

COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE INEFFICIENCY IN
KHAYELITSHA AND A BREAKDOWN IN RELATIONS BETWEEN THE
COMMUNITY AND POLICE IN KHAYELITSHA PHASE ONE

Vonita Thompson and Dr. Wadee

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MS BAWA: In light of our change of order and the questions that arise could we ask Ms Thompson to come and give evidence first? In fact it might be convenient Professor Wadee is here as well and the questions are overlapping if we swear both Professor Wadee and Ms Thompson in together and we could then just deal with the questions as they come it will probably be easier to do that.

MR ARENDSE: This is just not cricket is this a new format?

COMMISSIONER: A new format, well we've had a couple of times where we've had two or three witnesses up at the same time. Mr Arendse if you are concerned that it changes the batting order please let us know we could change it but it just will save time. Please take a seat Professor Wadee, am I correct that you're not...(intervention)

MR ARENDSE: No it makes a lot of sense that we do this.

COMMISSIONER: Yes, we'll start with Ms Thompson is that who you're going to start with I do think we should do one witness at a time.

MS BAWA: I was actually...

COMMISSIONER: No I think that's a little confusing, it's particularly confusing for the transcription so who would you like to start with?

MS BAWA: I was going to introduce both of them and then start with Ms Thompson but it depends on – let's do that we'll swear them in.

COMMISSIONER: Okay, Ms Thompson welcome to the proceedings and Professor Wadee welcome to the proceedings of the Khayelitsha Commission we're very grateful that you are here and we're very grateful for the reports that you've put in. You both understand of course that these are public proceedings where journalists are present and that your names will be in the public domain and that your evidence will be in the public domain. Am I correct to conclude that you have no objection to that?

MS THOMPSON: No objection to that, Professor Wadee?

DR WADEE: No objection.

COMMISSIONER: No objection either thank you. Ms Thompson I understand that you're going to be giving your evidence in English is that correct?

MS THOMPSON: That is correct.

COMMISSIONER: Do you have any objection to taking the oath?

MS THOMPSON: No I do not.

VONITA THOMPSON (sworn in)

COMMISSIONER: Professor Wadee am I correct in also understanding that you are going to speak English?

DR WADEE: I have no objection to taking the oath.

COMMISSIONER: You are going to speak English and you have no objection to

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taking the oath.

DR WADEE: No objection to the oath and English.

SHABBIR WADEE (sworn in)

COMMISSIONER: I understand Ms Bawa you are going to start with Ms Thompson, thank you.

MS BAWA: Professor Wadee my (indistinct) is not quite good enough to match yours.

VONITA THOMPSON (sworn states)

EXAMINATION BY MS BAWA

MS BAWA: Ms Thompson you are the director of forensic pathology in the Provincial Department of Health?

MS THOMPSON: Yes I am.

MS BAWA: You've had that position since 1 January 2007.

MS THOMPSON: Officially since 1 January 2007 yes.

MS BAWA: Effectively the 18 forensic pathology facilities in the Western Cape Province fall under your control within the Department of Health.

MS THOMPSON: Yes I'm responsible for the forensic pathology management in the province which includes all 18 forensic pathology facilities in the province.

COMMISSIONER: (Off mic)

MS THOMPSON: Thank you Madam Commissioner I think also it's a challenge for us with hearing so I think it's a two-way issue thank you.

MS BAWA: Having sworn both you and Professor Wadee in I'm going to leave him to deal with the exchange between the pathologist and the investigating officers with post-mortems and I'll deal with you with the interaction between your department and SAPS and essentially the transition that occurred. Could you maybe briefly tell the Commission how in this province forensic services operated before and how it came to be under Health departmental control?

MS THOMPSON: Prior to 2006 April the mortuary service was within the ambit of the South African Police Service. There was a Cabinet decision that was taken already in the 1990s that the service should transfer but due to the financial implications and having to go through a detailed planning phase the final transfer of the service only happened on 1 April 2006. With that then there was the establishment of a Forensic Pathology Service within the Department of Health so it's now a provincial function that's basically mandated within the National Health Act and the Forensic Pathology Regulations in terms of the medico-legal investigation of Death Service.

MS BAWA: Now you've identified in paragraph 6 of your affidavit that there are three aspects in relation to the investigation of homicide. The collection of evidence in respect of the entire homicide investigation which is a SAPS function, the determination of the cause of death which is a Health function and then the provision of testimony in court based on the evidence collected and the formulated cause of death which then again becomes a Health function.

MS THOMPSON: That's correct.

MS BAWA: Now tell us a little bit about the relationship that has evolved and developed between the FPS Services and SAPS on three levels and we'll first look at the level you're at, the departmental level.

MS THOMPSON: At a departmental level we early on realised that there was some requirement in terms of some agreement in terms of our roles and responsibility and how we regulate our relationship. So we embarked on a process to negotiate a memorandum of agreement or understanding between us

as the Province, Provincial Health Forensic Pathology and the Provincial Health, sorry SAPS' Commissioner's office which we finally concluded, as was alluded to, in August 2009. That is a very broad memorandum that clearly just outlined the way that we interact with each other, our roles and responsibilities and what we realistically can expect from each other. So for example it would indicate that within the Metro a forensic pathology service when called will respond within a certain timeframe as an example.

Further in terms of dealing with aspects in terms of our relationship on an ongoing basis we established as was referred to earlier in a SAPS liaison meeting where we engage with the South African Police Service, the various entities within SAPS as well as Emergency Medical Services; City of Cape Town, Metro Police, Provincial Traffic, Community Safety, the forensic chemistry laboratory which is a National Health entity to try and deal with operational issues on an ongoing basis.

MS BAWA: Is that what you referred to as the "monthly standing meeting"?

MS THOMPSON: That is correct.

MS BAWA: Now how effective is that forum in dealing with day-to-day operational matters and I raise this with you Ms Thompson because we've heard about these meetings both from a witness who is still going to testify from the prosecutorial side and we've had a previous witness who has also mentioned that this takes place. But it doesn't seem to be a forum in which difficulties such as provision of post-mortem reports we find a lasting solution or dockets to court etc., so how effective do you find these meetings to be in solving the problems?

MS THOMPSON: I think the effectiveness of the meeting can be improved upon, I think we've had standing challenges with attendance and having appropriate attendance at the correct level because obviously one would want the representation there to be at a decision-making level that can go away and implement what has been agreed to. There have been some successes I think we have identified a number of procedures that had to be developed and the procedure manual that was referred to or that is also contained within my statement is clearly evidence of that where priority areas that have come up time and again in terms of our interaction we've identified as priority areas and have developed procedures related to that.

I think there has also been a number of systems that have been implemented to try and improve on service delivery directly as a result of the engagement and the liaison meetings but it can always be improved upon and I think it's largely due to the change in attendance in terms of parties that do attend this meeting.

MS BAWA: If you were running it what would you do to improve on the system?

MS THOMPSON: I think it's to have a focal person that would be committed attend those meetings on a monthly basis and take responsibility for implementing the decisions that are taken at these meetings and feed back at the next meeting. So that would be my recommendation.

COMMISSIONER: Could I just follow up on that question so what you're finding is that there's a lot of chopping and changing with attendance at meetings?

MS THOMPSON: I think often it's difficult, these meetings are scheduled a year in advance so the dates are communicated way upfront but I think there are often urgent priorities that come specifically SAPS' way where they have to reprioritise. Then often one has a challenge where you might not necessarily

have the appropriate person being represented which is a challenge because that means that some of the issues that are standing items or issues that stood over from the previous meeting cannot be adequately addressed. When we do find this I must indicate that we do address that directly with the Provincial Commissioner's office and we have seen responses but unfortunately it is an ongoing issue that we need to manage.

COMMISSIONER: What status would the SAPS member be who ordinarily attends?

MS THOMPSON: It would normally be at the level of a brigadier that would attend and we have had from time to time also more senior management that would attend.

MS BAWA: Now one of the issues that time and time come up is backlogs and delays on blood and toxicology samples and you mentioned that there's representatives from those bodies or institutions and they fall under the National Department of Health that also attend these meetings. What is the solution that we're looking for, what can we do to improve on that?

MS THOMPSON: Well I think from a user department perspective what we would like is reliability in terms of turnaround times and also in terms of reliability in results. So what we would like to see is that if a toxicology sample is submitted that we reliably know when we can actually expect that result and I think that is for us the challenge at the moment. It is something that we are managing on an ongoing basis through our relationship with the National Department of Health but it is a challenge and it directly impacts on our service delivery and our own efficiency in terms of being able to finalise the post-mortem determination which obviously indicates that the Department of Health Forensic Pathology Service is not delivering on its mandate which is a challenge as it is really beyond our own control as we are reliant on a third party for the actual toxicology and blood alcohol results.

MS BAWA: On average how long do you wait before you get those results back?

MS THOMPSON: It's very difficult to actually indicate an average because currently with the backlogs cases are prioritised so one would generally find that they would prioritise a case if requested to do so if the case for example is going to court to ensure the post-mortem report can be finalised. So it's not possible for me to actually give you an average in terms of average turnaround times.

MS BAWA: Right so now I have a case that's coming up in court that requires prioritisation what does that entail who has to do what to get that case reports out of the starting blocks?

MS THOMPSON: I think obviously in terms of administration I can respond to that question but I think in terms of the clinical response Professor Wadee most probably would be more appropriate in terms of the response. But what it actually means is that the pathologists do request if a toxicology or a blood alcohol is still outstanding that that case be prioritised. It is done so in writing and the forensic chemistry laboratory then prioritises that case to enable the toxicology result to be made available which then gives the pathologist the opportunity to consider that result and then finalise their post-mortem finding in terms of the actual result that they received. I think what also happens and because of the longstanding issue relating to toxicology there has been a criminal justice review process that's been established at a national level specifically to look at the management of the toxicology backlogs and blood

alcohol backlogs both ante-mortem and post-mortem. Now from a forensic pathology perspective we are only really interested in the post-mortem blood alcohol results and not the ante-mortem in terms of drunken driving. So I think there are currently four toxicology laboratories that have been established nationally with the latest one being established in KZN that deal with the whole country's toxicology and blood alcohol requests. As I say what has happened with the established of the criminal justice review project is to specifically look at mechanisms to deal with the backlog. So they have appointed project managers based at each of the forensic chemistry laboratories that work very closely with the National Prosecuting Authority, with the police to determine if or whether toxicology results are still required in terms of some of the court proceedings to be finalised. Those cases then are also being prioritised through this agreement.

What we have stressed however from a forensic pathology perspective is just because a toxicology case is no longer required for a criminal case does not necessarily mean that that toxicology result is no longer required to finalise a post-mortem finding. One would often find that there are delays in finalising estates and insurance payouts because post-mortem findings have not yet been finalised or made available. So I think we stress that despite the fact that the memorandum or the service level agreement that's been entered into – and I'm not quite sure yet on the status of that agreement if it has been signed at a national level – is basically between the national entities of National Health, National Prosecuting Authority and the South African Police Service but that each and every one of the provinces should also be a participatory agent in that service level agreement as we are the users in terms of the actual service itself and not necessarily only the National Prosecuting Authority or the South African Police Service.

MS BAWA: Now we've heard about these backlogs, in your department how much are we talking about what are the backlogs you're waiting for?

MS THOMPSON: I unfortunately don't have the exact figures with me but it is something that we are monitoring on an ongoing basis. I would estimate that it's in excess of 4 500 toxicology results that we are waiting for. We have had a number of recent interactions with the National Department of Health where undertakings have been made to increase the actual outputs as far as blood alcohol and toxicology are concerned I think the last having taken place on the 13th December. There is as I said a commitment and agreement in terms of improving the output and it is something that we are monitoring on an ongoing basis.

MS BAWA: This approximate figure of four and a half, and I accept you can't give an existing figure, let's take over the last three or four years has it been increasing or has it been decreasing?

MS THOMPSON: Unfortunately it's increasing.

MS BAWA: So the CJR established by the Department of Justice when was that implemented?

MS THOMPSON: As I say I'm not quite around the status around the implementation and the actual agreement itself if it has been signed all I know is that it's been since 2010 that the criminal justice project has been active in the province in terms of looking at backlogs and dealing specifically with police on a case-by-case basis.

MS BAWA: Okay, now can you confirm that even when you approach the project

manager on the criminal justice project and you wish him to prioritise cases that there's even now a waiting list on the priority cases?

MS THOMPSON: I'm not in a position to comment on that I think the pathologist would be in a better position.

MS BAWA: Okay.

COMMISSIONER: Can I just put a question one of the things I notice in paragraph 30 of your statement is that you say that sometimes these reports had taken as long as six years.

MS THOMPSON: That is correct we have results outstanding from 2004 and 2005.

COMMISSIONER: Perhaps I may need to put this question to Professor Wadee but what is the quality of the specimens at that stage?

MS THOMPSON: I think from a provincial perspective obviously it's difficult for us to comment on the quality of the actual specimen itself. I think what does happen is if one does get a result and there are questions within the actual pathologist's mind whether those results can actually still be taken into consideration or not. It is a challenge I think we have discussed this issue also within the meeting that we've had with the National Department of Health and they've also agreed to look at embarking on work specifically, technical work to look at the deterioration or possible deterioration of samples over time but that they are busy engaging as far as I'm aware an expert to actually start looking at that. I can't obviously comment on their behalf but that is what has been agreed to.

MS BAWA: You mentioned, I've seen it and we've discovered in the evidence the record keeping system which the forensic evidence keeps and how they detail the deaths that come in. One of the things you're suggesting or one of the solutions that you suggested is that an electronic system from the respective different departments are able to talk to each other, has this ever been on the table, is it an option?

MS THOMPSON: Yes it has been ongoing I think we've had challenges since implementation. We developed a business solution in the Western Cape with a vision of being able to interact or interrelate to other systems. For example we are reliant on fingerprint results to be able to confirm identity as an example and if that could be uploaded electronically into the AFIS or whatever system is being used it would give us a turnaround time much quicker than we have currently in terms of identification, as an example. But is a challenge and it has been because of obviously the security measures that need to be in place there is no such system in place so everything has to basically be done manually.

I think another area that could really add value is we've implemented as part of our solution an SMS system for example where if a post-mortem is scheduled and we have the phone number of the IO that should be attending the post-mortem we will SMS them to confirm that the post-mortem has been scheduled. Again obviously just in terms of the administration related to that process it is a challenge so I think there is a lot of opportunity for integration.

The one other area where integration for us is critical or an ability to access the police systems is for example access to CAS No. or case numbers where there's often a challenge that when we are given a CAS No. on a scene that case number might not necessarily be the case number that's assigned to that case. We've been very privileged in the Metro that we've got dedicated SAPS liaison officers at our two facilities in the Metro whose function then it is

to confirm that those case numbers are actually correct because they at least have access to the CAS system and can confirm those case numbers. That is the case number together linked with our own internal what we call our "WC No." that tracks that case throughout the whole process and obviously if there's a disjuncture or incorrect CAS No. from the start it just escalates all the way through in terms of the management of that specific case.

MS BAWA: Does your SAPS liaison officer have access to the CAS system electronically?

MS THOMPSON: My understanding, and I can be corrected, is that they don't have access within our facility but they do travel to the actual police stations to be able to access that specifically CAS system.

MS BAWA: Because if you did have a SAPS liaison officer at your facility with access to a CAS system and a scanner could your post-mortem reports not simply be scanned into the police existing system by the SAPS liaison officer?

MS THOMPSON: I'm sure it is possible I think, I mean as technology, with technology anything is possible I think it's the ability to actually get systems in place that meet the safety and security requirements of the various agencies to make it work.

MS BAWA: I don't have any further questions.

NO FURTHER QUESTIONS BY MS BAWA

COMMISSIONER: Could I just ask one question in relation to the CAS Nos., generally what is the timeframe is it 24 hours or 48 hours before a CAS No. is actually allocated what's the time delay generally?

MS THOMPSON: We generally do not remove a deceased from a scene without a CAS No so we require the CAS No. to be available at the time and I think even in hospital cases, say for example there's a multiple gunshot that died as a result of injury in a hospital environment we generally would not remove the deceased until we had or unless we have a CAS No. available again just to facilitate the whole management process of that incident.

FURTHER EXAMINATION BY MS BAWA

MS BAWA: Maybe following on that question is it not so that the case number that is sometimes issued on the scene is not the same case number that the electronic system kicks out. So you sometimes have a system where you have more than one CAS No?

MS THOMPSON: That is correct.

MS BAWA: What happens in that respect?

MS THOMPSON: In those respects as I said with the SAPS liaison officers they follow up. Say for example if we responded to a scene during the night, the next day they would follow up and make sure that that CAS No. is correct. We only have the privilege of SAPS liaison officers in two of our facilities out of the 18. In the smaller areas normally outside the Metro we find it less challenging there's more of a relationship that's been built up it's smaller areas so it's easier to obtain the correct Cas No. due to the relationship that's been developed between the forensic pathology service and the local police. So that is normally then the responsibility of our forensic pathology officers to make sure that the correct CAS No. is actually confirmed so that there is no challenge as far as the actual management of that case is concerned.

MS BAWA: In your view how well is the SAPS liaison officer system working?

MS THOMPSON: I think currently it's very much based on the collegial relationship that's been developed with the SAPS, I think it is a challenge in

terms of the fact that there is no such job description and formalised structure within the South African Police Service and it's again an issue that has to be dealt with at a national level. So I think through provincial relationships we've been able to have such posts, both within a hospital environment at our bigger hospitals for example Groote Schuur and Tygerberg and then also in our two big mortuaries in the Metro.

MS BAWA: You also mentioned in your affidavit that there was some challenge in getting hospital records to SAPS and that that was being attended to, have you put systems in place to facilitate SAPS having access to hospital records?

MS THOMPSON: Yes, this issue was raised at the SAPS liaison meeting and again in terms of our liaison meeting the focus of that meeting was very much related to forensic pathology and that interaction. So if any issues are raised that's relevant to the bigger whole system what we do is we escalate those issues. For example, if there are issues related to clinical forensics or hospital interaction with police are raised we do escalate that. So this specific issue was raised with senior management of the health service and an instruction has gone out to the CEOs of hospitals to ensure that should SAPS require access to hospital records that those be made available. I am also aware of a draft circular that is in the process of being issued around access to hospital records.

MS BAWA: Okay thank you Ms Thompson.

NO FURTHER QUESTIONS BY MS BAWA

COMMISSIONER: Thank you. I think we decided we would start with the Legal Resources Centre questions first.

MS BAWA: Could we finish with Professor Wadee?

COMMISSIONER: Fair enough if you're both happy with that let's go ahead we'll hear Professor Wadee and then we'll have question time from the LRC and from SAPS.

SHABBIR WADEE (sworn states)

EXAMINATION BY MS BAWA

MS BAWA: Professor Wadee you are the head of the division of Forensic Medicine Department of Pathology, Faculty of Medicine and Health Sciences, University of Cape Town is that correct?

DR WADEE: University of Stellenbosch yes.

MS BAWA: That's right and you've been there for many years.

DR WADEE: That's true.

MS BAWA: In fact you told me you've been there a bit too long now.

DR WADEE: I think I'll let my employer decide on that I've been there since 1997 yes.

MS BAWA: Now the forensic pathology services you've had jurisdiction since 2006 over all non-natural and sudden unexpected deaths in the Khayelitsha area.

DR WADEE: That's true yes.

MS BAWA: Prior to 2000 it was handled by the forensic pathology services in Salt River.

DR WADEE: That is true yes.

MS BAWA: So most of the persons who die from non-natural causes in Khayelitsha would come to your facility is that correct?

DR WADEE: That is true yes.

MS BAWA: I understand that the only exceptions would be is when for some or other reason it is picked up by a Salt River mortuary van or the person dies in a

hospital that then feeds into the Salt River mortuary system is that correct?

DR WADEE: That is true yes.

MS BAWA: Those are more the exception than the norm.

DR WADEE: That is very true.

MS BAWA: Now you heard a bit about the discussion between Mr Jones and myself and Mr Arendse about post-mortem reports and the attendance of IOs at post-mortem reports. Can you tell us why it is important for investigating officers to attend at post-mortem reports?

DR WADEE: The reason why we want investigating officers who have relevant knowledge to attend autopsies are as follows. The idea is not for them to attend the autopsy itself we have enough professional assistants to do that, what we want them to do is to give us information that we probably didn't get through paperwork that was not completed. Sometimes information becomes available after the paperwork has been done so therefore if the investigating officer comes to the autopsy he or she can then give us up to date information that has become available, that is the main aim of why we want them there. If they are there and they don't have any objection to attending the autopsy we then take time off and we always prioritise cases where police service people are there and make a point of teaching them to say that next time you go to a scene if you see this, this is what it's supposed to be. However, if the investigating officer feels uncomfortable at the autopsy in fact we've quite adequately addressed the issues outside the autopsy room so that they don't have to be party to the autopsy as long as they can carry over the information to us that's the main thing. It's a verbal autopsy that we want from them rather than the anatomical one.

MS BAWA: So primarily for you what is important is a communication between the person who was at the crime scene or who has got information subsequent to the collection of the body and yourself prior to you doing the autopsy.

DR WADEE: Yes that's the importance and the gist of the matter.

MS BAWA: How successful are you in getting that information in whichever way at the moment?

DR WADEE: Unfortunately it's not a very good record we have instituted systems whereby the investigating officer himself or herself must attend and if they don't attend then they should send somebody to stand in their place. Mr Jones may have mentioned that we even keep – before the Commission has asked about records yes we have records over the last few years and at one stage I think we even reached at Tygerberg mortuary we reached a level of 80% of the people came there. But it's not a question of quantity it's a question of quality and very often we ask where is the investigating officer why didn't he or she come, she's in court. I know this excuse offhand, why, they're trying to arrange bail or they're appearing in another case. So the individual who comes is there purely to sign the register to say an individual was there, their presence there is absolutely, maybe I shouldn't be too hard they don't know, they have no idea what the case is about so really it's an exercise in futility that person wasted time he or she could have been doing work that as an official of the SAPS department they should be doing. So if the relevant official or the relevant information does not make it to the autopsy room to transfer knowledge then they shouldn't even bother coming. In fact we've now come to the stage where we don't even keep the register because it's useless.

MS BAWA: Tell me how would an investigating officer know that an autopsy is

taking place?

DR WADEE: On a daily basis we try to formulate a roster the day before the autopsy is done this is then transmitted to the Tygerberg facility they then inform the police liaison officer makes a point of then informing the relevant police station or the relevant information individually if we have the numbers.

MS BAWA: So you finalise your list for the next day, you give that list to the SAPS liaison officer and the SAPS liaison officer communicates it to the IO directly or the station commander.

DR WADEE: That's how it should work in theory yes.

MS BAWA: Do you know how that communication takes place by telephone, does it go to the police station or does he send emails, do you have any idea?

DR WADEE: I would think if I remember correctly it's an SMS system that's used because that seems to be the preferred choice it's very difficult to email SAPS officials, apparently of late it's easier to do that, but we find the SMS the most convenient but I'm sure Mr Jones and Mrs Thompson who are more *au fait* with that will be able to answer that question better. To give an idea that list that goes out that's the same time that my medical officers or my staff are notified of what the cases are so it's not as if SAPS are told at a later time. On that reply list is, so when my doctors get to know what cases they're doing for the next day that's when the SAPS official gets told that his or her case will be on the next day.

COMMISSIONER: I see from the report that generally you try to do the post-mortems within three days of the body arriving at the mortuary.

MS BAWA: We try to delay them not more than that.

COMMISSIONER: If you're an investigating officer in relation to a particular murder you will know that the body was delivered to the mortuary today and some time in the next three days it's likely that the post-mortem is going to take place.

DR WADEE: I would expect that yes.

MS BAWA: Now what would you do to improve the current system?

DR WADEE: I think first of all – do you want me to give an overview of just this system or do you want me to give the entire overview on police attending autopsies?

MS BAWA: Well both, go with the narrower one of police attending autopsies and then the entire system because you have given this quite some thought.

DR WADEE: Well I think first of all if we look at the problem and the way I analyse it is (1) in my opinion members of the South African Police Service with whom I have been dealing since 1994 are not adequately trained and do not understand the forensic importance or their forensic importance, forensic in the sense I'm using in terms of what they are doing and how it relates to the court. If the members are trained better and they have a good understanding they will probably appreciate better the evidence of collection and also the transmission of knowledge so that ultimately our function there would be to try and ascertain as precisely as possible the cause of death and their input is very important. If one looks at the criminal justice system where I look at it from the investigating officer is probably the most important link person between us and the courts because he or she give us information, we do the autopsy we process the information given to us. We then give the autopsy report back to him or her, he or she then takes it to the relevant judicial official and it's very obvious that that person is the most important link person. If he or she is a weak link one can

appreciate what happens to the entire investigation. So the level of training is extremely important and I heard in the press last week that the police have now started a university I hope the university which was formerly a police college you must have independent people and I believe the University of South Africa or Unisa are involved. If we do not have a system like that and that system fails then we're going to perpetuate the system that we've had for the last many years in the time that I've been there. So that's one process and I think they have to be trained adequately in terms of what they're doing, how they're doing it and why they're doing it.

Secondly is the area of communication it's an area of where we have landlines, we have cell phones which we use for SMSses, we talk to each other, we have emails. Email is a very convenient way for us to communicate because we deal with a lot of documentation, unfortunately it's very difficult for us to speak to police persons via the email. I admit it is improving but in the past it was impossible to get hold of somebody. How does one get a document so short of the individual coming to us either faxing it to us or delivering it personally and the fax becomes relatively difficult here because it's confidential information the fax can become available to any generalised individual. Email would be a very good way to go and in terms of our own department everybody is in contact via email we can move documents via email so that's one area that we need to look at.

Obviously as discussed earlier is the information that's available SAPS our systems are not integrated so I have no access to any SAPS information except what the investigating officer would give us. The most important document there would be the SAPS180 which is a document that the investigating officer fills in to give me all the information from the crime scene or the death scene and also any specific requests. Unfortunately the standard form that we get if a person has been shot it's like "shot", "stabbed", "found dead" now to me that's giving me no information.

COMMISSIONER: Can I just interject there what are the security risks of your getting a SAPS180 I mean how secure could it be kept confidential only to the forensic pathologist and to the immediate team doing the forensic pathology, is there a risk there of inappropriate publication of information on the SAPS180?

DR WADEE: The SAPS180 would be given, a docket would be opened the documentation would be in a folder or a file the only people who have access that would be the forensic pathology officers and people in their employ and they will then give that documentation to us so to answer your question it's basically forensic pathology officers and the forensic pathologist.

COMMISSIONER: Perhaps my first question should be should you be getting SAPS180 is that the arrangement that you ought to be getting it and you're not getting it or is it the arrangement that you shouldn't be getting it because it's for some reason confidential?

DR WADEE: I should be getting it because that's information that the police are giving me what I'm saying is it does arrive but it's inadequately completed. Then I think Mr Jones mentioned DNA evidence, we collect DNA evidence as part of the autopsy process but it's almost never that we get the report and that report normally from the forensic science laboratory is given to the investigating officer. If we get to see that at all it's perhaps when we see it at court so we have no access to that information. It would be advantageous both from my point of view and from an education point of view in terms of teaching my

training doctors and also for our own knowledge so that if we are going to go to court it would be an advantage to know that. Again we can be bound by the same rules of confidentiality that everybody else is bound to.

Toxicology I think Mrs Thompson has covered in detail, it's a problem it's being addressed but I think obviously that needs to be addressed faster rather than slower. The delays are very long and Madam Commissioner the figure you were given of six years I can give you cases of my personal cases that I'm waiting for six years and I'm getting closer to retirement and I'm wondering if by the time I retire those will become available, I hope they do but there's no guarantee to that.

Another area I think is the interrelationship between forensic pathology services and SAPS I think those can be improved, we do have liaison committees but again to be able to have a decent relationship like every other relationship that we have one has to have some sort of communication going and I think I've outlined in detail in my first comment as to how that should be done.

We also have systems where if an autopsy is done and if the police tell us that look this is a priority case if we don't have the autopsy report within 24 hours or very soon we can fast track them it's a matter of one call either to the mortuary or to my department to whoever is on call to say we need this. The port of call probably would be the facility, the mortuary because that's where the bodies are kept so we can fast track them the autopsy can be done tomorrow if it needs to be done and if you require an autopsy report we can even give it to you the same day so we do have levels of priority.

We discussed the call system and how it works and how police know about all this. The difficulties I think communication is a bigger problem and I think we need to address that. Improvements, well I've mentioned difficulties and I've also given what I think are solutions that one can address and it doesn't require very difficult changes in the whole system to do that. I think if we just improve the system we look for areas where there are deficiencies and areas where there are backlogs and areas that are weaknesses we can address them and it can be improved. It's not impossible but I think training and communication would be the priorities on my list, thank you.

MS BAWA: Professor Wadee do you have any difficulty from an evidentiary point of view, and you're the professor not necessarily the criminologist, in issuing your pathology reports with electronic signatures in other words an electronic copy rather than the SAPS person fetching the pathology report from the offices every Thursday that it be emailed to the SAPS nodal point weekly, if not to the station which requires the report? Is there any difficulty in that?

DR WADEE: I don't see any difficulty in that in fact as I said if we do that system and I said that the IO is a potential weak link in the criminal justice system where I sit from, we can obviate that because first of all we can get it out sooner and get it out more confidentially and the chances of leaking it out to other places or of the reports disappearing or getting lost would be minimised.

MS BAWA: It would also mean that, do you have any contact with the prosecutor when they're looking for post-mortem reports do they ever come to you directly for them?

DR WADEE: Again if the prosecutor or state advocate has a problem trying to procure an autopsy report it's one telephone call and one of the things that we're trying to impress to another forum that we use is for example the inquest

docket. Sometimes an inquest magistrate asks a question it will take three months before that docket lands up on the doctor's desk whereas if that individual just picks up the phone or if they send us an email and on every one of our reports we have the full contact details of every doctor. If one email gets to our desk we can address that within a day or two whereas again if you use the wrong channel of communication it takes months.

MS BAWA: There is a problem with the backlog of inquests are you aware of that?

DR WADEE: Yes I'm aware about that but we have two areas, we have a forum that we're addressing on a three monthly basis where we meet all the inquest magistrates in the area that we service we're trying to get that whole process going. One of the difficulties we have is that again we want a senior SAPS official to be there so that at least it carries some sort of *gravitas* when he or she says it has to be done. We are not having that kind of attendance so we have a list, the various courts have given us a list of all the cases and we're compiling them and I think we're looking at numbers around 500 give or take a few on either side and that's the backlog. Fortunately the whole system started at the University of Cape Town and the Cape Town Magistrates' Courts that particular system is already more advanced than ours we're still sort of catching up but ultimately we have to address that yes.

MS BAWA: A number of those backlog inquest cases are from Khayelitsha as well is that correct?

DR WADEE: Presumably yes they would be I haven't got the figures here but I would expect considering we do get a significant amount of work from Khayelitsha it would be yes.

MS BAWA: What is your solution to clearing this backlog of inquest cases?

DR WADEE: Well again I think the judiciary needs to come to the party, we know from our discussions that very often they don't have, some of the courts don't have inquest magistrates, they don't have appointed inquest magistrates sort of permanent appointments. If you have an individual who is delegated to do that job and has to carry through and we have the necessary support of South African Police Service and the investigating officers who are again our eyes and ears, and I'm sure that applies to the inquest magistrates, if that process is well run I'm sure that the whole process can work. We need to first get the backlog resolved and then to address it and once it's addressed it's a running wheel I'm sure we can gain momentum and continue with that.

MS BAWA: What are the implications for the families of the deceased with these inquests being outstanding so long?

DR WADEE: Terrible, I mean if for example if an insurance company says they want the cause of death and the cause of death is not available, I give an example if a young 25 year old female is found dead and if I've done the autopsy and I need toxicology because that would be important if I haven't found a cause of death at the autopsy and I've done histology and I still can't ascertain the cause of death it's absolutely important. If that toxicology doesn't come through the family does not get money from the insurance company. We now have a letter on record where we then tell the insurance company that the person has died and we're investigating the death and that's at most we can go because beyond that we're not able to tell them. We are hoping that the insurance companies would then help the families to at least advance some of the money and there are times when people have phoned and cried on the

phone and said if you don't give me this document I'm going to lose my house. I mean it affects them to a very significant extent and I would hope that we could go about trying to resolve it, if not for us, at least for them.

MS BAWA: To be able to resolve that we need all the players to come to the party that's essentially the solution.

DR WADEE: Absolutely, absolutely.

MS BAWA: That includes forensics, SAPS, the judiciary and the prosecuting services.

DR WADEE: Yes we need the buy-in of everybody and also the commitment and focus.

MS BAWA: Thank you I don't have any further questions.

NO FURTHER QUESTIONS BY MS BAWA

COMMISSIONER: Thank you, my proposal would be that the Legal Resources Centre start first and if you could ask questions to each witness and then SAPS will follow. Ms Mayosi?

VONITA THOMPSON (still under oath)

SHABBIR WADEE (still under oath)

CROSS-EXAMINATION BY MS MAYOSI

MS MAYOSI: Thank you Madam Chair. My question is directed at you Ms Thompson, are there any particular difficulties that are experienced with regards to disturbances of the scene of death in cases coming from Khayelitsha?

MS THOMPSON: Yes there are I think the whole issue around incident management, the ensuring that the scene is maintained or not tampered with before forensic pathology arrive I think those kind of ongoing issues are very, do exist. I think, I mean I've had recent incidents reported for example in Site C where on arrival at the scene by our forensic pathology officers there was clearly a lot of unhappiness of the community in the area and it was quite a challenge for our staff to enter the scene. The scene was not clearly demarcated, there were people entering and accessing the scene obviously which means that the evidence that was there might not be retained in the way that it should have been. Also because it was a volatile scene one wouldn't have expected the actual incident to have been managed more closely and I think there was reported one SAPS vehicle and three members actually on the scene. So I think these incidents do happen from time to time but it's unfortunately not only within the Khayelitsha area it's generally so it is an ongoing issue that we do address with SAPS in our standing meetings.

MS MAYOSI: Perhaps you can demonstrate those challenges with reference to testimony that was given here last week. One of the community members testified as follows in relation to how the scene where her brother had died was handled by the police. Her brother was found on the side of the road at about 2am, the police ultimately arrived she estimated at about 4am. The brother was thought to have been stabbed, the police approached the deceased and sort of lifted his clothes to look at where he might have been stabbed. They were not wearing gloves. They then proceeded to leave, both policemen proceeded to leave the deceased there as they were going to pursue a witness elsewhere. They then returned to the scene and the body was ultimately collected at about 7am. Now from a forensic pathology perspective can you just tell the Commission what the challenges are in relation to how that scene was handled firstly. Secondly, again from a forensic pathology perspective ideally how should that scene have been handled?

MS THOMPSON: I can respond obviously in terms of the ideal textbook type response that one would have expected, I must also just make it clear that I'm an administrator managing the forensic pathology service who has been intimately involved in establishing the service drafting the standard operating procedures but I am not a forensic pathologist or an expert. So I think it's important that I indicate that upfront that I'm there managing the service with a good understanding in terms of what happens but that I'm not a forensic expert in any way.

COMMISSIONER: Ms Mayosi I just wonder in the circumstances whether you wouldn't prefer to put that question to Professor Wadee?

MS MAYOSI: Yes that is correct perhaps Professor Wadee could assist with the answer there.

MS THOMPSON: That's fine.

DR WADEE: Just before I answer the question give me the clarification, the person was stabbed at a certain time and the body was removed give me the time interval?

MS MAYOSI: The sister's testimony was that she found the body at approximately 2am, the police ultimately arrived at the scene, they responded to her calls at approximately 4am. They left together with her there were community members already at the scene and they returned to the scene and the body was ultimately collected from the scene she estimates at about 7am.

DR WADEE: So we're looking at roughly five hours, not acceptable. First to give an idea, obviously to a certain extent has to ask what their standard operating procedures are, what I would expect as a pathologist or what I would expect is first of all if the policeman finds the body the first thing is he'd inform his seniors. He would appoint a senior detective to undertake that. When the detective gets to the scene if he or she thinks that a forensic pathologist's opinion is required to ascertain whatever you know cause of death, time of death and so forth the investigating officer has the right, we have a consultant on call and we have a doctor on call everyday, every week of the month, every month of the year that's how our roster bases are. They can then phone the doctor on call discuss the matter, if the doctor who is on call feels that he or she needs to discuss it with a senior doctor that discussion takes place. Then if in our opinion we feel that going to the scene would be beneficial or would benefit the investigation in terms of SAPS investigation and us to ascertain the cause of death we do go out to scenes and that's part of the job description that's written into every doctor's job description so it's not a problem.

First of all to get to the scene, scene management we spoke about is to secure the scene, secondly to make sure there's no contamination of the scene and thirdly you keep the public away as far as possible not to exclude them from the process but you don't want them to contaminate the scene. That they did not have gloves is unacceptable I mean obviously they're now contaminating the scene with their own DNA or other evidence matter. If they left, when they left was there a policeman with enough experience to be able to secure that scene. When they came back, why did they go away, those are the kind of questions I would like to know and maybe SAPS would be able to answer that. Why was there a five hour delay, I can understand sometimes one of the limitations is, and I've been there from a different angle, is for the Metro there's one police photographer, only one. That individual does scenes and services our photography needs so that gives you an idea of why so I'm saying that's one

possibility. From our point of view we sometimes have to wait, an autopsy has to wait where you do another autopsy or you wait until the photographer gets there because the nature of autopsies being what it is once you do the autopsy you destroy evidence. So we then wait and we have to sometimes sit and wait till that person gets there so that's a problem and that may be another reason. But I think SAPS would be in the best position, we don't have a problem, Mrs Thompson will tell you that one of the indicators for our staff, the forensic pathology office is what's the time it takes from the time the call comes in to the time that they get to the scene, that's an indicator that we use. So I don't know if I've answered your question but I've tried to give an idea of what is expected as far as we are concerned. If you do not collect adequate evidence at the scene then obviously your investigation is flawed, in the same way if you contaminate the scene with foreign material the evidence becomes flawed.

MS MAYOSI: I think both of you raised the ideal again being that ideally the FPO should have attended at the scene together with the investigating officers in order to begin the forensic investigation is that right?

DR WADEE: Ideally yes that would be a very good way to do it.

MS MAYOSI: Ms Thompson you talk about measures that were put in place as a result of the criminal justice review, to what extent have those measures been effective in terms of improving the backlogs you spoke about and expediting the delivery of post-mortem reports?

MS THOMPSON: Unfortunately for us at a provincial level we've not yet seen the impact. I realise or I am aware that as a result of the pressure and having to deal with the backlogs of the forensic chemistry laboratory additional funding has now been made available to the forensic chemistry laboratories in the next financial year specifically to look at procurement of equipment and all of that. But unfortunately at a provincial level we've not yet seen the impact.

MS MAYOSI: So it has not begun to really reap positive results on the ground

MS THOMPSON: No not yet I think what it has done is obviously there's an awareness that's been created in terms of the backlogs itself but I mean that has been, it's an historical issue and it's been ongoing. As I said there has been commitment made in terms of increasing the output of the forensic chemistry laboratory and we have seen some improvement but it's not a marked improvement and it actually hasn't dealt with the backlog it's still there.

DR WADEE: I would like to add onto that you may have seen in the press approximately 18 months ago the Minister of Health had said that he was going to take graduates and I think the figure that he spoke about was between 60 and 65 people who are then trained, were then taken on a course and were trained at the University of Pretoria by a forensic toxicologist. Those people have now been delegated to certain labs but you do appreciate that they are relatively inexperienced. If and when the funding takes place and more equipment is available then you'll be able to utilise those individuals. One of the problems that they do have is there has been a shortage of staff at the level of the laboratories and I think the Minister of Health is quite aware of that and issues are being addressed. But in terms of the judicial process and as far as we are concerned the process is not fast enough we are waiting for the momentum to kick in so that we can see the benefits of that.

MS MAYOSI: Thank you Ms Thompson. My next question is directed at you Professor Wadee both of you in your affidavits mentioned the difficulties around investigation officers failing to attend at post-mortems. Professor Wadee you do

say however in paragraph 22 of your affidavit that there are a few IOs from Khayelitsha who are quite diligent and who do manage to attend at post-mortems frequently and what this really shows is those IOs would be subject to the same pressures as all the others, the same case load and all of that so what that really shows is that it can be done...(intervention)

DR WADEE: Yes there's a Constable Adams that I've mentioned in my report we take it for granted if it's a case where he's involved the next morning by the time you get to the autopsy or you've started the autopsy he's going to be there. I agree with you working in Khayelitsha if he can render that kind of service, I assume he's an ordinary human being just like every one of us and every other member in SAPS, he does it and he does a sterling job. Shouldn't SAPS management be expecting that from every one of their staff? Unfortunately I'm not in a position to comment on that all I can comment on is the diligence of some of the individuals and unfortunately those that don't and I would strongly suggest to SAPS management that that be addressed because once that is addressed surely it can only but improve the service being rendered.

MS MAYOSI: Are there any records kept of how often or how frequently Khayelitsha IOs fail to attend at post-mortems?

DR WADEE: I've instructed my staff that every time an investigating officer attends an autopsy the individual's name, his telephone number and his force number is documented as part of the autopsy report at the end of the report under "additional observations" so one wants us to retrieve that it is possible.

MS THOMPSON: Commissioners may I comment?

COMMISSIONER: Yes.

MS THOMPSON: Specifically related to that question I think we know for our 2013 period in terms of post-mortem attendance and we've looked at attendance of the SAPS stations Khayelitsha, Lingeletu West and Harare I think Harare really had the highest attendance out of the three that we looked at with about 68% of cases being attended and largely by two individuals. I can name them but ja largely by two so in terms of overall performance they have attended most of the autopsies, about 68%. On average for the Khayelitsha area the post-mortem attendance was around 53% for the year 2013.

COMMISSIONER: It would be useful for us to have those figures and potentially also those names but you don't need to put them in public, if you could provide them to the evidence leaders.

MS THOMPSON: Provide them.

COMMISSIONER: Thank you.

MS MAYOSI: In your statement Professor Wadee you talk about the systems that are applied in countries such as the US and Canada where you say they use two independent investigating arms, do you recall that in your statement?

DR WADEE: Yes I do.

MS MAYOSI: Do you know if this approach has been proposed in South Africa and if it has what has been the response?

DR WADEE: Well when the FPS was formed, the forensic pathology service when the Department of Health took over from SAPS when mortuaries came to us it was the time when we were able to then make an input into what the system should be like. Obviously the idea was put forward but I think in all fairness the cost would be prohibitive to have a parallel system would be difficult but not impossible. At the same time what we intend doing with the forensic pathology officers is to educate them to a level they wouldn't just be

couriers of bodies but they would be able to go to a scene and be well enough trained to ascertain whatever they need to do. The training would be can they ascertain cause of death, can they see injuries and if they don't then they'll always have the pathologist to contact. Thus far as program is being planned, Mrs Thompson is well involved in that but what we've done in the Western Cape is every forensic pathology officer that works in the Western Province has been through an in-house training that we designed so that at least they have the absolute minimum or basic training so they will know basically what organs look like, where they are in the body, what gunshot injuries look like so they do have that training. I'm not sure what the rest of the country is doing so we are in the process but there have been difficulties in trying to register the program, the diploma program that we're trying to institutionalise for our forensic pathology officers. So that would be the (indistinct) system so for example in that case once they succeed an investigating officer from SAPS will submit his or her report and then the forensic pathology officer will have a separate report that will be given to us so we will then be privy to two reports and we must then draw our own conclusions. But Mrs Thompson I think would be in a better position to tell you exactly where we are at regarding the formulation of that program.

MS MAYOSI: If you could very briefly Ms Thompson?

MS THOMPSON: I think part of the planning process for the implementation of the service was to have an accredited training program for our forensic pathology officers such a program was established, also in terms of the history to the service it did come with some challenges.

This forensic pathology officer is quite a strange animal in a sense because you need apart from the health and anatomy and all those kind of contexts and background you also need the legal expertise, the crime scene or death scene investigation expertise. So at the time when the qualification was developed it was registered within the field 8 which was safety and security which obviously meant that the quality assessor for this training program would have been sitting with the safety and security SETA. There has been a long debate with the National Department of Health and because these individuals handle human tissue it was agreed that this qualification should be quality assured by the Health Professions Council of South Africa. So we are in the process now of changing the actual qualification moving it from previously where it was in safety and security to health and then for the Health Professions Council to be the quality assessor of the training program. I think unfortunately because of legislative changes it did delay the implementation so there is now a program being developed and my understanding is that hopefully by 2016/2017 we'll have an accredited program in place. Unfortunately that is just the long process that it has to walk through before such a formal diploma would be in place.

In the interim as was mentioned we do have structured training programs in place for our forensic pathology officers, unfortunately it's not accredited so they don't get any recognition for the training that they've done but internal training programs do take place.

MS MAYOSI: Two last questions for you Professor Wadee, do you propose that the Commission make a recommendation that investigating officers be required to complete the SAP180 form?

DR WADEE: I would really appreciate if the Commission can do that but I think the relevance is that when they fill in the form they must fill it in in detail.

MS MAYOSI: Complete.

DR WADEE: And important, legibly please because there's no point if you're going to give me a two page document that I can't read and it would be appreciated even more if the handwritten one is followed by an email within the next day or before the autopsy is done because then we'd get information that we don't have. The quality of our service is like when you go to a doctor, if you tell the doctor what's wrong with you he or she can then process, examine you and then give you, prescribe medication. My case is I need that information to interpret the findings that I get and then that goes into formulating my report. So the more information I have the more descriptive and the more detailed my report can be otherwise I'm left to my intuition as a pathologist to decipher or interpret what I see.

MS MAYOSI: Yes and in your view is the interacted meaningfully with the SAP180 form that would alleviate somewhat the difficulties caused by IOs not being able to go to post-mortems.

DR WADEE: Yes it would be, one could say well why don't they phone you but if I have a document that becomes evidence it then goes into the folder whereas a telephonic conversation doesn't. If we had an email it would also do well but the SAP180 is a brilliant opportunity missed if it's badly filled in and if there's anything the Commission can do to assist us in remedying that we would really appreciate that.

MS MAYOSI: Thank you Professor Wadee.

NO FURTHER QUESTIONS BY MS MAYOSI

COMMISSIONER: Mr Arendse?

CROSS-EXAMINATION BY MR ARENDSE

MR ARENDSE: Professor Wadee your handwriting is better than that of the police, more legible is that what you're saying?

DR WADEE: I am a doctor and we are notorious for our bad handwriting therefore I do have contemporaneous notes but I rely on my typed autopsy report which is the legal document and I refer to that. I do not profess to have good handwriting at all I sometimes have difficulty reading my own handwriting.

MR ARENDSE: I thought so. Just before I ask you a question Professor Wadee perhaps the agreement, the MOU makes no provision even for some basic training for investigating officers is that not a difficulty? Why was that not addressed or is it an inter-departmental issue, national, provincial issue?

MS THOMPSON: On a point of correction the MOU actually does make provision for training, it does indicate that training will take place by agreement or on an agreement basis and that would be either for our forensic pathology officers or for SAPS police. I think the challenge is obviously that we are dealing with as a Provincial Government with a national entity and even the training institutions within SAPS is a national entity and it becomes quite a challenge for us to engage in a meaningful way at that kind of level and for that we rely on our National Health Department to do that and to formalise that. That does not mean that *ad hoc* training does not happen and we've had some very good recent interaction for example where our forensic pathology officers have been going through some ballistics training with the forensic science laboratory personnel. So those relationships are established but when we talk about formalised actual training programs that unfortunately is not in place.

MR ARENDSE: Would it be fair to say that since the MOU was signed in 2009 and then, well it still needs to be signed the one of December 2013 agreement

that the relationship has been much improved between SAPS and the department and the laboratories and the pathologists. Everybody that the two of you have been discussing in your evidence there's obviously much room for improvement.

MS THOMPSON: I think there is much room for improvement it's clear that – I think one of the frustrations that we have as a forensic pathology service is that you build relationships and that is how you manage the service in terms of those relationships that you form and unfortunately there has been a lot of movement from time to time within the SAPS structures which means that you have to re-establish those structures or those engagements that you've had previously. So we do engage through our SAPS liaison meetings I think there are very good relationships at a local level but I think the bigger challenge for us is in terms of making sure that there's dedicated people that are taking the forensic pathology officers within SAPS forward and that we've maintained those relationships.

MR ARENDSE: Ma'am you referred to your monthly standing meetings in paragraph 12 of your affidavit has Khayelitsha been raised at any stage as a specific concern?

MS THOMPSON: No Khayelitsha is not raised as a particular concern I think the challenge that we have within the SAPS and with our engagement is a general issue across the service not only particular to Khayelitsha.

MR ARENDSE: Okay, I think some of the other questions that I've drafted Madam Commissioner some of them have been dealt with. So perhaps just one or two questions for Professor Wadee and just in terms of our *modus operandi* my colleague Advocate Masuku actually drafted some questions for Professor Wadee so with your leave if I'm done if he could also ask a few questions.

COMMISSIONER: Certainly, Mr Masuku?

MR ARENDSE: Professor Wadee the main task, the primary task of a pathologist doing a post-mortem is to establish the cause of death.

DR WADEE: To put the legal phrase to it ascertain as precisely as possible the cause of death yes.

MR ARENDSE: Yes, now the cause of death can be established an hour, two hours, five hours, a day, a month sometimes years after the fatal incident or the cause that caused the fatality.

DR WADEE: It would depend on the nature of the injury yes.

MR ARENDSE: I mean one knows about it in one's experience, you read about it in books and you see it in the movies that the killer, the murderer would have stashed away the body or cut up the body or thrown it into the sea or locked it up in a fridge and then it is discovered days and weeks and months and sometimes years afterwards, it still remains your job when that corpse or even skeleton when that is uncovered, discovered, made available to you, you with your tools and your experience and your expertise will be able to establish the cause of death.

DR WADEE: On a humorous note don't believe what you see on television or in the movies, including what you see on CSI. The point you're getting at when I say depending on what the cause of death is the sooner you do the autopsy the more evidence you collect the better the accuracy. Sometimes we may delay an autopsy for a day or two to allow us to get the necessary information. In cases where they are skeletonised and we have to look at the body afterwards the primary aim there is to identify the person and if we are lucky we may even find the cause of death sometimes we are, it's not always possible to find the cause.

If there are injuries to the bone and there are imprints caused by instruments we can do that but to answer your question the sooner we do the autopsy the better the chances of finding the cause of death, the later we do it the more unlikely. Obviously with toxicology, and you've heard some of the delays we have, if we get a toxicology result it normally takes if we're lucky in the best situations in the world you may get them within three weeks to a month. Your final cause of death can only be done when you look at the toxicology result, so different causes of death you have different time spans or different timeframes where you can then ascertain and commit to a cause of death.

MR ARENDSE: Some of the FPOs Madam Commissioner like Norris and even Mr Jones in their affidavits have been very complimentary about police assistance in taking them to crime scenes, ensuring that they get in especially in difficult areas like informal settlements and so on where there are narrow pathways and poor or no lighting and that kind of thing. I would assume that that takes longer than your standard 40 minutes response time.

DR WADEE: Yes one would expect that and I must compliment SAPS for that I mean I have quite a large contingent of female staff in my department and my instructions to them are if you don't feel safe then go to the forensic pathology officers coming through and they sort of either accompany them or sit in the FPOs vehicle. SAPS then always secure the scene for us, there have been one or two cases but the rule has been SAPS have been very helpful in getting our staff to the scene of death or the scene of crime, that happens. Obviously depending on the difficulty of the terrain where the person has died it may take more than the 15, 20, 30 minutes that we would ideally like so again it's horses for causes and it depends where the death occurs.

MR ARENDSE: Your expertise as a forensic pathologist would also be to estimate as closely as you can the time of death is that not so?

DR WADEE: It depends on the relevance I mean for example if I am called to a scene, if I am contacted by a policeman who says we have a decomposed body or we have skeletonised remains I will insist my staff do not go out to the scene. All the relevant information that we will need Madam Commissioner we will then deduce better at the time of the autopsy. But if a person has been shot and you're trying to ascertain and the information that we give you will assist the police in deciding how they're going to apprehend or who they're going to apprehend as suspects by all means it's very important for my staff to go out there.

MR ARENDSE: Of course there are times when a body is discovered or uncovered sometimes hours, days, weeks maybe after if it was a murder if that took place and it would still be your job to estimate the date and time of death.

DR WADEE: That we can't do with accuracy and we're quite honest about that that's why I said once they come skeletonised, decomposition sets in it becomes very difficult so therefore we use, earlier we mentioned three days, we allow ourselves the luxury of three days to collect all the information and also SAPS to do the investigation that needs to be done. It also allows the family if they want to give us more information or if they want a second pathologist to attend the autopsy that's the idea for the three days. If I had my choice we'd do it within 24 hours because that's the golden day, the golden 24 hours but everything in life is not perfect. Sometimes for example people who have been assaulted with blunt instruments you find that within 24 hours you don't see the bruises that well but wait for 24 hours and where you didn't see a bruise at the

time of admission you now see a very specific injury that can perhaps help you in identifying the instrument that was used. So the point is we can't always give you the time of death but more often we can give you the cause of death but at the same time in about 85% of the cases that we can give you there are 15% of cases that in the best units in the world with mega bucks for their budgets they can't give you that either. So in the majority of the cases we do have cause of death but I must be honest and tell the Commission there are times, despite all the time that we have and all the investigations we have we can't, but fortunately those are few and far between...(intervention)

MR ARENDSE: Now in many of the cases and incidents and some horrific evidence that's been given by some witnesses the cause of death would have been by the use of blunt instruments or knives or gunshots or just severe assaults, multiple injuries caused by blunt instruments and sharp instruments or a combination and then a body would have been burnt would that make a difference to how long it takes you to get the body and to do the autopsy?

DR WADEE: Again I will use the example I gave earlier that within 24 hours our accuracy rate is higher but the fact that the body has been burnt will make it difficult for us to state the time of death but in terms of the cause of death we still pride ourselves and say that if you apply proper forensic pathology rules you should be able to ascertain the cause of death. We have budgetary constraints but they're not to the extent where we can't do that, in a case like that for the benefit of the Commission we go for an X-ray of the body to know whether there are any foreign objects in the body that we don't see with our naked eye. We would then do an autopsy, we'd do a full autopsy in that case we'd take histology if we're not sure at autopsy what was done, we'll take toxicology to see what the carbon monoxide level is, was the person alive, where they were burnt or was the person dead by that time and then we'll do a detailed toxicology and after that take histology and review all of them before we'd be able to tell you. The more investigations we do like everything else in life the more accurate we can get. Sometimes we are limited by the condition of the body, like a decomposed body is not a very good form of evidence because we can't extract enough information but the body that has been burnt we can get enough information from there.

MR ARENDSE: You know where I'm going to because there's talk of crime scenes not being properly secured, there's talk of investigating officers not doing their job properly or at all by coming onto the scene or not even going there and leaving the scene and then there's contamination with evidence. But that's not your concern as a pathologist I can't imagine that an onlooker or even a suspect or even an assailant would be able to change the cause of death subsequently.

DR WADEE: I would agree with you but I think one of the functions of an investigating officer would be to go to the scene to secure the evidence and going back to the question that you asked at the beginning was to ascertain as precisely cause of death as we can. If he or she does not do that then as I said it then forces me to formulate a report purely on the basis of the evidence that I find at the autopsy. I mentioned earlier that the more information we have the better we can diagnose or comment on what the cause of death was.

MR ARENDSE: I suppose but I must put it on record I'm not making light of your job which is a critically important job and even that of an investigating officer but I'm representing the police and I'm concerned about the extent to which

some of them, and we know that there are others, some excellent IOs that you've mentioned but there would always be like there's bad lawyers, bad judges, bad prosecutors and bad doctors so you have these bad IOs that don't do their job. My question goes to what extent, if at all, do they really – excuse the pun – fatally affect your judgment as a pathologist which is to look at a dead body, cut it up and look at the cause of death.

DR WADEE: It won't significantly affect the cause of death but what I'm saying is that it will influence the quality and also the confidence with which we can interpret our findings. So if you can marry what they tell you, with the history you are given and corroborate it at the autopsy I mean that's what the court's functions are. If we don't provide that critical, excellent, top notch evidence then I think we're disadvantaging the court. That is what we are here for I mean surely despite us being a third world country I don't see why we shouldn't aim to have excellence and if you can and we have and within the budget constraints that we have we can provide that why not, it just requires the effort of some individuals and we have given examples of people who (indistinct)

MR ARENDSE: To the contrary we have a former top prosecutor here and a top judge here I think our justice system prides itself on the kind of work that our forensic pathologists do far from being a third world country, to the contrary. But may I ask you when last did you appear in court to either give evidence in relation to a pathologist's report or defend it because the report has been contested by the defence?

DR WADEE: I haven't but I'll give you the situation I spent three days in the witness box last year, well maybe we should mention that where SAPS were involved, (indistinct) were involved in an investigation and my report was given to another doctor so he had a report on my report and unfortunately a lot of the loopholes that the defence found were in that document. The policemen all got off scott free because the state was not – me being part of the witnesses were not able to provide adequate evidence to say who the, what the cause of death was but at the end of the day a person has died. If I had a very good investigation and everything else being ideal maybe we would have got a conviction. Maybe while I'm here and if the Commission would allow me the luxury I think I can point an example with the IPID, the investigation, I mean how can you have IPID being located within the police budgetary I mean it just doesn't make sense to me. If they want to (indistinct) IPID was involved I mean they should be totally independent of SAPS and they are not, in terms of our law it is formulated under the Police Act so maybe that's another area if you grant me the luxury that perhaps the Commission can look at and say where does IPID fit in. In other parts of the world IPID is totally independent, is governed and is responsible and answers to a different judicial authority and if I can go on record I think here we've got it wrong, in South Africa that aspect we've got wrong.

MR ARENDSE: Prof if we were in an adversarial process I would ask for those comments to be struck from the record but I think you've made your point which was not solicited from you. I think I've asked my questions Madam Commissioner I don't know if my colleague has any questions.

CROSS-EXAMINATION BY MR MASUKU

MR MASUKU: I have only two and I'll make them very quick.

COMMISSIONER: Thank you Mr Masuku.

MR MASUKU: Thank you, in paragraph 6 of your statement Professor Wadee

you say you speak of an ideal situation, you say that an ideal situation would be to ensure that FPs attend all homicides. Just from conceptualising the solution to the problem you identified would an increase in FPs be part of the solution you propose?

DR WADEE: By FPs I assume you're referring to forensic pathologists, well in this country and I stand to be corrected I don't think there are more than 40 actively registered and practising forensic pathologists for a population of 45 million give or take. So there is a shortage but I think having said that, and as I said earlier in my statement, that the important thing is that when in forensic pathology – we're discussing Khayelitsha under the circumstances if any investigating officer requires medical assistance or medical advice or a visit it's a matter of picking up the telephone and calling the facility and saying you'd like to know who the doctor on call is. As I said there you can escalate it from a doctor in training to a specialist on call so that information we can give it to you it's not a problem.

MR MASUKU: Yes.

DR WADEE: So if that facility is used it's there to be used.

MR MASUKU: No I'm saying the absence of FPs, forensic pathologists you say there are about 40 in a population of about 45 million that would be 1 to about...

COMMISSIONER: A million.

MR MASUKU: A million roughly if I understand the situation right...

COMMISSIONER: Mr Masuku (off mic) are you talking about forensic pathology officers?

MR MASUKU: No I'm reading from paragraph 6 which refers specifically to forensic pathologists, you read that together with paragraph 8 that's an ideal situation that is conceded by Professor Wadee and what I'm suggesting to Professor Wadee insofar as recommendations are possible to make that ideal should be put in as part and parcel of recommendations that could well improve the delivery of this kind of service that you make but you've answered the question Professor Wadee.

DR WADEE: To give you an idea obviously my director is here maybe I should say yes obviously we need more staff but to give you an idea, to put it into perspective the National Association of Medical Examiners which is the body that governs forensic pathologist in the US they recommend that no doctor should do more than 250 cases a year and they don't have a service and academic commitment like we do. Our doctors on the average, for example the trainees, the registrars who are becoming specialists or a doctor becoming a specialist do in excess of 350 to 400 maybe some of them even closer to 500. Those are the autopsies that they do, they also need to teach because we have to teach medical students and sometimes they are expected to train other people outside the medical facility for example paramedics or nursing staff. So the short answer to your question yes and I hope my director hears that loud and clear.

MR MASUKU: The last question, the recommendations that you make and you in fact said you would direct that request to the Commission that they make the recommendations which would make it more or less compulsory for FPOs to get some base training on the process of pathology. Why did it take this Commission for that suggestion to come through have you raised it before to anybody and if you have raised it before what has been the response?

DR WADEE: Okay let me answer that question, our service is divided into

regional pathologists we have pathologists outside the Cape Metro. We have a forensic pathologist based at Paarl and she has been instrumental when she's requested by the Police College she goes and gives lectures on forensic pathology at the College. What I'm saying is that should become more regular, it should become in fact the norm and perhaps SAPS needs to come down and tell us we need to sit down with them in addition to what we've got to improvise a facility to a stage, especially now that you've elevated it to a university degree, to get to the stage where the cause that they want to offer we are prepared to make the input to elevate it to whatever level you want. But right now it's a very basic level and what I'm saying is we need to elevate that.

MR MASUKU: Yes but what I'm saying is it has taken this Commission for you to raise that.

DR WADEE: No it has been ongoing, since I've been in Cape Town for about 20 years now there's always been an input into that College on a request basis we never enquire.

MR MASUKU: Okay that will be all.

NO FURTHER QUESTIONS BY MR MASUKU

COMMISSIONER: Thank you Mr Masuku. Any further questions Ms Bawa?

RE-EXAMINATION BY MS BAWA

MS BAWA: Could I raise two, one we omitted to ask you. A bit of evidence that has come out in the last few weeks is the dangers which unsecured crime scenes pose to children who play in the area do you have any comment in relation thereto?

DR WADEE: Sorry I didn't get the full gist of your question?

MS BAWA: One of the issues that came before the Commission last week in fact was the dangers which unsecured crime scenes pose to children, do you have any comment in respect thereof?

DR WADEE: Well I think I've painted the broad principles and especially with children, I think children are special I mean across the board we should probably take more precaution and especially depending on what, we are judged by, a country is judged by how you look after your children and how you assess and how you investigate their deaths and it's an adage that we use. I would think that more than ever now we need more attention, you need more facilities and more resources to investigate children's deaths because sometimes it's so easy to kill children that if we do not take the extra precaution we probably may not get to the cause of death. I'm not sure if I answered your question adequately.

MS BAWA: Partially but it's adequate enough. Ms Thompson this one is directed to you the question was posed whether the issues which have been raised are Khayelitsha related, your response was that it is general difficulties which are being encountered. Should we understand that in these general difficulties that have been encountered it is also being encountered in relation to Khayelitsha?

MS THOMPSON: That is correct.

NO FURTHER QUESTIONS BY MS BAWA

COMMISSIONER: My colleague has one question, Advocate Pikoli?

MR PIKOLI: I've got two questions for Ms Thompson, the first one relates to paragraph 9 of your written statement where you make reference to difficulties around human tissue management and you seem to ascribe the problem to the legislation in the sense that it does not sufficiently clarify the roles to be played

by the respective departments. Now can this defect be cured only through legislation by an amendment or can it be done through a service level agreement or even operational guidelines?

MS THOMPSON: I think it largely relates to the actual expertise I think the cases specifically that I quote in my statement related to human tissue management. One of the components or areas that I'm responsible for is called the Inspectorate of Anatomy which really has an oversight in terms of the undertaking industry and the management of human tissue generally within the province. There have been a lot of legislative changes in that area, previously there was a piece of legislation called the Human Tissue Act that has now been replaced, repealed and replaced by regulations within the National Health Act specifically Chapter 8 of the National Health Act. I think the challenges would be for example, and I will quote an example, where an undertaker within the Khayelitsha area has taken payment for the burial of deceased. What happened is that the community reported obviously foul smelling decomposing bodies within that area, the Inspectorate of Anatomy did an investigation and found this area completely abandoned. The challenges then in terms of a response and the agency that responds and who does what and I think the focus on this portfolio has been relatively new within our province, it's always been there in existence but with the changes in the legislation obviously it also brought about a new focus. I think the challenge is to establish again that focal expertise within the SAPS environment in providing support both in taking appropriate action to make sure that human tissue is retained it's move to the correct place, who takes responsibility in terms of the whole legislative process and I think those are issues that we had to grapple with in the past. But again to indicate that it's a process, we are in the process of establishing those relationships and we have found that there is expertise within the SAPS that we now can liaise with around specifically for example the movement or the issues around fertility clinics and people being paid for example for artificial insemination and challenges related to that. So there is expertise but the challenge was to locate that and then to build a relationship in terms of how do we deal with these cases going forward.

MR PIKOLI: Then in your concluding remarks particularly in paragraph 37 you say there that there's no reason why there should be delays especially insofar as the prioritised post-mortem reports reaching the prosecutors. Now how can this be attended to if (indistinct)

MS THOMPSON: In my view in the age that we live with technology, and technology should be enabling, there should be no reason why post-mortem reports are not available. I had a recent example actually towards the end of last week I received a communication from the NPA around a post-mortem report that is not available. We have investigated it's a case of 2009 we've got proof that that post-mortem report was signed out in 2009 with the persal No. all of the details related to that case. Subsequent to that our pathologist reissued a post-mortem report, again that was received and signed for so I think for me it's an issue around how do we manage the system where you've got a multi-agency response all really working towards a common goal and that as a collaborative we need to look at how can we strengthen the system to make sure that these reports are available. As we said there's no reason why a post-mortem report can't be made available. What we've done in the Western Cape specifically in the Metro we're participating in what Prof Wadee alluded to earlier as the "case

flow meetings” where cases are actively case managed and we look at what is outstanding to try and ensure that there’s no further delays in actually these cases being concluded or being ready to go to court. So I think for me it’s the way in which we handle these cases and there is some work that we’re embarking on in terms of research projects specifically as it relates to for example child deaths to look at perhaps establishing a child death review system which again will be a multi agent, multi agency approach. Again it goes around the systems, how do we actually track a case through the system and I think that’s some of the frustrations that our pathologists often have. We don’t really know at the end of the day what the outcome of a specific case would be because that case is not followed to its complete conclusion in terms of a feedback loop. So I think for us important that as stakeholders with a common goal we try and see how we all contribute to making the system work.

MR PIKOLI: Thank you.

COMMISSIONER: Ms Thompson just a couple of clarifying points there are four national forensic laboratories you mentioned that deal with blood and toxicology and then there is also Plattekloof, what does Plattekloof deal with?

MS THOMPSON: Plattekloof is under the management of the National Police it’s a forensic science laboratory so they are responsible for example for ballistics testing, DNA for terms of identification.

COMMISSIONER: Sorry just say that again they’re responsible for?

MS THOMPSON: Ballistics and DNA.

COMMISSIONER: And DNA?

MS THOMPSON: DNA.

COMMISSIONER: That’s quite interesting to me because it’s a human biological issue that’s been dealt with by them.

MS THOMPSON: Yes I think it is obviously, ja historically they have done the DNA because I think currently the responsibility of SAPS is still that to determine the identification of a deceased and then obviously also relates to possible DNA of a perpetrator. So it goes around the actual crime scene investigation whereas from a forensic chemistry laboratory they obviously look at the body and the human tissue related to the actual cause of death or when it comes to ante-mortem blood alcohol the drunken driving issue.

COMMISSIONER: One of the issues that must arise during a post-mortem say for example where it is suspected or alleged that there’s been a rape followed by a murder is the collection of DNA samples or semen or mucus from the body of the deceased in order to identify the perpetrator.

MS THOMPSON: Yes.

COMMISSIONER: Is that done during the post-mortem and then what happens to those samples?

MS THOMPSON: Yes, I think in terms of priorities and Professor Wade can add to that but often evidence is collected on the scene but also, and I think that’s why it’s important that the investigating officer attend the post-mortem because the investigating officer then will take ownership in terms of the chain of evidence process of the actual evidence that’s been collected very much like in clinical forensic aspects. I think that’s why it’s important for the investigating officer to be present so that that evidence is collected at the time of post-mortem, handed over to the investigating officer and the chain of evidence is being maintained.

What dos happen obviously if the investigating officer is not present it gets

handed over to the SAPS liaison officer who then in turn takes that responsibility but I think that's why it's critical for the IO to be at the post-mortem. Generally those cases are prioritised they ensure that the sexual assault evidence collection kits are available at the time of post-mortem to ensure that all of this happens.

DR WADEE: Madam Commissioner in rape/homicides obviously it's very important the sooner you do the tests for DNA identification the better but one has to be discrete sometimes the scene of death, the crime scene is not the ideal place so the next step we do is we follow the body and as soon as the body gets into the mortuary where the conditions are controllable and optimum we then do the picking of the special tests you do it then and here on admission and then even do the autopsy at a later time. Research has shown that if you do the test for DNA identification without, the sooner you do it the less likelihood of you losing body fluids from which the assailants can be identified.

COMMISSIONER: Professor Wadee just one further question the authenticity or value of specimens or samples when long periods of time have elapsed does the ability to assess them or analyse them deteriorate as time passes?

DR WADEE: If I understand you correctly you mean the toxicology results?

COMMISSIONER: Yes exactly you said they're sitting there in the lab for six years.

DR WADEE: That's become a very contentious issue in the literature and now questions are being asked about if you take toxicology specimens and you store them over a long term what is the authenticity, what is the credibility, how much accreditation can you attach to those results. So again time is of the essence, the sooner they get done the better.

COMMISSIONER: Alright well thank you very much to the both of you for both the very comprehensive reports that you've prepared and submitted to the Commission and also for your testimony this morning it has been most helpful to the

Commission and thank you very much you may now stand down.
We wish you everything of the best for your ongoing work.

NO FURTHER QUESTIONS

WITNESSES ARE EXCUSED

We will now adjourn I'm afraid we've gone a little bit over time we were ambitious this morning with the number of witnesses. My suggestion would be that we adjourn till 2:15 and that we will then take the evidence of Mr Norris if he is available this afternoon and then move on to Dr Redpath, thank you.