHAIRPERSON: On what basis?

COLONEL PADAYACHEE: On the basis of the way I
20 interpreted it.

CHAIRPERSON: No, no, no, no, no, this is not, this is about the facts presented.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: This is about the facts presented for purposes of the referral.

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: Yes, you look at those facts in conjunction with what is provided for in section 27. But on the facts, on the facts, what is it that made you satisfied that the jurisdictional facts had been met?

COLONEL PADAYACHEE: It is what was being said there, a person has been appointed in a technical post without qualifications. It is a civilian. For me, that amounts to fraud and corruption that needed to be looked at to be
10 verified.

CHAIRPERSON: At this stage, at this stage I will say that is a quantum leap in logic, but I am sure Ms Sello is still going to come to that. It is a quantum, quantum leap in logic because you know that many people get appointed in SAPS without ...[intervenes].

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: They cannot even salute, but they are appointed because of their expertise. I am not necessarily saying Ms Mokwele had that expertise, but that is what we
20 have been told. And to just say because there is no experience, within SAPS means nothing, and it is on that basis that I say that is quite some quantum leap in logic, but Ms Sello I assume will deal with that more extensively when the time comes.

COLONEL PADAYACHEE: Thank you, Commissioner.

ADV SELLO SC: I was intending to, Chair, perhaps, and this might be the logical point to deal with it. So then let me introduce the referral affidavit.

ADV BALOYI SC: Sorry, before you do that, can I?

ADV SELLO SC: Yes, Commissioner.

ADV BALOYI SC: And I am asking this on the back of how you have answered the Chair and say you are satisfied as you sit there that the jurisdictional effects existed for IDAC to take on this matter. It takes me back then to my earlier
10 question, which I said we will reserve for Ms Johnson when she comes, and my question is this. Section 27 speaks of specified offence or something like that. It says there must be a specified offence. What is the specified offence that you say you were satisfied is present to trigger your jurisdiction?

COLONEL PADAYACHEE: My answer to that will be when I read what is written in the 27 and on this, I draw the inference here, the inference that there is fraud and corruption. That is my answer to it.

20 **ADV BALOYI SC:** 27 speaks of a specified offence, and if you remember, I did refer you to section 1, which defines what is a specified offence, and it defines it by reference to the now deleted section 7(1). It says:

“Specified offence is the offence in 7(1).”

When you go to 7(1), 7(1) has been deleted. You

sit there now, you say you were satisfied that the jurisdictional requirements were present, therefore, it must mean you were satisfied that there is a specified offence as defined. And my question is, what is that specified offence that was previously defined in the deleted section 7(1) that you found to be present, and as you sit there, you find to be present to have triggered the jurisdiction?

COLONEL PADAYACHEE: In terms of the 7(1A) ...[intervenes].

10 **ADV BALOYI SC:** We are not at 7(1A), we are at 7(1).

COLONEL PADAYACHEE: 7(1).

ADV BALOYI SC: 7(1A) does not speak to a specified offence. It has nothing to do with a specified offence. 27 is triggered when there is a specified offence. That is what 27 says.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Now, the provision that used to list or to explain what is a specified offence is no longer there and you say now to the Chairperson, yes, the jurisdictional fact
20 is present. I was satisfied, I am still satisfied that it is present. And I say to you, well, it has to be a specified offence. Show us what is the specified offence with reference to both what is alleged in the affidavit, but two, with reference to the Act that gives you jurisdiction to investigate this matter.

COLONEL PADAYACHEE: Yes. Commissioner, I am going to answer it in this way. When you look at the statutory offences and where I come across corruption, all right, with the appointment, manipulation of the process, all of that, the fraud, corruption, let us put the fraud aside, let us look at the corruption. So when we look at the 27 and the mandate falling in terms of the statutory offence of PRECA, the appointment is one, is the giving of a gratification, and two, the receiving of a gratification in
10 terms of section 3(a) and 3(b) of PRECA. And that gratification falls in the definitions of gratifications in section 1 of PRECA. So I am deriving it from that, that it amounts around gratification.

ADV BALOYI SC: Yes. Let me interrupt you. Let me interrupt you. You say, your testimony is that IDAC gets seized of this matter because of a referral by virtue of a section 27 referral. Am I correct?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: That has been your testimony.

20 **COLONEL PADAYACHEE:** Yes.

ADV BALOYI SC: Okay. Now, section 27 tells you under what circumstances does a referral gets made. It says if you reasonably suspect, if you have reasonable grounds to suspect that there is a specified offence that is committed or that is about to be committed, or an attempt is being

made to commit a specified offence, that is the operational word, specified offence. It has to be a specified offence. Now, when you go to 7(1A), (1) used to contain a specified offence. It is no longer there. And (1A) does not deal with specified offence. (1A) has nothing to do with this referral.

It tells you it has to be serious, high-profile or complex corruption, commercial or financial crime. (2) talks about fraud, those common law offences. (3) introduces PRECA. You have not testified that you acted in terms of
 10 PRECA. You have said, we acted in terms of a referral under section 27. That is what your testimony is.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: That is what gave us jurisdiction. That is what got us started. And you say you are confident that the requirement in 27 is met, that is why you are able to investigate this. And what I have sought to show you, and I am happy to leave it at you have given your best answer on this, is that 27 requires for there to be a complaint of a
 20 offence in this Act, so 27 could not be where you drew your authority from. That is what I am putting to you.

COLONEL PADAYACHEE: I am still struggling with it, Commissioner.

ADV BALOYI SC: Your position is you acted in terms of section 27, and you say it gave you jurisdiction.

COLONEL PADAYACHEE: That is it.

ADV BALOYI SC: You have had ...[intervenes].

COLONEL PADAYACHEE: An approved ...[intervenes].

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: An approved section 27 referral, which was approved.

ADV BALOYI SC: Okay. No, no, I am not concerned about the approval.

COLONEL PADAYACHEE: Ja.

10 **ADV BALOYI SC**: I am concerned about your answer to the Chairperson that you are satisfied that the requirements that give you jurisdiction to investigate this matter have been satisfied. That is what you said to the Chairperson, and that is why I am having this discussion with you. But I have heard your answer. Thank you.

COLONEL PADAYACHEE: Thank you, Chair.

CHAIRPERSON: Ms Sello.

ADV SELLO SC: Yes, Chair.

CHAIRPERSON: I hope I did not encroach too much on the
20 terrain that you are still to ...[intervenes].

ADV SELLO SC: Not at all, Chair, because they lead into each other.

CHAIRPERSON: Thank you.

ADV SELLO SC: The two statements are inseparable.

CHAIRPERSON: Thank you.

ADV SELLO SC: The issue really is, and which is the next affidavit we are going to go to, we were dealing with the contents of the docket. The docket does not include the referral affidavit. That referral affidavit lies somewhere within IDAC, and it is the one we are going to turn to because now we know it was received and it has been submitted to us. So, but the link is truly appreciated between the two, and it is one we are going to seek to make ourselves.

10 Before we leave this document at 681 and 2, the issue that, let us go to the actual statement at paragraph - the gist of that statement really is at 683 is at paragraph 2, the paragraph that Commissioner Khumalo took you through. It is a very short affidavit. It is five paragraphs. So excluding paragraph 1 and paragraph 5, because paragraph 5 then confirms that the deponent knows the contents of this, the gist of that statement, our A1 is paragraphs 2, 3, and 4.

20 Paragraph 2 is the one that lays out the facts, not the facts, the issues that are raised. Paragraph 3 deals with I was informed there were several highly skilled and qualified senior police officers. So that does not speak to the complaint. It speaks to sort of the background and says, I am informed that what happened in 2 happens in circumstances where there are highly skilled, several highly

skilled and qualified senior police officers. So it does not speak to the complaint. 4 draws a conclusion that this type of conduct severely undermines the rules of the SAPS regarding promotions and vetting of senior managers at SAPS.

So, and I interpret that to mean this type of conduct being the conduct referred to in 2 complained of. Do you agree with my interpretation thus far?

COLONEL PADAYACHEE: No, I just did not catch your
10 last part.

CHAIRPERSON: No, I am saying paragraph 4, which states this type of conduct severely undermines the rules of the SAPS regarding promotions and vetting of the senior managers of SAPS, that is a conclusion that the deponent draws.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And the complaint that, the conduct he references there is the conduct set out in paragraph 2 that Commissioner Khumalo engaged you on. Do you agree with
20 me? The conduct is the one described in paragraph 2, the manipulation of promotional and security vetting processes. I am testing my understanding against you, the investigator.

COLONEL PADAYACHEE: So what you are saying, Counsel, is what is said in paragraph 2 and what is said in paragraph 4, that this type of conduct as mentioned in

paragraph 2 ...[intervenes].

ADV SELLO SC: Indeed.

COLONEL PADAYACHEE: Undermines the SAPS.

ADV SELLO SC: Indeed.

COLONEL PADAYACHEE: Yes, I agree with that.

ADV SELLO SC: Okay. So I am saying then that is the end of the A1.

ADV BALOYI SC: Can I test this as well. I had read it to include the complainant or the complaint to also include
10 paragraph 3, especially because keep an eye on your charge sheet, that your charge sheet refers to a specific General that should have been included and was not included. So my reading of this is wider than Ms Sello's, is 2 and 3 are the conduct that is being complained about, 3 being that several highly skilled and qualified police officers were overlooked by CI management. That is part of the complaint.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: So it is not just manipulation. It is that
20 certain people were overlooked.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: Yes, thank you, Commissioner.

ADV SELLO SC: Okay, it is broader than I interpreted. I accept 3, even that, but then that is the totality of the A1,

the content of A1 statement, okay.

COLONEL PADAYACHEE: Okay.

ADV SELLO SC: This then leads us to the referral because we must then see what was in the referral affidavit that provided the grounds for investigation by IDAC, correct, because that is where we would see compliance with the requirements of section 27. Would you agree? The section 27 referral affidavit must comply with the requirements that the Commissioners took you through in
10 section 27.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay. That would be CJC373, that is file 2, file 2 at page 512. Page 512, file 2. Now, that document is headed:

“Referral to IDAC for investigation in
terms of section 27 of the NPA Act,
Capture of the Crime Intelligence
Division by senior police officers”.

For the record, and you confirmed earlier this
20 document does not form part of the docket that we have just
cast a glance on, correct? It does not.

COLONEL PADAYACHEE: No, it is not in my docket.

ADV SELLO SC: Yes. And for the record, the Commission requested this affidavit from IDAC separately and it was provided separately.

COLONEL PADAYACHEE: That is correct, Commissioner.

ADV SELLO SC: So they stand separately. Let us look at this document then. It is longer than your A1, running into about five pages. I think you are very familiar with this content. It is fair to say.

COLONEL PADAYACHEE: Oh, yes, yes.

ADV SELLO SC: My summary of what is set out here without necessarily working through every paragraph is that at paragraph 1, it simply refers to the three cases opened at
10 the Cape Town Police Station and provides CAS numbers. You see that?

COLONEL PADAYACHEE: I see it.

ADV SELLO SC: And then the deponent says after these cases were opened, he was then informed that they were taken from the Cape Town Police Station to the office of the Provincial Commissioner, Western Cape. Then he expresses a view that he does not trust the Provincial Commissioner, General Patekile. So that is just background information.

20 At paragraph 2, that is when, as I read, the author engages with the real issues that would address the requirements of section 27 and I interpret that in summary to be an allegation that General Khumalo and the other persons listed there, including Generals Lushaba and Madondo and other senior Crime Intelligence officers, are

busy with the systematic capture of Crime Intelligence division. So that is one suspicion.

The next suspicion is at paragraph 4, and it is expressed thus:

10 “I suspect that General Khumalo and some of the other senior officers in Crime Intelligence, including Madondo and Lushaba, were manipulating procurement processes and processes to appoint and promote certain members to higher strategic positions within Crime Intelligence.”

 Then it says, it makes reference to the civilian who was working at BMW. Then, towards the bottom of that paragraph, expresses a view on this alleged conduct, which he says is the worst one of the lot of highly questionable appointments. The bottom of that paragraph then indicates the appointments at the various offices in the country must be investigated. So his second suspicion is the
20 manipulation of procurement processes and processes to appoint and promote.

 The next one is at paragraph 7, and I will skip paragraph 6 for the moment. Paragraph 7, that is where he expresses his third suspicion, which is that General Khumalo, Lushaba, and Madondo and many of those who

they have appointed are actively siphoning money from the secret fund accounts in the country. Then he expresses his understanding.

Now, what this affidavit tells the reader is what the author suspects, and you recall when you looked at section 27, section 27 has got three requirements, that the nature of the suspicion must be stated, which I believe it does. The section 27 then must state the grounds on which the suspicion is based. On my reading of this section 27
 10 referral affidavit, I do not see the grounds on which any of the three suspicions is based. Am I misreading it perhaps?

COLONEL PADAYACHEE: In the referral?

ADV SELLO SC: In the referral affidavit, where are the grounds of the suspicions expressed by the author, because section 27 said that affidavit must contain the grounds.

COLONEL PADAYACHEE: The only inference that I can draw from here, and be mindful again of this section 27, section 27 is not dealt with me, but dealt at management level.

20 **ADV SELLO SC:** Okay.

COLONEL PADAYACHEE: I only get to deal with it at the tail end when the preliminary investigation is authorized. But be that as it may, I will respond as such, that reasonable grounds, looking at the referral, there is allegations and serious allegations being made and these

allegations, you know, have to be tested to see, but it is serious, serious enough. It deals with Crime Intelligence. It is, Crime Intelligence is responsible for the national security of the country and for me, that there is something that is very important.

So myself, as an investigator down here that does criminal investigations, this is how I will approach it. The section 27 referral says one thing, but myself as an investigating officer, let us not look at 27, let us just look at
10 this that has come to me. I will take this here and investigate it in a preliminary way to establish if what he is saying, if there is substance to it. So that is from my side.

But like I said, I do not deal with the section 27 referral. I am the investigating officer here at the tail end that receives the authorization. I am authorized there to be involved in the investigation. I look at the allegations, go out and see whether what is said here is true or not true. They are serious allegations.

ADV SELLO SC: So then, if I understand you correctly,
20 you depart from the premise that once you are authorized, whoever granted you the authority has satisfied themselves that the referral affidavit itself complies with section 27.

COLONEL PADAYACHEE: Exactly, Commissioner.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Exactly, Chairperson.

ADV BALOYI SC: When you say it is management that makes the decision, who is that? Who is management?

COLONEL PADAYACHEE: Commissioner?

ADV BALOYI SC: You say management makes the decision that this must be investigated. It is not you that makes the decision.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: It is management, so they have satisfied themselves. Who is management that makes that decision?

10 **COLONEL PADAYACHEE:** Management would be the head of the office and her management on that level, like your committee or your management which ...[indistinct] but it is the head of office together with her management that makes the decisions.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: These belong in the IDAC space. It is authorized. It gets sent down to us on the ground level, and we take it from there.

ADV BALOYI SC: Okay, but the main person in that
20 committee is Ms Johnson.

COLONEL PADAYACHEE: The head of office. Final decision lays with the head of office.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you. But, I guess, let me just test, the section 27 referral affidavit does come to your attention,

though once you are authorized.

COLONEL PADAYACHEE: The section 27 referral, I do not see it.

ADV SELLO SC: Oh, you do not get to see it?

COLONEL PADAYACHEE: I do not see it. As I said, you know, and to go back, my end where I come in is the designation 28(13). It comes up to say I am now appointed on this preliminary investigation.

ADV SELLO SC: So, oh, sorry, my apologies.

10 **COLONEL PADAYACHEE:** So, the chief criminal investigator, whom we report to, who is responsible for us in that investigation, has the puzzle of what this whole allegation investigation is about. He briefs us, and we follow his directives from there to go out and search for evidence, take witness evidence. So, what I am saying to you, we at the middle ground, we are the work soldiers out there. Management makes a decision, authorizes it, it comes down, we comply.

ADV SELLO SC: Understood. So, it would not serve much
20 purpose to interrogate the contents of this affidavit with you because it does not come to your attention. When did you first become aware of the referral affidavit and its contents?

COLONEL PADAYACHEE: I think it was during the start of the investigation it was mentioned.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: Ja, it was mentioned that there was a referral on a number of aspects of corruption within Crime Intelligence and ja, that is about it.

ADV SELLO SC: Okay.

CHAIRPERSON: I find it hard to believe that you would not have sight of that referral affidavit. I find that very hard to believe. I mean, that is what is actually going to kick start your investigation as an investigator. Why would that be withheld from you? It just does not make sense. No, I find
10 it hard to believe that, because when you are asked to investigate, that is exactly what you should be given, what is this person complaining about so that I can then start my investigation.

I find it very hard to believe what you are saying. So you are required to rely on what you are told by word of mouth, by your seniors who saw or who had sight of this referral affidavit? Why not just give you that affidavit for you to see for yourself what the complaint is about? No, no, no, I find that very hard to believe, Colonel.

20 **COLONEL PADAYACHEE:** Can I respond?

CHAIRPERSON: Yes, please.

COLONEL PADAYACHEE: Thank you, Chair. Thank you, Commissioners. As I explained in my evidence in chief, is that the section 27 referral, I had no insight into it. I heard about the 27 and the allegations. My chief criminal

investigator, the chief criminal investigator who I report to, who sits with management, he has the more intricate knowledge that comes down to us as investigators and we are ...[intervenes].

CHAIRPERSON: And chooses to tell you by word of mouth what the complaint was about instead of simply giving you that. I understand she or he may speak to the document if they want to when they are briefing you, but why not just give you that document?

10 **COLONEL PADAYACHEE:** So I cannot answer that question.

CHAIRPERSON: You accept, do you accept that it does not make sense for you not to be given that document? It simply does not.

COLONEL PADAYACHEE: Let me just say it this way.

CHAIRPERSON: Do you accept that it does not make sense for you not to be given that document?

COLONEL PADAYACHEE: No, Commissioner.

CHAIRPERSON: Okay, tell me.

20 **COLONEL PADAYACHEE:** What I am responding to factually, and this is factually, the chief criminal investigator who is responsible for us ...[intervenes].

CHAIRPERSON: I am not talking about this instance now. I am talking generally. Does it make sense for the investigator not to be given the section 27 referral affidavit?

Does that make sense, in general terms now.

COLONEL PADAYACHEE: In general terms and hindsight now that you are bringing it, and I would say moreover, Commissioner, and this is the truth ...[intervenes].

CHAIRPERSON: Does it make sense or not, not to be given the section 27 referral affidavit? Does it make sense? [Indistinct]... investigator, any investigator, does it make sense?

COLONEL PADAYACHEE: Commissioner ...[intervenes].

10 **CHAIRPERSON:** I hope you understand where I am coming from.

COLONEL PADAYACHEE: Ja.

CHAIRPERSON: I hope you understand what I am saying.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: I am saying based on what you tell us, the chief investigator tells you orally what happened, what the referral is about, and you are then required to investigate. What I am saying is, even if they are very good at relaying information that they have come across, the
20 bottom line is the best source is the document that they relied on in briefing you. So what I am saying is, does it make sense for you not to be given that source document? Does it make sense?

COLONEL PADAYACHEE: Commissioner, it does not make sense, but I have to be truthful to the Commission and

answer for that particular time. At that time, I did not request it. I did not ask for it.

CHAIRPERSON: I am ...[intervenes].

COLONEL PADAYACHEE: But as you say, it does not make sense and at this point in time, I am saying, yes, sir, it does not make sense.

CHAIRPERSON: That is all ...[intervenes].

COLONEL PADAYACHEE: At that moment in time, we have been briefed and from the operational side, you are
10 listening, he is your chief, you are preparing yourself for your investigation. But what you are saying does not make sense. Sitting here now, I can say, yes, it does not make sense.

CHAIRPERSON: That is all I wanted. It just does not. I mean, looking at everything objectively, it simply does not make sense, which is why when I started engaging you, I said, I find it very hard to believe that you would not have had sight of that document. You insist that you did not?

COLONEL PADAYACHEE: No, I did not have sight of it
20 initially, sir.

CHAIRPERSON: Thank you.

COLONEL PADAYACHEE: I did have sight of it after and I was the one that had given Counsel a copy of the section
27. Thank you, sir.

CHAIRPERSON: Thank you.

ADV KHUMALO SC: Advocate Sello, can I, just to follow up. Colonel, you would have seen now the section 27 affidavit. It makes several allegations. Some of them are siphoning funds from the secret accounts in the country. Some of them are secret funds being given to certain Ministers. Some of them are, so there is a lot of them. And then there is this one that deals with the appointment of an outsider to the position of Brigadier.

Now, when your chief investigator or management
 10 were giving you a task, what did they say you must investigate? Did they say ignore all the other allegations in the section 27 affidavit, focus only on this one? I am asking you that because the January 2025 affidavit and that cover sheet that we looked at on page 680 only deals with the appointment of the Brigadier. What became of all the other allegations that are in the section 27?

COLONEL PADAYACHEE: Commissioner, as I said initially when I spoke, I spoke about myself in a team with investigation. There are several investigations. Two of
 20 them I have, which are in court. There is another investigation that was finalized. And there are other investigations that are still being investigated and to be finalized. Those are the other aspects. To name them was the appointments, the incident of the Leshaba matter. There is the properties. There is a secret service fund.

There is a whole lot of other investigations that are currently taking place. So, therefore, when I did appear in court, I mentioned it, that we are currently busy with other investigations, which includes the accused before court as well as other members in other offences that have been committed ...[intervenes].

ADV KHUMALO SC: And you were ...[intervenes].

COLONEL PADAYACHEE: Within that section 27, it is not just one matter that you have there, it is several different
10 ones.

ADV BALOYI SC: What are the several ones? Can you just ...[intervenes].

COLONEL PADAYACHEE: Several ones where he touches on the secret service fund.

ADV BALOYI SC: No, he is not alleging any facts. He says, I suspect this is what he want to do.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: You cannot speak of it as if it is an allegation of facts. So, you say, out of this section 27, we
20 are investigating other matters and I am inviting you to point out in this section 27 affidavit, what are these other facts that have been alleged that make you investigate these other matters.

COLONEL PADAYACHEE: Thank you, Commissioner. The other investigations that were, the mention of the secret

service account.

ADV BALOYI SC: Okay, let us go to the paragraph that you say is the basis for you investigating this, which you described as investigation of the secret service account. Just take us to the paragraph in the section 27, now that you have seen it. You say you did not know about it, or you had not seen it then. Now that you have seen it, take us to the paragraph that finds that investigation into the secret service account.

10 **COLONEL PADAYACHEE:** Thank you, Commissioner. Let me just go back before I come to the paragraph 7. When the briefing from the chief criminal investigator to us as investigators came, these things were mentioned about the secret service fund, the appointments, et cetera. On the, to point out now, on the section 27 referral, if we go to paragraph 7:

20 “My suspicion is that General Khumalo, Lushaba, Madondo, and many of those who have been appointed are actively siphoning money from the secret service fund in the country.”

ADV BALOYI SC: Yes. What about it? What about that paragraph?

COLONEL PADAYACHEE: It is an allegation that is made, but the secret service fund ...[intervenes].

ADV BALOYI SC: It is a suspicion. It is not an allegation. It is a suspicion. He says ...[intervenes].

COLONEL PADAYACHEE: Yes, Commissioner.

ADV BALOYI SC: My suspicion is this is what they are doing. He is not alleging any facts. In fact, he is not saying, I allege that they are siphoning money. He says, I suspect they are doing that.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: How does that paragraph create a basis
10 for you to now investigate the secret service fund, that paragraph 7, as it stands? That is a very low threshold. Remember, earlier you were discussing with the Chairperson about the threshold that triggers your investigation, it has to be a reasonable, there has to be a reasonable suspicion, reasonable basis. All he says is, my suspicion is they are siphoning funds. He does not say why, where does that suspicion come from. He does not say that. Why do you say this is the basis to investigate the secret fund, secret service fund?

20 **COLONEL PADAYACHEE:** Commissioner, I am finding it hard to explain it in a way that I understand it, and taking it from the document, and my understanding of Crime Intelligence too as well. The secret service fund is open out there for many years, more than three decades.

CHAIRPERSON: Ja, I am going, no, I am going to stop

you. I am going to stop you because my question has nothing to do with the historical operations of the secret service fund and I am quite mindful that we have probably strayed from where Ms Sello's roadmap leads her. So I am just going to make the comment now, and we can always come back to the discussion. You say this section 27 affidavit is the basis for you conducting all the many other investigations, remember, beyond the employment issue.

COLONEL PADAYACHEE: Yes.

10 **ADV BALOYI SC**: Remember, Commissioner Khumalo says ...[intervenes].

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: The complaint is the employment, appointment.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: But you seem to have investigated. What about the other issues that are raised in this affidavit, the suspicions? You say, well, we are conducting many investigations, and I even went to court and told the court
20 that we are investigating many other cases. And I say, show us in this section 27, insofar as you are relying on it, show us which paragraph makes a reasonable, an allegation which finds a reasonable suspicion that funds are being siphoned by these particular people that are named Khumalo, Lushaba, Madondo, and many of those who have

been appointed. And I say, what facts is this man alleging to support his suspicion? And I am worried that IDAC acts just on an expression of suspicion. Then you must have a very big caseload, if your threshold is that low.

COLONEL PADAYACHEE: Commissioner ...[intervenes].

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: As I said, I did not have insight into the section 27 referral at the time of the briefing. When we conducted our, once we started with the
10 preliminary investigation, we subpoenaed documents. On the basis of documents that were received, there was investigations done where the secret service fund came into the frame of it, which gave us a basis to say we need to look at this while we are busy with this investigation.

ADV BALOYI SC: Okay. Lastly, so the documents that you are referring to, based on the investigation documents, they actually showed you that Khumalo, Lushaba, Madondo are involved in siphoning funds.

COLONEL PADAYACHEE: No ...[intervenes].

20 **ADV BALOYI SC**: Is that ...[intervenes].

COLONEL PADAYACHEE: Not ...[intervenes].

ADV BALOYI SC: Does it go that far?

COLONEL PADAYACHEE: The documents did not show and point to Khumalo, Madondo or what. The documents showed that there were possibilities of money being utilized

unlawfully from the secret service fund, money being siphoned.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: So that investigation, we are still busy with it.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: There are allegations there.

ADV BALOYI SC: All right, thank you.

COLONEL PADAYACHEE: That is the only way I could
10 explain it on that. Thank you.

ADV BALOYI SC: I do apologize, Ms Sello.

ADV SELLO SC: [Indistinct]... [microphone off]

ADV KHUMALO SC: Can you maybe complete this picture. Did you, as investigating officer, obtain affidavits from Mr Adams in relation to all these complaints that are mentioned in the section 27? I am asking that because there is a January 2025 affidavit that sets out at least the conclusions in relation to the appointment of the Brigadier.

COLONEL PADAYACHEE: Yes.

20 **ADV KHUMALO SC:** But the complaints in the section 27 affidavit, there were many. In fact, in paragraph 9 of that complaint, Mr Adams says:

“I therefore request the IDAC to
investigate these cases.”

So all of these cases that he has mentioned, and

he is prepared to cooperate fully in the investigations and to explain. So were affidavits obtained in respect of all the cases that he mentioned in his section 27?

COLONEL PADAYACHEE: That is correct. There is not one affidavit of Mr Adams, Chair, Commissioner. There is not one ...[intervenes].

ADV KHUMALO SC: The only ...[indistinct] [cross-talking].

COLONEL PADAYACHEE: [Indistinct]...

ADV KHUMALO SC: Sorry to interrupt you. The only
10 affidavit is the one dealing with the appointment of the Brigadier.

COLONEL PADAYACHEE: Appointment one. So there are other affidavits in the other dockets and investigations that are dealing with that separately. So I hope I ...[indistinct].

ADV KHUMALO SC: I think because we spoke over each other, and I apologize for that, for the purposes of the transcript getting you correctly, can you just repeat that?

COLONEL PADAYACHEE: Thank you.

ADV KHUMALO SC: I apologize that we spoke over each
20 other.

COLONEL PADAYACHEE: Thank you. But there is clarity now, Chair, that there is not one Mr Adams A1. There is the A1 for the Mokwele investigation. There is an A1 for the Lushaba investigation and the other investigations. Remember, Commissioner, there were dockets that were

opened, the ones I mentioned initially, where there were affidavits in there that were very flimsy, did not have much content on it. So it had to be taken, looked at, investigated, and then affidavits obtained. Thank you, Commissioner. Thank you, Chair.

CHAIRPERSON: I do not, and I hope I am speaking for my co-Commissioners here, you should not leave that witness stand under the impression that we are suggesting that the alleged offences were not committed. We do not know that.

10 **COLONEL PADAYACHEE:** Yes.

CHAIRPERSON: Our concern is about a process and whether the investigation pursuant to a referral was properly grounded.

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: That is what we are engaging you on. Whether or not the offences were actually committed is not what we are engaging you, not at this stage.

COLONEL PADAYACHEE: I understand, Chair, and if I could get, and ask to pardon me and maybe I must
20 apologise, I know that you want to know the procedure in it, but I am a participant in this investigations, actively involved with the picture and the scenario and as I spoke to Counsel yesterday, I am also protective over my investigations because I need to complete it and I am having challenges and problems at the moment because

Crime Intelligence is not an easy environment and there are a couple of my witnesses who are no longer taking my calls. So that goes for me to start from scratch again to try and get what I want to get and to prove the case.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: Thank you.

CHAIRPERSON: Yes, perhaps lastly at this stage, not lastly for the day, lastly at this stage, let me engage you on something I understood you to be saying in response to a
 10 question by Ms Sello. You seemed to say once you have received something coming from, let me just loosely say the top, you just go ahead and investigate and you do not question that. A functionary at your level who investigates and whose investigations may have serious implications for an individual surely cannot act like something automated and as opposed to a warm-blooded individual. Let me give this example or let me posit this.

There may be instances where to anybody something that comes from the top is patently unfounded,
 20 patently has no factual basis whatsoever. Are you telling us that even in such instances you just go ahead and investigate and not raise your concerns with those above you about the fact that this is patently unfounded? Are you saying you just act like a robot and go ahead and investigate and not even engage them? As what would

become of that engagement is something else altogether, but I am asking you just about not engaging whatsoever. Is that what you are telling us?

COLONEL PADAYACHEE: No, sir. What I ...[intervenes].

CHAIRPERSON: What then are you saying?

COLONEL PADAYACHEE: What I am saying there, if I do not ...[intervenes].

CHAIRPERSON: And try to link that with the response you gave to Ms Sello then.

10 **COLONEL PADAYACHEE**: Yes, sir. I hear on the response that I have given. From what I heard from my chief criminal investigator and the briefing that he has done, I do not have any concerns.

CHAIRPERSON: You see, I understood you to be saying once I get something from the top then I investigate and I understood that to mean that that is how you operate generally. That is how I understood you.

COLONEL PADAYACHEE: If there is ...[intervenes].

CHAIRPERSON: Correct me if I misheard you.

20 **COLONEL PADAYACHEE**: I will, sir. If there is something that comes from top management, even if it is from the chief criminal investigator, you know, irrespective whether it is chief investigator or who, my point comes that I come from a veteran stage of many years in the service. If there is something that I do not agree with in an investigation and I

find that it is unlawful or that there is something wrong here and that there is an agenda, then I will refuse.

CHAIRPERSON: It does not even have to go to an agenda.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Just at the level of it totally being unfounded factually.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: But of course you may add that if you want to. I did not even get there. It is totally unfounded.

10 Please continue.

COLONEL PADAYACHEE: If it is totally unfounded, Chair, I will mention that it is totally unfounded and if they insist on it, I will step away and refuse to be further involved in it. That is it.

CHAIRPERSON: Thank you. Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. You recall as we were working through that affidavit, I said there is a paragraph I jumped. I would like to go back to that paragraph. It is paragraph 6. And I do, you did indicate that the referral
20 affidavit goes to, I think you called it a case committee. What is a case committee? I think it is about the third committee you now mentioned. I am trying to keep track.

COLONEL PADAYACHEE: Ja, case intake committee, that is the head of office.

ADV SELLO SC: Please say that again, case?

COLONEL PADAYACHEE: Case intake committee.

ADV SELLO SC: Okay. Oh, it is the intake one.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: So that is the head of office with her management or whoever now comes in, whether you call them advisory or whatever.

ADV SELLO SC: I am trying to clarify. So when we had spoken about intake committee, I was not sure if it is the
10 same.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: So it is the same committee, okay. But as the Chair indicated to you, you must have seen the content. You must have seen this affidavit and read it for yourself at some point.

COLONEL PADAYACHEE: No, I did not hear you there?

ADV SELLO SC: You never did?

COLONEL PADAYACHEE: No, I did not hear your question.

20 **ADV SELLO SC:** Oh, sorry. I was saying that at some point after your authorisation, you must have been given access to this affidavit and read it for yourself, and I am saying so because you said you have started other investigations already and they are underway based on the same referral.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: And that, those other investigations will fall under the ambit of Chief Investigator Perumal who is responsible for the broader investigation with the different investigating offices.

ADV SELLO SC: Yes. So how does it work? Remember, we are looking at the Mokwele appointment docket. You indicated that other investigations have started, and
10 Commissioner Khumalo took you to the suspicion set out in paragraph 7 regarding the siphoning of money from the secret fund account. You said that is underway.

COLONEL PADAYACHEE: Just repeat the last part you said?

ADV SELLO SC: You said that investigation is underway.

COLONEL PADAYACHEE: Yes, that, and that investigation, it is not really underway, right, but it has been activated, but there has been no movement into getting to the broader part of it where to start the real investigation
20 into that because of the matters that we were charged with and the way the flow processes went. Chair, with respect, Commissioners, we had a plan of action into what we were going to do with our investigations. So we started with the Lushaba matter, first case matter. And then there was going to be a short break and then we go with the second

matter which is the Mokwele matter. And after that there will be a short break and then we would have went on to the Madondo matter and then followed through with the others.

So if, for example, if there was, what we have done is that we respected that there was going to be a Commission of Inquiry or the Commission of Inquiry, the Commission and the other committee that, with respect, we stepped back because of the allegations and we stepped back. So those investigations that were supposed to still go
10 on and follow, which would have taken us to the bigger picture of what is being said about the capture of Crime Intelligence and everything else, would have come up probably by the fourth matter.

It would have shown the picture where it would have shown that this is not an HR process. This is an appointment for a purpose together with other appointments in strategic places. So, but that is the broader one which we will get to. So I just wanted to just explain that. Thank you.

20 **ADV SELLO SC:** You referenced “our workflow”.

COLONEL PADAYACHEE: Our?

ADV SELLO SC: You said our workflow, if I understood you, to indicate that it is broken down into different investigations.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: So that workflow I proposed to you can only be dictated to by this affidavit. It is this affidavit that tells you what the suspicions raised are and it is even just suspicions. So either in determining with your chief investigator the workflow and the various investigations that must take place, in that process, I still maintain that he would have shared, he would have shared this affidavit to give you insight into what the suspicions are and why you are having the investigations, otherwise, there is a team
10 that is just flying blind.

You are told about the Mokwele appointment. You do not see, and you are given that very terse A1 statement, which speaks only to that appointment. But somewhere there is a workflow that looks at various investigations, the detail of which you as part of that team do not know because you have not seen the section 27 affidavit from where they come.

It is challenging to wrap my mind around your work process and how you even conclude today as you sit there
20 that those various investigations would culminate in demonstrating capture of Crime Intelligence. How do you even get there?

COLONEL PADAYACHEE: Commissioner, Chair, Commissioner, Counsel, it may appear unstructured. It may appear that it looks all over the show, but that is not the

case.

ADV SELLO SC: Then please take us into confidence.

COLONEL PADAYACHEE: And I am going to try and put the picture out to you.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: We, all the criminal investigators that are charged with this, let us call it the Crime Intelligence matter, there is a briefing on the investigation. There are some that are involved in the
10 investigation themselves and others that assist. So, you have the allegations on the different matters that are there. So the first one you had was, I was almost going to say something else, but let us just say the Lushaba matter. Let us put it out. Then the second scenario is the Mokwele matter. And then you have the Madondo matter. I am not going to say about the fourth one, because that is still in the oven.

So, we are briefed on this. But as you progress from the one investigation, the others are coming out to the
20 fore. When you are interviewing your witnesses, your witnesses are from Crime Intelligence. They are from the crime scenes. They talk to you on this matter, but they are also telling you something on that matter and some of these matters are interlinked.

So, that is how you come to know about that and

that and that, if I can explain that more clearly. So, it does not seem that, you know what, we just walk in there and we are all over the show. No, it is systematic. So, when the chief criminal investigator does his briefing, we listen to what he has to say. We ask questions or whatever. We get our taskings and then we go out and do what we have to do, which is then, the prosecution now guides to as well, into what we should ...[indistinct]. You know, we get the evidence, they look at it, what further and stuff like that.

10 Thank you, Chair.

ADV SELLO SC: Now, would it be fair then to conclude that for the Commissioners to understand your workflow processes and using this section 27 referral as an example, the person to really speak to is chief investigator. That is the person that the Commission should really engage with, because you are responsible for but one leg of the bigger picture.

COLONEL PADAYACHEE: Yes, yes.

ADV SELLO SC: Is that what you are suggesting that
20 perhaps we should turn to the chief investigator to get better insight?

COLONEL PADAYACHEE: Yes, I agree, Chair. The chief investigator of the team who is responsible for the whole investigation will be in a better position with regards to that and the 27.

ADV SELLO SC: Now, okay, we shall do so, definitely. You referred to the Lushaba matter, so clearly you have some knowledge of it and I am, I do not want to ask whether you are involved in the investigation or not. No, I am not going there. But you have referenced it quite a few times, so you are aware of the Lushaba matter.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay. I want to refer you to paragraph 6 of this referral affidavit because I had a bit of a challenge
10 working my way through it. If we start at paragraph 4, you will recall we agreed that paragraph 4 speaks of manipulation of procurement processes and processes to appoint and promote. That is what paragraph 4 is dedicated to at page 513, correct?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Then I turn over at 514, paragraph 5. That then introduces Minister Cele and the appointment of General Khumalo himself and there is an issue, a question, no, not an issue being raised that he was appointed without
20 an interview process and without having worked as a senior police manager in Crime Intelligence. So that is another separate, distinct issue. Then I get to 6.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay, I get you. I forgot.

COLONEL PADAYACHEE: Sorry, I nodded.

ADV SELLO SC: The transcript does not see your nod, indeed.

COLONEL PADAYACHEE: My answer to that would be yes.

ADV SELLO SC: Yes, thanks. Then I get to 6, and now that is where it, that appears to be what I would call “the Lushaba matter”. That is what paragraph 6 speaks to.

COLONEL PADAYACHEE: Paragraph 6, yes.

ADV SELLO SC: Ja.

10 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: But paragraph 6, and remember what we have just been discussing and what precedes paragraph 6, paragraph 6 starts with the following words.

“The cover-up of the incident alleged took place at General Lushaba house where his state property was stolen is also concerning.”

What cover-up, do you know, and of what incident, because it says the incident, not an incident? So clearly
20 there was an incident that the author assumes the reader knows but has not referred to up until paragraph 5. So he says that there is a cover-up of the incident. Are you able to shed some light on that, yes?

COLONEL PADAYACHEE: Thank you, Chair, Commissioners. I think the Lushaba matter is the matter

that stands out where a cover-up is very clear in the matter. In this particular matter, the case was opened in August 2022. In this matter, a lady was taken home by General Lushaba ...[intervenes].

ADV SELLO SC: No, that is fine. If I may, I apologize.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: I do not want the details of the Lushaba matter. I am looking at the section 27 affidavit, which is the trigger for your investigation.

10 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: So those are the facts I take you subsequently established.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: But now on the 21st of November, as this affidavit is submitted, all the affidavit tells you is about their cover-up of their incident allegedly concerning General Lushaba at his house. What is it talking about as it tells you here, regarding what precedes paragraph 6.

COLONEL PADAYACHEE: If I am trying to understand
20 you, what cover-up. Is that what you want to
...[incomplete].

ADV SELLO SC: Yes, because I would expect
...[intervenes].

COLONEL PADAYACHEE: What cover-up and who covered up.

ADV SELLO SC: No, I would expect when paragraph 6 it says the cover-up of the incident, I would expect to go back into the affidavit to firstly establish what incident this is and then to understand where is the cover-up. So on the reading of this affidavit, paragraphs 1 to 5 are completely divorced from what is referred to at paragraph 6. It is almost like a chunk is missing from the affidavit.

And I want to understand, what do you understand by the cover-up of the incident, and this is in the referral
 10 affidavit, without the benefit of investigating yourselves to even establish whether there was an incident concerning General Lushaba at all, before it is even covered up.

CHAIRPERSON: And please do not misunderstand the question. The question is not asking you to state what the cover-up was and also the cover-up, ja, it is more. When you read this, when you read this what do you understand the cover-up and the incident? What do you understand those to be? As you read this, would you, looking at this, know what the affidavit was talking about? I think that is
 20 how I understand the question. So Ms Sello is not asking you to tell us what the cover-up and the incident in fact were. That is not the question. As you read this, what would you understand the cover-up and the incident to be without any substantiation? It just comes out of the blue like that.

COLONEL PADAYACHEE: Yes, sir, this is on ...[intervenes].

CHAIRPERSON: Now, please respond to the question.

COLONEL PADAYACHEE: When I read this paragraph, it states that an incident took place at Lushaba's house and ...[intervenes].

CHAIRPERSON: It is quite important to look at the article. The article is “the”, it is not “a” cover-up. And it is “the” incident, it is not “an” incident. You are saying an incident.

10 That is not what this is saying.

COLONEL PADAYACHEE: That cover-up ...[intervenes].

CHAIRPERSON: So the articles there, the “the” and the second “the”, those are quite important.

COLONEL PADAYACHEE: I am still struggling a bit. Maybe just help, just assist me with more clarity on it.

ADV SELLO SC: No, no, please read at your pace and see if you can assist us.

COLONEL PADAYACHEE: What I take from what is here is that it was an incident and that was covered up with
20 regards to what actually happened at Lushaba's house and that is what I take from here. So, and my understanding of it was this, that there was classified items that were stolen from his house.

CHAIRPERSON: You do not, let us see, let us see.

ADV SELLO SC: That is not in the paragraph.

CHAIRPERSON: Sorry, Ms Sello, please, please.

ADV SELLO SC: No, no, Chair, I agree with you. That is not in the paragraph. You see, you are taking information you subsequently learned and you are reading it into the paragraph.

COLONEL PADAYACHEE: My apologies, Commissioner. It is because I am involved in the investigation that these things come out naturally. So, my apologies. I am trying to restrain myself on it, but ...[intervenes].

10 **CHAIRPERSON:** You see, that is exactly where the problem lies. That is where the problem lies, because you must look at this and read it in conjunction with the provisions of section 27 to see if the requirements for a referral have been satisfied. Now, you see, you read reference to the cover-up and the incident. You are coming in cold.

COLONEL PADAYACHEE: Yes, I understand you now.

CHAIRPERSON: You have no idea what the writer is talking about. And what you appear to have done is then to
20 dig and get to what you then considered to be the cover-up and the incident. That is not how you should do it. You must understand from the statement what exactly is meant. Is there enough in the statement or the affidavit? Section 27 requires an affidavit. Is there enough in the affidavit to satisfy those requirements? You simply cannot just talk

about a cover-up and an incident. What on earth are those?
Sorry, Ms Sello.

ADV SELLO SC: Thank you, Chair. And if I may just add to what the Chair says, because the concern is, and I am sure you will appreciate, what you end up doing in your investigations is highly invasive. So you would like to be satisfied that you have the sufficient grounds to be that invasive and start investigating individuals. Would not that be fair? So if the statement does not give you a basis, one
10 would expect a level of restraint before you start using your power to investigate people. Or am I being too rigid in my approach?

ADV KHUMALO SC: Colonel, can I say something?

COLONEL PADAYACHEE: Commissioner.

ADV KHUMALO SC: When we are asking you questions, assume that we are looking at 2.1 in the summons, and what we are trying to establish is whether IDAC operates outside of its mandate in terms of the prescribed legal prescripts, namely section 7(1A) of the NPA Act. So our
20 engagement is aimed at establishing that. That is why we are looking at the affidavit as it stands, and we are saying, would IDAC, looking at the affidavit, without the subsequent knowledge of the facts that you came to learn about a year later ...[intervenes].

COLONEL PADAYACHEE: Yes, sir.

ADV KHUMALO SC: Look at that affidavit and say, it complies with section 27. I have jurisdiction to continue the investigation. So you do not have to look at what did you subsequently learn. You are simply looking at what does the affidavit say. Looking only at what it says, are we in the section 27 territory?

COLONEL PADAYACHEE: Yes, sir. No, I look at it. I am looking at it now and the paragraph 6, when you look at it in terms of what crimes were committed in terms of the
10 relevant mandate, you cannot just extract it from this affidavit just like that, because it talks about a cover-up, right, and theft of property. So when looking at the paragraph, you cannot say that what is required in terms of 7(1A) is in this just by looking at it as it is. That, yes, that is the way I look at it.

ADV KHUMALO SC: That is really the point.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Is that not true for paragraph 5 and 7 as well?

20 **COLONEL PADAYACHEE:** When I look at paragraph 5, Commissioner, I will have a different view by just by reading it and the view that I would have here that it does conform to that, because it touches on corruption. So what is different from 6, where it is talking about a cover-up and theft, whereas 5 speaks to corruption.

ADV BALOYI SC: Yes. Well, 5, I would suggest the operative part of it is it is a suspicion. In paragraph 5, Mr Adams says:

“I suspect that some of the funds are
being given to Minister Cele.”

Are you saying that meets the threshold that triggers your investigation? He has made sufficient allegations to trigger your section 27 powers, or in fact, 7(1A) powers. He says it is a suspicion. He does not say
10 what is the basis for the suspicion.

COLONEL PADAYACHEE: Ja, I think from the word suspect, or suspicion, it does hang in there, you know, in terms of bordering on that, because you need more information, substantiated on that you know. It is just saying I suspect.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: So when you are viewing it in terms of, okay, does it form to the 7(1A), it can be seen differently.

20 **ADV BALOYI SC:** Yes.

COLONEL PADAYACHEE: But as I indicated, Commissioner, with regards to myself, I did not view the section 27 referral, so I am sitting in the middle, and we already went out.

ADV BALOYI SC: Ja, I accept that you did not make the

decision to take this case in, and those who did will come and explain. I think all I was pointing out is, in the light of your concession, in the light of your concession about paragraph 6, whether you are prepared to make the same concession in respect of 5, just looking at 5 as it stands. It says ...[intervenes].

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: -:

10 “I suspect Crime Intelligence money is
being given to former Minister Cele.”

And that is all that he says.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: And then again in paragraph 7, he says I suspect that money is being siphoned by the three that he has named, and many others from the secret fund. So the point really that I was checking with you is just on the face of these paragraphs, forget what you say you have investigated and you just, you now know, just on the face of this, that does not, are you prepared to accept that it does
20 not seem to meet the requirement of what section 27 contemplates, which is there has to be a reasonable suspicion?

COLONEL PADAYACHEE: All that I can say, it is a reasonable suspicion and it is hard for me to comment more on paragraph 5, 6 and 7. I can form my own opinion, but I

do not want to form the opinion for management. I would prefer management come and explain than rather myself explaining something ...[intervenes].

ADV BALOYI SC: Okay, thank you.

COLONEL PADAYACHEE: That I will interpret differently.

CHAIRPERSON: I will not leave it there.

COLONEL PADAYACHEE: Okay, Chair.

CHAIRPERSON: You see the paragraph in front of you.

COLONEL PADAYACHEE: Yes.

10 **CHAIRPERSON:** Can you comment on it? Does what is stated there meet the requirements of section 27?

COLONEL PADAYACHEE: Yes, so I ...[intervenes].

CHAIRPERSON: You apply this section.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: You work, that is what gives you the powers to act, to investigate. As you read that section, regardless of who took that decision, does it meet the requirements of section 27?

COLONEL PADAYACHEE: So when I look at it and I see
20 the word suspect, I suspect, cover up. It is just my opinion that when I look at it in comparison with what section (1A) said, it is my opinion that these words do not give much.

CHAIRPERSON: You see the problem with your approach, and you have done this a good few times, the problem with your approach is that you seem to believe that once an

allegation has been made, then the section 27 requirements have been met. Just because Mr Adams says he suspects without substantiating, then for you that is sufficient.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: How can that be?

COLONEL PADAYACHEE: Commissioner, maybe it is such that I see the allegation and I interpret it like that, and I have given the explanation as to why, but that is why I ...[intervenes].

10 **CHAIRPERSON**: The only explanation you give is that in there a point is made that Mr Adams suspects.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: And he suspects without substantiating. So my point is it seems to me that once an allegation has been made, to you the requirements of section 27 have been met, and surely that cannot be.

COLONEL PADAYACHEE: No, that cannot be, Chair, that I understand.

CHAIRPERSON: So again, I will ask you again, have a
20 look at paragraph 5 and tell me, as you read it, whether you are of the view, the firm view, that the requirements of section 27 have been met.

COLONEL PADAYACHEE: Commissioner, when I look at paragraph 5 and 6 and the requirements ...[intervenes].

CHAIRPERSON: I am asking you about 5 only. That is the

last thing, Commissioner Baloyi was engaging you on.

COLONEL PADAYACHEE: Yes. When I look at paragraph 5, because of the words used and looking at the Act, I can say that ...[intervenes].

CHAIRPERSON: Bearing in mind that there is no substantiation at all. Bearing in mind that there is no substantiation. The suspicion that Mr Adams is expressing has not been substantiated.

COLONEL PADAYACHEE: Yes, sir.

10 **CHAIRPERSON**: Bearing that in mind, are you saying that the requirements of section 27 have been satisfied?

COLONEL PADAYACHEE: No, sir. That is my answer.

CHAIRPERSON: Now, you also seem to, my sense, rather, my sense is that you believe that because, as you allege, you did not have sight of this referral affidavit that makes your position or your situation better. I take the view that it actually makes your position worse. How could you go ahead with an investigation without even check for yourself that there was a well-grounded referral?

20 How could you do that, bearing in mind, as you said when I engaged you earlier, that there may be instances where you may have to query the instruction that you should investigate. So your position actually gets worse if you go ahead with an investigation without having seen the referral affidavit. It does not get better, do you agree with me?

COLONEL PADAYACHEE: I take what you say, Chair, and I understand what you say.

CHAIRPERSON: Do you agree with me?

COLONEL PADAYACHEE: I would agree with you, Chair.

CHAIRPERSON: And why would you not have insisted to see the referral affidavit here?

COLONEL PADAYACHEE: That is why I was continuing on what I was saying, Chair.

CHAIRPERSON: Yes.

10 **COLONEL PADAYACHEE:** You mentioning it now, that, you know, by not seeing the referral and what, the fact that I did not see the referral, if there was something else there that I actually put myself in a bad position, I am saying at that moment in time when the briefing was done with regards to the investigation, I did not think or it come to my attention, hey, but where is the referral. That is not the, you know, that is not the way I worked at that moment in time.

CHAIRPERSON: But exactly for the point that I have
20 made, which you agree with, which is that the referral may well not be properly grounded, and for that reason you may be entitled to take issue with it. Why did you not insist on getting the referral affidavit here?

COLONEL PADAYACHEE: Thank you, Commissioner. I think you highlighted something very important, and moving

forward on that, there is no other answer I can give to say that with regards to future investigations, and as highlighted and pointed out by the Commission, if there is such investigations again, I would request a copy of the referral, and that is what I will do moving forward. But to go back at that moment in time, in that space of time there and then, it did not cross my mind. I am an investigator there working with my chief.

I take it, for me, what he is saying is that if I look at
10 it, yes, everything is fine, and we proceed. So that is what I am saying there, and I cannot put any other words and try and sail around it except to say that moving forward, you have pointed out and highlighted something that I should satisfy myself, say, let me get the section 27 referral, let me have a look at this.

Another point is that because the section 27 referral and the manner in which these cases were highlighted in the media before the Commission, and I sat and listened to this, I have taken lessons from that to say
20 this is what I would implement with myself going forward with these matters. So that being said, and that is what I appreciate, Commissioner, there is nothing more I can say about that. Thank you, Commissioner.

CHAIRPERSON: And I assume that any colleague of yours who were to come here and say that you actually did have

sight of the referral affidavit would be lying. From what you have said, that would be your response. But if there were to be such a person, their story would be more probable than yours on this. It just, as I said earlier, I find it hard to believe that you would not have had sight of this document.

So if there were to be someone who says, no, we actually gave Colonel Padayachee that document, it would be easier for one to believe that story than your story. But, of course, I am not deciding the issue now. I am just saying
10 it would be much, much easier to believe that. I said it up front that it is hard to believe what you are telling us. Do you want to comment on that?

COLONEL PADAYACHEE: Yes, I will comment, Commissioner.

CHAIRPERSON: Yes, yes. I am not saying there will be such a person. Only the evidence leaders know whether that will be so or not. I see Ms Sello, I think I saw her shaking her head. Maybe nobody will contradict you.

ADV SELLO SC: I will neither confirm or deny that there
20 will be such a witness.

CHAIRPERSON: Please respond to my comment.

COLONEL PADAYACHEE: I say this in response, Commissioner, and I want to be honest, I am under oath.

CHAIRPERSON: Yes, yes, yes.

COLONEL PADAYACHEE: And I have been affected by a

lot of things that have been said in the media.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: It does hurt when I know the truth because I am there.

CHAIRPERSON: Yes, yes, yes.

COLONEL PADAYACHEE: And other people speculate about it.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: And coming from the
10 environment and knowing what it is, which is facts, we have
got to ask ourselves, in the search for truth, do we find the
truth? I have served for 44 years. I have come back to
assist to fight corruption. But it has shown that this is a
serious challenge. But people want to know the truth, so
there will be uncomfortable moments.

So to respond to your question, with regard to
somebody comes here and says, no, but I gave Brian
Padayachee that section 23, I say to you that I am under
oath, that I never received that section 27 referral until a
20 couple of months ago when it became an issue and when I
had sight into it.

I immediately, and as I have been throughout my
career, as a disciplined police officer, when a superior and
a Commander comes and briefs me, gives me the, I take
what he says, I listen to it. If it is lawful and I know it is

lawful and I have a feeling it is lawful, I execute it. But I just wanted to point that out, the last one, Commissioner, it does hurt and I am relaying it ...[intervenes].

CHAIRPERSON: Yes, yes.

COLONEL PADAYACHEE: That I have come here to the Commission to speak the truth, to be of assistance to the Commission. I have tried that with the Zondo Commission, and therefore I submitted a Zondo affidavit. General Mkhwanazi may come and also say that, yes, he pointed it
10 out then. We have a person sitting in the witness program since 2012 to date that exposed the corruption in Crime Intelligence. His punishment or his reward is that to date he is still in the witness protection Program and only the people around him because he disclosed the real rot. So it is not something that is easy.

But I do not want to drag my answer too long, Commissioner, but I must, had to get that across. I am here, I am under oath, and what I am saying is the truth. I am not manipulating some of the stuff. The English
20 language is also a challenging thing too as well, how we interpret things and how we come across. But the way I have portrayed and what I have said in my evidence is indeed the truth. I will not cover up, and I will not, as I said, General Khumalo, General Madondo, General Lekalakala are known personally to me. So this adds more

to it like an ongoing needle into you when you have to go on to it. Thank you, Chair.

CHAIRPERSON: In the face of the hurt that you have just expressed, let me grant you this. Cases that may have appeared to be improbable or narratives that may have appeared to be improbable have at times actually been proved to be true. So perhaps for now, let me just say I am keeping an open mind, but of course I have to engage you on my thoughts and it is at that level that I say to you, I find
10 it hard to believe this.

But as I say, let me grant you, or rather let me tell you that some improbabilities have been proven to be actually true. I will leave it at that. But that does not necessarily take away what I have put to you or what I have engaged you on.

COLONEL PADAYACHEE: Thank you, Commissioner.

ADV SELLO SC: Thank you, Chair.

ADV BALOYI SC: Ms Sello, can I just ask a related question?

20 **ADV SELLO SC:** Yes, yes, Commissioner.

ADV BALOYI SC: Colonel, when you get given a matter or you get appointed as an investigator in these circumstances where the trigger was a section 24 referral, what do you get given to get you started?

COLONEL PADAYACHEE: So when, let us call it an

investigation. When it takes place, your chief criminal investigator comes, assembles the criminal investigators, we have this investigation. This is what it is about. Right, there is a 28(13) where your name is on, show that you are designated on it. It is there, that is your authority to carry on with the investigation.

The briefing takes place and then taskings are given from the chief criminal investigator. Brian, this is what you have to do. You, this is what you have to do. So
10 we go out and we do our work, we search, whatever, come back. It is checked to say, no, no, you need to do this or whatever.

ADV BALOYI SC: I think my question is more direct than that. It is, what document, when you start out, do you, we earlier looked at the preamble to the statement, that cover page which is said to be the docket and it has an A1 statement. Is it the kind of material that you get given when you are now designated? You must start somewhere, right? And I say this also mindful of your earlier evidence where
20 you said we went to police stations and found dockets that showed not much had been done in those dockets relating to this allegation, this referral. I ask the question with that background to understand when you start off, what document, what information, in fact, that is recorded, do you start off with. From your chief criminal investigator,

what does he give you?

COLONEL PADAYACHEE: It is what the chief criminal investigator, as he does the briefing, from the briefing, we take the cue from there. In terms of documents, sometimes you will get a copy of the 28(13) to see your name is on there. When your task is being given to you from there, go to Mr so-and-so, right, set up an interview or prepare a section 28 summons for him to come to the office for an interview or whatever, the briefing has been done. We need
10 to do and request cellphone records, do this, et cetera, et cetera.

I know this is a starting point. And the one that is responsible, the lead investigating officer, once all this stuff is brought together, the affidavits, they start compiling the enquiry file. At that stage, you know, let us just say a docket is not open, the enquiry file with all the statements in them, and then that is how you start building from there. But there is no 27 given to you in your hand to say this is the section 27.

20 **ADV BALOYI SC:** So does he give you questions to ask? I am trying to understand how do you know you are going to this potential witness or this person and this is what you are covering with them in your, if you are conducting an interview, how do you know that what to cover with them?

COLONEL PADAYACHEE: So the briefing covers the

whole investigation, the operation, the whole scenario, what is actually, you know, the whole investigation is about. So from there, you take your cue from there. It is like, ja, the investigation. So it is most probable ...[incomplete].

ADV BALOYI SC: Sorry, sorry, you can finish. Sorry, Colonel.

COLONEL PADAYACHEE: Ja, so, yes, that is what I said. You are briefed on the investigation and it is explained to you quite holistically what is there and what you have to do

10 and your taskings from there.

ADV MOTLHASEDI: The 28(2) is what?

COLONEL PADAYACHEE: 28(1).

ADV BALOYI SC: What is that?

COLONEL PADAYACHEE: That is a full-blown investigation. So after your preliminary investigation is done and your prosecutors put together the preliminary investigation and they present it and it is the request for it to go into a full-blown investigation, which is 28(1), meaning now this is going the whole process through the
20 docket phase, through the court enrolment and stuff like that.

ADV KHUMALO SC: Colonel, maybe I did not hear you clearly. In your earlier response to Commissioner Baloyi, you said you see your name in the 28(2), that is how you know that it is you who is going to do this investigation. So

unless I heard you incorrectly, that is how I understood you to be saying that. How you know that a particular investigation is allocated to you, you see that in the 28(2), and that is what you use to move forward.

COLONEL PADAYACHEE: Yes, your name is there, so it does not say ...[intervenes].

ADV KHUMALO SC: What is the 28(2)? So that is the question you are being asked, what is the 28(2) and what does it tell you?

10 **COLONEL PADAYACHEE:** Your name appears on the document, right, but it does not tell you, you are the lead investigator. It gives you the name of the investigators you are authorized to be involved in the operation. That is the document.

ADV KHUMALO SC: The 28(2) that is applicable to the main case we are discussing with you, is it part of our bundle? Do you have it somewhere? Can you bring it with you tomorrow?

COLONEL PADAYACHEE: I am not sure whether it was
20 disclosed. Advocate Sello?

ADV SELLO SC: Let us start with the first. Is it part of the docket?

COLONEL PADAYACHEE: No, the 28 is not in the docket.

ADV SELLO SC: Is it, then it has not been disclosed separately to us like the section 27 affidavit was.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: So that particular document that Commissioner Khumalo references, we have not been provided with.

COLONEL PADAYACHEE: Noted, Counsel.

ADV SELLO SC: If I ...[intervenes].

CHAIRPERSON: Sorry, oh, sorry, Ms Sello. You refer to seeing your name on the 28(2) document you said?

COLONEL PADAYACHEE: That is correct, sir.

10 **CHAIRPERSON:** Yes, so are you basically saying you get given the 28(2) document, or the document that has your name on it, that is given to you? Because that is, you would only see your name if that has been given to you.

COLONEL PADAYACHEE: Yes, it is a document that the chief has, where you see there is your name on that, that you are now designated on this investigation.

CHAIRPERSON: When you see it, where would it be?

COLONEL PADAYACHEE: The chief will have it with him.

CHAIRPERSON: Oh, as the Chief is talking to you
20 ...[intervenes].

COLONEL PADAYACHEE: Yes, when he is talking.

CHAIRPERSON: The Chief has this document.

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: I am sure you already know where I am going. So they have the 28(2), but they do not have the 27

referral. But anyway, we have engaged on that.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: That adds to the point I made about it being hard to believe the story of you not getting the 27 referral, but let us not go there again. I will just refer you to 28(1) with regard to the commencement of the investigation. You will see there in 28(1)(a), if the investigating director has reason to suspect, so again, there is the same, there must be reason or a reasonable
10 suspicion, which is consonant with what 27 provides. So you do not just go ahead on a fishing spree and if you strike luck, then you find what you were looking for. You want to comment? Everything is packed on a reasonable suspicion.

COLONEL PADAYACHEE: Yes, I agree, Chair.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. If I may just follow up on that. My question was going to be, and I think it flows well from your response to the Chair, we know now that we have been dealing with the section 27 affidavit. We know if
20 we go to the end of it, it is dated the 21st of November 2025, correct? The transcription does not see the nod.

COLONEL PADAYACHEE: Oh, yes. Sorry.

ADV SELLO SC: 2024, my apologies, 2024.

COLONEL PADAYACHEE: 2024, 21st November.

ADV SELLO SC: 21st November. So that is the one date.

We know on the other end, at least so far, we have made it to the 6th of January 2025, which is when Mr Adams provides an A1 statement. In between those two dates, can you tell us when the section 28(1) investigation decision was taken? That is one. And secondly, whether it was in writing, and if so, are you able to provide us with a copy?

COLONEL PADAYACHEE: It was the 6th of December where the preliminary investigation was authorised in terms of 28(13).

10 **ADV SELLO SC:** So 6 December, authorisation for a preliminary.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: That is in terms of section 28(13).

COLONEL PADAYACHEE: Yes, 6 December 2024.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: That is the preliminary investigation was authorised.

ADV SELLO SC: Do you have a, and is it correct to assume that it would be authorised in writing? Do you have
20 a copy of that to perhaps include in the documents ...[intervenes].

COLONEL PADAYACHEE: I do not have a copy of it.

ADV SELLO SC: ... that you are sharing with the Commission tomorrow?

COLONEL PADAYACHEE: I will arrange it through

Counsel.

ADV SELLO SC: Okay, thank you. But it is in writing, so it will be on file.

COLONEL PADAYACHEE: Yes. Yes, the 28 documents are in writing. They are authorities, so they are in writing.

ADV SELLO SC: Thank you. So it is authorised, the preliminary investigation is authorised on the 6th of December.

COLONEL PADAYACHEE: On the 6th of December.

10 **ADV SELLO SC:** 2024.

COLONEL PADAYACHEE: 2024.

ADV SELLO SC: When is the section 28(1) investigation authorised?

COLONEL PADAYACHEE: The full-blown investigation was approved about five, more than five months later, in, I think it was 30th of May 2025.

ADV SELLO SC: So there, I will call it the section 28(1)(a) authorisation that was issued May 2025.

COLONEL PADAYACHEE: May 2025.

20 **ADV SELLO SC:** Okay. And may I request to add it to the list of documents you will be bringing tomorrow?

COLONEL PADAYACHEE: Noted.

ADV SELLO SC: Thank you. I heard, and this is slightly off this topic, your response to a question by the Chair at some point was that with the benefit of the engagement you

have had with the Commissioners on the importance of the section 27 referral affidavit, you now appreciate going forward to insist when you are appointed an investigator that you have sight of it in order to satisfy yourself that that affidavit meets the requirements of section 27 and that yes, indeed, the jurisdiction of IDAC has been triggered. You said going forward you know to do that.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Did I understand you correctly?

10 **COLONEL PADAYACHEE:** That is correct.

ADV SELLO SC: Now let us assume you are given and you find that the section 27 affidavit is very scanty and bare and does not even get close to the minimum threshold requirement for a section 27, which would mean IDAC jurisdiction has not been triggered, what do you do as an investigator then? Do you refuse to investigate? Do you send it back to the decision maker with representations? And, of course, we are looking into the future how, what the benefit of demanding that section 27 affidavit would be, and
20 this is not only for you.

I take it you said you were three levels or four levels down. For you and other investigators who find themselves in your similar position, what would be the benefit of that? What options would be open to you as an investigator appreciating, as I am sure you do, better than

us, your work environment?

COLONEL PADAYACHEE: I think speaking for myself and being more comfortable with it and because of my experience and the number of years that I have there, if there is something that I do not like and I am not happy with and if I feel that a particular section 27 referral was improper or was unlawful or whatever and I have commenced with an investigation at that moment in time, I will step down from the investigation because I will refuse
10 to participate in something that started off unlawfully.

ADV SELLO SC: Thank you. And, of course, we are just looking into the future on what you could possibly do. Chair, we have overrun and I think we have abused your time enough. Might this be an appropriate time to stop for the day? Unfortunately, we would have to roll over to tomorrow.

CHAIRPERSON: Thank you. Colonel ...[intervenes].

COLONEL PADAYACHEE: Chair.

CHAIRPERSON: I am sure you can see that Ms Sello is
20 not done. I am not talking about us. We will have to continue tomorrow, so you must be here at 9:30 tomorrow morning.

COLONEL PADAYACHEE: Thank you, Chair.

CHAIRPERSON: Let us adjourn until then.

ADV SELLO SC: Thank you.

INQUIRY POSTPONED TO 15 JULY 2026

INQUIRY ADJOURNS
