

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING
EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION
OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES**

**EVIDENCE LEADER'S SUBMISSION TO THE OBJECTION TO WITNESSES
BEING LED BY THEIR LEGAL REPRESENTATIVES TO PRESENT THEIR
EVIDENCE**

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INTRODUCTION

1. At the pre-hearing meeting held on 27 October 2025, an objection was raised by certain parties against permission granted to the witnesses represented by Webber Wentzel, that their counsel will be allowed to lead the evidence of certain witnesses who are to appear before the Commission.
2. The Chairperson of the Commission made a ruling that the objectors will argue the objection before the Commission on 10 November 2025 as a preliminary point.
3. The parties were also ordered to file their objections on or before 5 November 2025 and submissions by 7 November 2025.
4. The purpose of these submissions is to deal with the objections.

APPROACH

5. In these submissions, we will deal with the following:
 - 5.1 Salient facts
 - 5.2 The objections that deal with the following
 - 5.2.1 Procedural unfairness;
 - 5.2.2 Authority to grant permission to Webber Wentzel to lead witnesses; and

5.2.3 Process followed.

5.3 We will first deal with the relevant Rules of the Commission relating to presentation of the evidence of witnesses to the Commission.

5.4 We will then deal with the pertinent legal principles which should be applied in interpreting the Rules.

5.5 We will then deal with our submissions.

5.6 Conclusion.

SALIENT FACTS

6. The law firm acting on behalf of the Calata applicants in the Calata High Court matter requested that they be allowed to lead the evidence of certain witnesses that they represent.
7. On 11 August 2025, Webber Wentzel wrote a letter requesting that they be granted permission to lead certain witnesses and cross-examine others, subject to the Commission's directions. A copy of the letter is attached, marked "**A**"
8. The Chief Evidence Leader agreed to this proposal, and this was confirmed by Webber Wentzel in a letter dated 29 September 2025. A copy of this letter is attached, marked "**B.**"

9. On 25 September 2025, Webber Wentzel sent a letter to the Secretary of the Commission attaching a number of documents, including a document called **“Availability of statements for November hearing”**. In that document, Webber Wentzel stated that they will be happy to lead the evidence of their clients and that they had given affidavits in previous applications. The witness statements were attached as a link to the document. A copy of the letter is attached, marked **“C.”** This letter was sent to the legal representatives of the interested parties on 25 September 2025.
10. The Evidence Leaders were under the impression that since the letters were on SharePoint that they would have been accessible to all interested parties. On 27 October 2025, during the prehearing, it became clear that not everyone had access to SharePoint, and it was decided that all the documents on SharePoint should be loaded onto the website.
11. It took several days to have the technical service providers employed by the Commission to upload all the documents on SharePoint to the website successfully.
12. At the second pre-hearing meeting on 27 October 2025, at which all parties who had expressed interest in the Commission and the legal representatives of some of them were present. The further conduct of the proceedings of the Commission, including the leading of witnesses, was discussed.
13. The Chief Evidence Leader advised the parties that the first set of witnesses to be called will be led in their evidence by Advocate Varney. It bears

mentioning that these witnesses have deposed to affidavits in the High Court in various matters, including in the matter of **Calata and others vs the Government and the Republic of South Africa and others under case number 2025/5245**.

14. It was at this point of the pre-hearing that the legal representatives of certain parties said that they were unaware of this arrangement. The matter was debated at some length, but the parties were not agreeable to the arrangement and raised objections.
15. The Chairperson of the Commission was consulted telephonically and ruled that the objections should be dealt with at the commencement of the Commission proceedings on 10 November 2025, as a preliminary point.
16. The objecting parties have since filed their objections and some have filed written submissions.
17. We will summarise the objections and deal with them at the same time. We will list them in no order of preference but simply for convenience.

AD OBJECTION 1 (BOQWANA BURNS ATTORNEYS ON BEHALF OF THEIR CLIENTS)

18. The objector infers the phrase “primary responsibility” as the obligation resting on the Evidence Leader to place evidence before the Commission. The word “primary” does not exist in Rule 3.1 of the Rules of the Commission. The objector does not explain where that word comes from, nor why it should be

inserted in Rule 3.1. The phrase in the Rules is “**overall responsibility**” of Evidence Leader which is to place the evidence before the Commission. Nothing in Rule 3.1 places the obligation on the Evidence Leader as “primary responsibility.”

19. The argument that there is a primary responsibility for the Evidence Leaders to lead all evidence is not even borne out by other Commissions’ processes. We cite two examples: in the Marikana Commission, as an example, the evidence of Mr Ramaphosa then was presented by Adv. David Unterhalter SC after Farlam J invited him to do so. See [\[https://www.youtube.com/live/OwfdlZL3cD4?si=wxllpNdpqJWz8X5S\]](https://www.youtube.com/live/OwfdlZL3cD4?si=wxllpNdpqJWz8X5S). The same obtained in the Usindiso Commission, where MNS Attorneys, acting for the City of Johannesburg and one of their attorneys led the City of Johannesburg witnesses. At that point, nobody raised an objection against allowing the leading of witnesses by legal representatives.

20. The argument therefore that there is a procedure which requires firstly that there should be a request for anyone to make a written application for them to use their own legal representatives to present their own evidence is without substance. The other leg to that argument is that a Chairperson of a Commission must first obtain possible objections from other parties is not sound. No precedent prevents an obligation for the Chairperson to give permission for a Commission to authorize a witness to use its own legal representative.

AD OBJECTION 2 (STATE ATTORNEY ON BEHALF OF SAPS)

21. SAPS raises an objection that *“in order to maintain transparency, objectivity and fairness, all witnesses of the Commission ought to be treated the same, consulted upon with the evidence leaders and their evidence being presented with the assistance of the evidence leaders”*. Nothing of this objection is contested. The real enquiry is whether any party is being precluded from presenting their evidence as best as they think they should. From the evidence leaders no such hinderance is presented.
22. The Rules place the overall responsibility of placing the evidence before the Commission on the Evidence Leader. They do not prescribe how that responsibility should be carried out, nor do they preclude any witness from being led by their chosen legal representative. Other commissions have allowed witnesses to be led by their own legal representatives.
23. There is nothing unfair or prejudicial for any witnesses' evidence to be presented to the Commission through their own legal representatives. No such prejudice has been presented that the Calata witnesses must be presented by their own legal representatives. The Evidence Leader retains the prerogative to put any question to any witness in order to assist the Commission in making factual findings and recommendations.
24. The Commission is committed to transparency and where procedural issues have an impact on the parties, the Commission will ensure that all parties are brought on board.

25. All the correspondence of the Commission, as well as the minutes, are now on the website.

AD OBJECTION 3 (STATE ATTORNEY ON BEHALF OF THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

26. The Minister's objection is that *"the Chief Evidence Leader engaged in private discussions with counsel representing other parties and thereafter permitted their counsel to lead evidence on behalf of the Commission that this was procedurally unfair and inconsistent with the duty of impartiality imposed upon evidence leaders"*.
27. The Rules place the overall responsibility of placing the evidence before the Commission on the Evidence Leader. They do not prescribe how that responsibility should be carried out, nor do they preclude any witness from being led by their chosen legal representative
28. The chosen legal representative in carrying out the overall responsibility of leading the evidence and allowing witnesses to be led by their own legal representatives does not in any manner prejudice or unfairly affect the procedural rights of anyone, and neither is it inconsistent with the duty of impartiality imposed upon Evidence Leaders.
29. The argument proffered that there is a procedure, that says that there must be a written request for any witness to request the Chairperson for them to present their evidence thorough their chosen legal representatives; that other

parties must be invited to present whatever objection they have to that request and it must be presented to the Chairperson and that the Chairperson must rule on it, and is not contemplated in Rule 3.1 of the Rules of the Commission

30. The complaint that the letter by the Chairperson of 19 September 2025 that Adv Semenya SC will not deal with the NPA's prosecution policy was contravened is misguided, because it had nothing to do with whether or not external counsel can lead their witnesses. Rule 3.1 deals with the aspect of presentation of evidence and does not prohibit the leading of witnesses by their chosen legal representatives.
31. Another complaint is that there was no notice to, or participation by the Minister and other parties in the decision-making process concerning who may lead the Commission's witnesses and that this undermines the fairness of the commission's proceedings. The Rules do not provide for any notice or participation by other parties in the decision of who may lead any witness.
32. There is no perception, as alleged, of unequal treatment between parties before the Commission. All parties are treated fairly, transparently and with impartiality.
33. The objector also raises the complaint that they have a right of a fair hearing which will be compromised if Adv Varney SC leads the Commission's witnesses. The complaint is unfounded.

AD OBJECTION 4 (STATE ATTORNEY ON BEHALF OF NPA)

34. The objector says that *“the objection concerns the lawfulness and propriety of the process by which the request by Adv Varney SC and Webber Wentzel to lead witnesses was granted, including (i) the identity of the decisionmaker, (ii) whether the chairperson was consulted or gave approval, (iii) whether the process complied with the Commission’s Rules (specifically Rule 3.1) and (iv) whether affected parties were afforded notice and an opportunity to be heard before the decision was taken”*.
35. The Chief Evidence Leader agreed with Adv Varney SC that they are permitted to lead their evidence in the manner proposed and that was in accordance with Rule 3.1 of the Rules of the Commission. No process complained about was followed. There is no provision in the Rules that any decision made to allow legal representatives to lead their witnesses should be communicated to all parties and the right of any party to object or not is addressed in Rule 3.1 of the Commission’s Rules.
36. The Chairperson, in response to a proposal made by Webber Wentzel, that another evidence leader other than Adv Semanya SC should deal with the aspect of the prosecution policy, has nothing to do with the arrangement with Webber Wentzel lead Counsel, that the latter will lead evidence of his own clients during the public hearings

THE RELEVANT RULES

37. The relevant rule is Rule 3 of the Rules of the Commission published under Government Gazette No. 53251 of 29 August 2025.

38. Rule 3 deals with witnesses presented by the Commission's Evidence Leader.

39. Rule 3.1 provides as follows:

"Subject to anything to the contrary contained in these Rules or to the Chairperson's directions in regard to any specific witness, the Commission's Evidence Leader bears the overall responsibility to present the evidence of witnesses to the commission."

40. Rule 3.2 provides that:

"A member of the Commission's Evidence Leader may put questions to a witness whose evidence is presented to the Commission by the Commission's Evidence Leader including questions aimed at assisting the Commission in assessing the truthfulness of the evidence of a witness. Subject to the directions of the Chairperson, the Commission's Evidence Leader may ask leading questions."

THE PROPER APPROACH TO INTERPRETATION

41. The leading decision on the approach to the proper approach to interpretation is **Natal Joint Municipal Pension Fund v Endumeni Municipality**.¹

42. The Supreme Court of Appeal in **Natal Joint** observed that over the century there have been significant developments in the law relating to the interpretation of documents, both in this country and others that follow similar rules to our own.² The present state of the law can be expressed as follows:

*“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence.”*³

43. Whatever the nature of the document, consideration must be given to language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed; and the material known to those responsible for its production.⁴

¹ 2012 (4) SA 593 (SCA).

² Paragraph [18].

³ Paragraph [18].

⁴ Paragraph [18].

44. The decision of **Natal Joint** was endorsed by the Constitutional Court in **University of Johannesburg v Auckland Park Theological Seminary and Another**.⁵
45. The Constitutional Court in **University of Johannesburg** held that the approach in **Endumeni** “updated” the previous position, which was that context would be resorted to if there was ambiguity or lack of clarity in the text.⁶
46. The Supreme Court of Appeal has explicitly pointed out in cases subsequent to **Endumeni** that context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous.⁷
47. Interpretation is to be approached holistically: simultaneously considering the text, context and purpose.⁸

SUBMISSIONS

48. In the context of Rule 3(1) and having regard to the ordinary rules of grammar and syntax, the rule simply says that the Evidence Leader bears the overall responsibility (own emphasis) to present the evidence of witnesses to the Commission.

⁵ [2021] ZACC13 at paragraphs [64], [65] and [66].

⁶ Paragraph [66].

⁷ Paragraph [66].

⁸ Paragraph [65].

49. The rule certainly does not say that the Commission's Evidence Leader exclusively must present the evidence of witnesses to the Commission. It simply places the overall responsibility on the Evidence Leader.
50. The rule certainly leaves it open to the Evidence Leader to decide how the overall responsibility is carried out. The word "*overall*" is defined in the Cambridge Dictionary as: "*in general, rather than in particular, or including all the people or things in a particular group or situation*".
51. The rule certainly does not prescribe how the overall responsibility is to be carried out. That remains within the ambit or the functions of the Evidence Leader, subject to the rules or the Chairperson's directions.
52. As regards context in which the rule appears, this is amongst others the Constitution of the Republic of South Africa, the Commissions Act⁹, the Regulations and the Rules themselves. This is the legal context in which the rules must be interpreted.
53. In the first place, as far as the Constitution is concerned, commissions of inquiry are appointed by the President in terms of section 84(2)(f).
54. In the Commissions Act, the preamble records that the Act is meant to make provision for conferring of certain powers on commissions appointed for the purpose of investigating matters of public concern, and to provide for matters incidental thereto. Whenever a commission is appointed for the purpose of

⁹ Act 8 of 1947.

investigating a matter of public concern, the President may by proclamation in the Gazette:

54.1 declare the provisions of the Act or any other law to be applicable with reference to such commission, subject to such modifications and exceptions as the President may specify in such proclamation;¹⁰

54.2 make regulations with reference to such commission –

54.2.1 conferring additional powers on the commission;¹¹

54.2.2 providing for the manner of holding or the procedure to be followed at the investigation or for the preservation of secrecy;¹²

54.2.3 providing generally for all matters which he considers it necessary or expedient to prescribe for the purposes of the investigation.¹³

55. The President declared the provisions of the Commissions Act applicable to the Commission.

56. Regulation 14 gives the Commission the power to determine its own procedures.

¹⁰ Section 1(a).

¹¹ Section 1(b)(i).

¹² Section 1(b)(ii).

¹³ Section 1(b)(iv).

57. Nothing in the Act, Regulations or Rules prescribes that the Evidence Leader shall exclusively present the evidence of witnesses to the Commission.
58. As far as the apparent purpose to which the Rules are directed, this is to assist the work of the Commission, so that the evidence is presented before the Commissioners for them to reach their recommendations.
59. Those responsible for the production of the Rule would know the exigencies which attend such a task as running a Commission. One of the considerations is that the time period within which the Commission must execute its functions are limited.
60. It is also known that the Commission of Inquiry is not adversarial, but inquisitorial. The Evidence Leader carries the overall responsibility to present the evidence; but it may be convenient depending on the exigencies to allow other parties to present the evidence of witnesses, under the overall responsibility of the Evidence Leader.
61. **Endumeni** also instructs that where more than one meaning is possible, each possibility must be weighed in light of all these factors.¹⁴ The process is objective, not subjective.¹⁵ A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.¹⁶

¹⁴ Paragraph [18].

¹⁵ Paragraph [18].

¹⁶ Paragraph [18].

62. The view that the Evidence Leader exclusively must present all the evidence of all the witnesses, is firstly not borne out by the ordinary rules of grammar and syntax. Only one meaning of the rule is possible. There is not more than one meaning of the Rule.
63. The view proposed by the objectors is not sensible or businesslike. It is inflexible and fails to take into account the practicalities of running a commission of inquiry. The overall objective of the Commission is to investigate the matters before it in the public interest. No sensible purpose will be served by insisting that the Evidence Leader exclusively should present the evidence.
64. Our understanding is that as Evidence Leaders how the evidence is placed before the Commission will depend on the exigency of the moment.
65. For those witnesses who prefer to place their account through their own legal representatives, absent any prejudice, there is nothing wrong if the evidence is placed through their own legal representatives.
66. The option is available to any witness who has a legal representative.
67. The Commission's processes are inquisitorial, and not adversarial and the role of the Evidence Leaders is neutral, with the object of placing all facts relevant which will support the recommendations that the Commission will ultimately make.

68. The view that the Evidence Leaders should lead each and every witness before the Commission is not consistent with the objects of the rules. It would seriously be oppressive and offensive for any witness who has secured a legal representative to be told that they are **not** entitled to place their evidence through assistance of their representative. No legal authority exists for such an extraordinary proposition.
69. One should also bear in mind the timelines under which the Commission operates. It would not be possible to consult with each and every witness with the view of the Evidence Leader leading each and every one of them, even where the witness has a legal representative. One has to take a realistic view, given the time constraints. The Commission has to operate within the realities of the timelines imposed on it.
70. We ask for a ruling that every witness who is legally represented may at their election place their evidence before the Commission through the assistance of their legal representatives. Of course, the Evidence Leaders retain the right to put any question to any such witness.
71. Ultimately, the placing of all the evidence will remain the overall responsibility of the Evidence Leaders.
72. Our experience with other Commissions, like the Arms Deal Commission, Usindiso and Marikana Commissions, is that it is not uncommon for certain witnesses to be led by their legal representatives.

73. The argument that the witnesses are to be led by the Evidence Leaders exclusively is not supported by any law, convention or practice.
74. As a concluding remark, it is not novel for a commission of inquiry to have a party's legal representative lead that party's evidence. We make reference to the Marikana Commission of Inquiry as an example.
75. In the Marikana Commission, the then Deputy President of the Republic of South Africa and current President Matamela Cyril Ramaphosa was led in his evidence by his counsel. An excerpt from the transcriptions dated 11 August 2014 marked "A" bears this out.
76. Some other witnesses in the Marikana Commission were also led by their counsel, as appears from an excerpt of the hearing held on 27 August 2024 marked "B".
77. It is trite that the right *audi* does not arise with every decision made in the exercise of public power. First, the objector must establish the right they have to be heard. None has been claimed by the objectors. The second basis under which the objectors would claim a right to procedural fairness is if they establish a legitimate expectation of such a right. Similarly, none has been claimed or established. Whether the objector has the right to procedural fairness and in what manner is case-by-case specific. Further that a party seeking to rely on that right must fully set out the relevant facts and the context that warrants that right. In determining the issues, the Constitutional Court held that our Courts should be slow to impose an obligation upon the Government.

The mere fact that the party has a mere interest does not entitle them to procedural fairness. In the context of a Commission with a limited life span , it should not be over burdened with the duty to grant *audi* even on secondary issues in relation to the Commissions' work. This is more so in instances where the decision does not have a direct prejudicial, direct and substantial external legal effect to the rights of the objectors.¹⁷

78. The purpose of Rule 3.1 is to exclude the rigidity of the evidence leaders having to put questions to the witnesses in instances where it is practically inconvenient or more efficient that such exercise is done by someone either than the evidence leader.

CONCLUSION

79. The Commission should also issue a ruling that no irregularity was committed in the manner in which the Calata parties were allowed to lead their evidence through their legal representatives. the Rules do not provide that the Evidence Leader should exclusively present the evidence of all witnesses before the Commission. Those parties who wish to have their legal representatives lead their evidence should be allowed to do so, under the overall responsibility of the Evidence Leader.

¹⁷ See decisions of: Minister of Public Works and Others v Kyalami Ridge Environmental Association and Another (Mukhwevho Intervening) 2001 (3) SA 1151 (CC) and Premier, Mpumalanga, and Another v Executive Committee, Association of State-Aided Schools, Eastern Transvaal 1999(2) SA 91 (CC) (as per C. Hoexter, "*Administrative Law In South Africa*", 2nd Edition at pp 398-402, fns 243 and 252).

EVIDENCE LEADERS

7 November 2025