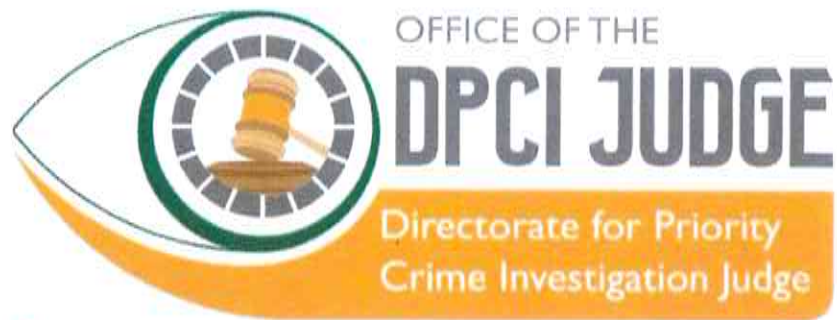


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 Tel: (012) 324 8417, Fax (012) 324 7435, Website: www.dpcijudge.gov.za,
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REF NO (O/PCI/J): 111/01/2017

16 March 2021

**REPORT ON THE FINDINGS OF A COMPLAINT RECEIVED FROM
 CAPT CANDICE COETZEE ATTACHED TO CRIME INTELLIGENCE
 UNIT OF SOUTH AFRICAN POLICE SERVICE IN TERMS OF SECTION
 17L (4)(a) OF THE SOUTH AFRICAN POLICE SERVICE ACT, 68 OF
 1995 (SAPS ACT)**

AGAINST

MAJ GEN PRINCE MOKOTEDI	(1ST RESPONDENT)
COL BERTUS FLYNN	(2ND RESPONDENT)
COL LANDA EDGAR MALIMA	(3RD RESPONDENT)
W/O SPIETKOP MASHEGO	(4TH RESPONDENT)
W/O MICHAEL BENNY MOFFAT	(5TH RESPONDENT)
W/O WELCOME MAKELENI	(6TH RESPONDENT)
CAPT BANELE MGOGODLO	(7TH RESPONDENT)

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W/O TEMBIKHAYA MANGQALAZA	(8 TH RESPONDENT)
COL AMOD KHALI HOosen	(9 TH RESPONDENT)

INTRODUCTION AND MANDATE

1. The complainant, Lt Col Candice Coetzee, was stationed at Crime Intelligence, Head Office, Pretoria, where she has been since January 2003. She was suspended on alleged charges of misconduct on 20 May 2016.
2. Pertinently to the Office of the Directorate for Priority Crime Investigation Judge (O/DPCI/J) or Hawks Ombud Lt Col Coetzee states:

"The making of a formal complaint to the Office of the Retired Judge for the DPCI, Justice Moosa, concerning the unlawful conduct of the Hawks, in particular the team deployed by Maj Gen Prince Mokotedi, (Mokotedi) which team I will state has been deployed at the instance of Moonoo, to silence anyone and everyone that has been involved in a process to expose Moonoo's patently criminal conduct.

Referring to the statement by Col Flynn of the Hawks: I request Judge Moosa to intensively look into the conduct of Col Flynn who was in the meeting with me and my attorney where he himself (Flynn) admits that the meeting was **off the record** but went behind my back to depose to a statement to the Employer in order to tarnish me and break my trust, thereby breaching the agreement that the meeting was off the record. What is the mandate of the Hawks: to investigate a Project that was authorised by the National Commissioner?"

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3. What further throws light on the above grievance is stated at pages 16 and 17 of Lt Col Coetzee's complaint letter as follows:
"On 8 April 2016 I was informed that I had to meet with the Hawks members with: Maj Gen Mokotedi and others. I had not been in communicating with my Commander [Brig Nkosana "Killer" Ximba] as I had not been able to replace my phone as yet. I sought legal advice and asked an attorney to accompany me to the meeting. I was very surprised at this meeting [on 20 April 2016] when I was posed the following questions:

I was asked if I was recording this meeting to which I answered no. I was then asked if I had asked for this meeting to take place. I was a bit confused at this stage and thought that perhaps my commander had arranged this meeting so I said yes. **After a few other questions, my legal representative halted the discussions and said that if this meeting is to continue it is totally off the record otherwise he would have to advise me of my constitutional rights before I continue.** I found it very strange that one of the members of the Hawks then said we don't know what she knows.

They then informed me that they were looking at a POCDATARA (Protection of Constitutional Democracy Against Terrorist and Related Activities Act) angle regarding O'Sullivan as well as **Treason and Espionage**. I was instructed that I had a few days in which to submit a statement to them. **I do not remember very much of this meeting as I was under medication but there were a few points that did stand out. In particular they were looking for anything to implicate O'Sullivan and wanted me to give a section 204 statement.** In other words, they did not care if I had committed

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any offence, they were ONLY interested in implicating O' Sullivan. They could have prepared a statement, if they knew what was what.

When I left the meeting I arranged to meet with my Commander to get clarity regarding who had set the meeting up and for what reason. **I was then informed by my commander that the Hawks had contacted him in order to instruct me to attend the meeting".**

4. Capt Coetzee's second complaint against the other respondents (Col Malima; Col Mashego, Lt Mgogodlo; W/O Moffat; W/O Makeleni and W/O Mangqalaza is captured at page 17 of her declaration, in these terms:

"I had returned to work [apparently after the suspension was lifted] and emotionally I was not coping very well so I took another few days of leave. I had just returned to work again when **I was contacted by Col Malima of the Hawks [who] insisted I was to give a warning statement.** I went to see a lawyer and Col Malima even spoke to the lawyer that same late afternoon. Col Malima insisted that I present myself for a warning statement the next morning (4 May 2016) at 08:30 in Pretoria. My lawyer informed him that he was unable to be present as he was in court the next morning and could not be expected to avail himself at such short notice. **Col Malima was adamant that I had to be there the next morning. The lawyer told him that he is advising me not to say anything.**

The next morning, I went to see the Hawks accompanied by a colleague from my office. She was not allowed to accompany me and I was taken into a boardroom by five (5) male Hawks investigators. **I felt this was an attempt to intimidate me** and I took exception to the fact that I was the only female in the room. I attach a copy of the questions that were posed to me over and above the warning

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statement which was taken. **The Moonoo case, namely Pretoria CAS 380/05/2016 against me involves classified documents and investigations.** Curiously, if not conveniently, a similar case lodged against Mdluli [Gen Mdluli] and others in Silverton was withdrawn against them because the Hawks allegedly could not declassify some of the evidence to be used against them. **In a counter-distinction a classified representation by me which includes an off the record discussion of mine has been used against me without being declassified showing that rules are broken or ignored for ulterior purposes.**

A further meeting that was held [evidently on **08 May 2016**] with the Hawks they were insistent that I give them information relating to the Act 70 [of 2002] on Moonoo's phone and regarding the letter to O'Sullivan. I question how it is, that a retired General in the police is still able to have so much control over the serving officials? Especially when one considers his patent criminal conduct whilst in the police. I note that Moonoo registered Pretoria Central CAS 480/5/2016, 3 days after O'Sullivan was released on bail, using a statement prepared by Huang's attorneys eight months earlier.

On 22 July 2016 I was issued a notification of departmental investigation against me by Col Duma relating to the letter sent to O'Sullivan. The allegations levelled against me read as follows: "On 2015-11-06 you fraudulently wrote a letter to Mr Paul O'Sullivan as if it was from Lt Gen V Moonoo, Maj Gen NO Taioe and signed by Lt Col BN Gininda". I was handed this notice which I signed for and nothing else. Obviously completely false and absurd, which proves only that these people were acting prematurely.

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On 09 September 2016 I was handed a notice of departmental investigation by Col Odendaal relating to interceptions. The allegations read: **"Alleged application of Act 70 of 2002 made by Paul O'Sullivan (Private) Forensic Investigator for interception of telephone lines 082 778 5617 owned by Lt Gen Moonoo: DPCI Enquiry 26/03/11(1)"**. I signed for that notice and nothing further. Again false, absurd and premature. I note that both charges show a clear intent with regard to O'Sullivan.

On 03 November 2016 I was handed the completed investigation by Col Odendaal which I signed for and was told I have 14 days to request further particulars if needed. I indeed requested further particulars via email to Col Odendaal.

On 10 November 2016 I received a call from Col Horn who said he was from Cape Town and that he wanted to meet me to hand over documents. This was getting confusing but we agreed to meet on Monday which he cancelled and we then met on 17 November 2016. He informed me that he is the Employer Representative and that the disciplinary case will be held from 5-9 December 2016 at Erasmuskloof. **I informed him that I haven't even had a response yet on the further particulars that I had requested of which he didn't even know about.** I forwarded the email to him in his presence and I said that the investigation regarding the letter had never been handed to me previously and I needed to go through the documents first. He said that everything he was handing me was what he was going to use and further documents wouldn't be necessary. **He also informed me that a presiding officer had been appointed which was a Col KM Moodley.** I was requested to sign receipt for all documents that he handed me which I did.

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I am not being afforded the right to additional particulars with enough time to be studied by legal counsel and prepare for the hearing. Furthermore, within this pack of documents is a letter for the extension of suspension as well as the appointment of the Employer Representative and the Presiding Officer. Why was I never handed copies of these documents on the dates that they were written?"

5. **Capt Coetzee intimates that having regard to the foregoing her "rights have been illegally violated by the investigations conducted by the Hawks and seeks further investigation in these matters".**
6. In the premises the issues raised by the complainant called for a rebuttal. Consequently, the Deputy Director Investigations in the O/DPCI /J, Mr Edward Rasiwela, duly approached those so implicated for a response, and they obliged.
7. **Col MM Flynn is stationed at Crimes Against the State, Organised Crime Directorate for Priority Crime (DPCI) or the Hawks, in Pretoria** having been furnished with the complaint explained on affidavit dated 13 June 2018:
 "(2) **On 2016/04/07** I received a telephone call from Brig Xaba that I have to assist Maj Gen Mokotedi, the Head of Organised Crime, Gauteng, to take an affidavit from a white lady that speaks Afrikaans.
- (3) **On 2016/04/08** I was phoned by a Col Malima from cellphone 071 481 2780 to meet them in Church Street at the Caltex Garage. The persons I found there were a Col Hoosen (from KZN); Col TC Mangqalaza and W/O Vlok. We drove to Rubenstein Caltex and the same Col Malima drove in front of us to a "safe house" [of] the NPA. Col Mangqalaza, cellphone

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number 082 778 4315 and Maj Gen Mokotedi waited at the gate of the "safe house" for us.

- (4) I have submitted a statement to a Col Malima, after Maj Gen Mokotedi phoned me on **2016/05/05** to be specific about the Act 70 [of 2002] detail Capt Coetzee gave during the meeting. Maj Gen Mokotedi was the chairperson on **2016/04/08**. He said that Capt Coetzee asked for the meeting. (I was never told anything about the investigation; therefore I didn't understand what Capt Coetzee spoke about in the beginning of the meeting). I didn't know the persons at the meeting except for W/O Kobus Vlok from "NINU" with cellphone number 082 778 3582. Capt Coetzee then introduced her lawyer as Mr "Staliano".
- (5) I warned Capt Coetzee that I am a Commissioned Officer and that everything she says would be written down. I then asked her if she has any problem with that. She then replied that we know each other for many years and that she trusts me, and that I am the most honest Police member she knows. She then started to tell us her story. **A while later the Attorney Mr "Staliano" said they believe the meeting was off the record and spoke to Maj Gen Mokotedi.** I never thought that they want it off the record and therefore made notes about the meeting. **Capt Coetzee was crying a lot and I supplied her with water. She also asked to go to the toilet frequently.** There was a "body break". I then spoke to Capt Coetzee outside the [safe] house while she was smoking.
- (6) **She told me she is afraid to be murdered.** I then mentioned witness protection, that she could make an affidavit to tell everything. She said she had to think about it. **After the "body break" Maj Gen Mokotedi then closed the meeting and Mr**

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"Staliano" and Capt Coetzee then said they will do an affidavit to explain everything. The Investigating Officer Col Malima phoned me a few weeks later and asked for [Capt Coetzee's] affidavit, which I submitted.

- (7) Later Col Odendaal from Crime Intelligence Johannesburg phoned for a copy of the affidavit. I then told him to speak to the Investigating Officer, Col Malima, to get a copy. **Col Odendaal later phoned back and told me that Col Malima never placed my affidavit on his docket because I didn't supply them with what they needed. (I could not understand the remark, did the investigating officer want me to declare an untrue version?).**
 - (8) I applied for a copy of my affidavit from Crime Intelligence and the letter returned to me from Crime Intelligence indicated that there is no affidavit of Col AMM Flynn file on the departmental hearing. See as attached per annexure AMMF1. See my request for assistance, copies of departmental hearing as per AMMF2.
 - (9) **It is further [of] great concern that my affidavit was left behind/kept out of the departmental hearing. I was never malicious to taint Capt Coezee's name but I spoke the truth exactly as I heard it, and it is in the public interest". (Emphasis by Col Flynn).**
8. The statement (dated 14 November 2018) of Maj Gen Prince Mokotedi, the erstwhile Provincial Head of the DPCI (the Hawks), Gauteng, explains on the events in these terms:
- (3) "I was approached by the O/DPCI/J to prepare a statement on whether or not I am aware that the participants of meeting that I

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attended with, among others, Capt Coetzee [and] Col Flynn agreed that the proceedings of the meeting are off record.

- (4) In or **around May 2016**, the DPCI (Hawks) was conducting an investigation of a case of unauthorised and/or illegal transfer or sharing of classified recordings of conversations between suspects and other people, by Capt Coetzee to Mr Paul O'Sullivan (hereinafter referred to as O'Sullivan). Apparently, O'Sullivan shared and/or distributed the recordings [to] foreign intelligence agents and other unauthorised people.
- (5) Capt Candice Coetzee requested me to meet with her so that she can give her side of the story regarding the transfer and or sharing of the classified recordings with O'Sullivan. The request came to me through Brig Ximba. The said meeting was arranged, and we met at a safe house in Pretoria.
- (6) I do not recall the particulars of everyone who was at the meeting, but I do remember that W/O Vlok, Capt Mkupa, Capt Mgogodlo, Capt Coetzee and her lawyer, Col Flynn were at the meeting. **Col Flynn was not part of the investigation team, but was brought in so that he can take and commission [the] statement [by] Capt Coetzee in the event she chooses to make a statement.** Coetzee brought her lawyer to advise her in areas where she could incriminate herself.
- (7) **The proceedings of the meeting were not off the record as the purpose was to have a statement from Capt Coetzee. However, there might have been certain issues which the participants at the meeting agreed to keep off record. We had intentions of considering her as a state witness. Capt**

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Coetzee told us that she leaked the classified information to O'Sullivan because SAPS management did not want to deal with Lt Gen Moonoo who was involved in criminal activities".

9. **Statement by Col Amod Khali Hoosen, Acting Commander at the Serious Organised Crime Section of the Directorate for Priority Crime Investigation in Durban. He recounts from para 4:**

"(4) During April 2016, I was present when Coetzee was interviewed. I recall that Coetzee had called for that meeting. The meeting was held in Pretoria area. Coetzee was represented by her legal representative, whose name I cannot recall at this stage.

(5) As far as I can recall, there was no agreement of the meeting being "off the record". However there were certain requests by the legal representative of Coetzee. The request was that W/O Vlok should not be part of the meeting because she stated that she did not feel comfortable. When she was questioned for a reason, she stated that W/O Vlok was involved and had links to the "Boer Mafia" but failed to substantiate it further.

(6) Coetzee had also requested that I should not be part of the meeting but could not give any plausible reason why, save to say that I was a "friend" of Gen Moonoo. I explained my role as an Investigator and a police officer which was accepted by the legal representative and Coetzee.

(7) The next request from the legal representative was that the meeting must not be recorded because his client (Coetzee) was uncomfortable. Coetzee was reminded that she had

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called us to the meeting and we were there to accede to her request and also that she was represented by her legal representative.

- (8) The meeting started off by Coetzee informing the team that she called for the meeting because she heard that we were investigating her involvement with O'Sullivan. Coetzee was again reminded that she had called for the meeting and we were affording her that opportunity and since she had her legal representative present, she ought to have been informed by him of her rights, however she was again reminded of it by Maj Gen Mokotedi.
- (9) She went on to give an account of the "Krechar" (not sure of the spelling) matters. I recalled that most of this information was in the media. However what was of interest, was her direct association with the "criminal" groups. I recall from her own admission that she used to visit the "Kretchar" household as a family friend with her minor child. She was friends with almost the entire "criminal underworld" linked to "Krechar".
- (10) Coetzee informed us that things took a turn when her best friend, one "Cyrel Beeker" was killed. That was when she was totally against "Krechar" and broke all ties with him. She had suspected that "Kretchar" had hired a gangster from Cape Town to shoot "Cyrel Beeker".
- (11) Coetzee admitted that she had known O'Sullivan and used to request assistance on a number of issues. She informed the team that she had also disclosed to O'Sullivan "telephone intercepts" from the Crime Intelligence environment, which was

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conversation between Lt Gen Moonoo and others who she described as "drug dealers and criminals". She did this because Lt Gen Moonoo refused permission to let them go overseas to interview a witness in a case. O'Sullivan had obtained the sponsor for the trip when the State refused. **Whenever the team intervened and attempted to seek clarity on any point, Coetzee became emotional and seemed upset. We had to allow her time to compose herself on a number of occasions.**

- (12) **I recall that at no occasion she informed the team that she had acted within her scope of duties.** It appeared from her own version, that she "piggy backed" on existing investigations and played a "duel-role" with a private investigator, O'Sullivan, and the police, Crime Intelligence sector.
- (13) **On her own version she had admitted that she had provided "top secret and or classified" information from the Crime intelligence environment, to a private person.**
- (14) I do not have any insight nor have seen any affidavit/statement that was supposed to have been sent to the Employer. However, I do not see any wrongdoing if it was done. I respectively believe that if anyone who comes across any information of any crime/wrong doing, becomes compellable witness to the information.
- (15) **I am a Police Officer and had sworn an Oath to abide to the "Code of Conduct" within the Police Service and also to uphold and defend the Constitutional value placed on me and therefore believe that [neither] I nor any member of the team had done**

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anything wrong or illegal. I submit that the complaint is spurious and ought to be rejected". **(Emphasis by the DPCI Judge).**

10. **Col Landa Edgar Malima, the investigating officer, attached to the Integrity Management Unit of the DPCI (Hawks),** having been informed of the complaint by Lt Col Coetzee, responded in his affidavit dated **20 February 2018** in this manner:

"(5) Responding to the allegation I would like to state that Capt Candice Coetzee is indeed a suspect in Pretoria CAS 380/04/2016 where the Public Prosecutor intended to charge her with the following charges:

- 5.1 Protection of Information Act;
- 5.2 Corruption;
- 5.3 Defeating the ends of justice and
- 5.4 C/S with RICA Act.

(6) I have been requested by the Prosecutor of the above mentioned case to obtain a warning statement from Ms Coetzee. I made [the] necessary arrangement with Capt Coetzee and her legal representative "Mr Leisher" to meet on the 4th May 2016. Ms Candice's representative indicated to me that he will not be available on the 4th May 2016 as he was going to be in [the] Johannesburg court. **He had agreed with me telephonically that his client must not make any statement but we could carry on with the interview and questioning of the suspect.**

(7) On the 4th May 2016 I together with my team members we conducted an interview with Capt Coetzee. She was fully informed of her rights. That was the reason why I always communicated with her legal representative "Mr Leisher". **She subsequently exercised her rights to remain silent and**

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elected not to make any statement during the interview.

The questions and answers were reduced into writing [on] the form. Capt Coetzee appended her signature [on] all the pages of the form that was used.

- (8) It is my submission that the interview was voluntary. I vehemently deny that there was any kind of force used [on] Capt Coetzee during the interview. I also deny the allegation of intimidation of any kind during the interview. Everything that happened during the interview was professionally conducted. Even **the approached on imposing questions** [sic] was polite. This is evident in paragraph 8 of the form whereby I asked Capt Coetzee if she was in anyway threatened, assaulted or influenced during the interview and she said "NO" and appended her signature thereon".
11. In support of para 8 of his statement Col Malima attached only page 4 of the printed proforma "SAPS 3M(m)" form. It reflects the printed clauses 7, 8 and 9. Clause 9 is the end of the "SAPS 3M(m)" form. In truth it is merely the "Certification" of the statement. It is meaningless because it is attached to Lt Col Coetzee's statement. The depiction of the "Certification" looks like this:

"(7). During the interview, I asked the suspect whether he/she is injured. The suspect indicated that she did not have any injuries. * I asked the suspect to show me the injuries and I noticed the following:

[Line drawn across 3 (three dotted lines]

*I asked the suspect how and when he/she had sustained the injuries and she replied as follows:

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[Another line drawn across 3 (three) dotted lines]

*Delete which is not applicable. All deletions must be initialled by the deponent, suspect, interpreter and Commissioner.

- (8) I asked the suspect if he/she was in any way threatened, assaulted or influenced to exercise the foregoing options. The suspect stated that-

~~*he/she was not threatened*/assaulted*/influenced*;~~

[Last question deleted as shown above]

- (9) During the interview-

(a)* the suspect was seemingly of sound mind and did not seem to be under the influence of liquor or any other intoxicating substance or in a state of shock;

(b) the suspect was seemingly not of sound mind*/or seemed to be under the influence of alcohol or other intoxicating substance*/or in a state of shock*.

[9(b) deleted as shown above]

*Delete which is not applicable. All deletions must be initialled by the deponent, suspect, interpreter and Commissioner of Oaths

(SGD: C COETZEE)	N/A	SGD: L MALIMA	(Indistinct)
Suspect	Interpreter	Deponent	Commissioner of oath

12. **Capt Cecil Mangqalaza says he resigned from SAPS (and therefore from the Hawks) in 2016 but advances no reason**

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therefor. He had joined Multichoice Company between 21 April 2016 and 04 May 2016. Part of his response is as follows:

“(4) On 08 September 2019 at about 11:00 until 14:30, I met Mr Rasiwela in his office as arranged. In his office he warned me about the misconduct in which I was [allegedly] involved in at the time I was in the DPCI Task Team that visited Col Candice Coetzee of Crime Intelligence and he described the allegations as follows:

4.2 That on 20 April 2016, my name appears on the list of police officers who were present when Col Coetzee was interviewed by Col Flynn with regard to handing over of interception communication product communication of Lt Gen Moonoo cellphone in which the matter was registered as a complaint in a docket vide, Pretoria Central CAS 380/04/2016.

(5) In reply to the above complaint as levelled against me by the Office of the DPCI Judge who is investigating conduct of me at the time I was a police officer is as follows:

AD Paragraph 4.2. thereof

On the allegations I cannot comment as the allegations are not directed to me as read by Mr Rasiwela only my presence shown by Col Flynn in his statement. I do not deny my presence, but no allegations are levelled either against me, furthermore even in future I cannot comment or divulge any facts on the matter which are subject of investigation until I appear in court as a witness because I filed a statement”.

13. The affidavits of Capt Mgogodlo, W/O Makeleni; W/O Moffat and W/O Mashego corroborate the version of Col Malima in all material respects.

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14. The words in s 17L (4)(a) of the SAPS Act that the DPCI Judge may "receive complaints from any member of the public who can provide evidence of a serious and unlawful infringement of his or her rights caused by the investigation by the Directorate" (DPCI or the Hawks) do not imply or presuppose that a complainant should be left to his or her own devices or fail in their quest or petition if an infringement is not substantiated at the initial stage. The structure of the enabling legislation must be construed as a whole, lest the legislation be rendered nugatory and consequently fail to protect the citizenry, particularly the poor, the unsophisticated and the vulnerable.

THE TWO PARALLEL PROCESS

15. We need to pause at this stage and draw attention to the fact that emanating from the foregoing there are evidently two parallel processes at play here. First, the criminal charges: Pretoria Central CAS 380/5/2016 and; secondly, the Disciplinary charges that were formulated by Col Duma on 22 July 2016 and were developed until 17 November 2016 when Col Horn, "the Employer Representative", handed Lt Col Coetzee the documentation, minus the further particulars requested by her, for the disciplinary hearing scheduled to take place from 05-09 December 2016.
16. The Office of the DPCI Judge neither had sight of the Charge Sheet/Indictment in the criminal matter nor the Col Duma Disciplinary Charges. We relied on what Lt Col Coetzee furnished to the O/DPCI/J as reflected earlier. For purposes of the Disciplinary Inquiry this shortcoming has not been an impediment because no detriment has been suffered by the complainant Lt Col Coetzee. The reason emanates from the decision given below.
17. On the enquiry of the status of the Disciplinary Enquiry against Lt Col Coetzee by the O/DPCI/J the document whose contents are

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quoted below was furnished to the O/DPCI/J on or about 18 April 2018. The document itself is dated 21 July 2017. It emanates from: The Divisional Commissioner, Crime Intelligence, Pretoria, and reads:

"The Head

Intelligence Collection

For att: Brig Ximba

Head Office

PRETORIA

ALLEGED MISCONDUCT: NO. 7194808-2 CAPTAIN C COETZEE:
COVERT INTELLIGENCE COLLECTION: CRIME INTELLIGENCE:
HEAD OFFICE: APPLICATION FOR ACT 70 OF 2000 MADE BY
PAUL O'SULLIVAN PRIVATE FORENSIC INVESTIGATOR

1. The abovementioned matter refers.
2. Kindly be advised that the abovementioned member [Lt Col Coetzee] was found not guilty on all four charges (attached Annexures J for your easy reference).
3. The suspension of the member in terms of Regulation 13 (1) is uplifted and she must return to work with immediate effect.

BRIG BELLINGAN

DATE: 2017/07/21"

18. The authority of the Office of the DPCI Judge to investigate complaints of the nature that Lt Col Coetzee has lodged with the O/DPCI/J has been circumscribed in s 17L (4)(a) and/or (b) of the SAPS Act, 68 of 1995. On this occasion we wish to examine the provisions of s 17L (4)(b) of the SAPS Act first. It stipulates that:
 - "(4) The retired Judge may receive complaints in the prescribed form and manner from:
 - (b) any member of the Directorate [meaning the Hawks] who can provide evidence of any improper influence or interference,

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whether of a political or any other nature, exerted upon him or her regarding the conducting of an investigation”.

19. Now, the complaint is certainly against members of the Hawks, in that the Respondents are indeed such members. However, the O/DPCI/J has established that Lt Col Coetzee is a SAPS member but not a member of the Hawks. In the circumstances the jurisdiction of the O/DPCI/J has been ousted under s 17L (4)(b) of the SAPS Act.
20. What remains is for the O/DPCI/J to examine whether s 17L (4)(a) of the SAPS Act does clothe this Office with jurisdiction. This section provides that:
 - “(4) The retired Judge may receive complaints in the prescribed form and manner from:
 - (a) any member of the public who can provide evidence of a serious and unlawful infringement of his or her rights caused by an investigation by the Directorate”.
21. Can it be said that a SAPS member who is “stationed at Crime Intelligence, Head Office, Pretoria,” falls under the general rubric or definition of “any member of the public”. In **Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)** at para 18 the Supreme Court of Appeal made this pronouncement: “The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its

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coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as a reasonable, sensible or businesslike for the words actually used. To do so in regard to a Statute or statutory instrument is to cross the divide between interpretation and legislation. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."

22. The view that the DPCI Judge takes, on the construction/interpretation of the s 17L (4)(a) of the SAPS Act, is that a broad and purposive interpretation is called for. The intention of the Legislature must have been to afford access to as wide a spectrum of the members of the public to the DPCI Judge (Hawks Ombud) who are aggrieved that the Hawks, in conducting an investigation of crime, violated their rights. If the complainant, a lieutenant colonel in SAPS, is disqualified because of a declaration that she is not a member of the public and cannot lay a complaint in terms of both s 17L(4)(a) or (b) of the SAPS Act; on what basis then would a professor in an institution of learning or a medical

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practitioner or an astronaut qualify? They are all members of the public.

It is accordingly declared that the Office of the DPCI Judge has jurisdiction under s 17L (4)(a) to adjudicate Lt Col Coetzee's grievance.

23. Now that it has been decided that the O/DPCI/J has jurisdiction under s 17L (4) (a) a further poser would still rear its head: Does s 17L (3) of the SAPS Act not preclude the mandate of the Hawks Ombud Judge (the DPCI Judge) from adjudicating Lt Col Coetzee's grievance. This section makes this injunction:

"(3) The retired Judge shall not investigate complaints about intelligence matters falling under the jurisdiction of the Inspector-General of Intelligence".

24. Lt Col Coetzee commences her complaint by marking it "Top Secret" and proceeds as follows:

"(1) Office of the Inspector General, Pretoria- BY HAND

Attention: Advocate J Govender

(2) Office of the IPID, Pretoria- BY HAND

Attention: Mr Robert McBride."

Lt Col Coetzee then goes on to state:

"The purpose of this complaint is multi-faceted and include:

The making of a formal complaint with the Inspector General for Intelligence 'IGI' as a result of the unlawful conduct of the Acting Divisional Commissioner Makele, Maj Gen Lekalakala, Brig Ntuli, Brig Chili, Col Pitout and others, employed by Crime Intelligence Division of the SAPS and for their conspiracy with [Maj Gen Prince] Mokotedi [then Gauteng Head of the Hwks] and the Mokotedi team,

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in targeting me, with no formal grounds for doing so, arising out of the fact that I have been gathering intelligence pertaining to the criminal conduct of Moonoo. Their conduct amounts to Racketeering, Defeating the ends of justice and a violation of the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002. By handing classified intercept data to the DPCI (Hawks)."

25. It would have been preferable or prudent for Lt Col Coetzee not to compose a composite document. However, she has demarcated with sufficient clarity the sphere of operation of each institution.

I am satisfied that para 24, quoted above, resorts in the domain and competence of the Inspector- General of Intelligence (IGI) and need not occupy the DPCI Judge.

THREE OR FOUR MEETINGS WITH LT COL COETZEE: THE DATES AND PURPOSES: WHO ATTENDED

26. It is evident from what has been discussed above that several meetings or interviews took place conducted by the Hawks with the Capt Coetzee between 08 April 2016 and 05 May 2016. It is unproductive to deal with what transpired on each occasion. Two interviews of interest or significance will be addressed which would lead this inquiry to find an answer to the question whether the complainant's rights were "infringed" in a "serious and unlawful manner". The first happened when her lawyer was present and the second was when her lawyer was not due to court commitments.
27. On the encounter on 20 April 2016 Lt Col Coetzee says she was unwell and under medication. This is the occasion at which her legal

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representative objected to his client being peppered with questions from various angles until "my legal representative halted the discussions and said that if this meeting is to continue it is totally off the record otherwise he would have to advise me of my constitutional rights before I continue". The aim, she says, was for her to "implicate O'Sullivan and wanted me to give a section 204 statement". It appears that the outcome of this meeting disappeared like raindrops into the parched sand dunes of the Kgalagadi Desert. This is where it should be left.

28. Of great moment is the encounter of 04 May 2016. It is as if the members of the Hawks were not in each other's company, were not at the same venue and seem to relate accounts of different dates the contents whereof are contradictory. It even seems that others lost focus and remember very little or selectively whereas others adapted and stretched their versions as they went along. What is more the accounts of most of them are diametrically opposed to that of Lt Col Coetzee.

- 28.1 According to Lt Coetzee on 03 May 2016 she "was contacted by Col Malima of the Hawks [who] insisted **I was to give a warning statement**" relating to "Pretoria CAS 380/05/2016 against me involving classified documents and investigations". The emphasis here is on her giving "a warning statement". Her lawyer advised her "not to say anything" as he was unavailable because of commitments in court. It is difficult to fathom why the agenda went ahead without Col Coetzee's legal representative and in addition if she was to keep mum. **Annexure CC9** to Capt Coetzee's statement is titled in capital

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letters: "Questions at Interview (for warning statement) on 04/05/2016". Col Malima asked 9(nine) questions; Lt Mgogodlo asked 7 (seven) questions; W/O Mashego asked 3 (three) questions; W/O Moffat asked 3 (three) questions; W/O Makeleni asked 5 (five) questions and Col Malima had a second bite and asked 4 (four) more questions.

- 28.2 There is some confusion about some dates. It does not matter much because all the protagonists relate the events of the same occasion. **According to Col Flynn Brig Xaba** phone him on 07 April 2016 to assist Maj Gen Mokotedi, the Head of Organised Crime, **"to take a statement"** from Lt Col Coetzee. The following day (08/04/2016) he was phoned by Col Malima to obtain the affidavit. The statement was not obtained due to the objection by Coetzee's lawyer that "the meeting was off the record". It could also have been aborted because "Captain Coetzee was crying a lot" and "she also asked to go to the toilet frequently." Further, "after the body break "Maj Gen Mokotedi [who chaired the meeting and Mr **"Staliano"** [her lawyer] agreed that they will do the affidavit to explain everything". Instead Col Fynn made a statement which disappeared from the docket.
- 28.3 Maj Gen Mokotedi is very vague. He said: "In or around May 2016" and further on "Capt Candice Coetzee requested me to meet her so that she can give her side of the story regarding the transfer and/or sharing of classified information to Mr Paul O'Sullivan". He went on: "The request came to me through Brig Ximba". He later: "Col Flynn was brought in so that he can take and commission the statement in the event she chooses to make" one. Then follows the astonishing contradictory and

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self-contradictory para 7 of Maj Gen Mokotedi's statement which is worth a repetition:

"(7) The proceedings of the meeting were not off the record as the purpose was to have a statement from Capt Coetzee. However, there might have been certain issues which the participants at the meeting agreed to keep off record. We had intentions of considering her as a state witness. Capt Coetzee told us that she leaked the classified information to O'Sullivan because SAPS management did not want to deal with general Moonoo who was involved in criminal activities".

So the meeting was off the record but certain portions not. So Capt Coetzee even confessed to criminal conduct!

28.4 The investigating officer Col Landa Edgar Malima murky the waters even further in paras 6 and 7 of his statement. Back came the date of "**04 May 2016**" and the purpose of seeing her was to obtain a "**warning statement**". He says in para 6: "(6) I have been requested by the Prosecutor [unnamed by Malima] of the above mentioned case to obtain a warning statement from Ms Candice Coetzee. I made the necessary arrangements with Ms Coetzee and her legal representative indicated to me that he will not be available on the 04th May 2016 as he was going to be in Johannesburg court. He had agreed with me telephonically that his client must not make any statement but we could carry on with the interview and questioning of the suspect".

Col Malima states in para (7) of his declaration. "She was fully informed of her rights". Later: "She subsequently exercised her rights to remain silent and elected not to make any

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statement during the interview" which he says was "voluntary". At para 11 of this Report of Findings we deal with what is reflected in Clauses 7,8, 9 of the proforma "warning" form. Clauses 1 to 6 have been omitted. We cannot speculate or determine what they contain or why Col Malima decided to omit them.

- 28.5 The statement of Col Amod Khali Hoosen is extensive (15 paragraphs) and puzzling. He says he was in attendance "during April 2016" when Capt Coetzee "was interviewed" at a meeting she initiated. This was anecdotal because he was based in KZN and Capt Coetzee objected to his presence, from his own mouth. The interview was not off the record. Capt Coetzee's lawyer was present:

However, Col Hoosen also stated:

"(7) The next request from the legal representative was that the meeting must not be recorded because his client (Coetzee) was uncomfortable. Coetzee was reminded that she has called us to the meeting and we were there to accede to her request and also that she was represented by her legal representative".

He says Maj Mokotedi "again reminded Capt Coetzee of her rights; and then went on ad nauseam about how Capt Coetzee recounted her friendship and relationship with "Kretchar" [Radovan Krejcir] and "Cyrel Beeker".

Hoosen says Capt Coetzee confessed to sharing "telephone intercepts from the Crime Intelligence Environment between Lt Gen Moonoo and others" with O'Sullivan to get back at Lt

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Gen Moonoo for thwarting her overseas office undertaking. Hoosen further intimates that:

"Whenever the team intervened and attempted to seek clarity on any point; Coetzee became emotional and seemed upset. We had to allow her time to compose herself on a number of occasions".

Col Hoosen concluded at para 15 of his statement with this self-righteousness:

"(15) I am a Police Officer and had sworn an Oath to abide to the "Code of Conduct" within the Police Service and also to uphold and defend the Constitutional value placed on me and therefore believe that I, nor any member of the team had done anything wrong or illegal. I submit that the complaint is spurious and ought to be rejected".

29. Maj Gen Mokotedi is studiously silent concerning the whereabouts of the statements made by both Col Flynn and Capt Coetzee. Col Flynn says when he asked for the statement to prepare his own statement for the DPCI Judge's inquiry he was informed that the statement was missing from the docket. Ostensibly because it may not have been implicative (It "didn't supply them with what they needed") of Capt Coetzee. Mokotedi avoided explaining on what basis Col Hoosen was involved in the investigation all the way from KZN.
30. There are two illusive statements (affidavits):
 - 30.1 One of which is Col Flynn's deposition which he "submitted to Col Malima after Maj Gen Mokotedi phoned me [Flynn] on 05 May 2016 to be specific about the Act 70 [of 2002] detail that Capt Coetzee gave during the meeting Maj Gen Mokotedi was

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chairperson of on 08 April 2016". According to Col Flynn this was his own statement through which he narrated what Capt Coetzee would have said on 08 April 2016. He resorted to this form of report because the statement that Capt Coetzee and her attorney promised to prepare and provide was not forthcoming.

30.2 The second statement would be that which Col Malima recorded of Capt Coetzee on 05 May 2016; which Malima say Capt Coetzee signed. Col Malima described these events at para 10 of this Report with comments of the DPCI Judge at para 11 thereof. At our follow up interview on 20 October 2020 with the now promoted Brig Malima he undertook to furnish us with the full statement recorded on Proforma "SAPS 3M(m)". He gave no cogent reason having furnished only Clauses 7, 8 and 9 of the "SAPS 3M(m)" and omitted the rest.

31. Brig Malima disputes the imputation that he was the investigating officer. Besides, he states that he was attached to the Integrity Unit. He says Capt Cecil Mangqalaza was the I/O. Pertaining to the event of 04 May 2016 he explains that he was approached by Capt Mgogodlo who informed him that Adv JJ Mlotshwa of the National Prosecuting Authority (NPA) requested that he obtain a warning statement from Capt Coetzee. It was a Prosecution Directed Investigation (PDI) driven by Adv JJ Mlotshwa. His first involvement with the case had been in April 2016. On neither occasion had he received a prior briefing on what the case entailed.

32. Brig Malima intimated that he had some discomfort and reservations in view of so many police officers (already listed above) being present. The discomfort was accentuated by the fact that all those present, including himself, but led by Maj Gen Mokotedi, interrogated Capt Coetzee. He could not understand why Col Amod

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Khali Hoosen from KZN was present and participated in soliciting information from Coetzee.

33. Brig Malima concedes, with hindsight he confesses, that the object was not for him to obtain a warning statement but to gather evidence or information for an unexplained purpose. He also concedes that the so called "SAPS 3M(m)" statement that he recorded of Capt Coetzee, if implicative, would not have been admissible in a court of law were Capt Coetzee to be criminally tried. See the defects at para 11 above of this Report.

In the view taken by the DPCI Judge this is a fair concession to make.

34. Col Malima corroborates Col Flynn's assertion that the latter gave him his (Flynn's) statement. Malima says that constituted his last involvement in the case. The following statement in Col Flynn's deposition dated 13 June 2018 was put to Brig Malima by the DPCI Judge on 20 October 2020:

"(7) Later a Col Odendaal from Crime Intelligence Johannesburg phoned for a copy of the affidavit. I then told him to speak to the Investigating Officer, Col Malima, to get a copy. Col Odendaal later phoned back and told me that Col Malima never placed my affidavit on his docket because I didn't supply them with what they needed. (I could not understand the remark, did the Investigating Officer want me to declare an untrue version?)."

Col Malima denies the allegation that he harvested Flynn's statement from the docket or did not incorporate it therein because it did not contain what he was looking for.

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35. The O/DPCI/J had an interview with Col Johan Odendaal on 07 October 2020 for an elucidatory explanation pertaining to the illusive statement of Col Flynn. Much of his averments are irrelevant for purposes of this enquiry. For instance, he impugns the propriety of the outcome of the disciplinary inquiry that exonerate Capt Coetzee. The O/DPCI/J is not competent to revisit or reopen that inquiry for the reason fully set out in paras 15 to 25 of this Report.
36. As far as the statement of Col Flynn is concerned Col Odendaal stated that he had possession thereof. It was Annexure "A6" of his investigative inquiry instituted against Coetzee. He no longer has a copy thereof and can't remember its contents. Col Odendaal undertook to establish from an unnamed Brigadier at Human Resource (HR) whether they have a copy of Flynn's statement.
- The question must be repeated: If Flynn's statement was so innocuous why is it so illusive?**
37. Concerning the statement obtained by Brig Malima from Lt Col Coetzee Col Odendaal says he has never had any sight thereof.
38. It is necessary to expatiate on what Col Flynn further related to the DPCI Judge at the O/DPCI/J on 13 October 2020. He states:
- 38.1 When he arrived at the Safe House he was introduced to Col Hoosen from KZN. He had not met him previously. His presence and role was not explained to him. In fact the role of none who were in attendance was explained. It was mind boggling to him why it was necessary to have all those people there. It was "sinister" to have so many individuals participating in taking down a warning statement. In his 33 years of service he never came across such situation.
- 38.2 His observation was that when Col Coetzee arrived with Mr Staliano, her attorney, she looked "rattled and was shivering".

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He tried to make her comfortable. He gained the impression that she later appeared more at ease. However, from the onset she raised her concern with speaking in the presence of Capt Vlok. Flynn asked Capt Vlok to recuse himself and he duly left. He saw Vlok in the car during the break. It was pointed out to Col Flynn that Col Hoosen said in his statement that Coetzee had also requested that he (Hoosen) be recused but after a short discussion he was allowed to stay. Col Flynn said that he may be mistaken about the request but he was emphatic about the fact that Col Hoosen never left.

- 38.3 Col Flynn further explained that he did not reduce Col Coetzee's statement to writing on the 08 April 2016 but rather made notes which he thereafter used in compiling his own but now illusive statement. It was impossible to record it contemporaneously as the parties were constantly interrupting each other, himself and Coetzee.
- 38.4 Col Coetzee approached him during the break and told him that she feared being killed should she provide information relating to organised crime to all present. He advised her to make a full statement later whereafter she would be admitted to the witnesses protection programme. He stated that in the beginning (initial stages of the interview) Col Coetzee addressed him directly but as the interview progressed she turned to Gen Mokotedi and addressed him.
- 38.5 Col Flynn stated further that: "Col Coetzee cried a lot, she was in such a terrible state. Emotionally she was in a bad state. She was sniffing a lot". The meeting was chaired by Maj Gen Mokotedi. After the body break Col Coetzee and Mr Staliano were, in the circumstances, rather asked to prepare Coetzee's affidavit to which they agreed. Mr Staliano did not say anything during the meeting, apart from advising that the interview was off the record in light of the apparent hostile environment.
- 38.6 Col Flynn maintains that he received a call about two weeks after the interview of 08 April 2016 from Gen Mokotedi who informed him that he had still not received the affidavit of Col Coetzee. Mokotedi requested him to prepare an affidavit

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based on the notes that he had made during the interview. Mokotedi, ominously, directed him to confine the affidavit to the issue of the voice clips of the tape recording that Col Coetzee had allegedly played or supplied to Mr Paul O'Sullivan, a forensic investigator. Col Malima had also, strangely, approached him with a similar request but to discard everything else that was said or happened at the interview/interrogation. It was as if the two had conspired about this before making the request to him. The uniqueness of the request satisfied him that it was not a mere coincidence.

39. Although Col Flynn volunteered on 13 December 2020 to reconstruct his statement, if need be, the DPCI Judge won't require him to do so because it is not Coetzee's statement but his. Even if it was Coetzee's statement it would still be excluded by virtue of having clearly been obtained when she was under severe emotional stress and therefore not made freely and voluntarily but under duress. In addition a statement which is "made off the record" can only serve a nefarious agenda.
40. The aforementioned turn of events called unavoidably for a lot of clarification from Maj Gen Mokotedi who was admittedly in charge of the interrogation. He attended at the DPCI Judge's office on 25 November 2020. He gave a rambling historic account of the chaotic manner he found the DPCI Gauteng Office in and put proper systems in place. It was not easy to keep him focused and relevant. Many people were named and or implicated by him in some malfeasance. Those matters are or resort in the law enforcement domain or probably even in the sphere of the Inspector General of Intelligence and will consequently not detain this report.
41. Of relevance is that Mokotedi makes the allegation that Capt Coetzee leaked some secret information to an unauthorised person,

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the aforesaid Mr Paul O'Sullivan. Hence the investigation against her. Mokotedi maintains that he received information that Coetzee wanted to spill the beans on O'Sullivan and others of wrongdoing and would be comfortable with him present. Coetzee was brought to him by her commander, Brig Killer Ximba, for this purpose. He states that Coetzee equivocated when asked during that specifically scheduled (separate) interview why she did not approach the Intelligence Services and decided to abort the interview.

42. Mokotedi states that Coetzee on her own initiative consulted with him on at least two occasions subsequent to the interview/interrogation of 08 May 2016. From the information gleaned from her he was of the firm view that the interests of justice would be best served if she turned a "204 of the CPA" witness against O'Sullivan whom she allegedly leaked the information to and who in turn apparently disseminated that information to a few selected confidants whose names it would be inappropriate by the DPCI Judge to disclose, not only because they have not been notified but pivotally because the DPCI Judge does not investigate Lt Gen Coetzee for culpability.
43. That Capt Coetzee was a nervous wreck was reiterated by Maj Gen Mokotedi. He states further that certain aspects of the information given by Coetzee was off the record in that she had implicated some of her colleagues who were allegedly involved in serious misdemeanours.

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WHAT IS THE STATUS OF THE CRIMINAL INVESTIGATION AGAINST THE NOW LT COL COETZEE.

44. According to the complainant, Lt Col Coetzee, Lt Gen V Moonoo who then held the position of Divisional Commissioner of Police, registered CAS 380/05/2016, Pretoria Central Police Station, against her. She says, she has however never appeared in a court of law.
45. Having established through Capt Mangqalaza, Capt Mgogodlo and Brig Malima that the direction to obtain a warning statement from Lt Col Coetzee was given by Adv JJ Mlotshwa of the NPA, Adv Tshepo Boikanyo, Director and Acting CEO of the O/DPCI/J, sought this information from him on 15 September 2020:

"The Office of the DPCI Judge was created as an independent institution in terms of Section 17 L of the South African Police Service Act 68 of 1995 (SAPS Act) to investigate complaints regarding the Directorate for Priority Crime Investigation (the DPCI, or Hawks).

The mandate of the DPCI Judge is set out in section 17 L (4) and reads as follows:

- (4) The retired judge may receive complaints in the prescribed form and manner from—
- (a) any member of the public who can provide evidence of a serious and unlawful infringement of his or her rights caused by an investigation by the Directorate; or
 - (b) any member of the Directorate who can provide evidence of any improper influence or interference, whether of a political or any other nature, exerted upon him or her regarding the conducting of an investigation.

Section 7 of the SAPS Act stipulates that the retired judge may request and obtain information from the National Director of Public Prosecutions in so far as it may be necessary for the Judge to conduct an investigation.

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The DPCI Judge has received a complaint from Lt Col Candice Coetzee wherein she alleges that her rights were infringed during the course of an investigation by the members of the Hawks. The respondents are Col Brutus Flynn and six others.

A copy of the docket (Pretoria Central CAS 380/04/2016) was obtained by the Office of the DPCI Judge and upon perusal of the content, it was noted that on 29 December 2016 a letter was directed by yourself to the Directorate for Priority Crime Investigation wherein you directed that further investigations be conducted. It is not clear from the documentation in our possession if these instructions were complied with and if so, what the status of the case is.

To this end, we would appreciate it, if we could be furnished with the status of this matter which would enable us to expedite the finalisation of the matter. This would also enable the office to report to Parliament in terms of (s17L (9)) of the saps Act and to the complainant, Lt Col Coetzee, who has unfairly been left in suspense since 19 January 2017."

46. The communication referred to by Adv Boikanyo was dated 29 December 2016, marked for "Attention Capt Mgogodlo" and was addressed by Adv Mlotshwa to "The National Head: Directorate for Priority Crime Investigation: Pretoria." It reads:

**"RE: ADDITIONAL INFORMATION/FACTS REQUIRED:
INVESTIGATIONS CONDUCTED ON PRETORIA CENTRAL CAS:
380/04/2016: STATE VS PAUL O'SULLIVAN AND OTHERS:
CONTRAVENTION OF PROTECTION OF INFORMATION ACT
AND PROHIBITION OF INTERCEPTION ACT:**

- (1)Further to the above matter, kindly attend to the further investigations as per the attached documents.

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(2) Herewith is the docket, Pretoria CAS 380/04/2016.

(3) You are therefore requested to provide this office with the feedback about the progress achieved on or before the 29th day of January 2017.

Kind Regards

JJ Mlotshwa

Senior Deputy Director of Public Prosecutions

Priority Litigation Unit

Office of the National Director of Public Prosecutions: Pretoria."

47. The annexure referred to in para (1) to Capt Mgogodlo's document above (omitted from this report) required him to attend to 13 (thirteen) queries raised therein. Adv Mlotshwa's response dated 16 September 2020 to Adv Boikanyo's enquiry is perfunctory and runs as follows:

"Your ref: O/DPCI/J: 111/01/2017

Your letter dated 15 instant refers

Kindly note that I am unaware of the nature of the complaint by Lt Col Candice Coetzee against Col Brutus Flynn and 6 others and I am therefore not in a position to comment thereon.

As far as I can recall the docket was investigated by a team of Hawks officers that was assembled by then Head of the Hawks, Gen Berning Ntlemenza. This team, as far as I know, was disbanded when Gen Ntlemenza retired, and that was before the investigations were completed.

The docket was therefore finalised as 'undetected'.

48. By the phrase "finalised undetected" the O/DPCI/J was made to understand that the investigation was terminated. This is also how it

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would be conveyed to the complainant. Nothing more or nothing less. Lt Gen Ntlemeza retired in September 2017.

FINDINGS AND CONCLUSIONS

49. In the premises the following Findings are made and Conclusions reached:

49.1 Whereas the complainant, Lt Col Candice Coetzee, was a member of the South African Police Service, Act 68 Of 1995 (SAPS Act), and attached to the Crime Intelligence Unit, at Head Office, Pretoria, and not a member of the Directorate for Priority Crime Investigation Unit (DPCI or the Hawks), it is concluded that the Office of the DPCI Judge (O/DPCI/J or Hawks Ombud) is clothed with jurisdiction to adjudicate the merits of her complaint ito section 17 L(4)(a) of the SAPS Act pertaining to the manner in which her case was investigated or she was treated during her interview by the Hawks on 08 April 2016 and/or 04 May 2016.

49.2 Lt Col Coetzee characterised her complaint as "multi-faceted". On the aspect of her complaint quoted in para 24 of this Report pertaining to the alleged violation of certain provisions under Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002, by the respondents the DPCI Judge is satisfied that that portion of her complaint resorts in the domain and within the competence of the Inspector General of Intelligence (IGI) and need not occupy the DPCI Judge. However that may be, the complainant has also referred her complaint to the Independent Police Investigative Directorate (IPID). For this reason no referrals will be made to them ito S 17L (5) of the SAPS Act which stipulates that:

"(5) The retired judge may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, amongst others, the Secretariat, the Independent Complaints Directorate, the National Commissioner, the Head of the Directorate, the relevant Provincial Commissioner, the National Director of Public

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Prosecutions, the Inspector-General of Intelligence, or any institution mentioned in chapter 9 of the Constitution of the Republic of South Africa, 1996.”

- 49.3 Lt Gen Coetzee was charged with misconduct in connection with: “Covert Intelligence Collection: Crime Intelligence: Application for Act 70 of 2002: Paul O’Sullivan, Private Forensic Investigator.” She was found not guilty (she was exonerated) on 21 July 2017 by Brig Bellingan and her suspension lifted. In the intervening period her promotion to the rank of Lt Col which had apparently been frozen was activated. Although Lt Col Coetzee’s Request for Further Particulars had not been furnished the DPCI Judge concluded that she suffered no prejudice in the circumstances. The DPCI Judge has decided not to investigate or pursue this leg of the complaint any further because it would have amounted to reviewing the decision of a duly constituted disciplinary body, which the Hawks Ombud was not competent to do.
- 49.4 Concerning the complaint by Lt Col Coetzee that her rights were wrongfully and seriously violated by the Hawks in the course of investigating the Criminal Case (CAS 380/05/2016, Pretoria Central registered against her by Lt Gen Moonoo) the DPCI Judge needed to inform itself whether, in the event the case proceeded to trial, Coetzee’s statement was used and if so whether it was admitted in evidence. The idea was that if introduced the trial-within-a-trial proceedings would have been a good indicator of how a court of law perceived the manner in which the statement was obtained.
- 49.5 The case did not reach trial stage. The investigation was Prosecutor Driven. Adv JJ Mlotshwa of the National Prosecuting Authority (NPA) drove it. He does not say he declined to prosecute. He says the case was “finalised undetected.” The DPCI Judge was made to understand that it meant that the investigation was terminated.
- 49.6 The DPCI Judge is satisfied that on a consideration of all the statements and evidence presented and the surrounding circumstances the intention was never to obtain a warning

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statement from Coetzee which was said to be requisitioned by Adv Mlotshwa of the NPA. The intention was to interrogate her, which the respondents did. The clear ploy was to use her statement against her when she was charged or use it as a bargaining chip against her to implicate Mr Paul O'Sullivan and testify against him.

49.7 The attempt to obtain the first statement from Lt Col Coetzee that Col Bertus Flynn was designated to record on 08 April 2016 was attended by untold menaces: (a) Lt Col Coetzee was crying continually; (b) She was shaking (shivering), sniffing and using a lot of tissues; (c) She was unwell and under medication; (d) Her attorney intervened and stated that the interview was off the record. Flynn agrees and Mokotedi concedes that part of the interview was off the record but he (Mokotedi) does not identify which part.

49.8 Lt Col Coetzee in the end did not make a warning statement. Col Flynn composed his own statement from the notes he made on 08 April 2016 on what Lt Col Coetzee would have said and generally what transpired. Both Maj Gen Mokotedi and Brig Malima were not satisfied with Flynn's statement because it did not contain or reflect "what they wanted." That statement, unsurprisingly, went missing to this day.

49.9 Brig Malima states that: "On 04 May 2016 I together with my team members conducted an interview with [then] Capt Coetzee. She was fully informed of her rights. She subsequently exercised her rights to remain silent and elected not to make any statement during the interview. **The questions and answers were reduced into writing [on] the form. Capt Coetzee appended her signature [on] all the pages on the form.**"

There should not have been a question and answer session if Coetzee elected to remain mute. To muddy the waters further Brig Malima only attached p4 of the printed proforma "SAPS 3M(m)" form to his statement which reflects only the questions and answers pertaining to clauses 7, 8 and 9 of "SAPS 3M(m)." Clause 9 contains only the "Certification". During the interview

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with the DPCI Judge on 20 October 2020 Brig Malima had no cogent explanation why he furnished an incomplete form.

50. Based on the foregoing analysis and findings the DPCI Judge is satisfied:

50.1 That of all the respondents only Col Bertus Flynn (the 2nd Respondent) was forthright and frank and did the right thing in the prevailing circumstances. He stands to be exonerated.

50.2 That, in so far as Warrant Officers Spietkop Mashogo (4th Respondent), Michael Benny Moffat (5th Respondent) and Welcome Makeleni (6th Respondent) are concerned it is evident that they were minions (juniors) and did nothing overtly wrong. In any event, they acted under the guidance of their superiors and were largely passive or did what they were told lest they were accused of disobeying a "lawful" order.

50.3 Capt Banele Mgodlolo and W/O Mangqalaza (7th and 8th respondents, respectively) were described as investigating officers. However, they essentially resorted under the same category as the 4th to 6th respondents alluded to in para 50.2 above. They were under the supervision of Maj Gen Mokotedi and Brig Malima. They did nothing materially irksome. Capt Mgodlolo seems to have been instrumental in transmitting Lt Col Coetzee's docket (CAS 380/04/2016) to Adv JJ Mlotshwa of the NPA for guidance and decision. W/O Mangqalaza, it must be pointed out, left SAPS and the Hawks after the interview/interrogation of Coetzee on 08 April 2016. No aspersions have been cast on him pertaining to his departure.

50.4 As far as Col Amol Khali Hoosen, the 9th Respondent, is concerned he was the Acting Commander at Serious Organised Crime Section of the DPCI (the Hawks) in Durban, KZN. Neither Brig Malima nor Maj Gen Mokotedi could explain at whose invitation he attended the interrogation of 08 APRIL 2016. He did not merely hold a watching brief but enthusiastically participated in the interrogation, having regard to his statement. Whereas his presence was initially taken exception to by Coetzee, the complainant, he was subsequently

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permitted to be involved with the acquiescence of Coetzee. See para 6 of his statement at para 9 of this Report.

In the premises no adverse findings can be made against him and he is exonerated.

50.5 The two elephants in the room are Maj Gen Prince Mokotedi (1st Respondent) and Brig Landa Edgar Malima (3rd Respondent). Mokotedi was Head of the Gauteng Hawks and directed all operations involving the investigation of the case (CAS 380/04/2016) against Lt Col Coetzee. He was in charge of the interrogation of Coetzee on 08 April 2016 during her inhumane treatment summarised at para 49.7 above. From his own mouth he had at least two further but separate engagements with her. Mokotedi and Malima prevailed upon Flynn to tailor his statement to what suited them. That amounts to an incitement to falsify a statement. In the circumstances, the disappearance of Flynn's statement from the docket smacks of something sinister which borders on defeating the ends of justice.

50.6 Malima's feeble attempt to exculpate himself by denying that he was the investigating officer is hollow: (a) Everyone, including Col Flynn, referred to him as such; (b) Importantly, he fulfilled that role throughout and he also speaks of: **"On 04 May 2016, I together with my team members conducted an interview with Capt Coetzee"**; (c) Col Flynn gave him his statement which has now disappeared; (d) He and Mokotedi prevailed upon Flynn to truncate his statement in a particular way. That says it all.

DECISIONS

- A. The complaints by Lt Col Candice Coetzee, attached to Crime Intelligence:Head Office, Pretoria, against Maj Gen Prince Mokotedi, the former Head of the Gauteng Directorate for Priority Crime Investigation (DPCI or Hawks) and Brig Landa Edgar Malima, the Investigating Officer, that her rights were seriously and unlawfully infringed during their investigation against her in respect of Pretoria Central CAS 380/04/2016 on 08 April 2016 (by both) and

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04 May 2016 by Brig Malima have been substantiated (Sec 17L (4)(a) of the SAPS Act).

- B. The aforesaid complaints against Col Bertus Flynn, Capt Banele Mgogodlo and Warrant Officers Spietkop Mashego, Michael Benny Moffat, Welcome Makeleni and Thembikhaya Mangqalaza have not been substantiated and are accordingly exonerated. The same goes for Col Amod Khali Hoosen.

REMEDIAL ACTION

- AA. It is directed that the National Head of the Directorate for Priority Crime Investigation (the DPCI or Hawks), Lt Gen S Godfrey Lebeya, institute disciplinary action against Maj Gen Prince Mokotedi and Brig Landa Egdar Malima for seriously and unlawfully infringing the rights of Lt Col Candice Coetzee on the occasion of her interview/interrogation on 08 April 2016 under the circumstances that have been summarised in para 49.7 of this Report, but not limited to the catalogued list, which is not meant to be exhaustive.
- BB. That disciplinary measures be instituted against Maj Gen Mokotedi and Brig Malima for:
- (a) Inciting Col Bertus Flynn to falsify his statement; and
 - (b) to account and take responsibility for the disappearance of Flynn's statement which did not suit what clearly seemed to have been their nefarious purposes.
- CC. That disciplinary measures be instituted against Brig Malima for a combination of violating Lt Col Coetzee's rights by:
- Interrogating/interviewing her and obtaining her statement in the absence of her legal representative whom she wanted to be present but could not due to court commitment; and did so notwithstanding

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the fact that her attorney conveyed to Brig Malima that he advised his client to remain silent (Coetzee also confirmed the advice); and by exacerbating the situation by making only a fraction of the "Question" and "Answer" proforma form (SAPS 3M(m) with its recordings available to the DPCI Judge.

REPORT TO THE SAPS MINISTER AND HEAD OF THE HAWKS

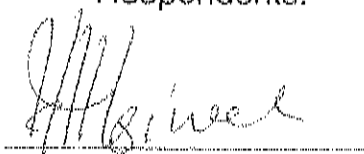
DD. We are sending the Report to the Minister in compliance with s 17L (6) of SAPS Act.

EE. The Report is also furnished to the National Head of the Hawks, Lt Gen Godfrey Lebeya to deal with the matters set out in the Remedial Action above.

DISPOSAL OF THE MATTER

FF. In view of our findings we are closing our file in this matter and complainant will be furnished with a copy of this Report.

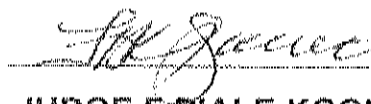
GG. A copy of this Report will also be furnished to each one of the Respondents.



MR EDWARD RASIWELA

DD-INVESTIGATIONS: O/DPCI/J

DATE: 16/03/2021



JUDGE F DIALE KGOMO

HEAD: O/DPCI/J

DATE: 16/03/2021