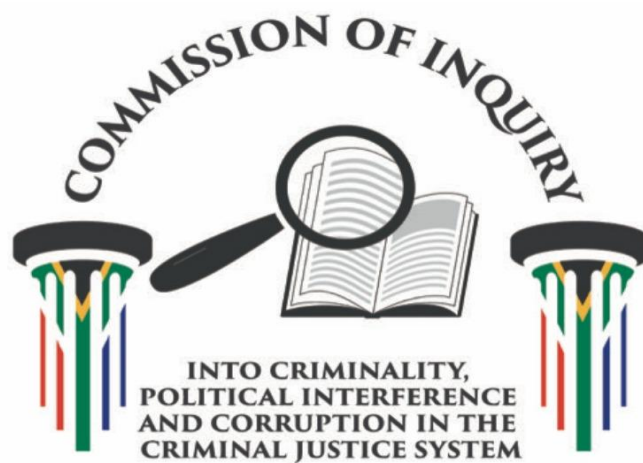


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

23 JULY 2026

DAY 146



PROCEEDINGS ON 23 JULY 2026

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

ADV JOHNSON: Morning, Chair.

ADV BODLANI SC: Good morning, Chair, good morning, Commissioners.

CHAIRPERSON: Thank you.

ADV SELLO SC: Morning, Chair, morning, Commissioners, and morning to Mr Bodlani, and good morning, Advocate
10 Johnson.

ADV JOHNSON: Morning.

CHAIRPERSON: Advocate Johnson, just to perhaps wrap up what we had touched on before we broke at 3 yesterday, you recall we were considering your section 28(13) authorization, and we considered the list of people, the 12 people. You could not, yesterday, recall, no, we confirmed that only the first three people in that Annexure A were referred to in the section 27 affidavit by Mr Adams.

20 The issue was where the names of those itemized from number 4 to 12 were obtained from, because at that point, we agreed that no independent investigations had been undertaken by IDAC. You could not immediately recall. I just want to check whether overnight you were able to recall or in engagement with anyone you were reminded as to the source of those other names. Thanks.

ADV JOHNSON: Commissioners, as I did not have an independent recollection yesterday, I did engage with Advocate Ramsami, whom I said did submit the application and I provide the response as I was given, given I had no recollection myself and Advocate Ramsami indicated last night that she had got the list of names from my office, wherein I had indicated that this list had been provided by Mr Perumal after his having engaged with Mr Adams. And that is the recollection she has and the recollection she
 10 provided to me. I cannot gainsay her recollection because I do not have ...[intervenes].

ADV SELLO SC: Your own.

ADV JOHNSON: An independent recollection. So I am not prepared to say that she is wrong, except that that is the recollection she has.

ADV SELLO SC: So if we accept what you say, and similarly, we too do not have a basis to gainsay it, before you authorized even a preliminary investigation, that suggests that Mr Perumal was already engaging with Mr
 20 Adams.

ADV JOHNSON: That is correct.

ADV SELLO SC: Was he doing so within his mandate in circumstances where IDAC itself had not even authorized an investigation, a preliminary investigation, let alone an investigation in terms of section 28? Why, how could he do

that and on what authority does he so do?

ADV JOHNSON: He would have to indicate why he engaged with Mr Adams over and beyond the initial indication of provide a section 27 affidavit.

ADV SELLO SC: Okay, now as the ID ...[intervenes].

ADV JOHNSON: So I am not sure if as part of that, that that went further for purposes of clarification, but for purposes of the process, we had a section 27. I have given it to the prosecutor and the prosecutor then submits an
10 application.

ADV SELLO SC: And at this juncture, as I understand things, Mr Perumal is not aware of the section 27. You recall yesterday, you said you received it, you considered it, and you referred it to Advocate Ramsami. So none of, the day before yesterday, I had understood you to suggest that you engage Mr Sesoko on that affidavit. But yesterday, you clarified that no, you had not.

ADV JOHNSON: Correct.

ADV SELLO SC: So as at the time you referred it to
20 Advocate Ramsami, you were about the only person who was aware of that affidavit. How does Mr Perumal become aware and go so far as to engage the complainant, Mr Adams, to obtain further information? Technically, he has begun the investigation unless he was informed by you.

ADV JOHNSON: Yesterday, I did indicate that he

contacted Mr Adams to indicate he must provide a section 27, so he is aware of that process only, from my understanding. But what engagements he would have had with him in between that process, Commissioners, I am unable to take further, except that he would have spoken to Mr Adams, had him provide the section 27.

Accordingly, I received a document in an envelope, I perused the document, which is the section 27, and I then handed that to Advocate Ramsami for the legal process of
10 submitting a section 28 application.

ADV SELLO SC: Now, I invite you as the ID to comment on the conduct of Mr Perumal. Do you have any comment to his conduct of initiating what would sound, from what you state, his own investigation before you authorize an investigation to be undertaken by contacting the complainant and obtaining this list of names from him? Is that lawful?

ADV JOHNSON: In terms of the process we followed, and after he engaged with Mr Adams, because I do not have the
20 direct knowledge of why, and if he engaged with Mr Adams, I do rely on Advocate Ramsami, there is not a process for that action.

ADV SELLO SC: Please say that again.

ADV JOHNSON: I said there is not a process that I can refer to Commissioners for why he would have engaged Mr

Adams.

ADV SELLO SC: No, I am asking you about the legality of his conduct. You are the Head of the institution, this is brought to your knowledge that a very senior member of IDAC has conducted himself in the fashion that you describe, and I want to find out from you whether you consider that to be legal, and if it is not, what your comment to it is. And this is before I get to my third question, is now that you have been informed, what steps are you going to
10 take?

ADV JOHNSON: So, nothing, I think procedurally, I get the legality thereof. Procedurally, investigators would engage witnesses or complainants, but in terms of Counsel asking me to provide a specific rule or legislation, there is not one. Having brought that, my now having the answer from Advocate Ramsami, we would have to address the conduct of Mr Perumal, but it is conduct that we would have to escalate, as we do have the IDAC Judge, for an independent consideration of the legality and or not of his
20 conduct.

ADV SELLO SC: You escalate before you consider. You are the Head of the institution.

ADV JOHNSON: Yes.

ADV SELLO SC: So you will not consider the conduct, you will not deal with it, you will immediately escalate.

ADV JOHNSON: No. I am not saying that I will not ...[intervenes].

ADV SELLO SC: What are you going to do?

ADV JOHNSON: I have to consider the conduct, I have to get a response from him. If the response is outside of the framework and the legality, it must then be dealt with through the IDAC Judge.

ADV SELLO SC: Okay, now please locate it within the framework of legality in circumstances where on your own
10 testimony you have not authorized an investigation.

ADV JOHNSON: There is no legality that I can point to, Commissioners.

ADV SELLO SC: And it is important because as we go through these matters, one gets a sense, and I may be wholly wrong, and I would require, I would need you to help me to change my mind. It would sound like everybody in IDAC is on a frolic of their own and this is their start now, with this particular investigation. And as we will see going forward, that that seems to permeate through the
20 organization. Is my understanding correct or wholly wrong? And I do accept I may have the wrong end of the stick.

ADV JOHNSON: They do not go on a frolic of their own. We do adhere to the processes and the prescripts. I am not saying someone may not deviate. Investigators are out in the field. If there is a deviation and it comes to the fore,

then we have to deal with it and understand why the deviation. But there is not a frolic of their own. They have to adhere to the internal processes and as I did indicate, Commissioners, yesterday, apart from the legislation, we have tried to operationalize things in a practical manner. But if they have worked outside of the accepted framework, which is common knowledge in IDAC, then I take the point that Counsel makes.

ADV BALOYI SC: Can I just express the point differently,
10 that you do not have standard operating procedures. You do not have protocols. And I say this because from the first day that you testified as you were reading your statement, that question kept coming up, do you have anything that regulates this internally, and you kept saying, it is how we practice, it is what we do. So the comment comes from that context that you seem to have these unwritten rules of how we do things, and which allow people, your people, to make it up as they go along you know.

If Mr Perumal, Chief Perumal, wants to speak to Mr
20 Adams, there is no prescribed process that wait until we have made a decision. If what you say happened is in fact what happened, then you are telling us there is no prescribed process that he can be held to that says to him, until there is a decision that we are taking this matter on, you may not engage with a complainant or any potential

witness, because this and this and this could go wrong, right, about it, you have, we all have to wait until a decision is made.

If you do not have that kind of operating procedure prescribed, you could never blame him for rushing off to go and hold his conversation, whatever the content of the conversation may be, including if he chooses to prompt witnesses, you know, give me names, do you have names? Your affidavit does not have names, give me names, and
10 what are you saying about those names?

There is nothing that you could say, you acted out of the boundaries of what is acceptable, according to our prescripts. Is that not a fair comment to make?

ADV JOHNSON: I take your point. If you would allow me just to add something.

ADV BALOYI SC: Ja.

ADV JOHNSON: It is not that we work without process. There are processes that are mapped out in the majority of, you get a section 27, when you get a 27, what it is that you
20 must, there is a few of the, not a few, there is quite a few of those processes, Commissioner Baloyi, that have been made practical for operational purposes. The point that is important that you make is we ...[intervenes].

ADV BALOYI SC: When you say made practical, what do you mean, that everyone understands that is how we do it?

ADV JOHNSON: A process map.

ADV BALOYI SC: Okay.

ADV JOHNSON: So they are process mapped.

ADV BALOYI SC: Okay.

ADV JOHNSON: So there are those process maps. The point that you make that becomes important for a future consideration is, what are all the eventualities that we should prepare for, if you take this example, and did we prepare for those eventualities? And I think that is an
10 important point that Commissioner makes and one that I have to agree is we did not process map every eventuality. It is, it therefore in itself becomes a flaw in the process, in step one to step two. But if something happens in between, what are the do's and don'ts? And in that environment, it has been somewhat difficult to process map every single thing. But I do take your point.

ADV BALOYI SC: Yes, I do not want you to misunderstand me to be saying your processes must provide for every eventuality. That would be to put too high a demand and
20 standard that are on you and may prove to be impractical. It is not anything close to that that I am suggesting. What I am suggesting is, and then maybe let me put it kind of differently, it is, I would expect that Chief Perumal and everybody in IDAC, not just you, everybody knows that before a decision is made to take on a case, we do not

1 speak to witnesses. We do not speak to complainants. I would expect that.

ADV JOHNSON: Correct.

ADV BALOYI SC: And if there is such a position, and Chief, then we are able to judge Chief Perumal's conduct that you acted outside of a prescribed protocol in that you went and consulted with a complainant, a potential complainant, even before a decision was made to take on this case for investigation. I am speaking to that, that we
10 have to have a measure against which we measure and consider what you say Chief Perumal did, that he went and got a list of people who are not in the section 27, in the section 27, before you made a decision to take the matter on.

It is, at the very least, it is a point of curiosity. Why would and how would he have gone and gotten these names if there was no decision yet at that point? And I would want to be able to say to him, you acted, to him, not you, to him, Chief, you acted contrary to your operating
20 procedures. Explain why in this case you did that. You understand the point I am making?

ADV JOHNSON: I understand the point you are making, Commissioner Baloyi.

ADV BALOYI SC: Yes.

ADV JOHNSON: And I did say yesterday that, or one of

the days, sorry if I got my days mixed, but as has been the case when a section 27 is maybe lacking in some or other detail, I just want that clarification, I am not taking it to Mr Perumal, that we do engage with the referee for purposes of clarity and or more information. That is allowed.

But in terms of not, you cannot do it, there is no hard and fast rule that you cannot do it. It is preferable you really do not do it, except for purposes of clarity, where the section 27 may lack sufficiency of detail in terms of the requirements of, is there reasonable suspicion made out, et cetera, et cetera. Those are the grounds on which I would ...[intervenes].

ADV BALOYI SC: Yes, I understand you explained that yesterday. I would expect that in that process of seeking clarifications, that is a formal process, it is recorded. It is a formal process. You may not at that point yet have decided to take on the case, but I would expect that there would be a record that Chief Perumal spoke to Mr Adams on this day, and this is what was discussed between them. Otherwise, if you do not have that kind of formal record, then there is no accountability whatsoever. You have no idea what your people are doing.

ADV JOHNSON: Yes.

ADV BALOYI SC: So I expect that there must be a formal process, and Chief Perumal should be able to say to us that

I got an instruction from, I got the section 27 from the ID on this date, right, and we determined, or I determined, that it requires particulars. I met with Mr Adams on this day, right, and here is what I discussed with him. These are the questions I asked him, and this is where I got these names. I am talking about that kind of process. It has to be in place, otherwise, you are in an environment where people indeed get to do what they decide is appropriate without any guidance.

10 **ADV JOHNSON**: Yes, there should be a record in the person's diary ...[intervenes].

ADV BALOYI SC: Yes.

ADV JOHNSON: And or an information note compiled of what the engagement was.

ADV BALOYI SC: Yes.

ADV JOHNSON: I agree with you, Commissioner.

ADV BALOYI SC: You agree. Okay, thank you.

CHAIRPERSON: Advocate Johnson, just for clarity, you said that your processes do not cover all eventualities.

20 What I want to know is whether, with regards to the Fadiel complaint, I am very sorry, the Fadiel Adams complaint or issue, there was anything out of the ordinary which would not have been covered by your processes?

ADV JOHNSON: Not that I can think of, Commissioner.

CHAIRPERSON: Thank you.

ADV JOHNSON: Sorry, Chair, I cannot ...[intervenes].

CHAIRPERSON: Yes.

ADV JOHNSON: Yes, Chair, sorry.

CHAIRPERSON: Thank you, thank you.

ADV KHUMALO SC: Good morning, Advocate Johnson.

ADV JOHNSON: Good morning, Commissioner. The list of names, so what Advocate Sello started with, I had understood you that you say the list of names came from Mr Adams.

10 **ADV JOHNSON:** According to the prosecutor, yes.

ADV KHUMALO SC: Yes, and those names were not in the section 27 referral, the affidavit.

ADV JOHNSON: That is correct, Commissioner.

ADV KHUMALO SC: Yes. Now, your section 28(13) authorization, we were in file 8 on 3282.

ADV JOHNSON: Sorry, the reference, Commissioner?

ADV KHUMALO SC: File 8.

ADV JOHNSON: Yes, I have file 8.

ADV KHUMALO SC: Page 3282.

20 **ADV BODLANI SC:** 83, 38?

ADV KHUMALO SC: 3282.

ADV JOHNSON: 3282. I am there, Commissioner.

ADV KHUMALO SC: So I have moved past Mr Perumal. We are now dealing with the ID's conduct. What you are saying in this authorization is that you have reason to

believe that the offences you have mentioned on page 1 have been committed or are being committed by the people listed in the annexure, and then you mention the 12 people. Now, what was the factual basis for your conclusion or your reason to believe that 8 of the 12 people there have committed the offences listed on page 1 and they should be investigated, because the only people who were mentioned in the affidavit, we know it was 3 or 4 people, and the offences those three or four people had committed were
10 mentioned in the section 27 affidavit.

Now, if all Mr Adams gives Mr Perumal is a list of names and it is now 12 people, what is the factual basis for you coming to a conclusion as you do on 3283 that you have reason to believe that the persons in the annexure have committed the offences you mentioned on page one of the same authorization?

ADV JOHNSON: Commissioner Khumalo, that would have been the application for the authorization. I did ask that that be sent, and Advocate Mhaga, I did send through to
20 him. I think when we were about to conclude yesterday afternoon, it was yourself, Commissioner Khumalo, who reminded that this should have come from somewhere and usually there is an application, and I indicated that the application is not with this document, and we did ask for that document, and the document has been procured that

shows an application, and in that application, these names are also mentioned.

ADV KHUMALO SC: But if the prosecutor has not engaged with Mr Adams, and all you have given the prosecutor is the section 27 affidavit, how can the prosecutor come to you and say, I have reason to believe that people whose names are not mentioned in the affidavit, whose conduct is not mentioned in the affidavit, have committed such serious offences as you list in 1.1 to 1.11 on page 3282.

10 Where would the prosecutor get that from, because all you have given the prosecutor is the affidavit, and on what basis would you then form a view that the people whose names are unknown to you, there is no complaint in respect of these people, there is no affidavit suggesting that any of these people have done anything wrong, how do you arrive at a conclusion, or how do you form a view that they have committed such serious offences and should be investigated?

ADV JOHNSON: I would just like to, if I can, have sight of
20 the application, but I hear the point that you are making, Commissioner. I provided, she was provided with the names, she would have had to indicate them in the summation whether or not they are linked and how they are linked and that is what, if we could just look at that, so that I do not, I took Commissioner Baloyi's point yesterday

afternoon.

ADV KHUMALO SC: [Indistinct]... [microphone off] My difficulty is this, that you give her the affidavit. We have seen the section 27 affidavit. It does not mention most of the people in the annexure. It does not say any of these people have committed offences. You give her that affidavit, and then you say you gave her a list of names. That is all you gave her, without saying what those people did or what their involvement is.

10 All you gave her was a list of names. What could she write back to you based only on the affidavit and the list of names that would make you form a view that these people have committed such serious crimes that would justify an investigation against them.

ADV JOHNSON: The application would have had to link them to the offences, and I would just like to see that part. But what I have to concede, Commissioner Khumalo, is in the absence of there being a link between what is said in the 27 and the list of names.

20 **ADV KHUMALO SC:** That should be the only link.

ADV JOHNSON: Then they should not be included.

ADV KHUMALO SC: They should not have been included in this annexure, because even you, as you got the application, you would say to her, but these people are not in the affidavit. No allegation is made against them. So

where would you have got this link for you to include these people in the application that you give to me, because the same affidavit you would have seen before it went to the prosecutor. So there is nothing the prosecutor could have told you that you did not already know based on the affidavit and based on the list which you gave to the prosecutor.

So for you to form the view that these people have committed fraud, defeating the ends of justice, breach of
10 these various statutes, there has to be a factual basis. It cannot just be made in the dark. And then IDAC uses its powers to attack or to, attack is a strong word, let me withdraw that, to target South African citizens without any factual basis and without any legal basis and decide that it is going to conduct an investigation against them.

I would understand if you said, Mr Adams came back with a supplemented section 27 affidavit and in that affidavit, he made allegations against these people and told IDAC what conduct on their part constitutes an offence
20 because that would have been a basis for you to authorize an investigation against them. But in the absence of that, I cannot see how you could have authorized an investigation against many of these people listed in the annexure. Do you want to comment?

ADV JOHNSON: I can take the point no further.

ADV KHUMALO SC: But you accept?

ADV JOHNSON: I accept the point, because the information came, when you look at the documentation, he has made statements, it is after that date and Commissioners are referring me to as at, and I can take it no further, Commissioner Khumalo.

CHAIRPERSON: One or two questions before the last question. I heard you say, if I could see something, did you mean there is something you would want to look at in order
10 for you to respond meaningfully, or did I misunderstand you? I am asking because if there is something you want to see, perhaps you should articulate that fully so that you are afforded an opportunity to see that.

ADV JOHNSON: Thank you, Chair. The document I wanted to see was the application that Advocate Ramsami would have submitted towards this authorization. I just wanted to see if, in fact, in that document, she stipulates anything about the link. But we can do that in an adjournment ...[intervenes].

20 **CHAIRPERSON:** Ja.

ADV JOHNSON: And I can come back to that point.

CHAIRPERSON: Yes, yes, yes.

ADV JOHNSON: But I do take Commissioner Khumalo's point and agree that beyond that, I can take it no further. It is as it stands at the time.

CHAIRPERSON: Yes, yes. All right, when we resume, perhaps then after the tea adjournment, you should indicate if you want to revisit this point or this issue.

ADV JOHNSON: Thank you, Chair.

CHAIRPERSON: Thank you.

ADV BALOYI SC: Can I say, though, Advocate Johnson, that the linking of these names to any specific factual allegation would not be in the submission from the prosecutor. It would be in whatever submission was made
10 to you by Chief Perumal. So the one that gives, by the time you give the list to the prosecutor, Ms Ramsami, in this case, you already have been told these people are implicated. Otherwise, it would defy logic in how you reasoned this, that all you got was a list, and then you did not ask Chief Perumal.

If this was done verbally, if this was done verbally you did not, you had nothing in writing. If you do not have it in writing, in which case, I would expect you to give us whatever submission Chief Perumal gave to you, which
20 must explain why he is giving you these names, who are these people, how are they implicated, and then you give that to the prosecutor to say include this in your application.

Or he told you verbally why these names must be included in that list, or why are they relevant. So it seems

to me that the answer does not lie in the prosecutor's submission to you, unless you say to us, I did tell the prosecutor why these names, how are they implicated, and why they should be in that list. So you would be looking at the wrong document, it seems to me. And I am not saying do not look at it. Maybe the answer does lie there.

But in my thought process, whoever gave you the list must have said to you, this is how they are implicated, for you to be satisfied that indeed they should be included
10 in this list and you have heard what we say about the power that that authorization you gave, what it imposes and the burden that it imposes on those people. So with that preface, did you discuss or ask Chief Perumal, when he gave you this list, why these people, how are they implicated?

ADV JOHNSON: As I indicated this morning, Commissioner Baloyi, I had no independent recollection, and so I do not want to venture a guess whether or not I even had a conversation, except that when the list was given to the
20 prosecutor, there was no reason why she may not have, I am not saying she did, why she may not have had an engagement with Mr Perumal as they were part of that team. But that is mere speculation and I do take the point that you make.

ADV BALOYI SC: The difficulty I have with your answer is,

the question yesterday on this topic was you were going to find out where did you get this list from and logic dictates to me that once you were told by Ms Ramsami that you told her that you got it from Chief Perumal, that is who you would speak to. That is my expectation. And I know it is a fair and reasonable expectation that once you were reminded, because that is all that Ms Ramsami seems to have done for you is to remind you that no, you are wrong, it did not come from me, I got it from you, and you told me
10 you got it from Chief Perumal.

You have to explain why did you not ask Chief Perumal, confirm I got this, because we know you have been talking to him. You have been asked as you were testifying some questions and you have come back and said, I have spoken to Chief Perumal.

On this question, the expectation, and I do not know why you would not have done it, is once you were reminded, you would have called Chief Perumal and said, remind me, did I get this list from you? He says yes. Then
20 you say, especially because I said to you it appears like an abuse of power, and in the light of that, I would have expected you to say, why did you give it to me? Why did you say to me these people are relevant?

Can you just explain why you did not speak to him about this so that you give us a complete answer, because

it is not helpful, in fact, it does not take the matter any further for you to say, I spoke to Ms Ramsami and she said, I told her it came from Chief Perumal. Well, we are exactly where we were yesterday.

ADV JOHNSON: Correct.

ADV BALOYI SC: So, why did you not speak to Chief Perumal, ask him, confirm you gave me the list, and then the next logical question, because of yesterday's discussion, would have been, where did you get these
10 names from? How did you go about getting them? Why did we include them? Can you just explain why that did not happen?

ADV JOHNSON: I did speak to Mr Perumal.

ADV BALOYI SC: Okay.

ADV JOHNSON: And Mr Perumal has no recollection.

ADV BALOYI SC: Okay, that he gave you the list?

ADV JOHNSON: That he gave me the list. And I said to him, I conveyed the message of the prosecutor, and he conveyed to me he has no recollection of having given us,
20 or given me a list.

ADV BALOYI SC: Okay, so let me leave it there for now, thank you.

ADV SELLO SC: Thank you, Commissioners. I would like us to consider, in relation to the issues under discussion now, the position you assumed before the *ad hoc*

committee, and for that purpose, I would like to refer you to file 3, and in particular, if we could go to page 559. That is CJC375, which starts at 523. That is a transcript of your testimony before the *ad hoc* committee.

ADV JOHNSON: Sorry, Counsel, you want me to go to page?

ADV SELLO SC: 559. Now, let us start, it is not numbered, the lines, but do you see the line that reads “the committee adjourned for lunch”?

10 **ADV JOHNSON:** That is correct.

ADV SELLO SC: I want to pick it up from there. Advocate Arendse says to you:

“We are dealing with the referral by Mr Adams in terms of section 27. You said that apart from seeing him on television screen, you do not know him at all.

You say:

“That is correct.

20 You did not receive the referral yourself when it was received by IDAC?

That is correct.

What is the date of that referral?

The second week of November 2024.”

So before *ad hoc*, you suggested that you did not receive the referral affidavit from Mr Adams. The last two

days before the Commissioners here, you indicated that you received it and you actually triggered an internal process resulting in a section 28(13) application for a preliminary investigation.

ADV JOHNSON: Correct.

ADV SELLO SC: The two are contradictory. Which is the true position, is it what you stated to the *ad hoc* committee or what you are stating to this Commission?

ADV JOHNSON: I took the question at the time to mean
10 that I received it from Mr Adams. That is why I prefaced it as I did by not knowing him. My office did receive the section 27. That is the position. I received a section 27 deposed to by Mr Adams and dated the 21st of November 2024.

ADV SELLO SC: But how could you so understand when Mr Arendse's question is very direct, you did not receive the referral yourself when it was received by IDAC. That is the question.

ADV JOHNSON: I did receive the referral.

20 **ADV SELLO SC:** And your answer to the *ad hoc* committee is that is correct, I did not receive it.

ADV JOHNSON: That is what I took it to mean, that I did not receive it from Mr Adams, but I did receive the referral.

ADV SELLO SC: Where then did you receive it from?

ADV JOHNSON: The referral when it came, came in an

envelope to IDAC, to the offices, through the nominal document receiver process, and then it was submitted to my office.

ADV SELLO SC: Okay. So you received it from IDAC, that is what you wanted to clarify to Mr Arendse. You did not receive it directly from Mr Adams by hand, you received it from IDAC.

ADV JOHNSON: Correct.

ADV SELLO SC: Your engagement does not go that far,
10 but let us move on. Yes, Commissioner?

ADV KHUMALO SC: Are you leaving that page?

ADV SELLO SC: I am not. I am staying with the page.

ADV KHUMALO SC: Yes, no, no, let me leave you to it.

ADV SELLO SC: All right. Now, the second leg of your engagement with Mr Arendse on this issue towards the bottom of that page, Mr Arendse says:

“You are not aware of Mr Adams also
referring this matter to the national
Commissioner of Police, the National
20 Commissioner or the Minister? “

You say:

“No, not at all.”

Do you see what I am reading?

ADV JOHNSON: Yes.

ADV SELLO SC: But we know after engagement yesterday

that MK16 tells us otherwise. Your entire basis for being persuaded by the referral is precisely because you said these issues had been raised with the Minister. The Minister or the Minister's office had purported to refer this matter to you in terms of section 27. We had quite a lengthy engagement and you too with the Commissioners about what was the complaint to the Minister.

We suggested that it related to interference and interception. You insisted that it related to what is
 10 contained in the section 27. Going with your understanding, then it cannot be correct that you did not know that he had complained to the Minister because we know our Annexure MK16, which you confirmed you received and you responded to, although you do not quite recall in what terms, tells us otherwise.

ADV JOHNSON: That is correct. At the time, I did not recall receiving anything from the office of the Minister.

ADV SELLO SC: So why did not you say, no, I, why did, when did you say I do not recall? You definitively say no,
 20 not at all.

ADV JOHNSON: Not at all, correct.

ADV SELLO SC: So what was *ad hoc* to believe? What if *ad hoc* believed that statement? You intended for *ad hoc* to rely on that statement.

ADV JOHNSON: That is correct. I did not recall

remembering, not recall remembering that is stupid English.
I did not recall receiving that from the office of the Minister.

ADV SELLO SC: Yes, Commissioner Khumalo.

ADV KHUMALO SC: You see, Advocate Johnson, your testimony yesterday was that IDAC received the Minister's letter.

ADV JOHNSON: Yes.

ADV KHUMALO SC: And the Minister's letter was unhelpful and you instructed Perumal to get an affidavit
10 from Adams. Now that is completely different to what you said to the *ad hoc* because the impression you are creating here is that it is Adams who came to IDAC and this thing landed on IDAC's desk when in fact yesterday we agreed that based on the Minister's letter or rather the letter from the Minister's office, it is IDAC that reached out to Mr Adams.

So which is which now, because here it is Mr Adams who is coming to IDAC but yesterday you were quite clear that it is the Minister who came to IDAC. The letter
20 from the Minister was not helpful. You then instructed Perumal to reach out to Adams and that is how the section 27 affidavit came about.

ADV JOHNSON: That is the correct position, Commissioner Khumalo. When I say, when I say that Mr Adams came to IDAC, it is Mr Adams who wanted IDAC to

deal with his matter but the position as I indicated yesterday is the position of having first received a letter from the Minister. I did indicate that there were no attachments, I therefore asked Mr Perumal to please engage Mr Adams as Mr Adams wanted IDAC to deal with his matter.

ADV KHUMALO SC: So and then the last engagement on that page, your response to the *ad hoc* gives the impression that Mr Adams' referral landed on your desk in the middle of
 10 December 2024. Now that cannot be correct because on the 6th of December, you gave the authorization, the section 28(13) authorization. So it cannot be correct that the referral landed on your desk in the middle of December 2024, because that is the question.

Advocate Arendse says, after the referral in November, when did the matter land on your desk and what work would have been done on it? So the question, although it is three questions in one, it is specific, when did the matter land on your desk, and your response is, at the
 20 time I received it, it would have been the middle of December 2024. That was incorrect, what you told the *ad hoc* committee.

ADV JOHNSON: This is incorrect, yes.

ADV KHUMALO SC: Because already by the 6th of December, you had had engagement not just with Perumal,

but also with the prosecutor.

ADV JOHNSON: That is correct.

ADV KHUMALO SC: Because you would have by the 6th of December already looked at the application from the prosecutor and formed a view that you are going to authorize investigation into those 12 people that we mentioned earlier.

ADV JOHNSON: That is correct, Commissioner Khumalo.

ADV SELLO SC: Thank you.

10 **ADV BALOYI SC:** The question is, why did you say to the *ad hoc* committee that you received the section 27 in the middle of December? Why would you say that?

ADV JOHNSON: At the time, Commissioner Baloyi, that was my recollection. In coming to ...[incomplete].

ADV BALOYI SC: Ja, carry on, sorry, sorry.

ADV JOHNSON: In coming to this Commission, I had to *aufait* myself properly with all of the facts. I am not saying that the *ad hoc* was not important. I did not go through all of this detail with my team when I went to *ad hoc*.

20 **ADV BALOYI SC:** But you would have prepared to go to *ad hoc*.

ADV JOHNSON: Yes.

ADV BALOYI SC: I mean, I suspect they would be deeply offended if they are to understand you to mean you went to that committee without preparing and looking at your

records on this matter. So I assume, I must assume, that you prepared when you went there. You knew what the issues were. Their terms of reference as in the question that they are required to deal with are not very different from what we are dealing with here.

So you knew that the referral and your investigation and your arrest of General Khumalo and what General Mkhwanazi said on the 6th of July were at the heart of what they are investigating. So you, I cannot conceive of a
10 situation where you did not go into your records of how this started, what culminates in prosecution.

Where did it start? I cannot, it is difficult to accept you saying, I did not remember, when in fact, a lot happened before the 6th of December. A lot. You activated things. You received a section 28(13) application. You authorized things to be done before the 6th of December.

How can you make a mistake? How could you genuinely make a mistake that you received this referral middle of December? It is improbable that is what
20 happened. It is improbable that you did not remember that you received this in November already, before the middle of December. In fact, here you say middle December. We know it is much earlier that you are actioning and signing those documents for people to be investigated. It is improbable that you did not remember it. You can comment

if you have any comment, but that is my view. It is just unbelievable that you did not remember when you answered the question.

ADV JOHNSON: I take your point, Commissioner.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Commissioners. And staying with your testimony before the *ad hoc* committee, can we go to page 557, and just to introduce the issue, it starts at 557, bottom thereof, Advocate Arendse stating:

10 “You mentioned that you do not know,
 have never met Mr Adams. You
 mentioned in your statement that when
 he approached IDAC, he had already
 gone to SAPS, gone twice to the SAPS in
 Western Cape and Gauteng province to
 open cases.”

 Now we know that he did not go to, he did not
approach IDAC. IDAC approached him. We know that now
for a fact. Do you confirm?

20 **ADV JOHNSON**: Correct.

ADV SELLO SC: And then, Advocate Arendse continues,
and then you say somewhat miraculously that these cases
disappeared. Now, do you have firsthand knowledge of this
or are you just conveying information that came to your
knowledge at some point? Your response at 558 reads

thus:

“This came to my knowledge through my own investigators who had taken the section 27 referral affidavit from Mr Adams. Part of what he indicates is that when he received information which he alleges was pushed under his door, which is part of the affidavit, he opened cases in the Western Cape.”

10 Am I to understand that the information pushed under his door is part of the affidavit because the version we have does not have any annexures?

ADV JOHNSON: No, it is part of what he said in the 27. He says he received documents under his door.

ADV SELLO SC: Oh, so which is part of the affidavit is the allegation that ...[intervenes].

ADV JOHNSON: Is the allegation.

ADV SELLO SC: But did you receive those documents? Were those documents disclosed to IDAC?

20 **ADV JOHNSON:** They were not part of the 27 and I am not aware that any of those documents were disclosed to IDAC.

ADV SELLO SC: So you never received, you are not aware of receipt?

ADV JOHNSON: No.

ADV SELLO SC: Let us stay at page 558. At the bottom,

Mr Skosana says:

“Did Mr Adams bring up a classified document in this report? If so, are you authorized to investigate classified intelligence and which specific section allows you to do so? According to the law, only the Inspector General of the Intelligence Office has the authority to investigate such matters.”

10 Your response is overleaf at the top of 559 wherein you state:

“What the ID herself received was a section 28 application based on section 27 referral.”

I will pause there. When you say what the ID has self, you are the ID.

ADV JOHNSON: Correct.

ADV SELLO SC: Oh, so you are speaking of yourself in the third person.

20 **ADV JOHNSON:** Yes.

ADV SELLO SC: I should not get confused, okay. You continue:

“The investigators got an affidavit from Mr Adams. Let us just say the ID was given a document purported to be

classified. The ID is in possession of top secret clearance, that therefore will allow me to look at those documents. However, before we do that, even with the State Security Agency matters to err on the side of caution would indicate to the person giving us a document, can you rather declassify before you give it to us, but I did not have sight of any of the
10 classified documents.”

Now you say you received a section 28 application based on the 27 and you say:

“Let us say the ID was given a document purported to be classified.”

Are you suggesting that you were given a document that was purported to be classified or are you saying, it is a hypothetical example, should you be given a document purporting to be classified?

ADV JOHNSON: It was a hypothetical example.

20 **ADV SELLO SC:** Okay. So you have not seen the content of the documents that were pushed under Mr Adams' door?

ADV JOHNSON: Correct, I have not.

ADV SELLO SC: You remember yesterday, you relied on specifically those documents as a ground for the suspicion that Mr Adams harboured. How could you when you have

not seen the actual documents?

ADV JOHNSON: I rely on what he says in his affidavit, that this is, I received information under my door, this is what the information said. So I relied on his affidavit. There were not, he did not give us classified documents or I did not get any classified documents. So, Counsel, he refers to it. He says, documents having been pushed under my door, I relied on that information. And of course, I think it goes on further to say, he relied on other information he
10 would have got.

ADV SELLO SC: No, I will, if you are looking for the referral affidavit, Mr Adams', it is at file 2, page 512 and the paragraph you are referring to is paragraph 3. File 2, page 512.

ADV JOHNSON: Yes, that is correct.

ADV SELLO SC: Now if we go to 513 at paragraph 3, he says:

20 “My suspicion about General Khumalo and others became more clearer when I found an envelope pushed under my office door at Parliament, which contained some Crime Intelligence procurement documents using secret funds of Crime Intelligence and vetting documents.”

So, if I understand you correctly, within the engagement yesterday that there were no grounds, you said that is one of the grounds. Now you have not seen the content of the envelope and the documents therein, but you rely on Mr Adams who says, trust me, I have read them.

ADV JOHNSON: That is correct.

ADV SELLO SC: Okay.

ADV BALOYI SC: Can I, just on this, follow up on this. I do not remember which provision exactly in your, in the
 10 NPA Act, but there is a provision that provides, that states that if in the course of your investigation, you come upon, I am going to call it information because I do not remember the exact terminology, of a possible offence, another offence, that is not what you are investigating, you can refer on if it is not part of what you are investigating. Am I correct in remembering such a provision?

ADV JOHNSON: Yes.

ADV BALOYI SC: Yes. Now, on this here, in the referral affidavit, Mr Adams tells you that I have intelligence
 20 documents that were shoved under my door and from those documents, I have even more reason to believe that Khumalo and them, General Khumalo and them have committed offences. Is that not typically, because you know, you are in the sector, you know that when he says somebody shoved intelligence documents under, it is

material that he should not have, you know that.

ADV JOHNSON: Correct.

ADV BALOYI SC: Did you do anything in accordance with the provision of your Act that says if you come upon information that suggests a possible offence being committed, you refer it to another agency, did you refer this possession of intelligence documents that were on Mr Adams' own account, were not properly given to him or lawfully given to him, did you refer it to the appropriate
10 agency for investigation?

ADV JOHNSON: I did not, Commissioner, not having any knowledge or sight of the documents he referred to.

ADV BALOYI SC: He tells you, he tells you that he has got documents that speaks to intelligence matters. It is Crime Intelligence documents about procurement and something else. You have acted on his affidavit solely on suspicion. You did not have any facts to action anything in his affidavit. That we have settled. He gives you information that tells you I have, not only in my possession, I have had
20 sight of Crime Intelligence documents that someone gave to me and I do not know who put them under my door.

That seems to me a classical case of you should have referred this to somebody. You do not need to see the documents to know. He is telling you I have got possession of those documents. Why did you not consider it a case

that must be referred to somebody else to look at, the appropriate authority to look at?

ADV JOHNSON: I did not.

ADV BALOYI SC: And you do not have a reason why you did not do it?

ADV JOHNSON: No, ma'am.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: Thank you, Commissioners. Your October 25 statement to the Commission regarding the
10 dockets now, this is as of the 6th of December you have authorized ...[intervenes].

ADV BALOYI SC: Ms Sello, sorry, can I please interrupt you?

ADV SELLO SC: Absolutely.

ADV BALOYI SC: I did not realize you are asking a different question. Advocate Johnson, that referral that Ms Sello referred you to exchange with Advocate Arendse where you say you were not aware that a complaint has been laid with the Minister. Can I ask you to repeat your
20 explanation for why you answered the way you did?

ADV JOHNSON: At the time, I did not remember that letter, at the time when I was at the ad hoc Committee.

ADV BALOYI SC: You did not ...[intervenes].

ADV JOHNSON: I did not recall that we had got a letter from the office of the Minister.

ADV BALOYI SC: Okay, so it is the same explanation.

ADV JOHNSON: It is the same explanation.

ADV BALOYI SC: Thank you. Thanks, Ms Sello.

ADV SELLO SC: Okay, that clarification, staying with the transcripts and page 562, at the top of 562, Advocate Arendse says:

“Were you aware that the matter had also
been referred to SAPS?”

You respond:

10 “Only in so far as Mr Adams in his
affidavit indicated his initial report to a
police station somewhere in the Western
Cape and then he is reporting of the
same to a police station in Gauteng.
That is the only SAPS reference that
IDAC is aware of.”

Then Mr Advocate Arendse refers you to page 283
of the *ad hoc* record and state:

20 “You will see there that that is an email
from Chief of Staff Nkabinde dated 1st
November.

‘Good morning, Major General Sebula.
Ministry has received this complaint from
a Member of Parliament. In order for the
Ministry to respond accordingly, please

furnish this office with a report in responding to this complaint and the details of the investigating officer who was assigned to investigate those cases. Your report is expected by Monday, 4th of November.'

10 You are not aware that this complaint was also being laid with the Minister at the time, Minister Mchunu, and in turn he was referring to the police."

And you say:

"No, not at all."

Mr Arendse continues:

20 "At the front of your bundle, there should be an information note that is addressed to the National Commissioner. It is dated 30th July 2025. It is signed by Lieutenant General Divisional Commissioner Inspectorate, PA Jacobs. This memo records the passage of this complaint by Honourable Adams and how it gets to the National Commissioner. The purpose of the information note is to provide a response to the allegation that one, the Division Inspectorate was complicit and

irregular in the handling of the service complaint levelled by Mr Adams, and two, to reflect on an averment that the Division Inspectorate irregularly handed seven dockets to the Investigating Directorate against corruption, IDAC. Were those the dockets that would have been requested by the IDAC investigation?”

10 Then you say:

“The dockets that were requested are those dockets.”

So you confirm. I will stop there. Yesterday we gave you two annexures, Annexures MK15 and MK16 and they should be a separate, yes. Now, if you go to MK15, start at page 269.

ADV JOHNSON: I have it.

20 **ADV SELLO SC:** At page 270 is a cover page of a document, an urgent memo from Lieutenant General PA Jacobs. It is dated the 30th of July 2025. We, before this Commission, have it as MK15. Now, it would appear that it served before, the same pack of documents served before the *ad hoc* committee and that is the report of ...[intervenes].

ADV JOHNSON: General Jacobs.

ADV SELLO SC: General Jacobs. Now, if you go to page 272, and I take it that the same report with all its annexures served before the *ad hoc* committee as we have it here. At page 272, it lists all the annexures. Now, if one has regard to the content of this report, then it was brought to your attention, at least at the *ad hoc* committee, about the complaint to the Minister's office, it being referred to the National Commissioner, and so on. Why then, when reference was made to this particular document, you do not
 10 say, oh, now I learn that, I am only learning now that this happened?

ADV JOHNSON: I do believe I indicated to the *ad hoc* that at the *ad hoc* this was the first time I saw this report of General Jacobs. It had not been made available to IDAC before. If my memory serves me, I do recall that that was my response, Counsel.

ADV SELLO SC: Okay, now, because we are on this document, unfortunately, I have to leave it for the moment and to come back to it, because I would like to go, I
 20 referred you to your statement, paragraph 8, and you do not have to go there, if you can trust me to read it correctly into the record. At paragraph ...[intervenes].

ADV KHUMALO SC: Can you display it so that at least she has sight of it.

ADV SELLO SC: Yes, that we can do. At paragraph 23 of

your statement, page 7, it reads:

“The referral was made by Mr Fadiel Adams. It was not treated any differently. It was supervised and overseen like any other. There were four dockets that were relevant to the referral. Following the common established process, I sent a letter to SAPS Divisional Commissioner, Detectives, Lieutenant General Senthumule requesting the dockets.”

That is what you state. You repeated that same allegation, or the claim, before *ad hoc* at page 562, having dealt with General Jacob's report. At 562, at the bottom, you state about the dockets:

“They were requested by myself as the ID on a letter to the Divisional Commissioner, Detectives, General Senthumule, given that, as the Divisional Commissioner, Detectives, I automatically and ordinarily assumed that any dockets to be found, or if they were at head office, would have been with the detective component.”

You are asked by Advocate Arendse:

“When would that have been? You received the complaint early in November.”

Your response is:

“I will, when we do break, ask my office for a copy of the letter, but it will have been soon after the authorization of the matter.”

So, it is no earlier than the 6th of December. We
10 have established the date to it now.

ADV JOHNSON: That is correct.

ADV SELLO SC: You say:

“But I do recall having written to Lieutenant General Senthumule, and I recall her then ensuring that the dockets were received accordingly by IDAC.”

Up until yesterday, you had, your testimony was that you requested these documents from Major General Khumalo, and you clarified, not Dumisani Khumalo. I think
20 you provided another name. Mbuso, thank you, Commissioner. Mbuso Khumalo. Please explain. You say from General Senthumule, you say to Major General Mbuso. Who did you request these dockets from?

ADV JOHNSON: So, at the time, Commissioners, my recollection was my letter to General Senthumule. The,

sorry, Chair, at the time, my recollection was my letter to General Senthumule. I had subsequently, but well after *ad hoc*, the investigation team advised and in fact showed that we had first written that morning to General Khumalo of Gauteng, the Detective Head, and on the same day, a letter followed to Lieutenant General Senthumule as the Divisional Commissioner of Detectives.

ADV SELLO SC: Why to both?

ADV JOHNSON: When the letter was written to General
10 Khumalo, it was because Adams had indicated he had opened dockets in Orlando, Chair. That falls under Gauteng, so we had to write to the Commissioner, and he indicated, if my memory serves me correctly, he indicated to the investigator, that is Mr Rapetsu, Mr Perumal, that the dockets were no longer with him, and that the dockets were with the Inspectorate, if I recall the feedback correctly. That would be the Inspectorate that we are referring to in terms of where General Jacobs was the Head.

I then write to the Divisional Commissioner of
20 Detectives, Lieutenant General Senthumule, as the national custodian of the dockets, and General Senthumule facilitated the receipt of those dockets. Those dockets were then, in fact, Commissioners and Counsel, found to be with Lieutenant General Peter Jacobs, and were then handed over.

ADV BALOYI SC: So Mr Adams would have told you on the 6th itself, because you wrote to General Mbuso Khumalo on the 6th, but on the same day you write to General Senthumule for the explanation that you have just given. It must mean, therefore, that after writing to General Khumalo, even before he responded to you, you were in touch with Mr Adams about his dockets, and then he told you then that, actually, they are with the Inspectorate. Is that how it happened?

10 **ADV JOHNSON:** No. No, Commissioner Baloyi. In his affidavit, the section 27 referral, he initially, in paragraph 1, refers to the dockets he opened in the Western Cape, and thereafter, in paragraph 8, he says, a few days after I opened the three cases at the Cape Town Police Station, I decided to go to Gauteng, and I went to Orlando Police Station, where I opened another three cases based on the three cases I had opened in, and that is where we got it from, that he had opened cases again in Gauteng.

ADV BALOYI SC: I understand that. You, and unless I
20 misunderstood you, I understood you to say to Ms Sello that you wrote to General Khumalo requesting the dockets after you, because you are relying on the section 27.

ADV JOHNSON: That is correct.

ADV BALOYI SC: So you write to the Gauteng Head, General Khumalo, to give you these dockets. This is on the

6th of December.

ADV JOHNSON: Correct.

ADV BALOYI SC: Yes. But on the very same day, you write to General Senthumule now at head office, even before you get a response from General Khumalo, and I understood you to say you wrote to General Senthumule because Mr Adams told you that the dockets are with the Inspectorate. Did I understand your evidence correctly, or did I hear it correctly?

10 **ADV JOHNSON:** Commissioner, we wrote to the Provincial Head, Major General Khumalo. He had informed the investigators that the dockets were not with him. It is on that basis that we then made the follow-up on where the dockets were. Now, I am not sure whether it was Investigator Rapetsu or Investigator Perumal who subsequently found out that those dockets were with the Inspectorate, which is why I then wrote on the very same day, but they had got a response that it is not with Major General Khumalo.

20 **ADV BALOYI SC:** All right, and that response, they did not get it from Mr Adams.

ADV JOHNSON: No.

ADV BALOYI SC: I had misheard you then.

ADV JOHNSON: You misheard me.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: Thank you. On that, so you wrote to Major General Khumalo on the 6th, requesting the docket on the 6th. Major General Khumalo advised that the dockets are not with him.

ADV JOHNSON: He had an engagement with one of the two investigators. It is either Mr Rapetsu or Mr Perumal.

ADV SELLO SC: Oh, so pursuant to your letter he then had an engagement.

ADV JOHNSON: Correct.

10 **ADV SELLO SC:** Who initiated that engagement? It has to be one of them, because ...[indistinct] [intervenes].

ADV JOHNSON: It is, it would have been Mr Perumal that he spoke to.

ADV SELLO SC: Okay, so ...[intervenes].

ADV JOHNSON: But the finding out, sorry, Counsel.

ADV SELLO SC: Go ahead, go ahead.

ADV JOHNSON: But the finding out of, that the dockets were then with the Inspectorate is something that was conveyed by Mr Rapetsu, the other investigator.

20 **ADV SELLO SC:** Oh. So I hope your Counsel and representatives are going to keep a running list. Could you avail us that letter that you wrote to General Khumalo and any written response that you may have received thereto.

ADV JOHNSON: Yes, I can make that letter available.

ADV SELLO SC: Thanks. I would appreciate it. Then you

write to General Senthumule.

ADV JOHNSON: Correct, Counsel.

ADV SELLO SC: Same day I take it, the 6th?

ADV JOHNSON: Yes.

ADV SELLO SC: So can I include that letter in the pack, in the request for documents?

ADV JOHNSON: In fact I, when we take the tea adjournment, I do believe I have them with me.

ADV SELLO SC: Okay.

10 **ADV JOHNSON:** If I have not made any notes on them, I will make them available. If I have made notes, apologies, and we will make sure we get you clean copies. I will avail what I have.

ADV SELLO SC: Thanks so much.

ADV JOHNSON: If there is anything short, we will ask for that to be availed to yourselves.

ADV SELLO SC: And then, so you wrote to Major General Khumalo because of the Orlando dockets.

ADV JOHNSON: That is correct.

20 **ADV SELLO SC:** Who is his equivalent in the Western Cape? Did you write to the person with the equivalent post to now get the Western Cape dockets?

ADV JOHNSON: That equivalent would have been Provincial Commissioner Patekile, but there was no need to engage General Patekile because as per Adams himself, he

says, I opened the very same. So, if it is the very same, we get the dockets that we got. We did not go back to, we did not see the need to go back to the Western Cape because he said he opened the same. He made the same allegations, sorry, Counsel, in Gauteng.

ADV KHUMALO SC: Can I just get clarity on this. When IDAC was told that the dockets are with the Inspectorate did it not cross IDAC's mind that, well, if the Inspectorate is already investigating these issues, then it is their mandate.

10 We do not have to deal with this.

ADV JOHNSON: I would agree with you, Commissioner Khumalo, if we knew what the dockets were doing at the Inspectorate. It is for that reason that I write to General Senthumule, who is the custodian of dockets. She facilitates that process. If, in fact, she came back to IDAC to say that we cannot facilitate those dockets from the Inspectorate because there is a, whether it is a service delivery complaint or whatever it is that they were looking at, then we had no right to ask for those dockets.

20 **ADV KHUMALO SC:** It is slightly different. You know what the Inspectorate does, so you know what their function is, and you get told that the very four dockets you are looking for are with the Inspectorate. The first thing that would cross my mind is it means they are investigating the same thing that I am being asked to investigate because

Inspectorate is not the local police station, or it is not the, what do they call it, the station of first, I cannot remember the term that was used many times. That is not where the case is opened. So if a docket is with the Inspectorate, it must be there for one reason and one reason only, to investigate what went wrong with those dockets.

So as part of your thinking process, either under section 27 or 28, did it not cross your mind that, well, if the matter has been referred to the Inspectorate, they have
 10 authority to investigate these issues, then we do not have to duplicate or use the same resources that they are using for that investigation.

ADV JOHNSON: May I respond? That if the, and that is why I just go back to my previous point. If, in fact, General Senthumule came back to indicate that the Inspectorate was vested with the investigation and what that investigation was, and sorry, IDAC, goodbye, you cannot get those, we would have stepped back. The Inspectorate, from how I understand it, Commissioner Khumalo, and if I am incorrect,
 20 my understanding is they were looking at a service delivery complaint.

That is how I see the Inspectorate, is if the rest of the police are not doing what they are supposed to be doing. It does not, of necessity, therefore equate that they would have been looking at the allegations that Adams

made in his section 27 referral, hence the request for the docket.

ADV KHUMALO SC: You said, if I am corrected, but I assume now having seen the June 2025 report, you know that ...[intervenes].

ADV JOHNSON: I now understand it differently.

ADV KHUMALO SC: You now understand it.

ADV JOHNSON: Correct.

ADV KHUMALO SC: Yes.

10 **ADV BALOYI SC:** On this, can I ask this question. When Mr Adams gives you an affidavit, the section 27, and he says, I have laid these complaints, and nothing is happening, or they have been intercepted, before you make the decision to investigate, is there a reason you do not enquire with the SAPS? They are your sister agency. You, at that point, I assume you know nothing.

We have this inadequate section 27, by any interpretation, by any account, it is woefully inadequate. It does not, it contains only suspicions, but more importantly,
20 that affidavit tells you, I have laid a complaint with the SAPS about these matters. Here are the docket numbers. How is it that your first step, as a sister organization, you do not say to the SAPS, we have received this complaint, this affidavit, what is happening, because then you will get an answer, that we are investigating, we are trying to get

hold of whatever's contained in that report. You would have gotten that answer, and you would have known to leave it, as you say, that had you known what is happening, we would have left it at that point.

How is it that that is not the first thing you do, instead of deploying resources? And I deliberately say deploying resources, because you do have a complaint that you do not have adequate resources to investigate all matters that fall within your mandate that you should
 10 investigate. How is it not the first reaction, to find out where the complaint has been laid, before you demand the dockets, to find out, have you received this complaint? Is anything happening? Is there anything to this concern that they have been intercepted?

ADV JOHNSON: What my first port of call, Commissioner Baloyi, was I did call. I called Lieutenant General Senthumule.

ADV BALOYI SC: After ...[intervenes].

ADV JOHNSON: Before the letter.

20 **ADV BALOYI SC:** After you received - before?

ADV JOHNSON: Before I sent a letter.

ADV BALOYI SC: Ja, but this is after you have now made the decision to investigate, so my question is, before you make the decision to investigate, before you say to Mr Perumal, whatever you say to him that makes him go and

speak to Mr Khan, before you say to Ms Ramsami, make an application in terms of section 28(3), include these names, before all of that, you have not yet made the decision we are investigating. You get a complaint from, yes, a member of public, I mean, Member of Parliament, but he is a member of the public, for all intents and purposes.

That complaint is not laid by a Member of Parliament, because he is not representing Parliament. He is a member of public who lays a complaint with you, that, 10 and the complaint, as we discussed yesterday, is my dockets have been intercepted. There is no intention to conduct an investigation. So I am still at that point, where that is the complaint.

How is it that it is not the first step to, that you take to enquire from the SAPS is it so that you have these dockets, what are you doing about them, before you make the decision, SAPS is doing nothing about it, give us the dockets, we are now going to investigate this.

ADV JOHNSON: So, it is on that basis, Commissioner 20 Baloyi, that we wrote to, that we wrote to General Khumalo to find out if they had the dockets. When he said they do not have the dockets, my next port of call was a telephone call to Lieutenant General Senthumule, to indicate, General, we have this matter for an investigation, we are looking for the dockets, we are given to understand that they are not

with Gauteng, and one of my investigators has indicated that he has since learned that the dockets are with the Inspectorate. General Senthumule indicated, and this was a telephone conversation, Commissioner Baloyi, she indicated that she was not aware herself, that the dockets were with the Inspectorate, she would find out, and she would come back.

When she later came back, she had facilitated, then the dockets to IDAC, and I do not want to sound like a
 10 broken record, Commissioner Baloyi, but I repeat that, had she at that stage said, I am sorry, ID, these are with the Inspectorate for a very specific purpose, based on the points that Commissioner Khumalo has made, IDAC would not have asked for those dockets.

ADV BALOYI SC: Maybe the problem lies with me, maybe I am not articulate enough. I do not understand why you do not understand my question. My question is, before you get to the point where you are now demanding or asking for the dockets, because now you are in investigation mode, so you
 20 are taking the dockets from the SAPS, so we do not get to General Senthumule could have said to you, sorry, I cannot give them to you. I am not, you do not arrive there yet, on my question.

ADV JOHNSON: Okay.

ADV BALOYI SC: My question is, when you get the

section 27, so, you receive it in November, right? We have established that, not in December, you received it in November. My question is, when you receive the section 27, which tells you, I have laid a complaint, and now we know you had also received a letter from the Minister's office, so, in November already, you know that Mr Adams has laid complaints with the SAPS in November. At that point, you have not yet made a decision to investigate, you received this affidavit. My question is at that point.

10 **ADV JOHNSON:** Okay.

ADV BALOYI SC: Let us assume you received it on the 21st of November, as the date of that affidavit, and you start actioning it on the 22nd of November, so we are on the 27th of November. My question is, on the 22nd of November, why is it that your first step is arising from this affidavit, is to call whether General Khumalo, whether General Patekile, whether General Senthumule, to say, there is a complaint that has been laid with the SAPS, and the dockets have gone missing, according to the complainant. Are you aware
20 of this complaint, and are you acting on it? Why is it that is not what you do first? In fact, what you do is you go into full investigation mode, and the next thing you do, you are demanding, or you are taking the dockets. So I am not yet there, I am talking about your first move on this.

ADV JOHNSON: It would have been, at the time, would

have been based on the fact that Mr Adams makes the submission that he knows that his dockets would not be dealt with, and or the cases would disappear. And I do take your point that the section 27, as the Commissioners now see it, is inadequate.

At the time, we based it, we based our actions on what was on the section 27, and on the 27, there are allegations being made against the police in terms of criminal allegations, as well as allegations that the dockets
10 would disappear, as they did in Cape Town, and it is on that basis that I make that call, Commissioner Baloyi.

ADV BALOYI SC: So you unquestioningly just accepted his say so. He says to you in the affidavit, my dockets have disappeared, they have been intercepted, and you go into investigation mode. You do not question why would he say that. Let me verify that indeed nothing is being done about them. You say, it is on the basis of what he says. So whatever he says, you just acted on that, because that is what it is. He said so, and you went into investigation mode
20 on that basis.

ADV JOHNSON: That is correct, Commissioner.

ADV BALOYI SC: All right, thank you.

ADV SELLO SC: Thank you, Commissioner. Please help me here, if you can, Advocate. At some point on the 6th of December, you are aware that the dockets referred to in the

complaint are with the Inspectorate, correct?

ADV JOHNSON: Correct.

ADV SELLO SC: I assume that you are aware of the function, or what the function was of the Inspectorate, that it plays a specific role, and that perhaps you know, in general, it is empowered to investigate service complaints against SAPS members.

ADV JOHNSON: Correct.

ADV SELLO SC: So it is acting in terms of law to have
10 those dockets, and to investigate, as you have now subsequently found they were doing, regarding the service complaints.

ADV JOHNSON: Correct.

ADV SELLO SC: Okay. Now, can you then point me to the legislation, or any prescript that then gives IDAC the authority to dispossess the Inspectorate of those dockets while that investigation is ongoing? What gave IDAC authority to demand those dockets?

ADV JOHNSON: IDAC did not intend to dispossess the
20 Inspectorate of those dockets. What IDAC did is, acting upon the section 27, and the subsequent authorization, IDAC sought to determine where those dockets were.

ADV SELLO SC: Yes.

ADV JOHNSON: And again, I repeat that if, in fact, those dockets could not be made available to IDAC, then that

would have ceased that matter, because for me, Counsel, my interpretation is, the Inspectorate is dealing with a service delivery complaint. IDAC has allegations of criminality, together with the allegations by Adams that my dockets will disappear, et cetera.

It is on that basis that we approached the police. I can take it no further than if we were told that the Inspectorate cannot release those dockets, then that is where it would have had to end. We have no authority and
10 we were merely making a request.

ADV SELLO SC: Yes.

ADV JOHNSON: Which request did not have to be acceded to, Counsel. The request could easily have been denied for access to those dockets.

ADV SELLO SC: Now, we know that you addressed a letter to ...[intervenes].

ADV BALOYI SC: Sorry. But you are conducting an investigation, so you could have demanded to them. You do have the legal means to, in the course of an investigation,
20 to demand access to documents, no?

ADV JOHNSON: Correct. If we had to, we would have had to subpoena them through the National Commissioner.

ADV BALOYI SC: Yes.

ADV JOHNSON: And that, unfortunately, is not the way to do the business. And what we could have done, had we not

been given access to those original dockets, would have been to request copies of the dockets, so that we could then look into those allegations.

ADV BALOYI SC: Yes. No, no, I was just clarifying, just in case the impression you leave us with, is that, well, you know, SAPS could have refused with these dockets, and that would have been the end of it.

ADV JOHNSON: Ja.

ADV BALOYI SC: And I am just trying to make sure that is
10 not what you are seeking to convey.

ADV JOHNSON: No.

ADV SELLO SC: Right, thank you.

ADV JOHNSON: Correct, we could have requested copies. That has been practice not just in IDAC over the years, and the police are amenable to giving you copies of the dockets.

ADV BALOYI SC: I am making a different point. The point I am making is, in the course of investigation, you do have the power, the legal power, to obtain documents, and that would have included these dockets. If SAPS had said to
20 you, if General Senthumule had said to you, sorry, you are not getting them ...[intervenes].

ADV JOHNSON: That is correct.

ADV BALOYI SC: Because you are in full mode of investigation, you did have the power and the means to get them legally.

ADV JOHNSON: Correct.

ADV BALOYI SC: Thank you.

ADV SELLO SC: And now, you get some time in the course of the 6th of December, you become aware they are with the Inspectorate. Earlier you said your first letter was to General Khumalo. The second letter was to General Senthumule. Now you know there with the Inspectorate and Lieutenant General Jacobs does not even have a courtesy of your letter, requesting the documents. You know where
10 they are now.

But instead, one of your investigators is off to the Inspectorate to go demand these documents, these dockets, or to, demand perhaps is too strong a word, to obtain these documents. Why could you not have addressed the letter to Lieutenant General Jacobs, requesting copies, accepting that he has those dockets because he too is discharging a particular statutory duty, because all you ever wanted were the content of the dockets.

My logic dictates that you would have asked him,
20 can I have copies of these dockets? I understand that they are with you, the Inspectorate, who is looking into a service delivery complaint. Why could you not do that?

ADV JOHNSON: I worked through the channel that we do when we request dockets, which would have been the Divisional Commissioner, Detectives. However, I need to

go through MK15. I do recall that there were people in the office of General Jacobs who indicated that the letters, both to Generals Khumalo and Senthumule, had been shown to the office of General Jacobs in order to indicate that a request had been made for those dockets.

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

ADV JOHNSON: And that he then had an engagement, sorry Counsel.

ADV SELLO SC: No, no, we will look at that during tea, it
10 is fine.

ADV JOHNSON: [Indistinct]... those documents.

ADV SELLO SC: My question was slightly different. You as the Head of one institution, you now have located the documents you require for your investigation. I would have thought it is appropriate that you once again, at that level, address yourself to the Head of that institution to say it has now come to our knowledge this, may you kindly provide copies. I just point out that you failed to do so. I do not understand why.

20 **ADV JOHNSON:** I take your point. I reiterate, I worked through the channels we do in obtaining dockets, which would be the Divisional Commissioner of Detectives.

ADV SELLO SC: So now we know that on the 6th of October you, you by, I mean IDAC, you received the dockets.

ADV JOHNSON: We requested them on the 6th of December.

ADV SELLO SC: Yes.

ADV JOHNSON: They were received on the 9th of December.

ADV SELLO SC: 9th of December.

ADV JOHNSON: The 6th having been a Friday, Commissioners.

ADV SELLO SC: Okay, thank you.

10 **ADV JOHNSON:** And they were put together and given to us on the 9th.

ADV SELLO SC: 9th of December. Are you able to recall what light they shed on, remember we still have that highly deficient section 27 referral, are you able to recall what light they shed on that referral?

ADV JOHNSON: The dockets?

ADV SELLO SC: Yes.

ADV JOHNSON: The dockets when they were received, were received by Investigator Rapetsu.

20 **ADV SELLO SC:** Yes.

ADV JOHNSON: Investigator Rapetsu then shared those dockets with Advocate Ramsami, who already had the 27 and she appraised those dockets together with the section 27.

ADV SELLO SC: So ...[intervenes].

ADV JOHNSON: I did not peruse the dockets, Commissioners.

ADV SELLO SC: So you do not know whether they added any value to the section 27?

ADV JOHNSON: I am not aware at that time if they added value, except maybe this, if I could give this last response, I can see that we should go into an adjournment, is what did happen later on in January is that Mr Rapetsu, Advocate Ramsami and Mr Perumal, after having gone through those
10 dockets together with the section 27, then had further engagements with Mr Adams in order to amplify or supplement the statements that were in the docket, which I guess by interpretation means they were not up to standard or sufficient.

CHAIRPERSON: Were those, I assume those were what, A1 statements in each one of the dockets.

ADV JOHNSON: Correct.

CHAIRPERSON: On your understanding, were they any better than the section 27 referral affidavit?

20 **ADV JOHNSON:** Of my personal knowledge, I cannot say, but from feedback from the prosecutors and investigators, they were not substantial.

CHAIRPERSON: Ja.

ADV JOHNSON: And it was for that reason that there was that January engagement.

CHAIRPERSON: Resulting in the supplementary
...[intervenes].

ADV JOHNSON: In further supplementary affidavits for
each of the matters.

CHAIRPERSON: All right, thank you.

ADV SELLO SC: Before we break for tea, Chair, may I
close this little topic. And in fact, if you go to MK15 at page
295, that is part of a document from Legal Services, SAPS
Legal Services. It starts at 293. I am particularly
10 interested in 295, paragraph 4, and you say you never
became appraised of the contents of the dockets. So at
paragraph 4, the author of that document, Lieutenant
General Chamane, states:

“Only the complainant's A1 statements
are contained in the six dockets. No
other evidence is contained in the
dockets. The lack of location information
makes it impossible to determine proper
jurisdiction at this stage.”

20 Let us jump ahead to 296 at paragraph 13:

“The current information contained in the
dockets is scanty and too vague to
formulate charges against any suspects.
As a result, Legal Services are unable to
confirm that the required elements of any

offence are contained in the dockets.”

In light of your admission that you never saw the contents of the dockets, you cannot take issue with these findings.

ADV JOHNSON: I cannot ...[intervenes].

ADV SELLO SC: You have to accept them.

ADV JOHNSON: I cannot take issue with these findings, save to say, when he makes these findings, he did not have a section 27.

10 **ADV SELLO SC:** No, it is, I assume it is a he, his analysis of the contents of the docket, that is all I am interested in. So as far as he is concerned ...[intervenes].

ADV JOHNSON: I cannot take issue with his analysis, Chair.

CHAIRPERSON: But based on the engagement we had yesterday, the section 27 referral affidavit could not possibly have made any difference even if the writer of this legal report had had sight of it. It would not have made any difference. I say that because when I engaged you
20 yesterday, you accepted that there was nothing there. Do you accept that?

ADV JOHNSON: I accept the point.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. Might this be an opportune time for a tea adjournment?

CHAIRPERSON: Let us resume at 11:40. Let us adjourn.

ADV SELLO SC: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair, thank you, Commissioners.

ADV KHUMALO SC: What do we put away? We still have the transcript, we have file 3, we have many files. What do
10 we put away?

ADV SELLO SC: Let us put away... file 3 and file 1.

ADV KHUMALO SC: So we need 3 and 1 for now?

ADV SELLO SC: 3 and 1 for now, yes.

ADV KHUMALO SC: Okay.

ADV SELLO SC: I think the transcript is in 3 as well.

ADV KHUMALO SC: And the MK, what do we do with the MK?

ADV SELLO SC: Oh, no, no, no, we keep the MK. Thank you, Commissioner Khumalo. You recall, Advocate
20 Johnson, when we started yesterday, we started with the requirements of section 27 of the NPA Act, the referral affidavit.

ADV JOHNSON: Correct.

ADV SELLO SC: And you indicated to the Commissioners that where the affidavit is deficient, it is standard practice

that you engage the person who made the referral to get clarity. Is it safe to assume that you do so to enable you to take a decision whether or not to proceed? You cannot take a decision at a particular time because of the deficiencies that lie in the affidavit and the engagement with the referee would then, I take it, enable you to look at what you have now collated holistically and say, yes, I have a basis to authorise an investigation. Would I be correct in that conclusion?

10 **ADV JOHNSON**: That is correct.

ADV SELLO SC: Okay. Now ...[intervenes]

ADV JOHNSON: Counsel, before you proceed, may I just respond to something, Chair, a request that I had made prior to tea? There is no need, I take the points that were raised by Commissioner Baloyi and I leave it where it is in terms of whether or not I should still look at the application for the section 28(13).

CHAIRPERSON: Thank you. Thank you, Advocate Johnson.

20 **ADV SELLO SC**: Thank you, Chair, thank you, Advocate Johnson. So then we know that by December the 6th, 9th. apologies, by December the 9th, somebody in the IDAC team now has the dockets and we assume that they would have read those dockets in the same manner that the legal services of SAPS did and arrived at the same conclusion.

That is an assumption on my part. I do not see a basis on which they would arrive at a different conclusion. Would that be a fair assumption?

ADV SELLO SC: It makes sense.

ADV SELLO SC: Yes. So, according to the docket, as far as we know, the next piece of information that comes in is Mr Adams' A1 statement, which is the first document in this inquiry file. And that you will find at EXHIBIT 1, page 683. 683, EXHIBIT 1, exhibit file 1.

10 **ADV KHUMALO SC:** File 3.

ADV SELLO SC: File 3. My apologies, I mixed up my files. And unfortunately, we will have to keep file 8 close by, but I will not call it immediately. They will assist you with that file, Advocate, you do not need to, but not immediately, we will get to it shortly. So, we know that what we have at page 683 of the exhibit bundle is this statement by Mr Fadiel Adams, which is dated the 6th of January 2025 if you look at 684, and it was Commissioned by Dylan Perumal, that is Chief Perumal, correct? At least that is

20 ...[intervenes]

ADV JOHNSON: That is what I see, yes.

ADV SELLO SC: Yes, Colonel Padayachee told us. Now, if we go to paragraphs 2 and 3, my assessment is this is the additional information the investigators obtained from Mr Adams. Now, if we look at paragraph 2, he says in early

October 24, he received information anonymously surrounding alleged fraud and corruption being perpetrated within the Division Crime Intelligence of the South African Police Service.

10 “The allegation related to a certain high-ranking police official being involved in manipulating and manipulating promotional and security vetting processes to unduly benefit a civilian person who worked for BMW South Africa, before being appointed as a brigadier in CI. She apparently has no policing experience and no management experience, and was appointed as the Head of the Technical Support Services.”

At 3 then he indicates that he was informed that:

20 “...there were several highly skilled and qualified senior police officers who applied for the post, but were overlooked by the CI management, who favoured Mrs Mokwele over them. The generals involved are Khumalo CI Head, Lushaba, CI, Madondo, CI, Ligalagala CI, amongst others.”

That is the totality of that statement.

ADV JOHNSON: I see that.

ADV SELLO SC: Would I be correct to assume that at this juncture, now that the referee has been given an opportunity to amplify their original section 27 affidavit, this would be the point to consider what you have on the table, and to determine whether a case has been made out for an investigation?

ADV JOHNSON: That would be correct.

ADV SELLO SC: Now, considering a highly deficient
10 section 27 referral, dockets that say almost nothing, from the perspective of determining whether or not an offence has been committed, and if so, by who, read with the contents of this statement, do you think the referral even gets anywhere close to complying with section 27?

ADV JOHNSON: Apologies, Commissioners, I only see the statement now, so if you will just grant me a moment.

CHAIRPERSON: Take your time.

ADV JOHNSON: Counsel, in my assessment of this reading, together with the section 27, it creates a sufficient
20 enough basis for an investigation to go forward.

ADV SELLO SC: And I take it you say so because, unlike with the original affidavit, we now have the grounds upon which the suspicions are based.

ADV JOHNSON: That is correct.

ADV SELLO SC: And the grounds you find where in the

statement?

ADV JOHNSON: They do refer then to the allegations of fraud and corruption. They say where. They say what the allegation is. The allegation related to:

10 “A 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
before being appointed as a brigadier.
She apparently has no policing
experience, no management experience,
and was appointed.”

And paragraph 3 going on to say that:

“There were several highly skilled and
qualified police officials who applied for
the post and were overlooked in favour
of...”

ADV SELLO SC: Yes.

20 **ADV JOHNSON:** I take it from that reading.

ADV SELLO SC: And that latter part, we know paragraph 3
does not invoke the authority and jurisdiction of IDAC. The
fact that in the course of recruitment, some more deserving
candidates were overlooked is neither here nor there for
IDAC.

ADV JOHNSON: No.

ADV SELLO SC: So the only thing we have is what is set out in paragraph 2.

ADV JOHNSON: Correct.

ADV SELLO SC: And paragraph 2, if it can even be said to lay out, set out the grounds, speaks to manipulation, of manipulating promotional and security vetting processes to unduly benefit a civilian. So it has become significantly narrow now.

10 **ADV JOHNSON:** I hear you.

ADV SELLO SC: Is it not at this point that you revisit your December the 6th authorisation? You remember that we looked at it, file 8, page 3282, which set out a litany of possible crimes and a list of people who must be investigated. Is it not at this juncture you revisit that decision and you say, now that the issues are clarified, I am happy that the referral in its totality now is complete and grounds have been advanced, I can only support charges relating to manipulation of promotional and security vetting
20 processes?

ADV JOHNSON: So, on my reading of paragraph 2, what it says is that an investigation can go ahead to determine whether or not there is veracity in the claims made in paragraph 2.

ADV SELLO SC: You said Mr Adams, no, Mr Adams cannot

instruct you to...

ADV JOHNSON: No, no, no, I am saying that the information herein, is for me, these are the allegations as they are now being made out a bit more clearer. These allegations should be investigated, whether or not they support his allegation or not. It is at that juncture, Counsel, that one is able to make a conclusive decision to then stop that process because there are allegations being made. If they are not followed up, we could have been accused of
10 not having conducted further investigation. That is just my assessment of where we are.

ADV SELLO SC: Chair?

CHAIRPERSON: Advocate Johnson, you remember your and my engagement of yesterday about factual conclusions that are lacking in factual substratum, supporting the factual conclusions.

ADV JOHNSON: Yes, Chair.

CHAIRPERSON: I will suggest this to you. I see the content of paragraph 2 to yet again make factual
20 conclusions which to my mind are not different in substance to the factual conclusions we dealt with yesterday.

ADV JOHNSON: I understand.

CHAIRPERSON: And do you agree?

ADV JOHNSON: I agree.

CHAIRPERSON: So I do not see the basis on which you

would, based on this affidavit, have come to the conclusion that now there is enough foreign investigation to be conducted. If you accept that these are factual conclusions that are not supported by factual allegations that support the conclusions. So I do not see how you get to the answer you gave to Ms Sello.

ADV JOHNSON: Chair, that was just my reading and understanding of it. And I indicated I see this for the first time today. However, I follow the sequence of the
10 reasoning that is made by the Chair and I agree.

CHAIRPERSON: Do you agree with the suggestion I am making?

ADV JOHNSON: I agree with your suggestion.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair.

ADV KHUMALO SC: Can I just...

ADV SELLO SC: Yes.

ADV KHUMALO SC: ...draw to Advocate Johnson's attention, Advocate Johnson, appointments to senior
20 management at SAPS level are governed by National Instruction 11 of 2017. And it appears to me that IDAC is not even familiar with this National Instruction because when Colonel Padayachee was here, he struggled to give answers in relation to this document. Yet, this is the document that governs every step in the appointment of

individuals such as the brigadier we are talking about here. And clause 17 of this document, I hope it has been provided to you, the National Instruction. I see the attorneys seem to have stepped out, but it is... National Instruction 11 of 2017, I had asked that a copy be made for you. The second last page, clause 15, just look at the first page first.

ADV JOHNSON: The one that starts with the purpose?

ADV KHUMALO SC: No, no, look at the cover page. It says National Instruction 11 of 2017, Appointments to Posts
10 in Senior Management Service.

ADV JOHNSON: I see that.

ADV KHUMALO SC: And then if you go to clause 15, which is the second last page...

ADV JOHNSON: I am there, Commissioner.

ADV KHUMALO SC: Ja, it says:

“If a candidate is appointed and it appears that the candidate did not comply with the requirements of the appointment...”

20 That is paragraph A, we can skip B because B relates to the non-disclosure of criminal record and goes to C:

“...if it appears that the candidate provided false information in his or her application or letter of acceptance...”

Or D;

“The candidate is unable to take up the post...”

Look at what follows;

“...the matter must be reported...”

And I emphasise the must;

“...must be reported to the Divisional Commissioner Personnel Management for a recommendation to the National Commissioner on whether or not the candidate may retain his or her appointment.”

Do you see that?

ADV JOHNSON: I see that, Commissioner.

ADV KHUMALO SC: So the prescripts at SAPS govern a situation where an allegation like this is made. Because IDAC is not qualified to determine whether somebody qualifies or does not qualify. If such an issue has arisen, it then gets reported. In fact, it must be reported to that person so that that person can investigate and then make a recommendation to the National Commissioner because it is the National Commissioner of Police that appoints people to this post. Do you see that?

ADV JOHNSON: I see that.

ADV KHUMALO SC: But it bothers me that your investigator, because I do not think this would have been

brought to your attention, but your investigators did not even pay attention to a national instruction which governs appointments at this level. And later on, when we go through the provisions of this document, you will see that it governs how panels are set up, who recommends, who approves.

It governs how candidates are interviewed and scored. It governs how the recommendation to appoint is then made and who recommends and who appoints. But
10 your investigators say nothing about this. In fact, they pay no regard to it. Because even the definition of what is appropriate management experience, not management position, do not confuse the two, appropriate management experience, the only place where you find that definition is in this document.

ADV JOHNSON: Okay.

ADV KHUMALO SC: And your investigators, for reasons that are not clear to me, paid no attention to this and proceeded instead to target a civilian and deal with her in a
20 manner that I have serious difficulties with. So going back to the affidavit, because it goes together, so let us go back to the affidavit. It goes together with the cover page, because the cover page on 682 is described as the statement.

And the reason why you have an affidavit is

because everything Mr Adams wants to say cannot fit in this page, on this page 682. So the affidavit has to be an annexure to this page which says South African Police Service Statement and then has description of the offence, where the offence took place, what the offence is. So if you just look at the particulars of the offence, it says the date of the offence is October 2024. Do you see that?

ADV JOHNSON: I see that.

ADV KHUMALO SC: So there is a specific date. And then
10 it says the scene of the offence. It says it is at Crime Intelligence Officers Prieska Street, Erasmuskloof, Pretoria. Do you see that?

ADV JOHNSON: I see that.

ADV KHUMALO SC: So that is what Mr Adams limits himself to, because this document gave him options. You will see when it talks about date and time of the incident, he could have chosen the starting point and the end point, but he limited himself to a particular date. And then same with the scene of the offence. It gives him the option between
20 did it start in Cape Town and continue and conclude in Pretoria, but he limits himself to a particular date when a particular decision was made and he says that is the offence, that is the date of the offence, it took place at Crime Intelligence offices. Do you see that?

ADV JOHNSON: I see that, sir.

ADV KHUMALO SC: But IDAC's investigation goes to April, it goes to May, it goes to June, and it targets this individual civilian in circumstances that are simply not justified by the referral or the statement or the affidavit itself.

ADV JOHNSON: I see that.

ADV KHUMALO SC: Do you want to comment? Because we will come back to that later.

ADV JOHNSON: I see that, and I see that once you read
10 the national instruction of the police, I see the point that you make.

ADV KHUMALO SC: Even on panels, it is very clear. If there is a problem with a panel, there is a procedure for that. If there is a problem with a shortlisting, there is a procedure for that. And this document governs all those things.

ADV JOHNSON: I take the point. I see the point.

ADV KHUMALO SC: Thank you.

ADV JOHNSON: Thank you, Commissioner Khumalo. For
20 the record, that national instruction for future readers is at file 3, page 706. Exhibit file 3, page 706. Now, staying with the statement then, the second statement of January 2025, do you still have your second statement, the A1 by Mr Adams? Do you recall I said it is page 682?

ADV JOHNSON: Yes.

ADV SELLO SC: Yes. Now, I am still at paragraph 2.

ADV JOHNSON: Yes, 683?

ADV SELLO SC: 683.

ADV JOHNSON: Thank you.

ADV SELLO SC: Yesterday, you – or day before yesterday, I have lost track of time now, I apologise. But you highlighted the provisions of section 29 of the NPA Act, and 29 capital A, which states:

10 “An investigator may, subject to control
 and direction of an ID, exercise such
 powers and perform such duties...”

I am interested in that phrase, subject to the control and direction. And I – my proposal to you is at this juncture that you do quality control or quality check to determine whether to proceed with this investigation and in order to do so, you must satisfy yourself that whatever is described in the referral affidavit and firstly complies with section 27 of the Act, but most importantly, brings you or brings that complaint within the confines of section 7. Remember
20 section 7?

ADV JOHNSON: Correct.

ADV SELLO SC: That we dealt with. Now that we are here, what about all these documents leads you to a conclusion that this matter relates to serious, high-profile or complex corruption, commercial or financial crimes? As

Commissioner Khumalo points out, whatever is clarified by the second statement is that this is about employing a civilian and there is a process in terms of initial instruction to address that issue.

So it cannot be, I suggest, that that employment could come anywhere close to section 7, capital A. How do you get there? We are looking at the same information, you and I now and I conclude that you could not reasonably have come to the conclusion that we are now within 7A. I
10 want to understand how you get there.

ADV JOHNSON: So, Counsel, I get there in terms of the allegation of fraud and corruption and the unduly benefiting of a civilian. Hence, I said initially, I am not going back on agreeing with the sufficiency hereof. At the time, the assessment is whether there is fraud and corruption and whether someone unduly benefited and that it does allow for further investigation.

ADV SELLO SC: So you are suggesting that you went by section 7, bracket 1, capital A, B. You say that what the
20 referral points out gets nowhere close to the provisions of Sub-A. So this is just sheer forgery. No, you said fraud and corruption.

ADV JOHNSON: That is correct.

ADV SELLO SC: So you skipped A, the requirement that the matter must be serious, high-profile or complex

corruption, commercial or financial crime cases. You completely ignored that part.

ADV JOHNSON: Not ignored that part, that it falls within the ambit of the 7B.

ADV SELLO SC: But then what is so serious, high-profile, involving complex corruption, commercial or financial, in what we have just looked at?

ADV JOHNSON: It is in the main the fraud and the undue benefit.

10 **ADV SELLO SC:** What is complex about those?

ADV JOHNSON: Not that it is complex. If you would allow me to ...[intervenes]

ADV SELLO SC: Oh, no, no, my question was, I took it that IDAC's mandate is in the main captured in Sub-A. So firstly, remember we had a conversation about a determination of whether when a matter is brought to you, you must, a determination of whether it is serious. Now, we may differ about how it should be read. But one would expect that high-profile or complex corruption, commercial
20 or financial, they must feature somewhere in there.

Now, I want to know, now that we are here on the 6th of January, what is so serious, high-profile or complex corruption? What is commercial? What exposes a commercial, a serious commercial or financial crime? Because I would suggest, absent that, then IDAC ought to

walk away. What is your response?

ADV JOHNSON: So, if I could just first indicate where I saw that it fell, and I have a response to it.

ADV SELLO SC: No, no, you will come to where you saw it fell. You have to, at least for my benefit, get us past A, which is your starting point.

ADV JOHNSON: Yes, so for me, Counsel, that even if you do not have A, there is B, which relates to the fraud, forgery, uttering, theft, any offence involving dishonesty.

10 That is my reading of where it fell.

ADV SELLO SC: So, you read this section to provide the Office of the Investigating Directorate shall carry out any functions incidental to investigations, and we have A, the serious high-profile, or relating to fraud, just like SAPS.

ADV JOHNSON: Yes.

ADV SELLO SC: No difference between you and SAPS?

ADV JOHNSON: No.

ADV SELLO SC: No difference between you and Hawks?

ADV JOHNSON: No.

20 **ADV SELLO SC:** What are the various mandates of these institutions, if you also overlap? And I read B as suggesting relating to additional related offences. So, it is additional to something, and I suggest it is additional to A. IDAC's entry point has got to be A. In the absence of that, I do not see how IDAC's gets to investigate.

ADV JOHNSON: If you look at...

ADV BALOYI SC: Maybe, Ms Johnson, as you answer the question about your mandate, you should also have in mind and speak to why IDAC was formed in the first place. We always had the SAPS, which always had the mandate to investigate fraud, forgery, uttering, and all of that. So, maybe consider also why was IDAC formed in the first place as you answer what is your mandate and how you interpret this 7(1)(A).

10 **ADV JOHNSON:** Thank you, Commissioner. So, under Capital 1A, we have relating to serious high-profile or complex corruption, and then it has commercial or financial crimes. And that then takes you to the additional, which is in B, which is fraud. There is nothing about – the serious high-profile or complex corruption is precisely what we were formulated for, Chair, is to deal with serious high-profile complex corruption matters in the main, the related offences, but to deal with those that arise from these Commissions of Inquiry, the state-captured Mpati and
20 Nugent, and then other matters that may be referred to IDAC, be they section 28(1)(A) or by section 27. But the main gist of the question by Commissioner Baloyi is IDAC was formulated to deal with serious, complex, high-profile corruption matters.

ADV BALOYI SC: And you say a theft that SAPS can

investigate is a matter that IDAC was formed to investigate?
And I am going to give you a truly ridiculous example. A theft of a motor vehicle. If Mr Adams had referred to that in section 27 and said a vehicle was stolen, are you saying that you would be entitled to investigate it under B?

ADV JOHNSON: No.

ADV BALOYI SC: Why? Why not?

ADV JOHNSON: Because that matter falls within a different mandate, and that matter falls within the mandate
10 of SAPS. If you would allow me to just, and then ...[intervenes]

ADV BALOYI SC: You can explain.

ADV JOHNSON: ...I know you would have other questions, Commissioner Baloyi. The theft relates to a very specific environment. It relates to the Crime Intelligence environment, and it relates to the theft of the secret funds or the slush funds, as he put it.

ADV BALOYI SC: No, but that is not what he is saying in that paragraph, too. Remember he gave you this affidavit,
20 section 27, which contains no facts whatsoever. We have agreed to that.

ADV JOHNSON: Yes.

ADV BALOYI SC: It contains no factual material. That is why you went to him, or Perumal, somebody went back to him, to get further clarification or further detail. Now the

grounds to support the suspicion, and all he comes out with is that paragraph, too, which is about unduly benefiting a civilian who did not qualify when there were three other people. What does it have to do with your mandate?

ADV JOHNSON: Commissioner Baloyi, from what I understood, and the investigators will have to give the detail, I understood as follows, that when they got those dockets, the four dockets, they took additional statements in each of those dockets. This would have been the one
10 that relates to the allegations of the appointment, but that there would have been other statements that would relate to the theft of the funds, et cetera, that would take that matter differently. But that is the information I have, as they took additional statements, Chair, per docket. This matter, for me, relates to a very specific ...[intervenes]

ADV BALOYI SC: So, ja, even with that, we can limit it to this specific matter, and the question remains, what is it about this specific matter? You say there are other files or other dockets, that is where we will find that it falls within
20 your mandate, but we are talking about this specific docket. That on this docket, where this statement belongs, if all you have in this docket is the section 27, and then you have this statement, it looks like this is a matter that belongs to the SAPS at best, and we have that initial instruction that tells the SAPS how to deal with this matter.

ADV JOHNSON: If I could just add that, from what I understand, that after the investigations continued, the docket does not consist only of. Whether or not that is sufficient is a debate. But if you take it just on this, and just on the section 27, it goes back to the question that Counsel asked, as well as yourself, Commissioner, then it should have fallen within the national instruction of the police.

ADV BALOYI SC: But remember also that at this point you
 10 have already made a decision to investigate, and I do not mean to reopen that debate that we have had, but this, in fact, is now part of an investigation, because you have already made the decision to investigate. So even if you had had sight of this post the decision to investigate, it has no consequence to your decision, because you have already made the decision to investigate. And when you made the decision, you did not even have this. This, in fact, further clarifies that this grievance as it relates to this employee in particular, and her ending up being charged, is really a
 20 grievance about someone having lost out on an appointment, and it is no more than that.

ADV JOHNSON: I see the point you make, except that I just go back to the answer I gave, that more investigations were done, Chair, and it is based on the more investigations that were done that would have been translated to the

charge as it stands.

ADV BALOYI SC: And the charge of gratification against her.

ADV JOHNSON: Yes.

ADV BALOYI SC: Okay.

ADV JOHNSON: But as it stands here, I took the point and agreed to the point that if this is all that there was, then it does fall under the national instruction and should have been elevated, Chair.

10 **ADV BALOYI SC:** Okay. Thank you.

CHAIRPERSON: Let me invite you, Advocate, to engage in a close interpretative exercise. As Ms Zillow touched on it, paragraph B of subsection 1, uppercase A, refers to 'additional related'. I want you to please give meaning to additional. Additional to what? And to also give meaning to related. Related to what? Can you please do that?

ADV JOHNSON: So just on my reading?

CHAIRPERSON: Not just your reading.

ADV JOHNSON: On a reading?

20 **CHAIRPERSON:** Yes.

ADV JOHNSON: The related to additional related offences, Chair, read from paragraph A above, is relating to serious high profile or complex corruption or commercial or financial crime cases. I take the commercial or financial crime cases relating to fraud, et cetera.

CHAIRPERSON: So at least you accept that IDAC cannot just jump and investigate any fraud, any forgery, any uttering, any theft.

ADV JOHNSON: Not from the reading of that.

CHAIRPERSON: So it must be additional to what is envisaged in paragraph A.

ADV JOHNSON: There must be a relationship with paragraph A.

CHAIRPERSON: Oh, all right, I just wanted to be sure.

10 Thank you.

ADV SELLO SC: Thank you, Chair. Now, on that understanding, we have section 27. We have the dockets, the A1s in the dockets, as we now have come to learn, that was the only thing that was in the dockets. We have this latest A1 statement from Mr Adams. Then can you please indicate what those documents collectively, how those documents collectively land you at A? We know their contents now.

ADV JOHNSON: Sorry, Counsel, repeat.

20 **ADV SELLO SC:** Those documents, the original section 27, the A1s in the respective dockets, which is what the legal adviser at SAPS said, that is all that was contained in the dockets and I assume that is precisely what you found. You could not have found any more than the Inspectorate had. And thirdly, Mr Adams' January statement, the one we

are looking at now with two paragraphs. What in any of those documents collectively led you to the conclusion that the documents disclose serious, high-profile, complex corruption, commercial and financial crimes?

ADV JOHNSON: I am saying, Counsel, that it is not restricted to those three because further investigations were done, and it is on a reading of all the investigation in its totality that led to the charges as they were preferred.

ADV SELLO SC: The thing you have rushed to the
10 charges. Remember that we had said the section 27 was incomplete. You exercised your discretion, as you say you normally do, which is to request further substantiation from a referee. Now you have it. And we agreed in the morning that that is for purposes of you determining whether to even initiate an investigation. And in order to do so, you must first establish jurisdiction, that you have the jurisdiction to entertain the claim. As they stand, is that not your point to have asked yourself whether this complaint at least squarely locates you within A?

20 **ADV JOHNSON:** Mmm ...[intervenes]

ADV SELLO SC: And I say this because it cannot be that you run your investigate with the hope that somewhere, somewhere, you will come across some damning facts that will then justify A. We first have to be in A before you investigate. Otherwise, the process is deeply concerning.

ADV JOHNSON: On a reading of those documents, I am not going to be able to take my point further than indicate that based on the fraud and the undue benefit and the fact that it is commercial and/or financial crimes, we moved from A into the B and that, therefore, justified investigations continuing. We are not there at charges. It is based on these documents that you refer to, Counsel.

ADV BALOYI SC: Advocate Johnson, the section 27 does not contain anything that is a basis for you to say, yes,
10 there is a financial crime possibly that is being committed that requires further investigation. It does not contain that. It does not contain... let me see, it does not contain anything where you say any facts. We settled that all that affidavit does is to list suspicions. It does not say what is the basis of those suspicions, which we all agreed sub B, 27B, requires that there must be grounds for it. Otherwise, you are going to be fishing, you know, and I do not think that is what your powers are meant for.

So we have agreed that affidavit does not contain
20 any matter that takes you to a place on its own where you end up saying, yes, that which is contemplated in 1A(a), which is serious high profile or complex corruption, commercial or financial crime, it does not contain those kind of facts that ground the suspicion. You then go and get an affidavit, or your people go and get an affidavit. All that

affidavit does is tell you that a civilian was unduly benefited over employees within Crime Intelligence. That is all it tells you.

But this is later. This is an affidavit in January, so it is actually irrelevant for purposes of your decision, what triggered your decision. All you had to trigger your decision was the section 27, and on the section 27, you could not have had a reasonable basis that there is the commission of a crime. And your explanation since yesterday and today,
10 and I must say the same with Colonel Padayachee, is it seems your office or IDAC took the view that we have an affidavit, vague as it is, we go fishing, we will find something. There must be something to find.

So you went in, either because you had been told, which is not in the section 27 affidavit, you had been told there is something to find, it is just not contained in the affidavit, and you went looking for that, or you went not knowing at all that you will find something, which is a typical fishing exercise. Your mandate and your powers do
20 not contemplate you doing that. That is why there is that trigger provision.

But in this case, it seems there was a failure in that trigger, you just did not have enough to trigger that investigation and the question that eventually must be asked and must be answered is, why would you do that?

And it is a question that is qualified to be asked because we are dealing with an organisation which has lawyers in it. We have you who has experience in what this Act deals with, the powers that it gives you. You have prosecutors, you have a lot of people.

It is simply unimaginable that in your office no one would have said to you, ID, we do not have the trigger, the triggering requirements. It is simply unimaginable that no lawyer in your office said, we do not have jurisdiction to
10 investigate this. And maybe let me ask you the question directly. That you went as far as you did, does it mean no single lawyer in your office said to you, we do not have jurisdiction to investigate on the basis of that section 27, and even after you received this affidavit, no one said, we lack jurisdiction?

ADV JOHNSON: No. And just to perhaps then indicate that based on those three documents, section 28(13) of the NPA Act says that:

20 “If the Investigating Director considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of subsection 1A, the Investigating Director may hold a preparatory investigation.”

ADV BALOYI SC: So you say to us you had that preparatory investigation.

ADV JOHNSON: That is the preparatory investigation that is conducted so that where there, it is in order to determine if there are reasonable grounds. And when you look at the proposition that is being put to myself, is when you look at these, there is no reasonable or there is insufficient. I am saying that section 28(13) allows us to conduct an investigation to determine if, in fact, there are reasonable
10 grounds.

ADV BALOYI SC: I accept that. My question still, after the preparatory investigation was done, no single lawyer in the office said to you, we do not have the jurisdiction to prepare these charges?

ADV JOHNSON: No.

ADV BALOYI SC: Okay. Thank you.

ADV SELLO SC: And staying with 28(13), for process purposes, my reading of it, and I want to test if it is correct, is that if you, as the Investigating Director, consider it
20 necessary to hear evidence, you do so to enable you to determine if there are reasonable grounds to conduct an investigation. So you are not at the investigation point yet.

ADV JOHNSON: No, it is a preparatory.

ADV SELLO SC: Yes. So 28(13) allows you to hear evidence or obtain evidence to determine whether or not

there are grounds for an investigation. The point we are making to you, at least I am making to you, is as of the 6th of January, there are not even any grounds at all to conduct a preparatory investigation to determine whether to conduct a full-blown investigation, because the matter does not fall within IDAC mandate. So I get confused by your reliance on 28(13). Because 28(13) is not carte blanche for you to conduct a full-blown investigation on flimsy, non-existent grounds.

10 **ADV JOHNSON:** It is not a full-blown investigation. What it does allow is where we need to still determine if there are reasonable grounds for an investigation.

ADV SELLO SC: Yes.

ADV JOHNSON: And I am saying that given what we had at the time is the section 27, the four dockets, then we needed to conduct a preparatory investigation in order to determine whether or not there are reasonable grounds to continue with an investigation.

ADV SELLO SC: No, apologies, because now I am
20 thoroughly confused. Remember, we start with 27. We said the original affidavit received does not assist you at all. You advised the Commissioners that you have the power to call for further information to consider the referral in its totality. Now you have got the flimsy A1 statements in the various dockets and you have this January 6th affidavit. At

that point, you now have a total picture. You must make a call on that section 27. Does it now bring you within section 7 of the Act?

Does it bring it within the jurisdiction of IDAC? And I am suggesting to you that considered collectively, you cannot even get into section 7A(a). That is a first. So it is only because it is only once you are in that you then determine whether, because what you are headed for now is to trigger a preliminary to determine whether to investigate.

10 You are not in full investigative mode yet. You are not intruding into people's lives and their private affairs. It is a preliminary investigation or preparatory investigation that informs whether or not to conduct because it could potentially end at 28(13) and the response coming back is that we will not go any further. So that is the second step. Correct? Are you with me?

ADV JOHNSON: Correct.

ADV SELLO SC: Now, when does the 28(13) step end? What must you have? Must you have the full picture of all
20 the crimes that you have alluded to in your authorisation of section 28(13) before you authorise a further investigation? The levels of investigations have to be different, I would assume.

ADV JOHNSON: That is correct.

ADV SELLO SC: Okay. Now, what must you obtain in

terms of 28(13) to help you determine whether to conduct a full-blown investigation?

ADV JOHNSON: You must have enough evidence that there are reasonable, that the suspicions are reasonable and that there are reasonable grounds on which to conduct that full-blown investigation. There must be sufficient evidence collected in the 28(13) process. It is then, Commissioners, that there is an evaluation thereof and whether or not to move into.

10 So the 28(13), Counsel, does allow for quite a few investigative mechanisms and so whilst it is a preparatory investigation, you are able to issue summonses, conduct search and seizures, et cetera, in order to move into that kind of investigative phase and therefore to collect evidence to make the determination on whether or not there are reasonable grounds to move into a full investigation.

CHAIRPERSON: Advocate Johnson, I just want to understand whether you are of the view that your section 27(13) discretion is unfettered. I do see the words, if you
20 as the ID consider it necessary, you may then institute the preliminary investigation. Is that discretion unfettered? In the sense that it depends purely on what you consider necessary, regardless of the circumstances.

ADV JOHNSON: I do not believe it is unfettered. It is based on the information that is presented, as was the case

with the team, in terms of how they assess and briefing me on that. It is not an unfettered.

CHAIRPERSON: No, continue.

ADV JOHNSON: No, no, no, maybe if Chair makes a follow-up point, I might be able to...

CHAIRPERSON: Yes, I want you to, just for a moment, for me to understand as a matter of law what the fetters are. If you say it is not unfettered, I want, as a matter of law, to understand what those fetters are. Can you give them to
10 me without reference to the facts that we have here? Because what you just did in your last answer was to refer to what happened here. So, as a matter of law, what exactly would fetter the exercise of your discretion?

ADV JOHNSON: So, there would have to be... As we indicated in the section 27, are there reasonable grounds to suspect that an offence has been committed, the grounds on which it is based, and additional information? In the main, that is what one considers. And any other additional information could then be whatever else they have brought
20 to the fore. And I say that that is what determines it in terms of the discretion on whether or not to move, sorry, Chair, also, if we had asked for additional information in order to augment the section 27, whatever that may have been, and that guides the discretion whether or not, given what we have, it is not sufficient for a reasonable suspicion,

but there is sufficiency, and so we can go ahead and conduct a preparatory investigation in order to arrive at.

CHAIRPERSON: So, absent that reasonable suspicion, if I understand you correctly, you cannot begin to do a 27(13) preliminary investigation?

ADV JOHNSON: Yes.

CHAIRPERSON: So, the reasonable suspicion is your entry point to 27(13), you say?

ADV JOHNSON: To the 28(13).

10 **CHAIRPERSON:** 28(13), I am very sorry.

ADV JOHNSON: Correct.

CHAIRPERSON: All right, thank you.

ADV SELLO SC: On that score, at file 8, the documents you provided yesterday, file 8, page 3288.

ADV JOHNSON: Do I still need to keep the exhibit bundle at hand?

ADV SELLO SC: Which one, ma'am?

20 **ADV JOHNSON:** The one where we were going through Fadiel Adams' affidavit, the additional affidavit? Close at hand, but not open?

ADV SELLO SC: Closed at hand, but yes, not open. At 38, at 3288, apologies, the document goes as far as 3300, and I see it is dated the 30th day of May 2025. Do you see that?

ADV JOHNSON: I have got that.

ADV SELLO SC: Okay. Now, if we go back to 3288, this is an application for an investigation in terms of section 28(1).

ADV JOHNSON: That is correct.

ADV SELLO SC: So, that suggests to me that now we are past the 28(13) preliminary investigation.

ADV JOHNSON: And that investigations were conducted and further evidence would have been obtained between the period 6 December 2024 to the date of this matter.

ADV SELLO SC: If I understand, the provisions of section
10 28(13) is that you conduct some preliminary investigations to determine whether to have a section 28 investigation.

ADV JOHNSON: Correct.

ADV SELLO SC: And I take it what we have at 3288, we are at a point where now we are applying for an authorisation to investigate in terms of section 28(1).

ADV JOHNSON: That is correct.

ADV SELLO SC: So, the true investigation now starts.

ADV JOHNSON: Correct.

ADV SELLO SC: Am I understanding it correctly? And that
20 application is made on the 30th of May 2025.

ADV JOHNSON: That is correct.

ADV SELLO SC: And as we know, on the same date at page 3304...

ADV JOHNSON: Sorry, 33?

ADV SELLO SC: 3304, same file. 3304 is designations in

terms of section 28(2)(a). So, you are designating a team in this matter.

ADV JOHNSON: That is correct.

ADV SELLO SC: For the investigations.

ADV JOHNSON: For the investigation and prosecution.

ADV SELLO SC: Yes. And this team is established, designated by you on the 8th of August 2025. If you look at 3306.

ADV JOHNSON: The designations on 3302 are the
10 designations dated the 30th of May 2025.

ADV SELLO SC: Yes.

ADV JOHNSON: Yes.

ADV SELLO SC: No, no, no.

ADV JOHNSON: 3303.

ADV SELLO SC: Yes.

ADV JOHNSON: Yes.

ADV SELLO SC: I am now at 3304.

ADV JOHNSON: This would have been where additional persons would have come onto the team afterwards. But
20 the original designation, Counsel, is on 3303. So the, Commissioners, the 28 is signed on the 30th of May.

ADV SELLO SC: Okay.

ADV JOHNSON: And the designation for the persons who are to deal with it are on 3303.

ADV SELLO SC: I accept your point. Correct. So the first

designation is 3302. That is dated the 30th of May 2025.

ADV JOHNSON: That is correct.

ADV SELLO SC: The document I have looked at, you say, was adding to the designated team in August.

ADV JOHNSON: Yes, as happens in all matters, if you add persons to an investigation, regardless of who they may be, you must designate them to the investigation.

ADV SELLO SC: I am with you. I accept that. Thank you.

ADV JOHNSON: for context for why there is a later one.

10 **ADV SELLO SC:** Thank you for that clarification.

ADV SELLO SC: Then ...[intervenes]

ADV JOHNSON: Sorry, I think Commissioner Khumalo has a...

ADV SELLO SC: Oh, yes, please.

ADV KHUMALO SC: I think it is confusion more than anything. I had understood during your first day of testimony that the designated investigator came to you in February to say, please authorise summons so that we can get these documents in relation to the generals that appear
20 in those summonses. And there was some time in February there was also a summons that went to BMW again in February.

Now, they could not do that unless they were designated as investigators because for them to say, I need to go into BMW and get documents and interview BMW

people because that is what the summons said. And that was all in the first or second week of February. That can only mean there must have been an earlier designation appointing them as investigators because if that designation only happens at the end of May, what were they doing talking to BMW management in February of 2025 and interviewing senior managers at BMW in February 2025? So, do you see why I am lost?

ADV JOHNSON: May I explain?

10 **ADV KHUMALO SC:** Yes.

ADV JOHNSON: So, Commissioner Khumalo, when the section 28(13) preparatory investigation was authorised on the 6th of December, it also designates persons to the investigation. And because they are designated to that preparatory investigation, they are able to conduct investigations.

ADV SELLO SC: May I assist? Please answer that question with reference to page 3282. Same file. You say when the section 28(13) preliminary investigation is
20 authorised, it also designates persons who should conduct the investigations and that is the document we discussed from yesterday. That is your authorisation.

ADV JOHNSON: Yes.

ADV SELLO SC: And it is followed by 3285?

ADV JOHNSON: Yes.

ADV SELLO SC: You say that is a designation in terms of 28(13). Is that the document you referenced that dated the 6th of December 2024?

ADV JOHNSON: That is correct.

ADV SELLO SC: With those documents, then you may respond to the Commissioner's question.

ADV JOHNSON: On page 3286, Commissioner Khumalo, is the list of persons that were designated on the 6th of December so that there are persons designated to conduct
10 investigations. And as I indicated, section 28(13) does allow you investigative processes, including being able to interview a witness, subpoena documents, and so on.

ADV KHUMALO SC: So there were two designations slash authorisations.

ADV JOHNSON: Yes. The first being preparatory, and once that is summarised and done, they then bring together the May application.

ADV KHUMALO SC: Advocate Sello, I am covered. Thank you.

20 **ADV SELLO SC:** Thank you.

ADV JOHNSON: Have I clarified it, Commissioner?

ADV KHUMALO SC: You have. Thank you.

ADV SELLO SC: I hope you have your Act close by. And my reading of 28(13), why do you suggest it requires a designation? When I read 28(13) with 28 sub 2 sub a, I

draw a distinction. Whereas it is 28 sub 2 sub a, that requires you to designate people to investigate, but that is a full-blown investigation now. 28(13) does not do so, and if anything, it just simply says you, the Investigating Director, may hold a preparatory investigation. I accept for present purposes that you may delegate that power. But it does not require you to establish a whole team of people to investigate. It is preliminary.

ADV JOHNSON: I understand what you are saying,
10 Counsel. But out of practice, we do designate persons to the investigation, preparatory or otherwise, or else it will go back to Commissioner Baloyi's point of you have people running around on fishing expeditions and doing as they please. And how do we account for what was done, who did it? Back to Commissioner Khumalo's question of how do you have people interviewing senior persons, et cetera. It is the designation assists in identifying persons to be able to conduct the activities that that team determines are for investigation. We have always done a designation for both,
20 so that there is accountability and there is responsibility for the activities and for the actions.

ADV SELLO SC: And I will tell you perhaps where that designation in terms of 28(13) gives me challenges. We have now agreed that you authorised a formal section 28 investigation on the 30th of May.

ADV JOHNSON: That is correct.

ADV SELLO SC: That is when the investigation starts.

ADV JOHNSON: Incorrect.

ADV SELLO SC: Tell me.

ADV JOHNSON: So section 28(13) is a preparatory investigation. It allows you to take statements. It allows you to interview persons. It allows you to subpoena documents in terms of section 28(6), which is what you would see the investigators had done.

10 **ADV SELLO SC:** Let us deal with that issue with reference to the wording of 28(13). 28(13) allows you as the Investigating Director, specifically singles you out, Advocate, to hear evidence to enable you to determine if there are reasonable grounds to conduct an investigation. So it is a process to enable you to make a decision whether or not to investigate. Correct?

ADV JOHNSON: Correct.

ADV SELLO SC: Now, we know that on the 6th, you started the preparatory investigation. And by the 30th, you say
20 there is sufficient material to conduct an investigation. So the actual investigation only starts from the 30th of May. Otherwise, you are investigating while you are in the 28(13) mode. And whatever exercise you are undertaking at 28(13) determines whether or not you should investigate in the first place. So you cannot have a full-blown investigation in

28(13).

ADV JOHNSON: It is not a full-blown investigation.

ADV SELLO SC: Now, we know that you came to the conclusion that we must investigate on the 30th of May as per the authorisation. I do not know if this speaks to the efficiencies of IDAC. By the 26th of June, 2025, less than a month later, after you authorised the actual investigation, that list of people was arrested and appearing before Court. So your investigation actually took exactly three weeks.

10 Not more. What did that investigation unearth that was already not in your files by the 30th of May?

ADV JOHNSON: The investigations out of that preparatory investigation would have commenced after the 6th of December, 2024.

ADV SELLO SC: Yes.

ADV JOHNSON: And I do hear what you say, Counsel, but in terms of the preparatory investigation, I read it with section 7(3) of the Act that says:

20 “An Investigating Director shall be assisted in the exercise of his or her powers and the performance of his or her functions or duties...”

And lists those people. So it is not the Investigating Director herself who conducts the preparatory investigation and the persons designated thereto conduct the

investigation on behalf of the Investigating Director. We go back to what is allowed in terms of section 28 as an investigative tool. They are allowed to interview witnesses. They are allowed to obtain, subpoena and obtain documents, etc. And that is what had happened. So by the time we get to... sorry, so by the time we get to mmm... If I can just take a moment?

ADV SELLO SC: Yes.

ADV JOHNSON: I am just feeling slightly lightheaded.

10 **ADV SELLO SC:** Take a moment.

ADV JOHNSON: Ja. Thank you, Chair. So by the time we get to the 30th of May, there would have been investigations done. What the test is on the 30th of May in the presentation of the section 28 application is a summation of everything obtained to date. Does it now make or create that reasonable suspicion we say was not there in the initial phase? And if it therefore fulfils that requirement, we can then authorise the full-blown investigation.

ADV SELLO SC: Okay.

20 **ADV JOHNSON:** It does not mean... May I continue? It does not mean that whatever investigation was done in the 28(13) process falls away and something new starts with the 28(1). Sorry, Commissioner.

ADV BALOYI SC: Finish. You can finish.

ADV JOHNSON: No, no, it is okay.

ADV BALOYI SC: Can I just clear my confusion? And maybe I should have done these sentences earlier. At page 3283 of the same file, you authorise a section 28(13) on the 6th of December 2024 and then at page 3300, you authorise a section 28(1)(a) preparatory investigation, you say, to conduct a preparatory investigation in terms of 28(1)(a) and this is on the 30th of May 2025. Is it – because in both letters, on the one you speak of a preparatory investigation in May 2025. You see where I am reading? At 3300?

10 **ADV JOHNSON:** That word preparatory is not – I have decided to conduct an investigation in terms of section 28-1A. It is not preparatory anymore, Commissioner.

ADV BALOYI SC: My copy reads, to conduct a preparatory ...[intervenes]

ADV JOHNSON: I am not disputing your copy. I am saying it should not read preparatory because it is a section 28(1)(a).

ADV BALOYI SC: It is now a full-blown...

ADV JOHNSON: It is a full-blown investigation.

20 **ADV BALOYI SC:** Okay. Thank you.

ADV SELLO SC: Okay, I accept that. Now, I want to know what investigations were conducted between the 30th of May and the 26th of June when they were arrested. Because only then, as of the 30th of May, full-blown investigations are authorised.

ADV JOHNSON: I would have to find out in the break and come back to you about what all was done.

ADV SELLO SC: Please do.

ADV JOHNSON: Because I cannot list what was done after the 30th of May.

ADV SELLO SC: And that date is key.

ADV JOHNSON: And I know it needs an answer.

ADV SELLO SC: That date is key because there is a reason why the statute distinguishes between preparatory
10 investigations and actual investigations and provides that you may not do investigations unless otherwise – unless duly authorised. You grant the authorisation and section 28 sub 13 allows you to conduct preparatory investigations to enable you to determine whether or not you should authorise.

Why I say it is important, it appears to me, and perhaps I am looking at it wrong, that IDAC used the mechanics of section 28(13) to conduct a full-blown investigation which would render it wholly unauthorised.
20 And then to post-facto grant the authorisation on the 30th of May, which opened the way for applying for arrest warrants and actually arresting them.

So no investigation was conducted after the 30th of May. It was all before the 30th of May. And that has got to be because there are benefits to hiding under the cover of a

preliminary investigation, conduct a full-blown investigation, cure that defect by a late authorisation, and in less than four weeks be ready to arrest. It is quite curious that you end there. Because if that is how it happens, I will applaud the efficiencies within IDAC.

ADV JOHNSON: I will come back with the response, Commissioners, if that is fine.

ADV SELLO SC: Chair, while we await the responses, might this then be an opportune time to take the lunch
10 adjournment because I will not finish this point. Thank you.

CHAIRPERSON: Yes, we will resume at 2 p.m.

ADV JOHNSON: Thank you, Chair.

CHAIRPERSON: Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Sello?

ADV SELLO SC: Thank you, Commissioners. Advocate Johnson, before we broke for lunch, we were trying to understand what investigations took place after your
20 authorisation for a section 28(18) investigation on the 30th of May, and you indicated you wanted to consult the records to respond to that.

ADV JOHNSON: Thank you, Chair. Counsel, I did contact the office. I have asked them to put it together, and they are in the process of just putting together a little document

that will state between 6 December and 20 May, and 20 May and 27 June. I have asked them to please do that for us.

ADV SELLO SC: Why 20 May?

ADV JOHNSON: Sorry, for the date of the authorisation.

ADV SELLO SC: 30 May.

ADV JOHNSON: Sorry, 30th of May.

ADV SELLO SC: 30 May.

ADV JOHNSON: Yes.

ADV SELLO SC: No, I am just interested from the 30th of
10 May because we do have the docket 542/6/2025, and I am saying on my reading of that docket, I cannot find any document relating to investigations post the 30th of May.

ADV JOHNSON: I take your word for it.

ADV SELLO SC: That is my reading of it, and I accept that I may very well be wrong. We know that that docket is numbered 542/6/2025, and we know that from the cover sheet of Mr Adams' A1 statement of 6 January. Would you like us to cast our eyes there? That would be ...[intervenes].

20 **ADV JOHNSON:** Are we in File 3?

ADV SELLO SC: File 3, page 681. Now, if we look at that, we see at the top it has got a CAS number there of 542/06. And I checked with Colonel Padayachee and I think many other police officers that have appeared, I am reliably informed that the middle number, 06, relates to the month in

which the case was opened.

ADV JOHNSON: That is correct.

ADV SELLO SC: So I take it the case was opened in June 2025.

ADV JOHNSON: Yes, the docket would have been registered June 2025.

ADV SELLO SC: And that is a day after you authorised an investigation, at the earliest, the 1st of June. It does not state, it does not give us the actual date, but best case
10 scenario is that it is the 1st of June 2025 when the docket is opened.

ADV JOHNSON: I take that.

ADV SELLO SC: And your authorisation to investigate is the 30th of May.

ADV JOHNSON: Correct.

ADV SELLO SC: So they are already deciding to open a criminal case before proper investigations in terms of section 28(1). Do you see that? It could have been later in the month of June.

20 **ADV JOHNSON:** But I do see it is in the month of June.

ADV SELLO SC: It is in the month of June.

ADV JOHNSON: Yes, ma'am.

ADV SELLO SC: And remember we are chasing the 26th of June, which is the arrest date, and we are trying to understand what happened when post the 30th of May.

Staying on that page, at the bottom of that page is a date, 2025-01-06, bottom left corner.

ADV JOHNSON: I see that.

ADV SELLO SC: Now, Colonel Padayachee explained that this was a preamble, this preamble to the statement and the statement were obtained on the 6th of January 2025.

ADV JOHNSON: Okay.

ADV SELLO SC: That is his explanation because I could not understand why the docket has got a June date as we
10 have determined, but the statement seems to be taken in January. He had an explanation for that, that they open the docket or they take the statement in terms of this document and will subsequently open an official criminal docket later, but that is the explanation as I understood it and I accept it. I have got nothing to countenance it. So, my issue really is, on the 6th of June 2025 already we are into criminal investigation mode. And this is very early during what ought to have been the 28(13) preliminary investigation process to help you determine whether to institute a formal
20 investigation in terms of section 28(1)(a). Do you accept that?

ADV JOHNSON: I am with you. I accept it.

ADV SELLO SC: And that is where then my challenge lies with this 28(13) preliminary investigation and the authorisation for the actual investigation. And I suggest

that, I will say the investigators in this case, abused the section 28(13) preliminary investigation to conduct a full-blown investigation before you so authorise them. They have gone so far as to obtain documents from SAPS to prepare an A1 statement in January.

ADV JOHNSON: As I indicated earlier, Counsel, that 28(13), while it is a preliminary investigation, does allow you to subpoena documents, it does allow you to engage with witnesses, and it does allow you to do some form of
10 investigation.

ADV SELLO SC: Yes.

ADV JOHNSON: Yes.

ADV SELLO SC: But at this point, while they are doing that, remember we are trying to show up the section 27 affidavit. SAPS should not be involved. This is now an IDAC process. You approach the referee to perhaps substantiate if that is what is required. Why is SAPS getting involved at this juncture when you are still trying to address the shortcomings in the section 27 affidavit?

20 **ADV JOHNSON**: The shortcomings, as I understand it, can only be addressed by us obtaining the necessary documentation to either support or to dispute the claims made by Mr Adams. It is, as he said, the section 27 does not have supporting documentation.

ADV SELLO SC: Yes.

ADV JOHNSON: He makes his averments. In order to determine whether or not these become a reasonable suspicion, we need to rely on the allegations he is making and where would we find the evidence of those allegations.

ADV SELLO SC: Yes.

ADV JOHNSON: And it is for that reason, Counsel, that one is able to subpoena documents. And it is so that the documents sought were invariably at SAPS.

ADV SELLO SC: No. This document was not at SAPS. It
10 was created. It was commissioned by Chief Perumal on the 6th of January.

ADV JOHNSON: I am saying the documents that we would seek in order to support ...[intervenes].

ADV SELLO SC: Yes.

ADV JOHNSON: Sorry ...[intervenes].

ADV SELLO SC: No, you are ahead of me. I am still on the statement.

ADV JOHNSON: My apologies.

ADV SELLO SC: Why is SAPS involved in this statement
20 which is seeking to obtain clarification on matters raised in the section 27 referral? Why is it being registered at SAPS already when you have not authorised an investigation?

ADV JOHNSON: I think I have ...[intervenes].

ADV KHUMALO SC: Why is IDAC at Brooklyn Police Station opening a case in January 2025?

ADV JOHNSON: If I look at the CAS number, Commissioner Khumalo, 542/6/2025 is a CAS being opened in June 2025. It is not January of 2025. That is how the CAS number is. I understand the conundrum then of what is this date here at the bottom that shows a 6 January.

ADV KHUMALO SC: And also look at the name of the station. Do not just look at the date.

ADV JOHNSON: Correct.

ADV KHUMALO SC: Look at the name of the station and
10 the form itself. That is a SAPS form. That is not an inquiry from IDAC.

ADV JOHNSON: No. So when you register a docket, we register it on the SAPS CAS system and we have to fulfil the requirements of the CAS system, which is to fill out that form. That is the only way I understand you are able to ...[intervenes].

ADV KHUMALO SC: That is exactly the question. Why are you registering a docket on the 6th of January 2025 when you are still at the preliminary investigation stage?

20 **ADV JOHNSON:** I understand your question. I am begging to differ only because of the CAS number. The CAS number determines, and I am not trying to be controversial, the CAS number has always been what determines when the case is registered on CAS. So 542/6/2025 says that a case was registered at Brooklyn in the month of June 2025.

I sit with the same conundrum as all of you do. What is this 6 January 2025? If we are talking about when was the docket registered, it would work on the CAS number. That is my understanding of it, and that is how it has always worked.

ADV KHUMALO SC: Or it means the docket was registered without a CAS number and a CAS number was added later on. Because looking at these two documents together, the cover sheet which says preamble to the statement on 681,
 10 and then the particulars of the offence, that is the affidavit. That is also January 2025. They go together. And all of that would have been done in January 2025.

Yes, the CAS number could have been added later in June, but the substance of the question is, why is IDAC involved in SAPS in January 2025 when it is still at the preliminary investigation stage? So the substance of the question does not change.

ADV JOHNSON: And I understand, and I cannot answer why that happened. It should not happen. It should have
 20 been when the CAS number was registered. So what I am trying to get to, Commissioner, is that SAPS CAS and any involvement within the CAS system ought to have been in the month of June 2025, not this date of January. I cannot explain the date of January.

ADV KHUMALO SC: Because my expectation would have

been that you would have an IPID inquiry number, and you would start with that and only get to the SAPS documents in June.

ADV JOHNSON: That is correct.

ADV SELLO SC: Thank you, Commissioner. And just to ...[intervenes].

ADV BALOYI SC: Can I just say that my difficulty with how you explain that a full-blown, what turns out to be a full-blown investigation happens on the back of a preliminary, of
 10 a decision for a preliminary investigation, my difficulty with that is that full-blown investigation is used to show up an incompetent referrer, section 27, if that is what happened.

Because what you had is, you had this wholly inadequate section 27 affidavit, which on its terms does not make a case that triggers your jurisdiction. You then authorise, as you say you are entitled to do, or you have the power to do, you then authorise a preliminary investigation, and that is where you collect all of this evidence.

20 But you use that to show up a poor referrer. So that is not the purpose of your section 28(13) preliminary investigation. It is not to assist what should have been kicked out or not accepted by you because it did not trigger your jurisdiction. It is not to use that process, because if that is what you are doing, then you are using your section

28(13) process for an unintended purpose. Its purpose is not to fix Mr Adams' poor section 27.

ADV JOHNSON: Correct.

ADV BALOYI SC: It cannot be. So if your explanation is correct, that is exactly what happened, then we are again in that territory where, in fact, the section 28(13) was used as a pretext to make up a case that Mr Adams should have pleaded or should have stated in his founding affidavit, and so your people would have acted improperly.

10 They did that which the law does not allow to use that process for, which is the point that Ms Sello was making, that you authorise a preliminary investigation, but that preliminary investigation, in fact, is used to conduct a full-blown investigation.

 Your explanation of it proves exactly that, that they use the pretext of your authorisation to assist make a case that places Mr Adams' complaint into your jurisdiction when, in fact, from the get-go, it did not fall within your jurisdiction, at least not in section 27. Do you accept that,
20 if that is what happened?

ADV JOHNSON: I accept it.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: Thank you, Commissioners. You will recall Commissioner Khumalo referred you to the national instruction, I think it is 11 of 2017. Did I understand you to

suggest that you were not aware of it, or perhaps I misheard?

ADV JOHNSON: I did indicate that I had not seen the instruction.

ADV SELLO SC: Okay, yes. Can we go to File 8?

ADV JOHNSON: Yes.

ADV SELLO SC: And in particular to page 3255. For the record, that is CJC389.

ADV JOHNSON: 32?

10 **ADV SELLO SC:** 3255. That should be what you call your prosecution note addressed to the DPP. If we go to 3257, I see at paragraphs 9 and 10, is that not the instruction note that you referenced there? The same instruction note that Commissioner Khumalo referred you to?

ADV JOHNSON: That is correct.

ADV SELLO SC: So you do know that instruction note?

ADV JOHNSON: I did not see the instruction. I know of this instruction because I got this from the briefing from the team in order to prepare this memorandum.

20 **ADV SELLO SC:** Please say that again.

ADV JOHNSON: So when I prepared the prosecution memo, it is as a result of a briefing I get from the team. So the charges against the suspects were presented to me by the team. And so part of the charges and part of the case is as a result of the feedback I got from the team. So I

would have got from the prosecution a memo, a draft memo, upon which I look at it and then compile my referral to the DPP, but I did not see the actual instruction as Commissioner Khumalo had shown it to me today. I did not look at that instruction.

ADV KHUMALO SC: So the upshot of what you are saying is that in your prosecution memo, you referred to documents you had not seen.

ADV JOHNSON: I did not see this document, no. It is as a
10 result of a briefing by the team and a memo that I would have got.

ADV KHUMALO SC: I accept that there was a briefing. I am saying the long and short of it is that in this memo, you referred to documents you had not seen.

ADV JOHNSON: Correct, sir.

ADV KHUMALO SC: So you did not even know that the section 9 you are quoting in fact says what you say in your memo. Because if you had not seen it, you could not satisfy yourself that it says what you have quoted in
20 paragraph 11.

ADV JOHNSON: Yes, that is correct. It would have been as a result of the briefing, not of me seeing the document.

ADV KHUMALO SC: Yes, so you did not satisfy yourself that what you are quoting in your paragraph 11 is in fact what the instruction says.

ADV JOHNSON: No, I relied on my prosecution team and my investigators.

ADV SELLO SC: And then you proceed at paragraph 12 to state:

“Same document, evidence collected proves that accused 1 to 6 contravene the provisions of the above quoted section to benefit accused 7 without just or reasonable cause.”

10 **ADV JOHNSON:** Yes, and that I would have got from the briefing.

ADV SELLO SC: Okay.

ADV JOHNSON: It is a briefing that they would have given me and indicated, Chair and Commissioners, how each one is allegedly implicated.

ADV SELLO SC: What if they are wrong? Here you are triggering a prosecution. What if they are wholly wrong, your investigators and whoever it is you rely on?

ADV JOHNSON: My prosecutors and investigators.

20 **ADV SELLO SC:** What if they are wholly wrong? Because nowhere in this document do you say I come to understand or I am made to understand. You are making definitive assertions here, suggesting that you are familiar with the prescripts, you are familiar with the evidence that has been collected, and you confirm that accused 1 to 6 have

contravened the prescripts. Is that not misleading, perhaps, to the DPP?

ADV JOHNSON: No, because I did get a briefing and I have no reason to believe that the prosecutors would have briefed me incorrectly.

ADV SELLO SC: But you are making assertions to the DPP on matters you know nothing about ...[intervenes].

ADV JOHNSON: No, I ...[intervenes].

ADV SELLO SC: And that is by your hand.

10 **ADV JOHNSON**: Sorry, I interrupted you.

ADV SELLO SC: I was saying, and this is by your hand. So the DPP reads that as she should to understand that the head of IDAC has satisfied herself because that is what triggers her response at 3255.

ADV JOHNSON: Correct, and I am saying that I satisfied myself from the briefing that I received from my team.

ADV SELLO SC: Okay. Now, I would like us to turn to your statement, your October 25 statement. And in particular, I would like us to have regard to page 8,
20 paragraph 24. Now, this is your statement to this Commission.

ADV JOHNSON: Yes.

ADV SELLO SC: You state at 24:

“Following upon receipts of the dockets,
the information therein was analysed.

Thereafter, an investigation was undertaken.”

Is that a section 28 investigation or 23(13) investigation?

ADV JOHNSON: At that time, following upon receipt of the dockets, that would have been the 13.

ADV SELLO SC: The 13?

ADV JOHNSON: Yes, ma'am.

ADV SELLO SC: Then you say:

10 “The investigation unearthed sufficient evidence:

(i) To conclude that there was reasonable and probable cause for the prosecution, and

(ii) Formulation of the charges against Lieutenant General Khumalo.”

So the preliminary investigation pointed to prosecution bypassing a formal investigation. That can only be the case.

20 **ADV JOHNSON:** In the first part, following upon receipt of the dockets, the information contained therein was analysed. Thereafter, an investigation was undertaken. That is the 28(13). The investigation unearthed sufficient evidence, that would seem to be exactly what it says in that paragraph.

ADV SELLO SC: The 28(13) investigation.

ADV JOHNSON: Yes, because I am unable to read into it a ...[intervenes].

ADV SELLO SC: Yes. Now, I would like us to move to paragraph 25, but the last sentence thereof. No, perhaps the fourth line:

10 “I may indicate that there was a series of
 matters referred to IDAC in terms of
 section 27 by one Mr Adams. When the
 whole picture is presented, they include
 the following:

25.1. The manipulation of recruitment
processes and appointment of persons
without suitable qualifications into senior
strategic posts in the Criminal
Intelligence Unit.”

Who are these persons? And as you think about that, what posts were they appointed?

ADV JOHNSON: In the one that comes to mind, it is the appointment of Brigadier Mokwele.

20 **ADV SELLO SC:** Brigadier, yes. Who else? Because you are talking again about persons ...[intervenes].

ADV JOHNSON: Appointment of persons. Those matters are still under investigation.

ADV SELLO SC: And which persons are these? Remember, this is from Mr Adams' section 27 referral. So,

they must arise from that referral.

ADV JOHNSON: Remember that – sorry, not remember. At the time this affidavit is deposed to, it is now October 2025.

ADV SELLO SC: Yes.

ADV JOHNSON: By then, the 28(1) has been authorised and investigations have continued. Not just in that matter, but in other matters that arise from the complaint.

ADV SELLO SC: Okay.

ADV JOHNSON: So, I am not restricted, this is not
10 restricted to the 27 of Adams. I say, I may indicate there was a series of matters referred to IDAC in terms of section 27 by one Mr Adams.

ADV SELLO SC: Yes.

ADV JOHNSON: But then when the whole picture is presented, that is, I read it to mean, I meant when the whole investigation is presented, the manipulation of recruitment processes and appointment of persons without suitable qualifications into senior strategic posts in the criminal, supposed to be in the Crime Intelligence Unit, the
20 one that is the one that comes to mind is the matter that is currently in court. And I know that there are other investigations.

ADV SELLO SC: But that picture can only emerge from the section 27 referral. You say so as much. See, there were a series of matters referred to in the section 27 by one

Adams, one Mr Adams, when the whole picture is presented.

ADV JOHNSON: Yes.

ADV SELLO SC: So, that picture emerges from that, from that referral.

ADV JOHNSON: That is not how I ...[intervenes].

ADV SELLO SC: That is how I understand it as well.

ADV JOHNSON: I know how you understand it. What I understand is that we get the 27 referral from Adams, but when you look at the whole picture, this is what that picture
10 shows. And that would be the picture that comes out of the section 28 investigation.

ADV SELLO SC: So, you are suggesting that there is further information post the authorisation for a section 28 that points to an authorised or manipulation of processes to appoint other persons other than Brigadier Mokwele?

ADV JOHNSON: That is correct.

ADV SELLO SC: Under what number? I take it you do not ...[indistinct] this particular CAS number. So, would it be an inquiry number?

20 **ADV JOHNSON:** It would have to be an inquiry number, which I would have to, which I must provide to you.

ADV SELLO SC: Now that you have brought this matter to the Commission, will you please disclose all those inquiry files and their respective numbers?

ADV JOHNSON: Yes.

ADV SELLO SC: Where the Commissioners will determine which persons are these you are talking about.

ADV JOHNSON: Correct.

ADV SELLO SC: Okay.

ADV JOHNSON: And bearing in mind – no, it is fine. I keep in mind what Commissioner Khumalo said about the standing orders and how matters should be approached. So, I will give you the reference numbers for those. But what is very clear is arising out of these engagements, one
10 would have to re-look the matters, re-look them with that factual and legal positions that were put to IDAC, and at least put to myself.

ADV SELLO SC: Yes.

ADV JOHNSON: I cannot go back, having had these engagements, Commissioners. The fact that there are investigations in the office does not mean that they should not be re-looked at. However, bear in mind that I am not vested with oversight of those.

What I should responsibly do is put together a
20 report for the Office of the National Director so that whoever is reviewing any and all of those matters does take these discussions into consideration. It would be irresponsible if I do not do that, having accepted what was put to me by the Commissioners and the manner in which we engaged.

ADV SELLO SC: I know Commissioner Khumalo wants to pose a question, but before he does so, may I correct you? I understood you to say you are not vested with oversight over those investigations. That has got to be wrong. You are the head.

ADV JOHNSON: Yes. May I explain?

ADV SELLO SC: Absolutely.

ADV JOHNSON: On the 19th of June, I approached the National Director and I did ask I hope, Advocate Mhaga, you
10 have now provided, because I think Commissioner Baloyi did indicate that we hear what you say, but where is the proof?

On the 19th of June, I approached the National Director on my own and I indicated to him that it might be best for the interests of IDAC and the NPA that I be removed from the oversight of these matters. The basis for that, Commissioners and Counsel, was that on the day prior there was the media briefing by General Nhlanhla Mkhwanazi.

20 What that brought to bear for myself is that for as long as I am in these matters, the matters themselves are not seen. The focus becomes the ID or the focus becomes Andrea Johnson. That is not in the public interest. That is not in the interest of justice.

I had that open conversation with the National

Director on the 19th. The National Director asked me if I am sure and I said yes, because the matters, as well as the NPA and IDAC, have to come first.

ADV SELLO SC: If I understand, the power of oversight is bestowed upon you by the statute.

ADV JOHNSON: That is correct.

ADV SELLO SC: So you are suggesting, pursuant to a request you made, you were stripped of that power insofar as matters relating to Crime Intelligence are concerned. Is
10 that what you say? And to whom has the power been shifted?

ADV JOHNSON: If I can just go here, because I know that Commissioner Baloyi, you did ask a question about how that could have happened. When I looked, after having had the conversation with the National Director, he thanked me for my pragmatic approach and he agreed. He then indicated, as he publicly did afterwards, these matters will now go under review. And that is the power of the National Director.

20 I report to the National Director, but if it is in the interest of the NPA, as the National Director under section 22(1) of the NPA Act, the National Director – sorry, may I read it?

ADV SELLO SC: Yes, yes.

ADV JOHNSON:

“The National Director, as the Head of the Prosecuting Authority, shall have authority over the exercising of all the powers and performance of all the duties and functions conferred or imposed on or assigned to any member of the Prosecuting Authority by the Constitution, this Act, and any other law.”

And then:

10 “May review a decision to prosecute or not to prosecute after consulting the relevant Director and after taking representations within the specified period by the National Director of the accused person, complainant, and any other party, person or party, whom the National Director considers to be relevant.”

It is on the basis of his powers to ensure the performance
20 and duties and functions conferred or imposed upon myself, as an example, of someone employed in the NPA. I make the request. He accedes to the request. He understands that it is in the best interest of those matters, public interest, the interest of justice.

And when he agrees, it is not just I agree that the

team does not report to you on these matters anymore. He says I remove them. They now fall under the reporting structure of the Deputy National Director of Public Prosecutions, who heads the National Prosecuting Service, Advocate Bell, and as well as the fact that the National Director has appointed, Advocate Mhaga might help me with the correct wording, I think there is an independent review panel that has been put together to consider not just one matter, but all the matters for processes of fairness and
 10 transparency.

ADV SELLO SC: As I read section 22, that is the one you just read out to us, that relates to prosecutorial decisions.

ADV JOHNSON: Yes.

ADV SELLO SC: Not investigation decisions ...[intervenes].

ADV JOHNSON: There are ...[intervenes].

ADV SELLO SC: Let me just finish. Earlier, you indicated that in the course of investigations post May 2025, after your authorisation, you have come across a number of
 20 instances where manipulation of recruitment processes occurred, resulting in unsuitable people being appointed to senior strategic posts. Those are the investigation files we have called for to try and determine who these are.

ADV JOHNSON: Yes.

ADV SELLO SC: I do not understand section 22 to suggest

the NDPP would have authority over those investigations. It is a prosecutorial decision that he is reviewing.

ADV JOHNSON: The NDPP has the right to review, or have to be reviewed the Lushaba matter, which is in court, the Mokwele matter, which is in court, and the matter for which warrants of arrest had already been obtained for Generals Khumalo and Madondo ...[intervenes].

ADV SELLO SC: As the ...[intervenes].

ADV JOHNSON: On the prosecution matters
10 ...[intervenes].

ADV SELLO SC: That is because in those cases, a decision was made to prosecute.

ADV JOHNSON: That is correct.

ADV SELLO SC: So it is a prosecutorial decision that he is reviewing.

ADV JOHNSON: That is correct.

ADV SELLO SC: But that is not our investigations that are currently within IDAC.

ADV JOHNSON: Yes. The investigations that are currently
20 within IDAC, as I said, would have to now be relooked ...[intervenes].

ADV SELLO SC: By you.

ADV JOHNSON: By myself, keeping in mind what was said during the engagements, especially the ones on the appointments. I might have to look as well, Commissioners,

in detail, if there are, and I assume there would be, standing orders with regards to vetting, and make a determination on those matters and submit them through to the office of the NDPP.

ADV SELLO SC: Standing order sounds very police-like. You meant national instructions, I think.

ADV JOHNSON: Sorry, national instructions. Sorry.

ADV BALOYI SC: Can I just ask the question? Before this Mokwele matter, or apart from this Mokwele matter, has
10 IDAC investigated any employment, appointment, recruitment issues, ever?

ADV JOHNSON: Commissioner Baloyi, no, not that I am aware of, no.

ADV BALOYI SC: Thank you.

ADV SELLO SC: I really hope Commissioner Khumalo has not forgotten his questions, I know. Took a bit of a detour, my apologies.

ADV KHUMALO SC: It is not a detour because we are still dealing with 25.1, which is where you were.

20 **ADV JOHNSON:** Yes.

ADV KHUMALO SC: Advocate Johnson, 25.1 of your original statement to the Commission, you say the manipulation of recruitment processes, appointment of persons without suitable qualifications. I think because you had not seen the national instruction, we can accept that

you do not know what the processes are because they are set out in that national instruction.

ADV JOHNSON: I accept that.

ADV KHUMALO SC: Is that fair?

ADV JOHNSON: That is fair.

ADV KHUMALO SC: Yes. Now, let us look at the suitable qualification. What suitable qualification do you say Ms Mokwele did not have when she was appointed to this role? What is that suitable qualification that you say she did not have?

ADV JOHNSON: I would have to have sight of the – I cannot tell you off my head. I would have to have sight of the advert.

ADV KHUMALO SC: Go to File 2, page 178. Can you please flight it?

ADV JOHNSON: Because Commissioner Khumalo seems to know all the pages.

ADV KHUMALO SC: No, it is File 2, page 178.

ADV JOHNSON: I am there.

20 **ADV KHUMALO SC:** Yes. So ...[intervenes].

ADV JOHNSON: I would have to read it ...[intervenes].

ADV KHUMALO SC: If you look at item 3.2.

ADV JOHNSON: Yes, I have gone through that one.

ADV KHUMALO SC: So that is the position in question. Do you see that in bullet 1 it requires that the person must

have at least a three-year degree or diploma?

ADV JOHNSON: In policing, public administration, management law, et cetera ...[intervenes].

ADV KHUMALO SC: Yes, and then it says in policing or public administration or criminology or intelligence or electrical or mechanical engineering. Do you see that? Or did IDAC stop at policing and say ...[intervenes].

ADV JOHNSON: No, no, I am reading as you ...[intervenes].

10 **ADV KHUMALO SC**: Ja.

ADV JOHNSON: Yes. And I do not know her qualifications, but the fact that you point me to that means they must be there ...[intervenes].

ADV KHUMALO SC: Stop there, Advocate Johnson. You do not know her qualifications?

ADV JOHNSON: I know she has It was called Megatronics [sic].

ADV KHUMALO SC: Do you know what her qualifications are?

20 **ADV JOHNSON**: Not all her qualifications, no.

ADV KHUMALO SC: So why do you make a statement under oath to say she is not suitable for this position if you do not know what her qualifications are? Why do you make a statement to this Commission to say the big picture will show that she does not have qualifications? Can I ask that

they be flighted so that we can look at them? Can we go to 270 on the same file? Are you there?

ADV JOHNSON: Yes.

ADV KHUMALO SC: So that is a degree in engineering, industrial engineering. Do you see that?

ADV JOHNSON: I see that.

ADV KHUMALO SC: So already she missed the qualification. Now, go to the next page on 271.

ADV JOHNSON: I see that.

10 **ADV KHUMALO SC:** Are you there?

ADV JOHNSON: I am there.

ADV KHUMALO SC: Now, that is a diploma in mecha, not mega, mechatronics. Now, what is the relevance of that? That is the core description of this role. If you go back to the advert on 176, you will see that the core functions, what Crime Intelligence was looking for is exactly this qualification because the description of the role tells you that they want somebody who is qualified in mechanics and electronics and all of those. Do you see those?

20 **ADV JOHNSON:** I see that, Commissioner.

ADV KHUMALO SC: Yes. Now, from 270, I do not want to show her a matric certificate. It is not fair to Ms Mokwele, but it is on 272. Please do not flight it. It is quite clear that this is somebody who is very bright. I must say this to you. Before I saw these files, the picture painted in my head was

that Crime Intelligence appointed a receptionist from BMW. That is the picture I had in my head.

Until I saw these files, then it became clear to me that this person is not just qualified, but her qualification exceeds the requirements. Now, from 273, which we can flight, it is about 12 certificates that I have counted because one of the requirements was that you must be familiar with computers, you must be familiar with finance, you must be familiar with how the public service works.

10 So, there is a series of them. I counted about 12. Cybersecurity being one of them on page 281. There is about 12. We do not have to look at all 12 of them. Otherwise, it will take the whole day. Now, having seen all of this, do you stand by what is stated in 25.1 of your affidavit, that she does not have the suitable qualifications?

ADV JOHNSON: So, she must have at least three years in applicable postgraduate qualification, relevant to middle management, learning programmes, must have a minimum period of three years of appropriate managerial experience
20 in the field of the post. For me, the only one, I am not disputing what you are asking me ...[intervenes].

ADV KHUMALO SC: Are you saying she is not bilingual and she does not have a driver's licence? Because those are some of the requirements.

ADV JOHNSON: No.

ADV KHUMALO SC: Do you want to dispute those?

ADV KHUMALO SC: No, must have ...[intervenes].

ADV KHUMALO SC: So, what is the qualification that you say in 25.1 of your affidavit that she does not have?

ADV JOHNSON: Must have a minimum period of three years appropriate managerial experience in the field of the post.

ADV KHUMALO SC: Is that a qualification?

ADV JOHNSON: No.

10 **ADV KHUMALO SC:** Is experience is a qualification?

ADV JOHNSON: No, it was just a requirement.

ADV KHUMALO SC: Yes. Now, your affidavit says she does not have the qualification ...[intervenes].

ADV JOHNSON: In terms of the documents that I now have sight of, that is incorrect.

ADV KHUMALO SC: It is incorrect what is stated in your affidavit.

ADV JOHNSON: It is incorrect.

ADV KHUMALO SC: She does have the qualifications.

20 **ADV JOHNSON:** She does have the qualifications.

ADV KHUMALO SC: Now, what your investigators have done in their affidavit to the court, they have said Ms Mokwele does not have seven years' senior management experience and therefore she does not qualify. Now, show me on 179 ...[intervenes].

ADV JOHNSON: It does not say so ...[intervenes].

ADV KHUMALO SC: Where it says you need seven years' senior management experience.

ADV JOHNSON: It does not say so in the ...[intervenes].

ADV KHUMALO SC: And that is the basis for IDAC targeting this female person and subjecting her to criminal proceedings and humiliation. What the advert says is that you must have appropriate management experience. Where does one find a definition of appropriate management
10 experience? Where does one find that? It is in the national instruction.

It is in the definition section of the national instruction. And this is what the national instruction says. You must have experience above the level of a supervisor. That is all that was required. If Ms Mokwele met those requirements, then she complied with the minimum requirements according to the advert.

In her application for this position, she lists all those. She goes further and she says, I am studying for my
20 MBA. Are you aware of that?

ADV JOHNSON: No, I have not gone through her ...[intervenes].

ADV KHUMALO SC: Did you see her application for this job?

ADV JOHNSON: No.

ADV KHUMALO SC: Now, if you have not seen her application for this job, how can you make a recommendation, as you did in your prosecution memo, that she must be charged with fraud and this many other things? What fraud has she committed? According to the investigation, let us not go to what the Court will decide.

ADV JOHNSON: Yes.

ADV KHUMALO SC: I do not want to get into what the charge sheet says.

10 **ADV JOHNSON:** Yes.

ADV KHUMALO SC: We limit ourselves to investigation that leads to arrests and charges. What fraud has Ms Mokwele committed that justifies you recommending to the DPP that she must be charged with fraud and state capture and all of those things?

ADV JOHNSON: Again, I relied on the briefing from my team. And it is going to go back to what Counsel had asked me, that I trusted them implicitly. I now see that the facts, as I may have received them then, and I would have to go
20 back and look at it, were incorrect.

ADV KHUMALO SC: And they misled the Court in many respects because the impression they created was that the panel just did as it pleases. I want to take you to three documents that illustrate that above the panel there was senior HR and people at general level who supervised the

work of the panel. We are going to start on page 200, same file.

ADV JOHNSON: I am there, Commissioner.

ADV KHUMALO SC: Are you there?

ADV JOHNSON: I am there.

ADV KHUMALO SC: I am going to challenge you before we go to – you described Ms Mokwele's appointment as a token appointment. It is an unfair statement to make, having not seen her CV, having not seen her qualifications.

10 Can you please in this Commission withdraw the statement that her appointment is a token appointment? It is an insulting thing to say.

ADV JOHNSON: I would have to go further than to withdraw. I would have to apologise that that statement was made.

ADV KHUMALO SC: Because it is one thing to say an appointment is irregular.

ADV JOHNSON: Yes.

20 **ADV KHUMALO SC:** It is quite another to say it is a token appointment.

ADV JOHNSON: Yes. I base it on what I was given, but I accept, having gone through this file, that the word unsuitable is unsuitable and that the word token is wholly inappropriate.

ADV KHUMALO SC: Sorry to interrupt you. Let us look at

page 200. What page 200 and 201 reflect is that there was a proposal that a panel be constituted and that proposal or recommendation had to be approved by the Deputy National Commissioner Crime Detection. But also if you go to 201, you will see that Acting National Commissioner Support Services, Lieutenant General Nkhua, approved it.

ADV JOHNSON: Correct.

ADV KHUMALO SC: So IDAC must accept that somebody higher than General Khumalo approved the appointment of
10 this panel. Okay. Now let us go to the shortlisting itself and the shortlisted candidates on page 222. Sorry, it starts on 221.

ADV JOHNSON: I am there, Commissioner.

ADV KHUMALO SC: So what you have here is a request for approval once candidates have been shortlisted. There is a request for approval. And if you look at the paragraph 2, the second bullet point. Are you there?

ADV JOHNSON: I am there.

ADV KHUMALO SC: Do you see that is the post section
20 head, Technical Support Services?

ADV JOHNSON: Correct.

ADV KHUMALO SC: Now do you see that somebody higher than the panel actually went through the list of shortlisted candidates and examined whether each of them qualified to go through the interviews? Because in respect

of that one candidate, they make it clear that here the requirements are not met and therefore this person cannot be shortlisted. Do you see that? Maybe take your time and just read paragraph 2.1.

ADV JOHNSON: I see that one.

ADV KHUMALO SC: And then 2.2.

ADV JOHNSON: I see that one.

ADV KHUMALO SC: And you can assume that the next page, paragraph 2.3 to paragraph 4, were along the same
10 lines. But look at paragraph 4 before we go to 223.

ADV JOHNSON: Sorry, paragraph 4?

ADV KHUMALO SC: Paragraph 4 on 222. It emphasises the need to comply with the relevance policy prescripts. Do you see that?

ADV JOHNSON: I see that.

ADV KHUMALO SC: So SAPS looks at these things. At a level above the panel, there is somebody who is reviewing the work of the panel to satisfy themselves that the panel is complying with the prescripts. And then you go to 223. Do
20 you see that the approval is granted?

ADV JOHNSON: Sorry, 223?

ADV KHUMALO SC: 223, Lieutenant General Nkhua.

ADV JOHNSON: Yes.

ADV KHUMALO SC: Human Resource Management grants the approval. And you need to read that with paragraph 2.

So you must go back to 221. I am going to read it into the record:

“Approval is hereby granted for the selection panels to proceed with the assessment of the shortlisted candidates for the post with due regard to the content of paragraphs below.”

Do you see that?

ADV JOHNSON: I see that.

10 **ADV SELLO SC:** So within SAPS, there was all that approval. And then we must now, I suppose, go to the national instruction. I will not read the paragraphs into the record. I will just draw your attention to the relevant paragraphs that one must look at when one assesses whether Ms Mokwele or the panel have done anything wrong.

ADV JOHNSON: Sorry, Commissioner. I just need to find my document.

ADV SELLO SC: Help is on its way. Somebody is there to
20 help you.

ADV KHUMALO SC: I am told Commissioner Baloyi took it back.

ADV JOHNSON: Yes, Commissioner had given me a copy.

ADV SELLO SC: No, just go to File 3. We had located, I think, page 706.

ADV JOHNSON: File?

ADV SELLO SC: File 3.

ADV JOHNSON: It is okay, Commissioner Baloyi.

ADV SELLO SC: Page 706.

ADV JOHNSON: We have found it. Let us not dispossess you. Thank you.

ADV KHUMALO SC: Advocate Johnson, I am going to go through this very quickly because...

ADV JOHNSON: Yes.

10 **ADV KHUMALO SC:** So just look at clause 2 or section 2. I do not know whether they call them clauses or sections. Clause 2 of the national instruction.

ADV JOHNSON: If Commissioner would rather just give me the page number at the top. Is that the 707?

ADV SELLO SC: That is correct. That would be 707.

ADV JOHNSON: Thank you. I am there.

ADV KHUMALO SC: Maybe for now then just look at B in clause 2.

ADV JOHNSON: Done.

20 **ADV KHUMALO SC:** Do you see that this is what I was referring you to?

ADV JOHNSON: Yes.

ADV KHUMALO SC: And then I am not going to read them. Just clause 6, I am just highlighting them to you. I am not going to deal with them. Clause 6.

ADV JOHNSON: I see that.

ADV KHUMALO SC: Clause 7 deals with the selection process.

ADV JOHNSON: I am there.

ADV KHUMALO SC: And then clause 12 deals with the recommendation by the panel.

ADV JOHNSON: I see that.

ADV KHUMALO SC: And then let me highlight this. 13(2).

ADV JOHNSON: I saw that.

10 **ADV KHUMALO SC:** Do you see that it says the Deputy National Commissioner, Divisional Commissioner, Regional Commissioner, Provincial Commissioner consent must certify that the process took place in accordance with this national instruction?

ADV JOHNSON: I see that.

ADV KHUMALO SC: So at a level above the panel you have four people who are not part of the panel who must certify that the process has been followed. Now if those four people have certified that in this specific case a
20 process has followed, do you not think it was necessary for IDAC to go ask them why did you certify, on what basis, what was the reason? Because they would know the national instruction better than IDAC, not so?

ADV JOHNSON: Correct.

ADV KHUMALO SC: Advocate Sello, I think for now I will

stop here.

ADV SELLO SC: Thank you, Commissioner.

ADV BALOYI SC: Can I just raise my concern about your 25.1, the affidavit? Even allowing for your explanation that you did not look at the documents, so you never saw this advert, you relied on a briefing from your investigators and had no reason to doubt them, even allowing for that, the difficulty that I have with your 25.1 is that at the time that you prepare this affidavit...

10 **ADV JOHNSON:** Commissioner?

ADV BALOYI SC: Is that at the time that you prepare the affidavit for the Commission, you now have the full set of documents. As you prepare, and I must again assume that you prepped for this, you did not rely on briefings when you came here.

You looked at the documents, what they say, how did we get to those decisions, what were we relying on, because you know that you are going to be asked questions about this. And if that is what you did, I have a difficulty
20 that you still represent what you state in 25.1, when your dockets, when your documents, all your documents that you requested were collected by your investigators are now all before you.

You are coming to the Commission and you still repeat the statement in 25.1, which as Commissioner

Khumalo has shown you, it is not supported by the documents that are in your own dockets. And it leads me to one of two possibilities, that as you come to the Commission, you come prepared to continue a narrative that is not based on any evidence that was before you, properly placed before you, and underlined properly placed before you, for purposes of your decision then, but also for purposes of your preparation here.

Notwithstanding that, you are prepared to continue
10 that narrative. The alternative is that you did not do the necessary preparation to be able to give us full comprehensive answers. Otherwise, you would not have said to us in that paragraph that she was appointed as a result of manipulation of processes.

And everywhere else in your affidavits where you continue that line, which one is it of the two? And maybe there is a third, you can give a third.

ADV JOHNSON: Yes. In my preparation, and in hindsight, I should have corrected it. I just did not correct it. I knew
20 that I would be asked and be given an opportunity. In hindsight, Commissioner, perhaps the correct, not perhaps, in the manner in which the question is posed, the correct thing would have been rather remove these paragraphs and/or insert a different view.

ADV BALOYI SC: And you, when you came to testify and

prepared for it, did you have any difficulty with the idea that you will come here and you will not defend the indefensible now that you have the benefit of preparing and having had the evidence of, for example, Colonel Padayachee? Very importantly, and I expect that on the back of listening to Colonel Padayachee's evidence, you went about to do your own investigation.

You asked questions based on whatever you were following. You asked questions to the right people. Did you
10 have, and I ask the question because it does bother me that you have said what you have said in the affidavit. Did you not get to a point where you thought, well, maybe some of the things that we did should not have happened? And when I go to the Commission, I will fairly concede as much.

ADV JOHNSON: Which is what I have done now in this process.

ADV BALOYI SC: Yes.

ADV JOHNSON: I am not defending my process.

ADV BALOYI SC: Yes. No, I am talking about when you
20 were preparing to come here, because you are making concessions as you are being probed. It is not as if you volunteered it. You happily read that paragraph and everything that it represents. Every way that you speak about recruitment processes having been manipulated to appoint somebody as part of a capture process, which you

are still going to tell us about, as part of the capture of Crime Intelligence for money laundering to happen. You have repeated that.

Your affidavits speak to that. Nothing more. Nothing outside of that or nothing different from that. You are continuing the narrative that is in the charge sheet, that is in Colonel Padayachee's many affidavits, that was in his evidence. So, I ask of you, and I ask of you because you are the head of institution.

10 I accept that in some cases, you will rely on your people to brief you, right? Instead of reading documents. Because you have a lot of other cases to look at. And in some cases, you may well be excused. Not in all cases. But when you are now coming to testify here, and we had a similar discussion about what happened in the Ad Hoc Committee where things were put to you and you said, well, I did not remember it, but we know there is a record of it.

 Here again, there has been this repetition of a narrative until you are probed, you make the concession.
20 And yet, some of the things, in my view, should not even have required you to be probed. You know, you should have come in and said to us, I have looked at this.

 And either you did not look at this stuff in preparation for coming here, or in my view, you looked at it, but you were going to continue the narrative because that is

already what you have said on paper and in other for a and that is why you stick to that version because you cannot change it.

I struggle with that. And I struggle with that, as I say, not only because you are a head of institution, but also you are a lawyer with obligations to forum like ours, with a full understanding of what an oath means and the consequence of saying things under oath that you had no reasonable basis to believe.

10 I ask in that way, and it is a matter of concern for me that you have continued this way and concessions have had to be forced out of you, forced in quotes, but had to be extracted from you without you volunteering them up front. I do not know if you want to say anything to that.

ADV JOHNSON: No, I hear you.

ADV BALOYI SC: You understand my concern?

ADV JOHNSON: I understand what you said.

ADV BALOYI SC: Yes. Thank you. Thank you, Ms Sello.

ADV SELLO SC: Thank you, Commissioner Baloyi. I do
20 not know if the Commissioners have anything else to say, to engage the witness on in regard to the paragraph 25.1, because I will be moving on. But if there are questions, I think ...[intervenes].

ADV KHUMALO SC: We will come back to the appointment issue. But paragraph 25 for now, because it simply said

manipulation of process and suitable qualifications, they are part of the qualifications ...[intervenes].

ADV SELLO SC: Is dealt with, yes.

ADV KHUMALO SC: And part of the recruitment process we have covered.

ADV SELLO SC: Okay.

ADV KHUMALO SC: We may come back to that.

ADV SELLO SC: Thank you, Commissioner. We stay with your statement to the Commission, Advocate Johnson, and
10 we are now at 25.2. Remember, this is the picture that you say emerges from Mr Adams' referral, and by referral I will use the expanded definition, which is the referral perhaps was linked from the dockets and from the subsequent A1 statement of 6 January, so I take them collectively. You say:

20 "There was a bypassing of vetting processes which, amongst others, manifested itself in the failure to apply for and get top secret clearance where required."

Who failed to apply for and get top clearances where required? Is that Ms Mokwele still?

ADV JOHNSON: No.

ADV SELLO SC: Who is this?

ADV JOHNSON: That is the other matter that is under

review. That is the matter of General Madondo.

ADV SELLO SC: Does this arise from the section 27? I did not read the section 27 to ever reference persons within CI failing to obtain clearance certificates.

ADV JOHNSON: No, this arises out of the investigations that were conducted after the 28.

ADV SELLO SC: So when you suggest that it arises from Mr Adams' section 27 referral, that is a tad misleading, is it not?

10 **ADV JOHNSON:** I did explain earlier, and I know we do not agree, that I said I may indicate that there were a series of matters referred to IDAC in terms of section 27 by one Mr Adams. When the whole picture is presented, that is the investigations, these are the things that they present, and they were then into different investigations.

ADV SELLO SC: So then I should assume, if it does not arise from the section 27 referral, I should assume in the course of the preliminary investigation, because that is all we have.

20 **ADV JOHNSON:** Yes.

ADV SELLO SC: What you stated 25.2 became apparent, correct?

ADV JOHNSON: Correct.

ADV SELLO SC: I would assume that that would require a section 28 authorisation to investigate. It is outside the

section 27 referral.

ADV JOHNSON: Correct.

ADV SELLO SC: Did you authorise investigation into the vetting and top security clearances for anyone within CI? And if so, when did you so authorise?

ADV JOHNSON: I think that the authorisation was one authorisation.

ADV SELLO SC: Is it part of the pile you gave this morning?

10 **ADV JOHNSON**: It should be.

ADV SELLO SC: Okay. What we received starts from – this morning, what we are looking at starts from page File 8, 3280. We can skip that 3280 and go to 3282. That is the one authorisation we dealt with. And this was, that had an annexure of 12 names. File 8.

ADV JOHNSON: There must be a...

ADV SELLO SC: So they started 3282, the next should follow at 3285, CJC390.

ADV JOHNSON: Yes.

20 **ADV SELLO SC**: And then we had 3288, but 3288 is for authorisations in terms of section 28(1). And if we pause at 3288, so that is a section 28 authorisation and this one at 1.1 section suggests that the persons listed in paragraph 1.2 of that document have committed some corrupt act in contravention of the Prevention and Combating of Corrupt

Activities Act. I am reading 1.1 and 1.2 together.

ADV JOHNSON: Yes.

ADV SELLO SC: And this, as I read it, sounds like, if you look at 2.1 summary of facts, this is at page 3289, sounds like that it is in respect of the, I will call it the Mokwele matter for lack of a better reference. The persons you have cited at paragraph 2.1, if memory serves me well, either served on the panel, correct?

ADV JOHNSON: Yes.

10 **ADV SELLO SC:** Or had involvement in the eventual appointment of Ms Mokwele. At 2.3, you quote the SMS, and once again you speak of the employment of the employee and what it is subject to. Then beyond that, at 3291, you then deal with the legislative mandate. So this is about the appointment of Ms Mokwele, that authorisation.

ADV JOHNSON: Correct.

ADV SELLO SC: Okay. Then we can move on to the next authorisation. It is at 3299, and this one is dated 30th of May as well. This is for fraud, at 3299, for fraud and any
20 offence involving dishonesty. Statutory offences there, once again, are in PRECCA, and it is in relation to activities within the South African Police Service and Crime Intelligence. And you see here you have decided to conduct a preparatory investigation. Judging by the date, I do not know if this is a different preparatory investigation, or you

actually meant a full-blown section 28 investigation. Is that the correction? You remember when Commissioner Baloyi referred you to a similar ...[intervenes].

ADV JOHNSON: Yes, that was the correction.

ADV SELLO SC: Is the correction. So we should cancel preparatory ...[intervenes].

ADV JOHNSON: [Indistinct].

ADV SELLO SC: Okay. And in this instance here, you then authorise, you then provide an annexure of the
10 persons who should be investigated, but that is for fraud and offences concerning, involving dishonesty. And then you, if you look at 3302.

ADV JOHNSON: Sorry, 33?

ADV SELLO SC: 02 of the same authorisation, it is common law offences of dishonesty, and then statutory offences including but not limited to contravention of corruption and gratification, and contravention of the provisions of, once again, PRECCA. And if you look at 3303, once again, this is dated May the 30th. If you go to
20 3304, it is the next document that is a designation, I guess in relation to the section 28 investigation you have just authorised from page 3299. Am I correct?

And you recall that what we are looking for is authorisation to investigate members of the CI as regards their top security clearances and their failure to apply for

such. And then by the time you get to 3307, those are the two documents provided this morning on your request, and this is the application for investigation in terms of section 28(13). This one takes us back.

And the next one, that is EXHIBIT 390.5. The next one is EXHIBIT 391, and those are the two letters that you address to General Senthumule, and at 3314 to General Khumalo, Major General Khumalo Detective Services, requesting the dockets.

10 There is no authorisation regarding the investigation into the vetting and issue of top secret clearances for the various other members of Crime Intelligence.

ADV JOHNSON: I see that that is not here.

ADV SELLO SC: Yes. So, will you be in a position to obtain that? And it is one thing to have a section 28 authorisation. It is another to understand, for the Commission to understand the basis of your exercise of that power, which would mean the investigation file must be
20 provided as well.

Otherwise, the Commission is not in a position to interrogate whether or not you exercised your power based on any concrete fact or evidence. And that becomes particularly important, I should point out to you, because in February already, and if you go to File 3, page 936, and you

suggest that the authorisation into these matters regarding security clearances for other officers within Crime Intelligence would have arisen after their preliminary investigations. So after you granted your authorisations, and that would have been in May, on 30 May 2025. Do you recall that?

ADV JOHNSON: I recall that.

ADV SELLO SC: So, now at File 3, page 936, is a summons issued on the 6th of February 2025. And if you go
10 to 937, it states:

“Details of the matter or other information. This investigation pertains to manipulation of security vetting processes, which resulted in the unlawful issuing of security clearances in favour of personnel within the Division Crime Intelligence of the South African Police Service.”

This is in February. So, it is not informed by any
20 investigation. At this juncture, the assumption was that it is informed by the section 27. Now, you have just testified that now the issue of vetting and security clearances in respect of the many, those persons listed at 938, arose after the preliminary investigation and not from the referral itself.

ADV JOHNSON: Yes.

ADV SELLO SC: That is what you explained. So, now, are you able to explain why it is your investigators in February already? Remember, you are still to authorise a section 28 investigation on the 30th of May. In February 2025, if you go to 938, why has it triggered a full-blown investigation and issuing a section 28 summons to obtain the vetting, the security clearances and vetting files for the officers listed in there at page 938?

10 **ADV JOHNSON:** At 936 it says that the investigation was authorised by the Investigating Director in terms of section 28(13) of the NPA Act into allegations of fraud and corruption.

ADV SELLO SC: It cannot be because you have just said that we know that 28(13) we have arises from Mr Adams' referral.

ADV JOHNSON: Yes, and the subsequent engagement with Mr Adams.

20 **ADV SELLO SC:** Yes, and he is a one statement of one page of January. You just indicated that that referral does not speak to the top security clearances of other persons within Crime Intelligence. You said that it was informed by investigations that IDAC conducted on your authority.

ADV JOHNSON: On the four dockets that – what I did say earlier was that there were the four dockets. They retook

statements on each of those dockets and the prosecutor grouped those dockets in terms of the categories of offences.

So the information that we would have had arose out of the 27 with the dockets and the section 28(13) approval that was granted. There was not one docket dealing with one matter. So the statement that we did view of Mr Adams, I agree, relates to one matter. I did say that there were other dockets on which they took additional
10 statements or amplified statements in order.

ADV SELLO SC: But we agreed earlier that you agree with the conclusions drawn by, I do not know if, let me say, Lieutenant General Chamane [?], that the information contained in the same dockets is scanty and too vague to formulate charges against any suspect. You said you agreed with that conclusion.

ADV JOHNSON: I agree with his conclusion there ...[intervenes].

ADV SELLO SC: Yes, yes.

20 **ADV JOHNSON:** May I proceed?

ADV SELLO SC: Please, absolutely.

ADV JOHNSON: However, IDAC took additional statements because the statements in the original dockets by Adams were exactly what General Chamane says. They were flimsy. So they took additional statements. That is

exactly how I understood their engagement with Adams in January of 2025, that on each of the matters, Counsel, they took additional statements.

ADV BALOYI SC: This would be additional statements from Mr Adams.

ADV JOHNSON: From Mr Adams, ma'am.

ADV BALOYI SC: Where he then mentions these people specifically as implicated in the unlawful issuing of clearance in the vetting, in the manipulation of vetting
10 processes, and unlawful issuing of security clearances.

ADV JOHNSON: That is what should have been there, yes.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: May I add then to the list of documents we request, can we get each and every such statement by Mr Adams of, you say it was in January 2025?

ADV JOHNSON: That is when the engagement took place.

ADV SELLO SC: Yes, and you said that he, I think he deposed to a number of statements.

ADV JOHNSON: Yes, that is what the investigators
20 indicate, that they took statements for each docket.

ADV SELLO SC: Then we are requesting all those statements.

ADV JOHNSON: Mr Mhaga is ...[intervenes].

ADV SELLO SC: No, no, no. I do not want to leave responsibility with somebody else. I want you and I to

agree ...[intervenes].

ADV JOHNSON: No, no, I agree with you and ...[intervenes].

ADV SELLO SC: Thank you.

ADV JOHNSON: I am looking at Mr Mhaga to just note while we are engaging. Thank you.

ADV SELLO SC: Okay. So then if we go back to your statement 25.3. At 25.3, you remember that you said this is what the investigations are at. I take the preliminary
10 investigations because those are the only on record:

“The appointment of persons not suitably qualified and/or experienced as a form of gratification for their collusion later in the looting of state funds, e.g., the purchase of properties.”

Now let us break it down. The appointment of persons not suitably qualified and/or experienced. Is it safe to assume that the A1 statements you are bringing, presumably by tomorrow, would address the issue of the appointment of
20 these unnamed persons? That they have to be in those A1 statements?

ADV JOHNSON: They have to be.

ADV SELLO SC: They would have to be. The second leg is as a form of gratification. Please explain that. I take it because we know that section 27 does not tell us, those

statements are going to demonstrate that a gratification was paid. I am not sure in which direction, to somebody or other.

ADV KHUMALO SC: Can I interrupt and take a step back?

ADV SELLO SC: Absolutely, Commissioner.

ADV KHUMALO SC: If the person you are referring to in 25.3 is suitably qualified, so we are turning it around. If that person is suitably qualified, then their appointment cannot amount to gratification.

10 **ADV JOHNSON:** Correct.

ADV SELLO SC: You accept that?

ADV JOHNSON: I accept that.

ADV KHUMALO SC: So if we accept that Ms Mokwele met the requirements that we put up, then her appointment cannot be gratification. At that level only.

ADV JOHNSON: Absolutely.

ADV KHUMALO SC: Yes.

ADV JOHNSON: And if you would allow me to maybe finish the thought is, as I have indicated, I would have to go back
20 into those matters that are still under investigation and to determine whether or not those aspects raised are then still relevant. Do they find relevance? Because in the manner in which we have engaged, if those aspects no longer find relevance in those matters, those matters would have to be closed and dispensed with.

ADV KHUMALO SC: Because for one to get to the point where one says their appointment amounts to gratification, one must start at did they qualify for the position ...[intervenes].

ADV JOHNSON: We have to start where you started ...[intervenes].

ADV KHUMALO SC: Because if they qualified, then they were properly appointed and their appointment cannot amount to gratification.

10 **ADV JOHNSON:** That is correct.

ADV KHUMALO SC: Yes.

ADV JOHNSON: And so both – sorry, Counsel. So both the vetting processes, those allegations of the vetting processes, as well as the allegations of the recruitment and gratification for the matters still under investigation, have to be properly revisited.

ADV KHUMALO SC: I think the vetting issue in respect of Ms Mokwele, we can put that to bed ...[intervenes].

ADV JOHNSON: That is ...[intervenes].

20 **ADV KHUMALO SC:** Because Colonel Padayachee accepted that the way CI did it, the way the panel did it, disadvantaged Ms Mokwele. It did not benefit her because the requirements said she must subject herself to vetting six months after the appointment. So the fact that they were doing it before the interview was in fact

disadvantaging her, not benefiting her. I think with Colonel Padayachee we settled on that and he accepted.

ADV JOHNSON: Yes, I accept that. I am saying with all other, the averment of persons not suitably qualified and/or experienced, and/or with regards to vetting, if they still find place in those other investigations not yet completed, those would have to be looked at as a matter of urgency and dealt with.

ADV KHUMALO SC: I do not want to force you to concede
10 that because the other people, the process of their vetting was different.

ADV JOHNSON: Yes.

ADV KHUMALO SC: With Brigadier Mokwele, the requirements were clear that it must happen within six months after. So the other people that you referred to in your summons are not there yet, so I do not want to force you to concede that.

ADV JOHNSON: Thank you, Commissioner. It is not a concession. It is a matter of saying I have heard the
20 argument and I should reapply my mind, given all of the discussions that were raised.

ADV BALOYI SC: Your response to Commissioner Khumalo that if a candidate meets the requirement, then there could not be gratification, I do not know that that is correct in your present case, that kind of answer, because

gratification is a quid for a quo.

ADV JOHNSON: Yes.

ADV BALOYI SC: So the way you have constructed the charges against Ms Mokwele is that she was given the position so that she can do something. So she has been rewarded with a position to do something, and that is something you have described as a capture of crime intelligence.

You have described it as such. So it seems to me
10 that on the case that you have, it really does not matter whether she met the requirements or not. Your case is this is a PRECCA offence. They have appointed this person so that they can syphon off funds. That is Mr Adams' complaint, which you have agreed with in the formulation of the charge.

And I do not expect you to do the same thing that Colonel Padayachee did, which is, well, we do not know what the offence in the future will be, whether she will commit it or not. But the charge itself would have required
20 you at day one to say, and maybe you do have that. I am not getting into the merits of whether you have a winnable case or not.

I am speaking at the starting point, is you formulate a charge, and if the charge is giving someone employment, that is one form of gratification. It is employment in return

for something. That provision in PRECCA does not say someone who is not qualified.

ADV JOHNSON: Correct.

ADV BALOYI SC: It does not. So she may well be qualified, and yet she gets appointed precisely so that she can assist to achieve certain ends. So your concession that you are easily making now, that, well, if it is a qualifying person, there could not be an offence of gratification. The offence is not just the appointment.

10 **ADV JOHNSON:** Yes.

ADV BALOYI SC: The offence is you get appointed because you are going to give something in return.

ADV JOHNSON: Yes.

ADV BALOYI SC: So your answer, you have to amend your answer to Commissioner Khumalo.

ADV JOHNSON: The answer talks to the suitability in terms of the appointments and whether or not the vetting processes were met. The additional issue, if in fact related to all and not just to Mokwele, would have to be looked at
20 differently. The appointments of persons not suitably qualified and/or experience as a form of gratification for their collusion later on, I have to see what that investigation says.

I cannot tell you that there is, in fact, evidence that there is collusion. The concession I make is that with

regards to suitability, the standing instructions, and the vetting process, those are the matters that I would look at.

ADV BALOYI SC: No, I am not raising with you, certainly not raising the vetting issue. I am raising a narrow issue with you, which is your answer, your concession to Commissioner Khumalo suggests that you accept that because if it is found that she met the requirements, then we were wrong to claim gratification, that this is a PRECCA offence, which is a gratification offence.

10 I do not remember the exact wording of that provision. I am saying your answer, to the extent that you are saying, well, if she did meet the requirements, then we are wrong, and I am paraphrasing. I am not saying that is what you said.

 If your answer is, because she meets the requirements, or if it is found that she met the requirements, then we could not speak of gratification, I am saying you are wrong because that is not what that offence is about.

20 **ADV JOHNSON:** Yes.

ADV BALOYI SC: That offence is you will prove in court that her appointment, it so happened that you say she is not qualified and you say that she is appointed even though she is not qualified, but in court you will show that this appointment, qualified or not qualified ...[intervenes].

ADV JOHNSON: Notwithstanding is a gratification.

ADV BALOYI SC: It is a gratification for what she is going to do. You understand the point I am making?

ADV JOHNSON: Yes.

ADV BALOYI SC: You agree ...[intervenes].

ADV JOHNSON: That does not fall away.

ADV BALOYI SC: You agree with my construction?

ADV JOHNSON: I agree with your construction. That is not a concession. It is to look at the suitability in terms of
10 the advert, the requirements, the standing orders.

ADV BALOYI SC: Okay, thank you.

ADV JOHNSON: If there are in terms of the other investigations, and I am not saying there are, in terms of the other investigations, I need to go and check.

ADV BALOYI SC: Okay, thank you.

ADV JOHNSON: I do need to go and check.

ADV BALOYI SC: Thank you, Ms Sello.

ADV KHUMALO SC: Just be careful. I was limiting myself only to your paragraph 25.3.

20 **ADV JOHNSON:** Yes.

ADV KHUMALO SC: I was not going to the offence in section 3 of PRECCA, which is what Commissioner Baloyi is engaging you on.

ADV JOHNSON: Yes.

ADV KHUMALO SC: So the answers to both our questions

may be different.

ADV JOHNSON: I understand, and I did not assume that you went beyond just the suitability ...[intervenes].

ADV KHUMALO SC: I deliberately avoided going to the charges. I was just sticking to your statement.

ADV JOHNSON: Yes, I accept that.

ADV SELLO SC: Thank you, Commissioners, and thank you, Advocate Johnson, for my edification. 25.3, does it apply to Ms Mokwele or do you think it could potentially
10 exclude her because she might be suitably qualified? How do I read it? How do you suggest I read it?

ADV JOHNSON: So we have agreed, Counsel, that she is suitably qualified.

ADV SELLO SC: So, therefore, the remainder of 25.3 does not apply to her?

ADV JOHNSON: She is suitably qualified and experienced. The appointment of persons not suitably qualified and/or experience as a form of gratification, that does not exclude that part of why she was appointed, even though she is
20 suitably qualified.

ADV SELLO SC: Yes.

ADV JOHNSON: Yes.

ADV SELLO SC: So then she is not out of the woods yet because if you were to concede that she could potentially be suitably qualified and experienced, her appointment in

and of itself is gratification for her collusion later in the looting of state funds.

ADV JOHNSON: That is correct, yes.

ADV SELLO SC: What in the investigation leads you to believe that in the future she will collude in the looting of state funds? Something in that investigation must have pointed you out to this. What could it potentially be?

ADV JOHNSON: So the information that we had at the time was that in the process, she would have been part of a
10 process where monies would have been taken from the secret funds in order to purchase properties and that her placement there would have assisted that process. That was the contention or the allegation.

ADV SELLO SC: As a mechatronics whatever ...[intervenes].

ADV JOHNSON: The...

ADV SELLO SC: I am trying to understand. I hear what you are saying is restating what is contained in 25.3. You are not giving me a basis for that conclusion. You are
20 already concluding that she will be involved by virtue of occupying that position and I want to understand what in the investigation leads you, by you I mean IDAC, to conclude that you give her that job, she is in the secret service fund and therefore she will be looting state funds. She will be colluding, I correct myself. I do not know who with, but to

loot state funds and purchase properties. What in those files should we look out for to support the conclusion that you draw, the fear that you express at 25.3?

ADV JOHNSON: I will just have to be given an opportunity to go back and to look into the evidence ...[intervenes].

ADV SELLO SC: No, you must have had it. For you to submit on oath, you confirm the correctness of the statement when we started.

ADV JOHNSON: Correct.

10 **ADV SELLO SC:** So you must have an idea and I suggest that perhaps you start sharing it with us. It might not be firmed up when you return, you will give us the full facts, chapter and verse, but for now, when you wrote 25.3 in relation specifically to Ms Mokwele, on what basis did you conclude that she was going to collude in the looting of state funds with whomsoever?

ADV JOHNSON: Commissioners, I ask for a moment.

ADV SELLO SC: Yes, please.

CHAIRPERSON: Are you thinking of a specific document
20 perhaps?

ADV JOHNSON: I am just perusing ...[intervenes].

CHAIRPERSON: I am not rushing you, but ...[intervenes].

ADV JOHNSON: Yes, I am trying to peruse through the charge sheet to at least refresh my memory.

CHAIRPERSON: Okay, please go ahead.

ADV JOHNSON: Okay.

ADV SELLO SC: I think the Commissioners were giving you an opportunity. Have you located what you are looking for?

ADV JOHNSON: It triggers the recollection and I am going to hold you to I will have to come back with the chapter and verse.

ADV SELLO SC: Okay.

ADV JOHNSON: I recall that when it came to where she
10 was positioned in TSS, TSS is a covert environment with a very big budget and the allegation was that if monies were needed, as an example for the purchase of properties, monies would be able to come out of debt and that if she was asked, because of disappointment, she would have felt the need to act. That was the projection and that was the understanding of where ...[intervenes].

CHAIRPERSON: Sorry, asked to do what exactly?

ADV JOHNSON: Sorry. If monies are required or needed, the Technical Support Services to which she would have
20 been appointed has a very big budget. It is a covert environment and I think the manner, and I am giving you the explanation as I understand it, the manner in which funds are dealt with are not as open source as everything else. and so should the need arise for funds to be procured, that would be the environment from which funds could be

accessed, for example, for the purchase of properties ...[intervenes].

ADV KHUMALO SC: Unlawfully ...[intervenes].

ADV JOHNSON: That is how I recall.

ADV KHUMALO SC: Unlawfully?

ADV JOHNSON: That is correct.

ADV KHUMALO SC: So she would violate her duty of good faith to her employer. She would breach her contract of employment.

10 **ADV JOHNSON:** I think that the contention, Commissioner Khumalo, if I recall correctly, was because the monies are in that environment, she could be approached to make those monies available. I do not know what would be presented to her for her to make those monies available, but that is where the funds are for her to make available.

ADV KHUMALO SC: But if she is doing that as part of her job, how does that rise to gratification and unlawful conduct? Because what you are saying, that would apply to any person who occupies that role. If they are required to
20 provide money, provided that they are complying with the prescripts and they are doing that correctly, that is not a criminal offence.

ADV JOHNSON: No, it is not.

ADV KHUMALO SC: They are simply doing their job.

ADV JOHNSON: Yes. If she was approached for access of

the TSS funds, knowing that whatever that motivation was, she should not approve that funding ...[intervenes].

ADV KHUMALO SC: Yes, but how do you leap to the conclusion that she would loot state funds? Because that is what your 25.3 says. If she is approving a request and she is doing it in accordance with the prescripts, there is nothing wrong with that.

ADV JOHNSON: Not if she is doing it in accordance with the prescripts.

10 **ADV KHUMALO SC:** Yes. So what is the basis of your assumption that she would have done it in an unlawful manner?

ADV JOHNSON: That she would have been approached to make monies available under circumstances where she would not have made them available.

ADV KHUMALO SC: But how do you know that?

ADV JOHNSON: Because of that environment and because of the fact that from previous matters, not in IDAC, that is how funds were looted out of accounts where the funds are
20 within a covert environment. So motivations would be put in for access of that money ...[intervenes].

ADV SELLO SC: If I may come in ...[intervenes].

ADV JOHNSON: So ...[intervenes].

ADV SELLO SC: No, no, no. You are being grossly unfair to Ms Mokwele. Now you are attributing conduct of persons

she has no knowledge of to her, in the future ...[indistinct]. And you are saying you accept that she may be required to access those funds in the course of execution of her job, but the impression you create here at this 25.3 is that she would do so to loot. So that apology that I think you sought to extend to her, you might as well take it back. You are seriously impugning her credibility and we are trying to find the basis on which you say she was going to loot.

ADV JOHNSON: I hear you. That is not the intention. I
10 am trying to give an example of how I find that space. Of how I find that space ...[intervenes].

CHAIRPERSON: Do you say ...[intervenes].

ADV JOHNSON: So if I ...[intervenes].

CHAIRPERSON: Sorry. You may continue if you are not done.

ADV JOHNSON: I think it is also wholly unfair. There is no intention to impede on her dignity. I am merely expressing or amplifying on the question. If that is how it comes out, Counsel, really it is unfortunate that you think
20 that I would, in giving an explanation, that I am intentionally impeding on her reputation and her credibility. I do apologise if that is how it comes out.

And to say that my apology in fairness, Commissioners, that I made earlier, I will not willy-nilly make an apology. The Commissioners did not drag an

apology out of me. I made that apology freely and I think it should be taken from where it came. It did come freely.

CHAIRPERSON: If there were substance in what you are saying, it would apply across the board. That is to anybody appointed to that position.

ADV JOHNSON: Correct.

CHAIRPERSON: That must be correct.

ADV JOHNSON: Yes.

CHAIRPERSON: Because you have no basis to think that
10 she is different and that, therefore, this would apply only to her. So anybody ...[intervenes].

ADV JOHNSON: In that position.

CHAIRPERSON: If what you say is logical, anybody would also be susceptible to this impropriety.

ADV JOHNSON: I accept that, Chair.

CHAIRPERSON: Thank you.

ADV KHUMALO SC: Advocate Johnson, in June 2025, this is exactly the charge that was presented, even in the draft charge sheet to justify Ms Mokwele's arrest. It is exactly
20 this. So she has gone through all of this over a period of a year. It is not new that for the first time today you are making this allegation.

The memos, the draft charge sheet, and all the documents, this was exactly the issue, and I say this for my part. I have no sympathy for people who loot state funds.

And if there are people, whether they are Generals or not, who are involved in the looting of the secret account or whatever it is, I have zero sympathy for them.

But this case, as Commissioner Baloyi said yesterday, is a serious abuse of power by IDAC to target a civilian, and that is what I have a problem with. My sympathy for her is a bit different to the Generals because if they did what they did, the law must take its course, but we must draw the line where Organs that are supposed to
 10 protect the public and work for the benefit of the public are used in this manner to unfairly target civilians. That is just not right.

ADV JOHNSON: I understand, hence I made the apology earlier.

ADV KHUMALO SC: Ja.

ADV JOHNSON: It does not detract from the fact that there is a case for which they have now made representations. Mokwele ...[intervenes].

ADV KHUMALO SC: And as you said, it is not just the
 20 representations. There is also the review process that you referred to.

ADV JOHNSON: Exactly, yes. And so, in the end, fairness and justice must prevail. So if we have made the wrong decision, then that decision will be corrected. And I am saying that in terms of the appointment, I am not detracting

anything that I said at all.

ADV KHUMALO SC: Okay.

ADV BALOYI SC: I think my difficulty with you is you should not think that the fact that there is a review process, there is a representation process, and therefore what you sought to do, which is to prosecute, if those decisions are reversed, then all is good.

ADV JOHNSON: No.

ADV BALOYI SC: It cannot be that. Our enquiry is really
10 about why did you make these decisions. It is not about the merits of your case. And I think we may not have fully succeeded to steer from talking to the merits because they are intertwined with your processes, your thought processes, your decision-making process, what you evaluated, and we compare that with the legislative mandate that you have and requirements.

So the fact that there will be reviews and representations that maybe do succeed is not really of our concern. Our concern is how do you make this charge, for
20 example. How does that allegation even arise that she is potentially guilty of a PRECCA offence of gratification? But not just her.

She has been the focus of Commissioner Khumalo because she is a civilian, but any criticism that comes out of section 25.3, in my view, applies to everyone that you

have charged with an offence of gratification as defined in PRECCA. And it comes from, but there are no facts alleged by Mr Adams.

There are not. Not in his section 27. Not in the affidavit, that paragraph 2 that speaks only about Ms Mokwele's appointment. Nowhere else does he make allegations that form a reasonable basis for you to prefer a charge of gratification as defined in PRECCA. That is really the issue, right?

10 And so the enquiry to you is why did you authorise that? Why did your investigators get to that point? Why did the prosecutor, firstly your internal prosecutor, get to that point? Why did your DPP who said I concur with the charges, they are good, what were they working off? So we are still at first base, before representations and before a review. Where does this all come from? Right?

 And on the face of it, so far between you and Colonel Padayachee, you have not given a satisfactory explanation, I must say. And I accept that you are still
20 going to give us documents, the A1 statements, and maybe we will see from there what were the facts that led to this allegation in 25.3, but also that led to the charge itself.

Absent that, if you do not have documents that show the facts on which this charge or this 25.3 is founded, if you do not have any such documents, then this was an

arbitrary decision not based on any facts, and because of it being an arbitrary decision, it is a use of investigative powers for ulterior purposes. If it is not explained satisfactorily for ulterior purposes, then we have to ask the question, what was the purpose? I hope you understand what I am saying.

ADV JOHNSON: I understand.

ADV BALOYI SC: Ja. So we still have to answer that question.

10 **ADV JOHNSON:** Correct.

ADV BALOYI SC: And hopefully your statements, the A1 statements, will put us at peace that there was a basis for that. But as matters stand, I must say from where I am sitting, that with everything that is before us, and until we get something else, then the exercise of the power to investigate and to charge an offence of gratification under PRECCA was exercised without proper consideration, without facts placed properly, and I underline properly, placed before you and the prosecutor and all the people
20 that I have listed to formulate that charge.

On the face of it, the power that you have, all of you that I have listed, you exercise it for an ulterior purpose, and hopefully by the end of the evidence of the IDAC witnesses, we will find out what was the purpose. That, for me, is the real issue here. Do you have anything

to say to that?

ADV JOHNSON: No.

ADV BALOYI SC: Thank you. Thank you, Ms Sello.

ADV SELLO SC: Thank you, Commissioner. If then we could jump to paragraph 28? You recall this paragraph when you started testifying two days ago, you effected changes and amendments to that paragraph. It currently reads:

10 “The picture that has emerged is that the
 appointment and installation of certain
 persons...”

We went through that exercise, and you suggested that it is not persons, that you refer to as person, and that person is Ms Mokwele?

ADV JOHNSON: Yes.

ADV SELLO SC:

20 “...in certain positions within CI by
 Lieutenant General Khumalo and his co-
 accused persons, help them strategically
 to access funding without following
 proper processes. This is because her...”

Following your amendment:

 “...her token appointment would not stop
 them from their unlawful acts.”

I think that follows on the conversation we have just had.

ADV JOHNSON: And that falls away.

ADV SELLO SC: Ma'am?

ADV JOHNSON: That falls away in terms of the appointment.

ADV SELLO SC: What falls away?

ADV JOHNSON: what I am saying is the picture that has emerged is that the appointment and installation of certain persons, and we agreed that in that paragraph it refers to Brigadier Mokwele.

10 **ADV SELLO SC:** Yes.

ADV JOHNSON: That the part of the appointment falls away, that those first two lines fall away, and that short of there being documents to prove the rest of the paragraph, then that falls away.

ADV SELLO SC: Okay.

ADV JOHNSON: But that we must have that evidence because those assertions cannot not be based on evidence, And that is what I am saying ...[intervenes].

ADV KHUMALO SC: Then that entire paragraph falls away.

20 **ADV JOHNSON:** Then that entire paragraph would fall away if I am unable to find in the Adams affidavits that the investigators say they obtained per docket, Commissioner Khumalo.

ADV KHUMALO SC: It goes further. Even following IDAC's own investigation in two parts, the preliminary and

the subsequent one. There is simply no basis for what is stated in that paragraph. No factual basis.

ADV SELLO SC: So, I will take it then it is a conditional deletion for now, depending on what you unearth in your investigation records.

ADV JOHNSON: Only the latter part. That is what ...[intervenes].

ADV SELLO SC: The latter part of that paragraph. The first has already fallen away. Now, you say by Lieutenant
10 General Khumalo. He is the Head of Crime Intelligence. He has got access to the very funds that you speak of. Why does he have to go through all these hoops to access the funds, as you suggest, as if he is outside Crime Intelligence? He has it. He is responsible for that budget.

ADV JOHNSON: He does not have direct access to the budget. He has to work through the co-accused ...[intervenes].

ADV SELLO SC: And they all account to him?

ADV JOHNSON: Sorry, I was just trying to get to the...

20 **ADV SELLO SC:** Okay.

ADV JOHNSON: I think he must be Lieutenant General Lushaba, or he is a Major General Lushaba, but the accused, General Lushaba, that is where that point relates to. So whilst Lieutenant General Khumalo is the Head of CI, he does not have direct access to funding. He has to

work through the CFO, who is General Lushaba.

ADV SELLO SC: So that then – okay. The thing is they all account to him. So then, on your theory, they must all be beholden to him, which would mean everybody in Crime Intelligence, because they are beholden to General Khumalo, will in the future collude, I do not know, perhaps with him or whoever, to loot state funds. That theory must apply to everyone who eventually accounts to General Khumalo.

10 **ADV JOHNSON:** Incorrect.

ADV SELLO SC: Okay, can you ...[intervenes].

ADV JOHNSON: I say that:

“And his co-accused.”

His co-accused being General Lushaba. We say that because of the first matter, which is already in court, where there was a housebreaking, his official equipment is stolen. All of it is hidden and for a long time no action is taken. And I refer only to him. We are not talking about everybody else. That would be a vile assertion to make, that everyone
20 else would have been beholden. I say that the CFO, who still remains in his job despite his – sorry, it is that time of the day.

ADV SELLO SC: Yes.

ADV JOHNSON: Despite his official equipment with state secret information having been stolen, it being pushed

under the rug, hence the charges of the defeating, et cetera, that he faces.

ADV SELLO SC: Okay.

ADV JOHNSON: And him being the CFO, that is the one person. We say because of those allegations. Not in isolation, Commissioner Baloyi, but because of what had happened in terms of his own matter and because he controls the – sorry, because he controls the funding.

ADV BALOYI SC: So, what does that have to do with the
 10 fact that he is strategically placed there to loot funds? I do not understand what the treatment of his case by the division, and for that matter by General Khumalo, if that is the case, how he treated that loss of computer and that whole incident, what that has to do with the allegation that he has been placed, his installation in Crime Intelligence so that he can help strategically to access funding without following, he can help General Khumalo to access funding without following proper process.

I do not understand the link that you are creating
 20 between how General Khumalo treated the loss of a computer and that General Lushaba is in that division and in that position and will be part of the scheme to loot funds.

ADV JOHNSON: It is based that General Lushaba, because he is the CFO and because his criminality was hidden or swept away for a long time till the investigation,

that puts him in a position where we say that should General Khumalo require funds, in all likelihood he would comply.

ADV BALOYI SC: He will give him funds.

ADV JOHNSON: Yes.

ADV BALOYI SC: Okay. You say there is that kind of arrangement between them.

ADV JOHNSON: That is the assertion.

ADV BALOYI SC: Okay.

10 **ADV SELLO SC:** If I may just follow up? It must be that it is General Khumalo who has covered up and swept under the carpet these issues affecting General Lushaba. It must be General Khumalo in order for General Khumalo to have that hold over him. Is that the charge that General Khumalo is facing? Is that the matter in court?

ADV JOHNSON: No, General Khumalo does not face – I speak under correction. That is not the charge he faces. He does not face such a charge.

ADV SELLO SC: So who did the sweeping under the
20 carpet and the covering up?

ADV JOHNSON: We say that at the time when General Khumalo came to know, there was a time where when this incident happened, Commissioners, the CFO was actually the Acting Divisional Commissioner. He was acting in the position that General Khumalo currently occupies. And the

assertion is that when it did come to the attention of General Khumalo, he did not act for this reason. That was the way it was couched in terms of the evidence.

ADV KHUMALO SC: When you say he did not act, you mean he did not discipline him?

ADV JOHNSON: I know that disciplinary action was taken, but well after the fact. I think it was after he was charged by IDAC.

ADV KHUMALO SC: So what do you mean when you say
 10 he did not act? Because we have agreed that a criminal case has been opened. There is a docket, so it is a SAPS matter. Now let us come back to Crime Intelligence, the internal workings. What is it that you say he did not do and should have done if there is already a criminal case and he was charged internally in terms of the HR processes? So make us understand what you say was not done.

ADV JOHNSON: Sorry, Commissioner Khumalo. Before I call you General Khumalo. Commissioner Khumalo, what I am saying is for a long time no action was taken against
 20 General Lushaba. And when he was arrested in the IDAC matter and a report was submitted by IDAC to the National Commissioner, as we are supposed to do, it was only then that disciplinary steps were taken.

The contention is that the moment the head of Crime Intelligence, and it did not have to be General

Khumalo, the moment the head of Crime Intelligence had come to understand and appreciate that this is what had happened, this having been the Acting Divisional Commissioner at the time with a different responsibility, internal action to which the disciplinary should have been activated.

ADV KHUMALO SC: Am I correct that that would have been the National Commissioner? Because who was the boss above General Lushaba at the time when you say
10 nothing was done?

ADV JOHNSON: He acted for, I speak under correction, but I think at the time he acted for a very short time ...[intervenes].

ADV KHUMALO SC: Yes ...[intervenes].

ADV JOHNSON: But for a very ...[intervenes].

ADV KHUMALO SC: But he could not charge himself. So I am asking who is the person above him who could charge him?

ADV JOHNSON: Now you are asking me a question.

20 **ADV KHUMALO SC:** Is it not the National Commissioner?

ADV JOHNSON: He was acting for a very short time.

ADV KHUMALO SC: Yes.

ADV JOHNSON: And from my recollection, General Khumalo comes back as the Divisional Commissioner. I am just not sure where he was in that time. And I am saying

that when it had come to his attention, and this was well before General Lushaba was charged criminally, that action should have been taken.

ADV BALOYI SC: Can I? The way that I have understood the structure, and I will be corrected if I misunderstood it, is that General Khumalo falls under General Sibiya. I think General Sibiya is – Yes, I see my co-Commissioners are nodding. So he has got a boss.

According to you, this incident occurs while he is
10 Acting Divisional Head. So General Khumalo is not above him at that point. Somebody else in the position of either General Sibiya or whoever would have been in that position that is occupied by General Sibiya today, substantive position, would have been the person that should discipline him.

When you charge, when you decide to charge General Khumalo as arising from the failure to discipline, why are you not charging General Sibiya as well, or his equivalent? Not only because the incident happened under
20 their watch and they are the ultimate head of the division or that section, and so finally accountable for what happens, why are you not charging that person? Why are you not arresting that person?

ADV JOHNSON: Again, under correction, there is not, I must check in the charge sheet again, but I do not believe

that that is what General Khumalo is charged for. That is not a contravention that he is charged for.

ADV BALOYI SC: Remember you have this overall charge where you say people were placed in these positions. In fact, even in your discussion of paragraph 28, the examples you make, that is why we are mentioning Lushaba so many times, you say because he was not disciplined, he is therefore beholden to General Khumalo, and so General Khumalo, him being the CFO, General Khumalo would be
10 able to access funds through him.

Now, if the charge of gratification is indeed a valid charge against any one of them, and with Lushaba you say the gratification is there was no disciplinary action taken against him, and therefore he would have to do something in turn, he must be charged. Him, he must be charged with that offence because he received gratification. It is not just Ms Mokwele.

Whoever he is going to be doing favours for must also be charged because gratification is a two-way street,
20 and so there must be two people charged for this. Whether it is General Khumalo, whether it is his boss, the question remains is you allege gratification, the failure to discipline, you say that is gratification to someone who is strategically placed, who will assist to loot.

And I am saying, well, are you charging anyone

with this gratification? You say not General Khumalo. My question is, are you charging anybody? And if you are not charging anybody, my question remains, well, it is a PRECCA offence, according to you, to loot criminal Crime Intelligence funds. Why is no one charged then for that future offence that might happen, might not happen?

ADV JOHNSON: I have to come back to you because I have got to go through the charge. I am not sure that no one is charged, or I am not sure who is charged.

10 **ADV BALOYI SC**: Okay.

ADV JOHNSON: But either way, your question, I understand it.

ADV BALOYI SC: All right. So I accept. Go look it up, and then you will come back and tell us who is being charged with this. But I want to leave it with this proposition that if no one is charged for this, no one at all, one. Two, if whoever was his superior at the time that this incident happened is not charged, and subsequently ...[intervenes].

20 **ADV JOHNSON**: Why not.

ADV BALOYI SC: Why not, but also, it would suggest preferential treatment, that there is no consistency in how you treat offences. Some you charge for gratification, others you do not. That is where I am coming from. So when you look it up, prepare that we will have the

discussion, further discussion along those lines.

ADV JOHNSON: Okay.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Commissioner. Chair, I know my time is not looking good at all, if at all. May I impose five minutes, literally, just to close this topic because I move on to something else next time I start? Thank you. Now, lastly then, for our purposes today, Advocate Johnson, let us have regard to paragraphs 27 and 26 of your
10 statement, and I take them in reverse order. At 27, you say:

“When one looks at all the cases referred to IDAC by Mr Adams, they depict the capture of systems and process for private interest by the head of CI...”

I take it that is General Khumalo? Correct?

ADV JOHNSON: Correct.

ADV SELLO SC: Okay:

“...and other senior managers.”

Then you say this too is an issue you intend to testify
20 about. At 26, before that one, you state from second line that:

“If leave to testify is granted, I will get an opportunity to expand on the issues to which reference is made above.”

And I think that is the exercise we have just tried to

undertake, but it has got a second leg to it. You state, I quote:

“State capture is a type of systemic political corruption in which private interests significantly influence a state's decision-making process to advantage or benefit of certain individuals.”

Now, in light of what you state at 27 in reference to Mr Adams' complaint, say the investigations, I will take it the
10 investigations, not only his complaint, depict the capture of systems and processes for private interest by General Khumalo and other senior managers.

I would like you, in five minutes, literally, if you can, to explain to the Commissioners that capture, the capture of systems and processes for his own private interests by General Khumalo and relate it to the question of state capture that you reference at your paragraph 26, explaining what relevance that has to the terms of this Commission. In five minutes, if you can, however briefly
20 you are able to. Thank you.

ADV JOHNSON: So having had the discussion we have had in terms of the preceding paragraphs about appointments, suitability of appointments, the placement of individuals, and what that placement would have done is what these paragraphs allude to.

But when you go back to the discussion we have had about the policies and the prescripts, it becomes clear that the persons that we thought had been put in certain positions for certain purposes, leaving out the gratification portion, which one must still look at, then that, in fact, is then not the case.

ADV SELLO SC: Then let us look at 27. What about the capture of systems and processes for private interests by General Khumalo? Does that remain? Is there evidence
10 that General Khumalo has captured systems and processes for private interests?

ADV JOHNSON: That would fall away in terms of the discussion we have had because a lot of it, in the main, revolved around, and I hate to do this, Commissioner Khumalo, it does revolve around the appointment of Brigadier Mokwele, which we have now dealt with. That was the systems and the capture. Those were the allegations.

ADV SELLO SC: So then it would be fair to say we hold
20 these issues in abeyance until you have checked your investigation files and you see if ...[intervenes].

ADV JOHNSON: Absolutely. I must check the evidence and then come back with a conclusive answer because what I base it on is not just the briefings but that in the briefings, this is the evidence that was presented in the way they

present them to the ID.

ADV SELLO SC: Yes.

ADV JOHNSON: So I would satisfy myself.

ADV SELLO SC: All right. I am happy to flag it until next time. Thank you, Advocate Johnson. Chair, I have a little bit of a crisis in that – yes?

ADV BALOYI SC: It is not a question. Can I just correct something?

ADV SELLO SC: Absolutely, Commissioner.

10 **ADV BALOYI SC:** I suspect that you understood what I was saying when I said if you are unable to find, to give a full explanation why you did not prosecute certain people and others for gratification, that I meant to say it would suggest selective prosecution decisions and investigation.

ADV JOHNSON: I understood.

ADV BALOYI SC: You understood?

ADV JOHNSON: I understood it that way.

ADV BALOYI SC: Thank you.

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

20 **ADV KHUMALO SC:** Advocate Johnson, can I say this? Please keep it in mind for when you come back. My reading of PRECCA is that gratification itself is not an offence. It is gratification in order to do something. That is the offence.

ADV JOHNSON: Yes.

ADV KHUMALO SC: Because gratification on its own,

every time somebody gives you something, I mean, it is gratification. Provided, of course, it falls within the definition, but it has to be linked to something that is going to be done and which is improper.

ADV JOHNSON: Correct, and/or something that is not going to be done in order to benefit.

ADV KHUMALO SC: But there must be impropriety there.

ADV JOHNSON: Absolutely.

ADV KHUMALO SC: Because if something is being done
10 as it should be done ...[intervenes].

ADV JOHNSON: There is no impropriety.

ADV KHUMALO SC: That cannot be an offence and people cannot be charged with that.

ADV JOHNSON: Absolutely.

ADV SELLO SC: Thank you, Commissioners. Chair, it is obvious we are not done ...[intervenes].

ADV JOHNSON: Sorry, when Counsel said until next time, I thought to myself, is next time not tomorrow? We are all tired, and one should have a light moment.

20 **ADV SELLO SC**: No, no, absolutely. Nothing wrong in that, and I think I share in your hope. But it is just that, a hope. But the reality of the Commission is, firstly, I have encroached on others' time. There is a standing programme for Friday. So I doubt it will be Friday, but I think the best I can do is to request that Advocate Johnson's further

testimony be stood down. As I understand it from the powers that be, I cannot have Friday, I cannot have tomorrow. It will be a question of to when. Thank you, Chair.

CHAIRPERSON: May we see Counsel outside just now? We will come back when we are ready to.

ADV SELLO SC: Absolutely, Chair.

CHAIRPERSON: Let us adjourn.

ADV SELLO SC: Thank you, Chair.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Advocate Johnson, the hearing of your testimony is postponed to 09:30 on Monday, this coming Monday.

ADV JOHNSON: Understood.

CHAIRPERSON: Thank you very much. And about an open session here, that will depend on the ruling to be made in the application by Mr Carrim, that the hearing of his postponement application, which is scheduled for 2 p.m. tomorrow, should be in camera. So there is still to be a ruling on that.

20

If the ruling is that that application should indeed be in camera, then it means tomorrow there will be no open session, but if the ruling is the other way, then we will be in open session here at 2 p.m. tomorrow. The ruling itself will

be circulated by Mr Michaels, our spokesperson, in the usual manner in which he does that. Amongst others, I think it should be uploaded onto our website and then circulated to the media as well. So let us adjourn.

INQUIRY POSTPONED TO 24 JULY 2026

INQUIRY ADJOURNS

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