

**THE ROLE OF THE INVESTIGATOR IN THE PROSECUTION PROCESS**

**by**

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**submitted in accordance with the requirements  
for the degree of**

**MAGISTER TECHNOLOGIAE**

**in the subject**

**FORENSIC INVESTIGATIONS**

**at the**

**UNIVERSITY OF SOUTH AFRICA**

**(UNISA)**

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**MAY 2015**

## DECLARATION

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I, Manyedi Solomon Nkashe, declare that this research dissertation is my own unaided work. It is submitted in partial fulfilment of the requirements of the degree of Magister Technologiae in the subject of Forensic Investigation for the School of Criminal Justice, University of South Africa. It has not been submitted before for any degree or examination at any other institution.



Signature

Mr M.S. Nkashe

29 May 2015

## **ACKNOWLEDGEMENTS**

I want to express my appreciation to my co-supervisor, Dr NJC Olivier and supervisor Mr MS Manamela, for their continuous guidance through my studies and for introducing me to the field of forensic investigation.

Very special thanks go to Ms S van Tonder, my editor, for her guidance and advice.

My thanks go to the University of South Africa and the South African Police Service's Commercial Crime Unit and Directorate of Public Prosecution Authority, for allowing me to contribute, through the study, to my fellow students.

This dissertation is dedicated to my wife, Lebogang Stephina, who has been my inspiration and driving force throughout this study. I couldn't have completed this dissertation if it wasn't for Lebogang, who encouraged me to continue and to complete this dissertation under very difficult circumstances. I thank you for all your honest feedback. I also want to thank my son, Thato, and daughter, Oratile, for their understanding and encouragement throughout the years of my studies.

I'd like to pay a special tribute to my mother, Merriam Bokhabenyana Nkashe, who taught me to pray that God grant me the serenity to accept the things I cannot change, courage to change the things I can and the wisdom to know the difference.

For the support and contribution of all participants for the success of this research, I say thank you – your experience and expertise assisted me in producing this dissertation.

## ABSTRACT

The process of investigation, which begins when a crime is reported and ends after a suspect has been convicted or discharged by a court of law, is a mammoth task which requires cooperation between various stakeholders, such as investigators and prosecutors. The purpose of this study was to determine the role of the specialised commercial crime investigators in the prosecution process. The study evaluated and explored the status of the current roles played by these investigators with the intention of recommending changes that could improve investigator practice. Two research questions were posed. First, the researcher endeavoured to find answers to a question regarding what the prosecution process entails. Secondly, the researcher sought to establish the roles of the specialised commercial crime investigator in the prosecution process. It was envisaged that the answers to these questions could be obtained from specialised commercial crime investigators and prosecutors deployed in the commercial crimes courts. On this basis two samples were chosen, with nine investigators from the Gauteng North office of the Specialised Commercial Crimes Unit and four prosecutors from the Specialised Commercial Crimes Court in Gauteng North. Some of the findings were that the investigators in trying to fulfil their roles of investigations have an adverse impact on the investigation and successful prosecution of offenders, which in turn lead to recidivism and apathy among the communities being served by the police and the justice system in general. The image of the police, particularly that of the commercial crime investigators, is often negated and the justice system is portrayed as a failure in addressing the problem of crime. The conclusions drawn from the data were that the roles of investigators in the prosecution process are mandatory as they are legislated rather than persuasive and that investigators cannot rely on prosecutors to handle all aspects of investigation once a case has been handed over to the prosecution. Apart from a lack of knowledge about these roles, it was established that some investigators deliberately ignore their roles in this relationship. It is proposed that dedicated training should be afforded to investigators and prosecutors above their existing training, with a focus on how to take part in the prosecution process. Investigators should be informed that their responsibilities in the prosecution process are a result of legislation and that failure to satisfy the legislation will carry adverse consequences for the investigation itself, the prosecution and the other stakeholders.

### Key terms:

Investigations; Prosecution; Investigation process; Detectives; Prosecutor; Commercial crime; Court; Forensics

## CERTIFICATE BY EDITOR

I, Susan van Tonder, MA Linguistics, ID 6009160072083, hereby declare that I have edited the master's thesis "The role of the investigator in the prosecution process" by Manyedi Solomon Nkashe.

A handwritten signature in blue ink, appearing to read "Susan van Tonder", is enclosed in a light blue rectangular box.

Susan van Tonder

11 March 2015

## LIST OF ABBREVIATIONS AND ACRONYMS

ACI	–	Anti-corruption Inspectorate
Cmdr	–	Commander
CPA	–	Criminal Procedure Act
DCoG	–	Department of Cooperative Governance
DNA	–	Deoxyribonucleic acid
DPCI	–	Directorate of Priority Crime Investigations
DPP	–	Directorate of Public Prosecutions
ISIS	–	Integrated Scientific Information System
SAPS	–	South African Police Service
SCCC	–	Specialised Commercial Crime Court
SCCU	–	Specialised Commercial Crime Unit
SA	–	South Africa
SSA	–	State Security Agency
NDPPA	–	National Directorate of Public Prosecution Authority
NPA	–	National Prosecution Authority
UNISA	–	University of South Africa

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## **CHAPTER 1**

### **GENERAL ORIENTATION**

#### **1.1 INTRODUCTION**

The relationship between the Specialised Commercial Crime Unit (SCCU) investigators and Specialised Commercial Crime Court (SCCC) National Directorate of Public Prosecution Authority (NDPPA) prosecutors is probably the cornerstone of the criminal justice system. It is through this relationship that information that is critical to an investigation is sent out to all stakeholders in the investigation process. Becker and Dutelle (2013:14) argue that investigators and prosecutors are the most visible members of any criminal investigation team. Research conducted by the International Centre for Criminal Law Reform and Criminal Justice Policy indicates that the mutual respect between these members of the team fosters communication and assists in the trial and pre-trial processes, but that the relationship between prosecutors and police investigators is frequently adversarial or non-existent (Dandurand, 2009:35).

The reliance of these team members on each other is elaborated on by Becker and Dutelle (2013:14), who suggest that prosecutors prosecute cases in which they have confidence and that this confidence is based on the quantity and quality of evidence, the quality of documentation supporting an investigation and the ability of investigative witnesses to communicate from the witness stand. All of these things are provided by the police investigators. Kyprianou (2010:198) also indicates that, during the process of investigation, prosecutors provide extensive legal advice to the police, usually when the police seek this advice, but sometimes because the law officers themselves judge that the sensitivity of a case requires them to intervene.

It is against this background that this chapter outlines the research problem, the research aims and the research questions of this study. The key concepts of this study are also defined. The chapter examines the methodology followed in researching the role of investigators in the prosecution process. The study population is indicated and the sample delimited in accordance with the data-gathering and the data-analysis methods chosen. The chapter concludes by spelling out the ethical issues taken into consideration in this study and by outlining the structure of the research report.

## 1.2 PROBLEM STATEMENT

The main problem that led to this study being undertaken is certain difficulties encountered by all South African Police Service (SAPS) docket-based SCCU investigators in Gauteng Province, under the Directorate for Priority Crime Investigations (DPCI). The difficulties encountered are that investigators are frequently in need of assistance from prosecutors during the prosecution process, rather than with the investigation itself. The researcher has 25 years of experience in the State Security Agency of South Africa (SSA) and is currently working as Executive Manager of the Anti-corruption Inspectorate (ACI). He is responsible for the investigation of corruption in municipalities. During his past and current work, the researcher's liaison and interaction with investigators and observation of their investigatory process have revealed that certain investigators do not possess sufficient knowledge about their role in the prosecution process.

Geldenhuis and Joubert (1994:47) mention that there is an essential indication of co-operation between the police and prosecutors but the relationship remains loose. The gap is exacerbated by the fact that while investigators may possess knowledge of what their role in the prosecution process entails they do not fulfil their responsibility as mandated by applicable legislation. For instance, Geldenhuis and Joubert (1994:39) and Section 2(1) of the Criminal Procedure Act, Act 51 of 1977 (CPA) allow that the authority to institute and conduct a prosecution in respect of any offence in relation to which any lower or superior court of the Republic of South Africa exercises jurisdiction vests in the State. This means that investigators may fail in their legislative mandate, especially if they do not get involved in the prosecution process.

The initial research for the study included visiting the NDPPA, which is the head of the prosecuting authority, and the Directorate of Public Prosecutions (DPP) and prosecutors in Pretoria to conduct interviews with prosecutors. During these visits, it came to the researcher's attention that prosecution is kept apart from investigation for prosecutors to be able to assess the adequacy of evidence dispassionately and objectively. This is a differentiation that is difficult to sustain in practice, and the dividing line is gradually becoming blurred, especially in specialised cases, such as major corruption investigations.

This separation of roles means that investigators do not consult with prosecutors and are not available to discuss important issues regarding any case. This is problematic

because, as recognised by most policing agencies globally, investigators need to be able to work as team players with prosecutors and to communicate and testify objectively and professionally (Becker & Dutelle, 2013:14).

The researcher found numerous consequences of the lack of knowledge and failure of investigators to fulfil their required role by reading through case dockets, which he also undertook as part of the research. The first consequence that he noted was that many cases were withdrawn or even struck from the roll because certain information was unavailable and could not be accessed immediately as investigators were not available to provide it. In certain instances, the court granted dangerous criminals bail because the investigators had not provided the prosecutors with the necessary information for the benefit of the cases appearing in a particular court. Westmarland and Gangoli (2012:183), in their research conducted in South Africa (SA), found that among the reasons for the withdrawal of cases was a high number of postponements because there was a need for further investigation. Further, if the docket is lost or not brought before the court, it will be struck from the court roll and won't be postponed for further investigation.

These problems come to the fore when investigators do not play their role in the prosecution process and prosecutors are forced to take decisions without the proper support and availability of the investigators. In the worst case scenarios, the prosecution rate drops because investigators do not know their role or do not fulfil that role in the prosecution process. The researcher believes that if investigators have sufficient knowledge about their role in the prosecution process, they can confidently fulfil that role. This will mean more availability of investigators to the prosecutors and more open communication among all stakeholders in the prosecution process. This will, in turn, enhance the prosecution process and the provision of quality evidence, which would be available at the time required before the courts, thus increasing the conviction rate of cases.

### **1.3 DEMARCATION**

Investigations in the SAPS are carried out by different units that specialise in specific crimes, such as general crimes dealt with by detectives, family and violent crimes, commercial crime and priority crimes. These specialised crime units are headed by a specific General at the SAPS Head Office.

This study focused on the SAPS docket-based SCCU, a unit that investigates commercial crimes and that has a working relationship with the ACI Unit in the Department of Cooperative Governance (DCoG) to fight corruption within municipalities.

The Directorate for Priority Crime Investigations (DPCI) was established on 06 July 2009 in terms of the South African Police Amendment Act of 2008 (Act No. 57 of 2008) to prevent, combat and investigate national priority offences and any other offences or category of offences referred to DPCI by the National Commissioner (Annual Report, 2009/2010).

According to the South African Police Service Amendment Act 57 of 2008 (South African Police Service, 2008), the functions of the Commercial Crime component include the following:-

- (a) To prevent, combat and investigate national priority commercial-related offences and serious commercial crimes, and
- (b) To address serious and priority commercial crime threats.

The study focuses on the SCCU in Gauteng only. Gauteng was selected, as it would make the study cost effective, as it is the area where the researcher resides. It was also the province in which the problem that became the topic of the study was identified under different clusters. The SCCU is headed by a Major General who is based at the Head Office in Silverton.

#### **1.4 AIM OF THE RESEARCH**

According to Basford and Slevin (2003:288), an aim can be considered as a broad statement about what a research study is going to achieve and the objectives are the various steps that lead to the achievement of the aim.

The aim of this research is to determine the role of the SCCU investigators in the prosecution process.

#### **1.5 PURPOSES OF THE RESEARCH**

According to Patton (1990:152), the purpose of research is to contribute knowledge that will help people understand the nature of a problem so that human beings can more effectively control their environment. The researcher identified the need to evaluate the

role of the SCCU Investigators in the prosecution processes of criminal proceedings. Convictions can only follow if the court is satisfied that the guilt of the accused has been proven beyond reasonable doubt in the criminal matters they are accused of. Oates (2009:16) suggests that reasons for conducting research are to add to the body of knowledge about a particular topic; to solve a problem; to find out what happens; to find the evidence to inform practice; to develop a greater understanding of people and their world; to predict, plan and control; to contribute to other people's well-being; to contribute to personal needs; to test or disprove a theory; to come up with a better way to do something; to understand another person's point of view; or to create more interest in the research.

Denscombe (2002:27) suggests that research has as its purposes exploration, evaluation, development of good practice and empowerment. The current research explores and evaluates the role that should be played by investigators in the prosecution process.

In order to understand the problem statement and be able to answer the research questions of the current research, it is important to know the value of the role that investigators play in the prosecution process.

In accordance with Denscombe's (2002:27) listed research purposes, this research set out to achieve the purposes outlined below.

- Evaluate

The study looked at the current value of the investigator's role in the prosecution process, as determined from the literature review, with a view to determining whether and to what extent the role is known to investigators. The evaluation revealed that there should be constant co-operation between the investigators and the prosecutor. This co-operation and a clear understanding by the investigators of their role in the prosecution process ensure that important information and evidence are effectively brought to the attention of the prosecutor. In a nutshell, a clearly understood role and a relationship of co-operation with the prosecutor are likely to increase conviction rates and minimise withdrawals of cases.

- Explore

Since, as described in the problem statement, some investigators lack knowledge about their role in the prosecution process, this research also explored the role of the investigator by interviewing investigators and reviewing current literature on the topic. The exploration in this research was intended to establish what role should be played by the investigators in the prosecution process in South Africa. The researcher also looked for guidelines and best practices regarding this role. This was necessitated by the fact that little guidance is available to ensure that investigators relate effectively to prosecutors. The main reason for this exploration was therefore to close the knowledge gap that exists as far as the role of the investigator in the prosecution process is concerned.

- Develop new practice

The research also endeavoured to develop detectives and sensitise them to good practices by making recommendations for good practice on the basis of the findings of the study. In this way the researcher hopes to empower the whole investigator fraternity. The development and sensitisation of investigators may be facilitated by the results of this research being placed in libraries to which investigators may obtain access. Apart from that, it is envisaged that the research results will be published and will be well positioned to add to the study materials used for investigator training.

- Empower

The knowledge obtained by means of the research can be used to empower decision making, especially because decision making in the public sector is based on verified data and not on intuition, tradition or “gut feeling”. Furthermore, one of the Integrated Justice System objectives of the National Prosecution Authority (NPA) is to assist its NPA partners to ensure that criminal matters are better investigated, which will in turn ensure successful prosecutions by the NPA.

## **1.6 RESEARCH QUESTIONS**

Jesson, Matheson and Lacey (2011:18) explain that a research question provides the structure for the literature review and is a crucial step that points the way for the research investigation. This research seeks to answer the following questions:

- What does the prosecuting process entail?
- What is the role of the Specialised Commercial Crime Unit in the prosecution process?

## **1.7 KEY THEORETICAL CONCEPTS**

The purpose of defining the key concepts used in a research study is twofold. Maxfield and Babbie (2005:120) indicate that, presenting a specific working definition allows readers to understand exactly what is meant by each key concept. It was imperative to define the concepts presented below as they are frequently used in this research.

### **1.7.1 Investigator**

The term “investigator” means any individual authorised by a department or agency to conduct or engage in investigations or prosecutions of violations of criminal laws (Stich, 2006:140).

### **1.7.2 Criminal investigation**

According to Sennewald and Tsukayama (2001:3), an investigation is the examination, study, search, tracking and gathering of factual information that answers questions or solves problems.

### **1.7.3 Prosecutor**

According to Banks (2004:89), there are standards that state that a prosecutor is an administrator of justice and advocate of an office of the court and must exercise sound discretion in the performance of his or her functions.

### **1.7.4 Prosecution**

“Prosecution” refers to a legal proceeding in which a person accused of a criminal offence is tried in a court by the State-appointed public prosecutor or a representative of government (Cole & Smith, 2007:319).

### **1.7.5 Prosecution process**

The prosecution process, which is mostly associated with criminal cases, actually means the process of engaging in a lawsuit, in which the prosecuting party presents relevant evidence to support its position (Neubauer & Meinhold, 2013:36).

## **1.8 RESEARCH APPROACH AND DESIGN**

According to Maxfield and Babbie (2005:108), a research design involves a set of decisions regarding how the topic is to be studied, the specific population, with what research methods and for what purpose. According to Denzin and Lincoln (2003:36), a research design describes a flexible set of guidelines that connects theoretical paradigms to strategies of inquiry and methods for collecting empirical material. A research design can be defined as the logical sequence that connects the empirical data to a study's initial research questions and ultimately to its conclusions (Shakya, 2009:159).

In the study, the researcher used an empirical design supported by the qualitative approach. In this instance, the researcher collected data from different sources and the conclusion of the research was based on the outcome of the empirical data collected and analysed. The qualitative approach allows participants to tell their stories in their own words and the procedure used provides outsiders with maximum insight into the situation (Taylor, 1994:208).

This study used a qualitative approach, which meant that the researcher was not concerned with statistical analysis but with the results of content analysis from the interviews that he conducted. This is in line with the view expressed by Kopala (2000:28), who submits that qualitative research brings about a socially constructed nature of reality, allows for an intimate relationship between the researcher and the study, and defines the situational constraints that shape the inquiry. It was the researcher's expectation that interviewing participants would provide more information, which could then be used to arrive at certain conclusions.

Data was collected through interviewing investigators from the SCCUs and prosecutors from the SCCC, since the researcher intended to establish the well-being of the relationship between them. This was undertaken to ascertain certain aspects of the role that investigators need to play in the prosecution process.

## **1.9 TARGET POPULATION**

Sekaran and Bougie (2009:262) submit that "a research population" refers to the "entire group of people, events, or things of interest that the researcher wishes to investigate". The ideal population of the current study would incorporate all 12 SCCUs and 12 SCCC

in all nine provinces of South Africa. This population would consist of 672 SCCU investigators and 75 NDPPA prosecutors from the SCCC. Unfortunately, it was practically not possible to conduct a study on all SCCU investigators and NDPPA prosecutors in all nine provinces because a research project of this nature and size is constrained by a lack of funds, lack of access to the population and lack of time. For this reason the researcher narrowed down the population and used a target population.

The “target population” is defined as the population selection that ideally has elements of similar value to the key defining characteristics of the whole population (Wrenn, Sherwood & Ruddick, 2006:188) and can therefore be used by the researcher for generalising the study results to the whole population.

Gauteng Province was chosen for this study because it is the province where the researcher resides and works and is the province where the problem was identified. The target population is not representative of the population because it was not scientifically selected but chosen for comfort and economic considerations. Gauteng Province has three SCCUs, which are situated in Germiston, Johannesburg and Pretoria respectively, with a total number of 216 SCCU investigators, and two SCCCs, situated in Germiston and Pretoria, with 45 NDPPA prosecutors.

The researcher made use of probability sampling. Kumar and Chaudhary (2006:15) explain that the simplest of the methods of probability sampling is known as the method of simple random sampling. For Kumar and Chaudhary (2006:15), in simple random sampling, an equal probability of selection (equal to the reciprocal of the number of available units in the population) is assigned to each available unit of the population at the first and each subsequent draw. According to Leedy and Ormrod (2005:199), generally, the components of the sample are chosen from the larger population by a process known as “random selection”.

To determine which SCCU to use for the study population, the researcher wrote down the names of the three SCCUs in Gauteng: Germiston, Johannesburg and Pretoria respectively, on separate pieces of paper and placed the names in a bowl before picking a piece of paper randomly. Through the simple random sampling technique, the North Gauteng Pretoria office of the SCCU was selected, with 90 commercial crime investigators.

## **1.10 SAMPLING**

Goddard and Melville (2005:35) suggest that a sample must be representative of the population being studied; otherwise no general observations about the population can be made from studying the sample. According to Kumar (2005:164), sampling is the process of selecting a few from the bigger group to become the basis for estimating or predicting the prevalence of an unknown piece of information, situation or outcome regarding the bigger group. Furthermore, Simmons, Bland and Wojciechowski (2013:222) explain that the researcher will draw a sample, or subset, of a workable size from the population and measure each individual in the sample. Random selection is a basic principle used to try to avoid bias in a sample (Goddard & Melville, 2005:36). Goddard and Melville (2005:36) indicate that the random selection of a sample must ensure that each member of the population has as much chance as any other of being included in it. For Leedy and Ormrod (2001:211), the sample should be carefully chosen so that, through it, the researcher is able to see all the characteristics of the total population in the same relationship that they would be seen were the researcher, in fact, looking at the total population.

Goddard and Melville (2005:36) write that the researcher first assigns numbers to each member of the population. After performing this enumeration, the researcher generates as many unique random numbers as the size of the population from which the sample is drawn.

The same process was followed for the selection of the prosecutors from the North Gauteng Pretoria office SCCC. In this way 35 NDPPA prosecutors were selected.

The study samples consisted of Sample “A”: Investigators and Sample “B”: Prosecutors.

### **1.10.1 Selection of Sample “A”**

To select a representative sample, the researcher decided to select ten per cent (10%) of the 90 SCCU investigators and nine investigators were randomly selected. The researcher requested a list of the names of SCCU investigators and identified that there were 90 investigators attached to the Pretoria SCCU. The researcher captured and numbered all names from one (1) to 90 and each name was separated and placed in a bowl. Thereafter, the researcher shuffled the names inside the bowl and the names were

picked one by one without looking until the number of names chosen reached nine. This meant that nine investigators were randomly selected.

The researcher used the simple random sampling method as he intended to ensure that an equal representation was maintained, as noted by Bailey (1987:87), in selecting people without showing bias for any personal characteristics. Fink (2003:37) mentions that simple random sampling is a technique that allows the subject or unit to have an equal chance of being selected. Because of this equality of opportunity, random samples are considered relatively unbiased (Fink, 2003:37).

### **1.10.2 Selection of Sample “B”**

The researcher established preliminarily that 35 prosecutors were located at the Pretoria SCCC. The researcher decided to select ten per cent (10%) of the 35 SCCC prosecutors and four prosecutors were randomly selected. As with the SCCU investigators, the researcher obtained a name list of the prosecutors attached to the Pretoria SCCC and wrote each name separately on a small piece of paper. The researcher then put each piece of paper in a bowl selected for the purpose. Using the simple random sampling technique as described by Kumar (2005:171), the researcher picked four pieces of paper one by one without looking at the names. As with the selection of the prosecutors, the researcher did this to ensure that an equal representation was maintained by selecting people in an unbiased way. The researcher considers Sample “B” to be representative of the population because of the random sampling selection used.

## **1.11 DATA COLLECTION**

Beri (2010:11) is of the opinion that the term “data” means “facts and statistics collected together for reference or analyses”. Data collected by the investigator for his own purpose, for the first time, from beginning to end, is called primary data (Jain & Aggarwal, 2008:14).

In this study, the type of data used is primary data. The new data is used to answer specific research questions. Primary data is generated by a researcher, who is responsible for the design of the study and the collection, analysis and reporting of the data. Blaickie (2003:18) believes that primary data is characterised by the fact that it is the result of direct contact between the researcher and the source, and has been generated by the application of particular methods by the researcher. According to

Leedy and Ormrod (2001:95), primary data is often the most valid, the most illuminating, and the most truth manifesting.

For Creswell (1994:149), data-collection procedures in qualitative research comprise four basic types: interviews, review of documents and literature, and analysis of visual images. For the purposes of this research, the researcher used interviews and a literature study to collect data. The usage of different data-collection methods ensured that a process of triangulation was followed. Triangulation is the use of more than one method in studying the same phenomenon, to validate the phenomenon (Arksey & Knight, 1999:23; Taylor & Roberts, 2006:235). The term “triangulation” is taken from the field of surveying, in which a region is divided into a series of triangles based on a line of known length so that accurate measurements of distance and directions may be made by the application of trigonometry (Remenyi, Williams, Money & Swartz, 2003:142). According to Covington (2008:267), the advantages of using triangulation are:

- The weaknesses of both qualitative and quantitative methodologies are naturally overcome.
- The reliability of each method can be cross-checked.
- The researcher can check that their own interpretation of data is correct.

#### **1.11.1 Literature**

According to Goddard and Melville (2001:19), a literature study allows the researcher to get a feeling for the topic and the issues involved and to understand how the processed research would relate to these issues. In this research, different publications relevant to the research were consulted.

The researcher visited the Muckleneuk and Florida libraries of the University of South Africa (UNISA) to search for different sources pertaining to the research topic. Any books that shed any light on the subject being researched were borrowed and the researcher read those books with the intention of obtaining relevant information. Apart from books, the researcher also visited various websites to locate articles and other documents relevant to the research topic. Little South African formal literature was found to exist that was specific to the research questions and the topic. In contrast, a reasonable number of international sources were found that were relevant to this research. The researcher used the research questions as a guide to collect information from literature. In order that both national and international books and articles were treated similarly, the researcher utilised specific key words that were pertinent to this study. These words

included, but were not limited to, the role of the “investigator”, and “prosecutor”, in the “prosecution process” and “investigations”. These words were used with search engines such as Google, Yahoo and others. In addition, the term “South Africa” accompanied each key word.

### **1.11.2 Interviews**

According to Hofstee (2006:122), the interview is the most frequently used method of data collection, where a researcher is essentially trying to elicit information from a certain group of people who are presumed to have the information the researcher is seeking. For the purpose of the study, the researcher employed semi-structured interviews, in the form of two interview schedules designed specifically for Sample “A”, the investigators, and Sample “B”, the prosecutors. The interview schedule for the SCCU investigators is attached as Attachment A and the interview schedule for the SCCC prosecutors as Attachment B. Klenke (2008:127) is of the opinion that the interview schedule provides the interviewer with the flexibility to rephrase the questions and add further inquiries such as “Who?” “Where?” “When?” “Why?” and “How?” based on the interviewee’s answers and conversation flow. The interview schedules were determined through the use of the research questions, which were divided into smaller questions.

Both interview schedules were developed prior to the interviews and were piloted, as suggested by Grady (1998:21). According to Grady (1998:21), piloting the interview questions provides feedback on whether the questions are clear and reasonable and whether they elicit useful information. For this pilot study, the researcher used his colleagues and friends, who are investigators in the SAPS and NDPPA and who are responsible for processing the cases of commercial crime. None of the investigators and NDPPA officials chosen was part of the selected samples.

The researcher also wanted to gain first-hand knowledge about the work he was about to begin. The pilot test provides the researcher with the opportunity to detect problems with the wording of the instructions or questions, determine the time involved to conduct an interview, and assess the reliability and validity of the instrument (Waltz, Strickland & Lenz, 2005:254).

It is important to note that the researcher used separate interview schedules for the investigators and prosecutors. The reason for this is that the researcher did not expect to find similar responses from these two categories of participants. The investigators

were expected to shed light on their experiences in participating in the prosecution process while the prosecutors were expected to confirm or deny such participation. The researcher recorded the participants' responses verbatim in the written interview schedules as interview notes. In accordance with Goddard and Melville's (2001:49) guidelines, the interviews were conducted with participants on a one-on-one basis for face-to-face discussion of the subject, where all the feedback was written down in detail.

For conducting productive interviews, the researcher used the guidelines provided by Leedy and Ormrod (2005:147) and Waltz et al. (2005:254). The researcher followed the guidelines as outlined below:

- Identify some questions in advance

The researcher compiled interview schedules from the research questions. To allow the participants to express themselves freely, the researcher used the semi-structured interview technique. The topic itself was relevant to the participants' experience.

- Make sure your interviewees are representative of the group

The researcher used a random selection procedure, which meant that everyone in the population of interest had an equal chance of being selected to the sample (Potter, 1996:104). Potter (1996:104) states that if everyone is given an equal chance of being in a sample, the resulting sample can be regarded as being representative of the population.

- Find a suitable location

The researcher ensured that there was a suitable location for conducting the interviews. Each interview was conducted in the office of the individual being interviewed at the SCCU or NDPPA building in Visagie Street, Pretoria. A "meeting in progress board" was displayed on the office door to prevent interruption. The door was always closed.

- Get written permission

Written permission was obtained from the SAPS SCCU and NDPPA SCCC provincial offices in Pretoria to conduct this study (see permission letters attached marked Attachment "C" and Attachment "D" respectively). The purpose of the interviews was explained to the participants prior to the interviews and consent was also given by each participant.

- Establish rapport

The researcher took some time to establish rapport with participants and was careful and respectful at all times, showing interest in the participants' responses. Before the commencing of the interviews, the researcher made the participants feel at ease by explaining the topic of the study and the aims of the research.

- Don't put words in people's mouths

The researcher did not put words in the participants' mouths and allowed them to discuss and elaborate on any answer as they deemed necessary. The participants were issued with the interview schedules and answered each question according to how they understood the content. If clarity regarding a question was requested, the researcher and the participants discussed the meaning of the question.

- Record responses verbatim

The researcher recorded the participants' responses verbatim in a written interview schedule as interview notes. The answers were read back to the participants according to the interview schedule to establish that the information noted was what the participant had said.

- Keep reaction to yourself

The researcher showed composure and interest in the responses from the participants. The researcher respected each individual and their own opinions regarding the questions asked in the interview.

- Remember that you are not necessarily getting the facts

The researcher always remembered throughout the research to treat the participants' responses as perceptions rather than facts.

### **1.11.3 Experience**

The researcher has been employed by the DCoG in Pretoria for the past two years. He is responsible for instituting and maintaining a mechanism/forum for sharing information on corruption incidence; typology, prevalence and origination trends; and exchanging best practices and measures for reducing and countering corruption between municipalities to:

- Develop and get stakeholder and public acceptance of a Local Government Anti-Corruption Code of Best Practice that sets out asset and interest declaration requirements and processes for councillors and officials;
- Institute a corruption case co-ordination and management mechanism that initiates and drives cases to conclusion through the logic of the criminal justice system;
- Provide technical support in the implementation of the Anti-Corruption Legislative Framework;
- Investigate corruption, serious maladministration, and unlawful expenditure of public money within the three spheres of government; and

- Develop, implement and ensure effective security risk management services with respect to vetting investigations and information security in the department.

The experience of the researcher may have an impact on his or her interpretation of the results of the study. In qualitative research, the influences brought about by the researcher's experience are considered to be a research dilemma. These influences can be categorised as descriptive versus interpretive dilemmas, objective versus subjective dilemmas and dilemmas regarding participant voice versus researcher voice (Shi, 2011:3-13). To avoid a situation where the research participants are influenced during the interviews or during the analysis of data, the researcher may systematically apply bracketing-off, with the intention of ensuring that the qualitative research is a rigorous scientific universal form of knowledge (Creswell, 2009:191).

According to Shi (2011:3-13), "bracketing-off" refers to the researcher's ability to make their perceptions explicit and bracket their presuppositions through a systematic procedure of research reduction. This is confirmed by Creswell (2009:191), who further submits that bracketing-off may be applied during the data-collection or data-analysis stages of the research.

In this study, coding was used to analyse data as analytic coding can assist in preventing the researcher's experiences from counting in a qualitative research study and in this way compromising neutrality (Denscombe, 2005:273). In addition, the researcher presented the results of the data analysis to his research supervisor so that the supervisor could pick up any judgements, prejudices or influences brought about by the researcher's experiences.

## **1.12 DATA ANALYSIS**

The purpose of data analysis is to interpret and draw conclusions from the mass of collected data (Tustin, Ligthelm, Martins & Van Wyk, 2005:102). Ruona (2009:4) states that "data analysis is the process of organising and sorting data in light of increasingly sophisticated judgements and interpretations". Qualitative data analysis is a process that entails (1) sensing themes, (2) constant comparison, (3) reclusiveness, (4) inductive and deductive thinking and (5) interpretation to generate meaning (Ruona, 2009:4).

As mentioned above, the researcher used a data-analysis method known as coding. Coding is the process of organising the material into chunks or segments of text before

bringing meaning to information (Creswell, 2009:186). The use of analytic coding was justified by the fact that the researcher's experiences count in a qualitative research study and this may compromise neutrality (Denscombe, 2005:273). However, it was expected and proved true that the researcher would be able to impose codes based on his experience as an investigator. The outcomes of data analysis form the basis for the findings and recommendations of this research.

Keele (2011:27) indicates that data-collection decisions include the study population and sample; gaining access to the population; getting all the approvals needed to do the study; deciding on what data will be collected to answer the research questions; and deciding who will collect it, where it will be collected and for how long it will be collected.

### 1.12.1 Summary of background information

The purpose of this is to summarise the information on the training and years of service of the investigators and prosecutors that participated in the study.

**Table 1.1: Participants' background information**

<b>SAMPLE A</b>			
<b>COMPETENCY</b>	<b>RESPONSE</b>	<b>YES</b>	<b>NO</b>
<b>YEARS OF SERVICE</b>	Average between 3 years and 15 years	n/a	n/a
<b>DETECTIVE TRAINING</b>	Some participants	12	3
<b>COURT PROCESSES TRAINING</b>	Some participants	6	9
<b>SAMPLE B</b>			
<b>YEARS OF SERVICE</b>	Average between 2 and 10 years	n/a	n/a
<b>PROSECUTION TRAINING COURSE</b>	All participants	n/a	n/a
<b>CASE PREPARATION TRAINING</b>	Some participants	13	2

### 1.13 METHODS TAKEN TO ENSURE VALIDITY

According to Leedy and Ormrod (2005:287), the validity of a measurement instrument is the extent to which the instrument measures what it is supposed to measure. The validity of the findings of a study is defined as "how accurately the account represents participants' reality of the social phenomena and is credible to them" (Dagnino, 2012:119). Validity concerns the accuracy of the questions asked, the data collected

and the explanation offered. Generally, it relates to the data and the analysis used in the research (Denscombe, 2002:100).

To ensure validity, the researcher made sure that the methods used to collect the data were accurate, honest and on target (Leedy & Ormrod, 2005:92). The creation of validity was used in this regard to test whether the results of the interviews correlated with the literature study, as submitted by Leedy and Ormrod (2005:92).

The interview questions were based on the research questions, to ensure that they measured what they were intended to measure as accurately as possible (Miller & Whitehead, 1996:183) and were based on the problem identified for this research.

According Leedy and Ormrod (2005:100), qualitative researchers frequently use triangulation, comparing data sources in search of common themes to support the validity of their findings. Triangulation should be used to ensure validity in three main ways (Dagnino, 2012:119): triangulation of sources, through the use of multiple research participants from within and outside of the cases; and theory triangulation, through looking at the data from the perspectives of multiple theories.

The participants in this study were SCCU investigators and prosecutors and they had already investigated and participated in the prosecution process. The research was always strict on meeting the requirements of the qualitative approach and all participants were met personally during the interviews. Response validation was achieved by the researcher's sharing of the outcomes of the research with the participants. In addition, the dissertation is anticipated to become available to the public once it is placed in the UNISA library after assessment. Since the purpose of the study was explained during the interviews, most participants expressed their interest in seeing the final product.

Different categories of people, including the investigators and the prosecutors, were interviewed in addition to a literature review being conducted, which was also used as a data-collection method. This ensured that the research was valid because the researcher could compare different responses from different sources of data.

Another important aspect of ensuring validity is dealing with the issue of the generalisation of research results. Generalisation is defined as the researcher's ability to state that the research results can be applied beyond the confines of the particular context in which the research was conducted (Bradford & Cullen 2012:117). In this

research, the research results could not be generalised as the population used in this research was heterogeneous. The investigative component of the SAPS consists of many sub-components, with each component focusing on a particular area of specialisation. Generalisation is also more appropriate in research with a quantitative research design because the samples are larger in quantitative research than in qualitative research (Bradford & Cullen, 2012:117). The absence of generalisation in this research was not considered problematic by the researcher because, as Costello (2013:56) points out, generalisation may not be sought in small-scale research nor in research undertaken within the context of most undergraduate and postgraduate courses.

Finally, the manner in which data was analysed can also be seen as a mechanism that is used to ensure the validity of the research. The use of coding as a data analysis method can enhance validity because, although the researcher imposes codes on the research, the available data plays a critical role in proving that the emerging themes indeed came from the participants.

#### **1.14 METHODS TAKEN TO ENSURE RELIABILITY**

O'Connor, Newton and Bromley (2002:16) also state that the reliability programme must begin at the earliest, conceptual phase of a project. It is at this stage that fundamental decisions are made, which can significantly affect reliability. An important method of ensuring that the evidence is valid and reliable is to use triangulation, which Remenyi et al. (2003:142) define as using multiple methods to capture a sense of reality.

The researcher enhanced the accuracy and reliability of data received by conducting interviews using the questions contained in a pre-prepared interview schedule. The interview room was kept private, quiet and free from mental distractions so as to promote honest and open communication. The researcher focused on the consistency with which a measuring instrument yielded a certain result (see Leedy & Ormrod, 2001:31). In this way, the researcher was able to establish that if the same research were undertaken in the future, the results were likely to be the same. This was achieved even where the researcher probed for more information in the interviews because probing did not happen outside the main questions and the answers already provided. This means that in order to maintain reliability, the researcher did not change the crux of any question.

In addition, the researcher ensured reliability through faithful representation of the truth, and correctness. Inductive and deductive reasoning, as discussed in Leedy and Ormrod (2001:34-35), were applied throughout the research activity. A deductive conclusion means that a specific conclusion follows from a set of general premises while inductive reasoning is when a logical conclusion is reached through reasoning, inference or experimental evidence, as put forward by Leedy and Ormrod (2001:35). Le May and Holmes (2012:87) indicate that this necessitates a careful and repeated reading of the transcripts obtained to identify significant words or phrases and, when all transcripts have been analysed, organise them in a way that captures their central meaning. To ensure reliability, the researcher followed the guidelines of Le May and Holmes (2012:87):

- Focus on the research question(s);
- Reflect on the data and discuss it with other people to try to rule out bias and formulate their ideas;
- Aim for rich, thick, detailed accounts of the findings, including appropriate quotations from, for example, participant or observational field notes; and
- Check back with participants, if possible, to ensure that the final account reflects their experience/views.

### **1.15 ETHICAL CONSIDERATIONS**

According to Leedy and Ormrod (2005:101), most ethical issues in research fall into one of four categories: protection from harm, informed consent, the right to privacy and honesty with professional colleagues. These issues are elaborated on below.

- Protection from harm

Researchers should not expose research participants to undue physical or psychological harm. As a general rule, the risk involved in participating in a study should not be noticeably greater than the normal risk of day-to-day living. To ensure this, the researcher interviewed the participants in their own work environment and only posed questions contained in the interview schedule.

Participants were assured that the information they provided for the study would be confidential and that their identity would be protected when the results were published as stipulated by Leedy and Ormrod (2005:101).

- Informed consent

Research participants should be told the nature of the study to be conducted and given the choice of either participating or not participating. Further, they should be told that, if they agree to participate, they have the right to withdraw from the study at any time. Any participation should be voluntary. Informed consent of the line managers of the interviewees was obtained prior to the interviewees being interviewed, so as to achieve voluntary participation.

- The right to privacy

Any research study should respect participants' right to privacy. Under no circumstances should a researcher's dissertation, either oral or written, be presented in such a way that readers become aware of how a particular participant responded or behaved (unless the participant has specifically granted permission, in writing, for this to happen). The researcher assured the participants that all information given would be treated confidentially and that their information would only be used in this research, although the findings would be made public. The participants requested that they take part anonymously, so each participant was given a number, and at no stage were the participants' names put on the interview schedule. The researcher instead referred to them as "participant 1", "participant 2" and "participant 3", etc. (following Leedy & Ormrod, 2005:102). In addition, the researcher only met and interviewed each participant as per an agreed appointment and at a place agreed to by the participant. All participants were interviewed at their workplace and during their normal working hours, as permission to interview them was obtained from the relevant authorities. The researcher met with the participants as per the agreed appointments only.

- Honesty with professional colleagues

The researcher did not fabricate data to support any finding or recommendation. The findings and recommendations are based on the facts determined in the research, as guided by Leedy and Ormrod (2005:102).

In this research, the researcher acknowledged any information that was used in this research that was not originally his own. All sources used in this research were adequately referenced and the results of this research were reported in such a way that they were free from any influence or beliefs of the researcher.

## 1.16 RESEARCH STRUCTURE

The research report is divided into four chapters in which the research design is presented, the research questions are discussed and the research findings are presented and interpreted.

**Chapter 2:** The prosecution process – in this chapter the researcher discusses the prosecution process, the pillars of successful prosecution and the importance of physical appearance in court when testifying.

**Chapter 3:** The role of the investigator in the prosecution process – this chapter deals with the field and the role of the special commercial crime investigator and includes the relationship between the investigator and prosecutor, the importance of a good relationship between the investigator and the prosecutor, factors influencing the relationship and the role played by the prosecutor in the investigation process.

**Chapter 4:** is called “Findings, Recommendations and Conclusions”.

## CHAPTER 2

### THE PROSECUTING PROCESS

#### 2.1 INTRODUCTION

In South Africa, only one authority is responsible for prosecution. According to Gutto (2001:321), section 179 of the Constitution of South Africa 1996 provides for a single National Prosecution Authority (NPA), which consists of:

- “(a) the national Director of Public Prosecutions, who is the head of the Prosecuting Authority,
- (b) Deputy national Directors,
- (c) Directors,
- (d) Deputy Directors and
- (e) Prosecutors.

Christou (2005:1321) indicates that prosecutors are expected, in accordance with the law, to perform their duties fairly, consistently and expeditiously; respect and protect human dignity; and uphold human rights. In this way they contribute to ensuring due process and the smooth functioning of the criminal justice system. The other functions and roles of prosecutors are clearly discussed by Cole and Smith (2008:213) and include representing law enforcement, providing legal advice, representing the State and ensuring that the law is applied impartially.

This chapter focuses on what the prosecution process entails. The meaning of the prosecution process is unpacked along with other facets of the process such as the field of criminal prosecution and the objectives and the functions of prosecution.

#### 2.2 THE MEANING OF “PROSECUTION PROCESS”

Wahidin and Carr (2013:51) describe prosecution as the court stage in which defendants are brought to court and possibly brought to trial. The defendant is brought to trial depends on, among other factors, the seriousness of the offence. Neubauer and Meinhold (2013:28) indicate that although the term prosecution is popularly associated with criminal cases, the law uses a broader definition, stating that prosecution is the process of engaging in a lawsuit, whether criminal or civil. The prosecution process

refers to the detection or investigation of a qualifying crime or criminal activity and to the prosecution, conviction or sentencing of the perpetrator of the qualifying crime or criminal activity (United States Office of the federal register, 2012:420).

Frantz (2009:136-139) and Siegel (2009:515) highlight that the process of prosecution can unfold in several different ways, which may include this following possible sequence of events:

### *1. The plea agreement*

A plea agreement may occur if the defendant tenders a plea of not guilty at the arraignment. The plea agreement normally consists of the dropping of some charges or accounts and allowing the recommendation of certain punishment in return for a guilty plea. The defendants' attorney may or may not have a say in the structure of the plea agreement. The plea agreement may or may not be negotiable, depending on various circumstances and the strength of the prosecutor's case.

Plea bargaining, which has been an accepted practice in South Africa for some time, is now legislatively sanctioned (Burchell & Milton, 2005:15). According to Burchell and Milton (2005:15), a plea sentence agreement procedure is laid down in section 105 of the CPA. In terms of this provision, negotiated agreements between the prosecution and defence, regarding both plea and sentence, can be reached provided that they satisfy certain formal requirements laid down in the section and the court accepts the agreement.

### *2. Trial*

Van der Merwe and Du Plessis (2004:441) state that in this phase of the process, the rules make provision for matters such as request for particulars for trial; discovery, inspection and production of relevant documents; inspection of objects, medical examinations of plaintiffs in personal injury cases; exchange of summaries of expert evidence to be adduced at the trial; and pre-trial conferences with a view to narrowing the issues and expediting the trial.

### *3. The verdict*

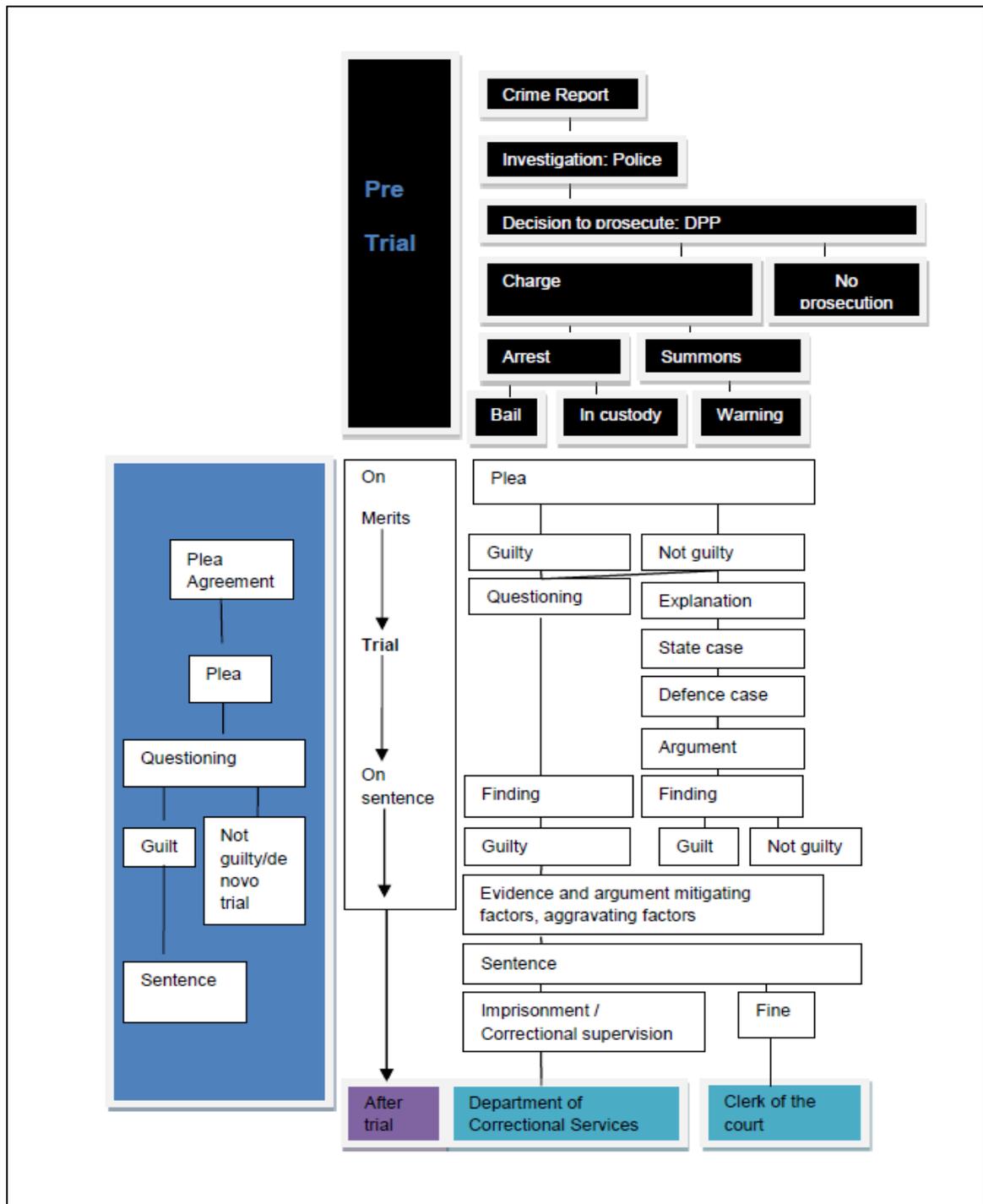
If the court is of the opinion after the closing of the State's case that there is no evidence that the accused committed the offence, it may discharge the accused and return a verdict of no guilt (Van der Merwe & Du Plessis, 2004:527). Hermans and Moore (2004:103) indicate that these verdicts compel the State to protect the rights of the

people according to the Constitution and, in cases where the State is negligent about protecting people's rights, it is obliged to compensate its citizens financially when the court's verdict is in their favour. Burchell and Milton (2005:396) state that originally South African law used the "guilty but insane" formula, but, in 1977, the verdict was changed to "not guilty by reason of mental illness or mental defect". The CPA expressly sets out competent verdicts on certain charges (Van der Merwe & Du Plessis, 2004:529). Van der Merwe and Du Plessis (2004:529) write that, for example, if the charge is murder or attempted murder, the accused can also be found guilty of culpable homicide; assault with intent to do grievous bodily harm; robbery; common assault; public violence; exposing an infant; disposing of the body of a child; or pointing of a fire arm, air-gun or air-pistol.

#### *4. Sentencing*

At the end of the trial the judge will make a statement providing the reasons for the sentence he is about to administer. The judge will then announce the sentence. Kleyn and Viljoen (2011:149) explain that the framework for the prosecution process is set out by the CPA through a set of rules, which is outlined below in Figure 2.1.

**Figure 2.1: Phases and steps in the criminal prosecution process**



(Source: Kleyn & Viljoen, 2011:149).

From the literature consulted, it is clear that the term prosecution implies the process of prosecution, in which the investigators investigate the allegation against the suspect, handing over the case docket to the prosecutor for guidance or a decision about whether

to prosecute or not. This suggests that the investigation and prosecution processes are interlinked.

The question “Based on your experience, what does the prosecution process entails?” was posed to Sample “A”. The participants’ responses varied.

- Five participants from Sample “A” mentioned that the term prosecution process entails the process involved in prosecuting an offender. These participants varied in their answers, indicating that it is associated with investigating crime, arresting the accused, establishing whether there is a case for the accused to be tried and assisting the complainant so that at the end of the day justice is done.
- Four participants highlighted that the prosecution process means that the police investigate the allegation against the suspect, handing over the case docket to the prosecutor for guidance and trial.

Sample “B” replied as follows:

- All four participants indicated that the prosecution process entails the process of prosecution, which means that the police investigate the allegation against the accused, handing over the docket to the prosecutor for guidance or a decision about whether to prosecute or not.

The responses of both the Sample “A” and “B” categories of the participants had some commonalities and some differences. Only four participants from Sample “A” indicated that the prosecution process entails the process of prosecution, which means that the police investigate the allegation against the suspect, handing over the docket to the prosecutor for guidance and prosecution. However, all four Sample “B” participants emphasised that a prosecution means that the police investigate the allegation against the suspect, handing over the docket to the prosecutor for guidance or a decision about whether to prosecute or not. Both samples agreed that the prosecution process involved investigating the case docket, arresting the suspect, establishing whether there was a case for the accused to be tried and assisting the complainant so that at the end of the day justice was done.

Literature sources consulted suggest that prosecution process refers to the detection or investigation of a qualifying crime or criminal activity and to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity. Most of the participants from both Samples “A” and “B” agreed that the prosecution process was to investigate the case docket, arrest the accused, establish whether there was a case for

the accused to be tried and assist the complainant so that at the end of the day justice was achieved. While the participants varied in their responses, it was apparent that they were certain about and understood what the prosecution process entails. The viewpoints of the participants support the information obtained from the Office of the Federal Register of the US (2012:420) as discussed.

The term prosecution also refers to the court stage in which defendants are brought to court and possibly tried, depending on the seriousness of the offence. Wahidin and Carr (2013:54) argue that although the prosecution process works closely with police and other investigators, it is independent of them. The independence of prosecutors is of fundamental constitutional importance (Wahidin & Carr, 2013:54).

Joubert (2001:11) suggests that the criminal justice system is a formal structure of the State that consists of the government departments responsible for co-ordinating the criminal justice process, which entails bringing a criminal to justice. The main role players are therefore the departments of Safety and Security, Justice and Correctional Services.

According to Joubert (2001), police officials are empowered by the National Prosecution Authority (NPA) Act, Act 32 of 1988, and other legislation to take certain steps during the investigation of an offence. Joubert (2001:216) states that these powers are used as investigation tools to obtain evidence, identify perpetrators and secure their attendance in court. The NPA Act of 1988 has been formulated to simplify the co-operation between different government departments within the criminal justice system, as submitted by Joubert (2001:13). According to Joubert (2001:13), the Act creates certain channels aimed at fostering closer co-operation between the Department of Justice and the SAPS.

### **2.3 THE CONCEPT “PROSECUTOR”**

The prosecutor is one of the two adversaries who face each other every day in the criminal trial process: the prosecutor, who represents the State’s interest and serves as the “people’s attorney,” and the defence attorney, who represents the accused (Siegel, 2010:387). Siegel and Bartollas (2012:35) further add to the discussion that the prosecutor is an appointed or elected member of the practising bar who is responsible for bringing the State’s case against the accused.

For Joubert (2009:69), a public prosecutor must display the highest degree of fairness to an accused. Bugliosi (2000:1) further highlights that in order to master the art of prosecution, the prosecutor should have the following characteristics:

- *Credibility*

Credibility is the most important attribute of a good prosecutor. Credibility is also essential for achieving success, both inside and outside the court room. Credibility is the word spoken most often by all parties during a trial.

- *Intelligence*

The prosecutor needs to have mastered all the relevant criminal law, including criminal procedure and evidence.

- *Diligence*

A prosecutor must be diligent, not only in learning the law but in every aspect of the job. Additionally, before trial, a prosecutor must thoroughly prepare all the witnesses, the *voir dire*, opening, all “crosses” refer to cross-examining witnesses and as much of the closing argument as practicable.

- *Self-sufficiency*

To be effective, a prosecutor must also be self-sufficient. That is, a prosecutor must have the ability to work alone in an extremely stressful environment. They must also be able to control or manage stress, pressure, and adversity, which are the by-products of a system that places such a heavy burden on the prosecutor.

- *The ability to convict*

The final attribute of an effective prosecutor is the ability to convict.

In South Africa, according to Van der Merwe and Du Plessis (2004:524) and Joubert (2009:62), a prosecutor is authorised by the National Director of Public Prosecutions to negotiate with an accused who is legally represented before the accused pleads. Van der Merwe and Du Plessis (2004:524) and Joubert (2009:62) state that the accused to the offence charged or to an offence of which he or she may be convicted on the charge, and if the accused is convicted of such offence, the prosecutor and accused may enter into an agreement to:

- A just sentence to be imposed by the court; or
- The postponement of the sentence in terms of certain provisions; or
- A just sentence to be imposed by the court of which the operation of the whole or any part has to be suspended in terms of certain provisions, and
- If applicable, an amount of compensation.

To the directive “Based on your experience, define the concept ‘prosecutor,’” Sample “A” responded as follows:

- Four participants mentioned that a prosecutor is a legally qualified person who handles criminal matters on behalf of the State.
- Five participants stated that the prosecutor is an official responsible for conducting a prosecution on behalf of the State and who reads dockets, leads the investigation and decides to prosecute or not.

To the directive above, Sample “B” replied as follows:

- All four participants mentioned that section 179 of the Constitution defines the prosecutor in the simplest terms a prosecutor is a designated, legally qualified person who institutes criminal prosecution on behalf of the State in criminal courts.

From the above, it is clear that the term prosecutor partly refers to a person with a law degree who reads case dockets that have led the police or investigating officers during the investigation and who then decides to prosecute or not. As still another dimension, a prosecutor can review the work of the investigator and can avert any potential challenges to the admissibility of evidence early on. This response is nearly similar to the discussion of Cole and Smith (2008:211) and Siegel and Bartollas (2012) explained above. All participants from Samples “A” and “B” had a clear understanding of the meaning of concept prosecutor.

The researcher has deduced from the literature review and responses of the samples that the prosecutor determines and eventually shapes the way in which justice is exercised in the general public. For this reason, prosecutors have great influence because they are concerned with all aspects of the criminal justice process, as submitted by Cole and Smith (2008:212).

Based on the research, the concept prosecutor refers to an appointed or elected member of the practising bar who is responsible for bringing the State’s case against the accused. The literature and the participants are in agreement on this point. A slightly different definition, which was provided by four of the nine participants of Sample “A”, is that a prosecutor is a legally qualified person who handles criminal matters on behalf of the State.

## 2.4 THE OBJECTIVES OF PROSECUTION

According to Levinson (2002:941), prosecution is characterised by the indictment, which contains the objective and subjective details of the accusation and may be exercised either by starting ordinary legal proceedings or by triggering one of the special, or fast-track, proceedings. Grover (2010:485) is of the opinion that, to this end, the prosecution will prove that the accused was both aware of the existence of the facts relevant to the objective elements of the crimes and accepted the substantial likelihood that his acts or omissions would result in the realisation of these objective elements. This means that the objectives of prosecution go beyond a mere premise of presenting the case against the accused because if the prosecutor is aware of evidence in favour of the accused, that evidence must be presented to court (Joubert, 2010:33). The similarity between local authors and international authors is provided in the summary by Marianne and Ballin (2011:283), who list the objectives of prosecution as “discovering the ‘truth’; utilising an adversarial process of adjudication; utilising an accusatorial system of proof; minimising erroneous convictions; minimising the burdens of accusations and litigation; providing for lay participation; representing the dignity of the individual; and maintaining the appearance of fairness”.

The literature regarding the South African situation does not differ from the international literature in this respect. This is also pertinent to the objectives of prosecution because what these authors argue is that it is as important to exonerate the innocent as it is to convict the guilty.

The participants in Sample “A” were asked “What, in your experience, are the objectives of prosecution?”, and the following answers were provided:

- Two participants said that prosecution is aimed at bringing the suspect before a court of law so as to answer the allegations against them.
- Seven participants stated that the objective of prosecution is to reveal the truth about a particular allegation so that the court can decide on the guilt or innocence of the accused person.

Sample “B” replied as follows:

- One participant responded that the objective is to determine the guilt of the person arrested for the crime.
- Three participants indicated that the objective of prosecution is to prosecute all those who are guilty of the allegations and prosecute without fear, favour or

prejudice.

The submissions of the participants are in line with what is provided in both the national and international literature. All the sources of data in this research are in agreement that the objective of prosecution is to present the evidence before the court of law so that the court can decide on the guilt or the innocence of the accused person/s. All the sources of data touch on the fairness that must prevail during prosecution and the fact that the enforcement of law encourages prosecutors to be fair and objective and not to be affected by improper or undue pressure from any source.

The researcher concluded that the objectives of prosecution include bringing the perpetrators before the courts and presenting the State's case before the court as highlighted by Joubert (2010).

## **2.5 FUNCTIONS OF THE PROSECUTOR**

The function of the prosecutor is to represent the public in prosecutions against individuals charged with public offence (Trebilcock & Daniels, 2008:146). This function involves investigating any conduct in State affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; report on that conduct and take appropriate remedial action (Gutto, 2001:321). Furthermore, Van der Merwe and Du Plessis (2004:515) mention that the prosecutor's primary function is to assist the court in arriving at a fair verdict and that he or she must act impartially and in good faith. According to the International Bar Association: United Nations High Commissioner for Human Rights (2003:150), prosecutors fulfil an essential function in the administration of justice and must be strictly separated from the jury and the executive. For the International Bar Association: United Nations High Commissioner for Human Rights (2003:150), prosecutors must, in particular:

- “be able to perform their professional duties in criminal proceedings in safety, without hindrance or harassment;
- act objectively and impartially, respect the principles of equality before the law, the presumption of innocence and due process guarantees;
- give due attention to human rights abuses committed by public officials, including law enforcement officials; and
- not use evidence obtained by unlawful methods which violate human rights (forced confession through torture, etc.)”.

The proper function of a prosecutor is to present to the court with reasonable impartiality the evidence on behalf of the State in support of conviction (Dyzenhaus, 1998:121). Cole and Smith (2008:214) state that the prosecutor's main duty is to enforce the rules of due process to ensure that the investigator acts according to the law and upholds the rights of defendants. Under the law, the functions of a prosecutor (Council of Europe, 2000:71) are to:

- “exercise oversight over the activities of investigative bodies and the operational activities of other institutions;
- organise, conduct and perform pre-trial investigation;
- prosecute on behalf of the State in all courts;
- exercise oversight over the execution of imprisonment sentences;
- participate in court hearings which are related to the change of the imposed term or conditions of imprisonment”.

When the participants in Sample “A” were asked “What, in your experience, are the functions of a prosecutor?” the following responses were tendered:

- One participant mentioned that the functions of the prosecutor are to consult with the witness and defence lawyer before placing the matter on the roll, for the prosecution process.
- Five participants indicated that the functions of the prosecutor are to prosecute without fear, favour or prejudice, to be objective about the facts presented to him or her and to proceed with criminal cases before the court.
- Three participants said that the functions of the prosecutor are to review the case docket, guide the investigation and monitor the process before preparing for a trial.

To the question above, Sample “B” replied as follows:

- Three of the participants said that the primary functions of the prosecutor are to decide on prosecution, present evidence before court and assist the court as the officer of court to arrive at a fair and just decision.
- One participant submitted that the function of the prosecutor is to be the lawyer of the State and that prosecutors face conflicting pressures to press charges vigorously against the lawbreakers while also upholding justice and the rights of the accused.

Both samples managed to extrapolate the various aspects of the functions of the prosecutor. The literature consulted and all four Sample “B” participants pointed out that

as the prosecutor's primary function is to assist the court in arriving at a fair verdict, they must act impartially and in good faith. All nine Sample "A" participants have some knowledge regarding the functions of the prosecutor and they are in agreement about how these can be applied in the prosecution process.

The responses of the participants are in agreement with the submissions of Paterson, Kotzé and Sachs (2009:98), who submit that the NPA has the primary role of instituting and conducting prosecutions. The South African Law Commission (2001:277), Joubert (2009:70) and Geldenhuys and Joubert (2011:76) state that the prosecutor's primary function is to assist the court in arriving at a specific verdict which will secure conviction and provide a fair sentence based on the evidence presented.

## **2.6 THE PROSECUTOR'S DISCRETION**

Joyce (2013:219) indicates that "although the prosecution process is governed by formal rules and procedures, these are tempered by the exercise of discretion by those professionals who are engaged in all aspects of this work." Joyce (2013:219) mentions that the term "discretion" conjures up a variety of images, which include "rule bending", the application of "tact", "sympathy", "understanding" and "common sense", or the exercise of independent judgement by professionals in a situation with which they are faced. According to Da Cruz (2008:63), prosecutorial discretion permits prosecutors to pick and choose which cases to charge and which to dismiss. The NPA derives its mandate from section 179 of the Constitution, as stated in the NPA Legislative Mandate (2010/11:7). Section 179(2) of the NPA Legislative Mandate (2010/11:7) empowers the prosecuting authority to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings. The prosecutor has the discretion to make decisions that affect the criminal justice process.

This discretion can be exercised at specific stages of the process and include:

- the decision whether or not to institute criminal proceedings against an accused;
- the decision whether or not to withdraw charges or stop the prosecution;
- the decision whether or not to oppose an application for bail or release by an accused who is in custody following arrest;
- the decision about which crimes to charge an accused with and in which court the trial should proceed;
- the decision whether or not to accept a plea of guilt tendered by an accused;

- the decision about which evidence to present during the trial;
- the decision about which evidence to present during sentence proceedings, in the event of a conviction; and
- the decision whether or not to appeal to a higher court in connection with a question of law, an inappropriate sentence or the improper granting of bail, or to seek a review of the proceedings (National Prosecution Authority Policy and Directives Manual, 2005:A4).

Du Bois and Du Bois-Pedain (2008:97), in keeping with the common law tradition, state that South African prosecutors enjoy broad discretion in their decision about whether to institute proceedings. The NPA Act, Act 32 of 1988, in South Africa and other legislation elsewhere also vest prosecutors with considerable discretion in determining which cases and which defendants to prosecute (Levesque, 2006:10). According to Hoexter (2007:213), the legislation now governing prosecutorial discretion is the NPA Act, Act 32 of 1998. The Act gives the NPA and prosecutors discretion with regard to how they perform their functions, exercised according to law and within the spirit of the Constitution of South Africa. Van der Merwe and Du Plessis (2004:515) believe, for example, that in terms of the CPA the right to institute a prosecution shall, unless some other period is expressly provided for by law, lapse after 20 years from the date when the offence was committed.

According to Joubert (2001:43), the investigating officer investigating the case must gather all relevant facts and evidence before present it the prosecutor. Based on these facts, the prosecutor or state advocate will decide, from a legal point of view, whether there is a *prima facie* case against the suspect, and whether to proceed with the criminal prosecution (Joubert, 2001:43). In terms of section 20(1) of the NPA Act, the power vested in the prosecuting authority, as stated in the NPA Legislative Mandate (2010/11:7), is to:

- institute and conduct criminal proceedings on behalf of the State;
- carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and
- discontinue criminal proceedings.

The following responses from the participants of Sample “B” were received in response to the question, “According to your understanding, when does a prosecutor exercise discretion to prosecute?”

- One of the participants mentioned that the prosecutor exercises discretion to

prosecute after all the relevant evidence has been collected and entered by the police into the police docket.

- Three participants explained that a prosecutor exercises discretion to prosecute when he or she has real available affidavits, has evaluated the evidence and seen whether the evidence (facts) available constitutes a *prima facie* case against the suspect or not.

The literature gives several basic explanations of the prosecutor exercising the discretion to prosecute. Van der Merwe and Du Plessis (2004:515) state that as long as a director of public prosecutions acts within his statutory powers, the High Court, in the absence of *mala fides*, is unlikely to interfere with the manner in which they exercise their discretion. Similarly, Tshiwula (1998:146) believes that the courts will not generally interfere in the exercise of the prosecutor's discretion to prosecute or not to prosecute. All three Sample "B" participants expressed a similar understanding, with one saying that "a prosecutor exercises discretion to prosecute when he or she has real available affidavits, has evaluated the evidence and seen whether the evidence (facts) available constitutes a *prima facie* case against the suspect or not".

Even though there was a minor variation in the explanation regarding when a prosecutor exercises the discretion to prosecute, the common understanding of Levesque (2006) and all four Sample B participants was that the legislation also vests prosecutors with considerable discretion in determining which cases and which defendants to prosecute. It is of the utmost importance to consider both the literature and the participants' viewpoints as rich additional information in the explanation of the prosecutor exercising the discretion to prosecute.

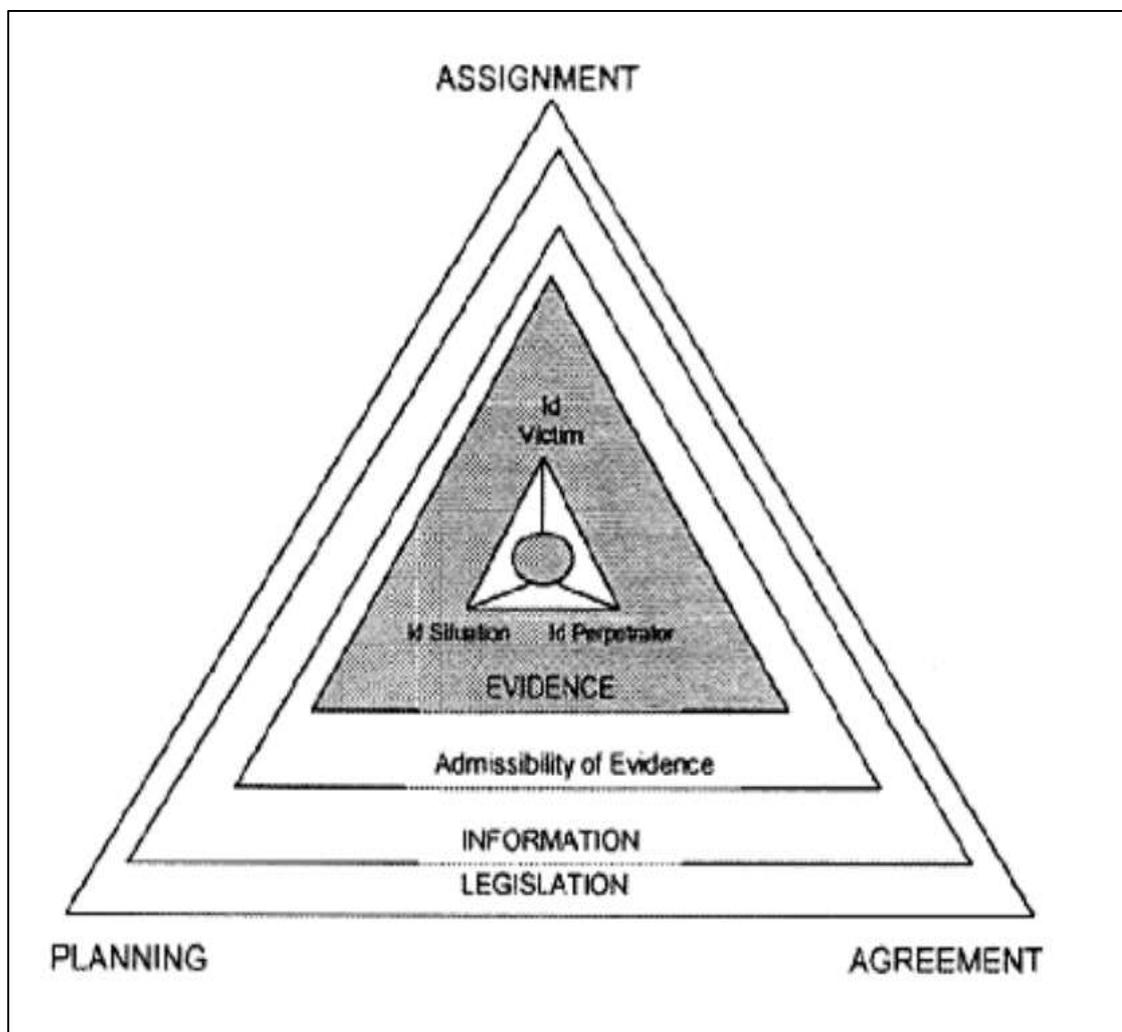
It was established that the NPA Act gives the NPA and prosecutors discretion with regard to how they perform their functions, exercised according to the law and within the spirit of the Constitution of South Africa. One participant mentioned that the prosecutor exercises the discretion to prosecute after all the relevant evidence has been collected and entered by the police into the police docket. Three participants explained that a prosecutor exercises the discretion to prosecute when they have a *prima facie* case against the suspect or not.

## 2.7 THE CONCEPT “INVESTIGATION”

Hess and Orthmann (2012:8) explain that investigation is a patient step-by-step inquiry or observation, a careful examination, a recording of evidence or a legal enquiry. Van Rooyen (2004:18) further states that the entire investigation process can be summed up in the form of a three-sided pyramidal model. The three aspects of the model that affect the approach to the investigation (agreement, assignment, and planning) are the first to be considered and provide the framework for all investigative activities.

**Figure 2.2: Three-sided pyramidal model of the investigation process**

(Source: Van Rooyen, 2004:18).



For Rory, McMahon and McMahon (2013:175), the basic elements of the investigative process include recognition, collection, preservation, and evaluation of information as outlined below:

- Recognition

Information relating to crime must be recognised as such by the investigator. Examples of such information include drops of blood at an assault scene, a neighbour who viewed a burglary and the bank records relating to a crime.

- Collection

Relevant information must also be collected by the investigator. Examples of information that must be collected include interviewing neighbours and reviewing the bank records of a suspect.

- Preservation

The information must be preserved to ensure its physical and legal integrity. Examples of information that must be preserved include obtaining a sworn statement from the neighbour and obtaining copies of the bank records of the suspect.

- Evaluation

The information must be evaluated by the investigator to determine its worth. Examples of the types of evaluation that must be conducted include the ability of the neighbour to pick the offender from a line up and bank records that are clearly deposits of money far in excess of the suspect's salary.

Berg and Horgan (1998:6) believe that criminal investigation is the lawful search for people and things to reconstruct the circumstances of an illegal act; apprehend or determine the guilty party; and aid in the State's prosecution of the offender. Joubert (2010:231) is of the opinion that the purpose of investigating an offence is to collect evidence, identify the perpetrator and bring him/her to justice.

In response to the question, "Based on your experience, define the concept 'investigation', the Sample "A" participants replied as follows:

- All nine participants mentioned that investigation refers to gathering evidence, identifying the suspect, and preparing the case docket with the aim of bringing the perpetrator before the court of law.

The question was not posed to Sample "B" because these participants were not investigators and were not expected to have a detailed knowledge about the duties involved in investigation.

The researcher's experience and the reviewed literature suggest that investigation refers to the tracing of suspects, gathering of information and evidence in the investigation process in order to determine whether a crime has been committed and who the offender is. The viewpoint of all nine participants, who stated that investigation refers to gathering evidence, identifying the suspect and preparing the case docket with the aim of bringing the perpetrator before the court of law, concurs with the literature reviewed. All participants of Sample A understood what investigation means. The viewpoint of the participants supports that of Brown (2001:3), who submits that investigation is the process of legally gathering evidence of a crime that has been or is being committed.

## **2.8 THE OBJECTIVES OF INVESTIGATION**

Ferraro (2012:77) indicates that the investigation's objectives define the fact-finder's purpose, benchmark his or her progress and provide the framework by which the project manager coordinates and builds his or her case. The objectives become the foundation that the investigation rests on (Ferraro, 2012:77). For Becker and Dutelle (2013:17), there are seven objectives of a police investigation, which are:

- a. Crime detection;
- b. Locating and identifying the suspect (before a crime scene can be processed, individual perpetrators must be removed from the premises because they pose a danger to the police, investigators, and others);
- c. Locating, recoding, and processing evidence while observing all constitutional considerations;
- d. Arresting the perpetrator(s) while observing all constitutional considerations;
- e. Recovering property;
- f. Preparing for trial, including completing accurate documentation; and
- g. Convicting the defendant by testifying and assisting in the presentation of legally obtained evidence and statements.

Gardner (2005:52) and Fisher (2004:48) state that the objective of an investigation is to establish that a crime has actually been committed, identify and apprehend the suspects, recover the stolen property and bring the culprit before the court to account for any charge. For Greene (2007:356), very broadly, the objectives of the criminal investigation process are: (1) to establish that a crime was actually committed, (2) to identify and apprehend the suspect(s), (3) to recover stolen property and (4) to assist with the prosecution of the person(s) charged with the crime. According to Du Preez (1996:4-7), the objectives of investigation include, among others, the identification of

crime, gathering of evidence, individualisation of the suspect, arresting of the suspect, recovery of stolen property and involvement in the prosecution process. Even though there are minor variations in the definitions of the objectives of investigation, a common understanding of the investigation process exists (Palmiotto, 2012:4).

The viewpoints expressed in the literature are that the objective of an investigation is to establish that a crime has been committed, that solving each case depends on the nature of the case and the individual investigator, and that an investigation is accomplished by collecting all the accurate information available on a specific act or crime.

To the question, "In your experience, what are the objectives of investigation?" Sample "A" participants responded as follows:

- Four participants mentioned that the objective of investigation is to discuss the docket with the prosecutor.
- Five participants said that the objectives of investigation are to:
  - Identify the suspect, collect evidence, obtain statements, trace a suspect, effect an arrest, and prepare the docket for the court process.

The question was not posed to "Sample "B" as this sample was not expected to have the expert knowledge to answer it comprehensively.

Five participants from Sample "A" mentioned the objectives of investigation as stated in the literature while four participants mentioned that the objective of investigation is to discuss the docket with the prosecutor, which was not close to the information obtained from any of the literature reviewed. A possible reason for this limited answer is the lack of basic and continuous training. Five participants from Sample A submitted that the objectives of criminal investigation have something to do with identifying the suspect; collecting evidence; obtaining statements; tracing a suspect; effecting an arrest and preparing the docket for the court process. The participants understood what the objectives of investigation are and that these objectives play an important role in the successful prosecution and/or conviction of a suspect.

## 2.9 THE CONCEPT “INVESTIGATOR”

Bennett and Hess (2007:6) highlight that an investigator is “any police employee (whether a detective, evidence technician, or other person) who contributes to an investigation”. The term investigator means any individual duly authorised by a department or agency to conduct or to engage in an investigation or prosecution of violations of the criminal laws of the country (Stich, 2009:537). According to Bennett and Hess (2007:9), a good investigator should be knowledgeable, creative, patient and persistent. For Gardner (2012:21), the criminal investigator seeks to establish the truth regarding a given event or crime by objectively pursuing this truth without regard to any other agenda.

Hess and Orthmann (2012:11) are of the opinion that investigators systematically seek evidence to identify the individual who committed a crime, locate the individual and obtain sufficient evidence to prove in court that the suspect is guilty beyond a reasonable doubt. Rory et al. (2013:182) explain that a criminal investigator collects facts to accomplish a threefold aim: to identify the guilty party, to locate the guilty party and to provide evidence of his or her guilt.

In response to the question, “Based on your experience, define the concept ‘investigator’, Sample “A” participants replied as follows:

- All nine participants indicated that it is a person who investigates the crime scene, researches records, analyses data and prepares the case docket for court.

The question was not posed to Sample “B” as this sample was not expected to have the expert knowledge to answer it comprehensively.

From the interviews and the literature reviewed, it was concluded that an investigator is a non-biased person who helps the prosecutor to gather free, unbiased information to help the court in reaching a fair decision at the end of the trial. It is important that the investigator keeps this in mind during the investigation process because the ultimate goal of any criminal investigation is to produce evidence related to the guilt or innocence of a suspect and to recover property (Gissel, 2005:27).

The literature consulted suggests that the concept investigator means any individual duly authorised by a department or agency to conduct or to engage in an investigation

or prosecution of violations of the criminal laws of the country (United Nations Office on Drugs and Crime, 2006) while the participants from Sample “A” provided in detail what an investigator does in the investigation of these violations of criminal laws. The participants indicated that an investigator is a person who investigates the crime scene, researches records, analyses data and prepares the case docket for court. All the participants were certain about the concept investigator.

### **2.9.1 The concept “detective”**

According to Stelfox (2009:48), the police service does not define a detective. However, being a detective can actually be interesting and challenging work and, among police professionals, has long been considered a coveted assignment (McElreath, Doss, Jensen III, Wigginton Jr., Kennedy, Winter, Mongue, Bounds & Estis-Sumerel, 2013:255). Weiss (2009:15) adds to the discussion by submitting that state officials define the word detective to mean a person skilled in the handling of evidential facts furnished by witnesses or derived from objects found at the crime scene.

Siegel (2011:101) indicates that detectives investigate the causes of crime and attempt to identify the individuals or groups responsible for committing particular offences. For Palmiotto (2012:15), the detective usually has freedom of movement and special skills to continue the investigation. Barkan and Bryjak (2011:271) argue that the decision on the part of detectives to conduct an investigation is contingent on two factors:

- a. Has a perpetrator been clearly identified? and
- b. Is the crime serious enough to attract public attention?

Participants of Sample “A” were asked “Based on your experience, define the concept ‘detective’. Their responses were as follows:

- Three participants indicated that anybody can investigate but the detective is somebody who has specialised in the field of investigation.
- Five participants mentioned that the detective is a person who collects evidence; it can be from the crime scene or by means of interviewing suspects and witnesses and recording that evidence in writing.
- One participant stated that the work of the detective is to detect crime and based on their investigation to come up with facts that can lead to the solving of a mystery.

The question was not posed to “Sample “B” as this sample was not expected to have the expert knowledge to answer it comprehensively.

The researcher has made some deductions which clearly show that detective implies the action of detecting based on investigation, to come with facts that can lead to solving a mystery, to find out what an ordinary person or layman cannot uncover. Both the literature and participants mention “special skills” and “specialisation” (participants). In conclusion, one can say that the investigator and detective are identical in their daily functions, as mentioned by Bennett and Hess (2007:6).

The viewpoints of the sample concur with the generally used definition as obtained from the literature study, that the investigator and detective are identical in their daily functions as their purpose is to investigate and gather evidence for their role in the prosecution process.

## **2.10 THE DIFFERENCE BETWEEN AN INVESTIGATOR AND DETECTIVE**

McElreath et al. (2013:255) explain that, for the public, the term “criminal investigations” often conjures up the image of “the detective” as the tenacious officer who single-handedly digs out evidence, collects tips from informants, identifies the criminals, tracks them down, and brings them immediately to justice. The investigator has specific tasks to perform, which include “collecting evidence, recording the information, interviewing witnesses and, the like” (Palmiotto, 2012:15). This view is also expressed by authors such as Bennett and Hess (2007) and Birzer and Roberson (2012:29) and the tasks include:

- Determining if crime has occurred
- Collecting evidence in order to identify a suspect(s)
- Arresting the suspects
- Recovering property
- Documenting findings in a clear and concise manner for presentation to a prosecutor and for use in the criminal justice system

Detectives are officers who try to solve crimes by determining the perpetrator and victims, ascertaining the involvement of accomplices, locating stolen property, and tracking down the suspect (Ross, 2012:75). Birzer and Roberson (2012:220) explain that the investigator is charged with finding out what happened but also who was involved and whether a crime was committed. According to Willingham (2013), the terms “investigator” and “detective” are often used interchangeably.

Participants of Sample “A” were asked the question “What, in your experience, is the difference between an investigator and a detective?” Their responses were as follows:

- All nine participants indicated that anybody can be a detective as the investigator and detective underwent the same training and the only difference is detachment in the SAPS.

The question was not posed to “Sample “B” as this sample was not expected to have the expert knowledge to answer it comprehensively.

The response of the participants is in agreement with the literature in that they all indicate that anybody can be a detective as the investigator and detective undergo the same training.

Regardless of the differences that exist in job titles, one can conclude that both the investigator and detective use specialised skills during criminal investigations and the two work together. In conclusion, one may say that the work of an investigator and a detective is identical. As it has been established that the two concepts are identical, from this point onwards investigator and detective are referred to as “investigators”.

**Table 2.1: The difference between investigator and detective**

Investigator	Detective
The investigator needs to conduct a preliminary investigation to determine in which jurisdiction the violation has occurred	When a serious crime occurs and the suspect is identified and caught right away, the detective prepares the case to be presented to the prosecuting attorney
The primary task of the investigator is to identify who committed the crime	When there is no suspect the detective starts from scratch to find out who committed the crime
In many cases, an investigator has the responsibility for recovering stolen goods	When the suspect has been identified but not caught, the detectives tries to locate him or her
The investigator must determine whether the evidence is true	When the offender is not identified but there is more than one suspect, the detective conducts investigations to determine which one committed the crime

(Source: Cole, Smith & De Jong, 2014 :241; McMahan, 2014:176-181)

## 2.11 THE RESPONSIBILITIES OF AN INVESTIGATOR

For Holden (2006:37), “responsibilities of an investigator include comparing and identifying whole and fragmentary latent prints lifted from or developed on various and possible unstable surfaces; testifying in court as an expert witnesses and classifying, searching, and identifying fingerprints accurately.”

Hess and Orthmann (2010:xix) submit that the investigative responsibilities are: documenting the scene by note taking, photographing and sketching, writing reports, searching crime scenes and suspects, identifying and collecting physical evidence for forensic examination, obtaining information, and identifying and arresting suspects. Echaore-McDavid and McDavid (2008:11) believe that investigators are responsible for examining crime scenes to gather and process physical evidence that may link suspects to the crime scenes. For Echaore-McDavid and McDavid (2008:11), criminal investigators, particularly, are responsible for conducting intensive probes into criminal cases and solving them. For Palmiotto (2012:7), an investigator’s responsibilities include determining if a crime was committed and interviewing victims and witnesses. For Fisher and Fisher (2012:379), the investigator is responsible for collecting a vast amount of evidence and co-ordinating information from various sources, including witnesses, suspect(s), case detectives, forensic pathologists, criminalists and district attorneys. For Liberty University (2014:1), the responsibility of a criminal investigator varies, based on the crime being investigated at the time. Nevertheless, there are some common duties in most cases. Those include (Liberty University, 2014:1):

- Examining case files
- Using law enforcement equipment, such as police radios and evidence containers
- Preparing evidence before a trial
- Testifying in court about a criminal case
- Gathering evidence at a crime scene
- Working with forensic scientists and psychologists to assess a crime
- Identifying suspects of a crime
- Recruiting witnesses for a criminal court trial

In response to the question posed to Sample “A”, “What, in your experience, are the responsibilities of an investigator?” the following answers were provided:

- Seven participants submitted that the “responsibility of the investigator is to investigate” crime, interview suspects, and identify and arrest the perpetrator.

- Two participants mentioned that the responsibilities of an investigator are to gather evidence for the prosecutor to enable him or her to present a formidable case in court; they need to acknowledge that it is their responsibility to see that exhibits are recorded in the SAP 13 and statements from witnesses and suspects are legible for the prosecutor to understand them.

The question was not posed to “Sample “B” as this sample was not expected to have the expert knowledge to answer it comprehensively.

From the above, it is clear that the responsibilities of an investigator are to ensure that a crime that has been reported or has occurred is investigated and evidence collected in a good manner in terms of the constitution of the country and also to see to it that the perpetrator is brought before court. For these participants, it is important that investigators acknowledge that it is their responsibility to see that exhibits are recorded in the SAP 13 and statements from witnesses and suspects are legible for the prosecutor to understand them.

From the participants’ responses and the review of various studies, the researcher determined that the investigator’s responsibility is to establish if a crime has been committed, link the suspect to the crime scene, identify and charge suspects, and interview the complainant and witnesses. This definition is similar to the discussion of Echaore-McDavid and McDavid (2008) and Palmiotto (2012) above. Most of the participants had a clear understanding of the responsibilities of an investigator.

## **2.12 THE PRE-TRIAL CONFERENCE**

According to Levesque (2006:696), a pre-trial conference refers to a meeting with the public prosecutor and attorneys to define issues, prepare for a trial and discuss the possibility of settlement. The pre-trial conference is further clarified by Brown (2001:296), who explains that prosecutors should meet with witnesses in a pre-trial conference to review the questions they will be asked. According to Jenkins (2011:234), the pre-trial is a conference between the parties and their attorneys in which matters pertaining to the trial are resolved and documented by court order. Pyrek (2007:331) explains that a final pre-trial conference further frames the issues and defines the structure of the case, as well as helping formulate a plan for the trial, including a programme for facilitating and streamlining the admission of evidence.

For Sarkin-Hughes, Haeck and VandeLanotte (2001:170), appropriate pre-trial disposition is also essential to ensure that the victim is in a position to provide the court with evidence in its optimal form – not only in terms of the integrity of evidence but, in light of South African realities, simply in terms of making it to the courtroom alive.

To the question, “Based on your experience, what is a pre-trial conference?” the Sample “A” participants’ responses were as follows:

- Nine participants indicated that a pre-trial conference is a preliminary inquiry of facts of the criminal case before the main trial can commence.

Sample “B” replied as follows:

- Two participants stated that the pre-trial hearing is a process in which a judge determines whether a probable cause exists to support the formal charges against the defendant.
- Two participants described the pre-trial conference as a pre-trial process in terms of which the parties come together to establish which factors are in dispute; this helps to shorten the trial and the State is better placed if admissions are recorded to call only witnesses who will help to prove disputed versions.

Although the participants used different terminologies to describe a pre-trial and the purpose of a pre-trial, it was observed that there were no major differences between their responses. All Sample “A” participants indicated that a pre-trial conference is a preliminary inquiry of facts of the criminal case before the main trial can commence. Two Sample “B” participants described the pre-trial conference as a pre-trial process in terms of which the parties come together to establish which factors are in dispute. “The rest of the Sample “B” participants stated that the pre-trial hearing is a process in which a judge determines whether a probable cause exists to support the formal charges against the defendant”.

The researcher supports the idea of Champion (2005:199), that the term pre-trial conference refers to a meeting between opposition parties in a law suit or criminal trial for the purpose of stipulating things that are agreed on and thus narrowing the trial to the issues that are in dispute, disclosing the required information about witnesses and evidence, making motions, and generally organising the presentation of motions, witnesses and evidence.

## 2.13 PILLARS OF A SUCCESSFUL PROSECUTION

Prssler, Saner and Wasserfall (2009:23) believe that the following are the four pillars of successful prosecution:

- Pillar 1: Criminal justice process
  - Improving the efficiency and effectiveness of the criminal justice process, which means increasing the chances of successful investigation, prosecution and punishment of crime
  - Improving information systems so that quality information is available for investigation, prosecution and punishment of crimes
- Pillar 2: Reducing crime through environmental design
  - In terms of reducing crime through environmental design, the government is taking steps to strengthen internal regulations and control, and putting in place steps to uncover hidden crime in the private and public sectors; for example, bribery and corruption of the police
- Pillar 3: Community values and education
  - Improving public understanding of the criminal justice system, so that the public can become involved
  - Creating crime awareness and developing strong community values and encouraging social pressure against criminality
- Pillar 4: Transitional crime
  - Improving the co-ordination between South African agencies for border regulation, the control of ports of entry and the implementation of the immigration policy.

According to Prssler et al. (2009:23), the criminal justice system is taking the following action to activate crime control in terms of the prosecution process:

- Improving the efficiency and the effectiveness of the criminal justice process, which means increasing the chances of successful investigation, prosecution and punishment of crimes;
- Improving information systems so that quality information is available for investigation, prosecution and sentencing of crimes;
- Using community sentencing for minor offenders;
- Taking petty offenders and juveniles out of the normal system;
- Creating special, secure care facilities for young suspects and convicts;
- Making sure that legislation protects special-interest groups, including women and children; and

- Making the criminal justice process more victim-friendly.

A successful prosecution, which secures a conviction, is the fruit of a productive, meticulous and intensive investigation (Douglas, Burgess & Burgess, 2013:509). Comer (2003:32) adds to the discussion that the English legal system is adversarial and rests on three pillars. The first is that the court should hear the whole truth. The second is that innocence should be presumed. The third is that those involved in proceedings should be able to obtain plain advice from their lawyers in total confidence under the cloak of legal professional privilege. Becker (2005:12) and Becker and Dutelle (2013:18) add to the discussion that a successful investigation is one in which the following statements are true:

- All available physical evidence is completely handled.
- All witnesses are intelligently interviewed.
- All suspects are effectively interrogated.
- All leads are developed.
- All documentation is comprehensively, clearly and accurately completed.

Brandl (2014:464) summarises the pillars of a successful prosecution by stating that successful prosecutions are based on good evidence and, as such, successful prosecutions depend on competent and thorough investigations.

When the participants of Sample “A” were asked “What, in your experience, are the pillars of a successful prosecution?” they gave the following responses:

- Four participants indicated that the pillars were trustworthy, steadfast and honest witnesses and a competent investigating officer.
- Five participants stated that proper initial decision making and proper investigation were the pillars of a successful prosecution.

Sample “B” replied as follows:

- One participant stressed that it is to make sure that investigations cover all evidence that should be brought to court in time.
- Three participants mentioned that the pillars were trustworthy, steadfast and honest witnesses and intensive investigation.

A comparison between the samples shows that Sample “A” added on to what Sample “B” had already mentioned. For instance, the participants in both samples mentioned that the pillars of successful prosecution were trustworthy, steadfast and honest

witnesses and intensive investigation. These responses support the literature consulted, which see the pillars of a successful prosecution as a wide collaboration and the ongoing commitment of judges, health care professionals, the police, prosecutors, and witnesses (Siegel, 2010:357). The participants understood what the pillars of a successful prosecution are and that they play an important role in the prosecution process.

It may be concluded from the literature and interviews that a prosecution is unlikely to be successful if the pillars of a successful prosecution such as competent investigation, collaboration between all stakeholders and honesty are not present. This means that the pillars of a successful prosecution, particularly the onus of proof and the requirement to prove the case beyond reasonable doubt, set the ground on which any prosecution must be built.

The issues on which the participants and literature agree regarding a successful prosecution are further clarified by the National Prosecution Authority Policy and Directives Manual (2005:A4), which explains that in deciding whether or not to institute criminal proceedings against an accused, prosecutors should assess whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution.

## **2.14 SUMMARY**

In this chapter, the researcher discussed what does the prosecution process entails. The concepts discussed were “investigation”, “detective” and “investigator”. The differences in meaning among these concepts were also elaborated on, in order to obtain a good understanding of the field of study.

The objectives of prosecution and the functions of the prosecutor were addressed, to provide a clear understanding of why prosecution are conducted.

## CHAPTER 3

### THE ROLE OF THE INVESTIGATOR IN THE PROSECUTION PROCESS

#### 3.1 INTRODUCTION

Joubert (2009:5) believes that crime is a reality of life, especially in South Africa, and each country needs rules, principles, mechanisms and State structures to prevent, detect, cope with and control criminal behaviour. The Republic of South Africa has a national police service, the “South African Police Service” (SAPS), which is independent and is under the ultimate control of the relevant member of the cabinet (Joubert, 2009:62). All South African police officials must know, understand and be able to apply South African law to perform their duties diligently and exercise their powers fully (Joubert, 2009:62). As far as prosecutions are concerned, the police practise, exercise discretion of their own and often refrain from bringing trivial matters and allegations, which are not adequately supported by evidence, to the attention of the public prosecutor.

According to Joubert (2010:14), section 205 of the Constitution of the Republic of South Africa provides that the extent and source of the functions and the objectives of the police service are as follows:

- “(1)The National Police Service must be structured to function in the national, provincial and, where appropriate, local spheres of government.
- (2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.
- (3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law. This is recognised in section 205(2) of the Constitution, which required the enactment of the national legislation to establish the powers and functions of the SAPS and to enable the SAPS to discharge its responsibility effectively.”

In this chapter, the researcher covers the field and the role of the commercial crime investigator in the prosecution process, the investigator’s assisting the prosecutor during the prosecution process, the investigator’s giving evidence during the prosecution process and the importance of physical appearance in court when testifying. He then looks at the officials that are involved in the prosecution process; the importance for the

investigator of having a good relationship with the prosecutor; the relationship between the prosecutor and the commercial crime investigator; factors that influence the relationship; advantages of a good relationship; disadvantages of a bad relationship; the role of the prosecutor in the investigation process; and the role of the investigator in a prosecution. Lastly, he focuses on two specific aspects of the investigator's role: assisting the prosecutor during the trial and preparing witnesses effectively. By investigating the above issues, the researcher intends to establish the role of the investigator in the criminal justice system. In the literature research the researcher focuses on the investigator in general but the interviews focus on the role of the SCCU specifically.

### **3.2 THE ROLE OF THE INVESTIGATOR IN THE PROSECUTION PROCESS**

Atkinson (2010:158) states that prosecutors and investigators should work closely together but that the final responsibility for the decision about whether or not a case should go ahead rests with the prosecution services. According to the Commercial Crime Mandate (2011:8), the Commander books out a case docket to an investigating officer, who is required to begin the investigation process within seven days. The process includes the A1 statement (complainant's statement in order to link the suspect); confirming the identity of the suspect; requisitioning necessary documents –as many as possible such as bank statements; updating police registers; capturing information on the Integrated Scientific Information System (ISIS); and confirming the case number. Brandl (2014:466) indicates that police investigators are a part of the prosecution team.

Shameem and Tuiketui (2012:1) state that the role of the investigator is to investigate the alleged commission of criminal offences, to gather evidence, interrogate suspects and refer charges for the prosecutor. This role means that police officers understand that ultimately they are answerable to the courts for the manner in which they conduct interviews and investigations and for their respect for due process rights (Shameem & Tuiketui, 2012:1).

The investigator immediately contacts the prosecuting officer and they meet within a further 14 days to review the case docket together for the following purposes (Commercial Crime Mandate, 2011:8):

- Consider information already in hand
- Review the initial investigation plan that has been prepared
- Draw up a new plan/adapt the plan as considered necessary (this may

happen from time to time as the investigation progresses)

- The prosecutor provides the “Case Administration Office” with the plan information so that the plan can be captured on the case planning system.

Orthmann and Hess (2013:665) submit that, although the investigating officer can arrest based on probable cause, prosecutors are held to a much higher standard –*proof beyond a reasonable doubt* – in the courtroom. They state that:

“Unless it appears that this higher burden of proof can be met, the criminal proceedings cannot ethically be commenced. Sometimes, therefore, the charging gaps result from the simple fact that the quantity and quality of evidence that may be more than enough to constitute probable cause nevertheless falls short of what would be needed to establish guilty at the trial.”

According to the Commercial Crime Mandate (2011:10), an investigating officer is appointed who will take responsibility for all SAPS investigative work in respect of this case within the integrated team structure, together with the prosecutor and external specialist (where relevant) who will be appointed to the case and will take prosecutorial responsibility.

To the question, “Do you believe that the investigator has a role in the prosecution process?” Sample “A” replied as follows:

- All nine of the Sample “A” participants answered “yes”. They highlighted that the investigator has a role in the prosecution process by saying that this is to investigate crime and ensure that witnesses attend court by serving subpoenas on them and to shed light on the investigation process.

To the question above, Sample “B” replied as follows:

- All four Sample “B” participants replied “yes”. The investigator’s role is to investigate all outstanding factors, subpoena witnesses and help to bring exhibits to court.

The literature consulted gives several basics in referring to the role of the investigator in the prosecution process. Shameem and Tuiketui (2012:1) note that the role of the investigator is to investigate the alleged commission of criminal offences, to gather evidence, to interrogate suspects and to refer charges for the prosecutor. Brandl (2014:466) indicates that the role of the investigator is to collect the evidence in the case

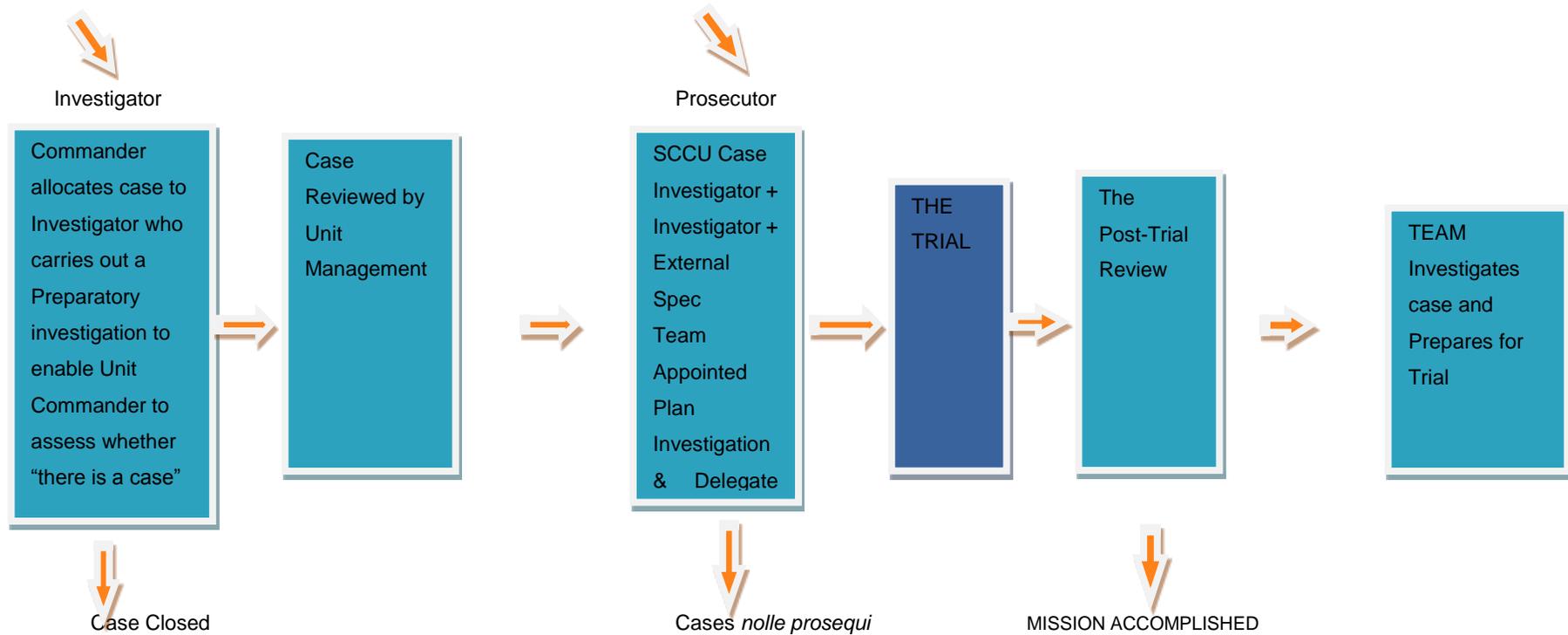
and, on the basis of probable cause, to identify and apprehend the individual who committed the crime. All 13 participants from both Samples “A” and “B” gave a similar explanation by referring to the investigator’s role in the prosecution process as being to investigate crime and ensure that witnesses attend court by serving subpoenas on them and to shed light on the investigation process. Both Sample “A” and “B” participants are in agreement with the literature (such as Brandl, 2014:466) that the role of the investigator is to collect the evidence in the case and, on the basis of probable cause, to identify and apprehend the individual who committed the crime.

The fundamental objective of this process is to provide clear direction for the effective investigation and prosecution of serious commercial crime from the time that the crime is reported through to the completion of the judicial process, which is the post-trial review by the prosecutor and investigator. The Commercial Crime Mandate (2011:3) provides a structure of the process, which includes:

- i. The identification of the type and scope of the offence, at the earliest possible opportunity, in an endeavour to promote team effort effectively. And, given the specific circumstances of the case, to enable a decision to be made as to the suitability of the case for the Specialised Commercial Crime Unit (SCCU) and
- ii. (this is referred to as the “preliminary investigation”)
- iii. The selection of the case for investigation and prosecution by the unit and for trial in the Specialised Commercial Crime Court (SCCC)
- iv. The identification of the main elements of the case docket and the appointment of the investigation or prosecution team to be assigned to the case (including external specialists where necessary)
- v. The proper planning, execution and performance measurement of the investigation process and the preparation of the case for trial
- vi. The trial
- vii. A post-trial review

A “team approach”, where the investigators and prosecutors jointly plan and prepare the case for trial, where clear activities and responsibilities are assigned to each team member relative to their area and level of proficiency, together with realistic completion dates (Commercial Crime Mandate, 2011:4) is set out in a functional diagram that reflects core activities. This diagram is presented below in Figure 3.1.

**Figure 3.1: Functional diagram reflecting core activities and point of decision**



(Source: Commercial Crime Mandate, 2011:8)

### 3.3 THE INVESTIGATION PROCESS

Joubert (2010:222) mentions that, in general, the criminal justice process takes effect when a crime is committed. According to the Commercial Crime Mandate (2011:9), the commercial crime investigation process commences once a formal complaint is reported, which could occur in the following manner:

- The complaint may be registered at the client service centre of the SAPS, where the nature of the complaint falls within the scope of the mandate, which is the responsibility of the Commercial Branch. The client service centre will refer all such cases to the Commercial Branch as soon as possible.
- Representations may have been made directly to the NDPPA or to the Minister of Justice and Constitutional Development or National, Provincial or Area Commissioner of the SAPS, where such representation may also be routed through the SCCU to the Commercial Branch.
- Representations may also have been made directly to the Head of the SCCU, where they too should be routed to the Commercial Branch.

Sennewald and Tsukayama (2006:3) indicate that the investigative process is a comprehensive activity that involves information collection, the application of logic and the exercise of sound reasoning. Plach (2008:8) indicates that while the individuals involved may vary from one case to the next, there are a number of principles that, when followed by investigators, can increase the chance of a “successful” investigative process. These include:

- A thorough, objective, and unbiased approach to the investigative process – that is, the investigators collect and evaluate all the information and evidence that is relevant to the allegations and do so in a way that is objective and unbiased.
- The investigators actively explore and evaluate “alternative hypotheses” regarding the allegations.
- The investigators act “proactively” by anticipating defence challenges to the reliability of the evidence, and make efforts to ensure that the evidence is reliable and strong enough to withstand defence efforts to dismiss or discredit it.
- The investigators work in a collaborative, co-ordinated effort that takes advantage of the skills of many different professionals.
- The investigators respond to the victim and their family in a way that is respectful and compassionate and that “preserves their dignity and adapts

the investigative process to meet the unique developmental, emotional and cultural needs of the victim”.

### 3.4 THE DIFFERENCE BETWEEN PUBLIC AND PRIVATE INVESTIGATIONS

According to Tyska and Fennelly (1999:142), the fundamental difference between the investigative process in the public and private sectors is the objective. The primary objective of the investigative process in the private sector is to serve the interests of the organisation, company or client that employs the investigator (Black, 2014:53) while, according to Tyska and Fennelly (1999:142), the primary objective of investigations in the public sector is to serve the interest of the society. Sennewald and Tsukayama (2006:10) further add that different perceptions and different objectives have a direct impact on the strategies and the character of the investigative process in the two sectors, leading to other differences. Public investigators are usually armed, for example; private investigators are unarmed (Sennewald & Tsukayama, 2006:10; Tyska & Fennelly, 1999:143).

Cavallaro (2011:26) compares the work of the police officer (public) and the private investigator as shown in Table 3.1.

**Table 3.1: The difference between public and private investigations**

<b>Public investigation</b>	<b>Private investigation</b>
Community service	Business
Must investigate all cases	Chooses to decline or accept cases
Can interrogate	Can be called to perform interrogation and record depositions
Case not confidential	Case confidential
Can make arrests	Can only make citizen's arrest and must immediately deliver the person to law enforcement
Has authority to use force	Use of force not authorised unless in self-defence

(Source: Cavallaro, 2011:26).

### 3.5 THE ROLE PLAYED BY THE PROSECUTOR IN THE INVESTIGATION PROCESS

The prosecutor can give legal advice on statements, confessions, evidence, the search and necessary legal papers and may provide new perspectives on the facts in the case

(Hess & Orthmann, 2010:26). Kyprianou (2010:30) states that prosecutors can also give general instructions to the investigator regarding how a particular case is to be handled and can set areas of priority of investigation. Hess and Orthmann (2010:26) reveal that the prosecutor's office can review investigative reports and evidence that relate to the elements of the offence, advise whether the proof is sufficient to proceed and assist in further case preparation. According to the National Center for Prosecution of Child Abuse (2004:96) in America, the prosecutor's role is to provide ongoing legal advice, help draft search warrants, observe interviews of potential witnesses and provide any other assistance deemed appropriate. Bennett and Hess (2007:615) explain that the prosecutor is an investigator's legal advisor throughout the process – during the investigation, the pre-trial conference and the court presentation.

Hess and Orthmann (2010:26) state that when investigators have concluded their investigation, they should seek the advice of the prosecutor's office. At this point, the case may be prosecuted, new leads may be developed or the case may be dropped, with both the investigator and the prosecutor's office agreeing that it would be inefficient to pursue it further. In every major step of the prosecution process, the prosecutor has a number of important roles:

- Investigation

During the investigation phase of the criminal justice process, the prosecutor assists with the preparation of search and arrest warrants and works with law enforcement officers, ensuring that their investigative reports are complete.

- Arrest

Subsequent to arrest, prosecutors screen cases to determine which should be prosecuted and which should be dropped (Territo & Glover, 2014:359).

The investigators perform the investigative actions under the guidance and supervision of the prosecutor (Yordanova, Markov & Ilcheva, 2012:7). The prosecutor may also direct or control the investigation by giving specific instruction to the investigating officer; that is, the police official charged with the investigation of crime (Mokoena, Karels, Basdeo & Swanepoel, 2012:17; Joubert, 2009:62). In addition, the prosecutor often acts as a legal advisor to the investigator, giving advice about law enforcement practices that will withstand court challenges, ensuring appropriate gathering of evidence and interviewing witnesses (Regoli & Hewitt, 2010:184). Kyprianou (2010:30) adds to the discussion that, when there is a need for search and seizure, pre-trial detention, telephone tapping, deploying an undercover agent or DNA analysis, in principle, a court

has to authorise these actions and, therefore, the public prosecutors must serve as an interface in terms of filing a corresponding motion.

In response to the question, "In your experience, what role does the prosecutor play in the investigation process?" Sample "A" participants replied as follows:

- Five participants indicated that prosecutors make sure that they guide the investigation, how evidence is obtained and the truth is revealed.
- Four participants mentioned that the role played by the prosecutor in the investigation process is to review the docket files, assisting and guiding the investigator with regard to issuing subpoenas to witnesses and helping to bring exhibits to court.

To the question above Sample "B" participants replied as follows:

- All four participants indicated that prosecutors can give guidance during the course of investigation and also review the case docket to establish what is outstanding, with the aim of minimising the investigation gap before and during the trial.

All participants from both Samples "A" and "B" mentioned the role played by the prosecutor in the investigation process as mentioned in the literature discussed above.

When the responses of all participants from both Samples "A" and "B" were compared with the information gleaned from the literature on the topic, no big difference was found between them. It seems that the participants had good workable knowledge on what role the prosecutor plays in the investigation process. It is therefore of the utmost importance to consider both the literature and the Sample "A" and "B" participants' points of view as rich additional information in the explanation of the role played by the prosecutor in the investigation processes.

### **3.5.1 The investigator's assisting the prosecutor during the prosecution process**

Joubert (2009:62) submits that in practice there is some form of co-operation between the investigator and prosecutor in the investigation of a case and its preparation for the prosecution process. Investigators should make every effort to uncover evidence that reflects on the past crimes and misconduct of the defendant and to make this evidence known to the prosecutor, who may then be able to use it in the prosecution process. Gilbert (2004:543) suggests that investigating officers are typically essential in assisting

the prosecutor during the prosecution's case, since they frequently provide eyewitness information, or information that supports the testimony of other witnesses. Becker and Dutelle (2012:21) indicate that it is helpful if the testifying investigator can assist the prosecutor in establishing the necessary predicates and can anticipate the types of questions that will establish those predicates. Brown (2001:54) and Joubert (2010:39) believe that the presence of the investigating officer during court proceedings is also required, since they have the necessary background knowledge of the case, which can be of great value to the prosecutor.

Vadackumchery (1997:104) submits that mutual trust and assistance must exist for a case to be conducted in the courts of law. According to Reyes, Britton, O'Shea and Steel (2011:63), if the investigator develops a broad understanding of the case as an investigator, they will be able to assist the prosecutor in identifying the testimony the investigator could offer that would be helpful for the "trier of fact" to understand the issues that are really in dispute. For example, the predicate for admitting photographs is not complicated, but the standard could remain unmet if either the prosecutor or testifying investigator is not familiar with the format (Becker & Dutelle, 2012:21). Cole and Smith (2008:214) argue that the prosecutor depends on the police investigators to provide both the suspect and the evidence needed to convict lawbreakers.

From the literature, the researcher concluded that an investigator with a broad understanding of the case will be able to assist the prosecutor in identifying the testimony they could offer that would be helpful for the prosecutor to understand the issues in dispute. For Joubert (2010:42), regular contact between the prosecutor and the investigating officer will help to minimise problems.

To the question "Do prosecutors allow the investigators to assist them during the prosecution process?" the participants from Sample "A" responded as follows:

- Three participants indicated that generally prosecutors do not allow the commercial crime investigators to assist them because they believe that investigators have nothing to offer by virtue of being investigators.
- Six participants mentioned that prosecution is a team effort and prosecutors do allow the investigators to assist them during the prosecution process in some instances; where the prosecutor is aware of an investigator's capabilities and legal background they will seek their input.

To the question above Sample “B” replied as follows:

- One participant replied by saying “no”, only when there is a need.
- Three participants emphasised that prosecution is based on team work and it is important that the investigator has to assist because they have knowledge on the background of the investigation regarding what needs to be done to ensure fair and successful prosecution.

The literature reviewed suggests that investigating officers are essential in assisting the prosecutor during the prosecution’s case, since they frequently provide eyewitness information or information supportive to the testimony of other witnesses (Gilbert, 2004:543). The common understanding of Brown (2001) and Joubert (2010) and the six Sample “A” and three Sample “B” participants is that prosecution is a team effort and it is important that the investigator has to assist because they have background knowledge of the investigation and what needs to be done to ensure fair and successful prosecution. The remaining three Sample “A” and one Sample “B” participants responded that generally prosecutors do not allow the investigators to assist them because they believe that investigators have nothing to offer by virtue of being investigators. This attitude is a shortcoming, as both samples deal with the prosecution process on a daily basis and it is a concern to note that some investigators and at least one prosecutor have limited knowledge about the importance of prosecutors and investigators working together.

The researcher agrees with the viewpoints expressed in the literature and by the six Sample “A” and three Sample “B” participants.

The researcher is of the understanding that prosecutors in Pretoria do not allow investigators to assist them during the prosecution process.

### **3.5.2 The investigator’s giving evidence during the prosecution process**

White (2010:526) states that giving evidence in a court of law is usually the culmination of the whole investigative process. According to White (2010:432), there is nothing wrong with an investigator giving evidence on facts. Lyman (2002:279) states that before the prosecution process, the investigator should go back over their list of evidence and be sure that all is accounted for and easily identifiable. Once the investigators are satisfied that the evidence has been collected appropriately, the question of how best to present the evidence to the prosecutor is addressed (Lyman, 2002:271). Horswell (2004:12) indicates that evidence will also provide investigators with information that

they may not otherwise have knowledge of and will assist the court in reconstructing the crime scene, providing the most reliable evidence as to the condition of the crime scene, potential evidential material and their inter-relationship and, finally, may well provide the court with a facsimile of the crime scene, which would not otherwise be available.

Hare (2009:1015) states that, subject to any direction contained in the order for the taking of evidence, any person giving evidence may be examined, cross-examined or re-examined and the examination or cross-examination of a person giving evidence will be conducted in the same way through as other trials. Plach (2008:6) writes that the most successful prosecutions result from very concrete efforts by investigators to gather evidence objectively and thoroughly, and from anticipating possible attacks on the evidence to ensure that whatever evidence is collected is strong enough to withstand attacks by the defence during the prosecution process.

According to Adams, Caddell and Krutsinger (2004:77) and Lyman (2002:279), to present evidence in court, the investigator should show that there was a constant chain of custody from the time evidence was first discovered until it is presented in court. Lyman (2002:279) states that the investigator should also consider how the evidence will be transported to court and who will maintain possession of it once the court proceeding is under way. Murphy (2008:495) argues that the general rule is that all evidence should be given under oath, although there have always been limited exceptions.

To the question “What does ‘giving evidence’ mean?” the Sample “A” participants’ responses were as follows:

- Two participants indicated that it is to testify under oath in court.
- Seven participants indicated that giving evidence is to testify during the criminal proceedings process.

To the above question, Sample “B” participants replied as follows:

- One participant indicated that giving evidence means giving evidence before court either orally or by introducing documentary or real evidence in order for the court to adjudicate and make a judgment.
- Three participants believed that giving evidence means testifying in court by outlining facts which prove that an offence has been committed or facts which support such an offence.

It is apparent from the information obtained from the literature and interviews that giving evidence means giving evidence before court either orally or by a witness's introducing documentary or real evidence for the court to adjudicate and make a judgment on. This confirms the view of Horswell (2004:13) that, when giving evidence in court, the crime investigator may be permitted by the court to refresh their notes taken during the investigation if these were made contemporaneously with the examination of the crime scene.

The participants' responses were compared with the literature on the topic and it was found that there was no major difference between them. It seems that the participants had a good understanding of what giving evidence means in the prosecution process.

### **3.5.3 Preparing a witness to testify in court**

According to Miller and Meinzingler (2012:362), a witness is any person asked to testify in court. Probably the most important part of being a successful and confident witness in court is preparation before testifying, as stated by Davies and Hertig (2008:403). According to Davies and Hertig (2008:403), the first step in this preparation is for the investigator to realise that they may be called on to testify on any official act that they perform in their job as an investigator. Preparation actually begins at the scene of a crime or when conducting the initial investigation (Davies & Hertig, 2008:403). Miller and Meinzingler (2012:363) believe that good advance preparation can make a great difference to the testimony that a witness provides. The amount of time spent preparing a witness will vary, depending on the size of the case, the importance of the witness's testimony, and whether the attorney believes that the witness will be able to communicate clearly and effectively in court (Miller & Meinzingler, 2012:363).

According to Bishop, Crawford and Reisman (2005:1490), the witness should review the relevant documents to refresh their recollection of facts. Bishop et al. (2005:1490) believe that the party or lawyer who assists and guides the preparation of a witness should ensure that the witness reviews the documents thoroughly and considers the points that may arise in questions. The Centre for Child Law (2008:30) suggests that court preparation involves the process of familiarising witnesses with the court environment, legal process and legal terms at the appropriate level so as to address their fears and concerns about having to testify.

To the question “Do you consider it important to prepare a witness to testify in court?” the Sample “A” participants responded as follows:

- One participant answered “yes, it is important” and stated that preparation involves informing the witness about the set-up in court and making the witness feel at ease.
- Three participants mentioned that every witness needs to be prepared because usually people are uncomfortable about being witnesses in criminal court.
- Five participants indicated that the witness must be prepared by reading statements, focusing, answering the questions without motivating, not lying or speculating and not losing their temper.

To the above question Sample “B” participants replied as follows:

- One participant indicated that there is a need to prepare a witness to testify because sometimes they reveal unnecessary information during the prosecution process.
- Three participants answered “yes” and indicated that it is generally important just like evidence accompanied by an affidavit in terms of which the physical presence of the witness is not compulsory and evidence becomes admissible by mere production of the affidavit.

On the basis of the views of the participants from both samples presented above, it seems as if the participants have a fair understanding of the importance of preparing a witness to testify in court. However, some of the participants narrowed the scope to the importance of preparing a witness to testify in court by informing the witness about the set-up in court and making the witness feel at ease. The participants’ viewpoints did not differ from the literature on the importance of preparing a witness to testify in court.

Finkelman (1995:10) argues that, in particular, it is important to assess the capacity of a witness to testify in court in a factual way about the offence as witnessed or experienced. This is because some witnesses have never testified before.

#### **3.5.4 Effective preparation of the investigator for being a witness in court**

Various authors such as Van den Berg (2011:119) and McMahon (2014:441) indicate that witness preparation is a key to being an effective witness. The amount of preparation that an investigator needs for a given case will depend on the complexity of

the case, the seriousness of the event investigated, and the investigator's comfort level with testifying in court (McMahon, 2014:441).

- Preparation

Proper presentation of the professional investigator's testimony can be the deciding factor in a case. How he dresses and carries himself sets the tone for his testimony on the stand. While in the witness chair, the investigator should exhibit an aura of professionalism. Testimony should be easily audible, concise, and crisp. As a witness, the investigator should undergo pre-trial preparation. Preparation should begin with reading and reviewing the case report and activities that were conducted in furtherance of the investigation (McMahon, 2014:441). He should familiarise himself with all material pertaining to the case. While waiting to testify and after the testifying, he should avoid conversations with any other witness or members of the judges.

- Testifying

During the trial, the investigator should be well dressed, well groomed, and the investigator should be calm and confident and should sit upright with his feet planted on the floor and his arms resting on both chair arms. Testimony should be presented in a well-organised, logical, and orderly fashion.

- Testifying in court

On the witness stand, the investigator should be serious yet relaxed in order to show that he is in command of the situation. The investigator should look at the attorney asking the questions before answering (to avoid the appearance of being coached). The investigator should be professional in both demeanour and testimony.

- Cross-examination

During the cross-examination, the professional investigator should maintain his composure. He should not be impatient or lose his temper. He should also be prepared for the fact that the attorney may badger the witness.

Preparation has a number of primary goals (Baker, Kirkpatrick & Lockhart Preston Gates Ellis LLP, 2007:140):-

- 1) To enable counsel to assess the investigator's capacity to be an effective witness and help the investigator control any personality traits that may interfere with effective testimony;
- 2) To identify and resolve potential conflict issues and give the investigator

necessary admonitions and guidance about the testimony process;

- 3) To determine the extent of the investigator's knowledge of relevant facts and the availability of documents that might refresh the investigator's recollection; and
- 4) To understand the general guidelines in how to answer a question.

Van den Berg (2011:126) submits that there are three stages to effective witness preparation. These involve familiarising the witness with the issues in dispute and the relevant documents, familiarising the witness with the examination process and, finally, subjecting the witness to mock examinations (Van den Berg, 2011:126):

a. Step one: Familiarisation with the issues in dispute and relevant documents

Much of the first stage of witness preparation will be undertaken when assisting the witness with the preparation of their witness statement. The exercise should also be repeated ahead of the hearing to refresh the witness's memory (as several months may have passed since the witness submitted their statement) and in light of new factual developments or new allegations or arguments raised by the opposing party. The relevant documents and exhibits should include all documents on the record authored by the witness or on which the witness was copied.

b. Step two: Familiarisation with the process

The aim of this second phase is to familiarise the witness with what can be an unknown and intimidating process —and to give common-sense guidelines for testifying before court of law.

c. Step three: Mock examinations

Following the completion of the third stage of preparation, the witness will be less likely to be intimidated, frustrated or caught by surprise during cross-examination and they can therefore better tell their story and put answers to difficult questions in context.

Van den Berg (2011:132) concludes that, ultimately, good witness preparation ensures that the witness tells their story accurately, relevantly and truthfully, both in writing and orally, in a way that can withstand cross-examination.

To the question "Based on your experience, what guidelines would you give for effective witness preparation?" Sample "A" replied as follows:

- One participant mentioned that the guidelines of “effective witness preparation” are to tell the investigator as a witness about the trial so that the investigator feels more comfortable when he or she takes his or her place on the witness stand.
- Eight participants stated that the effective witness preparation is a key because as a witness, the investigator, should do pre-trial preparation.

To the above question Sample “B” replied as follows:

- One participant indicated that an effective witness preparation is more unlikely to provide inconsistent answers during the prosecution process.
- Three participants revealed that the guidelines for effective witness preparation would be that the investigator consults thoroughly with the prosecutor to discuss guidelines for the crime investigator as the main witness before appearing in court, the investigator’s testimony on direct examination and the use of demonstrative evidence as an aid to the investigator’s testimony.

It is interesting to note that both Sample “A” and Sample “B” explained the purpose of “effective witness preparation” as being an important tool for the investigator to use in preparing before testifying and to refresh their memory of court procedure. This is supported by the literature (Van den Berg, 2011:126). From the literature review it is clear that the effective preparation of the investigator for being a witness in court involves the three steps of familiarising the witness with the issues in dispute and the relevant documents, familiarising the witness with the examination process and, finally, subjecting the witness to mock examinations (Van den Berg, 2011:126).

### **3.6 THE RELATIONSHIP BETWEEN THE INVESTIGATOR AND THE PROSECUTOR**

For Trebilcock and Daniels (2008:151), in practice, the day-to-day relationship between investigators and the prosecution implies that prosecutors are often involved in the investigative prosecution process. Hess and Orthmann (2010:26) indicate that co-operation between investigators and the prosecutor’s staff depends on the personalities involved, the time available, a recognition that it is in everyone’s best interest to work together, and acceptance of everyone’s investigative roles and responsibilities. According to Hess and Orthmann (2010:26), given sufficient time and a willingness to work together, better investigations and prosecution result. Palmiotto (2012:253)

mentions that a positive relationship between the prosecutor and the crime investigator is beneficial to both and assists the criminal prosecution process.

According to Mokoena et al. (2012:17), in South Africa, in practice, there is some form of co-operation between the police and the prosecutors in the investigation of cases and their preparation for trial. Reydam, Wouters and Ryngaert (2012:282) are of the view that successful prosecutors are those that have a good relationship with the investigators. Joubert (2010:62) and Mokoena et al. (2012:17) specify what the relationship should be like by explaining that in paragraph 8 of the Prosecution Policy issued by the NDPPA in terms of s12(1)(a) of Act 32 of 1998, it is stated that: "With regard to the investigation and prosecution of crime, the relationship between prosecutors and investigating officials should be one of efficient and close co-operation, with mutual respect for the distinct functions and operational independence of each profession."

Becker and Dutelle (2013:21) argue that from an investigator's point of view it also pays to have a working relationship with the prosecutor and an understanding of the prosecution process. Becker (2005:15) concludes that investigators and prosecutorial staff will find it easier to cultivate a good relationship if they understand and appreciate the difference in their roles.

When asked the question, "Do you as an investigator have a good relationship with the prosecutor?" all nine participants of Sample "A" said "yes".

From the discussion above, the researcher concluded that a relationship between the investigator and prosecutor is important because they work to achieve the same purpose. This is supported by Mokoena et al. (2012:17), who explain that in paragraph 8 of the Prosecution Policy issued by the NDPPA in terms of section 21(1)(a) of Act 32 of 1998 it is state that with regard to the investigation and prosecution of crime, the relationship between prosecutors and police investigators should be one of efficient and close co-operation, with mutual respect for the distinct functions and operational independence of each profession.

The responses from the Sample "A" participants were not comparable to the literature because they did not give reasons for their answers. The literature sources consulted suggest that successful prosecutors are those that have a good relationship with the investigators.

### **3.7 THE IMPORTANCE OF A GOOD RELATIONSHIP BETWEEN THE INVESTIGATOR AND THE PROSECUTOR**

According to Trebilcock and Daniels (2008:150), in practice the relationship between the investigator and the prosecution implies that prosecutors are often involved in the investigative process. Furthermore, prosecutors in their relationship with investigators place a great importance on trust and mutual understanding (Kyprianou, 2010:31). For Palmiotto (2012:253), a positive relationship between the prosecutor and investigating agencies is beneficial to both and assists the criminal justice process.

Glušćić, Klemenčič, Ljubin, Novosel and Tripalo (2006:286) hold that in order for the prosecutor to have complete insight into the investigator's work, there must be a legal obligation or agreement at the highest level, that the investigator is obliged to inform the prosecutor about every new enquiry, the execution of certain measures and actions, and the execution of urgent investigative actions. If there is such a relationship between the investigator and prosecutor, then the investigator is obliged to participate actively in the planning and conducting of criminal inquiries (Glušćić et al., 2006:286).

According to the Department of Police Executive Research Forum (1999:115) in America, there sometimes exists a love-hate relationship between investigating officers and prosecutors. The relationship between investigating and prosecuting agencies can be made better, depending on the attitude, trust and co-operation of the agencies regarding the other (Vadackumchery, 1997:105).

When asked the question, "In your experience, is it important for the investigator to have a good relationship with the prosecutor?" Sample "A" participants replied as follows:

- All nine participants from both Sample "A" responded by saying "yes".

To the above question all four participants from Sample "B" replied, "Yes."

The responses from both Sample "A" and Sample "B" participants were not comparable because they did not give reasons for their answers. In the literature it is emphasised that the importance of a good relationship between investigating and prosecuting agencies can be made better, depending on the attitude, trust and co-operation of the agencies.

### **3.7.1 The advantage of a good relationship**

Conly (1991:34) writes that the one-on-one relationship between investigators and prosecutors has the added advantage of giving one prosecutor considerable experience in handling the commercial cases in an office. According to Becker and Dutelle (2012:20), if the conditions are favourable to the prosecution, the case will be prosecuted or severe plea bargaining reached.

Becker (2005:xi) believes that each contributor to the criminal investigation – and its resulting prosecution – will be more effective in support of that investigation by understanding and appreciating what role they serve on the team, what role other team members play and how all of it must come together to further a successful prosecution.

When asked the question, “What, in your experience, are the advantages of a good relationship with the prosecutor?” the participants from Sample “A” responded as follows:

- All nine participants stated that the advantages of a good relationship with the prosecutor can result in successful investigation and prosecution.

The question was not posed to “Sample “B” as this sample was not expected to have the expert knowledge to answer it comprehensively.

The viewpoints of the participants concur with the broad explanation commonly set out in the literature study. All nine participants stated that the advantages of a good relationship with the prosecutor can result in successful investigation and prosecution process.

## **3.8 FACTORS INFLUENCING THE RELATIONSHIP**

Neubauer (2011:237) mentions that when the investigator conducts incomplete investigations (missing important evidence or witnesses), or improperly seizes, marks, or stores the items they gather, prosecutors find themselves without sufficient evidence to prosecute a case successfully. This situation often puts stress on the relationship between the investigator and prosecutor. A prosecutor who has serious misgivings about a case or about an investigator is less likely to prosecute the case in question and future cases handled by that investigator (Becker & Dutelle, 2013:21). Siegel (2010:399) mentions that corruption and lack of trust can exist among officials involved in the prosecution process.

According to Neubauer (2011:242), investigating departments sometimes object when prosecutors set a high standard of charging because they see case rejections as an implicit criticism of the arresting officer for making a “wrong” arrest. Moreover, if a prosecutor refuses to file charges, no review of this decision is possible; courts have consistently refused to order a prosecutor to proceed with a case (Neubauer, 2011:242). Mutual respect fosters communication and assists in the trial and pre-trial process, but the relationship between prosecutors and investigators is frequently adversarial or non-existent. Investigators think that prosecutors often dismiss “good” cases or plea-bargain cases that should be tried (Becker & Dutelle, 2013:20). Siegel (2010:396) mentions that prosecutors dismiss minor cases to avoid wasting time that could have been better spent on the investigation and prosecution of more serious crimes.

To the question, “What factors, in your experience, influence the relationship of the investigator with the prosecutor?” the participants from Sample “A” responded as follows:

- Five participants mentioned corruption and lack of trust among officials involved in the prosecution process.
- Four participants indicted dishonesty and ulterior motives on either side.

To the above question, Sample “B” participants responded as follows:

- Two participants stated that in some instances political factors also cause prosecutors to apply their powers unevenly within the community.
- Two participants mentioned that the factors, in their experience, that influence the relationship of the investigator with the prosecutor are political interference and the ongoing corruption that involve numerous investigators and prosecutors and are factors that make most prosecution processes unsuccessful.

According to the literature consulted, factors that influence the relationship are corruption and a lack of trust amongst officials involved in the prosecution process. All participants from both Samples “A” and “B” had similar explanations with regard to the factors that influence the relationship. The viewpoints of the participants are in agreement with the literature discussed above.

### **3.9 THE IMPORTANCE OF PHYSICAL APPEARANCE IN COURT WHEN TESTIFYING**

The credentials of an investigator who appears in court are important, but not as important as their physical appearance, carriage and delivery (Baum & Henkel, 2010:487). According to Hails (2012:514), “dress for success” the “power suit,” and many other slogans reflect the importance of a person’s physical appearance in business situations. The same is true in the courtroom (Hails, 2012:514). For Hails (2012:514), the jury’s first impression of a witness will be based on physical appearance.

Solomon, Rudolph, Broom and Barrett (2011:247) state that the way a witness dresses gives the judge an impression of how trustworthy they are. When a witness walks into a court room, they are judged by what clothes they wear (Solomon et al., 2011:247). Hallberg (2010:22) indicates that, ultimately, a person’s dress code becomes their image and determines how others perceive them. Fay (2007:246) writes that when an investigator appears in court, they must observe the highest standards of conduct. On the witness stand, they become the focal point of interest and observation by the public (Fay, 2007:246).

According to Hails (2012:514), officers who do not wear uniform in their normal assignment, such as detectives, usually appear in court in civilian clothing. Some believe that the public respects law enforcement officers and the uniform adds credibility to the witness (Hails, 2012:514).

To the question “Do you consider physical appearance in court important when testifying?” all nine Sample “A” participants answered “yes”. They emphasised that it is important to be well presented in court and encourages everyone in court to believe that the person is a credible witness.

To the above question, the four Sample “B” participants replied “yes”.

The literature consulted focused on different aspects of impression and image and on how investigators who appear in court are perceived. According to Fay (2007:245), the importance of a good presentation by the investigator on the witness stand cannot be over emphasised.

If all nine Sample “A” participants’ point of view is compared with the ideas obtained from the literature on the topic, there is not a big difference between them. It seems that the participants had a good knowledge of how physical appearance in court is important when testifying during the prosecution process as an investigator. All four Sample “B” participants responded by saying “yes” without giving any explanation.

### **3.10 SUMMARY**

In this chapter, the role of the investigator in the prosecution process was discussed. The sources consulted suggest that the role of the criminal investigator does not stop once the criminal has been arrested, when the case docket has been presented to court for the prosecution process for trial. At this stage, the investigator has the role of assisting the prosecutor during the prosecution process until the end of the trial.

Effective co-operation of the prosecutor with the police and other investigating agencies from the outset is essential for the efficacy of the prosecution process. If a case is not efficiently prepared initially, it will be less likely to lead to a prosecution or result in a conviction.

The best teams in court are made up of a passionate and dedicated investigator and a well-prepared and articulate prosecutor (Shameem & Tuiketui, 2012:1). Shameem and Tuiketui (2012:1) indicate that no prosecution will succeed without a thorough investigation, based on the elements of the offence, and a thorough analysis of the evidence by a competent prosecutor, also based on the elements of the offence. This suggests that the relationship is a symbiotic one, based on mutual need. Both the investigator and the prosecutor need to have a better understanding of their respective roles.

## **CHAPTER 4**

### **FINDINGS AND RECOMMENDATIONS**

#### **4.1 INTRODUCTION**

The aim of this research is to determine the role of the investigator in the prosecution process. The researcher attempted to achieve this aim by utilising data received from a review of current literature on the topic and from interviews conducted with a representative sample of SCCU investigating officers and with a sample of prosecutors. The findings made by the researcher are described below. Thereafter, the chapter provides recommendations for future training in maintaining a relationship between the investigator and prosecutor for a successful prosecution process and recommendations for future research.

To address the research problem, the following research questions were asked:

- What does the prosecuting process entail?
- What is the role of the investigator in the prosecution process?

The researcher carried out this study to guide SSCU investigators to acknowledge their role in the prosecution process. The findings and recommendations of this study aim at establishing the role of the investigator in the prosecution process. The literature research focused on investigators in general but in the interviews the researcher focused on the role of the SCCU specifically.

#### **4.2 PRIMARY FINDINGS**

Based on information obtained from the literature review, the participants of the two samples, and personal experience, the researcher made the following findings.

##### **4.2.1 Research Question 1: What does the prosecution process entail?**

The following primary findings were made from information obtained from literature referring to investigators in general and the answers from Sample "A", which consisted of SCCU investigators.

4.2.1.1 The findings reveal that the term prosecution is popularly associated with criminal cases. The law employs a broader definition: prosecution means the process of engaging in a lawsuit, whether criminal or civil (Neubauer & Meinhold, 2013:28).

4.2.1.2 Both the investigators and prosecutors agreed that the prosecution process involved investigating the docket, arresting the accused, establishing whether there was a case for the accused to be tried and assisting the complainant so that at the end of the day justice was done. However, the participants varied in their responses.

4.2.1.3 Literature sources consulted suggested that the prosecution process refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction or sentencing of the perpetrator of the crime or criminal activity. Most of the participants from both Samples "A" and "B" agreed that the prosecution process was to investigate the docket, arrest the accused, establish whether there was a case for the accused to be tried and assist the complainant so that justice was done.

4.2.1.4 The rest of the participants from Sample "A" highlighted that the prosecution process entails that the police investigate an allegation against the suspect and hand over the docket to the prosecutor for prosecution. This was a separate idea from those found in the literature reviewed.

4.2.1.5 The participants of Sample "B" understood what the prosecution process entails. The viewpoint of these participants supports the view expressed by the Office of the Federal Register of the US (2012:420).

## **4.2.2 Research Question 2: What is the role of the investigator in the prosecution process?**

The findings regarding this research question are outlined below.

### **4.2.2.1 The role of the investigator in the prosecution process**

The literature consulted suggested that the role of the investigator is to collect the evidence in the case and, on the basis of probable cause, to identify and apprehend the individual who committed the crime (Brandl, 2014). All 13 participants from both Samples "A" and "B" gave similar explanations, referring to the investigator's role in the prosecution process as being to investigate crime and ensure that witnesses attend court by serving subpoenas on them and to shed light on the investigation process.

#### 4.2.2.2 The role played by the prosecution in the investigation process

All responses from the participants from both Samples “A” and “B” were compared with the literature on the topic and it was found that there was no significant difference between them. It seems that the participants had a workable knowledge of the role played by the prosecutor in the investigation process.

#### 4.2.2.3 The investigator’s assisting the prosecutor during the prosecution process

The Sample “A” participants’ response is that prosecutors do not allow investigators to assist them because they believe that investigators have nothing to offer by virtue of being an investigator.

#### 4.2.2.4 The investigator’s giving evidence during the prosecution process

The participants’ responses were compared with the literature on the topic and it was found that there was no major difference between them. It seems that the participants had a good understanding of what giving evidence means in the prosecution process.

#### 4.2.2.5 Preparing a witness to testify in court

On the basis of the viewpoints of the participants from both samples, it seems that the participants had a fair understanding of the importance of preparing a witness to testify in court. However, some of the participants narrowed the scope of the preparation of a witness to testify in court to informing the witness about the set-up in court and making the witness feel at ease. The participants’ viewpoints on this question also did not differ from the literature.

#### 4.2.2.6 Effective witness preparation

Both Sample “A” and Sample “B” explained that the purpose of “effective witness preparation” was an important tool for the investigator to use to prepare before testifying and to refresh their memory of court procedure. This is supported by the literature (see Van den Berg, 2011:126). From the literature review it is apparent that the effective preparation of the investigator for being a witness in court involves familiarising the witness with the issues in dispute and the relevant documents, familiarising the witness with the examination process and, finally, subjecting the witness to mock examinations (Van den Berg, 2011:126).

#### 4.2.2.7 The relationship between the investigator and the prosecutor

The responses from the Sample "A" participants were not comparable to the literature because they did not give reasons for their answers. The literature sources consulted suggest that successful prosecutors are those that have a good relationship with the investigators.

#### 4.2.2.8 The importance of a good relationship between the investigator and the prosecutor

The responses from both Sample "A" and Sample "B" participants were not comparable because they did not give reasons for their answers. From the literature it is apparent that the relationship between investigating and prosecuting agencies can be made better, depending on the attitude, trust and co-operation of the agencies with regard to each other.

#### 4.2.2.9 The advantage of a good relationship

The viewpoints of the participants concur with the broad explanation commonly set out in the literature study. All nine participants from Sample "A" stated that "the advantages of a good relationship with the prosecutor" are that it can result in successful investigation and prosecution.

#### 4.2.2.10 Factors influencing the relationship

According to the literature, factors influencing the relationship are corruption and a lack of trust amongst officials involved in the prosecution process. All participants from both Samples "A" and "B" had similar explanations with regard to the factors that influence the relationship and supported the literature reviewed.

#### 4.2.2.11 The importance of physical appearance in court when testifying

Comparing the literature reviewed with all nine Sample "A" participants' answers to this question revealed no big difference between their views. It seems that the participants had a good knowledge of how physical appearance in court is important when testifying during the prosecution process as an investigator. All four Sample "B" participants responded by acknowledging the importance without giving any explanation.

### **4.3 SECONDARY FINDINGS**

During the study, the researcher made other relevant findings. These findings are presented below:

#### **4.3.1 The prosecution process as a court stage**

The literature consulted suggests that prosecution refers to the court stage, where defendants are brought to court and possibly tried. Whether a defendant is tried will be dependent, among other factors, on the seriousness of the offence (Wahidin & Carr, 2013:51).

#### **4.3.2 The definition of a prosecutor**

The prosecutor is one of the two adversaries who face each other every day in the criminal trial process: the prosecutor, who represents the State's interest, and serves as the "people's attorney", and the defence attorney, who represents the accused (Siegel, 2010:387).

#### **4.3.3 The objectives of the prosecution process**

The similarity between local authors and international authors regarding the objectives of the prosecution process is provided in the summary by Marianne and Ballin (2011:283), "who list the objectives of prosecution as: discovering the "truth"; utilising an adversarial process of adjudication; utilising an accusatorial system of proof; minimising erroneous convictions; minimising the burdens of accusations and litigation; providing for lay participation; representing the dignity of the individual; and maintaining the appearance of fairness".

#### **4.3.4 The definition of an investigator**

Marais (1998:2) believes that the crime investigation process is made up of three phases: the crime identification, victim identification and suspect identification phases.

#### **4.3.5 The definition of a detective**

Detectives are officers who try to solve crimes by determining the perpetrator and victims, ascertaining the involvement of accomplices, locating stolen property, and tracking down the suspect (Ross, 2012:75).

#### 4.3.6 The role of investigators in the prosecution process

For Shameem and Tuiketēi (2012:1), the role of the investigator is to investigate the alleged commission of criminal offences, to gather evidence, to interrogate suspects, and to refer charges for the prosecutor. The role of the investigator is to collect the evidence in the case and, on the basis of probable cause, to identify and apprehend the individual who committed the crime (Brandl, 2014:466).

#### 4.3.7 Do prosecutors allow investigators to assist them in the prosecution process?

The literature suggests that investigating officers are typically essential and prosecutors should allow them to assist them during the prosecutions of cases, since they frequently provide eyewitness information, or information that supports the testimony of other witnesses (Gilbert, 2004:543).

Their response was that generally prosecutors do not allow investigators to assist them because they believe that investigators have nothing to offer by virtue of being investigators. Only one Sample “B” participant mentioned that investigators were only used when there was a need.

### **4.4 RECOMMENDATIONS**

The recommendations made from the findings of this research are as follows.

4.4.1 Based on the research findings, the researcher recommends that the following topics should be incorporated in the training programme of both the SCCU investigators of the SAPS and the SCCC prosecutors to equip them with specialised skills and knowledge:

- What prosecution entails
- The role of the investigator in the prosecution process

There is a need for more research on the role of the investigator in the prosecution process, as discovered from the literature review and participant interviews. The researcher established that there is a lack of knowledge owing to insufficient training of both investigators and prosecutors in the different subjects addressed in this research.

To enhance the investigators' role in the prosecution and improve their knowledge of their role in the prosecution process, it is recommended that the training curriculum for investigators and prosecutors should address the following:

- The objectives of investigation
- The difference between an investigator and a detective
- The pre-trial conference
- The investigator's assisting the prosecutor during the prosecution process

To assist investigators and prosecutors in South Africa to be more effective in embracing the role of the investigator in the prosecution process, they need to be trained in aspects identified in this research as weak points.

#### **4.5 CONCLUSION**

The aim of this research was to determine the role of the investigator in the prosecution process. Both Sample "A" and "B" participants are in agreement with the literature that the role of the investigator is to collect the evidence in the case and, on the basis of probable cause, to identify and apprehend the individual who committed the crime (Brandl, 2014:466). It is evident from the findings of this research that the participants of both Samples "A" and "B" interviewed have various shortcomings in respect of their understanding of the objectives of investigation, the difference between an investigator and a detective, the investigator's assisting the prosecutor during the prosecution process and the pre-trial conference. These shortcomings may lead to the failure of a successful prosecution as the collaboration and the ongoing commitment of police and prosecutors are necessary for a successful prosecution.

The literature suggests that investigating officers are usually essential in assisting the prosecutor during the prosecution's case, since they provide eyewitness information or provide information that supports that given by other witnesses (Gilbert, 2004).

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**ATTACHMENT A: INTERVIEW SCHEDULE FOR COMMERCIAL CRIME UNIT  
(SAMPLE A)**

**Interview schedule no. 1 – Investigators from the Commercial Crime Unit**

**TOPIC**

The role of the investigator in the prosecution process

**Part B**

**HISTORICAL INFORMATION**

- A.1** Name:.....and participant number.....
- A.2** Years of service as an investigator.....
- A.3** Have you attended a basic detective training course?  
YES/NO
- A.4** Have you received any training about the court process?  
YES/NO
- A.5** Briefly explain the training you received in preparing a case for the prosecution process.

**SECTION B: WHAT DOES THE PROSECUTING PROCESS ENTAIL?**

- B.1** What, in your experience, does the prosecution process entail?
- B.2** Based on your experience, define the concept “prosecutor”.
- B.3** According to your understanding, what is the objective of prosecution?
- B.4** According to your understanding, what are the functions of a prosecutor?
- B.5** According to your understanding, when does a prosecutor exercise discretion to prosecute?
- B.6** Based on your experience, define the concept “investigation”.
- B.7** In your experience, what are the objectives of investigation?
- B.8** Based on your experience, define the concept “investigator”.
- B.9** Based on your experience, define the concept “detective”.
- B.10** What, in your experience, is the difference between an investigator and a detective?
- B.11** What, in your experience, are the responsibilities of an investigator?
- B.12** Based on your experience, what is a pre-trial conference?
- B.13** What, in your experience, are the pillars of a successful prosecution?

## **SECTION C: WHAT IS THE ROLE OF THE INVESTIGATOR IN THE PROSECUTION PROCESS?**

- C.1** Do you believe that the investigator has a role in the prosecution process?
- C.2** In your experience, what role does the prosecutor play in the investigation process?
- C.3** Do prosecutors allow investigators to assist them during prosecution process?
- C.4** What does “giving evidence” mean?
- C.5** Do you consider it important to prepare a witness to testify in court?
- C.6** Based on your experience, what guidelines would you give for effective witness preparation?
- C.7** Do you as an investigator have a good relationship with the prosecutor?
- C.8** In your experience, is it important for the investigator to have a good relationship with the prosecutor?
- C.9** What, in your experience, are the advantages of a good relationship with the prosecutor?
- C.10** What factors, in your experience, influence the relationship of the investigator with the prosecutor?
- C.11** Do you consider physical appearance in court important when testifying?

**ATTACHMENT B: INTERVIEW SCHEDULE FOR NATIONAL PROSECUTING  
AUTHORITY (SAMPLE B)**

**Interview schedule no. 2 – Prosecutors from Commercial Crime Court**

**TOPIC**

The role of the investigator in the prosecution process

**Part A**

**HISTORICAL INFORMATION**

- A.1** Name:..... and participant number.....
- A.2** Years of service as a prosecutor.....
- A.3** Have you attended a training course on the prosecution process?  
YES/NO
- A.4** Have you received training in preparing a case for the prosecution process?  
YES/NO
- A.5** If your answer to the previous question is “yes”, briefly explain the training you received in preparing a case for the prosecution process.

**SECTION B: WHAT DOES THE PROSECUTING PROCESS ENTAIL?**

- B.1** Based on your experience, what does the prosecuting process entail?
- B.2** Based on your experience, define the concept “prosecutor”.
- B.3** What, in your experience, are the objectives of prosecution?
- B.4** What, in your experience, are the functions of a prosecutor?
- B.5** According to your understanding, when does a prosecutor exercise discretion to prosecute?
- B.6** Based on your experience, what is a pre-trial conference?
- B.7** What, in your experience, are the pillars of a successful prosecution?

**SECTION C: WHAT IS THE ROLE OF THE INVESTIGATOR IN THE PROSECUTION  
PROCESS?**

- C.1** Do you believe that the investigator has a role to play in the prosecution process?
- C.2** In your experience, what role does the prosecutor play in the investigation process?

- C.3** Do prosecutors generally allow investigators to assist them during prosecution process?
- C.4** What does “giving evidence” mean?
- C.5** Do you consider it important to prepare a witness to testify in court?
- C.6** Based on your experience, what guidelines would you provide for effective witness preparation?
- C.7** Do you as an investigator have a good relationship with the prosecutor?
- C.8** In your experience, is it important to have a good relationship with the investigator?
- C.9** What factors, in your experience, influence the relationship of the investigator with the prosecutor?
- C.10** Do you consider physical appearance in court important when testifying?

## ATTACHMENT C: LETTER OF APPROVAL FROM (SAPS) SCCU

G.P.-nr. 003-0222

SAP 21

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

PO Box 8214 / Posbus 8214  
PRETORIA, 0001

Verwysing Reference	: 2873/1
Navrae Enquiries	: Brig C. Jonker
Telefoon Telephone	: 012 401 3207
Selfoon Cellular	: 0795090760
Faksnummer Fax number	: 012 401 3363
pos E-mail	: JonkerCasper@saps.org.za

**OFFICE OF THE COMMANDER  
PRIORITY CRIME INVESTIGATION:  
COMMERCIAL CRIME  
PRETORIA  
0001**

**22 August 2012**

Mr MS Nkashe  
University of South Africa  
**PRETORIA**  
0001

Dear Mr. Nkashe

### **REQUEST TO CONDUCT RESEARCH IN THE SOUTH AFRICAN POLICE SERVICE**

Your letter 'request to conduct a research in the South African Police Service' dated 07 February 2012 bears reference.

Permission is herewith granted to conduct interviews as per your approved interview schedule with investigators from the Directorate for Priority Crime Investigation: Commercial Crime Investigation Unit at 228 Visagie Street, Arcadia, Pretoria.

The information supplied during the interview can be used in the research and subsequent research report.

Hope you will find the arrangement in order.

A handwritten signature in black ink, appearing to read 'C. Jonker', is written over a circular stamp or seal.

**THE COMMANDER: PRIORITY CRIME INVESTIGATION: COMMERCIAL CRIME:  
PRETORIA : SOUTH AFRICAN POLICE SERVICE  
BRIGADIER C JONKER**

**ANNEXURE D: LETTER OF APPROVAL FROM NDPPA**

**Specialised Commercial  
Crime Unit**



The National Prosecuting Authority of South Africa  
Iganyo Jikelele Labethutshini boMzantsi Afrika  
Die Nasionale Vervolgingsageng van Suid-Afrika

Ref no.: 10/R  
Tel. : (012) 401 0425  
Fax. : (012) 322 9204  
E-Mail: gbreytenbach@npa.gov.za  
Enquiries: G Breytenbach

8 March 2012

**PRETORIA**

Tel: +27 12 401 0420  
Fax: +27 12 322 9204

228 Visagie Street  
Pretoria

P/Bag X297  
Pretoria  
0001

South Africa

[www.npa.gov.za](http://www.npa.gov.za)

Mr MS Nkashe

**BY HAND**

**Re: REQUEST TO CONDUCT RESEARCH IN THE SCCU. Your letter dated 7 February 2012 in the abovementioned regard refers.**

1. I have discussed the contents of your letter with Adv L Mwrebi, the Head of the SCCU in the NPA.
2. He has agreed that you be permitted to conduct the research as set out in your letter, on condition that:
  - You do not under any circumstances refer to current or prospective cases under prosecution in any way that will allow them to be identified as such;
  - You do not refer to any prosecutor so interviewed by name;
  - You remain vigilant at all times not to compromise any *sub judice* information which may come to your knowledge while conducting your research.



Justice in our society, so that people can live in freedom and security

Page 1 of 2

3. I will, in accordance with your undertaking to ... conditions, arrange for you to interview such prosecutors as you have indicated.
4. I would greatly appreciate it if you would, once you have finalised your research, make it available to us for our library, and consider the possibility of conducting a training lecture on the subject matter for the SCCU prosecutors.

Yours faithfully



**GLYNNIS BREYTENBACH**  
**DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS**  
**REGIONAL HEAD : SPECIALISED COMMERCIAL CRIME UNIT:**  
**PRETORIA**