IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case number: CCT ……..

In the matter between:

GLENISTER, HUGH	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First respondent
THE MINISTER OF SAFETY AND SECURITY	Second Respondent
THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	Third respondent
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Fourth Respondent
THE HEAD OF THE DIRECTORATE OF SPECIAL OPERATIONS	Fifth Respondent
THE SPEAKER OF THE NATIONAL ASSEMBLY	Sixth Respondent
THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Seventh Respondent
THE AFRICAN CHRISTIAN DEMOCRATIC PARTY	Eighth Respondent
THE DEMOCRATIC ALLIANCE	Ninth Respondent
THE INDEPENDENT DEMOCRATS	Tenth Respondent
THE UNITED DEMOCRATIC MOVEMENT	Eleventh Respondent

THE INKATHA FREEDOM PARTY Twelfth Respondent

FOUNDING AFFIDAVIT

TABLE OF CONTENTS

INTRODUCTION 5

PART A: APPLICATION FOR LEAVE TO APPEAL 8

The parties 8

The history of the litigation 12

The factual and legal background 17

Constitutional matters raised in the High Court judgment 18

Grounds on which the High Court judgment is disputed 19

The interests of justice favour the grant of leave to appeal 23

Urgency…… 24

Prayer 24

PART B: APPLICATION FOR URGENT RELIEF 24

The parties 25

Overview of the relief sought in Part B 28

My locus standi 32

The DSO 37
The establishment of the DSO 38
The track record of the DSO 44

Investigation of prominent ANC members by the DSO 46

The Khampepe Commission 51

Cabinet accepted the recommendations of the Khampepe Commission 54

Decisions of the ANC to disband the DSO 57
The ANC's 51st National Conference held in 2002 57
The ANC's National Policy Conference held in 2007 59
The ANC's National Conference held in 2007 61

Steps taken by Cabinet to dissolve the DSO after the Polokwane conference 62
Statements of Cabinet's intentions after the Polokwane conference 63
Publication of the bills that will disestablish the DSO 67

Cabinet's decision seeks to give effect to the Polokwane resolution 70

Disestablishing the DSO would harm the fight against crime 82

Consequences of the initiating of legislation to disestablish the DSO 91

The relief sought in prayer B2 96

The relief sought in prayer B3 106

Urgency 109

The exclusive jurisdiction of this Court 110

Prayer 110

CONCLUSION 111

INTRODUCTION

I, the undersigned

HUGH GLENISTER

do hereby make oath and say as follows:-

1. I am a major businessman currently residing at 18 Kitui Road, Sunninghill Extn 2, Gauteng. I am the Applicant in this matter.

2. Save where I state otherwise or where the contrary appears from the context, the facts deposed to herein are within my personal knowledge and are, to the best of my belief, true and correct.

    2.1. Where I make legal submissions, I rely on advice that I have received from my legal representatives.

    2.2. Where appropriate, I shall refer to confirmatory affidavits of persons who can positively swear to the facts I have described that do not fall within my personal knowledge.

    2.3. Since I am an outsider to the political process, I have of necessity been forced to rely on media reports for some of the averments that

shall I make in this affidavit. I have attempted to obtain confirmatory affidavits from the various journalists whose media reports I rely on. In this regard, I confirm that either I or my representatives have been in contact with the journalists and/or their various editors. Some journalists did furnish affidavits, whilst others refused on professional grounds. I respectfully refer this Honourable Court to annexure **"HG78"** being various e-mails exchanged with the relevant journalists and/or their respective editors by my representatives confirming the aforegoing.

3. Since its establishment seven years ago, the Directorate of Special Operations ("the DSO") has proved to be the most successful crime-fighting institution in the country. Notwithstanding the success of the DSO, the Cabinet announced in February 2008 that it intended to initiate legislation that would have the effect of disestablishing the DSO. This represented an abrupt about-turn in respect of previous Government policy. The only plausible explanation for this about-turn is that the African National Conference ("the ANC") resolved at its National Conference in December 2007 that the DSO should be "dissolved as a matter of urgency" in order to protect various ANC members from current and future investigations by the DSO. I respectfully submit that the Cabinet's decision

to initiate legislation disestablishing the DSO violates a range of constitutional obligations and is invalid.

4. This is an omnibus application in which I seek two forms of relief in the alternative:

4.1. In Part A of the notice of motion, I seek leave to appeal in terms of Constitutional Court Rule 19 read with section 167(6)(b) of the Constitution against a judgment of the High Court (Transvaal Provincial Division) handed down on 28 May 2008. A copy of the judgment is annexed hereto marked **"HG1"** ("the High Court judgment").

4.2. The High Court held the matter did not fall within its jurisdiction but intimated that it may fall within the exclusive jurisdiction of this Court. I dispute the correctness of this finding and submit that the High Court was indeed vested with jurisdiction. However in the event that this Court were to refuse leave to appeal on the grounds that the High Court correctly held that the matter falls within the exclusive jurisdiction of the Constitutional Court, I shall in the alternative apply to this Court for the urgent relief set out in Part B of the notice of motion.

5. In this affidavit I shall deal in turn with (*a*) the application for leave to appeal and (*b*) the application to this court for urgent relief.

PART A: APPLICATION FOR LEAVE TO APPEAL

6. This part of my affidavit is filed in support of my application for leave to appeal, in compliance with the requirements of Constitutional Court Rule 19(3). The grounds on which I dispute the High Court judgment, and the constitutional matters raised therein, will be set out below.

7. I respectfully submit that this application has been filed within the time periods prescribed in the proviso to Rule 19(2) of the Constitutional Court Rules.

8. I confirm that I have not applied for leave to appeal to any other court, and do not intend to do so.

The parties

9. I am the Applicant. I was the applicant in the litigation that culminated in the High Court judgment.

10. The First Respondent is THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA, acting in his official capacity.

    10.1. The First Respondent's office is located at the Union Buildings, Government Avenue, Pretoria.

    10.2. The First Respondent was cited as the first respondent in the litigation that culminated in the High Court judgment.

11. The Second Respondent is THE MINISTER OF SAFETY & SECURITY, acting in his official capacity.

    11.1. The Second Respondent's office is located at the Department of Safety & Security at 7th Floor, 231 Pretorius Street, Pretoria.

    11.2. The Second Respondent was cited as the second respondent in the litigation that culminated in the High Court judgment.

12. The Third Respondent is THE MINISTER OF JUSTICE & CONSTITUTIONAL DEVELOPMENT, acting in her official capacity.

    12.1. The Third Respondent's office is located at the Department of Justice & Constitutional Development at Momentum Building, 329 Pretorius Street, cnr. Prinsloo Street, Pretoria.

12.2. The Third Respondent was cited as the third respondent in the litigation that culminated in the High Court judgment.

13. The Fourth Respondent is THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS, acting in his official capacity.

13.1. The Fourth Respondent's office is located at the National Prosecution Authority, VTM Building, 123 Westlake Avenue, cnr. Hartley Avenue, Weavand Park, Silverton, Pretoria.

13.2. The Fourth Respondent was cited as the fourth respondent in the litigation that culminated in the High Court judgment.

14. The Fifth Respondent is THE HEAD OF THE DIRECTORATE OF SPECIAL OPERATIONS, acting in his official capacity.

14.1. The Fifth Respondent's office is located at the National Prosecuting Authority, VTM Building, 123 Westlake Avenue, cnr. Hartley Avenue, Weavand Park, Silverton, Pretoria.

14.2. The Fifth Respondent was cited as the fifth respondent in the litigation that culminated in the High Court judgment.

15. The Sixth Respondent is THE SPEAKER OF THE NATIONAL ASSEMBLY, acting in her official capacity.

15.1. The Sixth Respondent's office is located at the South African Parliament at Parliament Street, Cape Town.

15.2. The Sixth Respondent was cited as the sixth respondent in the litigation that culminated in the High Court judgment.

16. The Seventh Respondent is THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES, acting in his official capacity.

16.1. The Seventh Respondent's office is located at the South African Parliament at Parliament Street, Cape Town.

16.2. The Seventh Respondent was cited as the seventh respondent in the litigation that culminated in the High Court judgment.

17. The Eighth Respondent is the AFRICAN CHRISTIAN DEMOCRATIC PARTY, a political party with its principal place of business at 1st Floor, Stats Building, 2 Fore Street, Alberton. The Eighth Respondent was admitted as an *amicus curiae* in the litigation that culminated in the High Court judgment.

18. The Ninth Respondent is the DEMOCRATIC ALLIANCE, a political party with its principal place of business at 5th Floor, Ruskin House, 2 Roeland

Street, Cape Town. The Ninth Respondent was admitted as an *amicus curiae* in the litigation that culminated in the High Court judgment.

19. The Tenth Respondent is the INDEPENDENT DEMOCRATS, a political party with its principal place of business at M28 Marks Building, Parliament, Cape Town. The Eighth Respondent was admitted as an *amicus curiae* in the litigation that culminated in the High Court judgment.

20. The Eleventh Respondent is the UNITED DEMOCRATIC MOVEMENT, a political party with its principal place of business at 2nd Floor, Tomkar Building, cnr Vermeulen & Du Toit Streets, Pretoria. The Eleventh Respondent was admitted as an *amicus curiae* in the litigation that culminated in the High Court judgment.

21. The Twelfth Respondent is the INKATHA FREEDOM PARTY, a political party with its principal place of business at 2 Durban Club Place, Smit Street, Durban. The Twelfth Respondent was admitted as an *amicus curiae* in the litigation that culminated in the High Court judgment.

The history of the litigation

22. I set out below a brief overview of the litigation that has given rise to the present application for leave to appeal.

23. On 18 March 2008, I made application to the Transvaal Provincial Division of the High Court as a matter of urgency for a final order (*alternatively* for an interim order) interdicting and restraining the First, Second and Third Respondents from initiating legislation that seeks to disestablish the DSO established in terms of Section 7(1)(a) of the National Prosecuting Authority Act 32 of 1998.

24. The Fourth, Fifth, Sixth and Seventh Respondents filed notices of intention to abide the decision of the High Court.

25. The First, Second and Third Respondents filed notices of intention to oppose. The First Respondent subsequently withdrew his opposition to the application, and filed a notice of intention to abide the decision of the High Court. In the result, only the Second and Third Respondents opposed the application.

26. In terms of the Notice of Motion in the High Court application, the Respondents were afforded until 14 April 2008 to file their answering affidavits and the matter was set down for hearing on 6 May 2008. I point out that the time period afforded to the First, Second and Third Respondents to file their answering affidavits was only slighter shorter than the time period afforded under Uniform Rule 6.

27. The First, Second and Third Respondents' attorneys in due course requested additional time to file their answering affidavit, in circumstances where it must have been appreciated that the grant of such a request would inevitably lead to a delay in the hearing of the matter. My attorney requested the First, Second and Third Respondents to furnish an undertaking that they would not use the extra time in order to initiate legislation to disband the DSO. The First, Second and Third Respondents refused to furnish this undertaking. With considerable prescience (as it turns out), my attorney recorded in a letter my concern that

> "the reason why [the respondents] may seek an extended period of time to file their answering affidavit, and then refuse to furnish the requested undertaking, is to enable [the respondents] to do precisely that which [the applicant] seeks to interdict (i.e. to initiate the relevant legislation) prior to the court having had an opportunity to hear the matter".

28. I afforded the Second and Third Respondents extra time until 30 April 2008 to file their answering affidavits. In the result, the hearing date was moved from 6 May 2008 to 20 May 2008.

29. On 30 April 2008, the Second and Third Respondents filed their answering affidavit. The answering affidavit had been deposed to on 29th April 2008 by Mr Menzi Simelane, the Director General of Justice and Constitutional Development. Mr Simelane's main answering affidavit was confirmed by

confirmatory affidavits deposed to by the Second and Third Respondents on 29 April 2008.

30. In his answering affidavit, Mr Simelane stated that my application was premature since no decision had been taken by Cabinet with regard to the future of the DSO. The Second and Third Respondents averred that they continued to have an open mind regarding a range of possible legislative options in relation to the DSO. They stated under oath:

30.1. that "no decision has been taken by Cabinet to 'disestablish' the DSO";

30.2. that they were in the process of "engaging in an exchange of ideas prior to recommending the initiation of legislation relating to the DSO"; and

30.3. that they were "considering various ways in which to" deal with the DSO.

31. On the very day on which the answering affidavit was filed (i.e. 30 April 2008), legislation to disestablish the DSO was approved by Cabinet. One of the bills approved by Cabinet was subsequently published on 9 May 2008.

32. In order to deal with these developments, I gave notice of intention to apply for leave to amend my Notice of Motion so as to seek an order "interdicting and restraining the First, Second and Third Respondents from initiating legislation (*alternatively* from persisting with the passage of legislation) that seeks to disestablish the Directorate of Special Operations established in terms of section 7(1)(a) of the National Prosecuting Authority Act 32 of 1998". The underlined words represented the proposed amendment to my original notice of motion.

33. Shortly before the hearing of the matter, the major opposition parties in Parliament (being the Eighth to Twelfth Respondents cited above) applied for leave to be admitted as *amici curiae* in terms of Uniform Rule of Court 16A. The Second and Third Respondents opposed their admission.

34. The main application was argued before the High Court on 20 and 21 May 2008 (together with various interlocutory applications).

35. On 28 May 2008, the High Court handed down the judgment that is annexed hereto marked **"HG1"**. The High Court:

35.1. admitted the Eighth to Twelfth Respondents as *amici curiae*;

35.2. granted me leave to amend my notice of motion in the manner set out above;

35.3. granted condonation to the Second and Third Respondents for the late filing of a supplementary affidavit;

35.4. ordered that the matter should be removed from the roll with no order as to costs.

36. I seek leave to appeal to this Court only against that part of the High Court judgment which ordered that the matter should be removed from the roll.

The factual and legal background

37. Although the relief sought in Part B represents a modification of the relief sought before the High Court, the factual averments and the legal submissions that I relied on before the High Court are substantially the same as the factual averments and legal submissions that I shall advance below in Part B. I shall not repeat those facts and legal submissions here. I respectfully request that those paragraphs be read as if incorporated herein.

Constitutional matters raised in the High Court judgment

38. Constitutional Court Rule 19(3)(b) provides that an application for leave to appeal to this Court must set out succinctly the constitutional matter raised in the decision of the court *a quo*.

39. For the reasons that follow, I submit that the High Court judgment raises constitutional matters and issues connected with constitutional matters (within the meaning of section 167(3) read with section 167(7) of the Constitution).

40. The threshold question before the High Court was whether it had jurisdiction to grant the relief that I sought in my notice of motion. I am advised that this is a constitutional matter within the meaning of section 167(7) of the Constitution.

41. The merits of the application involved the question whether the first, second and third respondents violated their constitutional obligations by initiating legislation that seeks to disestablish the DSO. I am advised that this is a constitutional matter within the meaning of section 167(7) of the Constitution.

Grounds on which the High Court judgment is disputed

42. Rule 19(3)(a) of the Constitutional Court Rules requires an applicant for leave to appeal to set out "the grounds on which [the decision] is disputed".

43. I shall set out below the grounds upon which I dispute the High Court judgment. I do so in order to establish that I have reasonable prospects of success on appeal.

44. In the course of ordering that the matter should be removed from the roll, the High Court held as follows:

    44.1. A court will only in exceptional cases consider interfering with the deliberative process of Parliament. The High Court made it clear that it had been asked to consider my application as an exceptional case. More particularly, it had been asked to find that the President and Members of the Cabinet intended to initiate legislation disestablishing the DSO in order to give effect to a resolution adopted by the ANC at its Polokwane Conference. It was my contention that this placed the President and other members of the Cabinet in breach of their obligations under the Constitution and also in breach of the rule of law.

44.2. The High Court held that the question of the disestablishment of the DSO was a “highly politicised matter”.

44.3. The High Court held that it was not necessary to decide whether the bills amounted to “parliamentary bills” within the meaning of section 167(4)(b) of the Constitution. If the bills *did* qualify as “parliamentary bills” within the meaning of section 167(4)(b), the High Court would have no jurisdiction to hear the application since it would fall within the exclusive jurisdiction of this Court.

44.4. If the two bills did *not* qualify as “parliamentary bills” within the meaning of section 167(4)(b) and if the publication of the bills forms part of the process of initiating legislation, then the High Court held that it had no jurisdiction to decide the application “on the principle of separation of powers”. This was despite the “strong argument” on behalf of myself that this was an exceptional case where the separation of powers should be ignored and where a court should interfere with the right of the Executive to initiate legislation and/or the deliberative process of the legislation in Parliament. The High Court held that this was not an “exceptional case”. It stated that it had “no jurisdiction to interfere with the executive powers of the

President and Cabinet or with the process in Parliament" since it "can only deal with the constitutionality of an Act".

44.5. The High Court accordingly held that "this matter involved crucial and important political matters over which a High Court has no jurisdiction but only the Constitutional Court".

45. I respectfully submit that the High Court erred in finding that it had no jurisdiction to decide the matter:

45.1. I am advised and respectfully submit that the High Court is not deprived of jurisdiction to hear matters merely because they are "highly politicised" or because they involve "crucial and important political matters". The High Court is only deprived of jurisdiction in the circumstances contemplated in section 167(4) of the Constitution.

45.2. The High Court was not being asked to decide on the constitutionality of a parliamentary bill, within the meaning of section 167(4)(b) of the Constitution. The High Court was being asked to determine the constitutionality of the conduct of the First, Second and Third Respondents in initiating legislation that seeks to disestablish the DSO.

45.3. I respectfully submit that the High Court was not being asked to decide that the President had failed to fulfil a constitutional obligation, within the meaning of section 167(4)(e) of the Constitution. Section 172(2)(a) of the Constitution specifically empowers the High Court to make an order concerning the constitutional validity of any conduct of a President. I refer further to the judgments of this Court in:

President of the RSA v SARFU 1999 2 SA 14 (CC) para 25

Doctors for Life International v Speaker of the National Assembly 2006 6 SA 416 (CC) paras 13-30;

Pharmaceutical Manufacturers of SA: In re ex parte President of the RSA 2000 2 SA 674 (CC) para 56.

45.4. I point out that, in the course of oral argument before the High Court, counsel for the Second and Third Respondents agreed with the submission of my counsel that the High Court was not deprived of jurisdiction to deal with the matter.

46. I accordingly submit that the High Court erred in finding that it did not have jurisdiction to deal with the matter.

47. Had the High Court considered the matter on its merits, I respectfully submit that it should have granted the application. The reasons for this will be set out below in the context of Part B. I shall not repeat what is stated below, but request that it be read as if incorporated herein.

The interests of justice favour the grant of leave to appeal

48. I submit that the High Court judgment raises matters of significant public interest. It concerns issues that go to the very heart of our constitutional dispensation. As I shall indicate below in the context of Part B, the application before the High Court excited a considerable amount of public interest.

49. For the reasons given above, I respectfully submit that there is a reasonable prospect that this Honourable Court might reverse or materially alter the High Court judgment.

50. I accordingly submit that the interests of justice favour the granting of leave to appeal.

Urgency

51. For reasons that will be fully set out below in the context of Part B, I submit that the matter is urgent. I respectfully request that directions be issued in terms of Constitutional Court Rule 12(1) to regulate the further conduct of Part A.

Prayer

52. I accordingly pray for the relief set out in Part A of the Notice of Motion.

PART B: APPLICATION FOR URGENT RELIEF

53. I turn now to deal with the alternative relief sought in Part B of the notice of motion. I seek such relief in the event that this Court were to refuse the application for leave to appeal on the grounds that the matter falls within the exclusive jurisdiction of this Court. The averments that follow are made on the basis that this Court may reject my preceding submission that the High Court was indeed vested with jurisdiction to determine the matter.

54. The relief that I seek in Part B represents a modification of the relief that I sought before the High Court. This modification has been effected in order to deal with events that occurred after the High Court application was launched. However the substance of the relief remains the same, and is based on the same factual averments that I relied on in the High Court litigation.

The parties

55. I am the applicant.

56. The First Respondent is THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA. The First Respondent's office is located at the Union Buildings, Government Avenue, Pretoria. The First Respondent is cited in Part B in his capacity as "head of the Cabinet" (within the meaning of section 91(1) of the Constitution) and by virtue of the fact that the executive authority of the Republic is vested in him in terms of section 85(1) of the Constitution. Section 85(2)(d) of the Constitution provides that the First Respondent exercises his executive authority (together with other members of the Cabinet) by, inter alia, "preparing and initiating legislation".

57. The Second Respondent is THE MINISTER OF SAFETY & SECURITY, acting in his official capacity. The Second Respondent's office is located at the Department of Safety & Security at 7th Floor, 231 Pretorius Street, Pretoria. The Second Respondent is cited in Part B by virtue of the fact that he administers some of the legislative amendments that seek to disestablish the Directorate of Special Operations.

58. The Third Respondent is THE MINISTER OF JUSTICE & CONSTITUTIONAL DEVELOPMENT, acting in her official capacity. The Third Respondent's office is located at the Department of Justice & Constitutional Development at Momentum Building, 329 Pretorius Street, cnr. Prinsloo Street, Pretoria. The Third Respondent is cited in Part B by virtue of the fact that she is the Cabinet Member responsible for the administration of the National Prosecution Authority Act 32 of 1998 ("the NPA Act"). Moreover, it appears that the Third Respondent is responsible for administering some of the legislative amendments that seek to disestablish the Directorate of Special Operations.

59. The Fourth Respondent is THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS, acting in his official capacity. The Fourth Respondent's office is located at the National Prosecution Authority, VTM Building, 123 Westlake Avenue, cnr. Hartley Avenue, Weavand Park,

Silverton, Pretoria. The Fourth Respondent is the Head of the Prosecuting Authority in terms of Section 179(1)(a) of the Constitution. The Fourth Respondent is cited in Part B by virtue of the fact that the Directorate of Special Operations is established in his office by virtue of Section 7(1)(a) of the NPA Act. No relief is sought against the Fourth Respondent, save for a costs order in the evident that he were to oppose the relief sought herein.

60. The Fifth Respondent is THE HEAD OF THE DIRECTORATE OF SPECIAL OPERATIONS, acting in his official capacity. The Fifth Respondent's office is located at the National Prosecuting Authority, VTM Building, 123 Westlake Avenue, cnr. Hartley Avenue, Weavand Park, Silverton, Pretoria. The position currently held by the Fifth Respondent was created by Section 7(3)(a) of the NPA Act. The Fifth Respondent is cited in Part B by virtue of the interest he may have in the relief sought in Part B. No relief is sought against the Fifth Respondent, save for a costs order in the event that he were to oppose the relief sought herein.

61. The Sixth Respondent is THE SPEAKER OF THE NATIONAL ASSEMBLY, acting in her official capacity. The Sixth Respondent's office is located at the South African Parliament at Parliament Street, Cape Town. The position of the Speaker of the National Assembly was created

by section 52 of the Constitution. The Sixth Respondent is cited in Part B by virtue of any interest she may have in the relief sought. No relief is sought against the Sixth Respondent, save for a costs order in the event that she were to oppose the relief sought herein.

62. The Seventh Respondent is THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES, acting in his official capacity. The Seventh Respondent's office is located at the South African Parliament at Parliament Street, Cape Town. The position of Chairperson of the National Council of Provinces was created by Section 64 of the Constitution. The Seventh Respondent is cited in Part B by virtue of any interest she may have in the relief sought No relief is sought against the Seventh Respondent, save for a costs order in the event that he were to oppose the relief sought herein.

Overview of the relief sought in Part B

63. The DSO came into existence on 12 January 2001. It was established in the Office of the National Director of Public Prosecutions by means of section 7(1)(a) of the NPA Act. In the seven years since its establishment, the DSO has proved to be extremely effective in the fight against crime. I

shall indicate below that the DSO has been significantly more effective than the South African Police Service ("SAPS") in the combating of crime.

64. Notwithstanding the success of the DSO, the Cabinet announced in February 2008 that it intended to initiate legislation that would have the effect of disestablishing the DSO. This represents an abrupt about-turn in respect of previous Government policy. The only plausible explanation for this about-turn is that the African National Conference ("the ANC") resolved at its National Conference in December 2007 that the DSO should be "dissolved as a matter of urgency". In other words, the Cabinet initiated legislation that would disestablish the DSO in order to implement a resolution adopted at the ANC's National Conference in 2007, being a conference attended by approximately 4000 delegates. That resolution, I shall indicate below, was passed because the DSO has been *too effective* when it comes to investigating various high-profile members of the ANC. In other words, the resolution was apparently passed in order to protect various ANC members from current and future investigations by the DSO.

65. I respectfully submit that Cabinet's decision to initiate legislation disestablishing the DSO violates a range of constitutional obligations and is invalid. I shall elaborate below upon the reasons for this. The initiation of such legislation is bringing about the *de facto* destruction of the DSO even

before the relevant legislation is enacted, since many DSO members are already seeking alternative employment and those DSO members who remain behind will be rendered institutionally incapable of performing their functions.

66. The relief sought in Part B is a declarator to the effect that the decision of the First Respondent and other members of the Cabinet to initiate legislation disestablishing the DSO is unconstitutional and invalid. Ancillary relief is sought in the form of an order directing the Second and Third Respondents to withdraw the relevant Bills from the National Assembly. The application in Part B is brought as a matter of urgency because many members of the DSO are currently seeking, or are likely to seek, alternative employment as a result of the initiation of legislation directed at disestablishing the DSO. Unless urgent relief is granted, the act of initiating legislation will bring about a situation in which the DSO is in effect unable to continue functioning even though the relevant legislation has not been enacted. Such an outcome would violate a range of constitutional rights, as I shall indicate below.

67. My affidavit will be structured as follows in relation to the relief sought in Part B:

67.1. I shall begin by describing my locus standi to seek the relief in Part B.

67.2. Thereafter I shall provide an overview of the DSO.

67.3. I shall deal next with the various resolutions that have been passed by the ANC calling for the disbanding of the DSO, and I shall describe the steps that have been taken by the Government to give effect to those resolutions.

67.4. I then indicate that the disestablishment of the DSO would harm the fight against crime, since the South African Police Service has proven itself to be less efficient than the DSO in various respects.

67.5. In the next section of my affidavit I shall describe the harm that is being caused by virtue of the decision to initiate legislation disestablishing the DSO.

67.6. Thereafter I set out the basis upon which I seek the relief foreshadowed in Part B of the notice of motion.

67.7. Finally, I shall explain why Part B is urgent.

My locus standi

68. It is a notorious and regrettable fact that crime is rampant in South Africa. I shall refer below to some of the crime statistics. For present purposes, it suffices to state that the statistics make for distressing reading.

69. In terms of the Constitution, everyone has the right to life (section 11), to dignity (section 10), to freedom and security of the person (section 12) and to property (section 25). Those rights are violated when a person becomes the victim of crime. Section 7(2) of the Constitution makes it plain that the state is obliged to respect, promote and fulfil those rights. In particular, the First Respondent and the Cabinet are required to respect, promote and fulfil those rights when they initiate legislation in terms of section 85(2)(d) of the Constitution.

70. The DSO is integral to the fight against crime in South Africa. I shall indicate below that the initiation of legislation disestablishing the DSO will bring about the *de facto* destruction of the DSO long before the necessary legislation is enacted. The mere act of initiating such legislation will, in other words, bring about a situation where the fight against crime is undermined and where persons are exposed to an increased risk of becoming a victim of crime. This would threaten the rights in sections 10, 11, 12 and 25 of the Constitution.

71. I bring the present application:

71.1. in my own interest (within the meaning of section 38(a) of the Constitution);

71.2. in the interest of a group or class of persons (within the meaning of section 38(b) of the Constitution); and

71.3. in the public interest (within the meaning of section 38(d) of the Constitution).

72. In support of the averment that I bring this application in my own interest, I refer to the following:

72.1. I am a businessman, and a director and shareholder of a number of companies conducting business within the Republic of South Africa.

72.2. As a businessman, I have a vested interest in the survival and growth of the economy of South Africa. It is a well-known fact that crime is one of the biggest threats to the growth (and indeed to the survival) of an economy. Any legislation that results in an effective crime-fighting unit (such as the DSO) being disbanded constitutes, in my opinion, a substantial and direct threat to the survival and growth of

the economy, and hence, a direct and substantial threat to my interests as a businessman.

72.3. As a South African citizen who is passionate about his country, I have an interest in ensuring that I am able to live a life which is not overshadowed by the omnipresent and brooding spectre of crime.

72.4. I bring this application in my own interest in order to vindicate the constitutional rights that I have identified above.

73. In support of the averment that I bring this application in the interest of a group or class of persons, I refer to the following:

73.1. As a concerned citizen of South Africa, I initiated an on-line petition with a view to gauging public opinion regarding the Government's stated intention to disband the DSO. The website address is www.mypetition.co.za (under petition number 39). In addition, I also launched an SMS campaign and a manual petition.

73.2. As at the date of signature of this affidavit, over 100 000 persons have "signed" the petition (in its various mediums) opposing the disbanding of the DSO. I annex hereto the latest printout from the

petition, marked **"HG2"** reflecting the total number of signatories to the petition**.**

73.3. Members of the media have also conducted polls to gauge whether members of the public are opposed to the disbanding of the DSO. They include the following:-

73.3.1. The Sowetan (as is evident from Annexure **"HG3"** hereto) conducted a poll which determined that 79,64% of the people polled are in favour of retaining the DSO.

73.3.2. Carte Blanche (as is evidenced from Annexure **"HG4"** hereto) conducted an on-line poll which determined that 97,8% of the people polled are in favour of retaining the DSO.

73.3.3. I further refer to the Ipsos Markinor Poll commissioned by Independent Newspapers of 1496 adults in urban areas throughout the country which, after weighting, represents the views of approximately 7 million South Africans. The poll, the results of which are annexed hereto marked **"HG5"** (and which were published on or about 25 March 2008), revealed that:

- 67% of people have a great deal/quite a lot of trust and confidence in the DSO, whilst only 31% of people had trust and confidence in the SAPS;

- 64% of people think the idea of disestablishing the DSO and relocating it to the SAPS was bad, whilst only 24% thought it was a good idea, for various reasons, the main reasons being that the DSO was effective in fighting organised crime and government corruption, and that organised crime and government corruption would now increase.

73.3.4. I also refer to the results of the TNS Research survey published on 7 May 2008, a copy of which is annexed hereto marked **"HG6"**. It reveals that 59% of South Africans living in 7 metropolitan areas, felt that the DSO should be separate from SAPS.

73.3.5. I also refer to the results of the IOL Poll conducted and published on 29th May 2008 as to whether I should pursue this Application. As is evident from Annexure **"HG6A"** hereto, 80% of those polled noted that I should.

73.4. I bring this application in the interest of the aforementioned group of persons who have indicated their opposition to the disestablishment of the DSO. In doing so, I seek to vindicate the constitutional rights to which I have already referred.

74. In support of the averment that I bring this application in the public interest, I point out that the Government's intention to dissolve the DSO has excited a massive amount of public interest and controversy. This is apparent from the public polls to which I have already referred, and will become even more apparent from the media reports to which I shall refer below. In bringing this application in the public interest, I seek to vindicate the constitutional rights that I have already referred to.

75. For all of these reasons, I respectfully submit that I have standing to seek the relief in Part B.

The DSO

76. I turn now to provide some necessary background regarding the DSO.

The establishment of the DSO

77. The DSO was established in terms of section 7(1) of the NPA Act as an investigating directorate in the office of the National Director of Public Prosecutions. The DSO is known colloquially as “the Scorpions”, and I shall use this phrase on occasion below.

78. In terms of section 7(1) of the NPA Act, the aim of the DSO is:

78.1. to investigate and to carry out any functions incidental to investigations;

78.2. to gather, keep and analyse information; and

78.3. where appropriate, to institute criminal proceedings and to carry out any necessary functions incidental to instituting criminal proceedings relating to offences or any criminal or unlawful activities committed in an organised fashion, or such other offences or categories of offences as determined by the President by proclamation in the Government Gazette, from time to time.

79. The term “organised fashion” is defined as including the planned, on-going, continuous or repeated participation, involvement or engagement in at least

two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims, or methods of commission, or otherwise are related by similar characteristics (section 7(1)(b) of the NPA Act).

80. The DSO formally came into existence on 12 January 2001.

81. The intention to establish the DSO was first announced by the First Respondent during his State of the Nation Address on 25th June 1999, in which he stated as follows:

> "To enable our law enforcement agencies to translate this into reality, I am privileged to announce that a special and adequately staffed and equipped investigation unit will be established urgently to deal with all national priority crimes, including police corruption."

82. As is evidenced from Annexure **"HG7"** hereto, the then Minister of Justice & Constitutional Development, Dr P M Maduna, addressed Parliament on 1 November 1999 and stated that:

82.1. the First Respondent had repeatedly addressed Parliament on the issue of preventing and fighting crime;

82.2. the First Respondent had announced a bold initiative aimed at addressing the challenge faced by the criminal justice system in its fight against national priority crimes;

82.3. these challenges included the existence of corruption among certain officers in law enforcement agencies, unsatisfactory standards of investigation which result in unacceptably low rates of conviction, and the general lack of an efficiently co-ordinated attack on organised and syndicated crime by investigation, intelligence and prosecution authorities;

82.4. the Inter-Ministerial Security Committee and the National Director of Public Prosecutions had been hard at work to establish the DSO, which would complement and, where necessary, supplement the efforts of existing law enforcement agencies in fighting national priority crimes;

82.5. these crimes include vehicle hi-jacking; offences related to possession of, or trading in, arms and ammunition; serious economic offences (or serious commercial crime); organised and syndicated crime; corruption in the Criminal Justice System; and crimes against the State;

82.6. the office of the Department of Justice & Constitutional Development would be responsible for vetting members of the DSO to ensure that they were able to perform their duties competently, free of corruption and without fear or favour;

82.7. there was a collective responsibility, across the political divide, to ensure that this initiative was properly resourced;

82.8. the legislative framework provided for an appropriate constitutional balance between two equally important imperatives, namely to combat crime with conviction and resolve, and to do so in a manner that reflects our commitment to the rule of law and the provision and protection of human rights, whilst providing an effective deterrent to engage in crime;

82.9. all people should recognise the threat that crime poses for the development of our democracy;

82.10. crime destabilises the economy and impacts dramatically on the poor and historically disadvantaged;

82.11. the DSO would provide a supplementary national resource for law enforcement;

82.12. the DSO would have a unique function and would face extraordinary challenges in executing their duties;

82.13. in order to ensure that the DSO succeeds, it would be necessary to ensure that the DSO recruited the best and most talented corps of personnel available;

82.14. in an effort to assist the DSO in realising the objectives that have been set for it, it should be remembered that what was being built was a specialist unit that must be able to take on, and deal with, increasingly sophisticated levels of criminality;

82.15. countries that have committed themselves to rooting out organised crime and syndicated crime have discovered that conventional crime-fighting methods have failed against the sophisticated practices of international crime syndicates and organised crime;

82.16. it is necessary to send out a strong message that crime has no place in our society and does not pay.

83. At the time of its establishment, the DSO published a document outlining its structure and functions. A copy of this document is annexed hereto marked **"HG8"**.

84. On or about 7th February 2000, the then Minister of Safety and Security Mr Steve Tshwete, conducted a media briefing on behalf of the Crime Prevention and Integrated Justice Sector, a printed version of which is annexed hereto marked **"HG9"**. Mr Tshwete stated that:

84.1. prosecution-led and intelligence-driven investigations are a key deterrent in the fight against crime and corruption;

84.2. the creation of the DSO gave effect to the determination to increase national conviction rates through prosecution-led investigations;

84.3. the DSO would direct its energies at priority crimes including vehicle hi-jacking, syndicated drug and arms dealing, transnational crimes, money laundering and corruption;

84.4. the Intelligence Services would be pivotal to combating crime at its source;

84.5. improved methods of intelligence-gathering and close co-operation between the intelligence arms of State, the SAPS, Scorpions, Customs and Immigration Services would contribute to significantly improved investigations which in turn would impact on the quality of prosecutions and increase public confidence in our systems.

85. In March 2004, Jean Redpath published a monograph titled "The Scorpions: Analysing the Directorate of Special Operations". The monograph provides, inter alia, an overview of the methodology, history, operation, mandate, performance and comparison of the DSO. A copy of the monograph is annexed hereto marked **"HG10"**. I annex hereto an affidavit by Ms Redpath in which she confirms that she is the author of the monograph and in which she confirms the content thereof. I ask that the contents of annexure **"HG10"** be read as if incorporated herein.

The track record of the DSO

86. It is a matter of public record that, in the seven years since its establishment, the DSO has been extremely successful in the combating of crime.

87. I annex hereto marked **"HG11"** a copy of a document which indicates the performance levels of the various crime prevention units within the Republic of South Africa, being a document that was tabled before Parliament with regard to the budget for the forthcoming year. The document records as follows:

87.1. The conviction rate achieved by the Scorpions for the period 2004/2005 was 88%, 82% for the period 2005/2006, 85% for the period 2006/2007, and 85% for the period 2007/2008.

87.2. The number of investigations finalised by the Scorpions for the period 2004/2005 was 325, for the period 2005/2006 was 318, for the period 2006/2007 was 267, and for the period 2007/2008 was 128.

87.3. The number of prosecutions finalised for the period 2004/2005 was 234, for the period 2005/2006 was 243, for the period 2006/2007 was 214, and for the period 2007/2008 was 122.

88. The track record of the DSO is further analysed in Jean Redpath's monograph titled "The Scorpions: Analysing the Directorate of Special Operations", to which I have already referred (annexure **"HG10").**

89. Significantly, the First Respondent himself recognises that organised crime is a threat to the national security of the country and that the DSO has been effective in dealing with organised crime. This is evident from Annexure **"HG12"** hereto, being a copy of a letter addressed by the First Respondent to the then National Director of Public Prosecutions, advocate Vusi Pikoli, in which the First Respondent stated that:

89.1. the NPA forms an important part of our criminal justice machinery, and, accordingly, our fight against crime;

89.2. this machinery to fight crime was further strengthened in 2000 when Parliament adopted legislation creating the DSO in the office of the National Director of Public Prosecutions;

89.3. in recognition of the particular threat posed by organised crime in the country, the DSO was specifically tasked to investigate and institute criminal proceedings relating to organised crime;

89.4. organised crime poses a serious threat to our national security.

Investigation of prominent ANC members by the DSO

90. It is well-known that the DSO has been involved in a number of high-profile investigations involving prominent members of the ANC. They include the following:

90.1. the so-called "Travelgate Scandal" (being an investigation conducted by the Scorpions in connection with various Members of Parliament – including ANC members – who had defrauded Parliament with regards to their travel expenditure. A list of the

Members of Parliament implicated in Travelgate is annexed hereto marked **"HG13"**. It is significant that the investigation was initially handled by SAPS but was subsequently handed over to the DSO on the basis that SAPS was not as well-equipped to deal with the matter. In this regard, I respectfully refer this Honourable Court to Annexure **"HG14"**, being a copy of a memorandum addressed by the Former Secretary to Parliament (Mr S Mfenyama) to the former Speaker of Parliament (Dr F N Ginwala) and the former Chairperson of the National Council of Provinces (Mrs G N M Pandor). The transfer to the DSO was approved and the investigation was formally handed over to the DSO on 4th February 2004, as is evidenced from Annexure **"HG15"**, being a copy of a letter addressed by Mr Mfenyama to Advocate A. Mopp, the Regional Head of the DSO);

90.2. the successful prosecution of Mr Schabir Shaik, the "financial adviser" to Mr Jacob Zuma (pursuant to which Mr Shaik was sentenced to a jail term of 15 years);

90.3. the pending prosecution of the newly-elected President of the ANC, Mr Jacob Zuma, on charges of corruption;

90.4. the successful prosecution of Mr Tony Yengeni on charges of fraud;

90.5. the pending prosecution of the National Commissioner of Police, Mr Selebi, on charges of corruption.

91. The DSO has for some time been investigating alleged irregularities in relation to the so-called “Arms Deal”. I understand that this investigation has involved a number of ANC members (including Mr Shaik and Mr Zuma). I refer in this regard to the affidavit of Andrew Feinstein annexed hereto. I ask that the contents of Mr Feinstein’s affidavit be read as if incorporated herein.

92. A number of high-ranking members of the ANC (including members of its newly-elected National Executive Committee) have been investigated and, in certain instances, convicted of offences as a result of investigations conducted by the Scorpions. I understand from the media reports referred to below that the following members of the newly-elected National Executive Committee of the ANC are amongst those individuals who have been investigated in relation to criminal activities:

92.1. TONY YENGENI : Investigated, convicted and jailed for fraud after failing to declare to Parliament a 47% discount received on his motor vehicle.

92.2. BATHABILE DLAMINI: Was investigated and implicated in the Travelgate fraud. Ms Dlamini pleaded guilty to defrauding Parliament in the sum of R254 000.00, was given a 5-year suspended sentence and was fined R120 000.00, payable over 24 months.

92.3. RUTH BHENGU : Investigated and implicated as a Travelgate fraudster. Ms Bhengu resigned as a Member of Parliament after pleading guilty to defrauding Parliament in the sum of R43 000.00, was sentenced to 2 years' imprisonment or a R45 000.00 fine, and was given a three year suspended sentence.

92.4. NYAMI BOOI : Investigated and accused of being a Travelgate fraudster. Mr Booi is due to face criminal prosecution during the course of 2008. (I am led to believe that Mr Booi is the leading protagonist in Parliament for the disestablishment of the DSO.)

92.5. THABA MUFAMADI : was, until recently, Limpopo's MEC for Public Works. He resigned during 2006 over claims that he had received bribes in a social grants tender. Mr Mufumadi is currently being investigated by the Scorpions for alleged corruption.

92.6. NOSIVIWE MAPISA-NQAKULA: Was investigated in the Travelgate fraud matter and was allowed the opportunity to repay monies illegally taken rather than face prosecution. Ms Mapisa-Nqakula and her husband, the Second Respondent, have been allowed to repay thousands of rands to the liquidators of the travel agencies involved in Travelgate, but have since ceased these re-payments.

92.7. NDLELENI DUMA : Is one of the Members of Parliament who was investigated in the Travelgate scandal, pleaded guilty to a charge of theft, and was fined R30 000.00 or imprisonment of 3 years.

92.8. NGOAKO RAMATLHODI : Is currently under investigation by the Scorpions for alleged corruption, in which it is alleged that Mr Ramatlhodi and Mr Mufamadi were secret shareholders of Northern Corporate Investment Holdings which owns 30% of Cash Paymaster Services, which was awarded a multi-million rand tender for the disbursement of social grants.

93. In confirmation of what is set out in the preceding paragraph, I respectfully refer this Honourable Court to the newspaper article published by The Times on 22 December 2007, a copy of which is annexed hereto marked

"HG16". In addition hereto, I respectfully refer this Honourable Court to the 17 January 2008 edition of the Mail & Guardian and to an article published in the 25 February 2008 edition of The Times and annexed hereto marked **"HG17"** and **"HG18"** respectively.

94. Other Members of Parliament and high-ranking ANC officials who have been implicated in the Travelgate scandal (according to documents furnished by the former Chief Financial Officer of Parliament (and the whistle-blower in the scandal), Mr Harry Charlton, include the Second Respondent, the Sixth Respondent, the former ANC Chief Whip, Mr Mbulelo Goniwe, and the current ANC Chief Whip Nathi Mthethwa.

The Khampepe Commission

95. In 2005 the First Respondent, acting in terms of section 84(2) of the Constitution, appointed a Commission to investigate the mandate and the location of the Scorpions. The Commission was chaired by the Honourable Justice Khampepe, and I shall accordingly refer to it as "the Khampepe Commission". I annex hereto marked **"HG19"** the relevant Notice that established the Khampepe Commission (Government Notice R317 dated 1 April 2005, as published in the Government Gazette No. 27446).

96. The terms of reference of the Khampepe Commission were to enquire into, make findings, report on and make recommendations regarding (inter alia) the following matters:

96.1. the rationale behind the establishment of the Scorpions and the institutional location of the Scorpions;

96.2. the mandate of the Scorpions and an evaluation of the implementation thereof;

96.3. the systems for management, control, communication, oversight and accountability by the Scorpions;

96.4. accountability, effectiveness, efficiency and oversight in respect of the intelligence operations of the Scorpions;

97. In June 2006, the Khampepe Commission completed its report. It did so after conducting a process that involved the receiving of written and oral submissions from various interested parties, and the holding of public hearings.

98. On 5 May 2008, the First Respondent published the Report of the Khampepe Commission. A copy of the Report is annexed hereto marked **"HG20".**

99. The findings in the Khampepe Report included the following:

99.1. the location of the DSO within the structure of the National Prosecuting Authority was not unconstitutional;

99.2. the rationale for the establishment of the DSO continues to exist;

99.3. the DSO was not established as a temporary structure, and the mandate of the DSO as described in section 7 of the NPA Act and, in particular, relating to the information-gathering capabilities of the DSO should be left as is and should not be amended;

99.4. the discord between the DSO, SAPS and other intelligence agencies of the country could be managed through the Ministerial Co-Ordinating Committee created by section 7 of the NPA Act, and other committees, but the Ministerial Co-ordinating Committee had failed to meet or fulfil its obligations;

99.5. although there were some problems in the functioning of the DSO, these problems could be rectified and there was no reason to disestablish and/or relocate the DSO.

100. In short, the Khampepe report recommended that the DSO should continue to be located within the National Prosecuting Authority. The report states

in unequivocal language that "the rationale for the establishment of the DSO is as valid today as it was at conception", and that "the DSO should continue to be located within the NPA". Its conclusion could not have been more expressed in more forthright language:

> "Until such time as there is cogent evidence that the mandate of the Legislature (to create a specialised instrument with limited investigative capacity to prosecute serious criminal or unlawful conduct committed in an organised fashion) is demonstrably fulfilled, I hold the view that it is inconceivable that the Legislature will see it fit to repeal the provisions of the NPA Act that relate to the activities and location of the DSO." (my emphasis)

Cabinet accepted the recommendations of the Khampepe Commission

101. The Cabinet accepted the recommendations of the Khampepe report shortly after the report was completed. In other words, the Cabinet approved the recommendation of the Khampepe Commission that the DSO should continue to be located within the National Prosecuting Authority. In support of this, I refer to the following.

102. The Khampepe Commission submitted its report to the First Respondent, who, in turn, referred the report of the Commission to the National Security Council. The National Security Council considered the report and submitted recommendations to the Cabinet. Pursuant thereto, the Cabinet

endorsed the National Security Council's decision to accept, in principle, the recommendations of the Commission, including the matter of retaining the Scorpions within its current structure. In short, the Cabinet re-affirmed the architecture and practice of the Scorpions as originally conceptualized (namely that the Scorpions should deal with high level priority crime and that it should deal with cases referred to it by SAPS).

103. In a statement issued by the Government on or about 29 June 2006, it was asserted that the implementation of the recommendations of the Khampepe Commission should assist in enhancing the integration of the work of the relevant departments against organized crime. It was also stated that the implementation of these recommendations would significantly improve oversight over the Law Enforcement functions of the Scorpions. It was moreover stated that it was the firm resolve of the Cabinet that all anti-crime agencies of the State should re-double their efforts to make South Africa safer and more secure for all its citizens. In confirmation of the aforegoing, I refer to the statement published on the South African Government Information website, a copy of which is annexed hereto marked Annexure **"HG21".**

104. On or about 6 December 2006, the Cabinet held its final meeting of the year in Pretoria. The meeting, inter alia, reviewed the progress in

implementing the recommendations of the Khampepe Commission regarding the location of the Scorpions. The tensions between SAPS and the Scorpions were also noted, and the meeting decided that legal instruments must be put in place to ensure greater co-ordination between the two agencies. These legal instruments were to outline the roles and responsibilities of the Second Respondent and the Third Respondent regarding the political oversight of the Scorpions. It was further stated that amendments to the legislation in this regard would be tabled before Cabinet in and during 2007 in order to institutionalize the Commission's recommendations. In confirmation of the aforegoing, I respectfully refer this Honourable Court to Annexure **"HG22",** being a copy of the statement published on the South African Government website on or about 7 December 2006.

104.1 I respectfully submit that it is significant that, although the Report was presented to the First Respondent in June 2006, the First Respondent only published the Report on 5 May 2008. Further argument in this regard shall be addressed at the hearing hereof.

Decisions of the ANC to disband the DSO

105. I have indicated above that the DSO has been extremely successful since its establishment, that the Khampepe Commission recommended that the DSO should continue to exist within the National Prosecuting Authority, and that the Cabinet accepted the recommendation of the Khampepe Commission. The ANC has nevertheless resolved to disband the DSO, and the Government has recently made it plain that it intends to give effect to this resolution of the ANC. I describe this process below.

106. I annex hereto marked **"HG23"** a copy of the Constitution of the ANC. It describes the various institutions and decision-making processes that will be referred to below.

<u>The ANC's 51st National Conference held in 2002</u>

107. During the period 16 to 20 December 2002, the ANC held its 51st National Conference at Stellenbosch. At the Conference, various draft resolutions (which had been adopted by the ANC National Policy Conference during 27 to 30 September 2002) were tabled.

108. In the lead-up to the ANC's 51st National Conference, various discussion documents had been produced as a basis for discussion in ANC branches,

regions and provinces. One such document was an overview of ANC Policy with regard to peace and stability in the country. A copy of this document is annexed hereto marked **"HG24"**. In paragraph 20 of Annexure **"HG24"**, the following is stated:

> "The establishment of the National Prosecuting Authority has transformed the management and function of the Prosecuting service. Progress is being made in all areas, including increasing average court hours to at least four hours, increasing conviction rates, increasing the numbers of seizures and forfeitures of the Asset Forfeiture Unit. The Directorate of Special Operations has also continued to make an impact in combating organized crime, notably urban terror and gangsterism in the Western Cape, vehicle hi-jacking in Gauteng and taxi-violence and racketeering in the Eastern Cape".

109. At the 51st National Conference of the ANC, various resolutions were adopted relating to peace and stability. In adopting these resolutions, the following was noted:

> "The successes of the South African Police Service, the Intelligence Agencies and in particular the Asset Forfeiture Unit and the Directorate of Special Operations (Scorpions) in combating criminal activities."

110. Based on the aforesaid, the National Conference resolved as follows:

110.1. That the Conference re-affirms the Resolutions of the 50th National Conference of the ANC in Mafeking and further affirmed by the National General Council in July 2000.

110.2. That the ANC commends the Security Agencies for the successes they have achieved during the period under review especially in the recent past with regards to their intelligence gathering work, crime prevention investigation and prosecution.

111. In order to avoid prolixity, all the Resolutions adopted by the 51st National Conference of the ANC will not be annexed hereto, but the relevant portions are annexed and marked **"HG25".**

The ANC's National Policy Conference held in 2007

112. During the period 27 to 30 June 2007, the ANC held its National Policy Conference at Gallagher Estate. At the Policy Conference, various issues were discussed (including peace and stability) and various draft resolutions were prepared for tabling at the ANC National Conference to be held from 16 to 20 December 2007.

113. In dealing with the issue of peace and stability, the National Policy Conference noted that:

113.1. defeating crime is in the best interests of the National Democratic Revolution;

113.2. community policing is the best form of policing;

113.3. many of the resolutions on peace and stability adopted at the 51st Conference of the National General Council on various issues were still relevant;

113.4. the continuous implementation of those resolutions was an urgent priority.

114. After noting what is set out in the preceding paragraph, the National Policy Conference went on to prepare the following draft resolutions:

114.1. Implementation of all resolutions on peace and stability adopted at the 51st National Conference be finalised;

114.2. “The constitutional imperative that there be a single Police Service under the command of the National Commissioner of South African Police Service be implemented so that Municipal/Metro Police, and the Directorate of Special Operations (Scorpions) be located within the South African Police Service”;

114.3. “The DSO (Scorpions) be a special unit to deal with organised crime within the Police Services”;

114.4. “The relevant law be promulgated as a matter of urgency to give effect to the aforegoing”.

115. Once again, in order to avoid prolixity, all the draft resolutions adopted at the National Policy Conference will not be annexed, but the relevant portions referred to above are annexed hereto as **"HG26"**.

The ANC's National Conference held in 2007

116. The ANC's 52nd national conference was held at Polokwane from 16 to 20 December 2007

117. At the Conference, it was noted that:-

117.1. defeating crime is in the best interests of the National Democratic Revolution;

117.2. community policing is the best form model of policing;

117.3. the resolutions on peace and stability adopted at the 51st Conference at the 2005 National General Council are still relevant;

117.4. the continuous implementation of those Resolutions is an urgent priority.

118. After noting the aforegoing, the 52nd National Conference resolved as follows:-

"6. The constitutional imperative that there be a single police service should be implemented.

7. The municipal, metro and traffic police be placed under the command and control of a National Commissioner of the South African Police Service, as a force multiplier.

8. The Directorate of Special Operations (Scorpions) be dissolved.

9. Members of the DSO performing policing functions must fall under the South African Police Services.

10. The Relevant legislative changes be effected as a matter of urgency to give effect to the aforegoing resolution."

119. I shall refer to the above-quoted resolutions collectively as "the Polokwane resolution".

120. Once again, and in order to avoid prolixity, all the resolutions passed at the 52nd National Conference will not be annexed. The relevant portions dealt with above are annexed hereto and marked **"HG27".**

Steps taken by Cabinet to dissolve the DSO after the Polokwane conference

121. Pursuant to the Polokwane resolution, the Cabinet has initiated urgent steps to introduce legislation that will disband the Scorpions. I describe those steps below.

Statements of Cabinet's intentions after the Polokwane conference

122. In his State of the Nation address on 8 February 2008, the First Respondent stated in Parliament that the priority of the Government for the forthcoming year is, inter alia, the revamping of the criminal justice system to intensify the offensive against crime. As regards the DSO, the First Respondent stated as follows:

> "Informed by the imperative to intensify the offensive against organized crime, as well as the recommendations of the Khampepe Commission on the functioning and location of the DSO and continuing reflections on this matter, including the reform of the criminal justice system, we shall, by the end of March this year, interact with Parliament on legislation and other decisive matters required further to enhance the capacity to fight organised crime.
>
> What will continue to inform us as we take this step will be the absolute commitment of government to fight organized crime and improve the management, efficiency and co-ordination of the law-enforcement agencies.
>
> Of great importance is that success in the fight against crime depends on co-operation amongst all of us as law abiding citizens, inspired by the principles of the rule of law, respect for the judiciary and pursuit of equal human rights, which the Constitution enjoins us to observe in our daily lives and pronouncements."

123. In confirmation of the aforegoing, I annex hereto the relevant portions of a copy of the State of the Nation address of the First Respondent marked "**HG28"**.

124. Prior to the State of the Nation address by the First Respondent, the Acting National Director of Public Prosecutions, Adv Mokotedi Mpshe, had addressed a communiqué to all of the staff of the Scorpions, on or about 23 January 2008. Advocate Mpshe advised that "*a decision*" had been taken about the Investigative Unit of the Scorpions, and that it had been resolved that the process relating thereto must be finalised by June 2008. In confirmation of the aforegoing, I refer this Honourable Court to Annexure **"HG29"**, being a copy of the memorandum. (Although the memorandum is undated, there is a follow-up memorandum dated 24th January 2008 [a copy of which is annexed hereto marked **"HG30"**] which refers to the previous memorandum.)

125. The Memorandum does not indicate who made the "decision" referred to therein. This matter is however clarified by the Minutes of a Workplace Forum Meeting with the Fourth Respondent (Adv. Mpshe) and DSO Management conducted on 30 January 2008. A copy of the minutes is attached hereto marked **"HG31"**. I do not have a signed copy of the minutes, but I have managed to obtain an Affidavit from Mr Pierre Du Toit, who was present at the meeting. The affidavit will be filed herewith. Having regard to the said minutes, it is apparent that:

125.1. the Fourth Respondent advised that a decision had been taken by the ANC to disband the DSO, and that a communication was received from the Third Respondent on 7/8 January 2008 that, indeed, the DSO, is disbanding;

125.2. the Management indicated that they are not in a position to challenge the disbanding of the DSO, but merely had to implement the said decision to disband;

125.3. the Fourth Respondent advised that there existed a possibility that the decision of the Cabinet and the First Respondent may differ with that of the ANC, but that the chances thereof were very slim.

126. The Director General of Justice, Mr Menzi Simelane stated in an interview conducted on 702 Talk Radio on or about 14th February 2008 (a transcript of which is annexed hereto marked **"HG32"**) that:

126.1. The Scorpions will definitely be amalgamated and basically it means that there is a dissolution of the Scorpions;

126.2. The Scorpions will be placed in the Organised Crime Unit of SAPS;

126.3. The Organised Crime Unit of SAPS will also be dissolved, and out of that amalgamation a new Unit will be created with a new name and with new capacities that will fight organised crime;

126.4. People must accept that the Scorpions will be dissolved, that such dissolution will happen and is happening; and

126.5. Work has started and the Department of Justice will be on track to get the dissolution done as soon as possible;

127. I annex hereto marked **"HG33"** a document detailing the legislative programme for 2008 of the Department for Safety and Security and which was furnished by the said Department in and during February 2008. It states as follows (my emphasis):

> "Government has made known just recently its decisions on the future of the Directorate of Special Operations (DSO). This decision requires amendments to the South African Police Service Act, 1995, as well as to the National Prosecuting Authority Act, 1998 (administered by the Minister of Justice and Constitutional Development). It will also require some consequential amendments to a number of other laws administered respectively by the Minister for Safety and Security and the Minister of Justice and Constitutional Development. In view of the decision that this legislation must be ready to be introduced by March 2008, the proposal was made that the enabling the legislation be dealt with as a General Law Amendment Bill. Discussion between the Department for Safety and Security and the Department of Justice and Constitutional Development in this regard are on-going. Drafters of

both Departments are already exploring the different drafting options and consulting informally."

128. Having regard to **"HG33",** it is clear that it is the intention of the Government to fast-track the legislation demanded by the Polokwane resolution, regardless of other priorities.

Publication of the bills that will disestablish the DSO

129. On or about 9 May 2008, a draft amendment to the NPA Act was made available ("the NPA Bill"). A copy of the Bill is annexed hereto marked **"HG34"**. To the best of my knowledge, the NPA Bill has not yet been published in the Government Gazette. The amendment will delete all references to the DSO from the NPA Act. In other words, the amendment will terminate the existence of the DSO by disestablishing it.

130. On 9 May 2008, the General Law Amendment Bill of 2008 was published in the Government Gazette ("the GLA Bill"). A copy of the GLA Bill is annexed hereto marked **"HG35".** The GLA Bill has subsequently been re-named the South African Police Service Amendment Bill ("the SAPSA Bill"). A copy of the SAPSA Bill is annexed hereto marked **"HG35A".**

130.1. The preamble states that the purpose of the Bill is to "transfer the investigative capacity and operational powers of the [DSO] to the

South African Police Service". The Bill gives effect to this intention.

130.2. I draw particular attention to para 1.4 of the Memorandum attached to the Bill, which states as follows:

> "Various decisions were taken by Cabinet on the future of the DSO. Cabinet eventually decided that there was a need to address organised crime in a more comprehensive fashion, and to that end to amalgamate selected members of the investigative component of the DSO with selected members of the Commercial Crime Component of the South African Police Service … into a new crime combating unit which is established within the South African Police Service …."

130.3. In as much as the Memorandum states that "various decisions were taken by Cabinet on the future of the DSO", this clearly refers to the decisions that I described above in which Cabinet had accepted the recommendations of the Khampepe Commission. The next sentence of the Memorandum states that Cabinet "eventually decided" to adopt a different strategy and to "address organised crime in a more comprehensive fashion" by disestablishing the DSO. This makes it plain that Cabinet abandoned its earlier decision to accept the recommendations of the Khampepe Commission, and decided instead to disestablish the DSO. Once again, it is submitted that it is significant that the First Respondent took some two years to publish

the Khampepe Commission Report, and that such report was only published after Cabinet approved the abovementioned Bills on 30th April 2008. Further argument in this regard shall be addressed at the hearing hereof.

131. It appears that the SAPSA Bill was submitted by the Second Respondent on 12 May 2008, and was referred to the Portfolio Committee on Safety and Security and the Select Committee on Security and Constitutional Affairs. This appears from the Announcement, Tablings and Committee Report that is annexed hereto marked **"HG36"**.

132. The dates for the Public Hearings on the SAPSA Bill have been advised by the Portfolio Committee on Safety and Security as is confirmed in Annexure **"HG37"** hereto (such dates have subsequently been altered, although no new dates have been made known). The programme, herein, indicates that a mere five days have been allocated for the public hearings on the bills. I respectfully submit that this is far too short a time to ensure meaningful public participation in a matter of such enormous public controversy, and interest.

133. I do not know what stage the NPA Bill has reached in the Parliament process. However I can confirm that, whatever stage it might have reached, it has not yet had a second reading.

134. I annex hereto marked **"HG38"** a copy of the relevant Rules of the National Assembly, being Rules 229-257, 268-272 and 296-300.

Cabinet's decision seeks to give effect to the Polokwane resolution

135. I respectfully submit that the events referred to above make it clear that the Cabinet's decision to disestablish the Scorpions has been taken in order to give effect to the Polokwane resolution. In further support of this, I refer to the following.

136. I annex hereto marked **"HG39"** a speech made by the Second Respondent in Parliament on 12 February 2008. The Second Respondent stated as follows (my emphasis):

> "The DSO has been discussed within the ANC many times since its establishment. The discussions covered such questions as to whether the Unit was doing its work in accordance with the dictates of its mandate; the way it carried out its investigations; our belief that there is merit in keeping investigative units separate from the prosecuting service for better monitoring, command and control, and where it was proper to locate the investigative arm of the DSO within the prosecuting services.

> It is now history that the matter was subsequently referred for adjudication to the Khampepe Judicial Commission.
>
> The ANC took the matter to its Policy Conference last year for further discussions and presented a recommendation to the Polokwane National Conference for the dissolution of the Scorpions and the re-deployment of its investigators to the South African Police Service for central command and control and the improvement of the co-ordination of the work of all Law Enforcement Agencies that deal with organized crime.
>
> We want to place on the table, therefore, a proposal for the creating of a better crime fighting unit, to deal with organised crime, where the best experience of the Scorpions and the police's Organised Crime Unit will be merged. The best investigators from the two units will be put together, under the South African Police Service, as a reconstructed organised crime fighting unit. The Scorpions, in the circumstances, will be dissolved and the Organised Crime Unit of the police will be phased out and a new amalgamated unit will be created.
>
> We note with pride the good work that has been done in the past by the law-enforcement agencies and the many successes scored in the fight against organised crime. Both the police and the Scorpions have done well in that respect. There are many criminals who are in jail serving long sentences, after they were busted by the crime fighting units."

137. This speech makes it apparent that the Second Respondent has executed a policy U-turn regarding the DSO, and that he has done so in order to give effect to the Polokwane resolution. Were the position otherwise, there would have been no need for the Second Respondent to refer to the Polokwane resolution at all.

138. After this speech, the Justice, Crime Prevention and Security Cluster conducted a media briefing on 19 February 2008. A copy of the briefing is annexed hereto marked **"HG40".** The briefing stated that the Justice, Crime Prevention and Security Cluster was discussing an option, other than the recommendations by the Khampepe Commission, that will be taken to Cabinet soon, namely that the Government re-consider the Organised Crime Combating Unit in existence to design a programme in the best interests of the Country. The proposal was to create a team that will work in the best collective traditions to fight organized crime. The team will be an amalgamation of the best investigators of both the Scorpions and the SAPS Organised Crime Unit, whilst other investigators will be recruited elsewhere to give the new structure adequate capacity.

139. On or about 12th/13th February 2008, the Third Respondent addressed Parliament in the debate on the First Respondent's State of the Nation address. In the said address, a written copy of which is annexed hereto marked **"HG41",** the Third Respondent stated, *inter alia*, that:-

139.1. at the core of the agenda should be the enhancement of the capacity to fight crime (organised crime and corruption in particular);

139.2. Parliament would be approached by March 2008 with legislation relating to the restructuring;

139.3. in the realignment being considered, no breach of the Constitution would occur and the rights of members of the DSO would not be undermined.

140. Various members of the ANC's National Executive Committee have made it clear that the Government is expected to give effect to the resolutions that were adopted at the Polokwane conference. I draw particular attention to the following:

140.1. Mr Matthews Phosa, the newly-elected treasurer-general of the ANC, stated as follows in the 11th January 2008 edition of the Financial Mail (Annexure **"HG42")**:

140.1.1. "The president of the country takes guidelines, mandates and instructions from the ANC…. There is only one centre of power and that is the highest decision-making structure of the ANC".

140.1.2. "The NEC, including the President of the ANC, in effect becomes the representative of the majority of

voters between elections. Its task therefore is to instruct the executive and legislative organ of government on issues of policy."

140.1.3. "The elected ANC structures hold the ultimate power in this situation and all structures and leaders of the governing party will account to them".

140.1.4. "The President and his or her Cabinet accounts to the NEC of the ANC, as any other structure of Government does"

140.2. Mr Themba Maseko, the spokesperson for the Cabinet, made the same point when he stated as follows in an article which was published on 5th February 2008 by the Centre for International Political Studies(a copy of which is annexed hereto marked **"HG43"):**

> "The President of the ruling party made it very clear that there is only one centre of power and that is the ruling party."

141. A series of media reports similarly make it plain that the Cabinet's decision to disestablish the DSO seeks to give effect to the Polokwane resolution. They include the following:

141.1. I annex hereto marked **"HG44"** an article published in The Times on 19 January 2008. It reported that in discussions conducted between the National Executive Committee of the ANC and the Cabinet, the Second Respondent was instructed that the Investigations Unit of the National Prosecuting Authority (i.e. the Scorpions) must be incorporated into the SAPS by June 2008.

141.2. I annex hereto marked **"HG45"** an article published in The Times on 27 January 2008. It stated that, according to the ANC's National Executive Committee, the most urgent priority facing the ANC was the disbanding of the Scorpions and their incorporation into SAPS. It also reported that the Sixth Respondent advised that it was very easy to accomplish the task of disbanding the DSO.

141.3. I annex hereto marked **"HG46"** an article that was published in The Times on 27 January 2008. It reported that:

141.3.1. the ANC's National Executive Committee had instructed the Third Respondent to override the recommendations of the Khampepe Commission Report and draft a new Bill to disband, rather than re-organise the Scorpions;

141.3.2. prior to the ANC's National Conference in December 2007, the Third Respondent presented a draft National Prosecuting Authority bill to ANC Members of Parliament in which it was sought to implement the Commission's recommendation that the Scorpions report to the Second Respondent;

141.3.3. the ANC National Conference in December 2007 rejected the Khampepe recommendation, insisting that the Unit be dissolved and that the members who perform police functions should fall under SAPS;

141.3.4. the Third Respondent had been told, in no uncertain terms, that the aforegoing was to happen;

141.3.5. the Justice Committee and the Safety & Security Committee would have to rush legislation through Parliament if Parliament was to meet the ANC's June 2008 deadline for disbanding the Scorpions, being a Unit that has become the bane of some ANC party leaders;

141.3.6. the Third Respondent would have to release the Bill by

the end of March 2008, if Members of Parliament were to have any chance of meeting the deadline.

141.4. In a report published in the Pretoria News on 20 February 2008 (Annexure **"HG47"**), it was reported that:

141.4.1. Siphiwe Nyanda (a newly-elected member of the National Executive Committee of the ANC and the Head of the ANC's Peace and Stability Sub-Committee) stated that the Government had given its commitment to the ANC to fast-track the incorporation of the Scorpions into the police by the June 2008 deadline as determined by the ANC Conference in December 2007;

141.4.2. Nyanda said the dissolution of the Scorpions would proceed with sufficient speed to meet the deadline;

141.4.3. Nyanda further stated that from the ANC's point of view, they have considered the matter carefully, and the Government has considered all possibilities of legal challenges and was of the view that nothing legally prevents them from carrying out the

Resolution.

141.5. In an interview conducted with the ANC Secretary General Gwede Mantashe and published in 23 March 2008 edition of the Sunday Times (a copy of which is annexed hereto marked **"HG48"**), Mantashe states as follows:

141.5.1. the ANC intends establishing a unit to monitor and evaluate ANC members in Government (i.e. the Cabinet);

141.5.2. the ANC was the strategic centre of power and had a duty to ensure that the Government lived up to the party's manifesto;

141.5.3. the DSO are monsters aimed at destroying leaders linked to the ANC, and that the decision to disband the DSO was to undo the monster of the ANC's own creation;

141.5.4. the decision to disband the DSO was the correct decision;

141.5.5. the ANC had based its decision as a result of how the

ANC perceived the DSO to operate, and especially its decisions on who should be prosecuted in the ANC;

141.5.6. only the elite members of society did not want the DSO disbanded.

141.6. In a seminar hosted by the Institute for Security Studies on 10th April 2008 (a filmed version of which will be made available at the hearing hereof if necessary), Mr Siphiwe Nyanda (a member of the ANC NEC) stated as follows:-

141.6.1. the prosecution of ANC President Jacob Zuma is not totally divorced from the ANC's decision to disband the DSO, and the Polokwane resolution was informed by the view of how the DSO conducted itself in relation to Jacob Zuma. We (the ANC) find the DSO's dabbling in politics dishonourable and must be stopped;

141.6.2. as far as the ANC is concerned, it is important to separate investigators from prosecutors to prevent an abuse of authority that may occur where prosecutors are also involved in investigations from the start;

141.6.3. there is unhealthy competition between the country's crime-fighting agencies, particularly the DSO and SAPS which undermines the country's crime-fighting capacity.

141.7. In an interview conducted by Chris Barron with Mr Nyanda, and which was published in the 13 April 2008 edition of the Sunday Times (a copy of which is annexed hereto marked **"HG49"**) Mr Nyanda stated that:-

141.7.1. the ANC is bound by the ANC Polokwane Conference Resolution and the plan to disband the Scorpions was still on track; and

141.7.2. the DSO will be located within the SAPS, although the ANC had not worked out the reporting mechanisms; and

141.7.3. the fact that the morale of the members of the DSO may be affected by the decision to disband the unit by June 2008 was a concern, but the fact that the unit was to be disbanded stands.

141.8. At a meeting held between Helen Zille (the leader of the Democratic Alliance) and Gwede Mantashe (the ANC Secretary-General) on 15 April 2008, Mr Mantashe stated that:-

141.8.1. the ANC wanted the DSO disbanded because the DSO was a political unit made up of apartheid security branch members which treated the ANC like the enemy, and the DSO, like the Democratic Alliance, hated the ANC;

141.8.2. the investigation of Mr Jacob Zuma was an abuse of power;

141.8.3. the ANC would ensure that the Polokwane resolution to disband the DSO was fulfilled;

141.8.4. the ANC wanted the DSO disbanded because the DSO are prosecuting ANC leaders.

141.9. Ms Zille confirms the correctness of what is stated in the preceding paragraph. Her confirmatory affidavit shall be made available at the hearing hereof.

141.10. I respectfully refer this Honourable Court to annexure **"HG50"** hereto, being a copy of an open letter written by the ANC Chief-Whip, Mr Nathi Mthethwa, as published in the Cape Times on 24 April 2008. This letter makes it clear that the decision to disband the DSO finds its roots in the Polokwane resolution, that the decision was made prior to 30 April 2008, and that the decision to disband the DSO is politically motivated.

141.11. I also respectfully refer this Honourable Court to Annexure **"HG31"** hereto which similarly makes it clear that the decision to disband the DSO found its roots in the Polokwane resolution.

Disestablishing the DSO would harm the fight against crime

142. The Cabinet's ostensible intention is to create a new unit in the SAPS in order to do the work that is currently done by the DSO. I respectfully submit that this would harm the fight against crime since the SAPS is not well-positioned to perform functions of this sort. I say so for the reasons that follow.

143. It is well-known and well-documented that SAPS does not have a good track record with regard to its ability to successfully fight crime, arrest

suspects and investigate crime in such a manner that lends itself to more and successful prosecutions.

144. When regard is had to the performance indicators of the SAPS for the last financial year as tabled for the purposes of the budget debate, the following is clear:-

144.1. The rate of depicting contact and property-related crime by the SAPS for 2004/2005 was 39%, for 2005/2006 was 40%, for 2006/2007 was 42%, and for 2007/2008 was 34%; and

144.2. The rate of convicting contact and property-related crimes for the period 2004/2005 was 28%, for 2005/2006 was 27%, for 2006/2007 was 26%, whilst no figures are available for 2007/2008.

145. A copy of the aforesaid indicators is annexed hereto marked **"HG52".**

146. The SAPS can hardly be expected to investigate corruption efficiently in circumstances where it is well-known and well-documented that the SAPS itself is riddled with corruption. Even SAPS acknowledges the problems with regards to the corruption of its individual members (not to mention the charges that have been brought against the National Police Commissioner). As reported in the 24 February 2008 edition of the Sunday Times, corrupt

members of SAPS who are implicated and are convicted of criminal activities, are not having their services terminated, but are kept on in their employment simply because there is a chronic shortage of police personpower within SAPS. The aforesaid report goes on to state that:-

146.1. According to the Independent Complaints Directorate, criminal activity by policemen increased by 8% during 2007;

146.2. More than 1000 policemen were arrested and charged during a special investigation into social grant fraud totalling R5.1 million;

146.3. Many of the policemen charged have pleaded guilty, and have then paid admission of guilt fines of R1000 whilst continuing to work pending internal disciplinary procedures;

146.4. At least 400 SAPS officers and clerks were arrested and charged, but such officers are still awaiting disciplinary action to inform them officially that they have been charged.

146.5. A copy of the aforesaid article is annexed hereto marked **"HG53"**. My attorney has managed to obtain affidavits from the journalists who wrote their report and in this regard I refer to Annexures **"HG53A"** and **"HG53B"** respectively.

147. I refer further to the SAPS Report on the crime situation in South Africa for the period April to September 2007, released and published in December 2007. A copy of this report is annexed hereto marked **"HG54".** I do not propose to deal in detail with such report, but will instead refer to the report of Dr Johan Burger in the Crime Quarterly Volume No. 21 of 2007 in which he conducts an analysis of the crime statistics as released by SAPS for the period. A copy of Dr Burger's report is annexed hereto marked **"HG55".** The following appears from Dr Burger's article:

147.1. Murder has increased by 2.4%;

147.2. Aggravated robbery has increased by 4.6%;

147.3. Residential or house robberies increased by 25.4%, but more alarmingly the risk of residential or house robberies is showing a steady increase. In addition, the invasion-type crime is often accompanied by assault and even torture, rape and murder, with criminals using torture as a means to achieve compliance and to access victim's safes, bank accounts, and so forth;

147.4. Car hi-jacking has increased by 6%;

147.5. Business robberies increased by 62.2%;

147.6. Bank robberies have increased by 118%;

147.7. Cash-in-transit robberies increased by 21.9;

147.8. SAPS does not appear to be concerned by the crime statistics and tends to down-play such statistics;

147.9. In the past six years, SAPS has increased by approximately 30 000 members and their budget almost doubled from R17 billion to R32 billion;

147.10. The crime statistics raised various questions, including the effect and impact of the ongoing re-structuring process on SAPS's ability to combat crime;

147.11. SAPS themselves declare that even if South Africa can reduce the current contact crime by 10% per annum for consecutive years, it will take at least another ten years to reach the majority of other countries.

148. In confirmation of the aforegoing, I respectfully refer this Honourable Court to the Confirmatory Affidavit of Dr Burger annexed hereto. I ask that the contents of **"HG55"** be read as if incorporated herein.

149. I respectfully refer this Honourable Court to the article by Pearle Joubert published in the 2 May 2008 edition of the Mail and Guardian Newspaper annexed hereto marked **"HG56"** I have requested Ms Joubert to furnish me with an Affidavit, but she declined the request (as is evident from **"HG57"** hereto) for fear of having to reveal her sources. Annexure **"HG57"** nevertheless confirms that Ms Joubert stands by the story published, and that Ms Joubert conducted the interviews referred to. The article states that:-

149.1. up to 10% of all police officers in South Africa are either criminal or corrupt;

149.2. these problems are systematic and entrenched in all police stations;

149.3. criminality in the police is chronic and occurs in every unit and in every police station;

149.4. SAPS is a rudderless police service because of the crisis with leadership;

149.5. in 2007, 5500 South Africans laid complaints with the Independent Complaints Directorate against SAPS.

150. That corruption within SAPS is rife is evident from Annexure **"HG58"** hereto, being a paper presented by Andrew Faull of the Institute for Security Studies and styled "Corruption and the South African Police Service – A Review and its Implications". Faull makes it clear that SAPS has no anti-corruption strategy in place.

151. In addition, and is evident from annexure **"HG59"** hereto, being an article which appeared in the 30 March 2008 edition of the Sunday Times, even Government entities have no faith in SAPS and are appointing private sector companies to provide security.

152. I also refer to the "Results of the 2007 National Victim Survey" presented by Antoinette Louw of the Institute for Security Studies on 8 May 2008, a copy whereof is annexed hereto marked **"HG60".** It reflects that most South Africans believe that crime has increased, that corruption is rife within SAPS and that they have no confidence in SAPS.

153. I further respectfully refer to the report of the SAPS policy advisory council, a copy of which is annexed hereto, annexure **"HG61"** (which was released in April 2008) from which it appears that members of the SAPS found that the SAPS is in utter chaos and that corruption is rife.

154. In February 2008, the Democratic Alliance published a document entitled "The Case for Retaining the Scorpions". The document highlights he successes of the DSO and the shortcomings of the SAPS. A copy of this document is annexed hereto marked **"HG62"**.

155. In a report published in the 1 June 2008 edition of the City Press, a copy whereof is annexed hereto marked **"HG63"**, it is stated that organised crime will increase in the country ahead of the 2010 Soccer World Cup because of the Country's lax border controls. I point out that border control currently falls within the mandate of SAPS.

155.1 In a speech made on the anniversary of Primedia's Crime Line Initiative on 12th June 2008, even the Second Respondent admits that SAPS is not capable of fulfilling its constitutional mandate of combating crime when he stated that it will not be the size of the police service that will successfully deal with crime and criminality in the country. A recording of such speech shall be made available at the hearing hereof, if necessary.

156. All of the aforegoing, I respectfully submit, confirms that SAPS has failed, and is failing, to fulfil its constitutional mandate to combat crime and, more

particularly, that any unit within SAPS would be unable to carry out the functions of the DSO with the same degree of competence.

157. I have already indicated that the distinguishing feature of the DSO is that the process is prosecution-driven. As the Khampepe Report points out (para 52.13 page 110),

> "the one telling element of the DSO that sets it apart from the conventional methods used in the investigation and prosecution of offences is the methodology of using teams involving prosecutors, information analysts and investigators in the ultimate prosecution of their cases. It is a principle that is proving to be an effective tool in addressing complex and organised crime."

The efficacy of using teams involving both prosecutors and investigators is highlighted in a speech delivered by WJ Downer SC on 29 May 2008 entitled "The Evolving Role of the Prosecutor and the Police in Complex Commercial/Corruption Investigations and Prosecutions". A copy of the speech is annexed hereto marked "**HG64".** I am advised that the speech has been adopted as the official viewpoint of the Society of State Advocates. Significantly, the SAPSA Bill shows no intention to retain the prosecution-led investigative method of the DSO.

158. In the circumstances, I submit that the disbanding of the DSO and its incorporation within the SAPS would seriously damage the fight against crime in South Africa. Even the SAPS, as referred to in Annexure **"HG14"**

hereto, have previously admitted that it is not equipped to deal with certain crimes. A further example is the failure on the part of SAPS to deal with the recent xenophobic violence in the country.

Consequences of the initiating of legislation to disestablish the DSO

159. It is apparent from what is set out above that the Cabinet has made a decision to disestablish the Scorpions and has indicated that it will fast-track the necessary legislation to achieve this end. As is borne out by Annexure **"HG65"** hereto, the initiating of legislation to disestablish the DSO is likely to bring about the *de facto* destruction of the DSO long before the relevant legislation is enacted. The reason for this is that many members of the DSO will seek alternative employment once legislation is initiated to disestablish the unit in which they work. (I shall indicate below that this process of resignation has already commenced.) Since their vacancies will not be filled, those members of the DSO who remain behind would be rendered institutionally incapable of performing their crime-fighting tasks. This would have a negative impact on the ability of the DSO to perform its functions.

160. In support of what is stated in the preceding paragraph, I refer to the following:

160.1. I annex hereto marked **"HG66"** an interview broadcast on 18 February 2008 on SAFM Radio Station by Jeremy Maggs with the Acting Head of the National Prosecuting Authority, Mokotedi Mpshe. Advocate Mpshe made it clear that morale within the Scorpions was very low, and that this was already impacting on the work of the Scorpions. He also stated that various companies (such as KPMG) had received many applications for employment from members of the Scorpions -- as Advocate Mpshe put it, "they are applying left and right, that is a fact". This situation is likely to be exacerbated now that Cabinet has initiated legislation disestablishing the DSO.

160.2. In an interview conducted in the Sunday Times on 13 January 2008, a copy of which is annexed hereto marked **"HG67"**, Advocate Mpshe made it clear that the DSO had already experienced wholesale resignations.

160.3. I attach hereto marked **"HG68"** an article entitled "Battle rages over the DSO", which was published in the February/March 2008 edition of Khasho (being an internal NPA newsletter). The article describes the uncertainty felt by many DSO members regarding their future.

160.4. My Attorney Kevin Louis confirms that he has been placed in possession of documents by a member of the DSO (and who has asked not to be named), which indicate the number of resignations and potential resignations from the DSO in the Western Cape. A copy of these documents is annexed hereto marked **"HG69".**

160.5. I annex hereto marked **"HG70"** a document titled "DSO CLOSURE WORKSHOP" which deals with the "closure" of the DSO.

160.6. I annex hereto, marked **"HG71"** a copy of portion of the February/March 2008 edition of "Khaso" which contains inter alia, a letter from Advocate Mpshe and an article on the closing down of the Scorpions.

160.7. The Head of the DSO, Advocate McCarthy, has recently resigned. I am not in possession of Advocate McCarthy's letter of resignation, but I doubt this fact shall be disputed in light of the wide media attention that it attracted.

160.8. I respectfully refer this Honourable Court to the media report contained in the 5 April 2008 edition of the Star Newspaper annexed hereto marked **"HG72"**. It states that, in a secret survey, 65% of the members of the DSO said they were not prepared to be relocated to

the SAPS, whilst 35% are alleged to have agreed to the relocation, but only if the DSO is relocated as a unit into the SAPS. I attempted to obtain an affidavit from Boyd Webb confirming same, but he was not prepared to do so for fear of compromising his sources, as is evident from Annexure **"HG73"** hereto.

161. I refer further to the affidavit filed by the Fourth and Fifth Respondents in the High Court application, a copy of which is annexed hereto marked **"HG74"**. I pray that the contents of this affidavit be read as if incorporated herein. In their affidavit, the Fourth and Fifth Respondents stated as follows:

161.1. The Fourth Respondent has, over the last 4 months, been involved in discussions with representatives of the Second and Third Respondents concerning proposals for the restructuring of the DSO. The proposals in question have been in the form of a series of draft bills (three in all, excluding the bills published).

161.2. Since January 2008, 26 employees of the DSO have left the employ of the DSO because of the threat of a transfer to a perceived hostile environment, a lack of consultation and the attendant uncertainty,

and/or the prospect of a more attractive, stable and secure working environment or career options.

161.3. A number of employees intend to leave the DSO.

161.4. The DSO has gained a large measure of international endorsement from many developed and developing countries, governments, individuals and other bodies.

161.5. Some 546 projects (which translates into 787 individual investigations, arising from which 161 prosecutions are in progress) are threatened by the intended restructuring of the DSO.

161.6. The comparative impact of the DSO has been unsurpassed.

162. It is clear from what is set out above that the ability of the DSO to perform its crime-fighting functions has been detrimentally affected by Cabinet's decision to initiate legislation disestablishing the DSO. This is one of the prime drivers of the relief that I seek in the present application. It is the decision to initiate such legislation that has caused the harm that is sought to be prevented by the relief envisaged in this application.

The relief sought in prayer B2

163. Against the background set out above, I turn now to indicate the legal basis upon which I seek the relief set out in prayer B2 of the notice of motion.

164. Section 85(2)(d) of the Constitution provides that the First Respondent exercises executive authority together with other members of the Cabinet by "preparing and initiating legislation". I respectfully submit that the First Respondent and the Cabinet must act subject to the constraints imposed by the Constitution when they discharge this function. Section 92(3)(a) of the Constitution makes it clear that they are required to act "in accordance with the Constitution". Similarly, section 83(b) of the Constitution stipulates that the First Respondent "must uphold, defend and respect the Constitution as the supreme law of the Republic"

165. In short, the First Respondent and the Cabinet are subject to the limitations imposed by the Constitution when they "prepare and initiate legislation". If they exceed those limitations, their conduct will be invalid. This follows from section 2 of the Constitution, which provides that conduct inconsistent with the Constitution is "invalid".

166. I respectfully submit that the decision of the First Respondent and other members of Cabinet, taken on or about 30 April 2008, to initiate legislation disestablishing the DSO violated the following constitutional constraints and was accordingly "invalid" within the meaning of section 2 of the Constitution.

167. *First*: the decision to initiate legislation disestablishing the DSO was arbitrary since it was not rationally connected to a legitimate governmental purpose.

167.1. I am advised that "the rule of law" is a foundational value of the Constitution (section 1(c)). It is a component of the rule of law that governmental conduct must not be arbitrary. In other words, all governmental conduct must be rationally connected to a legitimate governmental purpose, failing which it will be unconstitutional. The matter will be fully addressed during argument if necessary.

167.2. For the reasons that follow, I submit that the decision of the First Respondent and other members of Cabinet, taken on or about 30 April 2008, to initiate legislation disestablishing the DSO was not rationally connected to a legitimate governmental purpose.

167.3. It is apparent from what is set out above that the Cabinet has back-tracked on its earlier decision to accept the recommendation of the Khampepe Commission. In my respectfully submission, the only plausible explanation for this about-turn is that the Cabinet is seeking to give effect to the Polokwane resolution.

167.4. I have indicated above that the DSO has been extremely successful in the fight against crime. There can accordingly be no rational basis for the Polokwane resolution. I draw the inference that the Polokwane resolution was motivated by a desire on the part of the ANC to protect its members from current and future corruption investigations by the DSO. In other words, the ANC's decision to disband the DSO was not motivated by the fact that the DSO has been unsuccessful but was rather motivated by the fact that the DSO has been too successful – especially in its investigations of ANC members. I draw this inference for the reasons set out above.

167.5. In sum, the Cabinet's decision to initiate legislation disestablishing the DSO seeks to give effect to the Polokwane resolution in circumstances where the Polokwane resolution was motivated by a desire on the part of the ANC to protect its members from investigation by the DSO. Members of the Cabinet and, indeed

Parliament, have made it clear that they regard themselves as bound by the Polokwane resolution, and that they will give effect to the Polokwane resolution notwithstanding Cabinet's earlier decision to accept the recommendation of the Khampepe Commission.

167.6. I am advised and respectfully submit that the decision to initiate such legislation was not rationally connected to a legitimate governmental purpose. In effect, the First Respondent and the other members of the Cabinet made such a decision in order protect members of the ANC from investigations by the DSO. I respectfully submit that this can hardly qualify as a "legitimate governmental purpose". On the contrary, it is a purpose that is manifestly illegitimate and impermissible. This renders the decision "arbitrary" and inconsistent with the rule of law, particularly in the light of the unacceptably high levels of crime in South Africa. I point out that South Africa is seen as being vulnerable to transnational and domestic crime syndicates, as appears from an article which appeared in the 5 March 2008 edition of the Business Report and which is annexed hereto marked **"HG75"**. I also refer to Annexure **"HG63".**

168. *Second*: the decision of the First Respondent and other members of Cabinet, taken on or about 30 April 2008, to initiate legislation disestablishing the DSO violated my constitutional rights, the constitutional rights of the group that I represent, and the constitutional rights of the public at large.

168.1. Section 7(2) of the Constitution provides that the state "must respect, protect, promote and fulfil the rights in the Bill of Rights". I am advised that this means that the First Respondent and other members of Cabinet must respect, protect, promote and fulfil the Bill of Rights when they initiate legislation.

168.2. In the present circumstances, the First Respondent and other members of the Cabinet have breached this injunction. They have made a decision to initiate legislation disestablishing the DSO in circumstances where the mere act of initiation violates my rights and the rights of other South Africans to life (section 11), dignity (section 10), security of the person (section 12) and property (section 25). I reiterate that the decision to initiate such legislation has had a negative impact on the ability of the DSO to perform its functions. In other words, the decision to initiate the legislation violates the

above-mentioned constitutional rights even before the necessary legislation is enacted by Parliament

169. *Third*: the decision of the First Respondent and other members of Cabinet, taken on or about 30 April 2008, to initiate legislation disestablishing the DSO violated section 41(1) of the Constitution.

169.1. Section 41(1) of the Constitution provides that all spheres of government must "preserve the peace … of the Republic" (subsection (a)) and "secure the well-being of the people of the Republic" (subsection (b)). I am advised that the First Respondent and other members of the Cabinet must comply with this injunction when they initiate legislation.

169.2. In the present circumstances, the First Respondent and other members of the Cabinet have breached this injunction. They have made a decision to initiate legislation disestablishing the DSO in circumstances where the mere act of initiation undermines the peace of the Republic and the well-being of the people of the Republic.

169.3. I reiterate that the decision to initiate such legislation has had a negative impact on the ability of the DSO to perform its functions. In other words, the decision to initiate such legislation violates

section 41(1) even before the necessary legislation is enacted by Parliament.

170. *Fourth*: the decision of the First Respondent and other members of Cabinet, taken on or about 30 April 2008, to initiate legislation disestablishing the DSO violated section 198(a) of the Constitution.

170.1. Section 198(a) of the Constitution provides that "national security must reflect the resolve of all South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life". I am advised that the First Respondent and other members of the Cabinet must comply with this injunction when they initiate legislation.

170.2. In the present circumstances, the First Respondent and the Cabinet have breached this injunction. They have made a decision to initiate legislation that disestablishes the DSO in circumstances where the mere act of initiation undermines the resolve of South Africans to live in peace, to be free from fear, to seek a better life and to live as equals, and exposes all South Africans to what the First Respondent (in Annexure **"HG12"**) describes as a threat to national security.

170.3. I reiterate that the decision to initiate such legislation has a negative impact on the ability of the DSO to perform its functions. In other words, the decision to initiate such legislation violates section 198(a) even before the necessary legislation is enacted by Parliament.

171. *Fifth*: the decision of the First Respondent and other members of Cabinet, taken on or about 30 April 2008, to initiate legislation disestablishing the DSO violated section 179(4) of the Constitution.

171.1. Section 179(4) of the Constitution provides that "national legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice". This must be read with section 179(2), which provides that the prosecuting authority "has the power to institute criminal proceedings on behalf of the state, and to carry out necessary functions incidental to instituting criminal proceedings".

171.2. It follows that, when the First Respondent and other members of the Cabinet initiate legislation, they must "ensure that the prosecuting authority exercises its functions without fear, favour or prejudice". In the present circumstances, the First Respondent and other members of the Cabinet have breached this injunction. They have

made a decision to initiate legislation that would deprive the prosecuting authority of the ability to exercise its functions without fear, favour or prejudice. In support of this, I refer to a press statement that was issued by the Society of State Advocates of South on 13 April 2008, a copy of which is annexed hereto marked "**HG76".** I reiterate that the decision to initiate such legislation has a negative impact on the ability of the DSO to perform its functions, and in the grand scheme, the NPA. In addition, the decision to initiate such legislation and to protect members of the ANC from prosecution, means that the NPA is not able to perform its functions without fear, favour or prejudice.

172. *Sixth:* the decision of the First Respondent and other members of Cabinet, taken on or about 30 April 2008, to initiate legislation disestablishing the DSO violated the constitutional principle of accountability.

172.1. I am advised that accountability of those exercising public power is one of the foundational values of our Constitution. The importance of accountability is asserted in section 1(d), section 41(1)(c) and section 195(1)(f) read with section 195(2) of the Constitution.

172.2. It follows that the First Respondent and other members of the Cabinet must comply with obligations of accountability when they initiate legislation. This obligation is particularly onerous in circumstances where the legislation concerns measures to combat the crime epidemic in South Africa.

172.3. I respectfully submit that the decision to initiate legislation disestablishing the DSO violated the foundational principle of accountability. I reiterate that the legislation has been initiated for the purpose of giving effect to the Polokwane resolution. In effect, the First Respondent and other members of Cabinet seek to disestablish the DSO in order to protect members of the ANC from investigations by the DSO. I respectfully submit that this flies in the face of every tenet of public accountability.

173. I advance the preceding submissions with the knowledge that the Cabinet has on occasion sought to contend that the DSO in its current form contravenes the provision of the Constitution which provides for a single policing structure. This explanation is, with respect, flawed. This is particularly so when regard is had to the rationale for establishing the DSO (as reflected in the annexures hereto), the findings of the Khampepe Commission, and the opinion of the ANC itself as reported by the Daily

News briefing on or about 29 August 2000 (a copy whereof is annexed hereto marked **"HG77")** in which it is reported that the DSO Bill had been certified as legally in order. The matter will be further addressed during argument if necessary.

174. For all of the reasons set out above, I respectfully submit that the decision of the first respondent and the other members of the Cabinet, taken on or about 30 April 2008, to initiate legislation disestablishing the DSO is unconstitutional and invalid within the meaning of section 2 of the Constitution. I seek a declarator to this effect in prayer B2 of the notice of motion.

The relief sought in prayer B3

175. Rule 299 of the Rules of the National Assembly provides as follows:

> "The person in charge of a bill introduced in the Assembly may withdraw the bill at any time before the Second Reading of the bill is decided."

176. The Second and Third Respondents are the persons "in charge of" the SAPSA Bill and the NPA Bill. Since the second reading of those bills has not yet been decided, the First and Second Respondents are at liberty to withdraw the bills in terms of Rule 299.

177. For the reasons that follow, I respectfully submit that the Second and Third Respondents should be directed to withdraw the SAPSA Bill and the NPA Bill. This is the relief that I seek in prayer B3 of my notice of motion.

178. I respectfully submit that I have established a clear right to such relief above. I reiterate that the First Respondent and other members of Cabinet have acted unlawfully by making a decision to initiate legislation that seeks to disestablish the DSO.

179. For the reasons set out above, the ability of the DSO to perform its functions will be detrimentally affected if the NPA Bill and the SAPSA Bill are not withdrawn. It is the decision to initiate this legislation that has caused harm to me, to the group of persons that I represent and to the public at large. That harm will be exacerbated with every passing day.

180. I am advised that, in *Doctors for Life International v Speaker of the National Assembly* 2006 6 SA 416 (CC), this Court posed the question whether it was competent to issue declaratory relief in respect of Parliamentary proceedings before Parliament has concluded its deliberations on a bill. Although this Court declined to express any firm conclusion, it stated as follows (para 69):

> "The basic position appears to be that, as a general matter, where the flaw in the law-making process will result in the resulting law being invalid, courts take the view that the appropriate time to intervene is after the completion of the legislative process. The appropriate remedy is to have the resulting law declared invalid. However, there are exceptions to this judicially developed rule or 'settled practice'. Where immediate intervention is called for in order to prevent the violation of the Constitution and the rule of law, courts will intervene and grant immediate relief. But intervention will occur in exceptional cases, such as where an aggrieved person cannot be afforded substantial relief once the process is completed because the underlying conduct would have achieved its object."

181. I respectfully submit that this is one of the exceptional cases envisaged in *Doctors for Life*, since immediate intervention is called for to prevent the violation of the Constitution and the rule of law. My submission is supported by the political parties, who stated on affidavit in the High Court application that "this is a truly extraordinary case, wherein the inception of the legislation is in violation of legality, which emphatically proscribes an executive [organ] of national government from subjecting itself to the unauthorised directive of an external body, and/or fettering its discretion by rendering itself bound by the decisions of such a body". Indeed the political parties stated that the proposed amendments "have precipitated a constitutional crisis in South Africa". If the *Doctors for Life* exception does not apply in the present circumstances, then I respectfully submit that it will never apply at all.

Urgency

182. I have already stated the reasons for my belief that many members of the Scorpions are seeking alternative employment because the Cabinet has initiated legislation disestablishing the DSO. The initiation of such legislation has commenced a process that, if left unchecked, will mean that the DSO will be rendered institutionally incapable of performing its crime-fighting tasks. Those members of the DSO who have not already resigned will leave for greener pastures, and those members of the DSO who remain behind will be rendered incapable of performing their functions. These consequences will be experienced long before the necessary legislation is enacted, since they flow from the decision to initiate legislation to disestablish the DSO.

183. It is accordingly necessary for this application to be brought on an urgent basis. I am advised that, if the matter were to be brought in the ordinary course, the harm that I have referred to above would already have been suffered by the time that the matter is heard and would be irreversible.

184. Rule 299 of the Rules of the National Assembly provides that the Second and Third Respondents may withdraw the SAPSA Bill and the NPA Bill "at any time before the Second Reading of the bill is decided". It is

accordingly imperative that this matter must be decided before the second reading of the NPA Bill and the SAPSA Bill.

185. In the circumstances, I respectfully submit that this matter is urgent and should be dealt with on this basis by this Honourable Court in terms of Constitutional Court Rule 12.

The exclusive jurisdiction of this Court

186. The High Court judgment intimated that the present matter may fall within the exclusive jurisdiction of this Court. I have indicated above, in the context of Part A, that I dispute the correctness of this finding. The relief in Part B is sought in the event that this Court takes a different view of the matter and finds that it falls within the exclusive jurisdiction of the Constitutional Court in terms of section 167(4) of the Constitution.

Prayer

187. For the reasons set out above, I pray for the relief sought in Part B of the notice of motion.

CONCLUSION

188. I respectfully pray for the relief set out in Part A *alternatively* Part B of the notice of motion.

HUGH GLENISTER

Signed and sworn to before me at on 2008, the deponent having acknowledged that the deponent knows and understands the contents of this affidavit.

_____
COMMISSIONER OF OATHS

full names :
business address:
designation:
capacity: