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REPORT OF MINISTERIAL COMMITTEE INTO CRICKET

"You do well to love cricket, for it is more free from anything sordid, anything dishonourable, than any game in the world. To play it keenly, honourably, generously, self-sacrificingly, is a moral lesson in itself and the classroom is God's air and sunshine. Foster it, my brother, so that it may attract all who can find the time to play it; protect it from any that would sully it, so that it may grow in favour with all men.",

Lord Harris, a cricketer, some time Governor of Bombay and Lord Randolph Churchill's under-secretary for India, in the late nineteenth century.

Cricket is a great game. It deserves to have governance, including management and ethics, worthy of the sport. This is not the position at the present time. This report… identif[ies] the shortcomings and the action which now needs to be taken to remedy this. We have… set out a vision as to the changes that need to be made and the transformation in the situation that these changes should bring about.

Lord Woolf and PricewaterhouseCoopers LLP in *An independent governance review of the International Council February 2012.*

"There is a well-observed pattern in sport around the world which is that the money is increasingly concentrated at the very top of the sport and not well distributed to lower levels."

David Crawford and Colin Carter in *A Good Governance Structure for Australian Cricket 2011.*

Introduction

1. On 4 November 2011, Sport and Recreation Minister, Mr Fikile Mbalula **("the Minister")**, announced that he was appointing a Ministerial Committee of Enquiry **("the committee")** to conduct an investigation into the affairs of Cricket South Africa **("CSA")**. The committee is chaired by Judge Christopher Robert Nicholson, and has as its members, Mr. Freeman Nomvalo, the Accountant-General and Ms. Zolisa Zwakala, who is the Chief Director for Internal Audit Support in the National Treasury.

2. The committee was appointed in accordance with Treasury Regulation 20, issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and section 13(5)(a) of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998 as amended)**("the Act")**. The Treasury Regulation refers to the remuneration of committees of enquiry ***inter alia*** and the Act to the intervention by the Minister in a dispute where such is likely to bring a sport into disrepute. We deal with the Minister's powers at the end of this report.

3. On Friday, 11 November 2011, the committee had its first formal meeting with the Minister, who emphasised the importance of the investigation for the future of cricket in our country. In the meeting it was agreed that the committee would commence with its work immediately and make every effort to complete its assignment within one month. The Minister emphasised the independence of the committee and his commitment to ensuring that the committee is supported fully by his Department.

Terms of reference

4. The terms of reference of the committee were as follows:

"12. The committee must —

12.1 investigate and report on the reasons for the failure of Cricket SA to adhere to certain recommendations of KPMG and Legal Counsel as referred to in par. 6 and 7, following a forensic investigation into the affairs of CSA given the seriousness of the contraventions of the Companies Act;

12.2 investigate and report on—

(a) maladministration in CSA in relation to payment of bonuses to officials in respect of the Indian Premier League **("IPL")**, circumstances surrounding those payments;

(b) whether the said bonus payments were made in contravention of any law, in general, and Companies Act in particular;

(c) non compliance with legal advice or KPMG report.

12.3 investigate and report on any irregularities discovered during the KPMG's investigation;

12.4 analyse any relevant documents relating to its terms of reference and to do the necessary interrogations on the basis thereof;

12.5 enquire into, assess and report on the effectiveness and efficiency of the current administration of CSA and in particular identify all aspects of the current administrative system which allows for or encourages undesirable or illegal practices;

12.6 enquire into and report on the degree of compliance by CSA and its staff with applicable laws;

12.7 recommend ways to eliminate deficiencies identified; and

12.8 recommend systems, practices and procedures to improve the administration of CSA, facilitate compliance with applicable laws and to optimise the provision of the services rendered by CSA and its staff."

Procedure to be followed by committee

5. The committee was urged to complete its enquiry within one month or such additional period, as determined by the Minister, who recognised that the said period might be inadequate. A procedural framework was recommended with changes to be made at the discretion of the chairman, in consultation with the Minister.

6. The committee was empowered to follow procedures which are informal, flexible and non accusatorial and which permit for the maximum participation by interested parties.

7. In this context we were required to analyse any relevant documents relating to its terms of reference and to do the necessary interrogations on the basis thereof. We were supplied with all relevant documentation and nothing, apart from the instances set out hereinafter, was withheld from us. We had access to a number of books and reports which have been of great assistance to us, including Andre Odendaal's book - "*The Story of an African Game"*. Ashwin Desai *et al* "*The Race to Transform: Sport in Post-Apartheid South Africa",* David Crawford and Colin Carter "*A Good Governance Structure for Australian Cricket"* and Lord Woolf and PricewaterhouseCoopers LLP "*An independent governance review of the InternationalCricket Council.".*

8. We received a large amount of documentation including *inter alia* the full report by KPMG including three volumes of annexures, the court proceedings in the application brought by Dr. Nyoka **("Nyoka")** to the High Court to secure his reinstatement and countless other memoranda and papers handed in by witnesses and lawyers representing such witnesses.

9. It would be an act of superfluity to repeat all the facts and allegations contained in the oral evidence and the documents we were provided with. We have had regard to them, but of necessity we have made mention of only those aspects that would be useful in carrying out our mandate to investigate and report and those that would assist the Minister in considering what steps he should take.

10. The committee was authorised to carry out its functions in two phases. In the first phase the committee was to invite the Board of CSA, any of its employees or any other person as it deems fit, to make written submissions, confined to the terms of reference within a time period stipulated by the committee. Similarly members of the public had the same opportunities to make written submissions. Thereafter the committee was required to acknowledge receipt of the submissions and summarise the points made. The committee reserved the right to invite those persons, who in the committee's opinion should supplement their written submissions, to address the committee by way of oral evidence.

11. In the second phase the committee was empowered to invite persons who have made written submissions to address it. Such addresses were to be led by the chairperson, who would decide on the appropriate procedure. Oral submissions were consequently permitted, but cross examination was not to take place. The committee was also allowed to receive affidavits. If the affidavits contained allegations of the commission of an offence, those affidavits must be submitted to the appropriate authority for investigation.

12. On completion of the addresses or hearings, the committee was obliged to summarise the information gained at the addresses or hearings and the report had to contain a summary of all information placed before it relating to the terms of reference and the key observations made by the committee.

13. The report had to also highlight systematic problems which needed to be addressed and contain recommendations based on the written and oral submissions made and was to be delivered to the Minister.

14. In compliance with the requirements of the first phase, a notice was sent on 11 November 2001 to all newspapers calling on CSA, its employees and the public at large to make submissions on the issues raised in the terms of reference. A media conference was held on 13 November 2011 by the committee, which was covered by television, where the process was explained, including an invitation to make submissions as aforesaid.

15. Written submissions were received from 31 persons whose names appear on **Annexure A** hereto.

16. The committee heard oral addresses from 28 persons whose names appear on **Annexure B** hereto.

17. In addition, annexed hereto as **Annexure C**, are summaries of the written material submitted relative to the committee's terms of reference.

18. It is important to constantly bear in mind that this committee has the function of investigating and reporting to the Minister on the matters that are contained in the terms of reference. Given the absence of cross-examination of witnesses by the affected parties or their lawyers, the investigation and subsequent report have limitations and cannot be regarded as conclusive findings in all respects. The proceedings of this committee do not amount to a disciplinary enquiry of any person nor do they constitute a court of law or administrative hearing of any nature. The proceedings are designed to investigate the matters set out in the terms of

reference and assist the Minister in deciding what steps if any to take as a consequence thereof.

CSA, its Board and committees

19. CSA is the controlling body of cricket in South Africa with oversight over both amateur and professional cricket for men and women cricketers. This responsibility initially fell upon the United Cricket Board **("the UCB")** which came into existence on 29 June 1991, following successful unity talks between the old South African Cricket Union **("SACU")** and the South African Cricket Board of Control **("SACBOC")**.

20. Prior to 2009, CSA was a company run by the General Council **("Genco")** and the board. The first mentioned was made up of the 11 affiliate Presidents and the entire body of associate members, a representative of Women's cricket, a representative of Blind Cricket, three Black African representatives, the office bearers, being the President, Vice-President and Treasurer and finally the CEO.

21. At all material times to this investigation Mr. Gerald Majola **("Majola")** was the CEO. As will appear more fully hereinafter Majola took over the helm of South African cricket after a long period of dominance by whites. He comes from a family that was steeped in sport and he and his brother Khaya achieved the highest honours in "non-white" cricket as it was known. Their family also distinguished themselves in the struggle to rid the country of Apartheid in sport.

22. The game was administered by whites and virtually all national and provincial players were white. Majola assumed the position of CEO in a fast changing institution which was wrestling with vast exponential growth, encompassing the development of one day cricket and the arrival of the twenty-twenty over variety.

23. As appears from the findings of the Woolf Review for the International Cricket Council **("ICC")**, India now provides between 60 and 80% of the financing of world cricket. The political instability in the sub-continent and the transfer of tournaments to South Africa, while providing welcome funds, also imposed challenges on the CSA structure, both institutional and ethical.

24. From earlier times cricket was an amateur code run by honorary administrators composed largely of ex-players. The structure was largely democratic, with clubs electing provincial representatives, who in turn elected delegates to the national body. The test playing nations dominated world cricket and the rules and ethics were centred in England.

25. With time professionalism introduced commercial dimensions, which required different skills and experience. While gate money and sponsorships from the provinces used to finance the national body, with time the focus has changed. Most of present finances of cricket are poured into the head office of CSA, for onward distribution to the provinces or affiliates, as they have come to be known.

26. The budget of CSA and its predecessors in title increased from more modest sums, Majola mentioned R 127 million in 2001, to the R750 million it annually now commands. We were told a contract was signed recently for R1.5 billion: so the erstwhile amateur game has transformed into a major business with fresh challenges, including the demands of professional cricketers.

27. By and large Majola and his team dealt very competently with the challenges presented by the new changes to the commercial and institutional nature of cricket. He explained in some detail the five pillars of the vision for CSA which included, excellence, development, transformation, sustainability and brand promotion.

28. Majola was the architect of the vision and was very keen to carry it out as speedily and efficiently as possible. He said:

> *"And we look at all those things and we do a lot of scientific research in our work (for) effective governance and efficient administration, I think the mere fact that I stand here today is because of that we believe in good governance and when things are not kosher we want to make sure that things are dealt with.".*

29. Much of the evidence presented to us praised Majola and his staff for managing such large events as the IPL at such short notice. The managers in the sub-continent of these tournaments are wealthy and quite uncompromising in securing their demands.

30. Keith Lister **(Lister")**, an erstwhile attorney and Vice President of the Gauteng Cricket Board **("GCB")**, told us that Lalit Modi, a commissioner of the IPL and member of the Board of Control for Cricket in India **("BCCI")** had attempted to bribe the GCB and the security company involved with the GCB cricket.

31. Lister said and I quote from his evidence before us:

> *"Mr Modi is in exile in London with warrants for his arrest out. He has been criminally charged by the board of control for corruption, for money laundering, he is under investigation by half a dozen authorities in India et cetera… The man was, to put it mildly, a criminal who was let loose in South Africa by Cricket South Africa…"*

32. Majola explained that 87% of the income of CSA came from professional sponsorships, brokers' rights and ICC distributions. He produced figures showing that 26.7% of the budget went to development, 20.5% to the national team and only 4.9% to staff salaries and administration. From R35 million per year to the affiliates in 2001 that sum, for development, has been increased to R300 million in recent years. These figures seemed

to show a strong commitment to spreading the game to disadvantaged areas.

33. As will appear from the evidence of other witnesses analysed later there is a strong body of opinion that grass roots cricket is being neglected. Clearly something is going wrong with the distribution of the money by the affiliates and programmes for the upliftment of the game in depressed areas.

34. Apart from the demands of managing a large business, with conflicting interests, including financing professional players and finding resources for grass roots cricket in disadvantaged areas, the new administration had to deal with affirmative action. The monopoly of the game by whites, in a country where they constituted a small minority, was a historical anomaly that had to be corrected.

35. In a sport where accurate measurement of performance is possible, with bowling and batting statistics and averages readily available, the obvious method to correct the historical imbalances alluded to, was to pour huge sums of money into the hitherto disadvantaged African, Coloured and Indian areas and provide equal opportunities for all. The aim was to level the playing field so that merit would soon become the only criterion for selection at all levels. This last mentioned goal was to become a yardstick to measure how well CSA had come to achieving its historical imperative.

CSA Board

36. The Board of CSA consisted of the Chairmen of the 6 cricketing franchises in South Africa, 2 independent Directors, the 3 office bearers, the Treasurer, the Chairman of the Audit and Risk Committee **("Auditcom")**, the representative of the Players' Association and the CEO.

37. 14 Directors were elected to the board on 24 October 2008, when, due to a change in the Tax legislation, CSA became a section 21 company. These comprised the president, vice-president, treasurer, CEO, three affiliate member representatives, three franchise representatives, a South African Cricketers' Association **("SACA")** representative, two independent directors and the head of Auditcom.

38. After a meeting held on 19 July 2010 the articles were amended to include all 11 affiliate presidents, as well as the three Black African Representatives. Eight new directors were appointed and the SACA representative was ruled to have a conflict of interest and was removed from the Board. We were perturbed at how little documentation was provided to inform the discussion about these fundamental changes.

39. The Members' Forum, whose composition was the same as that of the former General Council consisted of 23 members, which was according to Prof. Mervyn King **("King")** "a convenient association of the members of the section 21 company to obtain a non-binding view as to what members would do when meeting after due notice'. The 23 members of the Members' Forum consisted of the president, the vice-president, treasurer, Auditcom chairman, CEO, 11 presidents of the cricket affiliates, three Black African Representatives, one Associates' Representative, two independent directors and a SACA Representative.

40. We found it difficult to understand why the board was increased to virtually replicate the Members' Forum. We deal later with the difficulties that have arisen out of a Board of such size and draw on the experiences of other countries, with regard to similar problems.

Board sub-committees

41. CSA has various sub-committees tasked with assisting the Board of CSA with the execution of the fiduciary duties of the individual board members. The relevant sub-committees include the Legal and Governance Review Committee, the Finance and Commercial Committee, the Remuneration Committee and the Audit and Risk Committee.

42. In terms of CSA's founding documents, i.e. the Memorandum and Articles of Association, the Affiliate Presidents and the Board members are required to act in a manner which has as its ultimate objective **the advancement and achievement of the overall interests of cricket in South Africa.**

43. The Legal and Governance Review Committee **("the Governance Committee")** was chaired by King who was on the said committee during part of the relevant period when he made a presentation to the CSA Board as referred to hereunder. King testified before us and advised us of his role in advising CSA and a presentation he made to the Board on good corporate governance and responsibilities of directors. The Governance Committee is tasked with ensuring that CSA complies with a range of policies, procedures and systems so as to properly comply with all aspects of good governance.

44. The role of the Audit and Risk Committee **("Auditcom")** is to assist the Board of CSA in discharging its fiduciary and statutory duties relating to the safeguarding of assets, the development and operation of adequate systems and control processes, the preparation of accurate financial reporting and statements in compliance with all applicable legal requirements and accounting standards; and corporate accountability and the associated risks in terms of management, assurance and reporting on risks.

45. The Remuneration Committee **("Remco")** is charged with the responsibility of dealing with **all** remuneration, allowances and incentive schemes across cricket in South Africa. This related to all staff, players, as

well as administrators. The structure and composition of Remco during 2008 to 2010, consisted of three independent members, namely: Paul Harris **("Harris")** (Chairman and Convener), Thandeka Mgoduso and Thandi Orleyn **("Orleyn")**.

46. The CEO and COO were invited to attend all the meetings of Remco, whose responsibility was to ensure that remuneration associated with cricket in South Africa, whether at Head Office or the regions, was managed in a transparent and properly governed manner. In addition, it was required that Remco consider all remuneration matters related to South African Cricket and to ensure that the appropriate level of independent oversight was implemented and to ensure that this was also seen to be the case. The function of Remco was to structure remuneration to reward performance and retain skills.

47. The terms of reference of Remco state that the approval of bonuses fell within the Remco's responsibility and therefore approval of bonuses by Remco was required before the presenting of a recommendation to the Board. Article 12 of the Articles of Association of CSA is relevant in this regard.

48. As appears more fully from Remco's terms of reference, the CEO is required to consult the President of CSA before making recommendations to Remco. At all relevant times Nyoka was the President of CSA. The position of Remco is very important in issues such as salary increases and bonuses as it is there to curb the natural inclination in staff either at national or provincial levels to increase their own salaries. Various members of Remco testified and indicated their difficulties in carrying out their responsibilities. Remco has to bear in mind the nature of the section 21 company, as a non-profit enterprise and the feelings of the public, in what is a national game, about excessive remuneration being paid to sporting administrators.

49. Remco conducted a benchmarking exercise in November 2006 of the senior management remuneration packages. They recommended three times monthly salary as a maximum for bonuses to the CSA Board. They referred to the following difficulties in carrying out their duties, firstly, in relating job performance to financial performance and secondly the problem the cricketing public had when there was a payment of large bonuses. The meeting said:

> *"A job in cricket was about following a passion and making a contribution to cricket and society, rather than the enrichment of the individual. Many people were prepared to do the same job where money was not the major consideration."*

50. Harris mentioned in this regard that at one meeting on 13 May 2010, a pitch was made for a bonus for the CEO at *three times his annual salary*. Although this was seriously argued for by an HR consultant hired by CSA, Remco regarded the proposal as preposterous. In the financial year ending April 2011, the CEO earned R5.317 million, which included the salary he was receiving (R 1.832m) plus the two bonuses, his ordinary CSA bonus (R 1.417m) and those that accrued from the IPL (R 1.131m) and International Cricket Council Champions Trophy **("Champions Trophy")**(R644.000) and retirement and medical contributions of R293 000.

51. The Finance and Commercial Committee **("Finco")** was established to oversee CSA and all its affiliates. In accordance with its terms of reference, Finco reports to the CSA Board. Professor Hentie Van Wyk **("Van Wyk")** was the chairman of Finco at all relevant times.

The bonus issue

52. We were required to investigate and report on maladministration in the CSA in relation to payment of bonuses to officials in respect of the IPL and Champions Trophy and the circumstances surrounding those payments. Such investigation had to encompass whether the said bonus payments were made in contravention of any law, in general and Companies Act in particular.

53. During 2009, as a result of a political election in India and unrest in Pakistan, two cricket tournaments were staged by CSA in this country. These were the IPL, held from 18 April 2009 to 24 May 2009 and the Champions Trophy, held from 24 September 2009 to 5 October 2009.

54. After the IPL tournament had been completed, rumours emerged, which were followed up by the Gauteng Cricket Board **("GCB")**, which is one of the eleven associate members of CSA, that Majola had personally received a significant payment from the IPL. At the same time there were other complaints about various issues, including the rights of suite holders to occupy their suites, *inter alia*. The latter were contained in correspondence whereas the allegations of an improper payment to Majola were not in writing.

55. Nyoka, the President of CSA testified that he asked Majola for his response and he denied receiving any personal benefit from the IPL. Majola told him that what he did was out of his duty or 'national service' and that the allegations arose from prejudice and racism. According to the KPMG report, Orleyn also asked Majola about any payments he had received and he categorically denied these.

56. Nyoka then threw his weight behind Majola in refuting the insinuations from the GCB, who persisted in its allegation of an improper benefit. As refutation of these allegations, Majola then showed Nyoka and Mr Skjoldhammer, the chairman of the GCB, a copy of the Heads of Agreement, concluded with the BCCI (after the two had signed non-disclosure agreements at the insistence of Majola), which included nothing

concerning any bonus. Although the agreement with the IPL contained no provision for payments, including bonuses, such had been surreptitiously negotiated by Majola and in truth and in fact, there was a schedule, signed by Majola a month earlier, which provided for the bonuses in question.

57. Nyoka was, of course, unaware of the schedule of payments and insisted that the GCB apologise for its accusations of impropriety against Majola. There were also threats to withhold test matches and one day internationals from the Wanderers' Cricket Ground, which is the home of cricket of the GCB and for many years a traditional venue for cricket tests.

58. In order to investigate the genesis of the payment of the bonuses, it is necessary to consider the events surrounding the tournament and certain correspondence in that regard. What should be borne in mind is that Majola gave evidence that it was Mr Don McIntosh **("McIntosh")**, the chief operating officer **("COO")**, who determined the bonuses and drafted a schedule of them on his computer. He did so as Majola insisted, because he was a quasi-tournament director and therefore senior to Majola with regard to the bonuses.

59. McIntosh, on the other hand, maintained that Majola determined the bonuses and that McIntosh merely generated a schedule of them, on the instructions of Majola. Majola signed the schedule and the payments were made on 22 July 2009. It is difficult to understand the urgency in this regard as CSA was owed money by the IPL at the time to the tune of some R25 million.

60. Majola had sent a letter to Mr N Srinivasan **("Srinivasan")**, the Honorary Secretary of the BCCI, on 2 June 2009 and set out some matters arising out of the IPL tournament that needed to be finalised. He said *inter alia:*

> *"As you can imagine a large number of our CSA staff spent a considerable amount of time on the IPL. I would like to look at some sort of performance payment pool in this regard, at your discretion".*

61. Majola met members of the IPL in London on 18 June 2009, without McIntosh, which is somewhat strange as he considered him to be the quasi-tournament director, although he was in the city at the time. It is also strange that Nyoka was not invited to nor informed that he could be present as he represented to us that he was also in London at the time. As will appear hereinafter the firm of accountants, auditors and forensic investigators, KPMG conducted a very thorough investigation of this whole issue and made a report to CSA. In their report they infer from McIntosh's absence that he was not the person identified for the negotiation of the bonuses. At this meeting Majola requested additional funding for bonuses for CSA staff, which had not been included in the original budget for the tournament.

62. On 10 July 2009, a special general meeting of the Members Association was held to deal with the GCB's allegations of mismanagement in respect of the IPL tournament. According to the minutes of that meeting Majola:

> *"informed the meeting that, in his negotiations with IPL he had included an amount for bonuses for the CSA staff and this news was applauded by the members."*.

63. KPMG has listened to the tapes of the meeting and Majola's actual words were:

> *"Doc, can I also say something on that note, Doc I almost forgot. I also negotiated with the IPL bonuses for **my staff** and they have also paid bonuses for **my staff.**" (Our emphasis).*

64. There seems *prima facie* to be a discrepancy between the verbatim words uttered and the minutes. No particularity was sought and none was given about the IPL bonuses. In particular, Majola did not mention specifically that he was to benefit or had benefitted from the bonuses he had negotiated and no amounts were mentioned.

65. On 16 July 2009 the bonus letter signed by Majola and sent to McIntosh said that "we have managed to negotiate with IPL to pay you a special discretionary bonus for your contribution to the success of the event". This tends to fortify the view that Majola was the dominating force behind the allocation of the bonuses and not an unwilling recipient as he sought to portray himself.

66. He made a full presentation to the Board on the IPL dispute with the GCB on 30 July 2009. It is significant that Majola made no mention of the bonuses, although he had banked his a week before. The allegations that he had received an improper payment could not, in our view, have been absent from his mind at that meeting.

67. A subsequent letter dated 19 October 2010, from Srinivasan to Nyoka records Majola's attendance at the meeting of 18 June to present accounts. Clearly the extra money for bonuses was requested as an amount of R3 820 000 was identified with the legend "Bonuses made to staff by CSA" and another note that such "additional costs were accepted by BCCI".

68. In his President's annual report for 2008/9 prepared in mid 2009, Nyoka praised Majola for his work as CEO. Nyoka also praised Majola in 2009 for his work as CEO on other occasions. This was all prior to 13 July 2010 when the bonuses received by Majola from the IPL and the ICC were revealed. From the time of the payment of the bonuses until after 13 July 2010, on Nyoka's version, Majola remained silent on the bonus he had received.

69. Unbeknown to Nyoka or the GCB, Majola had not disclosed the full IPL agreement to them at the meeting in August 2009 and had withheld the "Schedule of Payments" which reflected a bonus payable to him in the sum of R1 131 062.00 which was paid on 22 July 2009.

70. In September 2009, the Champions Trophy was held in South Africa. Without the knowledge of Nyoka, on his version, or Remco, Majola

received a further bonus in an amount of R644 081 paid on 22 April 2010. This too was not disclosed.

71. As mentioned the payment of bonuses for CSA staff requires the involvement of Remco. During the same period "normal" company bonuses were paid with the approval of Remco by CSA to Majola and staff in May 2009 (for the 2008/9 financial year) and in May 2010 (for the 2009/10 financial year). From Majola's 2010 Performance evaluation form, the IPL and Champions Trophy had been listed and taken into account in determining his "normal" company bonus. The IPL and Champions Trophy bonuses were, however, not considered by Remco.

72. One apparent dispute appears to be who authorised the payment of the bonuses? Was it Majola as CEO or McIntosh as Quasi-Tournament Director of the IPL? At one level it does not matter who actually divided the bonuses, if they acted in concert in determining and accepting them. Even if one was merely told of the bonus, he had a serious duty to disclose it to CSA, especially Majola who was a director. McIntosh also knew that it was Remco that authorised bonuses and he should have revealed his IPL and Champions Trophy bonuses to them. Between Majola and McIntosh, each represented that they had thought the other would disclose the bonuses to Remco.

73. In April 2010, at the end of the CSA financial year, Nyoka considered the work done by Majola during the year, specifically his contribution to the success of the IPL and ICC tournaments and motivated to Remco payment of an extraordinary bonus to Majola equal to eight months' salary, rather than the usual three months. In the same way McIntosh also applied for a bonus for his year's work. As I understand the way that the system operated, Majola and McIntosh each filled out separately a motivation for the bonus, which set out all the reasons why they should be favourably considered. These motivations were considered and approved by Remco and the normal bonuses were paid to Majola and McIntosh by CSA.

74. However, both persons made no disclosure that they had already received bonuses which had been paid without reference to or approval of the board or Remco. Had Remco known of these bonuses it would not have agreed to the special payment, apart from the fact it would have taken up the non-disclosure issue. This is specifically confirmed by Harris, who was the chairman of Remco at the time.

75. On 09 July 2010 the Auditcom of CSA met with Deloitte, the external auditors, to sign off the 2010 financial statements. At this meeting Deloitte was not aware of the payment of the IPL and ICC bonuses hence the financials were thus approved.

76. On 13 July 2010, before CSA's auditors, Deloitte, had signed off on the financial statements for the year ended April 2010, Mr D O Thomas **(Thomas")** (an internal auditor), delivered a report following his review of CSA's accounting records. Thomas reported that a pool bonus of R2 732 172.00 had been paid by the IPL tournament and of that amount, R1 131 062.00 had been paid to Majola and R797 999.00 to McIntosh.

77. He reported further that a bonus pool of R2 024 951.00 had been received for the ICC Trophy and of that, R644 081.00 had been paid to Majola and R649 986.00 to McIntosh. In total, 67% of the bonuses received by CSA had been paid to these two individuals. A further R1.5 million was shared between 38 CSA employees. In addition, Thomas identified travel and expenses claims which appeared to be abnormal. He sent his report to Mr Colin Beggs **("Beggs")** (then head of CSA's Auditcom), who in turn reported to Nyoka. In terms of its terms of reference, Auditcom has the responsibility to monitor the ethical conduct of CSA employees, executives and senior officials.

78. Nyoka was shocked at this news since it was directly at odds with the consistent denial by Majola that he had received any personal benefit from the IPL tournament. Nyoka testified that when he confronted Majola with what he had found out Majola did not deny this but enquired about the

authority of Thomas in conducting the internal audit. This was the turning point in the relationship between Nyoka as president and Majola as CEO of CSA. Nyoka immediately consulted a list of experienced individuals on the corporate governance ramifications and the correct steps forward.

79. On 4 August 2010, following a confrontation between Nyoka and Majola, Majola finally revealed the Schedule of Payments which formed part of the agreement with the IPL. The schedule reflected the personal benefit that Majola had negotiated for himself, as well as the other recipients, including McIntosh. Previously Majola had only shown Nyoka the IPL Heads of Agreement without the schedule. It is important to note that it appears only Majola had sight of the Heads of Agreement before signing with the BCCI. No other official or representative of CSA had given input before the finalization thereof.

80. In the ordinary course of events Remco awarded bonuses in monthly multiples. Remco awarded bonuses of eight times the monthly salary to Majola for the 2008/2009 financial year and seven times the monthly salary of McIntosh for the same period. In a memo from Remco it was noted this was in recognition of the extraordinary performance relating to the IPL and was not setting a new precedent going forward. The schedule of payments recording the payment of bonuses to CSA staff arising from the IPL tournament, records that Majola received a bonus of eight times his monthly salary and that McIntosh received a bonus of seven times his monthly salary.

81. Furthermore, the schedule of payments recorded that other CSA staff members received bonuses in accordance with their monthly salary multiplied by either two or three months. The table below, taken from the KPMG report, records these CSA staff members and a comparison between their IPL related bonus and their Remco related bonus. The KPMG Schedule shows that name of the person followed by their IPL bonus for 2008/2009 and next to that the Remco bonus:

		Monthly salary multiple:	
		IPL bonus:	**Remco bonus:**
a.	Kass Naidoo:	2times	3times
b.	Christelle Britz:	3times	4times
c.	Daryl Baruffol:	3times	3times
d.	Bronwyn Wakes:	2times	3times
e.	Lesley Nunn:	3times	3times
f.	Mike Gajjar:	2times	4times
g.	Grace Modisella:	2times	4times
h.	Minnie Martin:	2times	3times
i.	Trish Lewis:	2times	3times
j.	Musa Gubevu:	2times	3times

82. In addition the schedule of payments further shows that 29 other CSA staff members received either R5 000 or R10 000 each.

83. Nyoka sought advice from King who was then chair of CSA's Legal and Governance Review Committee of CSA and on his advice, immediately took steps to appoint an external Commission to investigate the bonus issue.

84. As the Langa Commission (chaired by Judge Langa **("Langa")**, the ex-Chief Justice of South Africa) had just completed its work in relation to a separate matter concerning the GCB, Nyoka decided to propose to the CSA Board that Langa be appointed to deal with the bonus issue as well.

85. At a board meeting held by way of teleconference on 4 August 2010, it was unanimously decided that CSA's management committee **("Manco")** should appoint an independent, external committee to review the circumstances surrounding the payment of the bonuses in the two tournaments.

86. On 5 August 2010, Manco met and decided to appoint a Commission headed by Langa, assisted by the auditing firm KPMG. On the same day, Majola proposed to pay back the bonuses he had received. It was by this stage essential to ensure that the CSA financial statements for the year ending April 2010 be approved without delay.

87. On 6 August 2010, CSA's audit and risk committee met and decided to recommend the approval of the financials by the board subject to the repayment of the bonus monies by Majola and McIntosh and an external review of the bonus issue. This decision was conveyed to Deloitte who insisted on an independent inquiry as a condition for them signing off the financial statements.

88. Thereafter a meeting was held with Langa and KPMG to brief them on their mandate and the intended terms of reference. At a further teleconference held later in August, the board again unanimously endorsed the external review. Two meetings were held with Langa, according to Nyoka and the former was told the nature of the commission he was supposed to chair.

89. On 1 September 2010, Majola, accompanied by his lawyer, met with Nyoka and complained about the process which had been followed. He wanted an opportunity to make representations directly to the board and to persuade it to reverse its earlier resolutions. At that meeting, Majola stated to Nyoka that in the past "he has never declared his bonus to any CSA President".

90. On 16 September 2010, Mr Ray Mali **(Mali")**, a CSA board member, arranged a meeting with Nyoka and Majola to try and reconcile the matter. Nyoka was not satisfied with the reconciliation process which did not in his view vindicate Majola.

91. At a board meeting held on 17 September 2010 Deloitte were questioned about the bonuses received by the staff of CSA, including Majola and

McIntosh. The following decision was recorded: "The general consensus of the board was to proceed with the appointment of a Commission (with the exclusion of Deloitte and KPMG). Mr Matheson **("Matheson")** (the lawyer acting for CSA at that stage) was asked to expedite the matter as quickly as possible."

92. This was the third occasion on which a unanimous decision for the appointment of an external Commission was taken by the board.

93. According to the press Langa was in the dark about his participation in the inquiry. On 19 September Matheson, CSA's legal representative, told the press that the investigation was due to sit for the first time that week either at CSA's offices in Illovo or at the Protea hotel at the Wanderers. It was stated that Majola had paid back his bonuses which were earned as a result of CSA hosting the IPL and the Champions Trophy.

94. The press also reported that Matheson and Langa had no objection in principle to the investigation being open to the media with this caveat that the witnesses needed to be comfortable with the media's presence. If they felt their privacy was being compromised, the media would not be allowed to attend.

95. On 28 September 2010, Mr John Bester **("Bester")** (the new chairman of CSA's Finance and Commercial Committee) **("Finco")** prepared a memorandum. He confirmed the board's decision of 17 September 2010 to appoint an external Commission comprising of Chief Justice Langa and himself. However, he recorded that he had subsequently held discussions with Majola and had met with Nyoka and the vice president, Mr. AK Khan **("Khan")** and in the light thereof suggested an internal review of the bonus issue rather than an external one.

96. According to Nyoka Bester told him the following:

> *"As far as I am concerned, I am the new treasurer here I have applied my mind to this issue and there is no need for an external enquiry here. I can just write a report to this matter. I have listened to everything Gerald has told me, and I will write a letter to the board and this matter gets closed."*

97. This was the first time that an internal investigation was suggested in the place of the external one that had been agreed to and confirmed by the board of CSA at least three times. The memorandum does not provide reasons for this change.

98. In the court case brought by Nyoka to seek his own reinstatement as president a supplementary affidavit was filed in which Bester explained that the internal investigation was suggested as a preliminary process and that the external investigation would have been resorted to if the internal process found good reasons for that.

99. On 29 September 2010, a board teleconference was held to discuss this proposal. The board decided to constitute an internal committee under the chairmanship of Khan **("the Khan Commission")** with Bester and John Blair, also serving as members.

100. The decision to proceed with an internal inquiry in the place of an independent external one, was taken in the face of the concerns of the external auditors, Deloitte, who in a letter of the same day (29 September 2010) expressed themselves as follows:

> *"Prior to signing the annual financial statements for the year ended 30 April 2010, we were informed that an independent enquiry would take place on the matters relating to the unauthorised bonuses, travel and related expenditure and fringe benefits. At that stage we were of the view that that an investigation was necessary in order to allow us to fulfil our statutory reporting requirements. Based on this understanding, we were satisfied with management's actions, and the financial statements were signed off accordingly.*

> *Should an independent enquiry not be held in this regard, we may be obliged, in terms of our statutory obligations, to conduct a review ourselves. In the event that an enquiry or our review indicates that there has been a Reportable Irregularity, we will have to report details to the Independent Regulatory Board for Auditors (IRBA) in terms of the Auditing Professions Act 2005 (Act 26 of 2005) (APA). …*
>
> *In relation to this matter, we strongly recommend to the Board to continue and conclude the independent enquiry. Failure to do so may have serious adverse consequences for CSA. …*
>
> *I understand that there is a Board meeting this afternoon. Please distribute this letter to all your board members."*

101. The press immediately suspected what they called "a massive, but clumsy, cover-up." In a moment of candour Khan said the following during the proceedings of his commission:

> *"[i]f you look at my opening remarks, I must find that page here, [our task] is to protect the CSA brand and the integrity of the individuals concerned." (Page 250.)*

102. This is hardly the appropriate attitude to an "independent" commission to establish whether Majola and McIntosh committed any breaches of any law by taking the bonuses. We, as the committee, tried in vain to secure the written record of the remarks referred to. We conclude it was either destroyed or deliberately suppressed.

103. When we view the whole background of the establishment of the Khan Commission, it is difficult to avoid the conclusion that it was set up to avoid the consequences of an open independent enquiry by Judge Langa. The corollary of this is that it was constructed to minimise the fallout for Majola. This does little credit to Khan, Bester or Blair and the members of the Board that authorised it.

104. During the Khan Commission McIntosh revealed how the bonuses were concluded and divided. He said:

> *"So the IPL came in – in June I was in London, Gerald was in London, we were all in the same hotel in fact. Now during that [time] I had some operational matters to cover off the IPL business, things like that and Gerald said he wants to talk to IPL about a bonus. So he talks to Sweeny [Srinivasan, the Honorary Secretary of the Board of Control for Cricket in India], the senior guy. I said do you want me involved? No, I will deal with it myself. Fine… When I returned Gerald came back and said I have got this full amount. I want to split it. So I kind of said well how do you want to split it and he said about like how we – how we apply our normal split, okay because CSA is quite a two-faced organisation, there is a lot [of] implementation and there is only a small area where it is judgmental like commercial area and [it] tends to be Gerald and I. So I gave him a split, he adjusted some of those things you know because that is his call and then he said fine, this is what we do." (Page 240)*

105. Majola was asked when he appeared before us:

> *"So was it between the two of [McIntosh and yourself] that you settled the schedule of payments?"*

His answer was in the affirmative:

> *"Yes, we sat with the schedule between the two of us and it was submitted to the IPL, who authorised the full schedule… It has never gone to Remco."*

106. Majola then conceded before us that it ought to have gone to Remco. He was asked:

> *"But was it not for Cricket South Africa, especially the remuneration committee to decide that, not the IPL and you and Mr McIntosh, that is the part I am not understanding?"*

His answer was revealing:

> *"Judge I think I have said that we have conceded that this practice was unsatisfactory the board has to look at this practice going forward and that is what is going to happen."*

107. McIntosh then explains how the schedule of payments was signed by Majola and Sundar Raman (of the Indian Premier League and Board of Control for Cricket in India):

> *"So I said Gerald I know you have approved it and yes, it is great, IPL will pay it but I think it is appropriate to just cover off with Sunda, number one, he needs – because the original thing Gerald never said hey, let us get Sunda. I said let us get Sunda to sign this and by person, not a total amount because we are conflicted. How can you – how can you split things that benefit you. So Sunda signed it which was the detail and I said to Gerald, Gerald how are you dealing with this but bear in mind the nature of our relationship is I do not – do not ask too many questions. I have been accused of insubordination for my questions before… I recall that he will cover it off with the President [Nyoka]…"*

108. According to Nyoka he was never told and only came to hear of the bonuses in July 2010. He confirmed that not only did they have meals together, but also shared many social occasions. While this was going on and they were discussing putting the GCB in place, Majola "was having meetings with the IPL to negotiate his bonus and despite all the time we spent together talking cricket issues not once did he mention that."

109. Nyoka also spoke of a meeting with Rev. Stofile, then Minister of Sport and Recreation and his deputy Mr Gert Oosthuizen, Majola and his lawyer Mr Max Boqwana, At this meeting Majola asked for help because "he is being accused of receiving millions and he has not received millions and we need the board, the office of the Minister of Sport to help us deal with GCB…". Mediation was proposed and Mr Brian Currin attempted to resolve the differences with the GCB, without any apparent success.

110. Nyoka insisted that he did not regard what Majola did as simply non-disclosure, but what he called "deception of various people, senior and junior over a long period of time because questions were asked and issues were denied."

111. The Khan Commission handed down its report shortly before 19 November 2010. It had heard evidence provided by 11 witnesses and found that the funds used to make the bonus payments were not those of the CSA. In the second place it held that the bonuses were paid via CSA payroll. It also found that Steve Elworthy **("Elworthy")** was the tournament director for the ICC T20 World Cup and as tournament director, determined the bonus payable to Majola, McIntosh and other CSA staff, as well as a bonus payable to himself. It concluded that Majola believed that the schedule of payments for both the IPL tournament and the Champions Trophy had been disclosed by McIntosh to Remco.

112. It made factual findings that McIntosh could have been more proactive in ensuring that Remco was made aware of the bonus payments and that the minutes of a meeting held on 10 July 2009 recorded that bonuses had accrued to members of CSA, including Majola. This should have caused members of Remco to question Majola on the beneficiaries and extent of the bonuses paid. Hence, Remco was not inhibited in performing its duties. Due to the above, the Khan Commission found that adequate disclosure by Majola had taken place. Following the findings of the Khan Commission being distributed and Majola having been cleared from any wrongdoing, the findings of the Khan Commission were accepted at a Board meeting on 19 November 2010.

113. The Khan Commission made a number of findings which Nyoka, as well as the former chairmen of CSA's key governance committees, regarded as being in direct conflict with the evidence they had presented. This caused them to publicly criticise its findings. Nyoka recommended that the report be sent to the affiliate members of CSA for consideration and discussion at that level before a decision was taken by the board of CSA whether to

endorse it or not. This proposal was rejected by Majola who stated that he wanted to bring the matter to an end.

114. As Majola was the subject of the enquiry it was regrettable that he was involved in any way in the discussion of this proposal. Apparently, subject to some dispute about the minutes of the meeting, the Khan Commission report was accepted by the board. Nyoka was not happy and submitted a statement of dissent, explaining his position.

115. Three individuals, formerly part of the cricket system and the sub-committees as we have mentioned, Harris, Van Wyk and Beggs — were very critical of Khan's findings. Harris had been chair of CSA's Remco, Van Wyk was chair of the Finco and Beggs chair of the Auditcom. None were re-elected at CSA's AGM in the winter. They, in their various ways, drew attention to the original financial problems on the part of CSA staff and because of their insistence that CSA was supposed to subject itself to the authority provided by investigation from a former chief justice.

116. The three went so far as to release a formal statement through SAPA, making clear their dissatisfaction with how the Khan Commission handled things. They voiced their disapproval at the manner in which the undisclosed bonus payments had been dealt with. They also raised the specific concern that the funds of the CSA were to be preserved to develop the game at grassroots level rather than to enrich the executives who had already been adequately compensated.

117. They apparently considered legal action but did not proceed with such.

118. There were also problems with sponsors of cricket. At that time Standard Bank announced it was not renewing a 13-year association with the sport when its contract expired in May 2011. When it last renewed — in May 2008 for three years — the bank's deal was worth R100-million.

119. Nyoka was not happy with the Khan Commission's Report and the manner in which it had dealt with his problems which have been enumerated. There was opposition to this line and his ousting was engineered. At a general meeting held on 12 February 2011 a motion of no confidence was adopted and the decision was taken to remove Nyoka from his position as president of CSA. This also had the effect of removing him as director and chairperson of the board of CSA. Nyoka approached the High Court and was reinstated. His fall from grace after being re-elected unopposed in August 2010 for a second two-year term was suspected to have resulted from his struggle to expose the bonus issue.

120. In giving judgment for Nyoka Mojapelo DJP said the following:

> *"Having regard to the background to the matter and the events that lead to the removal of the applicant from office, it appears to me that the purported removal of the applicant from his position as president and director of the respondent occurred as a consequence of respondent's reluctance to allow a further investigation into the financial management of the affairs of respondent and its failure to pursue breaches of basic principles of corporate governance and transparency. The applicant seeks to ensure that inter alia the IPL bonus irregularities are fully investigated and dealt with by the respondent."*

121. Mr Beresford Williams testified that he attended his first CSA board meeting on 18 and 19 August 2011 as a newly appointed President of the Western Province Cricket Association ("WPCA"). Thereafter on 11 October 2011 the WPCA Executive Committee agreed to a vote of no confidence in Nyoka by Williams as their representative director at the Board meeting and expressed its grave concern regarding the state of the administration in cricket and that steps must be taken to ensure good corporate governance. It also proposed a change in governance structures relative to officials and decision makers based on the principles of integrity, transparency and accountability, including compliance with all relevant laws.

122. Nyoka was voted out later on 15 October 2011 at a board meeting.

123. In the decision of the Khan Commission it was a specific finding that Remco have regard to the event bonuses when determining the extent of any CSA bonus to Majola.

124. In the year 2011 bonuses were again paid to Majola, Kass Naidoo and Nassei Appiah. Majola received R1.4-million, while Naidoo and Appiah received R200 000 and R300 000 respectively. Appiah, the organisation's chief financial officer, had worked for CSA at that time for less than a year. Along with his generous bonus, he also received an 11% salary increase. The 2011 bonuses according to Nyoka "were never authorised by Remco and were never authorised by the Board."

The response of the Ministry of Sport and Recreation South Africa and the South African Sports Confederation and Olympic Committee

125. As a result of these disputes the Ministry of Sport and Recreation South Africa **("SRSA")** and the South African Sports Confederation and Olympic Committee **("SASCOC")** agreed in principle to allow CSA to address and resolve the following issues internally within the said sports body, amongst others, namely the issue of contestation within CSA, the issue pertaining to the bonuses and determining an appropriate policy to regulate the bonus payments by CSA in future.

126. SRSA and SASCOC subsequently recommended to Nyoka, that four or five forensic audit companies be identified, screened and that one be appointed to do a forensic audit into the affairs of CSA. All but KPMG were disqualified due to prior involvement with relevant parties.

127. KPMG duly conducted an investigation and then reported comprehensively to CSA. Some of the recommendations arising out of KPMG's report included that the remuneration and travel allowance policy of CSA must be reviewed.

128. In assessing what legal principles Majola and McIntosh had breached, KPMG in their report had regard to CSA as an association incorporated under section 21 of the Companies Act and the duties owed by Majola, as a director of CSA and McIntosh, as an officer of CSA. The firm of auditors had regard to the common law, any applicable statutes, the Memorandum and Articles of CSA, any resolutions passed at directors' meetings, employment agreements and codes of practice, including the King Reports.

129. KPMG summarised the fiduciary duties of a director to act with good faith to the company and always in the best interests of the company and to avoid any conflicts between his personal and company interests. In particular they looked at the duty to disclose interests in contracts that affect the company, more especially as provided in sections 234-241 of the Companies Act.

130. Section 234 of the Companies Act states:

"Duty of a director or officer to disclose interest in contracts

(1) A director of a company who is in any way, whether directly or indirectly, materially interested in a contract or proposed contract referred to in subsection (2), which has been or is to be entered into by the company or who so becomes interested in any such contract after it has been entered into, shall declare his interest and full particulars thereof as provided in this Act.

(2) The provisions of subsection (1) shall apply to any contract or proposed contract which is of significance in relation to a company's business and which is entered into or to be entered into-

(a) in pursuance of a resolution taken or to be taken at a meeting of directors of a company; or

(b) by a director or officer of the company who either alone or together with others has been authorized by the directors of the company to enter into such contract or any contract of a similar nature.

(3) (a) For the purposes of subsection (1) a general notice in writing given to the directors of a company by a director thereof to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may after the date of the notice and before the date of its expiry be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract or proposed contract so made or to be made, if –

(i) the nature and extent of the interest of the said director in such company or firm is indicated in the said notice; and

(ii) at the time the question of confirming or entering into the contract in question is first considered or at the time such director becomes interested in a contract after it has been entered into, the extent of his interest in such company or firm is not greater than is stated in the notice.

(b) A general notice under paragraph (a) may from time to time be amended and shall not be effective beyond the end of the financial year of the company but may from time to time be renewed."

131. Section 235 of the Companies Act states:

"Manner of and time for declaration of interest

(1) No declaration of interest by a director under section 234 shall be of any effect unless it is made at or before the meeting of directors at which the question of confirming or entering into the contract is first taken into consideration and, if in writing, is read out to the meeting or each director present states in writing that he has read such declaration.

(2) If for any reason it is not possible for a director to make any such declaration at or before a particular meeting of directors, he may make it at the first meeting of directors held thereafter at which it is possible for him to do so and shall in that event state the reason why it was not possible to make it at such particular meeting."

132. In terms of section 235, the director must make the declaration of personal interests at a meeting of the directors of the company at which the contract is first discussed.

133. Section 237 of the Companies Act states that:

"a director or officer referred to in section 234 (2) (b) who is in any way, whether directly or indirectly, materially interested in any proposed contract to be entered into by him on behalf of the company, shall, before entering into such contract, declare his interest and the full particulars thereof at a meeting of directors as prescribed by section 235, and shall not enter into such contract unless and until a resolution has been passed by the directors approving thereof."

134. It is a criminal offence in terms of section 238(2) for any company or director to fail to comply with the duty to disclose. Section 441(1)(e) provides for a penalty of a fine or imprisonment not exceeding one year or both.

135. KPMG found that there seemed to be a non-disclosure of the bonus payments made to employees of CSA in the above regard as required in terms of the Companies Act.

136. As a result of this last mentioned finding KPMG recommended that CSA should seek legal advice from Senior Counsel in this regard as KPMG has not been mandated, nor was it within their ambit, to express their views on the guilt or innocence of an employee of CSA in this regard.

137. Once it had considered the report CSA by a majority vote decided: firstly, to accept the recommendations that there was possible irregular conduct relative to the Companies Act and the fiduciary duties of directors; and secondly, to seek the assistance of SASCOC in securing the appointment of the Legal Counsel as referred to above.

138. SASCOC and CSA then instructed attorneys to brief Adv. A Bham SC **("Bham")** to provide a legal opinion which was presented by the said advocate at a Board meeting of CSA held in Port Elizabeth on 19 August 2011. In summary, Bham was of the opinion that sections 234 and 235 of the Companies Act were breached by Majola in accepting certain bonuses and such contraventions were serious. In addition he concluded that there was a breach of fiduciary duties owed to CSA arising from the manner in which the IPL bonuses were determined and paid. Bham disagreed with

the legal opinion obtained by Majola from Adv Notshe SC **("Notshe")**, referred to hereinafter.

139. At the same meeting the Board considered another legal opinion presented by Adv. P Pretorius SC **("Pretorius")** as instructed by Nyoka, who was not present at the said Board meeting. This legal opinion endorsed the fact that the allegations against Majola were serious and that he had contravened the Companies Act by failing to carry out his fiduciary duty to disclose to CSA all matters relevant to the said bonuses and that he gained personally therefrom. In addition Majola should account for his actions in terms of the Articles of Association by way of a disciplinary hearing, alternatively the provisions of the Companies Act. It was also the opinion of Pretorius that consideration be given to recover the bonus amounts paid to Majola. Finally he concluded in his opinion that employees who were guilty of the same or similar offences as in the case of Majola, should be treated alike.

140. The third opinion on behalf of Majola was that of Notshe who also presented such opinion to the Board. This opinion concluded that Majola did in fact disclose his bonus payment in the above regard albeit not following the correct prescribed processes as contemplated in the Companies Act.

141. The Board considered the said legal opinions and report by KPMG. Mr H Molotsi, the African representative on the board, testified that the meeting concluded that there had been no disclosure by the CEO and that the 2011 bonuses of all senior managers should be recalled. When this decision was related to the CEO a negotiation process took place, according to Molotsi, with a demand that the resolution be changed to "insufficient" disclosure instead of "no disclosure".

142. The board then decided that due to the insufficient disclosure of the bonuses received by Majola in respect of the IPL and Champions Trophy in 2009, Majola be severely reprimanded by CSA. In addition the bonuses

of all the senior management of CSA must be reviewed by CSA. It was decided that no further actions were to be taken against Majola and any of the staff of CSA. Furthermore it was decided that a policy in relation to the delegation of powers must be implemented by CSA. Finally it was determined that all senior managers of CSA must in future declare all amounts received by them from all sources other than CSA to its Board.

143. The perception arose in SRSA that CSA had possibly not applied its mind properly to the seriousness of the contraventions of the Companies Act. The solution was that the decision and actions taken by CSA should be independently investigated and a report be sent to the Minister on the response to the recommendations contained in the report of KPMG, the legal advice submitted and the appropriateness or otherwise of the sanctions meted out by CSA. This committee was then appointed with the terms of reference that have been already set out.

Majola's corporate experience

144. Majola freely conceded before this committee that he had not complied with the provisions of sections 234 *et seq* of the Companies Act, but pleaded ignorance of them. Majola has very considerable corporate experience having been appointed as the CEO of UCB on 1 January 2001. He is alleged to be the longest serving CEO of international cricket. His contract was for an unlimited period but was amended in limited fashion on 30 April 2010.

145. KPMG researched his directorships and listed them as follows:

a. Keysha Investments 225 (Pty) Limited 2007/030607/07
b. Majola and Boyd (Pty) Limited 1997/015785/07

c. Pima International Export and Import (South Africa) (Pty) Limited 2007/032131/07
d. Rumdel Construction Holdings (Pty) Limited 1999/018941/07
e. Rumdel Construction (Pty) Limited 1983/001644/07
f. Solution Worx (Pty) Limited 2000/011917/07
g. Solutionworx Holdings (Pty) Limited 2005/014222/07.

146. His experience on these boards should have alerted him to his fiduciary duties as a director. Apart from his evidence before us and the other documentation, including statements and affidavits, we had recourse to some of his biographic history from Andre Odendaal's book *The Story of an African Game.* This book is dedicated to Majola's late brother Khaya and devotes considerable attention to the family and Majola's contribution and views on SA cricket and the role of CEO of CSA.

147. Odendaal at page 293 sketches his experience and says the following:

> *"he [Majola] was not intimidated by the job. 'It is something I like doing', he said. Management was not new to him and he had always been a hands-on person. He had nearly two decades of involvement with Firestone and Sanlam in the corporate world."*

148. Odendaal states at page 294:

> *"Majola made it clear from the start that he was his own man and would not be trying to imitate Ali Bacher. In fact his very first task was to try to professionalise the somewhat chaotic office Bacher had left behind… Two years after he assumed the CEO position, the UCB was certified as the first sports organisation in the country run according to the internationally recognised ISO 9000 principles for good corporate governance."*

149. Speaking in June 2001 at Kwa Maritane at a Transformation Review Conference Majola said, as quoted by Odendaal at page 295:

> *"There is no place for those discrediting our administrators and players, and sowing division and discontent. Cricket stood for values… such as integrity and fairness, sophistication and mastery, good manners, discipline and honesty, and personal accountability and focus."*

150. Responding to criticism of unsatisfactory financial and management systems in the *Financial Mail* in 2003 after the failure of South Africa to reach the finals in the World Cup after going down to Sri Lanka Majola pointed out:

> *"That the UCB's quest for professionalism and sustainability based on transformation had been nothing short of remarkable including a three year business plan… an honest and transparent partnership between the CEO's office and the General Council has been established, ensuring good corporate governance and accountability… a zero-based budgeting approach has been implemented in order to get a proper handle on finances, and ensure effective allocation of resources in the interest of cricket development…" Odendaal op cit page 300-1.*

151. CSA has also adopted a Code of Best Practice specifically designed to promote an awareness of individual responsibilities and best practice in relation to the operations of the Board and its Directors. It was the evidence of Beggs that this Code was posted on CSA's website under the signature of Majola. Apart from the fiduciary duties which Board members owe to CSA, sections 6 to 10 of the Code oblige Board members to disclose any outside interests and associations they have. It is annexed marked **Annexure D**.

152. In terms of section 11 of the Code, Board members are subject to the rules, regulations, directives and resolutions of CSA and all applicable laws in the performance of their duties. Section 14 of the Code precludes a

director from making any personal profits from CSA's business. The relevant provision furthermore expressly prohibits directors "from discussing and being involved in entering" any transaction on behalf of CSA in which they have a financial interest.

153. The concluding section of the Code requires, in the event that a director is in any doubt as to the propriety of any actions he or she intends taking, that the Chairman of the Board's advice be sought before a member proceeds.

154. By virtue of CSA's membership of the ICC, CSA is also required to adhere to certain standards of good governance and transparency. This includes a specific obligation to ensure that any investigations carried out involving a CSA Board member be carried out by an independent, external body. Nyoka was present at the relevant Executive Board meeting of the ICC held in Dubai on 12 and 13 October 2010 at which meeting the standards referred to above was accepted as binding on all members.

155. Mr GT Khumalo (**"Khumalo"**) is a former cricket administrator for many years and at some stage on the board and on the executive of UCB. He confirmed Majola's implementation of proper commercial and management systems into CSA and said that he preached King 1 and 2, referring to the company governance codes of King. Khumalo also told the committee that the sub-committees including Remco of CSA were put in place by Majola in his striving for better corporate governance.

156. King testified to us that he had been on the Governance Committee and that he had addressed the Board of CSA on 29 May 2009. Although King could not recall the precise date it has been ascertained and appears in Annexure B to the KPMG Report. The record of the meeting states that:

> *"CSA's conversion to a Section 21 Company had been long outstanding and, to start on a clean slate, the governance structures, duties and terms of reference of all the sub committees needed to be determined and understood."*

157. King told us in his oral evidence that his purpose was to explain the fiduciary duties of directors and their role in a company. He explained that the role of a director to a company was similar to that of a person in charge of the finances of his brother, who had been rendered incapable of his own actions, by an accident. He explained that such a person owed a duty to use the brother's finances solely for his brother's benefit and not for that of the trustee or carer.

158. King explained that he had also addressed the conflict situation caused when Tony Irish **("Irish")**, as the players' representative of SACA on the board, discussed the questions relating to the players' remuneration and conditions of employment. Irish was clearly obliged to recuse himself during any such discussions and subsequently the Board has been reconstituted to exclude a representative of SACA.

159. In Annexure B of the KPMG report the following summary is given of what King said:

> *"Prof King made a presentation on corporate governance and the implications of the new Companies Act (Act 73 of 2008). Particular emphasis was placed on the Directors' interests in which, Prof. King inter alia recommended that "a general Declaration of Interests form should be passed around the table at each meeting for signature."*
>
> *It is noted that "Declaration of Interests" became a permanent agenda item. Prof King also reiterated that full understanding of these matters was essential for each director and suggested a list of questions that each director should ask of himself when contemplating these interests, namely:*
>
> *"i) Do I have any conflict in this issue, no matter how remote?*
> *ii)…*
> *iii) Would the Board be embarrassed if this decision arrived on the front page of The Sunday Times?"*
>
> *The meeting resolved to re-draft the CSA Code of Practice based on the recommendations of Prof. King.*

Majola and Beggs were tasked with drafting the terms of reference for the Board of Directors and the Members' Association.

Both Majola and McIntosh were present at this meeting, which was convened a month before the 2009 IPL Tournament bonuses were paid."

160. Adv. Norman Arendse SC confirmed that declarations of interest forms were sent round during his time at CSA. In his evidence before us Majola conceded knowing about the above directives. At page 1718 of the transcript he was asked:

"But I am trying to understand, did you know about a broad duty to disclose?"

Majola answered "in fact, I did know".

161. This was followed up by another question:

"The broad duty is that you are a servant of South African cricket, Cricket South Africa, and you must bend every fibre of your body and will to achieve financial and other success for Cricket South Africa. And if anything occurs which could benefit you rather than Cricket South Africa you have to tell them about it. Did you understand that duty?"

He answered that he understood that duty.

162. Majola was asked a number of times by Nyoka about the payments from the IPL and denied them. His attempt at differentiating between a kickback and a bonus was disingenuous to say the least. The mere inquiry about whether he received a payment from the IPL, of whatever nature, would have triggered a disclosure in an honest man.

163. Majola gave a number of explanations as to why he did not disclose his IPL bonus. In the first place he said, and this was reported in the press and confirmed by Beggs, that if Graeme Smith did not have to disclose his bonus then he did not have to either.

164. The next version was in a memorandum, prepared by Majola and addressed to the "CSA Investigation Committee," (we believe this is the Khan Commission, given the date) in which Majola *inter alia* wrote the following:

> *"The President (Nyoka) placed on record that… he acknowledged that he was aware of the incentives paid to the staff, having been told by me [Majola] and having looked at the document to the Board of Control of Cricket India and the IPL document; his only concern was that he was not aware of the quantum and asked me why I have not told him. I was obviously flabbergasted, as no one has ever asked me the quantum of my salary. I have handled myself honestly, truthfully and with integrity throughout this process and now wish to submit finally that: Neither myself, nor CSA staff members sought to benefit themselves unfairly from CSA's financial resources; I admit that there are policy gaps, such is that responsibility of the Board to formulate policies and I shall support that together with my entire management. I would in the final analysis demand an explanation from the President as to his intentions in driving this ill-conceived process, a retraction and apology from him..."*

165. In the said passage Majola also maintains it was not CSA's money. During his testimony to the Khan Commission Majola confirmed this and testified that it was not necessary for the bonuses to be declared as they were not paid from CSA funds and to his knowledge represented a separate operation to that of CSA.

166. Majola testified to the Khan Commission that it was not his responsibility to disclose the bonuses to Remco. He said "I have never disclosed anything to Remco before, including our own bonuses. I do not take things to Remco..."

167. Majola then changes tack and states that Remco knew. He told the Khan Commission that everyone knew, including Remco that he and others got bonuses, which was not true. He then said Remco should have been told

by McIntosh. As Majola and McIntosh were acting in cahoots it was most unlikely that he would disclose the bonuses.

168. We know that Remco did not know at the relevant time and only discovered about the bonuses after Thomas had conducted the internal audit. We were told by Harris and Van Wyk that they would never have approved the normal bonuses they did, which included the performance during the IPL and Champions Trophy, if they had known about the undisclosed bonuses.

169. Beggs explained that the accounting for the bonuses was achieved through a suspense account, in that the inflow of funds was credited to the account, and the bonuses, when paid into the salary account resulted in a nil balance in the suspense account. Hence, the separate debit and credit balances for the income and expense were hidden to easy view.

170. Beggs stated that the internal auditor (Thomas) found the tournament bonuses using an enquiry report-writer available through the ledger software. Deloitte had not discovered these payments or ledger entries and this led Beggs to enquire of Deloitte whether they had had access to the same accounting records during their audit, as were examined by the internal auditor.

171. Beggs submitted that the tournament bonuses were unusual transactions and would certainly fall well within the need for disclosure, in terms of the code of conduct, as approved by management and issued to staff and approved by the Board for its own use.

172. Beggs confirmed that King had made a presentation to the Board and Forum on good governance in May 2009 and a code, which emphasised the need for disclosure of any interests or benefits by directors and forum members, was agreed to by that meeting.

173. Beggs as a very experienced accountant explained that McIntosh, a CA (SA) and trained as an auditor, would have a heightened realisation of the importance of the bonus disclosure. He testified that both Majola and McIntosh had many opportunities to discuss this matter with the external auditors, the Auditcom and the Treasurer.

174. Beggs concluded that the amount and nature of the undisclosed bonuses appear too significant to avoid the many opportunities that were open to Majola and McIntosh to raise the matter. This leads to a view that the amounts appear to have been hidden from easy sight in the accounting records and that the two appear to have decided not to discuss or disclose the bonuses or amounts. This tends to undermine the plea of ignorance.

175. We would advise the Minister that we do not accept that Majola was unaware of his fiduciary duty to declare the negotiation and receipt of the said bonuses to the Board and Remco. We are in agreement with those of counsel who were of the opinion that these were serious breaches that warranted an independent disciplinary enquiry.

176. We would say in conclusion that Majola's allegation that he was not aware of the Companies Act provisions relating to the fiduciary duty to disclose does not say much for his ability to recognise a foundational quality in corporate governance.

The bonus paid to Dr Ali Bacher

177. According to the information at our disposal a separate legal entity was created to host the World Cup in South Africa i.e. the 2003 ICC Cricket World Cup (South Africa), a section 21 company. KPMG recorded that John Blair informed them that Dr. Ali Bacher **("Bacher")**, who was the

CEO of the entity formed and Ian Smith were entitled to receive bonuses as a result of their contracts.

178. Majola told KPMG that other UCB employees, including Brian Basson and Ros Goldin, also received bonuses. KPMG received a schedule which did not include Basson or Goldin, both of whom informed the committee in writing that they received no such bonuses. Basson said he was given a three day holiday in Knysna which he did not regard as a bonus as such, which was confirmed by Bacher.

179. Majola suggested that there was a precedent in the payment of bonuses when Bacher received R5 million after the 2003 World Cup.

180. Bacher told us that he was honorary chairman of Transvaal Cricket from 1979 to 1981 and from 1981 to 1986 he was paid for this position. From 1986 to 1991 he headed SACU and then UCB from the last mentioned year. He explained that the R5 million was awarded to him by Cricket World Cup policy committee and the UCB in 2003.

181. In a newspaper article dated November 9 2003, Bacher's bonus was called an "ex gratia" payment by policy committee chairman Jakes Gerwel. Bacher explained that it was to augment his very meagre pension, though the article made no mention of any pension. Before us, CSA replied in writing to certain media reports of the payment, suggesting that, given Bacher's role in "rebel tours" such a bonus was unlikely. Bacher believed that the matter of "rebel tours" had been resolved through negotiation with Minister Tshwete and that this was all water under the bridge. This suggestion does not affect the main principle involved, namely, was there proper authorization.

182. CSA in their challenge of Bacher's version did not gainsay that it was authorised by the appropriate committees and bodies, including UCB and that the initiative had come from the said bodies and not Bacher.

183. Khumalo also refused to accept that the bonus of R5 million paid to Bacher was analogous to Majola's bonus and explained how the figure was arrived at in the absence of Bacher and was authorised by the board. He was on the finance committee which realised that Bacher had made inadequate preparations for his retirement and that part of the sum of R5 million was to assist in that regard. Khumalo said the matter was approved by Genco (the General Council) and Majola sat on that as CEO and was part of the procedure approving the sum in question. This was confirmed by Arendse.

184. A formal resolution to that effect in the minutes of UCB as provided by CSA could not be found. No search was made of records of the company created specifically for the tournament.

185. We do accept that Bacher's bonus was not done behind the backs of the relevant authorities that were required to authorise it. Whether it was justifiable is a question we cannot answer. We do not believe that the circumstances of Bacher's bonus payment are analogous nor do we accept that it constituted a precedent justifying Majola's payments.

The bonuses arising out of the ICC 2007 T20 Champions Trophy

186. Mention was also made by Majola of the bonuses paid at the ICC 2007 T20 Champions Trophy as a justification for his bonus. We heard no evidence on this issue and rely on the findings of KPMG. In brief, the Host Agreement provided for a hosting fee of $500 000 for the said tournament and a Local Organising Committee (LOC) had to be established with a Policy Committee **("Polco")**. Polco included Elworthy (as Tournament director), Arendse, Orleyn, Majola, Harris, Van Wyk and McIntosh. The

sum of $789 697 was made available for "host office staff hire". This budget was included in the host agreement.

187. KPMG records that at a Finco meeting held on 17 October 2006, Majola mentioned that the ICC would pay staff members for the tournament. As we understand the position McIntosh was to prepare a memo setting out a basis for such payments. At a Remco meeting held on 8 November 2006, it was decided that the bonuses paid for the tournament should form part of the normal bonus and that payment thereof be spread over a period.

188. At a Polco meeting held on 26 July 2007, Elworthy explained the formula and it was agreed by those present including Arendse, Majola and Orleyn that it was appropriate. This was to be paid out of the event budget. The minutes of the meeting reflect that "(t)he Policy Committee agreed to the formula and SE (Steve Elworthy) could proceed.".

189. The bonus payments appeared on a schedule signed by Majola and Elworthy on 11 October 2007. The bonuses were paid on 24 October 2007, but there was no specific referral of them to Remco. Harris regrets this circumstance, though he explains that it is mitigated by the fact that Orleyn of Remco was present at the Polco meeting, as were various members of CSA. Majola dealt with this aspect at the Khan Commission and maintained that Elworthy calculated and authorised the said payments. Elworthy denies this and he is supported by the minutes we have referred to.

190. We would point out, in the first instance, that it is no defence to say that others have committed the same offence. We are of the view that with both these previous tournaments the circumstances were materially different.

191. There are several differences that distinguish the two previous occasions. In Bacher's case the calculation and decision to pay him was done without his connivance and not at his request. The bonuses paid to Elworthy and

others were agreed to in principle by Remco and quantified by Polco, which included CSA board members and a member of Remco. The staff hire cost (bonuses) were discussed and agreed in advance with the ICC and included in the agreement.

192. We are of the view that the only common denominator is that bonuses were paid in each instance.

193. There is another worrying feature of all the bonuses paid to Majola: they were not disclosed to Deloitte, the auditors of CSA, in the manner required by the Companies Act and relevant accounting standards. But for the fortuitous discovery of Thomas the IPL and Champions Trophy bonuses would not have ever been discovered or disclosed to the auditors. This was in breach of the statutory requirement that all remuneration of a director, including that earned through a related party, should be disclosed to the auditors and included in the Annual Financial Statements.

194. As KPMG points out, this requirement flows from the relevant IFRS directive, namely IAS 24 which requires disclosure of compensation earned by "Key Management personnel" irrespective of who pays the compensation. This requirement demanded that the bonuses of Majola paid in relation to the IPL and the ICC tournament had to be disclosed as such in the AFS.

Travel related expenses

195. Majola has a written contract of employment with a specific clause which prohibits oral variations.

196. Clause 10 provides for him to engage in entertainment on behalf of CSA and to claim reimbursement "for all expenditure reasonably incurred."

Clause 11 provides for reimbursement of his out of pocket expenses, which have been "approved by the Board or are incurred in accordance with principles determined by it from time to time." However, it is clear that he should incur the expense and then justify such with vouchers.

197. KPMG conducted an in depth study of travel related expenses for the period of 1 May 2009 to 30 April 2010. They also established from Majola how he went about dealing with his travel related expenditure. He told them that he would estimate the travel expenses to be incurred for the forthcoming financial year and this figure would be included in the CEO's budget for the forthcoming year, presented to Finco for their recommendation and if Finco recommended the budget, the Board would be approached for authorisation. Once approved by the Board, so long as Majola stayed within the budget, he could travel at his discretion.

198. We do not believe that the Board should ever provide a budget and then authorise any expenditure so long as it falls within such budget. Every item of expenditure should be reasonable and authorised as part of CSA's business, either as part of a general policy, or specifically incurred.

199. KPMG established that during the period they surveyed the budget for flights amounted to R578 000, which was exceeded by R21 019. The budget for accommodation amounted to R100 800 and this was exceeded by R13 395. The auditing firm confirmed that the CEO's total budget for the 2009/2010 year of R8 636 133 was, however, under-spent by some R1 245 749.

200. KPMG spoke to Majola and asked for documentary and other justification for his expenses, which he provided for some of the items assessed. No reasons, oral or written, were provided to substantiate the following items (they relate to Majola or his wife Phumla and contain the date of the flight, the flight description and the cost to CSA). There are fifteen flights in all totalling R41 696:

	Name	Date	Flight Route	Amount
1.	Majola	10 Feb 2010	JNB/PLZ/JNB	R 1 393
2.	Majola	12-13 Mar 2010	JNB/PLZ/JNB	R 2 970
3.	Majola	28 Mar 2010	PLZ/JNB	R 1 742
4.	Majola	1-4 Apr 2010	JNB/PLZ	R 1 501
5.	Majola	31 May – 2 Jun 2009	JNB/PLZ/JNB	R 3 309
6.	Majola	4 Aug 2009	PE/DBN/JNB	R 2 524
7.	Majola	7-8 Aug 2009	JNB/PTG/PLZ	R 4 050
8.	Phumla Majola	9-10 Aug 2009	PLZ/JNB/PLZ	R 2 794
9.	Majola	13-15 Aug 2009	JNB/PLZ/JNB	R 3 034
10.	Phumla Majola	11 Sept 2009	JNB/PLZ/JNB	R 3 032
11.	Phumla Majola	23-27 Sept 2009	JNB/PLZ/JNB	R 3 513
12.	Phumla Majola	16-24 Nov 2009	JNB/PLZ/JNB	R 2 804
13.	Phumla Majola	3-4 Dec 2009	JNB/PLZ/JNB	R 3 010
14.	Phumla Majola	28 Jan 2010	JNB/PLZ	R 1 384
15.	Phumla Majola	1 Feb 2010	PLZ/JNB	R 1 393
16.	Phumla Majola	28 Mar 2010	PLZ/JNB	R 1 742
17.	Phumla Majola	1-4 Apr 2010	JNB/PLZ	R 1 501
			TOTAL	**R 41 696**

201. KPMG also sought and did not obtain an explanation for the business reason for the costs of a night spent at the Southern Sun in Bloemfontein on 25 July 2009, costing R1 146.23.

202. As Majola had paid back the travel expenses he agreed were not the responsibility of CSA we did not ask him to deal with them in his oral evidence. Afterwards we realised he should have an opportunity to explain either orally or in writing why the expenses had been incurred. He responded in writing. He explained that any reference to Mongezi in any such accounts was a reference to himself and his wife was variously referred to as Phumla, Esther and Honey.

203. He explained further that every year there is a travel budget for the company and specifically for the CEO and the President and he tried to consistently act within this budget. He explained that the travel policy (which we have never seen, nor was it provided to KPMG) dictated that in certain events, he travelled with his wife. He maintained that his travel expenses were overseen by the Finco and the Board. This is important, so he maintained, in that they understood the nature of travel in this business, as it relates to both national and international travel.

204. Majola further clarified that travel arrangements were outsourced to a company which was using CSA's premises for ease of co-ordination. Majola maintained that during the Khan Commission investigation the issue relating to his children's travel was raised and he responded fully thereto.

205. He conceded that the travel expenses for his children were not supposed to be paid by CSA. The expenses were paid, he said, by CSA in error as the Travel Agent was supposed to use his private credit card in their possession for his private travel. He explained that the travel office confirmed this was an oversight and the then outstanding amount of approximately R28 000.00 was duly reimbursed. Majola explained that the fault probably lay with his Professional Assistant and the Travel Office who would have used his diary to make the said bookings. He has had three Professional Assistants in the recent past and cannot assist us with details of his alleged unauthorised travels in 2009 and 2010.

206. According to his contract of employment, it will be recalled, there ought to be vouchers for each of these trips and any other CSA related expenditure.

207. In dealing with the unauthorised travel and other expenses Harris said:

> *"Well the Khan Commission found R28 000 which Mr Majola then paid back. The KPMG report found a further R40 000 and I am not certain what happened there, but I also need to highlight that there was a lot of*

> *pressure to only investigate one year. Now I believe that this is, to put my corporate governance hat on, this indicates a pattern or a potential pattern of abuse and therefore I believe that a proper investigation should be done going back several years."*

208. As the investigation of KPMG was restricted to a short period (one year), we believe that any further investigation by a disciplinary enquiry should go as far back as CSA records allow. In the absence of CSA records then the relevant airlines' records should be examined. If there is an ongoing abuse as suggested by Harris then this would be relevant to sanction by any disciplinary enquiry.

209. We believe that Majola has been most remiss in asking CSA to pay for travel and other expenses for himself, his wife and his children that did not relate to CSA business. We are sceptical that it was an error of his Professional Assistant or the travel agent. They would have been acting on Majola's instructions and it is improbable that they would charge CSA for his children's flights without his instructions, either in general or on specific occasions the said flights were undertaken. It is clear that, without authorization from the Board in general or for a particular trip, the expenses of himself, his wife and children should not have been paid as they could not, in the normal course, be in furtherance of CSA's business.

210. We understand a new policy is in place with regard to Majola's wife's expenses. The letter dated 30 April 2010, with his amended conditions of employment, refers to the requirement that he will travel and sanctions "travel reimbursement as per prevailing CSA travel policy guidelines". It permits Majola's wife to travel with him "on local and international business trips as and when necessary, at the company's cost."

211. While we understand the need for Majola to attend meetings abroad and occasionally cricket matches themselves, we would caution against very extensive overseas travel. Modern media, including television, make it possible to watch the games after hours. Extended absences from the

office could also affect the efficiency of the administration of CSA's office.

212. Later in this report we deal with the desirability of an independent board, staffed with a majority of non-executive directors. We believe that such a board would be able to arrive at a travel policy without too much difficulty, given that other countries have similar experiences and most certainly have put in place conditions of service that comply with best practice.

The alleged failure to comply with counsel's advice

213. We as the committee were required to investigate and report on the reasons for the failure of CSA to adhere to certain recommendations of KPMG and Legal Counsel given the seriousness of the contraventions of the Companies Act.

214. The recommendations of Adv Pretorius SC, it will be recalled, were that a disciplinary enquiry be held for Majola. This was also the view of Adv Norman Arendse SC a former president of Cricket South Africa. Incidentally these were also the views of Adv Cassim SC who said, without suggesting it was appropriate for Majola, that a disciplinary enquiry was the appropriate procedure in matters of non-disclosure. He said at pages 63-4 of the Khan Commission report:

> *"In terms of the Labour Relations Act, if prima facie he has committed misconduct then you give him a disciplinary enquiry… if there is a prima facie case and … the facts speak for themselves, where invariably you are looking at whether there was proper disclosure or not. So the follow up would be a disciplinary enquiry."*

215. We believe there is a *prima facie* case of non-disclosure concerning the bonuses and irregularities with regard to the travel and other costs. Majola's contract of employment provides the terms and conditions of his employment. It has been amended by letter dated 30 April 2010, but his latter contract does not govern the position when the bonuses were received. In clause 6 of the original contract provision is made for his duties and includes devoting his whole time and energy to the work of CSA and being "true and faithful to the Board in all dealings and transactions whatsoever relating to its business and interests".

216. There are wide duties not to indulge in betting (arising no doubt out of the Hansie Cronje and other betting scandals), which also include not "accepting… any money, benefit or other reward (whether financial or otherwise) which could bring him, the Board or the game of cricket into disrepute.".

217. Clause 3 provides for summary termination of his employment for conduct justifying summary dismissal at common law or if he is "guilty of conduct which is likely to bring himself or the Board into disrepute or is convicted of any offence involving dishonesty, or commits a material breach of his employment contract.".

218. Arendse, who is an experienced senior counsel, specialising in labour law, with a wealth of experience in cricket administration, says the following about the actions of the Board with regard to Majola:

> *"I think it is pretty clear that the meeting … in PE was irregular because the Board at that meeting somehow converted itself into some kind of a DC [disciplinary committee] and allowed Gerald and his legal representative to address the board. And I think that Ray Mali also testified here, played a role in somehow mediating a kind of outcome. And the outcome was, you know a slap on the wrist…I cannot see how a body of persons sitting as a board could have applied their minds to this [KPMG] report and fairly properly and objectively arrived at the outcome that they did. It was*

> *clearly networked and by some kind of consensus arrived at. And that is obviously not the way you do it in a proper labour context. The allegations are dealt with, evidence is presented. Parties are given the opportunity to question, cross-examine etc and findings are then made. And based on the finding an appropriate sanction is arrived at. And this did not happen in PE. And that for me, is probably the most serious [indistinct] if it is true I cannot say if it is or not…. If it is true then it ranks as a serious breach of corporate governance…"*

219. There are provisions for suspension for 180 days pending the conclusion of the disciplinary enquiry with pay. The Board should consider such for two reasons. Firstly, it would allow a pro-forma evidence leader/prosecutor free access to all the witnesses and documentation at CSA and secondly, it would be in Majola's own interests to give him time to prepare his defence, unfettered by his normal duties.

220. The decision by the board of CSA held in Port Elizabeth on 19 August 2011 that due to the insufficient disclosure of the bonuses Majola be severely reprimanded by CSA and that no further actions were to be taken against Majola, has to be rescinded and a new one taken to establish an independent disciplinary enquiry.

221. We believe that, for the reasons we have referred to, CSA was not sufficiently independent and principled to take the necessary action against Majola, namely that recommended by counsel, to subject him to a disciplinary enquiry, prosecuted and chaired by independent senior advocates, chosen by the chairperson of the Society of Advocates. Should this disciplinary hearing make adverse findings against Majola and mete out a sanction which he considers unlawful, unfair or unjust he can utilise the conciliation and legal system provided for in law, including the CCMA and Labour Courts, as he wishes.

222. We need to make it clear that hitherto no disciplinary hearing has been held. We do not regard any of the previous hearings, including the Khan Commission, as either purporting to be, or actually constituting

disciplinary hearings. At none of them were the full rights of an employee at a disciplinary hearing allowed, nor were they chaired by independent advocates.

223. As a result of this recommendation to the Minister we have not dealt with all the allegations and defences raised before us in our investigation. A disciplinary enquiry will canvass these issues in the manner befitting such a procedure.

Criminal prosecution

224. Part of our terms of reference related to investigating whether any provisions of the criminal law were breached and whether prosecutions should be instituted. Section 238(2) of the Companies Act provides that breach of the disclosure provisions in terms of sections 234 *et seq* is an offence and section 441(1)(e) provides the penalty. The relevant director is liable to a fine or imprisonment for no longer than one year, or to both such fine and imprisonment. This is an offence which the office of the National Director of Prosecutions should investigate.

225. Such investigations should also include whether any provisions of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No.12 of 2004) **("the Corruption Act")** have been contravened, as suggested by the legal representatives of Harris in their opinion to him.

226. Section 10 provides that any person who is a party to an employment relationship and who, directly or indirectly, accepts from any other person any unauthorised gratification (defined to include money, whether in cash or otherwise) is guilty of the offence of receiving unauthorised gratification. This would apply to both Majola and McIntosh.

227. Section 34 of the Corruption Act obliges a number of stipulated persons (including a director of a company) to report knowledge of such offence to a police official and failure to do so is an offence.

Civil proceedings

228. The amounts of money paid at the instance of Majola and McIntosh to themselves and other members of staff may be recoverable in civil proceedings.

229. The transactions that underlay these payments may be voidable at the instance of the company and those responsible may be liable to compensate the company for any loss it may have incurred.

230. As McIntosh has resigned no disciplinary enquiry can be held in his case. Regard should be had to recovering the bonus paid to him by civil action in the courts.

Irregularities identified in KPMG Report

231. We were required to investigate and report on any other irregularities discovered during the KPMG's investigation. This was restricted to travel and other expenses claimed with which we have already dealt.

The effectiveness and efficiency of CSA

232. We were required to enquire into, assess and report on the effectiveness and efficiency of the current administration of CSA and in particular identify all aspects of the current administrative system which allows for or encourages undesirable or illegal practices. We were also required to enquire into and report on the degree of compliance by CSA and its staff with applicable laws; to recommend ways to eliminate deficiencies identified; and to recommend systems, practices and procedures to improve the administration of CSA, facilitate compliance with applicable laws and to optimise the provision of the services rendered by CSA and its staff.

233. We were informed that prior to the establishment of the UCB the power of SA cricket in the old South African Cricket Union lay with the wealthy provincial cricket unions namely erstwhile Transvaal, Natal and Western Province. The UCB, as we have mentioned came into existence on 29 June 1991, run by the Genco and the board. As we have already recorded the first mentioned was made up of the 11 affiliate Presidents and the entire body of associate members, representative of Women's cricket, a representative of Blind Cricket, three Black African representatives, the office bearers, being the President, Vice-President and Treasurer and finally the CEO.

234. As mentioned the Board consisted of the Chairmen of the 6 cricketing franchises in South Africa, 2 independent Directors, the 3 office bearers, the Treasurer, Chairman of the Auditcom, the representative of the Players' Association and the CEO.

235. As already alluded to, towards the end of 2008, due to a change in the Tax legislation, CSA became a section 21 company. Thenceforth it was

governed by the Members' Council, whose composition was the same as that of the Genco and the Board.

236. David Becker, Head of Legal and Company Secretary at the ICC suggested as his personal view, as did Tony Irish of SACA, that there should be an independent governance review of CSA. This has been undertaken at New Zealand Cricket, Cricket Australia and now at ICC and would be of benefit in his view to South Africa.

237. Irish provided us with a press report dated 14 January 2012 by Nick Smith of the NZ Herald, indicating that already in 1995 the cricket board of New Zealand Cricket voted itself out of existence, after receipt of the John Hood report and instituted a truly independent model. Cricket in that country had so many commercial disadvantages that it had to innovate to survive and thrive. The press report suggested that the rest of the world was now copying that example and the efforts of Crawford and Carter on behalf of Cricket Australia were a follow up of that venture. They went further to suggest that a similar approach would be adopted in the investigation of cricket governance by Lord Woolf on behalf of the ICC.

238. The report anticipated that Woolf would follow the New Zealand example and that this would be implemented when New Zealander Alan Isaac took over the presidency of ICC in June 2012. The article recorded that pursuant to the recommendations of Crawford and Carter, Cricket Australia would cut its board from 14 to 9 and New Zealand had anticipated this in the mid-nineties, when its board was reduced from 13 to seven, now eight.

239. The report confirms that not just cricket but the Australian Football League **("AFL")** had moved to a quasi-independent model. It is interesting to note that rugby league in Australia and New Zealand had also moved to independent governance and rugby union, in the last mentioned country, was in the process of conducting a review of the manner in which the game was administered.

240. The article in question also confirmed that the New Zealand model had been copied by all its provincial administrations. Later in this report mention will be made of concerns about the inadequacy of funding for grass roots development. The metamorphosis of the board from a self-interested executive-minded organ to a body dominated by independent non-executive skilled administrators was considered the way to assist grass roots development.

241. Outgoing New Zealand chief executive Justin Vaughan, said that their system will "devise a best-practice way of managing grass roots sport. The issues for grass roots sports are considerable. It isn't a cricket-specific problem; it's shared by all sports and the club model is one that hasn't changed for decades." Vaughan told the reporter that the innovations they planned for the development of grass roots sport would provide "a global blueprint for the rest of the world to follow."

242. The review of Lord Woolf was released in early February 2012 and has been of great assistance to us. It states that "those members, other stakeholders and the cricketing public in general are entitled to expect the ICC to set an example by adopting standards of excellence in its governance." It deals with governance in the parent body, the ICC, but it has relevance to CSA as a member country in two respects. Some of the recommendations apply specifically to member states and secondly, it would be anomalous if a governance model were recommended and adopted for the parent body and not be applicable where appropriate in the member state.

243. The Woolf Review will have to be examined and debated by CSA. We have annexed the two reviews; firstly, that of Lord Woolf **(Annexure E)** with regard to the ICC and secondly, that of Crawford and Carter **(Annexure F)**, for easy reference by the Minister. We are not certain if both have been adopted as yet and it is notionally possible that different considerations apply in South Africa. As we view corporate governance

and ethics as having a universal character we would be reluctant to suggest that different rules should apply here.

244. We have directed the attention of the Minister to these reviews where they impact specifically on our terms of reference and have refrained from extensive references as such would be superfluous. We are also aware that transitional measures may have to be taken to allow for a smooth change over to any newly adopted system.

Brief background of SA Cricket

245. David Williams **("Williams")**, who is a journalist and a former deputy-editor of the Financial Mail traced the development of our major sports, mostly in England and noted their transformation from those early times. Sportsmen, even in classical Greek times and later in England were sponsored by wealthy patrons to either play or box against rivals, with betting often taking place. Thereafter the funding of sport arose from gate money, until fairly recent times when powerful sponsors, including the spoken and visual media have come to dominate the financial support of sport.

246. Williams noted the democratic development of sporting bodies in South Africa with clubs at the lowest tier electing representatives onto provincial unions, which in turn elected officials to the national body. That model can be extrapolated to include the ICC. In the early days administrators were mainly ex-players who worked on an honorary basis, with only expenses being paid.

247. Williams was of the view that this democratic model was inappropriate and that the money emanating from wealthy sponsors needed to be managed by a disinterested entity, the equivalent of a non-executive board

in a commercial company. King agreed and gave extensive reasons why in his various King Reports (1-3) over the years his researches had revealed that independent non-executive directors steered clear of conflicts of interest of individual shareholders to strive for the greater good the company.

248. Williams noted that the business aspects of sport – the generation and disbursement of large amounts of money – should be regulated as they are in any company. However, the case for even greater transparency than is demanded from ordinary businesses is strong, because the stakeholders of the entity are not merely its shareholders but the citizens of the country.

249. He was of the view that in addition to the business aspects, the governance of a major sport has to ensure that the game and its teams and brands, as national assets, are administered in the interests of the entire country, not merely those of its constituent parts. He emphasized that the board should concern itself, to a far greater extent than businesses do, with transparency on material privileges that are available to administrators and board members: tickets, meals and drinks, and some travel, rather than just direct monetary reward.

250. He felt that CSA should nurture the links between the professional national stratum of the game and the seedbeds below at provincial, club and school level and exercise particular vigilance over the effect of the natural tendency of sports bodies to be monopolies.

251. Desai et al describe how whites in our early history dominated cricket in what was imported as a colonial game, but that Indians, Coloureds and Africans in the Eastern Cape, also showed interest in the game. To accommodate these "non-white" players the South African Cricket Board of Control **("SACBOC")** was established in 1947.

252. The authors point out that from 1970 as a result of Apartheid South Africa was isolated from world cricket and apart from "rebel tours", which incited

the wrath of anti-Apartheid activists as seen to be prolonging the regime, no tests were played for 22 years. The amalgamation of SACU and SACBOC in the UCB saw a body still dominated by eleven whites, with two Coloureds, five Indians and one African on the first board. By 2008 cricket administration was no longer under white control and according to Desai *et al* Black empowerment levels were dominant with 66% on the Genco Council, 63% of permanent staff, 56% of domestic cricket and all the other administrative bodies over 50%.

253. As already mentioned CSA is a section 21 company consisting of two tiers, a consultative forum comprising twenty members with voting rights resting with eleven Affiliate Presidents, referred to as the Members Association. The second tier consisted of the Board with fourteen members, until amended, of which six were affiliate members.

254. The Members Forum was responsible for the consideration and formulation of policy, the board's business plan and strategy, the establishment of relationships with external stakeholders and the appointment and removal of members on the board.

Independent directors

255. Carter and Crawford and Lord Woolf emphasise the importance of independent directors on the board. The Woolf Review says the following:

> *"The ICC is a complex organisation, and the Board is required to take decisions with significant implications for the international game. A Board containing a proportion of Independent Directors is both a natural next step in its corporate governance development and*

an important component to ensure its longer term success."

256. The Woolf Review points out that there are:

> *"currently no 'Independent' Directors on the ICC Board or IDI Board, the two key decision-making bodies of the ICC. This structure risks being seen as increasingly out of step with good practice. From a corporate perspective, independent Non-Executives typically comprise a majority on Boards. Independence is a state of mind. In order to ensure Independent Directors are not only independent but are seen to be independent it is considered necessary that such Directors have not recently held positions of authority on any Member Board nor any commercial body that has had significant contractual relationships with the ICC. Independent Directors should also be able to address any potential conflicts of interest that may arise. It is essential that they are of sufficient integrity, independence and calibre."*

257. The Woolf Review was emphatic that the role of the independent directors was crucial in areas of high risk to the ethics and governance of the ICC. Similar sentiments are applicable to CSA. Lord Woolf stated:

> *"Effective monitoring and review is critical to the long-term sustainability of an organisation's governance procedures. The design and implementation of monitoring and review procedures should focus on those areas of activity which tend to create the most risk for an organisation.*
>
> *The Board, the Chairman and Independent Directors in particular, have a key role to play in monitoring the performance of the organisation and the operation of its governance procedures. As these Directors would not be involved in the day-to-day running of the organisation, it is vital they seek out and receive full access to sufficient, appropriate, robust and timely information and data to fulfil their monitoring role effectively."*

Tenure of chairman and directors

258. Lord Woolf suggested that the tenure of the chairman and board members should be three years with the possibility of a second term (a maximum of six years).

259. Molotsi also suggested that in addition to the limited tenure of board members, the CSA CEO's contract should comply with best practice internationally as well as in other SA sports and that he or she should enter into 3-5 year employment contract.

260. Arendse, who is a senior counsel and spent many years in cricket administration, commencing with presidency of Western Province Cricket in 2004, followed by the vice president of UCB and then president from June 2007 to September 2008, was also in favour of short defined terms of office and stated:

> *"Then that is why at Western Province both before and after unity we have always had a good clean administration, free of any issues such as this one, because you serve for a maximum of two terms and then you leave and then someone else takes your position. So there is no time to take control of the organization. There is no time to empire build and feather your own nest and those kind of things."*

Optimum size of a board

261. We have mentioned that the Board initially comprised of the same members as the old Board, but this was changed at the 2010 AGM to a Board that included all the 11 affiliate Presidents (as opposed to just the 6 Franchise Chairmen). Each of the affiliate presidents had equal voting powers. Because of perceived conflicts of interest relating to the

negotiation of players' remuneration and conditions of employment, the Players' Association representative was also removed and now sits on the Chief Executives' Committee.

262. The question also arose as to the relative voting powers of the small unions or affiliates in comparison with those with more players and economic power. Crawford and Carter discuss the situation in Australia where three states; New South Wales, Victoria and South Australia had three votes whereas Western Australia and Queensland had two each and Tasmania one. Australian Capital Territory **("ACT")** has no vote despite being an important part of the country both politically and in the sporting world. This led to unhappiness and the authors suggest that the States hold two shares each in the proposed model put to Cricket Australia.

263. The closest CSA got to achieving independent and skilled directors was the appointment of heads of some of the sub-committees tasked with assisting the Board of CSA. The relevant sub-committees include the Governance Committee, the Finco, the Remco and the Auditcom. This was severely diluted with the latest amendments bringing the president of every affiliate onto the board.

264. The Woolf review has a vision for the board of the ICC and calls for "an independent chairman to lead it, who is appointed solely on merit. The board needs to embrace diversity and independence of view." An individual director should have a fiduciary duty to the ICC board and not to his individual country. This model recognises directors coming from member countries, but subjugating their nationalistic instincts to the international interests of cricket. In addition to these member directors will be a substantial number of independent directors who will balance any bias in favour of any particular member state.

265. The Woolf Review suggests that the optimum board for the ICC would consist of 14 directors who would comprise the following:

> *"A streamlined new Board should comprise an independent Chairman, four Directors representing the Full Members, two Directors representing the Associate Members, three Independent Directors, two Independent Directors representing the wider game, together with the President and Chief Executive in attendance. This streamlined Board would ensure that the Independent Directors are no longer in a minority on the Board (aligning to corporate best practice) and the Board has been reduced in size to a more manageable number of Directors."*

266. There would need to be a gradual change and this would be effected in the following manner – this is a proposal for a 25 member board:

> *"There is a need for a transitional period to reach this optimal size of Board. On the basis of the recommendations made in Section 4.1 earlier in this report, the Board would initially consist of an independent Chairman, 12 Full Members, three Associate Member Directors, three Independent Directors, two Independent Directors representing the wider game, and President and Chief Executive in attendance."*

267. Crawford and Carter maintain that the CA Board be reformed to a maximum of nine non-executive directors. They point to the fact that the average size of company boards throughout the English speaking world is less than ten non-executive directors. A larger board according to them wastes time with procedure, inhibits proper discussion and allows individual directors to shirk their responsibilities without being noticed.

268. There was an echo of this in the evidence of Molotsi (one of the African representatives on the board) who said that the more than twenty members of the board "make it professionally unproductive and inefficient (some members always leave before end of the meetings – rushing for return flights)". He proposed that there be fewer directors "who meet regularly and the majority should be independent with scarce expert professional skills…"

269. Irish the CEO the SACA agreed that CSA's current structure was not in line with acceptable and appropriate corporate governance. He submitted that the CSA Board was too excessive in number giving rise to difficulties in making decisions and susceptibility to politicisation. He stated that CSA Board lacks independence and that there was a high level of duplication between members' forum and Board in that entire member's forum sits on the Board. He stressed and bewailed the absence of stringent competency requirements for its directors and contended that CSA does not properly reflect the King III requirements.

270. He advocated that CSA undergo an external governance review by independent outside consultants relative to the structure of Board, its election process and competency qualifications of its directors. He also emphasised that the ICC recently resolved to conduct an external governance review on structures within its own organization. He also mentioned that Cricket Australia had now embarked on a similar route as referred to above.

271. Mr Ajay Sooklal, attorney and Chairperson of the Governance Committee of CSA was appointed as such from 19 November 2010 until August 2012. He subsequently attended CSA Board Meetings from May 2011 until 15 October 2011, when matters arising out of the CSA "Bonus Saga" were raised. He stressed the weak leadership, prevailing at the CSA Board level, resulting in the resolution of the "Bonus Saga", at the meeting held on 19 August 2011, where mandated Board members farcically met with Legal Counsel of Majola on 19 August 2011 to discuss the adequacy of the sanction to be imposed on him.

272. He maintains that the current CSA Board does not have the resolve or inclination to seriously address the "Bonus Saga" issue. He criticised Khan the current Acting-President of CSA for believing that his Commission resolved the issue, suggesting that it was far from independent.

273. Harris emphasised that independent directors were important when the allocation of venues for test matches and funds generally was considered. If parochial or sectional interests were being advocated then the independent directors were a bulwark against such. They raised red flags and put a stop to any such practices. The enlargement of the board diluted and mostly eradicated this safeguard. The period of rotation was decreased from three to two years which further emasculated the board as any institutional memory was depleted. As soon as a director became familiar with the processes and problems of CSA he was required to resign.

274. It is worth mentioning that some of the independent directors, including Harris, Beggs, Van Wyk and King were all voted out for reasons we can only guess at. Arendse did not guess and gave his views for the non-election of Harris:

> *"[Harris] is a good guy to have and obviously he fell out with Gerald [Majola] and I think that is again a classic case where having been appointed on to that committee by Gerald, when he [collided] with Gerald that was the end of him. And he was removed. So that is another instance where you have a CEO that runs completely [rampant] that is in total control of the organization."*

275. Harris stressed that the size of the board, its constitution and structure made it subject to what he called "manipulation" by the management.

276. Nyoka told the committee that the allocation of resources by CSA to the affiliates was a source of great power and he said:

> *"I can get cooperation to vote this one in and vote that one out, to do this and do that, and that is the problem we have, is that the tail is wagging the dog, and that is the problem we have in Cricket South Africa. The arrangement between the tail and the dog needs some surgery, some correction."*

277. The canine metaphor is repeated by erstwhile CSA president Arendse who stated:

> *"… the articles say that the CEO who has been appointed to attend to the day to day management and… the articles then mention that the CEO is responsible to the board. That is certainly on paper the case … [but in practice] it is not the case. In summary, it is a case of a tail wagging the dog."*

278. Arendse said the CEO would not disclose to him, who was the head of a board that employed him, what his salary was. On two occasions decisions made by Arendse and the Board were countermanded by the CEO. These related to the composition of the national squad.

279. There is another feature which helps to understand the attitude adopted by the Board to Majola's conduct. The authors Crawford and Carter say:

> *"large boards are more easily captured by management than are small boards (and we note a view among some State observers) which is that 'the CA Board does not do a good job controlling CA management.'".*

Expertise of board members

280. Crawford and Carter emphasise the importance of the board consisting of competent persons with skills that can contribute to the overall vision of cricket in South Africa. They suggest that an analysis of cricket administrations round the world might suggest a predominance of ex-players, accountants or some other category with an insufficient mix of expertise to guide the complex business of cricket administration.

281. The Woolf Review was also in agreement that the ICC needed the skills of persons from a wide cross-section of society. It found:

> *"The Board should have the appropriate balance of skills, experience, independence and knowledge of the ICC. A balance needs to be struck between independence and knowledge. In the ICC's case, independence is of particular importance, in order to address any perceptions that an individual Director, or small group of Directors, can dominate the Board's decision-taking."*

The changing face of the commercialisation of cricket

282. As is clear from Desai *et al* cricket has evolved from a time when it was largely amateur sport to an era dominated by commercialism, perhaps most typified by the IPL.

283. Lord Woolf in his review states:

> *"As noted above, the level of funds flowing through the ICC and global cricket has been completely transformed in the last ten years, with a significant increase in revenues, principally from growth in income from television rights. For ICC-run events, the additional funds from television rights flow through the ICC to the Members. For other competitions and matches, such as those under the FTP, the income flows directly to the Members. The most notable source and beneficiary of the greater revenue flowing into cricket is India. That nation's love of the game has combined with significant population and GDP growth in recent years, to make India the commercial hub of world cricket. There are unsubstantiated estimates that India generates between 60% and 80% of revenues flowing into global cricket. India also has a significant impact on the ICC's Commercial Revenue, as almost all of the ICC's major commercial partners have significant links with India."*

284. Players are now able to ply their trade for their province, country and for a number of tournaments encompassing the shortened form of the game.

The advent of television and the lucrative nature of broadcasting in general have meant that the national team, the Proteas, is the "cash cow" as Majola called it of CSA. We were told that if a man and his dog attend a provincial match it was surprising. The absence of spectators means that no sponsors wish to pay money to provinces and 95% of the money that is paid to the provinces comes from the CSA coffers.

285. As mentioned already in the days of yore SACU was sponsored by the provinces and more particularly by the moneyed areas, Transvaal, Natal and Western Province. With the fall of Apartheid and the arrival of the UCB and later CSA the provinces have acquired not only the right to a much larger share of the cake baked by CSA, but enjoy equal voting rights out of proportion either to the number of players in their areas or the amount of money previously generated therefrom.

286. The corollary of the centralization of funds and the democratisation of voting among the regions has been a shift in the power relations between CSA and the provinces, affiliates and franchises. The allocation of funds and matches has fallen to the CEO and Manco, as the board meets insufficiently often to be effective.

287. To a large extent the affiliates and franchises are beholden to CSA for funds and matches and are reluctant to challenge the CEO and the leadership in case it threatens these matters. This leads to power accruing to the CEO out of proportion to what is desirable and contemplated by the articles of association of CSA. Those provide for control by the board and the CEO as an employee.

288. As Bacher pointed out, provincial or franchise delegates are extremely parochial and fight for their constituencies with all their might and main or gang up with others to achieve their ends. This circumstance has led to a change in power relations within the cricket structures that needs to be addressed.

289. Bacher advocated a system that made use of a majority of independent non-executive directors on the board whose vision and emphasis was on the welfare of national objectives rather than their own provincial interests. He pointed to the Australian model which he explained required a director to enjoy support from four out of the six states to be elected onto the board.

290. To us there seems to be merit in such as system. The advantages include a disinclination to favour any province out of proportion to its deserts and a more national perspective. Mention has been made of how the New Zealand model, developed in 1995 has set the example for the rest of the cricketing world. Reference was also made to the beneficial effect such an independent board would have on longer terms interests relating to grass roots sport. Such an independent board would find a way of catering for the national side and see the longer term advantages of the development of cricket in the disadvantaged areas. In that way the traditionally small pool of available cricketers, limited in the past to whites, coloureds, Indians and a few Africans in the Eastern Cape region, would be expanded to all the fifty million in this land.

Nomination committee

291. The Woolf review suggests that as a transitional measure a nomination committee should be set up consisting of the president and any other directors selected by the boards who should seek if necessary outside advice to select suitable candidates for the position of chairman and the independent directors.

292. We agree that such a nomination committee is desirable and the composition suggested by the Woolf Review seems to be a sensible approach.

Removal of directors and fundamental changes in structures of cricket

293. We believe that directors should be removed by a process similar to their selection, in other words by two thirds of the affiliates voting for such removal.

294. In addition any major decisions in cricket such as those relating to a change in formats or an introduction of new leagues should similarly require the approval of two thirds of the affiliates. Both the above two suggestions are in conformity with the advice given to Cricket Australia by Crawford and Carter.

Financial rights of provincial unions and stadia owners

295. The evolution of cricket in SA from a white-dominated sport to the domain of all South Africans, irrespective of race, has travelled a long and difficult road. We heard a considerable body of evidence about the effect the IPL had on the rights of suite holders, particularly those under the control of the GCB.

296. Arendse suggested that after the IPL problems a hosting agreement was imposed on the affiliates:

> *"That is reflected in the hosting agreement entered into, not entered into, more thrust upon the affiliates by Don McIntosh at national level. The hosting agreement denudes the provinces almost entirely of participating in sponsorships, procuring sponsorships for their grounds when it comes to the national team… because that is the very issue that caused Gauteng to question the IPL in the first place…"*

297. The desire of CSA to have control of grounds for matches cannot overreach the rights of provincial unions and stadia owners. All these matters have to be negotiated and settled between the stakeholders involved.

298. There was also considerable discussion as to the allocation of money to the various unions and the criteria that should be applied in deciding what amounts should be paid to each affiliate.

299. The problems relating to power relations within provincial and national sporting bodies are not capable of assessment and recommendation to the Minister. They will require economic arm wrestling and social power relations which will develop over the years to come. There is a symbiotic relationship between the old power houses of cricket, with their traditional grounds and clientele and the new administration, drawn from a much wider racial and economic constituency. Each needs the other and it is up to them to hammer out relationships that accommodate their own special needs.

300. Crawford and Carter considered the same problems arising out of the Australian experience and wisely left the decisions to the newly constituted Board of Cricket Australia, based on the independent non-executive model they advocated. They put it as follows at page 23 of their report:

> *"And we also find it difficult to imagine that the CA Board would fail to understand that adequately funding the State structures and teams and recognising existing stadium commitments is in the best interests of cricket."*

Transformation and development in SA Cricket

301. Desai *et al* in their book explore how hierarchies of nation, race and class have limited access to a level playing field in sport in South Africa over the years. They detail the inequalities inherent in the Apartheid policies and then move on to efforts to ameliorate the discrepancies in facilities and funding. They recall the initial ANC call for "a better life of all" and their first economic policy the Reconstruction and Development Programme (RDP). That policy stigmatised the inadequate sporting facilities for blacks as one of the "cruellest legacies of Apartheid" and signalled an emphasis on the "provision of facilities at schools and in communities where there are large concentrations of unemployed youth."

302. Desai et al define the initial approach by the new democratic government as transformative, being a bottom-up, mass based approach, providing growth through redistribution. This was contrasted with a reformative approach that emphasises reconciliation and cooperative governance on a neoliberal model that eventually won the day. The latter approach, they maintain, resulted in the de-racialization of the upper reaches of sport, an emphasis on high-performance centres, with a trickle-down of benefits to the poorest members of society.

303. There was very real evidence of this from Arendse, a past President of CSA who told us:

> *"… in Cricket South Africa still today… we have a kind of policy which is so criticised by Cosatu and others quite rightly in my view. The trickle down approach. You have got a pyramid with the Proteas team at the top. They are your main money earners. They are mainly responsible for generating the income… so most of the income of Cricket South Africa is spent on the national team. Our players are very well paid. They certainly get everything they ask for… after you have taken off the expenses… salaries, office expenses and so*

> *on, and also paying franchise cricketers then the balance would then be employed for amateur and grass roots cricket. The debate has always been either there is nothing left or there is too little that goes into amateur cricket."*

CSA as a section 21 company

304. In considering what role CSA should play in grass roots development, it is important to note that it was registered as a section 21 (non-profit) company as from 1 May 2008. A section 21 company is incorporated with no profit motive or as the section describes – "not for gain". The section deals with tax exempt companies such as those which have as their main object the promotion of religion, arts, sciences, education, charity, recreation or any other cultural or social activity.

305. The association has to apply its profits (if any) or other income, in promoting its main object. The section prohibits the payment of any dividend to its members.

306. So serious is the legislature in ensuring that the profit motive be absent that the section goes on to provide that the memorandum of such association shall contain provisions that:

> *"the income and property of the association whencesoever derived shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever, to the members of the association…"*

307. The section has a proviso which allows the payment of reasonable salaries which reads as follows:

> *"provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the association or to any member thereof..."*

308. Clearly the legislature is desirous of limiting the opportunities for the unreasonable enrichment of individuals at the expense of the dominant objective of the enterprise. Although the prohibition of bonuses relates to members of the company, the legislature has restricted payment of individuals to reasonable remuneration. What does reasonable remuneration mean? Is it so vague that no meaning can be given to it? We do not believe so. To interpret the sub-section in that manner would be to negate what Parliament was seeking to achieve.

309. We believe that reasonable remuneration should be interpreted in the light of the size of the section 21 company involved. Clearly a small section 21 company with a limited budget would pay its staff less than one of the size of CSA. No one opposed the notion that CSA should employ competent properly qualified staff who had the best interests of cricket in South Africa at heart. The senior staff should not only have a passion for the game, but also the necessary experience to lead the managerial side of the organization.

310. Essentially a non-profit company pays no tax. Reasonable remuneration must be such as to attract competent staff to achieve the objects of the enterprise. It must exclude unreasonable remuneration and be neither excessive nor niggardly. Nowhere else in the Companies Act are we aware of a similar provision limiting the payment of executives or staff. It would be anomalous if such positions were remunerated more generously than commerce or industry.

The objectives of CSA

311. As a section 21 company CSA has to apply all its funds solely to the promotion of its main goal. The objectives of CSA include the promotion and development of cricket and all its funds should be directed to that objective, subject to the payment of reasonable remuneration.

312. CSA plays the:

> *"role as custodian of cricket in the Republic and as the national controlling authority for cricket, as well as its new focus on transformation and development of amateur and professional cricket in South Africa." (See clause 24 of the Articles).*

313. In its goals of focusing on transformation and development of amateur and professional cricket CSA always had in mind the earlier commitments set out in the 1998 Transformation Charter of the UCB where it pointed out:

> *"Our historic and moral duty is to ensure that cricket grows and flourishes amongst the truly disadvantaged of society, with the recognition that the majority of the disadvantaged come from our black African communities. This involves a commitment to develop potential among our black African people at all levels of the game. This programme reaffirms our mission to bring cricket to all the people of South Africa and facilitate a culture of non-racialism." See Odendaal op cit page 341.*

314. Mali, considered by many the doyen of advocates of transformation and development, sees the present failures of CSA in the inability to have succeeded in these dreams of transformation and development in the poorest areas.

315. He drew attention to a declaration of intent which was agreed upon at a meeting between SACB and SACU in Port Elizabeth under the chairmanship of Mr Steve Tshwete on 16 December 1990. Of the nine principles agreed upon on that historic day four had not been realised in his view at the time he testified in 2011. These are as follows:

> *"Having regard for the future of South Africa, The South African Cricket Board and the South African Cricket Union declare that it is their intention to:*
>
> *B. To develop, to administer and to make available opportunities for all those who wish to play cricket at all levels as soon as possible.*
>
> *C. Both bodies acknowledge the existence of imbalances with regard to separate educational systems, sponsorships and facilities. To immediately for a committee comprising members of the South African Cricket Union, The South African Cricket Board and the business community that would formulate strategies to urgently redress these imbalances.*
>
> *D. To contribute through cricket to the creation of a just society in South Africa where everybody democratically has a common say and a common destiny.*
>
> *H. To administer and share, with immediate effect, the resources within the development field."*

316. He maintained that too much money was spent on players who were overpaid and not enough on development. He was not critical of what administrators were paid.

317. Arendse, a past president of the UCB explained the reason that section 21 status was acquired. He told the committee:

> *"…the section 21 company was formed as a direct result of the government and parliament passing a law, making it possible that cricket can retain, instead of paying the tax man, cricket retains whatever profits are made. The idea being that the money must obviously be ploughed back into the game…".*

318. We would recommend to the Minister that the South African Revenue Services ("SARS") be approached and requested to examine the section 21 status of CSA and ascertain whether CSA is complying with the tax benefit position conditions established. If CSA is not complying then SARS should put in place measures to ensure that the tax benefit position is maintained. If necessary monitoring standards must be put in place to make sure that there is compliance in future.

319. Arendse was emphatic that the manner in which the finances of CSA were dispensed was reducing the potential future pool of cricketers that could be expanded. He said:

> *"My focus is on grass roots, amateur cricket. I actually do not want anything to do with professional cricket because as things are at the moment, and that is why we are failing to produce black African cricketers in numbers. It because we have not invested enough in grass roots cricket. And because that is, it goes without saying that is where the numbers are."*

320. Given the early commitments to ameliorating the lot of the poor in all areas of life, there is a role for government in this regard. We are aware Government has encountered budget constraints in implementing improvements in sport. Deputy Minister Gert Oosthuizen told the press in 2006 that the sport budget was the smallest of all departments and R10 per person was being spent on sport at that time. He emphasised the need for infrastructure, organization, programmes, facilities, equipment and human resources.

321. The authors Desai et al bewail how little money has trickled down from government and CSA for sport as a result of these policies. Witnesses before us, including John Robbie, Mali, Arendse and others emphasised how the long term interests of the game required funding for transformation and grassroots development.

322. Arendse gave evidence of researches by Andrew Sampson of the numbers of players of colour who had been selected for the national and franchise teams. Of the 116 players selected for the national team since 1991 8 Africans, 17 Coloureds, 5 Indians and 86 white players of whom 30 were Afrikaans speaking, were selected. Since 2004 in the franchise (provincial) system 314 players were selected of whom 44 were Africans, 60 Coloureds, 27 Indians and 183 white players.

323. Despite this power shift and transformation of the racial composition of sports administration and teams, Desai et al, point out that most black players (including Indians and Coloureds), achieving prominence in national and provincial teams, come from either model C or private schools.

324. Desai et al maintain that:

> *"the balance has arguably shifted towards the production of "show piece players for the national squad" at the expense of the grassroots. The continuing lack of facilities in black areas is indicative of the fact that the fields are far from level." (Page 211).*

325. This is echoed by Arendse who says:

> *"The problem is that we have not invested enough in our state and public schools in the black disadvantaged areas to promote cricket.".*

326. Arendse put it very powerfully when he said:

> *"We have to make sure that our people, the black majority, they get a fair crack and a fair opportunity to be represented in the national side and at all levels in our society. And sport is certainly one of them."*

327. The Woolf review commits the ICC to provide funding "to support the game as a whole, from Test Cricket to grass roots cricket.". Hopefully some of these funds will filter down to the disadvantaged areas of our land.

328. This committee urges the Minister to call upon government and CSA to give urgent consideration to ploughing more funds into grass roots development of cricket, in previously disadvantaged areas. With time we are confident that controversial affirmative action selections will become a feature of the past. In this way not only will the lives of the participants be enriched by this wonderful game, but the pool of quality players from which provincial and national teams are selected, will be enlarged, to the benefit of the whole country. A better national team will bring more funds from sponsors and the initial investment will be more than justified.

Concluding observations

329. Our terms of reference require us to address the failure by the CSA Board to take appropriate and effective, action in relation to the KPMG report and the opinions of senior counsel. What the committee is mandated to do is to inquire into the reasons and circumstances that resulted in such failure and also to consider what measures are required to prevent something similar from happening in future. In this regard, the committee will come up with recommendations in relation to the corporate governance structure of CSA going forward.

330. Lord Woolf said in his review:

> *"If cricket is to protect the high level of awareness and financial support it currently enjoys, it needs to adopt a robust stance in detecting, exposing and punishing those guilty of misconduct who bring the game into disrepute, irrespective of who is responsible and where, how or when this occurs."*.

331. We inform the Minister that we believe that the CSA Board failed to take appropriate action in relation to the KPMG report and senior counsel opinions.

332. We find that there is a *prima facie* case that Majola contravened sections 234, 235 and 236 of the Companies Act in that he had failed to disclose the said bonuses appropriated to him, the CFO and other senior members of staff.

333. We believe these alleged transgressions should be referred to a disciplinary inquiry so that there is compliance with labour legislation. We believe that, pending the outcome of a referral to a disciplinary inquiry, CSA should recommend the immediate suspension with pay (again for labour law reasons) of Majola.

334. We are of the view that CSA should appoint an acting CEO, pending the outcome of the disciplinary inquiry.

336. We are confident that the CSA Board will ensure that the reputation of CSA is not further endangered by disregarding our recommendations.

Recommendations

339. We were tasked to investigate and report on the reasons for the failure of CSA to adhere to certain recommendations of KPMG and Legal Counsel. We conclude that for the reasons we have advanced no disciplinary action was taken against Majola.

340. We have found there was maladministration in CSA in relation to payment of bonuses to officials in respect of the IPL and Champions Trophy and that this was in contravention of sections 234 - 6 of the Companies Act.

341. We also believe there was maladministration with regard to the incurring of travel expenses which were beyond Majola's duties for CSA on his own behalf and on behalf of his wife and children.

342. As the investigation of KPMG was restricted to a short period (one year) with regard to the travel expenses, we believe that any further investigation by a disciplinary enquiry should go as far back as CSA records allow. In the absence of CSA records then the relevant airlines' records should be examined. If there is an ongoing abuse, as suggested by Harris, then this would be relevant to sanction by any disciplinary enquiry.

343. We believe that for the reasons we have referred to CSA was not sufficiently independent and principled to take the necessary action against Majola.

344. We recommend the same remedies as those mentioned by certain of the counsel we have mentioned, namely to subject Majola to a disciplinary enquiry, on the bonus payments and travel expense issues, prosecuted and chaired by independent senior advocates, chosen by the chairperson of the Society of Advocates. Should this disciplinary hearing make adverse findings against Majola and mete out a sanction which he considers unlawful, unfair or unjust, he can utilise the conciliation and legal system provided for in law, more especially the Labour Relations Act, including the CCMA and Labour Courts, as he wishes.

345. There are provisions for suspension for 180 days pending the conclusion of the disciplinary enquiry with pay. The Board should consider imposing suspension for two reasons. Firstly, it would allow a pro-forma evidence leader/prosecutor free access to all the witnesses and documentation at CSA and secondly, it would be in Majola's own interests to give him time to prepare his defence, unfettered by his normal duties.

346. The decision by the board of CSA at the meeting held on 19 August 2011, has to be rescinded and a new one taken to establish an independent disciplinary enquiry.

347. Part of our terms of reference related to investigating whether any provisions of the criminal law were breached and whether prosecutions should be instituted. We are of the view that there is *prima facie* proof that section 238(2) has been contravened by Majola. This sub-section, read with section 441 of the Companies Act, provides that breaches of sections 234 *et seq* are an offence and have criminal sanctions attached to them. The relevant director is liable to a fine or imprisonment for no longer than one year, or to both such fine and imprisonment. This is an offence which the office of the National Director of Prosecutions should investigate.

348. Such investigations should also include whether Majola and McIntosh breached any provisions of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) ("the Corruption Act"), more especially sections 10 and 34.

349. Section 10 provides that any person who is a party to an employment relationship and who, directly or indirectly, accepts from any other person any unauthorised gratification (defined to include money, whether in cash or otherwise) is guilty of the offence of receiving unauthorised gratification.

350. Section 34 of the Corruption Act obliges a number of stipulated persons (including a director of a company) to report knowledge of such offence to a police official.

351. We are required to investigate and report on any irregularities discovered during the KPMG's investigation. We believe that the bonus payments to both Majola and McIntosh were not properly authorised and should be reclaimed.

352. The amounts of money paid at the instance of Majola and McIntosh to themselves and other members of staff may be recoverable in civil proceedings. For some of the staff the sums involved were totally appropriate for the work they performed and are not subject to recovery.

353. The transactions that underlay these payments may be voidable at the instance of the company and those responsible may be liable to compensate the company for any loss it may have incurred.

354. As McIntosh has resigned no disciplinary enquiry can be held in his case. Regard should be had to recovering the bonus paid to him by civil action in the courts.

355. We had to enquire into, assess and report on the effectiveness and efficiency of the current administration of Cricket SA and in particular identify all aspects of the current administrative system which allows for or encourages undesirable or illegal practices. We have to recommend ways to eliminate deficiencies identified and recommend systems, practices and procedures to improve the administration of CSA.

356. We make the following recommendations with regard to CSA's governance structures.

357. We are of the view that the changes, initiated in New Zealand and continued in Australia and the ICC, with regard to amending the constitution of CSA, so as to elect a smaller board, with a majority of independent, professionally skilled, non-executive directors, ought to be effected in South Africa.

358 We believe that the voting rights for the provinces or affiliates, as suggested by the Crawford and Carter for the Australian model are also appropriate for our own context. We would therefore recommend that the members association (shareholders) be restructured to give each affiliate two votes.

359. Insofar as the board is concerned, for similar reasons, we would recommend that a board be constituted, consisting of nine non-executive directors, to be voted for by the affiliates, with each director being required

to enjoy two thirds support from the total of affiliates. We would further advise that the other directors consist of the CEO, the treasurer and secretary.

360. The identification of suitable candidates, with the necessary skills and experience, to lead the new CSA dispensation, is a crucial step in any reformation of the present set up. The successful candidates will have to enjoy the support of two thirds of the affiliates, so their selection may take considerable time and effort.

361. The removal of directors in similar fashion will require two thirds of the votes of the affiliates.

362. Any major changes in cricket such as an alteration in tournaments, franchise composition etc should also require two thirds of the votes of the affiliates.

363. We believe that, as a transitional measure, a nomination committee should be set up, consisting of the president and any other directors selected by the board, who should seek, if necessary, outside advice to select suitable candidates for the position of chairman and the independent directors.

364. Obviously, amendments will have to be made to the present CSA constitution, to bring about this restructuring and regard will have to be had to the correct procedures to achieve this.

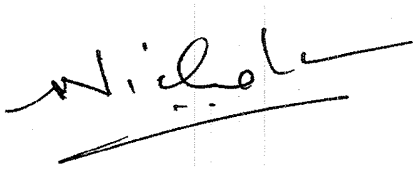
365. No doubt the new dispensation will have to be sent for approval to the various provinces. We therefore recommend that the proposed restructure be sent to all affiliates for endorsement.

366. We are concerned that CSA is not devoting enough revenue to the development of grass roots cricket in previously disadvantaged areas. We would recommend that more attention be given in the budget of SRSA to this aspect.

367. We are concerned that CSA obtained section 21 status on the basis that it would devote substantial revenue to development of cricket in previously disadvantaged areas and that CSA is departing from that condition.

368. We would recommend to the Minister that the South African Revenue Services ("SARS") be approached and requested to examine the section 21 status of CSA and ascertain whether CSA is complying with the tax exempt status conditions established. If CSA is not complying then SARS should put in place measures to ensure that the tax exempt status is maintained. If necessary monitoring standards must be put in place to make sure that there is compliance in future.

Signed on 7 March 2012 at Durban and Pretoria.



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Judge Chris Nicholson,

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Mr Freeman Nomvalo, the Accountant-General; and

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Ms Zolisa Zwakala, the Chief Director for Internal Audit Support in National Treasury.

GLOSSARY:

"Auditcom" refers to the Audit and Risk Committee of CSA (p 11, 12, 13, 20, 21, 31, 46, 61, and 69);

"Bacher" refers to Dr. Ali Bacher, a former president of the UCB (p 40, 47, 48, 49, 50 and 75);

"BCCI" refers to the Board of Control for Cricket in India (p 11 and 41);

"Beggs" refers to Mr. Colin Beggs, a former board member of CSA and chairman of the Auditcom of CSA who recommended the appointment of Thomas (p 21, 31, 41, 43, 44, 46 and 72);

"Bester" refers to the new chairperson of the Finco of CSA (p 25, 26 and 27);

"Bham" refers to Adv. A Bham SC who was appointed by SASCOC and CSA to provide a legal opinion regarding any possible irregular conduct relative to the Companies Act and the fiduciary duties of directors against the backdrop of the KPMG Report, amongst others (p 37);

"Champions Trophy" refers to the International Cricket Council Champions Trophy (p 15, 19, 24, 30, 38, 45, 49, 51 and 88);

"Finco" refers to the Finance and Commercial Committee of CSA (p 15, 25, 31, 49, 52, 53 and 69);

"GCB" refers to the Gauteng Cricket Board (p 10, 15, 16, 17, 18, 19, 23, 29 and 77);

"Genco" refers to the General Council which featured at the time prior to 2009 when CSA was a public company run by the Genco and the board of UCB. The Genco was made up of the 11 affiliate Presidents, and the entire body of associate members, representative of Women's cricket, a representative of Blind Cricket, three Black

African representatives, the office bearers, being the President, Vice-President and Treasurer, and finally the CEO (p 8, 48, 61and 65);

"Harris" refers to the former chairman of Remco (p 13, 14, 20, 31, 45, 49, 50, 54, 55, 59, 71, 72 and 88);

"ICC" refers to the International Cricket Council (p 8, 10, 19, 20, 21, 30, 41, 47, 49, 50, 51, 61, 62, 63, 64, 66, 67, 69, 71, 73, 74, 85 and 91);

"IPL" refers to Indian Premier League (p 4, 10, 15, 16, 17, 18, 19, 20, 21, 22, 24, 27, 28, 29, 30, 32, 37, 38, 43, 44, 45, 51, 74, 77 and 88);

"Irish" refers to Mr. Tony Irish in his capacity as the players' representative of SACA on the board of CSA at the time (p 42, 61 and 70),

"Khan" refers to Mr. AK Khan who is the current acting president of CSA and who chaired the Khan Commission (p 25, 26, 27, 30, 31and 71);

"Khan Commission" refers to an internal commission appointed by CSA instead of an external commission consisting of three members, namely Khan, Bester and Blair (p 26,27 ,30 ,31 ,33 ,44, 45, 50, 54, 56 and 58);

"King" refers to Professor Mervyn King, a former chairperson of the Governance Committee (p 12, 13, 23, 34, 42, 43, 46, 64, 71 and 72);

"Langa" refers to former Chief Justice Langa who was to head a Commission with the assistance of the auditing firm KPMG as appointed by Manco on 5 August 2010 regarding any possible irregular conduct relative to the Companies Act and the fiduciary duties of directors of CSA against the backdrop of the KPMG Report, amongst others (p 23, 24, 25,and 27) ;

"Majola" refers to Mr. Gerald Majola, the current CEO of CSA (p 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 33, 34, 37, 38, 39, 40, 41, 43, 44, 45,

46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 71, 72, 73, 74, 86, 87, 88, 89 and 90);

"Mali" refers to Mr. Ray Mali, a board member of CSA (p 24, 57, 82 and 84);

"Manco" refers to the management committee of CSA (p 23 and 75);

"Matheson" refers to Mr. B. Matheson the lawyer acting for CSA who was asked to expedite the appointment of an external commission relative the undeclared bonuses on 17 September 2010 (p 24 and 25);

"McIntosh" refers to the former chief operating officer of CSA (p 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 30, 34, 43, 45, 46, 49, 59, 60, 77, 89 and 90);

"Notshe" refers to Adv. Notshe SC who was appointed by Majola to provide a legal opinion regarding any possible irregular conduct relative to the Companies Act and the fiduciary duties of directors against the backdrop of the KPMG Report, amongst others (p37 and 38);

"Nyoka" refers to Dr. Mtutuzeli Nyoka, a former president of CSA (p 5, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 29, 30, 31, 32, 33, 34, 37, 41, 44 and 72);

"Orleyn" refers to Thandi Orleyn, a former member of Remco (p 13, 16, 49 and 50);

"Polco" refers to a Policy Committee of CSA which included Elworthy (as Tournament director), Arendse, Orleyn, Majola, Harris, Van Wyk and McIntosh (p 49 and 50);.

"Pretorius" refers to Adv. P. Pretorius SC who was appointed by Nyoka to provide a legal opinion regarding any possible irregular conduct relative to the Companies Act and the fiduciary duties of directors against the backdrop of the KPMG Report, amongst others (p 37 and 56) ;

"Remco" refers to the Remuneration Committee of CSA (p 13, 14, 19, 20, 21, 22, 28, 30, 31, 33, 42, 45, 47, 49, 50 and 69);

"SACBOC" refers to the South African Cricket Board of Control which was established in 1947 (p 8 and 65);

"SACU" refers to the South African Cricket Union (p 8, 48, 65, 75,and 82);

"SASCOC" refers to the South African Sports Confederation and Olympic Committee (p 33, 34, 37 and 95);

"Srinivasan" refers to the Honorary Secretary of the Board of Control for Cricket in India (p 17, 18 and 27);

"SRSA" refers to the Department of Sport and Recreation South Africa (p 33, 34, 38 and 92);

"the Act" refers to the National Sport and Recreation Act, 1998 (Act No. 110 of 1998 as amended) (p 3, 87 and 93);

"the committee" refers to the Ministerial Committee of Enquiry into Cricket (p 2, 3, 5, 6, 7, 42, 47, 56, 72, 83, 86 and 87);

"the Corruption Act" refers to the Prevention and Combating of Corrupt Activities Act, 2004 (Act No.12 of 2004) (p 59 and 90);

"the Governance Committee" refers to the Legal and Governance Review Committee of CSA (p 13, 42 and 71);

"the Minister" refers to Mr. Fikile Mbalula, the Minister of Sport and Recreation (p 2, 3, 5, 6, 7, 29, 38, 47, 58, 63, 78, 83, 85, 86, 87, 92 and 93);

"the UCB" refers to the United Cricket Board of South Africa (p 8, 40, 48, 61, 75, 82 and 83);

"Thomas" refers to Mr. D O Thomas, an independent auditor appointed by CSA as recommended by Beggs (p 20, 21, 45, 46 and 51);

"Van Wyk" refers to Prof. Hentie van Wyk a former chairman of Fincom (p 15, 31, 45, 49 and 72); and

"Williams" refers to Mr. D Williams who is a journalist and former Deputy Editor of the Financial Mail (p 64).

Annexure A: Names of persons/bodies that submitted written submissions:

1. KPMG
2. PAUL HARRIS
3. Mr. V SINOVICH
4. Dr. NYOKA
5. THANDEKA MGODUSO
6. AJAY SOOKLAL
7. Mr. T IRISH
8. Mr. L DEY
9. Mr. TUBBY REDDY
10. CRICKET SA
11. DON MCINTOSH
12. Mr. B SKJOLDHAMMER

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13. COLIN BEGGS
14. JOHN ROBBIE
15. Mr. H MOLOTSI
16. Prof. B MURRAY
17. Mr. K LISTER
18. Ms. T ORLEYN
19. GERALD MAJOLA

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20. Prof. M PROZESKY
21. Mr B WILLIAMS
22. Mr. GT KHUMALO
23. DAVID WILLIAMS
24. LARAINE LANE
25. YUSUF LORGAT
26. DAVID BECKER

27. BRIAN BASSON
28. Mr. NGENANGAYE
29. ROS GOLDIN
30. GORDON TEMPLETON
31. MIKE McLOUGHLIN

Annexure B: Names of persons/bodies that gave oral evidence at hearings

1. KPMG
2. PAUL HARRIS
3. Mr. V SINOVICH
4. Dr. NYOKA
5. THANDEKA MGODUSO
6. AJAY SOOKLAL
7. Mr. T IRISH
8. Mr. L DEY
9. Mr. TUBBY REDDY
10. CRICKET SA (Mr. O'CONNOR and Mr. J BLAIR)
11. DON MCINTOSH
12. Mr. B SKJOLDHAMMER

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13. COLIN BEGGS
14. JOHN ROBBIE
15. Mr. H MOLOTSI
16. Prof. B MURRAY
17. Mr. K LISTER
18. Ms. T ORLEYN
19. GERALD MAJOLA

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20. Prof. M PROZESKY
21. Mr B WILLIAMS
22. Mr. GT KHUMALO
23. DAVID WILLIAMS
24. ALI BACHER
25. JOHN BESTER
26. HENTI VAN WYK

27. Adv. N. ARENDSE
28. Prof. M KING

Annexure C: Summaries of the evidence of persons who submitted written submissions (see separate Annexure Bundle attached hereto):

Annexure D: CSA Board's Code of Best Practice (see separate Annexure Bundle attached hereto):

Annexure E: Governance review of ICC by Lord Woolf (see separate Annexure Bundle attached hereto):

Annexure F: Report on good governance for Australian cricket by Crawford and Carter (see separate Annexure Bundle attached hereto):