

**JUDICIAL COMMISSION OF ENQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM**

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

9 FEBRUARY 2026

DAY 56



PROCEEDINGS ON 9 FEBRUARY 2026

CHAIRPERSON: I was trying to find you, Ms Sello, and Ms Segeels-Ncube. Good morning.

ADV SELLO SC: Morning, Chair.

CHAIRPERSON: Yes.

ADV SELLO SC: Thank you, Chair. As the Chair and the Commissioners know, this is the position that I always assume, and I apologize for that momentary confusion. Good morning, Chair and Commissioners.

10 **CHAIRPERSON:** Good morning.

ADV SELLO SC: Commissioners, this week we begin once again with the EMPD stream. We have our first witness available today, and the witness will be led by Advocate Segeels-Ncube.

CHAIRPERSON: Yes.

ADV SELLO SC: We are ready to begin as soon as the Commissioners are. Thank you, Chair.

CHAIRPERSON: Thank you. Thank you, Ms Sello.

ADV SEGEELS-NCUBE: Thank you, Commissioners.

20 **CHAIRPERSON:** Yes.

ADV SEGEELS-NCUBE: Commissioners, the witness for this morning is Mr Kemraj Behari, and he has decided to take the oath, sworn in.

CHAIRPERSON: Thank you. Good morning, Mr Behari. Please, oh, by the way, I am sorry. Do you swear that the

evidence you are going to give is the truth, the whole truth, nothing but the truth. If so, please raise your right hand and say, "So help me God".

ADV BEHARI: So help me God.

KEMRAH PREM BEHARI (duly sworn states)

CHAIRPERSON: Thank you.

ADV SEGEELS-NCUBE: Thank you, Chair.

ADV BALOYI SC: Maybe before you start, Ms Ncube, let me say good morning, Mr Behari.

10 **ADV BEHARI**: Good morning.

ADV BALOYI SC: And place it on record that I, Mr Behari, and I have served on a board until recently. We were joint board members. I am putting it on record for what it is worth. Thank you, Chair.

ADV SEGEELS-NCUBE: Thank you, Commissioner.

CHAIRPERSON: Thank you. Thank you.

EXAMINATION IN CHIEF BY ADV SEGEELS-NCUBE: Mr Behari, just some housekeeping. You should have before you your witness statement file together with, which is file 1
20 of 2. Can you just check in front of you? Your witness statement should be 44 pages long and it is marked file 1 of 2.

ADV BEHARI: That is correct.

ADV SEGEELS-NCUBE: Do you confirm that that is your statement that you prepared for purposes of your evidence

before the Commission today?

ADV BEHARI: I confirm, save as I have explained earlier, there is a few minor adjustments which we have got in the supplementary, but as we go along, I will explain that.

ADV SEGEELS-NCUBE: Yes, we did discuss that. And do you confirm that the contents of your statement is true and correct?

ADV BEHARI: I confirm that.

ADV SEGEELS-NCUBE: And you consider it to be binding
10 on your conscience?

ADV BEHARI: I do.

ADV SEGEELS-NCUBE: Now, then you should have also another file, which is file 2 of 2, which is the annexures to your statement.

ADV BEHARI: That is correct.

ADV SEGEELS-NCUBE: And it should have six annexures, until KB6, if you look at the index.

ADV BEHARI: Yes, I, ja, I think they could be.

ADV SEGEELS-NCUBE: And they should be marked KB1,
20 2, 3, 4, 5, 6 with labels.

ADV BEHARI: That is correct. It should be, I am not sure, Counsel, it is item 1 to 7.

ADV SEGEELS-NCUBE: Yes, but ...[intervenes].

ADV BEHARI: There is 4.2, 4.1, 4.2, so yes.

ADV SEGEELS-NCUBE: Yes, correct, but it goes until

KB6.

ADV BEHARI: KB6, that is correct.

ADV SEGEELS-NCUBE: Okay. And then there is another file, which is a supplementary bundle. It is referred to as supplementary bundle.

ADV BEHARI: I confirm.

ADV SEGEELS-NCUBE: That file contains the Rule 3 notice that was sent to you by the Commission, which resulted in you responding thereto with your statement that
10 we have just discussed. Is that correct?

ADV BEHARI: That is correct.

ADV SEGEELS-NCUBE: Okay. And in addition to that, there are extracts of a transcript from the evidence of Ms Mashazi. Do you have that?

ADV BEHARI: That is correct, yes.

ADV SEGEELS-NCUBE: There is an additional document that has been added for the benefit of the Commissioners. It is page 84 and 85, which is an e-mail from Mr Behari to Ms Naicker on the 7th of December 2023. That was only
20 added this morning.

ADV BEHARI: That is correct.

ADV SEGEELS-NCUBE: And you have that. And I did discuss the inclusion of that document with you before your evidence.

ADV BEHARI: I confirm that.

ADV SEGEELS-NCUBE: Thank you. Mr Behari, before we start with your statement, if we can just go to the Rule 3 notice in the supplementary bundle, which is the first item, so that we can just have some context to the evidence that you are going to give today. Do you have the supplementary bundle, page 1?

ADV BEHARI: Sorry, my apologies. If you could bear with me.

ADV SEGEELS-NCUBE: That is fine. Someone will assist
10 you.

ADV BEHARI: Supplementary bundle, page 1. That is correct, I have that.

ADV SEGEELS-NCUBE: Yes, it is a Rule 3 notice that was addressed to you. Do you see that?

ADV BEHARI: I do.

ADV SEGEELS-NCUBE: Okay. And if you go to page 2, It deals with allegations that have been made by witnesses that have given evidence before the Commission that may implicate you, and my understanding from your statement is
20 that your statement will address quite a few of these allegations, but not necessarily all of them. You have, as I understand it, dealt with the primary allegations and insofar as you could identify where you may have been implicated and where you think you have not been implicated or it is not clear from the context, you have given general

comments to those allegations. Is that correct?

ADV BEHARI: That is correct.

ADV SEGEELS-NCUBE: Okay. So if we can then proceed to your statement, and that would be the file 1 of 2. Do you have it?

ADV BEHARI: I do, ma'am.

ADV SEGEELS-NCUBE: Now, this part of your evidence is an opportunity for you to give your version to the Commissioners in response to those allegations that may
10 implicate you and in respect of which you have already prepared a statement. So we do not necessarily expect you to read the entire statement, but where you do feel comfortable to read some aspects of your statement, you are welcome to do so. But it is really an opportunity for you to put forward your version uninterrupted to a large extent. But at some point, I may ask questions of clarity and the Commissioners may as well. And thereafter, we will then start the session where we really test your version insofar as those allegations are concerned. Do you understand?

20 **CHAIRPERSON:** Mr Behari, do it the way you want. If your preference is to read your statement from paragraph 1 all the way to paragraph 216, do it that way. But if you want to do it the way Ms Segeels-Ncube says, which is deal with the issues you want to highlight, do it that way.

ADV BEHARI: Thank you, Chair.

CHAIRPERSON: But we do not want you to leave the witness stand feeling that you were not given the opportunity to tell your story.

ADV BEHARI: I appreciate the guidance.

CHAIRPERSON: Yes.

ADV SEGEELS-NCUBE: Thank you, Chair. Please go ahead, Mr Behari.

ADV BEHARI: Thank you. Good morning, all. Good morning, Commissioners. My name is Kemraj Prem Behari, 10 very often called Kemi. So I am currently the Head of Risk and Legal Services at the City of Ekurhuleni. At the time when the incidents have happened, around 2023, I was just in the process of being appointed as the Head of Legal, Corporate Legal Services, as it then was.

My functions before being the Head of Department, I used to be the Divisional Head, Municipal Courts, Bylaw Enforcement, and Compliance. So from there, the main function there was compliance. I established courts and so on throughout the Ekurhuleni region, but the compliance 20 function was across 27 departments as it was then, which was then fizzled down to about 14 with the latest institutional review, and I did compliance across that.

So throughout this process, Chair, my main focus has always been on the compliance function. I am not involved in the HR space, save for special support that is

required, either by the Accounting Officer or the Head of that Department, but I will go through that in detail and I will welcome any further questions that I put to that. So when I was appointed then in, from 2024, actually from February, I was then the, in terms of the Council resolution, I was then offered the opportunity to be the Head of Risk and Legal Services, which I have, we were in the process of still finalizing that at this stage. But I performed the functions of both Risk and Legal Services.

10 Chair, in the main, as a section 56 employee, of course, the City Manager is my Accounting Officer. And when I got appointed to the, and I think most of the issues that arise falls around that period, between February, March. At that stage, from October 2022, I was acting in that capacity as the Head and then from, I was appointed on, in a letter the 30th of May 2022, sorry, 2023, and in that process then assumed my functions on the 1st of June 2023 as the Head of the Department.

20 So the entire issue that happened with the investigation into the Brigadier Mkhwanazi, I am not sure, or which, who later became the Deputy Chief of Police, it was during that period, and when I looked at the nature and scope of the statement that I received from this from the Commission, it focused basically on the following implicating witnesses. Of course, it is Chief of Police,

Mapiyeye; the Deputy Chief of Police, Revo Spies; Mr Xolani Nciza who was the Divisional Head; and Ms Kelebogile Thepa. I think she was Colonel or Lieutenant Colonel. I am not sure, you know from a civilian perspective, exactly what.

And then there was, in the letter from the Commission, there was a reference to a Witness D. Of course, we all, you know, we heard what had happened then since then. I have looked at all the record, the entire
10 record, all the documents given to me, I could not find anywhere where Witness D had referenced me. I then communicated with the Commission's attorneys, I think it was Mr ...[indistinct] if I am not mistaken, to say, but can you guide me in terms of where I have been referenced by Witness D in the process, because I have never had any dealings with a Witness D throughout my life and throughout my career at Ekurhuleni, more especially because it concerned me because when I looked at the record, in the transcript of Ms Kelebogile Thepa there seems to have been
20 a place where her evidence ended, and then immediately thereafter, the evidence of Witness D commenced in the same record. So I sought clarity. I have not got that clarity, but as I said, I have moved beyond that to say that I do not have any dealings, I have never had any dealings with the Witness D. May his soul rest in peace, you know.

So that is where I focused then, Chair. The statement then is structured to assist the Commission after setting out necessary background. I think a lot of the evidence that I have went through in the records, I found that sometimes I needed to come, and that is why I appreciate your guidance, Chair, that I must speak, you know. And the main focus here, which I, for me, it was shocking, you know, astonishing in all my career to come and hear that you have received a R600,000.00 royalty
10 money, bribe, however it is linked. I will deal with that issue because, Chair, that will take me back to where this matter comes through.

And, but that was, for me, ag, I do not know, I have been through, you know, through a lot, but actually I am glad that the opportunity has come for this. So the allegations directed against me arise basically from the events that happened between 2023 and 2025. And during this period, Chair, remember the new Council came into operation around late 2021, 2022, and it was highly political
20 turbulence.

In fact, as I started engaging with the matters and traced back, even in the September Council meeting of this year, sorry, of 2025, more information was coming out about what happened during those periods and I will deal with that, Chair. So this is not necessary for me to then deal

with this. It was an issue of financial strain in the budgets. And may I ask, how is it related to, it is about issues that have been picked up. Even the fact that we have had witnesses come to the Commission two years after these incidents to have happened, did not follow internal processes.

And I think, Chair, Commissioner Baloyi, you spoke about any processes available internally to address certain mechanisms, but we will deal with that. But there are
10 several mechanisms at Local Government level to address any allegations of impropriety, corruption, misconduct, even if the City Manager, Heads of Departments, who were not acting in accordance with that.

Then I went back and I looked at introspection. What could I have done that has led to the three officers, I think Colonel Thepa, not too much, she mentioned about, something about me not, you know, processing her grievance, but I have got evidence for that, Chair, which I will lead to that.

20 But in the main, it was Chief Mapiyeye, Deputy Chief Revo Spies, and Divisional Head, Nciza. And I ask myself that, so had there not been a hero or heroic fear like General Mkhwanazi, you know, who on, in July went and releases, would that always have just been kept under the carpet? Was it not necessary to have dealt with the issue,

because as we are uncovering every day the news of CAT VIP and Vusimuzi Cat Matlala and Medicare 24, did they not consider it important at that stage? And I will come to my, what do I consider at this stage. That you had wait now for almost two years, even our President did not know that this was going to be revealed.

So without trying to find an excuse in terms of them coming, yes, it can come at any stage to raise the issue, but for me, it seemed like they were structured. It was
10 structured and added to a stage where let us focus on the three characters. I do not want to talk too much about City Manager, I am sure I will be dealing with that in cross-examination, but she is my Accounting Officer, she was my Accounting Officer. And the CEO of the company, you know, I cannot say that I totally know what the requests are, as long as those requests are lawful and that is where, the area I will get to.

ADV SEGEELS-NCUBE: My apologies, Mr Behari, as you are going through your statement, if you could just orientate
20 us as to which paragraph you are dealing with so that we can also find you.

ADV BEHARI: All right, thank you. Thank you for that. I think I have like ...[incomplete].

ADV SEGEELS-NCUBE: On my count, you are on page 4 now.

ADV BEHARI: I am on page 4.

ADV SEGEELS-NCUBE: Somewhere on page 4.

ADV BEHARI: Exactly. And maybe taking some of the leeway from my Chairperson to speak ...[intervenes].

ADV SEGEELS-NCUBE: No, that is fine.

ADV BEHARI: But I am glad you brought it here. So I am on page 4 at paragraph 12, I am coming down that way. So it was important then that given my role in the City, that the main governing policy was directly taken from the section
10 59 of the Municipal Systems Act, which is the system of delegations.

That is the document that gives you your powers, what you should do, what you can do, what you cannot do. And I have attached as Annexure KB2 to my document, an extract of the system of delegations. Chair, if you would like me to go through in detail or can we take it as being read because it is part of the annexures, but I can go through that in detail.

CHAIRPERSON: What is your preference?

20 **ADV BEHARI:** I think, let me just go through it because, Chair, it is important given the evidence that has been laid already in terms of who had what delegations, when did they have those delegations. So if I, let me go through that, not too much in detail, but at least to give us the crux.

CHAIRPERSON: Yes, all right, thank you.

ADV SEGEELS-NCUBE: It would be the annexures bundle, KB2, page 3.

ADV BEHARI: Okay. Chair, if you go to page, it starts off at page 4 of the annexures bundle. So there are delegations that are reserved for certain functionaries in the City. There is political delegations from the Executive Mayor, the Speaker, and all other office bearers, political office bearers. And then the B delegated powers of all the administration come from that delegated to the City
10 Manager.

So that City, the City Manager then delegates the functions to each individual Head of Department. And then the sub-delegations in that where the Head of Department is delegated to the Divisional Head or any other functionary in that department. So to deal with page 4, my specific delegation is dealt with, to institute and defend action in all courts of law, including quasi-judicial forums, on behalf of Council; the signing of all documents necessary has also been sub-delegated; appoint attorneys and/or counsel on
20 the relevant experts when required; lodge or oppose appeals; consider settlements. That is on (vi) now, Roman numeral (vi). Ensure compliance with any bylaw of the Council, or right of Council; appoint legal, including representatives not on the panel of attorneys. So there could be a prior deviation process where you could process.

But we are stuck in the main, not to invite trouble in breaching the MFMA, that we stuck to the panel members. Identify areas of non-compliance with applicable legislation in the municipality and also report thereon to the City Manager and the risk committee.

So, Chair, in the main, the function of compliance was what I have been involved in, apart from the litigation processes. But the compliance for me, as a compliance officer of the City, was a paramount function because in the
10 City we have almost 400 pieces of legislation that we have to now, I am no, I am a novice at dealing with all the 400 pieces of legislation, but at least we know where to find it, how you interact, and how you ...[indistinct] and we apply that then, Chair, as it comes through the necessary environment, whether it is energy, NERSA, water, ICT, you know, hacking, all of those issues have come through.

So in addition to the express delegations on paragraph 13, Chair, of my statement, there is also included other forms of delegation where the City Manager can give
20 you certain delegations. But of course, those delegations cannot be outside the powers of that City Manager. It must be falling within the realms of the system of delegations. And in terms of the Municipal Finance Management Act, on an annual basis, there are delegations from the City Manager to the Heads of Departments, including the GCFO,

Heads of Departments, and then sub-delegations to the different other employee levels.

Now, why that is important, Chair, and why I am mentioning that is to focus on what Mr Nciza, throughout the conversation, we heard him refer to a delegation that was given to him by an Acting City Manager, Mr Joe Mojapelo. It was just before, I think it was July 20, it will be in his bundle now.

CHAIRPERSON: 2017.

10 **ADV BEHARI:** 2017.

CHAIRPERSON: A letter of, is it not June 2017?

ADV BEHARI: It is during that period, but it was just prior the October 2017 system of delegations coming in.

CHAIRPERSON: Yes.

ADV BEHARI: And I think he had also referred to a case, is it the Mabosela case, but we will come to that Chair at the time. So I am focusing on this to say, can you delegate a function that you would not ordinarily have had in the greatest scheme of things with a system of delegations?

20 And if you had done that, if there is delegations from Acting City Manager Mojapelo, where valid, indeed, the moment the new system of delegations came in applicable to the entire City, it says in the document that it revokes any previous delegations, whether it is the old system of delegations that would be in 2011, or whether it is specific

delegations from a City Manager or any other functionary.
So you start off on a clean state.

In addition to that, Chair, It became apparent that various departments, including Human Resources Department and EMPD, had developed irregular processes. So when I started acting Chair from October, say November 2022, I was faced with a barrage from attorneys. You know, and I have always been sympathetic, you know, being a former attorney myself to the costs and the fees not being
10 paid. I faced a barrage from attorneys who were appointed in HR matters, and I can refer to them as well.

I mean, one includes a Mr Majang, who was mentioned in the papers. And they came to me, and there is a particular attorney, Mr Mashudu Thenga, from Madhlopa Thenga, who came to me to say, but, HOD, okay, what is happening that we are not being paid? I have not been paid for seven years now. And I said to him, sir, I am trying to, I am just acting now, I am trying to clear that out. But why have you not raised this thing in seven years? So
20 he says to me, he was trying to keep the relationship. So I am saying, are you saying now that you do not want any relationship with me, that I am acting, you know.

But it was just to say that these are the concerns in terms of what I was finding when I got into the department on EMPD and HR processes not being followed through, and

unpaid legal fees, adverse awards against the City, and the undermining of accountability processes. And that is why it is important that I speak about that delegation of City Manager, Joe Mojapelo, at that stage. So when that process happened, Chair, and if, I want to cross-reference, if I may, to the document of Mr Revo Spies, where he attached which is so-called minutes of a meeting that were held with the EMPD top brass and the City Manager.

With your leave, Chair, may I quickly – Chair, I
10 stand corrected, but it is a document which was supposedly a meeting, so I do not know if it is either by Chief Mapiyeye, or Mr Spies, where there was a meeting held at the office of the City Manager, I was absent from that, in that meeting, and where several officers lodged complaints about what was happening. There is a particular reference to a Mr Ockert Bezuidenhout, where he stated that 99% of labour matters that are being sent on arbitration, are being lost.

So it necessitated us going in and looking at what is the issue. I mean, we have had, and Mr Nciza, I do not
20 want to say anything incorrectly, but he is an experienced HR practitioner. He was very experienced, he had many years there. But then what was the happening that every matter referred to, or almost 99% was lost. That loss at the Labour Court, without doing our due diligence and proper preparation, has an impact on our cost implications. It has

an impact on our budget, because of the City, Chair, we have at this stage, as I am speaking to you now, a contingent liability account of almost a billion rands.

When I took office, It was almost, it was just more than a billion. And the emphasis had to be on doing proper investigations, getting proper evidence, looking at the prospects of success, and what needed to be done to ensure that we do not have the situation, because in labour matters, it is highly intensive on procedure, and then the
10 substantive of aspects come in. So that has always been my interest. And I am coming to the process, Chair, of what happened in this Mkhwanazi, General Mkhwanazi and Brigadier Mkhwanazi matter.

Upon assuming office, I implemented, when I discovered these issues happening, Chair, the budget for Legal Services was at the City, Corporate Legal Services Department. To go for another department official and another department to come and incur the cost on our budget, whereas, that is the, it would have been non-
20 compliant with the vote allocated in terms of the Municipal Finance Management Act. Even if you apply the Public Finance Management Act, those votes are very important, how they, who are the authorizing persons, how are they done, who instructs attorneys?

And I was, I looked at, in the main, because of the

complaints I received from Mr Majang and Mr Madhlopa, amongst all the other attorneys, of the fees not being paid in seven years, for me, I could not understand how, in an annual budget, where you have a budget allocated, that you could have overruns. And then I started finding out that, and this has happened recently as well. I have got some WhatsApp messages I will share with the Commission as well, when attorneys in critical matters were not being paid. I was becoming a kind of a debt collector for the attorneys and advocates. I do not mind that, because in fact, the attorneys and advocates were paying, were doing very good work. If they were not doing good work, because we were involved in every matter now, and of course I would raise that, but some had, when you hear the stories, I am saying about quite experienced advocates, senior counsel.

And then I started looking at what is happening with this issue of the legal costs. What are the irregularities that are happening? And then I uncovered that Mr Nciza has been using this delegation from Mr Mojapelo to start using the threshold of R500,000.00 that he could approve. And he was appointing the attorneys. Primarily, when I uncovered this, it was about five attorneys and neither were Majang, Madhlopa Thenga, Mr Zebediela, Jack Zebediela, David Mogaswa, and one other firm, which I cannot remember, but I can get that. I am saying, but these are

attorneys, but you are appointing them and you are not paying them. But the obligations to answer to Council would be on my obligation. [Indistinct] account for why the monies have not been there, and there seemed to be a progress in terms of the finance that every year, in the last three months of the financial year, they do not pay. They ask the parties to roll over the accounts into the new year.

So these for me are irregularities and I questioned the appointment with the former Divisional Head, David
10 Frank, to say but how is Mr Nciza appointing attorneys, incurring the costs and how do we control it, because I am answerable at the end of the day for that budget.

I have also established then, Chair, that there were practices where, in the appointment of attorneys, you have a form K, which is part of the agreement that attorneys, okay, with advocates, we are not so strict because we look at the Bar Council rules and so on, but with attorneys that when they are appointed, they follow a, what do you call this, a tariff, you know, especially catered for us to see how
20 we can save costs. And even with that, attorneys making that sacrifice to go at a lower tariff, you still withhold the payments to them. So this is like a total value chain, Chair, if I express, and how we came to what we came to where I am implicated now in these matters.

Establish a fees vetting committee to say, but who

looks at the vetting of the attorney's fees? We have uncovered almost R3 million we saved because we have now started putting a due diligence. Before that, legal advisors were just settling on accounts. Legal advisors were appointing attorneys and in one incident, a legal advisor at the Legal department had moved the matter from one attorney who has been dealing with the matter for a long time, to another advocate who is related to one of the staff members, who charges R100,000.00 for a plea on a
10 collision matter.

And for me, that is where, you know, I started looking at it, but what has been happening? And when I started asking these questions, I get a pushback. But I have ventured on, I carried on with my team. I said, no, we will do the vetting. We will set up the fees vetting committee. We will continue to do that. But then the challenge came then with the Finance approving that. So I am not being popular at the City for many reasons, Chair, and that was because I was trying to get the legal
20 framework in place.

So in disciplinary matters, then I think that could be, to avoid all the procedural defects, and failed disciplinary inquiries, this is where the involvement from a compliance perspective, my involvement comes in. If you go to page 17, or paragraph 17, I have dealt with the, it

became a very hostile environment, Chair. In this period, the City also experienced serious instances of political interference. Chair, and I appreciate the fact that you said speak, speak, you know, because that is where it comes through, so because apart from what was happening at EMPD, there seemed to be a total collapse.

There was a total distrust between certain categories of employees and other employees and it dealt with promotions across the board, to the extent that even
10 last year, I think it was widely reported that the EMPD had come to a shutdown, EMPD police officers. They blocked highways. And that hinged on only one decision, Chair. It was a decision of the CFO to cut down overtime without consultation.

And that brought, I know they were officers, who performed, they were, you know, not the whole of EMPD is rotten. For me, the management needs to be addressed. But there are hardworking officers who put their lives at risk to go there. But to be excluded all of a sudden from, and
20 there is history of overtime in the City of Ekurhuleni, it has not become what you would expect of an overtime, where you say overtime is something over and above what you earn. It has become a trend over the last 15, 20 years, where that overtime is seen as being definite and people budget on that. People live their lives on that.

So when I looked at that issue and the cost, and I said to, but we need to start looking at the problems in EMPD and the issues that came about later on. I was not aware at the time when the matter came to me about the challenges, the full challenges at EMPD. That was after the, that was only after the meeting with the City Manager and when City Manager decided then to issue a directive or a letter. That letter I think is in the bundle as well from Mr Nciza, of the 22nd of August, if I am not mistaken, Chair,
10 where it seems to be seen that we usurped the functions of Mr Nciza.

So in the political interference, which it is quite, it is quite, how do I say, unabated, no apologies, because the main thing when I looked at the file and how the file came to me, the file of the investigation into the internal affairs of Mr, of Colonel Erasmus was when, I think Colonel Erasmus who was the collator of that docket, approached me during, towards the latter part of May 2023. He said, HOD, we are applying for an extension of the suspension.

20 Mr Mkhwanazi was suspended sometimes in February. We want to have an extension of the suspension, so I said to him, in terms of your HR guidelines, the labour legislation guidelines, and I must say that I have a very, which I consider a good relationship with Mr Hennie Erasmus, even up to the 1st of December 2025. I said to

him, Mr Erasmus, or we call him Hennie, what are, why is the need for an extension, because you have finalized your docket, your investigations in March of 2023. By that time, Mr Mkhwanazi would have been already on suspension for about a month. The collective bargaining speaks to a three-month period. But it is three months from when the decision, I think it is clause 7 or paragraph 7, to proceed with disciplinary proceedings. Now that decision was taken by, he says, by the City Manager, who are duly authorized
10 representative.

So, Mr Nciza, in my landscape, using the system of delegations October 2017, that decision would have to be taken by the City Manager or the Head of Department of HR.

CHAIRPERSON: Would that be the decision to extend the suspension?

ADV BEHARI: Extend the suspension as well as proceed with disciplinary. So what Erasmus was looking for was for me to give some supportive comments to say can we do
20 that, and that is when I said to Mr Erasmus, at this stage, please, I am inundated now, please can you leave the file with me. I will go through it and I will place the time, he said to me the suspension was coming to an end.

So I met with Mr Erasmus again after going through the file a day or two later, and if I may, I just want to skip a

few, which you can come through. But in the crux, in my meeting, Chair, if I ...[indistinct] a slight step back. The period of high-profile investigations that we were dealing with at my level involved the EMPD blue lights matter. It was not an investigation that I was dealing with, but it came through as what the City was dealing with. It involved CAT VIP and former Acting Chief, Brigadier Mkhwanazi. It should be, that is one of the issues I wanted to change in my supplementary.

10 If I look at page, or 20.1, I actually said Acting Deputy Chief of Police. He was not a Chief, Acting Chief, he was Acting Deputy Chief. That is page 6, paragraph 20, 20.1, Chair. Then the, unfortunately ...[intervenes].

ADV KHUMALO SC: Sorry ...[intervenes].

ADV BEHARI: Yes, Chair.

ADV KHUMALO SC: Mr Behari, what are you changing in 20.1 on page 6?

ADV BEHARI: So where I said, 20.1 I said involving VIP security and former Acting Chief, Brigadier Mkhwanazi, it
20 should be Acting Deputy Chief.

ADV KHUMALO SC: Oh, okay.

ADV BEHARI: And then these matters all fell within that period. Then a sexual harassment complaint and related misconduct allegations against the Chief of Police was lodged. Subsequent to that complaint, we were accused by

an attorney of the complainant to say, but this complaint has been lodged by then, and you are protecting the Chief of Police. I was not aware of any complaint prior to that letter from the attorney. I cannot remember the attorney right now, but I do have his details in the office.

Then the Syntell traffic fines irregularities implicating Deputy Chief Spies. And then the suspension and an eventual dismissal of Divisional Head, Employee Relations, Mr Nciza, on the grounds of misrepresentation of
10 qualifications and contractual non-compliance. So these are the, essentially the witnesses who implicated me in terms of what I have done legally, procedurally, and accountability on behalf of the City.

On page ...[indistinct] the Commission will observe that none of these allegations raised against me, though, were given to show a direct link to any incidents of corruption, fraud ...[indistinct]. The way the matter was carried out and aired, and in fact it was even done before I think it came to the Commission to say that there is two
20 HOD's received a massive increase of 600,000. Without going into the, and looking at the document to say, where does this come from?

So, Chair, I now deal with the specific allegations. This is the salary adjustment. But if the Chair would perhaps maybe out of more interest, maybe I should go to

the investigation first of Mkhwanazi. Or can I follow this trail of thought, Chair?

CHAIRPERSON: Is it not better, i think it makes it better for us to follow the narrative if you deal with them in the manner in which you have itemized them here.

ADV BEHARI: Thank you, Chair.

CHAIRPERSON: Not so much itemized in the manner in which you have dealt with them here.

ADV BEHARI: Thank you. Thank you very much. So,
10 Chair, when it comes to that, a central allegation advanced before this Commission, particularly by Mr Nciza, is an adjustment of my remuneration in 2023 constituted a so-called loyalty bonus. And that loyalty bonus was linked to my so-called involvement in ...[intervenes].

CHAIRPERSON: Which heading are we dealing with?

ADV BEHARI: Number 24, Chair.

CHAIRPERSON: Oh, 24.

ADV SEGEELS-NCUBE: It is page 7, Chair.

ADV BEHARI: Page 7.

20 **ADV SEGEELS-NCUBE**: The top of page 7, paragraph 24.

CHAIRPERSON: Thank you.

ADV BEHARI: And that was then linked to say that now Mr Behari stopped the investigation or the disciplinary proceedings against Mkhwanazi and then received this loyalty bonus. The allegation for me, Chair, is unfounded.

I am never involved in any disciplinary processes at staff at a lower level. My engagements with Mr Erasmus was to look at the compliance issues, what would be the prospects, what are the glaring issues you can see in the files as regards calling of the witnesses.

I know my former colleague, Nciza said but he acted as a shop steward. I mean, there is somewhere ...[indistinct] you expect shop stewards to act like this. Chair, in our environment where you face litigation costs
10 which are spiralling, and to understand, you have to play the other side and say, what could be this impact that could lead to a possible loss of a case for the City and future risk that we could be then be sued? So how do you mitigate against these issues? That is what my intention was in terms of guiding that.

So when I was appointed as the Head of Department, Chair, at paragraph 25, with effect from the 1st of June 2023, the all-inclusive remuneration package approved for the position was, I think it was 2.5, 2,055,000.
20 When I was a Divisional Head, immediately prior to that, because of the eight years that I have been at the City, my salary had already come through an amount of about 2,088,000. So effectively, I know I should have been a better person perhaps at that stage and say, no, even with a new function, with the added responsibilities of the Head

of Department, I must take a pay cut. You know, but I am saying that I asked the City Manager to say, but how is it now that I have got to pay, take a pay cut for running four divisions instead of one?

So I did not sign my contract because I was negotiating to say, but what can be done? I was just given an undertaking to say, no, there is a process for salary review that goes to organized structures within the City. The City Manager had no power to increase into, increase
10 my salary. She had no power. What she did was give me the undertaking to say, because I signed my contract of employment on the last day, the 30th of June, 2023, having to consider and go through that, but what do I do at the risk of not having, because my contract as Divisional Head would come to an end, I would have to make, you know, consider family issues and all of those matters, and what do I do?

So on the undertaking to say that, no, we will submit an evaluation to the remuneration committee and let
20 them decide, and I will deal with the issues thereafter. I also picked on numerous other irregularities pertaining to Heads of Departments' appointments in security which has been raised by all. Most of the Metros that I know in Gauteng have been raising issues on irregularities in the appointment, because after the 1st of November 2022, when

the municipal finance, sorry, when the Municipal Systems Act was amended, there were new provisions brought in, and all the Heads of Departments appointed after that needed to be complied with that.

But the Council and certain members or certain parties in Council were constantly trying to defeat that. Why? For no other purpose than say, no, no, we want to control a Head of Department. I was not prepared to do that. And I talk to other instances why. So the issues of
10 permanence of Heads of Departments, the issues of members of the panel, these all arose. The issues of the MEC's functions arose, and what could the MEC do. And I had an appointment, even with the MEC. I must say I find him to be a very wonderful character, MEC Mamabolo. And we had our engagements. And I had to say, and it was treated on my side to say, oh, is he being rude now by raising issues, which I wanted to look at protecting the integrity of the City.

So, there was a process, Chair, which was
20 recognized. You know, I do not want to bring in Mr Nciza, but Mr Nciza himself is aware of the review processes. He has applied for review through his Head of Department on the same way basis. The evidence is they have it. I do not want to put it out like what my salary and stuff were now. And why I had an interest of that was not even for this part.

It was because of the instructions that we developed that ...[intervenes].

CHAIRPERSON: Just a second, please, Mr Behari. Please continue.

ADV BEHARI: Chair, and why I am saying that it is vital, it is not about me saying, oh, he said this and I must say this and try and expose him. No. It is about me having taken instructions based on his termination as an employee of the City, which went through several external factors.

10 **CHAIRPERSON**: Had Mr Nciza's positions also changed, or was he trying to have his remuneration reviewed whilst he was still in the same position?

ADV BEHARI: Yes.

CHAIRPERSON: Or had he, like you ...[intervenes].

ADV BEHARI: Ja.

CHAIRPERSON: Had a change in position?

ADV BEHARI: The one was, he was appointed to a position, and then he wrote to his HOD. I think it was Naledi Modibedi at the time. She moved it to the City
20 Manager, Dr Mashazi, and Dr Mashazi approved it.

CHAIRPERSON: Okay. No, no, no, I just wanted to see if the two situations you are comparing were analogous. No fine, you may continue. Thank you.

ADV BEHARI: Yes, and that is where, Chair, I tried to come to the point that Dr Mashazi, apart from moving

something on behalf of, because any issues that concerned my contract, I needed to raise with her. She just moved it to the organized structures, to remuneration committee. Remuneration committee is, remember, in the system of delegations, the 2017, October, the negotiation of salary increments and so on lies with the Executive Mayor on the delegation. The Executive Mayor then, through the mayoral committee and the remuneration committee, deals with those issues. So we are not involved in that process, even
10 though I sit, HOD HR and myself sits in a lot of in-committee meetings and so on, we are not involved because it involved us directly.

So HOD HR could not even sit because she was also, and so she was appointed in March 2023. I was appointed on the 1st of June 2023. So when the application was moved in, I think it was in July, it was after the issues are raised, to say, I am concerned. I mean, how do I deal with the issue? And I was given the assurance that you will move with an application. And then there was a full process
20 through the remuneration committee, which when they have made a decision, they then moved to the mayoral committee. And the mayoral committee approved those increases based on our submissions. And because the mayoral committee is a committee of Council, they then do a noting to Council. So any Councillors that are not happy

with that, can then say to the mayoral committee, I want more details, I want this.

Okay, so that is where, and that is why I was so concerned when it looked like as if, you know, we were just given the 600,000 in my pocket, but if you look at then the increase of 500 and odd thousand, bringing it down amounts to about 24,000 a month, actual difference in my salary after taxes. That is for taking on three other divisions.

ADV KHUMALO SC: I was going to correct you until you
10 said after deductions. If you had not said that, I would have said you are incorrect.

ADV BEHARI: After the tax implications, Chair. So, yes, Chair, so, I have included my whole salary at KB3 of the annexures. That is very, Annexure KB3.

ADV SEGEELS-NCUBE: Which is page 6 of the annexure bundle.

ADV BEHARI: Chair, for full disclosure, because I mean, the salary increases are, so if you look at that table, Chair, KB3, page 6, on the 1st of July 2022, the salary to the 31st
20 of May 2023, when my position as Divisional Head ended, there is the salary that I have ...[indistinct] earning R2,088,551.00. On the 1st of June, there is a knock of about R30,000.00, of 2,055,000. Of course then later on in November, the normal increase came through, and then that brought the amounts.

But, Chair, I want to emphasize the fact that there was no loyalty bonus. There was no way, the matter was portrayed in all the, before the Commission and in all the media that we received something which would look at corruption. Chair, that is where I - so if it is corruption, that means I, or City Manager would have had to influence the entire set of politicians, even up to Council. Then the entire Council would be part of the corruption. And this is why it is absurd of how this was done. But it was done for a
10 particular purpose, Chair. It was done for a particular purpose to harm my fama, to harm my reputation, to harm HOD's reputation.

And even when I go back to the political interventions or political interference, it will show how, because in, between June and July of 2025, it is, I am just expanding on that, Chair, of 2025 I was brought under enormous pressure by the current City Manager, Mr Kagiso Lerutla, who was the CFO at the time, to settle. Kagiso Lerutla and Dr Kopedi were vying for the City Manager
20 positions, and I was asked because of certain agreements that were reached at the regional conference of the ANC, the African National Congress, that the agreements reached that you must settle Nciza and you must settle Chief of Police.

So at that stage I resisted because if you are

settling on Nciza, what are you settling on, because the allegations is at first he was dismissed after not having met the basic suspensive conditions of his date of appointment. He is the Divisional Head: Employee Relations. He ensures that contracts of all the Divisional Heads and HOD's and so on are in place, yet he did not have a signed contract months, if not years, after his appointment.

That would again bring us to the Auditor General to look at is this irregular expenditure, unauthorized or
10 fruitless and wasteful? We have to look at what category we fall under, because you do not have an underlying approval. So, those are my concerns, Chair. With respect to Mr, Chief of Police, Mapiyeye, my question was, how must I motivate to settle? You were talking as a City on gender-based violence, 16 days of activism. Is it something that we are just, you know, when the time comes to get popularity we are talking about it.

Because, as Commissioner Baloyi has pointed out, I am a board, or I am still a board member, Commissioner.
20 I am deciding now, you know, to, my term is coming to an end, and then we give the new blood chance to come in. But for the Institute for African Women in Law, I belong to a group called FEMNET International. I am also involved in the South African chapter of International Association of Women Judges as the secretary of the Trust for Training.

Now, given all of these issues, where would I put my conscience when this serious allegation has been made to say, no, okay, fine, you ...[indistinct] let us settle the matter, because already, Chief Mapiyeye had an internal, they had a report, a forensic report done by a firm of attorneys, which was very scathing. It is available to the extent that Commissioners need it.

10 Already there was a protection order which was made final in the Magistrates Court. And Chief of Police did not even bother to go and oppose that in the light of serious allegations. And then we have the process of the disciplinary internally, where political interference came in from the beginning, Chair. It came in, in the way in which it was presented. Now, when it is an item against a senior manager, it is an item for the City Manager, the Accounting Officer.

20 But out of courtesy, the City Manager pushed it through to, you know, to the mayoral committee. But when it came to the mayoral committee, despite assurances, you know, we were involved in protecting women, protecting our staff, there was a resistance. Every time the matter was to be served, we found that the Mayor was not present. He would give somebody else to do it. Then that person would say, no, no, Acting Mayor, I think I will wait for the Mayor to come.

So time was going. We were already accused of delaying the process by the attorney. So, Chair, these are some of the issues that, and then the people who really came in there with the Executive Mayor Xhakaza, was Alderman Tanya Campbell. Now, I have full respect for all the political parties that are in the City. The DA, I get on well with the DA elements, I get on well with Action SA, ANC, EFF, even the minority parties. But there are a few elements that have been pushing this for a particular
10 agenda and that has caused huge strain in the City. That has been now extended to interference in committees, the oversight committee for the Mayor and legislature, the oversight committee for corporate and shared Services. These are, out of desperation.

I rose to those committees to say, but this interference is unbearable though, because, and those are some of the things I just want to try and come back. I know I can, you know, when you deal with this issue, then you look at what happened, Chair, and please, my apologies if I,
20 but bring me back, bring me back, Chair. So to emphasize the fact that the salary increment for me was nowhere about any corruption, nowhere in stopping any, it was any investigation or any disciplinary process.

It was not my environment to do that Chair, because, so when, to come back now, I know there is a lot

of interest in Hennie Erasmus, and I said to Hennie Erasmus, are you finished with your investigations? You want an extension. How long do you want the extension for? Because, Chair, in any process in the labour environment, in a lot of courts, if you are out of time for any particular reason, you can still have the condonation leg that you can merit why you can make application for condonation. What, because these were serious. I mean, they were very serious charges.

10 But I am saying that Hennie Erasmus, when I started looking at the trail of the witnesses, when I started looking at every document, what was very, for me, very glaring, and I do not know why other people have not been picking up that, on this, is the involvement of CAT VIP Services, Anubis, I think it is Anubis, and Medicare 24, from 2019, Chair. 2019, there was a letter that Brigadier Mkhwanazi sent to the Chief of Police. I did not see the date on that letter, but from 2019 they have been involved apparently from COVID.

20 Then it became very important, and that is where my real focus was. The State of the City Address, 30th of March, 2022. What happened at the State of the City, and I asked this of Hennie Erasmus, I said, Hennie, but who was there responsible? Now we heard evidence about the MOU, and I will deal with the MOU, Chair. Then there was also

evidence about the operational plan that was forged. Now we will come to that, because at this stage, Chair, when you are dealing with the chief investigator or the compiler of that, you have to look at then what Revo Spies raised in his, under forgeries on what he detected.

I agree totally with that. If you look at the documents, you look at the font, you are looking at that, but it is like somebody looking specifically for where you can find it, because for me, and from my common eyes, looks at
10 the signatures there, there are four authorized signatures, and it beholds then for them to be put to their version, are these your signatures? And then so that you could also go and get a proper expert to say that are these signatures, who are they, and so on.

This matter with Brigadier Mkhwanazi then, where my concern arose, and that also goes through when we come and deal with the IPID issue, because if you look at the IPID report as well, there is a lot of overlapping in terms of the witnesses. And when I spoke to Hennie, the
20 witnesses were in the main Chris Steyn ...[intervenes].

CHAIRPERSON: Mr Behari, as much as I gave you leeway to tell your story as freely and as comprehensively as you want to, but we also do want to have progress. We are around page 8 now, if I am not mistaken.

ADV BEHARI: Oh. Yes, we are on page 8.

CHAIRPERSON: And it is been quite a while. To get to page 44, at this rate, it looks like it will take us forever. You will be on a topic and then you move on to another one. I think you are done with the one you are dealing with and then you say, let me go back to Erasmus, you know, when I thought you were already done with Erasmus. Perhaps we would have been moving much, much faster if you were reading your statement and perhaps supplementing here and there. I am just trying, you know, a balancing act of
10 sorts so that there is movement, real movement.

ADV BEHARI: Point is taken, Chair.

CHAIRPERSON: Yes.

ADV BEHARI: I will really strive to do that.

CHAIRPERSON: Yes, please, ja.

ADV BEHARI: It is just there are some certain critical issues I may have to have that, please, leeway.

CHAIRPERSON: Ja, that is why I said, perhaps if you read your statement and if you want to supplement here and there, you may do so, ja.

20 **ADV BEHARI**: Okay. I note that, Chair.

CHAIRPERSON: Thank you, thank you.

ADV BEHARI: So, Chair ...[indistinct] I think I have dealt with the system of delegations then, because those are the essential issues. The system of delegations, the remuneration committee, and the commission of the

delegations of October 20 - so, let us move to that. If I can then guide to page 9. Let me see if I can go through that. I have dealt with it. It all talks to the system of delegations, Chair. The only important part here on page 10 is the fact that when Mr Nciza relied on the delegations of Dr Mojapelo, by that stage, the system of delegations for the City in terms of section 59 overrode all of the previous delegations. And then there is also the financial delegations, because the way it is structured, financial
10 delegations come in annually and you revise it annually, and the HOD in that department must grant it.

So, Chair, then to come in then on page 41, sorry, page 11, paragraph 41. I just want to touch briefly on that letter of, but I think why I am concerned about that letter, Chair, I have looked at the record, and I think the Chair also went to try and understand the process of why I would be brought in, into a process. Chair, for me, it emanates from the findings or the discussions of EMPD. And one of the main complaints from the EMPD police officers in that
20 meeting were about a very disproportionate process of disciplinary proceedings.

And they mentioned Mr Nciza, and I think we also spoke about Mkwashi, he was labelled as Mkwashi, and for me, you know, from my colloquial learning in the KZN it is Mkosha, I am chasing you, you know. And I do not think it

is imperative upon any employee, irrespective of where you are to be labelled as a person who chases, that means you do not follow protocol, you do not follow processes, Chair.

So that is where it becomes very important to say that City Manager, between HOD, HR and City Manager, they looked at those. I was not part of the meeting, but he brought me in to say, but how do we improve this? So if you look at the document there, previously to the 22nd of, it had three categories. It had a category for a further
10 investigation, it had a category for internal hearing and then it had a category for the disciplinary tribunal.

So my engagements, Chair, and to try and understand, I think one of the questions you posed then on this issue, I am dealing with then page 11, Chair, one of the questions you put, but how did he manage with all of these issues because you have over 1,000 matters. And Chair, it was not easy for me, but the Accounting Officer is looking at the institution being saved from labour disputes, being saved from the possible further occurrence of what
20 happened last year. And these things are boiling, sir. It was boiling at the EMPD.

And when I applied, so it was an extra leg where I, I do not want to say I do not sleep, but I work till even midnight. I am up at 3 o'clock, 4 o'clock sending emails. That is my pattern, my work pattern that I have been

having, because of to ensure that when you do this, when you do the decision, take a decision to suspend and to, from a compliance perspective and to disciplinary, the witnesses who are there are available, because a lot of the cases that we have been losing, at the last minute, the witnesses are either giving evidence for the other side or they are not even coming to those forums, wherever it is.

So, Chair, I then, I have been doing that even until the internal suspension on the 2nd of December. I was, on
10 the last day, I was still doing these matters that were allocated to me. It was not a matter of taking any function away from anybody. The HOD of the department would go, would do his *prima facie*. I think there was discussions around the *prima facie* determination. That was the HOD ...[indistinct] the allegations come against him. He then came to me to say, can you support this? What do I need for further investigation? And that is where my role would have come in, even before the way I applied myself in that Mkhwanazi matter, came through here.

20 So, my role, Chair, on page 11 at the bottom, to review investigative files for legal sufficiency, to advise where additional evidence or clarification is required and that is what my entire role was in the matter of Mr Hennie Erasmus. And again, it was purely, purely focused on the risk to the City, what would be the risk of merely going on

and not taking the safeguards.

And I know I was alleged to have been a super HOD. I was never anywhere a super HOD, Chair. It was about me applying my compliance eye and the risk issues to try and say that, but where are we, where do we mitigate against the City? City has no money, Chair. I have got a WhatsApp message to say that we have no funds. I will try and pay the advocates next week. How do you do that? You have a budget allocated. How can you say you do not
10 have funds?

You know, so this is where, and at all the committees that I have been attending to over the last year or two, every time they have been saying, but what are we doing to mitigate the legal costs, and we have put in measures to mitigate the legal costs, and these are some of the measures to say, let us ensure that as we go forward, we have everything in a row so that we know that if we lose, it is based on what we could not produce and how we dealt with our case in court, not where things you could have
20 addressed internally.

Then let us go to 13, Chair, if I may, response to allegations, alleged interference in the disciplinary process of Brigadier Mkhwanazi. Chair, I spoke about it being pressured on the settlements of the Chief of Police. When the matter came to me, I said ...[indistinct] towards the end

of May for the extension of suspension. Chief of Police came and saw me on the 21st of June 2022, and he then sends me a letter dated the 21st of June 2022, but served on my office and my PA on the 22nd of June. I was unfortunately not at work from that date. I only came back to the office the following Tuesday because of court matters and so on.

ADV BALOYI SC: Mr Behari ...[intervenes].

ADV BEHARI: Yes.

10 **ADV BALOYI SC:** Your statement at paragraph 53 says the 21st of June 2023, and I think you have just said 2022, if I heard you properly.

ADV BEHARI: Ja, it was ...[intervenes].

ADV BALOYI SC: Is that ...[intervenes].

ADV BEHARI: Chair, yes, sorry, it is the 21st of June 2023, Chair.

ADV BALOYI SC: Okay.

ADV BEHARI: It was that letter. I think it was preceded by a letter or maybe at the same time to Brigadier
20 Mkhwanazi to say I am withdrawing the investigation. It was also on the same day, 21st of June, 2023. And then there is a letter dated 21 June 2023, addressed to me. Thank you for that, Commissioner. It is further alleged that I pressured the Chief of Police to hand over the investigation document.

Chair, the document was with me when Mr Erasmus brought that to discuss initially. He took it back, and the Chief of Police came back with the docket, so it is not as if I applied my mind only on the 21st when I had a meeting with the Chief, you know. And there was never a time where I said that the case must be terminated and the, because of an alleged lack of merit. This is purely incorrect, Chair.

Now, I just want to touch with your indulgence, Chair, I give advice in the following ways in the City. An
10 HOD would call me, an HOD would approach me, even in other meetings, an HOD would come to my office and they would ask me, and I will say, all I did was guide the HOD. I will guide the HOD to say, can you look at this. I have looked at the staff, let us look at that, add this, and so on. If there is a formal request for an opinion, I decide now do we do it internally because then I refer you to the Divisional Heads, or do I go externally and appoint, you know, counsel or attorneys for that.

So this is one of the matters where Erasmus came
20 to me. I looked at the documents. Chief of Police came to me on the 21st. I looked and I guided Chief. But in the way I guided Chief, I do not know whether he understood that perhaps it is going to implicate him in the way I was asking the questions and then decides, you know, we are not going to take it further, because the last engagement I

had was on the 21st with Chief, and thereafter the letter came in, and I heard nothing further about that until two years later when this issue came up before General Mkhwanazi.

ADV BALOYI SC: Just clarification. You say you do not know whether the Chief realized when he came to you that it was going to implicate him. Can you just expand on that?

ADV BEHARI: Yes, thank you.

ADV BALOYI SC: How is he implicated, because it is not
10 clear from the statement what you are talking about.

ADV BEHARI: Thank you very much, Commissioner. So, Commissioner, when I discussed the matter with both Hennie Erasmus and the Chief, and I looked at the Chief and I said to him, Chief, the issue with General, with Brigadier Mkhwanazi seems to stem from a relationship developed at the State of the City Address, or even before. At the State of the City Address, in the documents that he provided, there was an operational plan, Chief, your signature is there.

20 But you know, Chief, in his way, he would listen to me. He listened, but he would not, can I say one way or the other to say, I am responding this way. So I said to him, Chief, firstly, the State of the City address involved, from what I understood, in his own report, he found that there were people who were not supposed to be there, were from

companies who were not on our approved, appointed list of security companies.

He found dangerous situations there because there were snipers in that environment. Who then would have briefed the Mayor, Tanya Campbell, who was our first citizen? We had members of the public on the day being there, because the SOCA is the most, one of the most important events in a city.

ADV BALOYI SC: Can I just interrupt you. My question
10 was just to understand, implicate him in what way before you moved on too much.

ADV BEHARI: Okay. Implicating him to the extent that he had not applied the due diligence that he ought to have done to protect the citizens, to protect the first citizens, and in terms of that, because that is where the implication is.

ADV BALOYI SC: Thank you.

ADV BEHARI: And then further, Chair, the engagements with Chief and Erasmus were about, let us look at your witnesses that you have. The one witness being Chris
20 Steyn, who talks about the, I think he referred to him to the blue lights. So, Chair, I am still now dealing with the allegations on page 13, onwards, dealing with the allegations of Chris Steyn, and the blue lights and also the transfer of those vehicles, the donations.

Chair, that donations was totally contrary, non-

compliant with our system of delegations. I think that has been canvassed here and I will support that. But what was critical in terms of what, and I asked Chief then, Chief, but Steyn says that were you in EMPD and the fleet department, which was a leg of Transport, were you bypassing this matter all the time, because Steyn refers to other such instances when there was, even from Provincial Government, when there were donations done by way of a letter.

10 And Steyn, who was a proxy in the matter, he deals with all issues, clearly stated that Mkhwanazi came to him, he had the vehicles to donate. And then I said to Chief, but that is why it is going to go back to where. Who was involved? When did Mkhwanazi meet with CAT VIP Services and what were their engagements, and what were the involvements of the senior leadership in the MPD. So apart from implicating the Chief, it would implicate the senior, the Divisional Heads or the Deputy Chiefs of Police in critical matters pertaining to the State of the City.

20 What was the knowledge, what did you brief the Mayor about? It cannot be that Brigadier Mkhwanazi would brief the Mayor on critical issues. Why would he be then doing that? Why would he have allowed that to have taken place? Why, what was the issue of the driving, who was driving the vehicles on the day. So all of these issues, as it

became, maybe, it seemed to be me probing, but it was about, Chief, do you understand that it will come back to you in terms of what you knew, how do you understand what you should have done, what you ought to have done.

The witnesses were basically Steyn and it was Gcwabe. Gcwabe was a Divisional Head who received apparently a donation of 300,000 for books. And then I said to the Chief, but if you look at Gcwabe's report and if you look at Steyn's report, they speak about the resources that
10 were required. Even if you correlate that back to what Brigadier, sorry, Ockert Bezuidenhout mentioned, for essential police officers, there were vehicles, patrol vehicles, there were none. The bullets, there were none. Bulletproof vests, there were, well, I cannot say none, but I mean it was depleted resources. The college from Gcwabe, there was a college, and what would the impact be if you could not get the 300,000 to pay?

Chair, again, the process is totally incorrect. But the fact is, Chief, did you know about these lack of
20 resources and did you deal with Finance, because when did you approach Finance for these resources, because patrol vehicles are very important in protecting 4 million residents, not to even speak about the other residents or people that transit the area, but these are some of the discussions we have had, Chair.

So both Chief of Police and Mr Erasmus could not give me the issue because If I looked at it and applied my mind, I am saying that if Gcwabe is called as a witness and he says this, it means he was the one who did not fall. He ought to have said to Brigadier Mkhwanazi but why are you bringing, this is wrong. Go back to the Chief of Police, do a proper process, sent it to Legal for vetting, and let it go to the City Manager. Same with the vehicles. Even the MMC, Masuku, came about and she raised concerns to say, but
10 why, how can we not have vehicles? The police officers are going to the patrol sites with the private vehicles. What if there is a shooting? What if this? So these issues were raised by the MMC even prior to that.

So those are some of the issues I captured. And then Steyn's one for me was very glaring in terms of, Steyn also said a separate statement where he says that there was no blue lights. There was no blue lights fitted on the vehicles. Now, I do know that the vehicles were transferred to the City of Ekurhuleni. I think it was for a day or two
20 until Brigadier's Spies raised certain concerns and overturned that. But there was a transfer for a minimal period.

So the cost there, which I have said ...[indistinct] saw was about R200.00 per vehicle to transfer the vehicles. But the entire process, if you go into the process of that

Chair, it is more than that. Transferring the vehicles is one thing and showing the documents. You are not even showing, for the vehicles that are older than three years, where is the certificate of acceptability or certificate of compliance, you know, your roadworthy certificates. Where are these documents, because if you go into an open environment, Chair, and whether the shop steward or attorneys on the other side, these will be issues that I think.

So are we not putting ourselves at risk in terms of
10 we are going ahead with it. We are not investigating the other role players. Even the Chief, Chief, your statement about what you knew or that. I saw a letter where you say, I think it was Chair, and I will be corrected, there was a letter dated the 31st of March, 2023. That was after the State of the City, sorry. State of City was 22. The next day, after the Chief observed all of these issues, he wrote a letter, I think, to Mzolo. Mzolo was the direct in charge of Brigadier Mkhwanaz.

And I could not see anything to say but Mzolo, I
20 want a full meeting. I want to know what is happening here because the State of City address, you cannot ask somebody for a written response. There should have been an engagement and, you know, to say, bring all the parties together. I want to know because had, what would have happened had one of those snipers killed one of the people

attending there? And we know now from the evidence here, Ekurhuleni is becoming a place of peace, but unfortunately, what is happening in Ekurhuleni is not - so these are some of my concerns that I have raised, Chair.

Then I will have a separate claim to deal with if somebody was killed, even if the Executive Mayor was killed. So, and my concern was, but did you only rely on an operational plan, which has now been stated to be said it was forged, but when the other engagements from at least
10 two weeks, a month before, two weeks before, a week before, and daily before the SOCA, then I would think is when you are applying your full powers, so hence, Commissioner Baloyi, sorry, that long-winded thing, but it is to show that it was not a matter of just saying, abbreviated this, he donated vehicles, or brought donations in, he put the blue lights.

This was for me, look at the full landscape of what we are dealing with. We are dealing with serious implications from CAT VIP services, from Medicare 24, and
20 how they even ...[indistinct] in COVID-19. If they were involved in COVID-19, there was a program run by HR, because in terms of the staff ...[indistinct] those were all dealt with between HR and the department involved.

So, Chair, I just want to move on then for the purpose of, but I think you have heard the crux of what I am

trying to achieve. Gcwabe as well did not take the responsibility he should have, on page 14, paragraph 58, Chair. He ought to have told, he ought to have sent it back to, Brigadier had said no, no, follow the process. But apparently those cadets who do not have qualified would have caused a different problem if that happened.

So, Chair, on page 15, page 68, with that, I totally reject the fact that I pressured him to hand over the docket and stopped all processes. The next time the docket was
10 referred to was when there was a BXB mail, a BXB email, and then the forensic investigators got involved. I raised that because I am the Deputy Information Officer in terms of POPIA. And if there was a credibility, bring forward, even if it is through to Council, send it through, but when you start to do that, and if later on, if time permits or as I am permitted, Chair, we can go into the details of the BXB email.

But what I did was raise my concerns as a Deputy Information Officer to the Office of City Manager. She
20 called in the Audit, Chief Audit Executive at that stage, and then they proceeded further with the appointment of that. But, Chair, I do not get offended if a department head does not take my opinion, because they take, they do that with a full understanding that I will not be called in to defend the position later on. It happened in quite a few matters.

Even external senior counsel give an opinion. That opinion is rejected. We spend money on the external legal counsel and one of the such matters is that, which came to a head, I think, in the report of Dr Zweli Mkhize. My apologies, Chair.

ADV SEGEELS-NCUBE: Sorry, Chair. I note that it is 11 o'clock. Might we take the tea adjournment?

CHAIRPERSON: Please hold your thoughts, Mr Behari. Let us resume at 11:15. Let us adjourn.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Lift problem notwithstanding, we are still on time. Yes, Mr Behari, I am sure you have not forgotten where you were. I said please hold your thoughts, so you are sure to remember.

ADV BEHARI: Thank you, thank you, Chair.

CHAIRPERSON: But may I perhaps just try again. Please try to read. I think we will go quicker that way. But, as I said, if you feel like substantiating here and there, feel free
20 to do so. But please read.

ADV BEHARI: Thank you. Counsel has briefed me as well. I am grateful for that as well.

CHAIRPERSON: Yes, yes, thank you, thank you.

ADV BEHARI: Chair, I think we can move on to page 16. Alleged failure to act in relation to six EMPD officers

arrested for extortion. I think, Chair, for me, the one incident that I recall, I do not know if it is the same amount of, is it 120 000 or 80 000, but it involved a Sergeant Shirinda. And Sergeant Shirinda was, when he was charged, he was already in my assisting as a protector after I have received certain threats and so on. He was there.

So, when he was arrested, Chair, the only part of mine is that it is an HR function to discipline. I did not get involved to act in any respect of that. What happens is
10 when EMPD officers, because of the history of EMPD officers who go on raids or whatever their work is, and if they are arrested, there is a situation to say that if you need legal services, we assist because then you are not going to get EMPD officers wanting to go out at night or at any stage.

So, and this happened before with Chief of Police Mapiyeye approached me, and I said, Chief, give me the facts, and we will look at it. So, when this incident happened, and there was Captain Magagula from the IPID,
20 and it was all over the news and so on in arresting them. So, I do not play a role in this, but I did assist in terms of secure that no other EMPD officers do not want to go out and do stuff.

So, give them the legal, let them follow the services. It is not something that has not been done

before, and it is within our capacity. We do allow them that space. The HR functions, what the HR do about it, whether they decide to wait for the criminal conviction or go ahead with that, that is entirely.

And one of the most tricky things was Magagula in the bail application, when it was delayed, the process was delayed, he raised another issue to say, to use in the bail application to say, no, no, they are also going to be, I am charging them on another matter, or they have been
10 charged on another matter, only to later find that the DPP declined to prosecute.

So, he used information that was already finalised to try and stifle the bail proceedings. So those are some of the things we get involved. But I am reported about it, so I am not. But Shirinda has since been taken away from my profile. When he was with me, I had no issues. He was excellent in terms of what services he rendered valuable to me. On page 18, Chair:

20 “Alleged failure to respond to a complaint
by the community liaison officer
implicating Brigadier.”

Chair, the only matter I am aware of here is the one of the grievances that was raised by Colonel Thepa. Colonel Thepa, apparently, she was moved from her position, the unit was disbanded. But that is a process between the city

manager, the Chief of Police. When I engaged in the grievance proceedings, I had formal grievance proceedings. I have got a record of my outcome as well.

And only to be told by Mr Ivan Du Plessis that no, it was not the Brigadier Mkhwanazi who was acting Chief of Police, it was not his decision. It was the decision of Chief of Police Mapiyeye to disband. So, I had nothing, I looked at the grievance. I said, but you are taking a grievance against Brigadier Mkhwanazi? Whereas the actual decision
10 was taken by Chief of Police together with the city manager.

So, I did the formal process for that, it was full of chief. So, I denied it, I ignored that process. And in fact, she was also represented by a union from IMATU. And I said to them, take it a bit more seriously. If you are not happy with the grievance, you can take it on further:

“Unlawful participation in the restructuring of the disciplinary and grievance process.”

Chair, I think I have spoken to that already. It goes to that
20 where I am saying, Chair, nothing was unlawful. It was within the realm of the city manager to do that. And my role just came in at a compliance function:

“Alleged abuse of labour processes to frustrate or remove certain employees.”

Chair, this, I deny any reference. I mean, the labour

processes are there, they are well documented. Everything we did was within the Labour Relations Act. Ms Agnida[?] raised an unfair suspension and an unfair dismissal application. That was before the Bargaining Councils. So, I think it is one of the questions you posed as well, Chair. But it is not in the HR space.

And those are the processes that are to follow. These are - we could not find, if you look at the, even if I refer to the - there was, which provided the Commission
10 was an NQF Level 8. He says I have the qualification. And he shows an NQF Level 8 labour involvement. I think I have a copy as well, Chair. It is on the annexure bundle page 32, if I am not mistaken, Chair.

From, well, apologies. It is from page 28CV, 31. On page 31 of that annexure bundle, Chair. I have also attached it to my bundle now, Chair. To motivate the fact that he had the qualification, he refers to an NQF Level 8 advanced labour law. Now, Chair, that is contrary to what the requirements of the advert were. The advert spoke
20 about the B.luris or NQF Level 7, with labour law and others as specialised subjects.

Then he used this NQF level, higher level, to say, no, no, I am well within this point to get the job. He gave the Commission an NQF Level 8. This NQF Level 8 certification only came to the attention of the HOD and

during the processes in about March 2024. So, this comes back from 2009 when he supposedly obtained the. Now, Chair, on his HR file, we did a vetting in 2021 of all the employees to look at ghost employees and so on.

On his employment file, it is important that I just touch on that and then we move on, Chair. Page 36, page 38 of that bundle, you can see the University of South Africa advanced labour law NQF Level 7. So, the NQF Level 8 was 48 credits. The NQF Level 7 was 24 credits for
10 the same - what do I say, I cannot even call it a qualification, but it seems to be a unit standard towards a qualification at NQF Level 7.

So, these are the things we were dealing with, Chair, when we decided to start looking at how do we recover, because if somebody defrauded the city or any institution, then it is an obligation for me to recover. So those are the certain issues, and we could not get a direct answer from him.

In fact, we were about to go to the UNCIZA to sort
20 out the discrepancy because even a letter from a professor from the university spoke to an NQF Level 7 at 24 credits, which is used to say that he has that qualification in terms of the advertisement. So, Ms Agnida is on page 23, says and I think I have completed that. If I may move on. Mr Revo Spies, Chair, with your permission, on page 25.

Chair, Revo Spies and I, I have never had an issue with him.

The only issue that arose as a result of the investigation into Syntell. Syntell involves almost R100 million, which we are still trying to get. I am trying to get figures from the chief financial officer in the department. I cannot understand why, because we need to do the correlation. Why is there reluctance to give us that information?

10 I see the City of Johannesburg also now recently terminated the Syntell investigation.

They were this back office, fines administration people. Revo Spies was the project manager of that. So, Chief of Police in 2024, June, came to me, they were starting to get extensions. What we have been saying, but do not have evergreen contracts. You cannot ...[intervenes]

CHAIRPERSON: Can you please explain what these Syntell traffic fines were? The Syntell traffic fine system. What exactly was that?

20 **ADV BEHARI**: Thank you, Chair. So, Syntell was a group appointed by the city. So that when there are cameras in the road, or you are doing your 341 notices, in terms of your fines that you would be getting, there would be the fines administration part. They would be involved in collecting fines, and then there is a portion in terms of the

agreement that they would withhold, and then they will pass the rest of to the city, and then the city has a relationship with province in terms of the Road Traffic Act and all of the legislation for the administration of fines.

Now, it came to a stage where the contract was coming to an end. The city decided that you know what, we are paying too much money to Syntell, and that Syntell had already set up their own collection review, the MyCity. I think you can see it is MyCity or MyPay App, which is now
10 linked to this R2 systems where you can be paying. Now, I was interested in the losses to the city because of the correlation. Are they accurately reflecting to the city what they should have been doing?

CHAIRPERSON: And you also referred to an unexplained withholding of revenues. Who was withholding the revenues?

ADV BEHARI: Syntell, in the one matter where we found that the contract was extended, and internally they ...[intervenes]

20 **CHAIRPERSON:** All I needed was ...[intervenes]

ADV BEHARI: Okay.

CHAIRPERSON: Because this is in the context of Commissioner Revo Spies's being disciplined.

ADV BEHARI: Yes.

CHAIRPERSON: So, I wanted to know whether the

withholding is alleged to have been by him or whether it is alleged to have been by Syntell. So, you say it was Syntell.

ADV BEHARI: I say Syntell, he was the project manager. He needed to get all the funds, total accounting before the contract exited.

CHAIRPERSON: That is enough. I just wanted to know if it was Syntell or was it Commissioner Revo Spies.

ADV BEHARI: Thank you, Chair.

CHAIRPERSON: Thank you, please continue.

10 **ADV BEHARI:** Nonetheless, Syntell is still outstanding, and we are busy with that, Chair. On Kelebogile Thepa, as I mentioned already, I think, it was basically the issue of transfer, of her transfer, but that was done between the Chief of Police, city manager, and I dealt with a brief of it. On Mapiyeye, Chair, as I said, there was a lot of engagements because it was quite serious.

For me, it is sexual harassment. I have dealt with it. There was political involvement by Mr Izak Berg, who was the party leader of independent ratepayers, IRASA, and
20 Tania Campbell, Mayor Campbell, and there is a councillor called Berg, sorry, Pretorius, Brandon Pretorius. So, as I am saying, linking to the Executive Mayor. So, it was not the entire council.

There were a few pockets of who tried to exert control in terms of Chief of Police and even on the

settlements. And then the non-paying of attorneys because hoping - and the effect was by non-paying these attorneys, despite promises to pay them, there was a withdrawal from there, and which you cannot blame the advocates for. And that has caused us another problem in terms of finalising the disciplinary process of the Chief of Police. On page 28, Chair, 6.6:

“Alleged improper involvement in the forensic investigation.”

10 So, the BXB email, I have touched on it already. I am the deputy information officer for POPI, with huge fines that can be raised because of what was the content. I raised that as a concern. The city manager then called through the chief audit executive, and they appointed - so I was never involved in the appointment and so on. I only participated thereafter in terms of any information that is required by the investigators. So, my role there was limited to the fact that I was concerned about the content of the email, and thereafter I raised it, escalated it, and received a report
20 thereafter. On page 30, Chair:

“Alleged failure to adequately address a grievance of Colonel Thepa.”

Again, that is been done. I have addressed it. I set an grievance formal process. I have a finalised outcome, which was finding that the Chief of Police was the one that

actually did the transfer:

“Alleged support of city manager in the
usurpation of powers under section
60(4)(c) of the SAPS Act.”

Chair, I just want to spend time on this. This is, for me,
even at local government level, it is still a problem at all
municipalities because there is no clear-cut data to say that
you are an EMPD or a police department of the metro. You
know, although SAPS and the provincial MEC and so on
10 have an impact on the establishment, but once that
happens, there is a lot of issues that fall. So, I did not, at
any stage, usurp any powers of the chief or assist in any
usurpation of powers. The 60(4)(c)(2)(b) of the Act
provides that:

“The executive head of the municipal
service is responsible for the
recruitment.”

I agree with that. The executive head being the Chief of
Police. But, Chair, there is a hybrid role. The executive
20 head in terms of the SAPS Act for EMPD, but it is also an
HOD in terms of section 56 appointment. HOD is at our
level we do not get involved in the appointment. To the
extent I would get involved maybe with a division head or a
deputy Chief of Police and maybe even the executive
manager, but not at any lower levels.

So as much as I hear what the Chief says, overall, he is in charge. He has to approve the appointments and so on. But from my side, even in my response that I drafted, I would say I recognise that there could have been things happening based on the policy that could set out very clearly who you deal with. HR will deal with those issues. I am an HOD I do not get involved. Chief Mapiyeye was an HOD as well in terms of 56, but he had a dual role as an ED executive director in terms of SAPS Act. So, it was a dual
10 function with respect of powers of SAPS Act but also respect of the MFMA and the city and the Systems Act.

ADV KHUMALO SC: I got confused when you said he does not get involved, but overall, he has to approve. What do you mean by the last part, overall, he has to approve? And in the context of the question you are dealing with, if he did not approve, would that be irregular?

ADV BEHARI: Chair, remember at the level of below the divisional head, maybe below the executive manager, the chief would not be directly involved in the interview process
20 and so on. But then when the appointments come through, he should be the one approving. Even in my instance, if it is junior staff members, they will come to me to say, okay, this is what, and you cannot go against what the interview panel said because you are not part of the process.

So that is where I am saying, yes, overall, he has

the approving authority to say, you know, I am approving this, but not, and so on. But generally, it comes from appointment of a panel that he appoints. So, the panel does the work, and then he looks at the work that they have done and the report, and then he says, I am approving it. If I am not approving it, then he will say, I am not approving it based on these issues that I find. So that is the process.

ADV KHUMALO SC: So, if he gets told after the event that 60-odd people have been promoted or several other people
10 have been appointed to positions, would that be irregular because he would not have approved that?

ADV BEHARI: That is irregular, Chair, because he should have come to his knowledge to say, I have appointed all of these people. As I said, I have appointed all of these staff members, and then he would have then had the thing to say, okay, but what is this? He could have done that. So, he is the head of that. The SAPS Act, I trust everything – are you satisfied with that, Chair? Can I move on? And I did recognise his authority, and hence I crafted, Chief, let
20 us get together and do a policy. Let us be very clear that nobody can do this in the future, in terms of what happened. Alleged improper upward adjustment. Okay, I think we have dealt with that, Chair:

“Alleged improper involvement of a draft response to IPID.”

Chair, I think I am also grateful to my evidence leader to give me the last document in the bundle, which was the email from me to Linda Naicker[?]. Chair, there was a draft. My role in the legal department, again, is to say, when we hear of anything on foreign corruption, we go and engage and say, where is the foreign corruption? What do we do? Because I have got obligations to MPAC.

I have got obligations to the city, because if the employee decides, then I am going to withdraw, resign.
10 They resign quickly, and they take away the salaries and the pension, and so on. And then we are sitting with basically not being in a position to recover any impact of foreign corruption. That report from IPID was addressed to the Chief Mapiyeye.

It went in a meeting to the mayor and to the MMC, held by different role players in IPID. He did not come through the administration. All other reports come. Whether it is public protector, SIU, all those reports come to the officer, the administration officer, and that is when I
20 get involved. I mean, there has been instances when even a public protector report, I had taken on review, and we were successful with the review.

So that is my role, to say, what are we doing? Because it is not about finding only false. It is about concretising such that we do not leave loopholes in terms of

later on proceeding with that. But at no stage, it had any implication on me stopping or not proceeding with that. My role and my team's role. So, you will see the letter, which was described as nonsensical.

Now, we dealt with only the definitions in terms of what we found, and what were the definitions in terms of fraud, and what were the definitions in terms of PRECCA. So, when I received the report, I gave it to my divisional head. He is a seasoned prosecutor, more than 7 to 8 years.
10 I said to him, Njabulo, look at the definitions, and see how we can link these matters to that.

So, he drafted a document, which I sent to the city manager, to say this is a draft. That document never went out, Chair. It was portrayed, and I do not know how, because it was never a finalised document. In our meeting with, so city manager, after receiving the document from the mayoral office, called a meeting with a person called Khanyi, Osborne Khanyi.

So, when Osborne Khanyi was in the meeting with
20 city manager, I happened to be in my office, and they called me up. And I did not engage him. I said, look, but in all of this aspect, why did not you arrest him? No, but he said, if you look at, because I am confused by your saying. You say, proceed with disciplinary. However, the matter is with the DPP.

Chair, I do not know if, my understanding is that, we say, however, you try and put a different spin on what he said above. So, he is saying to me, proceed with disciplinary. But it is not for me, because Chief, had the item for the disciplinary. Just for me to look at what I am saying, and the question in the meeting with Khanyi. But he said, however, the matter is with the DPP for decision.

So, when are you? He said, no, we will inform you. I will give you an information. So, my draft was, we are
10 always proactive in the department. And I said to the HOD, please, but do not send it out, because even that letter, I still have to correct certain aspects. For example, they say I was in a meeting with the mayor. I was not in that meeting. And I heard the issue of the word suggest.

Chair, I do not want to get into it. But I am saying that, from my understanding, was it was not a different, because if you say, however, it means I must consider. I must consider the fact that there is something at the DPP. And what also gives me, when I look at Nciza's statement,
20 Nciza's statement, when it deals with the Erasmus reports, in the first one, he says that during April, before he signed off, during April, he had a meeting with Chief of Police.

I have got it here. I can refer to it for expediency. He says that he was informed that there were imminent arrests from IPID, which included Julius Mkhwanazi. So, I

am saying that you still went on them in April, and he mentioned the issue of fruitless, wasteful expenditure. But on the 30th of May, did he decide then to go ahead with that investigation, or with the disciplinary process, or whatever other process it is. But this is what Khanyi told us.

He said, no, we are not finalising the process. So, there was a draft form. It was never a document. I only shared the document with Mr Philip Rakgwale, when, apart from the city manager's office, when he came and he was
10 doing it, he says, but what was the engagements that I put in? I said, no, this is our draft document. How that was shared to Nciza now, to make it look as if it is a final document, of course, if we did not go get the full information, it would be nonsense, because we were looking at fraud and corruption.

I did not stop any of the HR disciplinary. If you wanted to go ahead, go ahead. What has happened to the issue of IPID telling you that there were imminent arrests? IPID never had imminent arrests, or never arrests at all,
20 even up to now. So, Chair, that is really, you know, that part. So, I never improperly involved myself in that. For me, firstly, the draft was not improper, because we were preparing it as a draft document, getting on looking at the documents, which we finalised with the IPID as they responded.

I have never signed off on it being, the issues that Nciza mentioned about me conveniently taking leave and so on, for me it is a non-issue. I was on special leave, or on family responsibility leave. You do not plan for family responsibility leave when you want to defer, and that is available on my leave records. Okay, Chair, the rest of it talks about that leakage and so on. If we can go then, permit me, Chair, page 39:

10 “Allegations are directed at EMPD
 officers who serve documents on Mr
 Nciza.”

Chair, I am not involved in any service of any documents. That is a function of HR and EMPD. Why would I do this? I would not even do this on my worst enemy. Not that I have any, I do not have any enemies, but why would I do that? Because this is an issue that talks about your integrity. It talks about the way people live, and I hear him. I mean, he is got a right to complain, but I was not part of that process, Chair:

20 “General allegation of implicated other
 unlawful conduct.”

Chair, I went about this quite a few times since whatever happened. I cannot understand any other unlawful conduct that I am aware of. Safe to say that I have, I have been under huge pressure because of my approach in compliance

in the city. And my conduct is not unlawful in the way of that. For example, Chair, if I may, quickly, I think we are at the end now.

Chair, I raise objections to Berg, the Mayor, Tania Campbell, and Pretorius interfering in the processes. To such an extent that after the withdrawal of our attorneys because of non-payment, the attorney for Mapiyeye takes a sensitive matter, heads of arguments, a very sensitive issue concerning sensitive information, and she puts it to all the
10 councillors.

Why would that be for all the councillors to see that this is what is happening? The issues of hacking of information. We are sitting with reports, pro salve. The Hawks methods to which I have referred have been non-existent from Hawks. I have only been working with confidence with the SIU. Many methods, pro salve methods, all involving even the current city manager.

Suddenly building a report blocked by the ...[indistinct] because the police wanted to know who the
20 people were involved. Grants and aid, Chair, that is a big, over 100 million involved. That is my area in which I get involved in. All have been blocked. And that is why now I am facing repercussions because Nciza mentioned one thing, Chair, I can take five minutes to answer this.

He mentioned that the only time I was involved in

labour matters was when it dealt with a senior manager. That senior manager, Chair, was Mojapelo. At the time Mojapelo was a COO. I did not get instructions from the city manager to do that matter. I got instructions from my HOD at the time and the HOD HR to do it. Apparently Nciza was close to him.

And as we are going through to the SIU report, we struggled with evidence. None of the witnesses from the city were forthcoming. And just when I said, no, but we
10 have to get Nciza's brother, TK Nciza, I am sure he is in the provincial legislature. He was there. He is the one that is been putting the pressure on, saying that no. And I said to my HOD at the time, the only people we can call now is TK Nciza and Zbuliope[?].

They are the ones who the evidence is pointing out benefited from this entire thing. The next time I am here, my HOD pulls me out. He says, no, we settled the matter. So, these are the things that I am now facing a backlash. I mean, business ventures, expropriation without
20 compensation. That matter is of interest throughout the country. I looked at the matter.

How do we buy a property, expropriate property, when there is a wetland on the property? Then I was called behind to say, no, but you are not working with us. And the last one, Chair, would be the important aspect would be the

rates, the special levy of rates for the residents of Ekurhuleni. You put in a special levy, then only for when Thembisa's uprising happened, then you decide to go back, but your initial process of public participation was flawed.

So, you seek to collect an extra money from the citizens without, then you decide to go back for the public participation. And it led to them having to cancel that, which has caused a loss of about 200 million. My interest is on the citizens of Ekurhuleni it is on the city of
10 Ekurhuleni. I do not get involved in individual politics, individual thing. I know it is portrayed that I have close of city manager. The extent of my relationship with the city manager was that my accounting officer, and I continued calling a city manager, and that is it, Chair. Thank you, Chair.

ADV KHUMALO SC: Sorry, where does that fit in the statement just for my benefit.

ADV BEHARI: Which one, Chair?

ADV KHUMALO SC: The issues of the raid and Thembisa
20 and uprising.

ADV BEHARI: It goes into the political interference part. Even the cases that were not pursued, I was being stifled from that. I have got details of that. Even when the HODs have agreed that there are criminal activities, but because I have been brought forward, the Executive Mayor said, but

why are you pushing with these things, Kemi? And I have got here with a former MMC for legal. They benefited of about 500 000, that is the allegation, from our grants and aid fund, which is meant to help the poor and destitute. So that is part of the political intervention, the political part that I have raised too. Thank you, Chair. I think that will be it.

CHAIRPERSON: Thank you. Thank you very much, Mr Behari.

10 **ADV SEGEELS-NCUBE:** Thank you, Mr Behari. Mr Behari, I just wanted to go back to your statement where you deal with your position prior to your appointment as a risk and legal. That was only in 2024, correct?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: And prior to that, there was the 22 August 2023 directive by the city manager, which brought about some kind of a legal review of disciplinary matters, which effectively said that your department would review decisions to go ahead with disciplinary proceedings
20 against senior personnel. Is that correct?

ADV BEHARI: No, not totally. If I can just clarify that. So, when the letter of 22 August 2023 came about, it was for us to get involved in the added leg of compliance. So, if you look at the form that is floating, there is three aspects to it. One is further investigation, the other one is internal

disciplinary, and then the disciplinary tribunal. So, we are not involved.

I can just recommend to say, in terms of additional information, I believe you should be able to secure it this way. In terms of an investigation internally, but it goes through ultimate approver, is the HOD of HR. And she relies on the input that I raised there into the matter. So that is what ...[incomplete].

ADV SEGEELS-NCUBE: Okay, just go to paragraph 18 of
10 your statement on page 5, where you deal with that aspect.

ADV BEHARI: Page 5, paragraph 18, yes.

ADV SEGEELS-NCUBE: Yes, so you say:

20 “A further structural development occurred on 22 August 2023 when the city manager issued a directive introducing an enhanced compliance review step in all disciplinary and grievance processes involving senior personnel. This directive required that such matters be subjected to a legal compliance assessment before charges were finalised or outcomes implemented. Its purpose was to reduce legal exposure, ensure procedural fairness, and improve the city's historically poor

success rate in labour disputes.”

ADV BEHARI: Chair, just on that, the one part I want to discuss, it was not only on senior personnel. It was basically across - I have scratched it out here, but I did not, you know, put it on there. So just on all personnel. And it comes from - I am not sure exactly when that meeting happened between Chief of Police and city manager and so on. But it emanated thereafter on the issue concerns about lost cases and so on.

10 But maybe – but that is what it concerned, adding an extra leg to say, can you look at them and that is one of the functions I did when I was looking at the initial report by Erasmus. So, we just brought in those experiences from there and brought it into the system to say, now – so the only person that was actually not there now, but it comes to the HOD. It was, in any event, had to do whatever he did on that stage with the HOD's consent.

Mine was just to bring in an added leg from a legal point of view, because we deal with the cases that are lost.
20 We deal with the cases thereafter that are to be implemented and that go into other costs. So that is where it is, Chair. But if there is anything more specific, I will ...[incomplete].

ADV SEGEELS-NCUBE: But what weight did that legal compliance assessment have in the process of the

disciplinary proceedings? So, if your decision was to not continue with the disciplinary proceedings, but the HOD was of the view that there is a case, a good enough case for it to go to disciplinary, how would you resolve that conflict?

ADV BEHARI: That was because it was never my role to say, in terms of approving or saying it can go to disciplinary. The HOD of the department who raises the issue will do an internal investigation. They will do that. So that investigation will come through. It will never stop
10 anyone, any of the functionaries, never change anything else, apart from me then coming in to say, okay, the HOD gives you the report.

I will look at the report and say, right, come, do you need an internal disciplinary process or do you need an external process. Then I will say to the HOD, in my comments to the HOD HR, to say I support this or this needs to be looked at further. Can we get this information and so on. But it was never for me – it was just to say, these are the issues I picked up. I think we can use that to
20 tie up so that we are secure because over the last two years, we have had union litigation upon litigation.

And these are some of the issues that is why they brought it between HOD HR and myself to say, look at this. And I can never stop any disciplinary from going on. I leave it to the HOD. I say, these are the issues. Can we cure it

by further investigation? These are issues. I will even guide that. For example, if I can by way of an example, on the 1st of December, the matter came back about the Firearms Control Act, and we charged somebody who had lost a firearm and failed to disclose.

So, they wanted to charge her for discipline as well. So, all I said to them was, please go back, look at them, who was in the control of the documents, but why your policy says there will be three monthly inspections.

10 Where is that? So, I asked them to get that added inspection report to say what has happened. It is just to strengthen any case that we are dealing with, but not to, I mean, the HOD HR will probably say, no, no, I hear you, or no, I do not agree. And she can take that decision. But from my side to say, give us an added leg of compliance in terms of that.

ADV SEGEELS-NCUBE: Okay, now this system only came into effect from the 22nd of August 2023.

ADV BEHARI: That is correct.

20 **ADV SEGEELS-NCUBE**: So, when Mr Erasmus approached you in May of 2023 regarding Commissioner Mkhwanazi's matter, this system was not yet in place.

ADV BEHARI: No, it was not.

ADV SEGEELS-NCUBE: Okay and can I just understand, when would he have met with you? We know that the

suspension, Commissioner Mkhwanazi's suspension, was going to lapse, the three-month suspension was going to lapse on the 24th of May 2023. So, when would he have come to see you?

ADV BEHARI: Chair, the Commissioner Erasmus, as I said, he came to me, if it was for me preparing an exact time, knowing about this further, I would have said to you. But it was before the suspension lapsed. Because immediately, I think it was the last week or latter part of
10 May, but before the suspension lapsed. And by that time, it was too late, because we were looking at, investigation finished March, April, and Nciza decides to say, okay, we are approving, and he appoints them on the 30th of May.

So, from April to 30th of May, it is almost a month and a half, nothing happened. And then you come into me at the last minute and say, please, can you do that? Now, as I said, Erasmus and I, we go for, a lot of the officers, HODs, senior personnel, come to me. If I am in the office, I will see them. I do not make appointments. The only one I
20 have documented is when Chief of Police said to me, can I see you on the 21st?

And that is when I put it down. But and it is quite correct. Before the 22nd of May, there was no formal structure like this that had to come to me. It came to me because Erasmus came to me to say, can I support an

extension of the suspension from a compliance perspective? But it comes at the latter part, towards the very end of it. Even the letter from Chief of Police to me, dated 21 June, is asking for me to assist there. But by the time, and they had until July. If I look at the disciplinary code, they had until July to serve and finalise the charges. And, if, for any reason, the process was delayed, you could also ask for a further suspension or a further time of another three months as provided in the disciplinary code.

10 **ADV SEGEELS-NCUBE**: Is that not what he was coming to you for guidance on that aspect, the extension of the suspension, not the merits of the disciplinary process itself and the charges?

ADV BEHARI: Counsel, when he comes to me to support an extension of a suspension, I cannot say, in light of the very serious charges that are against Mkhwanazi, and I want to know who are the witnesses, because the two witnesses are a day, there must be other witnesses who will supplement a positive case. So, I have to go into that. I
20 have got to delve into that to see, but what are the other issues that would be here?

It is not about - when you come to ask me to extend the suspension, you have to tell me, but why could you not do it all this time? Because he is suspended from February. What are the issues that relate to the stage now where you

cannot, you are coming for an extension at the latter part of May, and that is when I have written the document. And I have said to him, I will have to speak to the chief as well. So that is where it will share.

ADV SEGEELS-NCUBE: Okay, and when you then give him the guidance, which we will get to from page 13, on your assessment of the case, I understand you to be saying that you took the docket or the file away from him for a short period to review, so you did not make a decision or
10 give your view to him then and there on that day when he saw you.

ADV BEHARI: No, I did not.

ADV SEGEELS-NCUBE: Okay.

ADV BEHARI: It was about two days, I think. One or two days, yes.

ADV SEGEELS-NCUBE: And apart from him, who else did you discuss the matter with before you gave him your view on the merits of the case?

ADV BEHARI: Besides - because he was the one who
20 drafted the documents and I asked his questions the next person was the Chief of Police.

ADV SEGEELS-NCUBE: Okay, but you only meet with the Chief of Police on the 21st of June 2023. Correct?

ADV BEHARI: 21 June 2023, that is correct?

ADV SEGEELS-NCUBE: Yes, but Erasmus said come to

you before the 24th of May 2023. So, it is about a month between the two meetings.

ADV BEHARI: Yes, okay, in terms of formal discussions, but I was given city manager, because she has an interest there, to say city manager, we are looking at these issues. We are looking at these issues of - Erasmus is with me, I am speaking to the Chief of Police, but there would have been a verbal communication as well. It would not have been a formal matter. The only formal letter was when the
10 email went out to Linda Naicker, which is concerning the IPID update.

ADV SEGEELS-NCUBE: Okay, so you discussed it with Erasmus, the city manager, and then on the 21st of June 2023, you discussed it with the Chief of Police.

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: Okay, now the way your statement reads, it is as though by the time you speak to the Chief of Police on the 21st of June, you had already formed an opinion on the merits of the case. Because the
20 Chief of Police, in his letter that he sends to you after that meeting, says having discussed the matter, and he explains to you why he disagrees with your views. So, you had already formed the view then, before you spoke to him. Correct?

ADV BEHARI: That is correct, because I went through the

documents. When I looked at the file, I formed a view that there were certain aspects that needed to be addressed. And the link then to the state of the city address and so on. So, I formed a view. So, the meeting with the Chief of Police would have taken under an hour. So, it was not a long meeting.

It was about an hour, where I said to the chief, these are my concerns. And I think, Chief, that if we do not address these adequately, you know, in terms of what you
10 found at the state of the city address, because it cannot be said that it is just the issue of this. There is a full value chain of how the CAT VIP and so on came to the office, into the city of Ekurhuleni. So, let us look at those aspects. And that is where my issue was. I have an opinion to say, yes, these are the issues we looked at.

ADV SEGEELS-NCUBE: But did you have a discussion with the HOD HR?

ADV BEHARI: No, the HOD HR at that stage, because it was still dealt with, you know, chief deals with the
20 disciplinaries. I had no discussion with the HOD, because the extension of suspension application would be dealt with by HR. So, this was between the Chief of Police and myself.

ADV SEGEELS-NCUBE: Okay.

ADV BALOYI SC: Can I just - can I just ask, when Mr

Erasmus comes to you, or Colonel Erasmus comes to you about an extension, why did you not direct him to the HR people? Because as you correctly say, disciplinary matters are HR matters.

ADV BEHARI: Yes, because it is, the HR persons were already dealing with a possible extension of the suspension. He was looking for compliance comments to support in doing that. So, that is why it came to me from a compliance perspective. Is there something that I could support it?

10 Because if it goes into the HR, it is more likely that the HR, each of the HR will grant a suspension. But that is when, when I picked up on those issues, I could not then, without having those issues addressed, grant or finalise the rest of it, and I said, let us speak to the Chief of Police.

ADV BALOYI SC: Sorry, I do not understand. You say in your statement that he came to you regarding the impending expiry of the precautionary suspension, and I understood your evidence earlier to be exactly that. He came to speak to you about extension, an extension, or that the
20 suspension is about to expire. What do we do. I understood that to be your evidence.

ADV BEHARI: Chair, my evidence, yes, in the main, but it was about trying to get compliance support from me to give him favourable comments to send through to the HOD who deals with the extension. That is not my process, but to

look at compliance comments which I could support for that extension. And then when I looked at the file a day or two afterwards, or engaged with the file, and then when I met him again, that is when I said to him, but you need, here are the risks I am seeing.

Extension is one issue, but how far are you, which other witnesses are you going to get? Because when you are asking for extension, in our environment, you are going to say, which other witnesses are you still looking at
10 getting? The first witness, Jeff Wiggs, we do not know what happened to him, whether he was coming in or not, because the Chief of Police sent him an invite.

Gcwabe seems to be not very committal about what happened there. All Gcwabe says is that he raised it with the senior management. He raised the report on the donations with the senior management. There is nothing further from there. Chris Steyn talks about certain issues of other donations dealt with this issue, and I said to him, but from a compliance perspective, the issue of, nothing stops
20 you from going on with the disciplinary.

In terms of even the extension of suspension, even if the suspension occurred, there are processes in place when you are finding a matter for condonation to deal with that, and these are some of the issues that are dealt with, because if the suspension had occurred, what else could

you have done? If the suspension ended, you could still go on with the disciplinary.

ADV BALOYI SC: Yes, I am not sure that you are answering my question. My question really is, when he came to you, and according to your evidence, and I think you have just confirmed it now, that he came to speak to you about the pending expiry of the suspension, you seem to have gotten into the merits. But I am more interested in what did you say to him about the suspension? Did you say
10 to him there are grounds to suspend, I mean to extend it, or you are getting into the merits means you got to a point where you said no, there is no valid basis to extend. That is what I am trying to understand, because he is coming to ask you about extension.

ADV BEHARI: Chair, there was no outcome on that. My issue was when I reached out to him, I said, Erasmus, this is where I am looking at, have you addressed these issues? We did not finalise that, I did not give anything to say that these are the issues, I am not granting you the extension or
20 not. Address the issues, Chair. Same thing with Mapiyeye, address the issues.

ADV BALOYI SC: So, you discussed the merits. He comes to you about an extension, a suspension rather, that is about to expire, you instead discussed the merits.

ADV BEHARI: The merits were, with me, from a

compliance perspective, Chair, I cannot devoid myself of the merits ...[intervenes]

ADV BALOYI SC: No, no, no, I am not yet at why you discussed the merits, I am just trying to get the facts from your evidence.

ADV BEHARI: Yes, I got into the merits.

ADV BALOYI SC: You instead discussed the merits.

ADV BEHARI: That is correct.

ADV BALOYI SC: Thank you. Thank you, Ms Ncube.

10 **CHAIRPERSON:** Still on the same subject, so in paragraph 54 of your statement you mentioned the impending expiry of the suspension, to which my co-Commissioner, Commissioner Baloyi, has just referred you. And then at the top of page 14, and this is now paragraph 55, you say:

“I identified several material evidentiary gaps which posed a foreseeable risk to the sustainability of the disciplinary proceedings.”

And then at paragraph 60, you say:

20 “I regarded these gaps as significant.”

And then in paragraph 61, 62, 63, 64, you then say:

“You met Colonel Erasmus and told him your views about the merits.”

The merits being what my co-Commissioner engaged you on, Commissioner Baloyi. Now, I do not understand why

you should have chosen to deal with the merits and not with what Colonel Erasmus came to you about. I understand your emphasis about your concern being compliance, compliance, compliance. You said that umpteen times and you said it even before Ms Segeels started engaging you. You emphasised that. But point is, the Colonel comes to you for specific advice on an impending expiry of the suspension. Why do you not deal with that?

ADV BEHARI: Chair, I did deal with it in the sense that I
10 asked him to leave the file with me. Now, for a suspension in the labour environment, suspension is not punitive. Suspension does not stop anybody, and you cannot say that if somebody else comes in, nothing stops you from re-suspending him. That is a process that in our city we experience that. So, I have dealt with the merit ...[intervenes]

COURT: Show me in your statement where you dealt with it responding to Colonel Erasmus who sought advice from you. Show me in your statement where you dealt with it.
20 Insofar as the subject related to Colonel Erasmus who sought advice. Show me where in your statement you dealt with it.

ADV BEHARI: Did I suggest - sorry, Chair, I just want to ...[intervenes]

CHAIRPERSON: Show me in your statement where you

dealt with it insofar as Colonel Erasmus who sought advice from you was concerned.

ADV BEHARI: It is not in the statement itself. Let me go to 61, 62. Please, would you indulge me, Chair. These are the engagements I have had with Colonel Erasmus verbally when he returned to me on that date. And my issue was, if you apply, want me to extend or support an extension of the suspension, what would be the material facts that I would have to use to ...[intervenes]

10 **CHAIRPERSON:** But your statement is quite detailed, Mr Behari. Why would you leave out something that related to what he came to you about? Your statement is quite detailed. It says nothing, nothing in response to Colonel Erasmus about the extension of the suspension.

ADV BEHARI: Chair, I did not finalise the process of saying to him I support it or not.

CHAIRPERSON: Why not?

ADV BEHARI: Because I was still waiting for him to confirm to come on another date after I have seen the
20 documents. So, when I saw the documents and I discussed it with him and I said to him, these are the issues. I need to speak to the Chief of Police because I am not satisfied that we will be – these are the issues I raised.

CHAIRPERSON: You see, my problem is, later when you talk about the head, Commissioner Mapiyeye, you say that

by then the suspension had expired. So, you were working within very short and tight timelines. You raise all of these issues. They have nothing to do with the impending expiry of the suspension. You raise all of these issues. Time is running.

What do you do about the expiry of the suspension? Bear in mind, bear in mind, Mr Behari, that the suspicion, false or correct, the suspicion is that you were part of a click that was protecting Brigadier Mkhwanazi. So those
10 who are on the other side, in quotation marks, as it were, will say you let the suspension expire exactly because you are on Brigadier Mkhwanazi's quote-unquote side, as it were. Do you get the context?

ADV BEHARI: I hear you.

CHAIRPERSON: So, I come back to my question and I ask, why did you not give advice to General Erasmus on the extension of the suspension? That is what he came to you about. Not all of the issues that you then raised or chose to raise with him. Why did you not give him advice on what he
20 came to you for?

ADV BEHARI: Chair, General Erasmus, on the second date, after looking at the documents, I had to enquire. He must have a reason for extending the suspension. There must be valid reasons in terms of, are there witnesses still to come? If he had dealt with that, he never gave me a

response to my questions. Who are the witnesses? So, in our engagement, if he had told me at that stage, but Mr Behari, we bought the stuff, I need this, I need this, they would have been finalised then, Chair. He never gave me those responses.

CHAIRPERSON: Had you taken a definitive view on what you saw as gaps? Had you taken a definitive view that says there are gaps and there is no way that these gaps may be plugged? Had you taken a definitive view in that regard?

10 **ADV BEHARI**: No, Chair. It was a conversation with Erasmus. He had ...[indistinct].

CHAIRPERSON: Now, if you had not taken a definitive view, surely that must mean that you had not discounted the possibility that further investigations just might plug those gaps. Is that not correct?

ADV BEHARI: The further investigations, Chair, would have certainly plugged those gaps. But mine was to say to Chief ...[intervenes]

CHAIRPERSON: Yes, that is enough.

20 **ADV BEHARI**: No, no, I hear you. At the time, Chair, when I looked at the matter and I said to him, but these are the concerns I have, if he said to me, no, I still need this witness and so on, during our conversation, I would have had no problem with that, Chair.

CHAIRPERSON: No, no, no, no, no, it could not simply

have depended on what he said. You are the head of legal.

ADV BEHARI: Yes.

CHAIRPERSON: You have just accepted now that those gaps could have been plugged. Not so. You have just said now.

ADV BEHARI: No, I am with you, Chair.

CHAIRPERSON: Now, how can you throw it back at him if you yourself think that these gaps can be plugged? It is the obvious thing to do, not to actually give him time to plug
10 those gaps. If, as you say, they were capable of being plugged, why do not you say, my advice to you, which is what you have come to me about, is an extension of the suspension. That will give you time to plug those gaps. Was that not the obvious thing for you?

ADV BEHARI: In hindsight, Chair, now that I hear you, you put it that way.

CHAIRPERSON: Sorry?

ADV BEHARI: In hindsight, now that I hear you, you say it that way.

20 **CHAIRPERSON:** You accept. You accept.

ADV BEHARI: Yes, because, yes, let me leave it at that.

CHAIRPERSON: Was it not obvious even at the time? I do not think it is enough for you to say that in hindsight you accept. Was it not obvious even at the time? Why put stumbling block after stumbling block after stumbling block

without giving him solutions? He has come to you for a solution.

ADV BEHARI: Chair, at the time, the solution was for me to say, go and complete the investigations. Go and do the stuff.

CHAIRPERSON: Exactly. Exactly, and for that to happen, and for that to happen, Mr Behari, he needs time, and he can only have enough time if you agree to the extension of the suspension. The suspension was for a purpose. It was
10 not for the sake of suspension. It should be removed from the system for proper investigations to take place. So why do you not give him time to do that by assisting him with what he came to you for, extending the suspension? It is not enough to say, in hindsight, you agree with me.

ADV BEHARI: Chair, when he came to me, it was about supporting the extension of a suspension. We had an engagement. I said to him, these are what I think are problematic. These are the things we have to close, and these are the witnesses we have to include. He did not
20 finalise. I said, can I speak to the Chief of Police? And then the next meeting was the Chief of Police called me. But that was by the time the suspension had elapsed, but I did not deal with any suspension.

CHAIRPERSON: Effectively, you let the suspension expire, Mr Behari. You let the suspension expire. You are

raising all the problems with him, and you say, I am going to speak to the Chief of Police, and by the time you speak to the Chief of Police, the suspension has expired. You let it expire.

ADV BEHARI: Chair, there was never an intention to let the suspension expire. My intention was to make sure that we have all the processes, because, as I said, applying the laws to say that a suspension is not punitive, nothing stops us from still carrying on and saying that we have new
10 information to resuspend. The HOD HR could have resuspended, but for me, looking at it, and I know you mentioned that I am going on about the compliance issue.

That is what was important to me. How do you finalise these gaps? And Erasmus could not give me, at that stage, any response, but it could be taken, as I said to you, that I let it lapse, but it was never my intention. My intention was to look at how do we finalise and close all the gaps. The suspension could always have gone back and said to the HOD, let us resuspend. There has been other
20 cases where we have resuspended. Suspension lapsed, we resuspended.

CHAIRPERSON: You see, I would understand you, Mr Behari, on your point about the possibility of continuing with investigations even when the person is back with their suspension having expired. I would understand if you were

saying that having told Colonel Erasmus in so many words that, Colonel, I have all these gaps which need to be plugged but let us let the suspension expire. You can continue with your investigation to plug these gaps with Brigadier Mkhwanazi back at work. I would understand if that was your approach and if that was what you communicated to Colonel Erasmus. You never did that. You are now stating this in the witness box.

ADV BEHARI: Chair, because that is the policies of the
10 city.

CHAIRPERSON: I understand the policies, I understand the prescripts, but the point I am raising relates to your response to Colonel Erasmus when he comes to you for advice. Sitting there now, you tell us that in accordance with our prescripts, even if a suspension has expired, investigations may continue. You are saying that in the witness box, but Colonel Erasmus came to you for advice, you never responded to him that way. That is the point I am raising. It is different from the question of prescripts that
20 you are raising.

ADV BEHARI: Chair, as I can say, I am focused on the issues. Colonel Erasmus, as I said, I am aware of the processes in terms of suspensions. If the suspension lapses, we have dealt with that previously, but we can always suspend again. Because there is new issues that

came up.

CHAIRPERSON: Can you please focus on how you dealt with Colonel Erasmus? Please do not focus on the prescripts. I understand that. Can you focus on how you dealt with Colonel Erasmus? That is my issue.

ADV BEHARI: Chair, there was no definitive response to Colonel Erasmus. I did say to him I would discuss it also with the Chief of Police. Because even if the suspension lapsed then, I could have still discussed it with the Chief.

10 He said, right, once you have finalised it, let us go proceed further on that issue.

CHAIRPERSON: Thank you.

ADV SEGEELS-NCUBE: Thank you.

ADV KHUMALO SC: Can I just ask a question? After the suspension lapsed, you would have been aware because you say in your statement, it was impending, the lapse. After it had lapsed, did you ever say to Erasmus and to Mapiyeye, in the light of the serious allegations mentioned in Erasmus' investigation, the city has the power to re-
20 suspend. So, I advise you to consider that as an option. Did you ever do that?

ADV BEHARI: No, I did not say it in so many words. Because it is available within the HR space that you can do that.

ADV KHUMALO SC: No, but either you did or you did not.

And if you did not, just say, I did not advise it.

ADV BEHARI: Chair, I did not give them that. After Erasmus finished off with Erasmus, there was a break with the Chief of Police. The issue of suspension then never came out thereafter. Because there were other issues, I understand that I do not know how far that process has followed, but it seems to be, when I spoke to the Chief of Police on the 21st ...[intervenes]

ADV KHUMALO SC: You are the head of legal within
10 Ekurhuleni.

ADV BEHARI: Yes.

ADV KHUMALO SC: You know if the power to re-suspend is there in the prescripts. The reason Erasmus came to you in the first place was he was aware of the impending period. And he was asking you for support. You are now aware that the period has come and gone. And the effect of that is that Mkhwanazi is back at work. You know that.

ADV BEHARI: Yes.

ADV KHUMALO SC: And you are now engaging with the
20 two of them, Mapiyeye and Erasmus, on the seriousness, and we will still come back to that later on, the seriousness of the allegations. But as head of legal, at no point do you advise the city manager, or Mapiyeye, or Erasmus, that there is a power to re-suspend. These are serious allegations. Erasmus probably needs time to plug all these

gaps. I find that astonishing.

ADV BEHARI: Chair, if I may, when I raised those issues with both Mapiyeye and Erasmus, I heard nothing further after my last meeting with the Chief of Police. Now, if he had come back, and we have plugged the gaps, but there was no response, due to the nature of the issues I have raised with the Chief of Police. There was no further comeback to me.

10 And if we have addressed the issues that you raised in our meeting, can we now go on? And I would have said, yes, certainly, let us go to a re-suspension. That is how we have done re-suspension, to say, this is what the initial circumstances were, we have addressed that, and now we can go on. But that matter seemed to have stopped or stalled. The last was on the 21st of June. And then I heard nothing further from that.

ADV SEGEELS-NCUBE: Mr Behari, I have an issue with the notion that Colonel Erasmus approached you on the issue of the suspension. You did not tell us why he wanted
20 the extension of the suspension. Because in your statement you say that he told you that he had concluded his investigation and wanted an extension pending the disciplinary action. Why did he want the extension pending the disciplinary action if the investigation, according to him, had been concluded?

ADV BEHARI: Chair, those were the issues. When he came to me saying that the investigation was concluded, he wanted me to support an extension. Now, if you look at the conclusion of that, when I raise these issues, but is your investigation complete? And given the fact of the witnesses that you are going to call for the disciplinary enquiry, I extended that to say, but these are the witnesses, do you not have to revisit anything? Are there any other witnesses? Do you have to get a statement from Mr Jeff
10 Wiggs? Do you have to look at the engagements with Gcwabe, Chris Steyne? So, if those had been completed and returned to me, I certainly would have suspended, but anyway, I would have supported another suspension through the HR processes.

ADV SEGEELS-NCUBE: Yes, but I think that goes to, if the investigation is not complete, he comes to you and says the investigation is complete, I have concluded my investigation, but I still want an extension pending the disciplinary action. Surely, those reasons must be different
20 to, I still have an investigation to conclude. And if those reasons are different, you cannot even go into the merits because he said to you, I have concluded my investigation, but I want the extension suspended pending the disciplinary action.

So, he must have given, there must have been a

different reason other than the conclusion of the investigation, other than filling gaps, because he comes to you on the premise that the investigation has been concluded. And you know, as a lawyer, that one of the reasons could be that the safety of the witnesses, if he comes back to work, or that he might intimidate workers, or he might influence evidence.

In your statement, you do not say why he asked for the extension. And in light of the suggestion that Chief of
10 Police Mapiyeye says, you took the docket from him. He was pressurised to give the docket to you. It seems to me that Colonel Erasmus' approach for an extension is a convenient explanation as to why you inserted yourself into this process in the first place.

Because he had no reason to ask you for the extension. We have no record of him even requesting the extension, and it would seem to me that he would go to someone else who had already been involved in the process, like the Chief of the Police or Head of HR, to
20 speak to them about the extension.

So, you are not able to tell us what he asked you, the extension, for. What was the motivation for it? Because the investigation was concluded. And all that you give him in response to that is gaps about an investigation that he told you has been concluded. And that is, I think,

the difficulty that we have, is that you are not telling us why he came to you in the first place. It could not have been to finalise his investigation.

ADV BEHARI: Chair, Mr Erasmus never came to me to grant an extension. He never came to me to grant an extension. He came to me to say that the process of extensions is with the HR process. I need some comments to support that. And then I started looking. Hennie, is your case finished? I see your report says investigation is
10 complete on this day.

So, what do you need the extension for? And if you need the extension, are there any other witnesses that you still need to secure? Because in my environment, Chair, you do not grant an extension for the mere asking. And I have got to apply my mind to say, what else is still required? And if there is a process, then after that, to say, I have raised, are you going to close up the gap with Chris Steyn?

Are you going to close up the gap with Gcwabe?
20 These are some of the issues. I think I have documented that in terms of the issues raised. So, there was never an approach to me to grant an extension. It was to support that. And I engaged with it to say, this is what the issues are. And what are the reasons for it? You have to have the reasons why. I can say to the HR, I support these reasons.

Can we go on?

ADV SEGEELS-NCUBE: Yes.

ADV BALOYI SC: Mr Behari, in your paragraph 54, you say:

“He came to you to seek guidance regarding the impending expiry of the precautionary suspension.”

So, in your own words, that is why he approached you.

ADV BEHARI: Yes.

10 **ADV BALOYI SC**: It had to do with a suspension that was about to expire. And then you say:

“He advised that he had concluded his investigation and wished to extend the suspension pending disciplinary action.”

So, you tell us that is what he came to speak to you about.

You then, in the next following paragraphs, you tell us that you pointed out the gaps what you say are the gaps. But

you do not say to us, I then told him, the extension cannot be extended. I mean, the suspension cannot be extended

20 because of these gaps. You do not say that, even though that is why he came to you.

ADV BEHARI: Yes.

ADV BALOYI SC: But there is a different point I want to make about it. It is, Colonel Erasmus tells you, I have completed my investigation. I want to keep this man on

suspension. You raise issues with that. But you do not say to him, because you are going to investigate these gaps, while you deal with these gaps, extend the extension. You are the one that raises gaps.

The owner of the case is satisfied that he is concluded his investigation. You raise issues. The absence of a statement from Jeff Wiggs, absence of statement from Deputy Chief Mzolo. You say the content of DCP Gcwabe's statement, I do not know why that is a gap
10 to do with suspension. And then you say a letter from Chris Steyn indicating the acceptance of donated vehicles.

I do not know what that has to do with a suspension, the extension of a suspension, but maybe I should put it more positively. I do not think it has anything to do with whether you extend or not. But the two that you say are absent, the statements. So, you lead him on a path where you say, go find this, or these are issues. But you do not say to him, because you are going to be looking at these things, you should extend. You do not say that. Can
20 you just explain that behaviour?

ADV BEHARI: Chair, I did not say to him that I would support the extension to the HR. I asked him, have you dealt with these issues? And from there, he indicated that he understood he would address those issues. But I did not then say to him, no, I will support your extension in the

meantime. Because it could have been that I should have done that. But I did not say I will support your extension in the meantime. I said I would like to speak to the Chief of Police as well to say that how can we finalise that.

ADV BALOYI SC: I think that the problem, and what I am asking you to explain, is when you say to him, go and close these gaps, how is it that you do not say to him, in the meantime, while you are looking at these gaps, you will extend, you should extend the suspension. I mean, that is
10 why he came to you. He wants to extend the suspension. You raise problems to do with his matter.

And then you do not say to him, because you are going to address, while you address these two issues, or these four issues, according to you, then there should be an extension. You do not say that to him. And I am asking you to explain the absence of that kind of advice to him after you pointed out gaps that he needs to go and investigate further, according to you.

ADV BEHARI: Chair, when I guided, in the engagements
20 with Erasmus, when I pointed out these issues to deal with, at that stage, Chair, when he came to me, I did not have to say, you know, what are the grounds for further extension of this process. Because you said to me your investigation is complete. Yes, I reopened, I opened certain issues. And to go that, so, knowing that there could have been a

resuspension when it was finalised, I did not - in fact, yes, I did not deal with it totally. Instead of saying to him, I have guided you in this way, maybe I ought to have done that. But I did not do it at that stage.

ADV BALOYI SC: It is not even a maybe to me, at least how I think about it. It seems to be the logical conclusion, should have been the logical conclusion of your discussion. Because the reason he comes is, what do I do? His suspension is about to expire. I need to talk to you about
10 that. You do not advise him on that. You are silent about that. Instead, you give him problems, right.

You say to him, go address these gaps. And I am saying to you, it seems to me, in fact, yes, it seems to me that the logical conclusion of this conversation where you have pointed out problems would and should have been, no, you do not have a good reason to suspend, I mean, to extend the suspension, or in the light of these further investigations, and I suggest it should be the latter, in the light of these further investigations that I am indicating to
20 you, that in itself is a ground to extend.

You should extend it before it expires. I do not understand how you did not advise on this that he approached you about, especially where the only advice, or reasonable advice, rather, let me say, would have been, in the light of the issues I have raised with you, you do have a

reason to go and extend the suspension.

ADV BEHARI: Chair, I believe at that stage, it would be premature for me to have done that, to have supported the extension. And then, by that time, I understood from him there was already an extension request to the HR department. But he was coming to me to give that added aspect. And for me, I believe it would be premature until we finalise that, those issues that I would raise. So, I did not proceed that way, Chair.

10 **ADV BALOYI SC:** So, are you saying when he came to you to ask you for advice, or to have a discussion with you about the extension of the suspension, a request had already been made to HR to extend?

ADV BEHARI: That is what I understood. There was some issue. He wanted me to give him comments that could have been supporting, they could take it to HR. And that is when I raised the issue. I understood that he was already going to HR for the extension of the suspension.

20 **ADV BALOYI SC:** So, your discussion with him about the extension would have been a waste of time then, if the request was already with HR.

ADV BEHARI: Well, if I could, if it was still at HR, and if everything was in order there, and I found the reason, I could have sent through the support to the HR department.

ADV BALOYI SC: Thank you.

CHAIRPERSON: I am confused right now. Let me start here. Did I understand you correctly before my co-Commissioner started engaging you, did I understand you correctly that in response to Ms Seegels-Ncube, you said, Colonel Erasmus had not come to you for advice. I thought I heard you say so.

ADV BEHARI: He does not come to me for the extension. He has come to me to deal with the guidance.

CHAIRPERSON: He had not come to you for advice on the
10 extension.

ADV BEHARI: No, no, he did not come to me for an extension. I think that is where I understood to talk about an extension itself. But he would come to me for advice to look at how we could support the extension through the HR process.

CHAIRPERSON: I find it strange that your statement is silent on this thing about HR, which you suddenly mentioned now that you are being asked pointed questions. Your statement is quite detailed. It is one of the longest we
20 have had in this Commission. It is 44 pages long, quite detailed on all the subjects. There is no mention at all of HR. You suddenly mentioned HR when we questioned you for not having given advice to Colonel Erasmus on what he had come to you about, which was guidance regarding the impending expiry of the suspension.

That is what your statement says in so many words in paragraph 54. He had come to you to seek guidance on the impending expiry of the suspension. Now we ask you questions around why you never gave that advice. Now you suddenly say, no, no, no, with regard to the extension of the suspension, that was a process that was before HR and therefore I did not have to give advice. How is that so when your statement is so detailed?

ADV BEHARI: Chair, ...[intervenes]

10 **CHAIRPERSON**: How is it that your statement does not mention HR?

ADV BEHARI: Chair, ...[intervenes]

CHAIRPERSON: Would I be unfair if I suggest to you that you are suddenly mentioning HR because you are faced with difficulties? Because now you cannot tell us why you did not advise Colonel Erasmus on what you had come to him about, or rather, on what he had come to you about.

ADV BEHARI: Chair, at the time Colonel Erasmus came to me, there was already a process for the extension pushed
20 through to HR. He wanted me to give him some supporting comments and advice that I could support it to HR, to the HR HOD. That is where the extension, when I raised the issue. So, for me to support anything without having the full details ...[intervenes]

CHAIRPERSON: And your statement says nothing about

any of that insofar as it relates to HR. It says nothing about that. You only mention it for the first time when we question your failure to advise him on what he, in your own words, had come to you about. That is when you mention HR for the first time. Yes, it gives you a way out. You try to get away from the difficulty facing you by suddenly mentioning HR. I suggest to you, Mr Behari, that you are mentioning HR for the first time because you cannot answer the questions we are putting to you about your failure to
10 advise Colonel Erasmus on what he had sought your advice.

ADV BEHARI: Chair, I cannot - I hear you, but I cannot support that. I respect the fact that Erasmus came to me on the way to HR for the approval of that.

CHAIRPERSON: Okay.

ADV BEHARI: I then raised the issue and said to him, if I am going to support an extension, these are the issues that need to be addressed. I did not have at that stage any information and I believed it to be premature to me to even look at supporting a suspension. That was a process
20 already going through. So, yes, my statement does not deal with HR because I have dealt with what I was dealing with Erasmus.

This has come through now in terms of when we engaged, there was a process for extension because the extension of the suspension would have had to be before

the end of sometime toward the end of May. So, he came to me during a time very close to that, with one or two days, I think, before that. So even if I would ask for any further information and extended that, I understood it, but it was a process on its way to HR. So, my apologies if I did not in my statement deal with it, but there was a process there at HR. I was in the way to say, please, can you support this? I raised issues on ...[intervenes]

CHAIRPERSON: And what you raised as gaps, were these
10 even gaps? Were these even gaps? Let us look at the first one, the one about an outstanding statement from Mr Jeff Wiggs. Mr Jeff Wiggs had raised issues that were or ought to have been within the knowledge of EMPD officials. Is that not correct?

ADV BEHARI: Chair, with regard to Jeff Wiggs, it came to the knowledge of EMPD officials, there was peace through Jeff Wiggs. Now, in my engagements, whatever issues we are dealing with, we have a primary in terms of the value chain of the evidence to say, who did you get the
20 information from? So, Jeff Wiggs was there, and Chief of Police wrote a letter to Jeff Wiggs to ask him did Jeff Wiggs respond? Because there was a letter. So, either Jeff Wiggs said, no, I am not coming to the process or whatever. It was not there it was not obvious from that engagement. Then the next witness was ...[intervenes]

CHAIRPERSON: No, no, before you move to someone else, I am saying the issues raised by Mr Jeff Wiggs were issues that the EMPD could, within the EMPD, have been able to establish for itself. Is that correct or not?

ADV BEHARI: The issue of the blue lights, they could have done that. The issue of the donations, they could have done it.

CHAIRPERSON: Yes, yes.

ADV BEHARI: But still, it must emanate from somewhere,
10 Chair. The investigation comes from somewhere. It comes from Mr Wiggs. If there are any questions posed to EMPD ...[intervenes]

CHAIRPERSON: All that it did was to bring into the public domain facts of which the EMPD people were either aware or could easily have become aware, and you have already accepted that.

ADV BEHARI: Yes.

CHAIRPERSON: So, I do not understand why you would have insisted on a statement by Mr Jeff Wiggs. I do not
20 understand that.

ADV BEHARI: Chair, I did not insist and say you must get a statement from Jeff Wiggs.

CHAIRPERSON: But that was one of your gaps?

ADV BEHARI: Yes, the names were there to say, did you get a statement from Jeff Wiggs. Because after the letter

from Chief of Police Wiggs, we had nothing further. So, if you were saying to me that Wiggs is not prepared to come, then that is a different story, Chair. But that seemed to be still an outstanding matter which I was not made aware of.

CHAIRPERSON: Outstanding matter for the sake of it, Mr Beharin, so far as I am concerned. And truth be told, were you seriously expecting to get a statement from Mr Jeff Wiggs? I am not suggesting that journalists should not give statements, but you and I know the attitude of journalists.

10 Were you seriously expecting to get a statement from Jeff Wiggs? Was this not just a way of blocking progress on this matter?

ADV BEHARI: Chair, respectfully, I seriously, in all my experience, I have always looked at the cycle of evidence. Where does it start from? Where does it end? This came through from Mr Jeff Wiggs. If he was not prepared to do it, then we had to deal with it separately. But I was seriously expecting, because we have many instances when we have even emails that are coming through, emails that are
20 generated from untraceable accounts.

If we are going to go and investigate every one of those issues, and then when it comes to a situation where I prove it, where you got the information from, you do not want to have a situation where possibly the hearsay issues come in. So, I was seriously looking at Mr Wiggs. If he

said, no, I am not prepared to come under witness, it is fine.

CHAIRPERSON: And at the risk of being repetitive, you have already accepted that the issues that Mr Jeff Wiggs raised were issues that were either within the knowledge of EMPD officials or issues that EMPD officials could easily have been able to establish. So, I just do not understand the fixation with getting a statement from Mr Jeff Wiggs. I do not understand that.

10 **ADV BEHARI:** Chair, to the extent that I do not insist on a statement from Wiggs, I mentioned him, did you get the statement from him? But Chair, the issues that Jeff Wiggs raised could have been raised or elicited from the EMPD officials. But if you look at it from a very important aspect, he raised was the blue lights issue. The witness in the matter says there was no blue lights.

It would possibly need then Jeff Wiggs to come and substantiate, but this is where we have got it. This is where the information is. To assist and counter what the
20 witnesses are saying from EMPD. That is my engagement and my thinking when I dealt with the issue. So, in requesting Jeff Wiggs ...[intervenes]

CHAIRPERSON: Let us move on to the second gap. The absence of a statement from Deputy Chief Mzolo, who was the accounting senior manager to whom Brigadier

Mkhwanazi has reported during the relevant period. How would that statement have assisted?

ADV BEHARI: The statement from Deputy Chief of Police Mzolo would have assisted in the sense that when Mkhwanazi says that he was given these functions when he started to act. The incidents happened during the acting period. When he was given, he was following the instructions of what happened, they need to continue from Mzolo.

10 So that is one of the issues I looked at. But if it is coming from Mzolo, he should be coming to deny that he ever gave him to do these aspects, which was in terms of the MOU and all of the other aspects. So that is why I felt it was impressive to get a statement from Mzolo to say no, but I never gave such instructions to Mkhwanazi.

CHAIRPERSON: I am not sure I follow that, but I will move on. And paragraph 58, the content of DCP statement, which suggested that the entire senior management team of EMPD had knowledge of CAT VIP's involvement in EMPD officials.

20 And how was that a gap?

ADV BEHARI: Chair ...[intervenes]

CHAIRPERSON: The sort of gap that would have made disciplining Brigadier Mkhwanazi impossible.

ADV BEHARI: Chair, in terms of the evidential issues, if Gcwabe, he was instrumental in saying he received a R300

000 donation and he informed the senior management of that donation. Now, already the donation was irregular, and the senior management did not do anything to address it at that stage. Gcwabe is very vague in terms of 2021, 2022. So, it would have been in my assessment to say that but if the senior management of EMPD knew of the involvement of CAT VIP and what happened, why would nothing happen thereafter? So that is why I did not say Gcwabe. And first, and then the other issue is why did Gcwabe receive such a
10 donation knowing that the city manager had to approve the donation. So, these were some of the thinking patterns that I had at that stage.

CHAIRPERSON: I will leave it there.

ADV BALOYI SC: But Mr Behari, there were very specific allegations against Brigadier Mkhwanazi, Brigadier at the time. It had to do with the motor vehicles being registered in the name of Ekurhuleni and it had to do with the blue installation of blue lights on these vehicles, on vehicles that belonged to Mr Matlala.

20 Now, to bring in Gcwabe that he had received 300 000, I think it was, assistance with stationery, the involvement of CAT VIP with EMPD historically, that seems to be red herrings because it has nothing to do with the accusations at that time that you are being asked to speak to, in fact the extension to which you are being asked to

10 speak to because the extension relates to charges about the vehicles and about the blue lights. And you are throwing in quite a number of things that have nothing to do with that, and I do not understand how you would have thought:

[1] That is relevant for purposes of considering an extension of a suspension.

[2] Why you would regard that to be a problem with these disciplinary charges against Brigadier Mkhwanazi.

ADV BEHARI: Thank you, Chair. I believed that they were crucial issues because it comes into the entire investigative diary, with the docket. In terms of the blue lights issue, the allegations against ...[intervenes]

ADV BALOYI SC: No, sorry, when you say it comes into the entire investigative diary, what are you talking about?

ADV BEHARI: The information that was in the docket itself. To talk about donations. So, the donations being specific to the vehicles, that in terms of the only eyewitness that was going to be there that I could ascertain from Erasmus was Chris Steyn. Now if Chris Steyn says that we did this and Mkhwanazi comes to us, I ask, tell him what the process is. And that process is totally different.

ADV BALOYI SC: We have done this before, that is what Chris Steyn said.

ADV BEHARI: Yes, now in what way then would it be an implication that you want to finalise and make sure that the case against Mkhwanazi is strong? That is what we are looking at. So, if you have a witness, a sole witness being to say that the donations that, no, we have done this before, how would that then render the allegations against Mkhwanazi a problem? Because you have the one witness you are relying on who is saying something different.

ADV BALOYI SC: Well, are you suggesting as head of
10 legal that because Steyn says I have done this before, nobody can be disciplined for it, even if it is against municipal policies and against the law? Surely that is not the suggestion you are making.

ADV BEHARI: No, Chair, that is not my suggestion. What I am saying is, in looking at the matter holistically, you are looking at disciplining Mkhwanazi for the issue of the blue lights. Sorry, not the ...[intervenes]

ADV BALOYI SC: Registering vehicles in the name of Ekurhuleni, yes.

20 **ADV BEHARI:** So, the only witness there, Steyn, says it has been done before. But Steyn is the one who guided Mkhwanazi, according to his statement, to say we accept this on a letter, to give me a letter from the donor. And on that basis, that donation happened, with Mkhwanazi giving the letter, as per his directive. Now, it is not okay, because

that is where my concern is. If he says that we have been dealing with it previously, we have dealt with it in this way, it means all those donations have been irregular.

ADV BALOYI SC: Yes, and you are saying you cannot discipline Mkhwanazi because it has been done before. That is what Steyn is telling us.

ADV BEHARI: No, I have not said that, Chair. What I am saying is it makes your case against, remember, we have to look at a case that is winnable. We have to look at a case
10 that is going to be, not have any implications coming back. So, no one said do not discipline Mkhwanazi. But then I am saying is, when Mkhwanazi says he relied on that, so Chris Steyn has been doing something, so why not add, you throw your net wide enough to deal with all the aspects of the world, dealing with illegalities. If it is only Mkhwanazi, he will say, I relied on Chris Steyn and Gcwabe.

ADV BALOYI SC: Is that not what a disciplinary hearing is about? It is to ventilate the allegations and the evidence that is presented in support thereof, and then your
20 independent presiding officer will make a decision about it. Your management here, you proactively, that is not what you tell us, that is not what Erasmus came to discuss with you.

But you take it upon yourself to start commenting on the strength of this case, that it is unwinnable or it is

unsustainable. So, you volunteer to do that. But you are volunteering and the views that you express are to discourage, because that is really what you are doing here. Your comments are to discourage. You say this case is not sustainable.

That is really what you are doing. It is not sustainable because Chris Steyn told him this. You make no reference to policy. You do not say to Erasmus and to us here that the policy of the municipality or the conduct of
10 the municipality indeed is such that that is how it was done. Or we have always wavered where the people continue to do the same thing we generally do not discipline.

You do not do any of that. What you do is you say, well, Steyn says, then why would you discipline Mkhwanazi? How can you succeed against Mkhwanazi if Steyn says that is what happened? Maybe Steyn is lying. You do not seem to have applied yourself to interrogating what Steyn says. You are happy to take it on face value and to express a view which is disadvantageous, actually, to those who want
20 to institute disciplinary proceedings. You say because Steyn says this, this case is not sustainable. I do not understand that.

ADV BEHARI: Chair, my engagements to that extent were never to discourage anything, was never to discourage any disciplinary processes. It was to say that, as I mentioned

earlier on as well, we have been having a lot of matters. We cannot be waiting for matters to go on disciplinary processes and then knowing we should have done all of these issues before that and then lose a case because we have lost a lot of cases of the city of Ekurhuleni.

If their own EMPD officer in terms of Ockert Bezuidenhout had mentioned that, from that side, which I was not aware of, but my own experience, when we go into the bargaining council, almost every order that is coming,
10 which is adding to our contingent liabilities. So, it was for me observing to say that, but why did not we not finalise it? What was the, if we had waited for a little while, get all these cases up and running because Chris Steyn was there.

As much as Chris Steyn could have been lying, that would have to be tested. So how do you wait for Chris Steyn to go there and lie in the formal processes and then not have a substantiated witnesses in terms of how do you prove that he is lying? So, from my side, it was never to discourage anyone. Just look at, and again, I will reiterate,
20 Chair, that my interest is the number of cases we are losing and why. We have looked at the assessment on that. Thank you, Chair.

ADV BALOYI SC: Let us go back to Jeff Wiggs. What did you want him to say? He is provided the municipality. There is a story in the newspaper.

ADV BEHARI: Yes.

ADV BALOYI SC: He is written into the municipality. He is provided whatever he is got, including videos, and that is the evidence we have had, right, which shows these cars. He has provided letters which list registration vehicles, the number of vehicles and their registration details. So, he is provided all that information. When you say statement from complainant, and in fact, there is two parts to it. What did you want Jeff Wiggs to say in his statement anymore? That
10 is one. Two, why do you say he is the complainant? The EMPD is the complainant. Mapiyeye is the complainant. Why do you say Jeff Wiggs is the complainant and so must issue a statement?

ADV BEHARI: Chair, the mention of Jeff Wiggs and the statement from Jeff Wiggs emanates from the Chief of Police writing to him to give a statement.

ADV BALOYI SC: No, you are the one that says to Erasmus one of the risks that undermine the sustainability of disciplinary proceedings, not even the suspension,
20 disciplinary proceedings, you say to Erasmus, it is the absence of a statement from Jeff Wiggs. So, I am not asking you about what the Chief of Police said or did. You have identified it as one of the problems.

ADV BEHARI: The problem would be, in my assessment, would have been that Jeff Wiggs had information, whichever

his source would have been from. He writes to Revo Spies. So, to get a statement to say this is what I have obtained, this is what I want investigated. So, they have a complete chain in terms of where he came from and how he dealt with it.

So, the complainant would have been, Revo Spies did sign a statement as a complainant as well. But in terms of going to the full value chain of the issues, in terms of what I looked at in the findings or the report, there were
10 issues that would have implicated the Chief of Police. Because the whole issue about how, I went and delved into the entire thing, is how did CAT VIP and Medicare come into the city? How did Julius Mkhwanazi then get these donations or access and donations? Whereas they seem to already have a relationship of CAT VIP in the city ...[intervenes]

ADV BALOYI SC: Now, Mr Behari, I am not asking you, and let us not obfuscate yet, I am not asking you about how the relationship came about, how long is it. That was not
20 the issue here, in this case. That was not the issue. The issue was someone was spotted driving in motor vehicles that have blue lights. On investigation, it was found it is Mrs Matlala.

That is what Jeff Wiggs reports, right? Two, Jeff Wiggs provides details of motor vehicles with registration

numbers, and he says, these vehicles are registered to the city, in the name of the city, and they belong to Mr Matlala. Those are the issues regarding Brigadier Mkhwanazi. You then say to Colonel Erasmus, we have a problem, because you do not have a statement from Mr Wiggs.

Hence, then my question is, what did you still want Mr Wiggs to do, I mean, to say, rather? Erasmus has conducted an investigation, as instructed by Spies, we know that. He is conducted an investigation. You have that
10 report in front of you, so you know what is in there. Why you want a statement from Jeff Wiggs to say what, is a question that I am asking you.

Two, I put to you that you are wrong to refer to Mr Wiggs as a complainant. He is not a complainant. He is a journalist. He is a reporter. In fact, in this case, the complainant was the chief. It was management of EMPD that complained. It is not Mr Wiggs. So, when you say to Erasmus that Wiggs is a complainant and therefore must give a statement, it is all wrong. There is no basis for it.

20 **ADV BEHARI:** May I respond?

ADV BALOYI SC: Yes.

ADV BEHARI: Chair, the issue of Wiggs was that he brought the issue. The complainant is not, as I said, he brought the entire transfer of the vehicles, donations, to the attention of the city. Now, why is it important in terms of

proceeding to look at, maybe it is my old school, or very old school, in terms of having a complete value chain in terms of where the complaint emanated from.

If it came from Wiggs, that is just all in good. It came from him, Wiggs, but in terms of then linking that to the witnesses, Wiggs would have been able to concretise where Chris Steyn says there was no blue lights fitted. Where do we look at other options because it is a very serious issue about the blue lights? Where then would we
10 look at other options in terms of who else could be proving, if Chris Steyn says there was no blue lights fitted.

So, it was important in terms of the entire value chain to say to him, where is the statement of Jeff Wiggs? Do you have the statement of Jeff Wiggs. Is he coming through? There was nothing there. I felt it was important because he is involved in that process. In some respect, he is involved in that process. If it needed to be, that you get substantiated, but where you got this, are these fake messages? Where did you get that from?

20 The source and so on. He could have been dealt with at that stage. He could have been secured as a further witness. Chair, I think the other issue was Chris Steyn could have been lying and it could have been then ascertained at, but the other option was it could not have been lying. He could have said, but this is the process we

have. If he showed other issues on seizures and so on.

ADV BALOYI SC: My point is, he would have had the opportunity to say that in a disciplinary hearing.

ADV BEHARI: Certainly.

ADV BALOYI SC: That is my issue with this. That is why I say this is just a red herring really. Chris Steyn has given a statement. It is recorded in the report that you are looking at. That is going to be part of the evidence in the disciplinary hearing. Why you choose to make it an issue
10 that has a bearing on how you respond to a request for guidance on the suspension is the part that I do not understand.

ADV BEHARI: Cahir, in terms of Chris Steyn coming through as a witness and whatever was said, yes, he will have the opportunity at the disciplinary to deal with it. Remember, the disciplinary was not against him.

ADV BALOYI SC: Yes.

ADV BEHARI: He was a witness. He was an important witness for the city. For an important witness to come there
20 and then say, why must we lessen our case and the prospects of success in the city's case by calling a witness already who you know is not going to give evidence in support of the city's allegations? For me, it would not have supported it. You know he is not giving evidence. What other evidence can we get to make sure that the city's case

is strengthened? So that is my question.

ADV BALOYI SC: Yes, I have heard your answer, Mr Behari.

ADV KHUMALO SC: Thank you. Mr Behari, just look at paragraph 56 of your statement, please. Let us try to read it again. You say there:

10 “Absence of the statement from the complainant, Mr Wiggs, notwithstanding documented attempts by EMPD to procure his cooperation.”

So, by this point, you know they have asked him for the statement, and he does not want to give it.

ADV BEHARI: Chair, there was no direct response to say I am not coming. There was just a letter from the Chief of Police to him and I asked Erasmus, was there a statement for coming? There was no response from Jeff Wiggs to say I am not prepared to come.

20 **ADV KHUMALO SC:** Yes, so you say there in your own words, notwithstanding documented attempts by EMPD to procure his cooperation. So, you knew at this point that they have asked for it and he was not providing it.

ADV BEHARI: Yes, well I was asking for information about that. Has he provided it? Is he not prepared to come through? So, there is the engagements with Erasmus to say but your chief has written to Jeff Wiggs. Has he

responded? Or did he just keep quiet?

ADV KHUMALO SC: And let us assume that he did not come through. How does that then result in the charges against Mr Mkhwanazi not being sustainable? Because that is what you say in the latter part of paragraph 56. You say these gaps, the four gaps you have identified, they pose foreseeable risk to the sustainability of the disciplinary proceedings. So, you are basically saying without these things the proceedings are not sustainable. This is the
10 legal advice you are giving to people who are coming to you for advice. Explain to me how the absence of that statement renders the legal proceedings unsustainable.

ADV BEHARI: The absence of the statement from Jeff Wiggs as the disputes arise in the disciplinary process. It was for me to say as I said to look at the value chain. Where did it emanate from? How do you finalise who comes in? Is that a sole determinant to say that these prospects are weak? Or it is not going to be sustainable? But in the entire cycle it emanates from someone, it emanates from
20 Jeff Wiggs. What did the EMPD deal with? And did the EMPD not know about this before? Before these blue light issues was it the first time that the EMPD became aware of this at this stage? So, looking holistically at the evidence it was very important.

ADV KHUMALO SC: I do not want you to repeat yourself

because you have already said that. I am asking you a simple question. How does the absence affect the legal proceedings, the disciplinary proceedings continuing? Because they can continue without that statement. I just want you to accept that.

ADV BEHARI: Chair, it can ...[intervenes]

ADV KHUMALO SC: Could the disciplinary proceedings continue without Mr Wiggs' statement?

ADV BEHARI: It can continue.

10 **ADV KHUMALO SC:** Let us just stop there. Now, on Chris Steyn, you say Chris Steyn was not supporting the municipalities case. I do not understand how you can say that because earlier in your evidence-in-chief, unprompted, you were not prompted by anyone. You said these donations were irregular and unlawful. Now, Steyn confirms that he registered the vehicles because Mkhwanazi said to him there were donations to the city of Ekuruleni. So how can you then say what he says? I am talking about Steyn, does not support Ekuruleni's case because the very thing
20 you said, unprompted, that it shows that these things were irregular. That is the statement from Steyn.

ADV BEHARI: Chair, I will reiterate. Yes, unprompted. Those donations were unlawful.

ADV KHUMALO SC: Stop there. Now, that information comes from Chris Steyn. And we can take you there if you

want us to because we have got Steyn's letter in front of us.

ADV BEHARI: Maybe, please, if I can look at that. If you say, does Chris Steyn say it was unlawful?

ADV KHUMALO SC: No, no, Chris Steyn is not a lawyer. Chris Steyn is a fleet controller. Chris Steyn says Mkhwanazi told me that CAT VIP Services donated these vehicles to EMPD or Ekurhuleni and he showed me a memorandum and a letter of donation. And I was satisfied that those documents were what he says they are. And I
10 proceeded to register. Now, unprompted, you said that is unlawful and irregular.

ADV BEHARI: Yes.

ADV KHUMALO SC: So, what Steyn says happened, you confirmed that it is irregular and unlawful. So why then do you say Steyn does not support the employer's case?

ADV BEHARI: Well, Steyn goes more, Chair. Steyn goes more to that. He says, well, these things have been done good in this process on other occasions.

ADV KHUMALO SC: But, Mr Behari, you deal with those
20 things by investigating them and charge those who were responsible in the past for doing similar things. It has nothing to do with whether you proceed, or you do not proceed against Julius Mkhwanazi. If people have done something wrong in the past and as a result of Steyn's statement you become aware of it, you investigate them and

you charge them. That is how you deal with it. You do not say it impacts on the sustainability of the charges against Mkhwanazi. You do not say ...[intervenes]

ADV BEHARI: Chair, no. Chair, respectfully, the issue of Chris Steyn going further to that and saying it was done, that had an impact. Because if Mkhwanazi says he went to Chris Steyn, he asked him what was done, Chris Steyn says, come next day. He goes back, what do you need? So, Chris Steyn, dealing with other transactions in that fleet
10 in the arrangement, guides him in this way.

Then he took guidance from Chris Steyn. And that is why I am saying to say, I am not saying it is unsustainable in total, but the witness is going to come and say, but I guided him, we are doing this. So how is it then to say that you have not followed the process, which I agree, but now Chris Steyn guides in this way. So why not look at the impact, but why is Chris Steyn guiding something on a totally incorrect process?

And who knew about that stuff? Because it was not
20 a donation in the way it is done in terms of the city. It could not be a donation dealt with by fleet and other departments in the province or whatever it is. But from the city side, from what we request from a donation, it is not the correct process.

ADV KHUMALO SC: So, you are raising defences for

Julius Mkhwanazi, is that what you are doing?

ADV BEHARI: Chair, it is not an issue of raising defences. It is an issue of looking at what are the possible defences in terms of prospects of success which affects us going forward. If these are the issues or the gaps that we identify and we do not look at how we can close it, you cannot wait for us to go into the open environment whether it is disciplinary or bargaining council or courts and then decide, no, these are the issues. It is not about that, Chair.

10 It is about being proactive in the sense that it is not about a defence for Julius. It is about what the witness on behalf of the city is going to say. And is it a possibility that that court or whichever environment could take the city's, the witness of the city which we call the witness. So, I am saying that it is not about a defence, Chair. It is about dealing with the issue and not waiting to lose a case and then ...[intervenes]

ADV KHUMALO SC: One last question. I am mindful of the lunch break. Now, you are head of legal for the city of
20 Ekurhuleni and an investigating person from Ekurhuleni comes to you with this information. When they look at paragraph 55 to 60 of your statement where you say to them, these are material gaps. They have the effect of affecting the sustainability of disciplinary proceedings against Mkhwanazi. I mean, what did you expect Chris

Erasmus to think looking at this? Because the effect of this is that we do not have a good case against Mkhwanazi. Is that not the effect of this?

ADV BEHARI: Chair, no. It is about becoming aware of what are the risks if we proceed in this form.

ADV KHUMALO SC: Exactly.

ADV BEHARI: No, Chair, it is about becoming aware of what are the risks if we proceed in this form and how do we as a city ensure that where we are doing the discipline we
10 are able to secure what our intended outcome would be. So, in the serious note of what is been going on our intention would be to secure. We cannot go on a wishy-washy or say, okay, let us go on with the case and then find maybe some way it will be cured due to the evidential issue. That is not the way I have been dealing with those matters. We look at the - and there is no saying that someone will say to you but are you not overreaching your side?

ADV KHUMALO SC: I am going to leave it there. I think ...[incomplete].

20 **CHAIRPERSON:** Let us adjourn and resume at 14:15.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV SELLO SC: There are a couple of questions from Commissioner Baloyi.

ADV BALOYI SC: Thank you, Chair. Mr Behari, in that

last discussion, just before we broke, I remember you were talking about what you took into account, Spies statement, and that it was not going to be helpful, so his evidence would not be helpful. What I wanted to check with you was did you point out difficulties, where you say we do not have a statement from Wicks, we do not have a statement, Mzolo is non-committal, and what Gcwabe says as well. Did you consider what Mkhwanazi himself said in the course of that investigation? When you formed the view that the disciplinary proceedings, there was a risk that they are not sustainable, did you take into account what they have drawn from Brigadier Mkhwanazi in the investigation?

ADV BEHARI: Can you refer me to that somewhere, Chair?

ADV BALOYI SC: Well, one of the things he did was he provided MOUs, that he said these are the MOUs that were entered into between CAT VIP and the City. Did you consider those? Because they were given in the investigation.

20 **ADV BEHARI:** Chair, I did consider the MOUs.

ADV BALOYI SC: You did or you did not?

ADV BEHARI: I did consider that.

ADV BALOYI SC: Yes.

ADV BEHARI: The MOUs were not signed from what I understood.

ADV BALOYI SC: Yes.

ADV BEHARI: And for him to have relied on an unsigned MOU would have made no sense.

ADV BALOYI SC: Yes.

ADV BEHARI: Because there is no approval by the – in that matter, the MOUs are dealt with at different levels.

ADV BALOYI SC: Yes.

ADV BEHARI: Because an MOU in the structure in the City of Ekurhuleni is that it is non-committal. It cannot commit
10 the City to anything.

ADV BALOYI SC: Yes.

ADV BEHARI: An MOU can be signed then by the Chief of Police if it is a department. It is applied to all the department heads.

ADV BALOYI SC: Yes.

ADV BEHARI: So if it is concerning a department, the heads can sign it. If it is something having a wide-ranging Citywide impact, then the City Manager is to sign the agreement. What I looked at, Chair, furthermore in terms of
20 that was there was nothing, any indication of – the statement by Liezel Tyers and the statement by Jarmaine Fortein speak to the process of going to get approval for the MOU. Jarmaine Fortein, I think he was acting on instructions of Mkhwanazi. He submitted that to the Office of the Chief of Police. Liezel Tyers confirmed she printed

those MOUs and left it at that. There was thereafter nothing. There was nothing happened.

ADV BALOYI SC: Yes.

ADV BEHARI: So in terms of then was, did the Chief consider it? Why did he not call if it was not something that should have been proceeded with further? I believe that, and that is one of the discussions where we said, but Chief of Police, the MOUs came to your attention or did not? Because from the trail ...[intervenes].

10 **ADV BALOYI SC**: Yes, they may have come to his attention. What I am checking with you is you took into account what was in the file from the investigation, from Erasmus' investigation. Now, we know from earlier evidence that was presented here that Brigadier Mkhwanazi relied on these two MOUs, right, as authority for doing what he has done. Now, if you looked at them and you saw that they were not signed, you would have known they are not authority for what he did with the vehicles. You would have known that, and so you would have known that, in fact, he
20 did not have authority to do this, and he knew he does not have authority because these MOUs are not signed, right? That is a fair proposition to make, right?

ADV BEHARI: Yes.

ADV BALOYI SC: Now, if you are aware of that and you are looking at this docket, how do you still say that the

charges against him are not sustainable?

ADV BEHARI: Chair, because the MOUs that were taken, it shows that it was supported by Mkhwanazi. That is a document I think I have seen. It was signed on the one MOU that was supported by Mkhwanazi. The trail that leads to the Chief of Police, and my issue is then that it came to his attention or it did not come to his attention. What MOUs were put forward by Mkhwanazi to state, to say we have a relationship or we have these MOUs? That was incorrect.

10 There was further than that.

You had to go back and say, but then Chief, what if the Chief, and this is what I have said from the beginning when my issues were, when I looked at the process, and I said these could be matters implicating the Chief of Police and senior management.

ADV BALOYI SC: No. How does that implicate the Chief? We are talking about what Brigadier Mkhwanazi puts forward as the document that authorised him. Forget the Chief's signature. Brigadier Mkhwanazi provides what he
20 considers a full answer to I was authorised, there was authority, and he has proof of it. And the proof of it that he provides is not signed by anyone representing the City or with authority to represent the City.

Now, you are head of legal. You know this is not authority to do what he has done. Forget the Chief. Maybe

the Chief was in dereliction of duty. He did not sign. But we know in the course of this investigation the Chief says I know nothing about this. He says that, right? And that is the evidence we have before us. He says I did not know anything about this. In fact, we know from the evidence of Commissioner Spies that even these memoranda, they were being questioned, you know, about are these even genuine documents? Have they been made up? Sorry, I forget the correct word for it.

10 But there was a question about even these documents, whether they had ever been served to anyone in the EMPD, but that is not even the thrust of my question to you. My question to you is, you have taken into account what the other people have said, what Chris Steyn has said. You have taken into account what you say is Gcwabe's statement. And I think all that statement says is VIP or Medicare has given us R300 000 worth of stationary. So, it has nothing to do with the charges that Brigadier Mkhwanazi is accused of.

20 You have taken Mzolo's statement into account, and you want Jeff Wicks' statement. So we know you have taken certain facts into account. But you do not take into account at all, at least according to your statement, because you do not deal with it in your statement, you do not take into account at all what Brigadier Mkhwanazi

himself has said and done, which is contained in the investigation file, and yet you conclude that the charges against him are not sustainable. Ja, maybe make me understand how you thought about it.

ADV BEHARI: Chair, the issue of Brigadier Mkhwanazi did not draw my attention because I accepted he had done something wrong. In the statement in which he signed, I think there was one MOU that I have seen where he said, supported he had done something wrong in presenting that
10 to Chris Steyn. That is beyond the thing.

So in respect of what I discussed with Erasmus was to see then how do we concretise and make sure that we cover all our witnesses. Mkhwanazi will be coming in from a position of an accused person, so he will have his version. But from outside from the City, what would our witnesses need to be for us to have a case that we do not have those issues? So I have considered that.

What I am saying is I did not discuss that with Erasmus for the sake that it does not help the City's case to
20 listen to him. We were looking at the other witnesses.

ADV BALOYI SC: Let me suggest this to you, that on Brigadier Mkhwanazi's own explanation as contained in that investigation report of Erasmus, which we have seen, just on his version, there was a case for the City. It is that. If you have read that report, you would know, and you have

seen what he says he offers as an explanation for what happened. You would have known and should have known that there is a case for him to answer just on his version.

ADV BEHARI: Chair, I agree with that. On his version, I agree with it.

ADV BALOYI SC: All right, thank you.

ADV BEHARI: My issue was about our case going forward because we still have to go into a disciplinary environment. We still have to secure all the witnesses. So at the time
10 when somebody is on the accused side, there is several issues that could have been raised. Hence, my intention was let us secure our side. What is within our control? Our control is the witnesses who will be testifying on behalf of the City to finalise and get a successful case. That is what my intention was.

ADV BALOYI SC: All right. Thank you, Mr Behari.

ADV BEHARI: Thank you, Chair.

CHAIRPERSON: Just on a very limited aspect, Mr Behari, just the aspect relating to the memorandum, let me call it
20 the donation memorandum, just that limited aspect, you should have been aware, and in fact, I think you admit in response to Commissioner Baloyi's questions, you were aware that one of the documents that were given to Mr Chris Steyn by Brigadier Mkhwanazi was this donation memorandum. You have already agreed.

ADV BEHARI: Yes.

CHAIRPERSON: Now, I say limited or narrow issue in this sense. That donation memorandum was given to Mr Chris Steyn to support this idea that there was, in fact, an agreement of donation between Ekurhuleni and CAT VIP, correct?

ADV BEHARI: That is correct.

CHAIRPERSON: You have said that there was, in fact, no donation, correct?

10 **ADV BEHARI:** Yes, it was not a procedural correct...

CHAIRPERSON: There was no donation?

ADV BEHARI: Yes.

CHAIRPERSON: Simple and straightforward. And that immediately means that when Brigadier Mkhwanazi said to Chris Steyn there is in existence a donation, the proof of which is contained in the donation memorandum, he was misrepresenting the true position, correct?

ADV BEHARI: Yes, correct. He was misrepresenting the fact that there was a donation in the MOU.

20 **CHAIRPERSON:** Yes.

ADV BEHARI: For example, there was an approved MOU to support the fact that there was a donation.

CHAIRPERSON: Is there a need to explain? The question is simple. He was misrepresenting the true position, true position being that, in fact, there was no donation, correct?

Yes or no? It is a simple question.

ADV BEHARI: Chair, there was, if you look at following through of the process ...[intervenes].

CHAIRPERSON: Was there or was there not a donation?

ADV BEHARI: There ...[intervenes].

CHAIRPERSON: You have already said there was not, correct?

ADV BEHARI: There was no donation.

CHAIRPERSON: Yes, yes, yes, yes. So I am saying, when
10 Brigadier Mkhwanazi says to Mr Chris Steyn there is a donation, and therefore, please register these vehicles, he was misrepresenting the true position. It is a simple question. I do not know why you cannot simply agree that what I am positing to you is correct.

ADV BEHARI: May I, Chair? Chair, it is correct in terms of how you are positing to me that there was not donation because of the misrepresentation ...[intervenes].

CHAIRPERSON: No, no, no. I am not asking you. I am past the question whether there was, in fact, a donation. I
20 am asking you a different question now. I am asking you whether you agree that Brigadier Mkhwanazi was misrepresenting the true position. Do you agree or not?

ADV BEHARI: I agree.

CHAIRPERSON: When I introduced my questions, I said I am going to ask you questions on a very narrow or limited

situation. Was that not enough to discipline Brigadier Mkhwanazi? He is lying about the true position, exposing the municipality to the possibility of these motor vehicles being registered in the name of the municipality on the basis that there is in existence a lawful donation, which there was not. Is that not enough to discipline Brigadier Mkhwanazi?

ADV BEHARI: Chair, it is on its own enough to proceed with ...[intervenes].

10 **CHAIRPERSON:** You say it is on its own enough.

ADV BEHARI: For the disciplinary process.

CHAIRPERSON: Yes.

ADV BEHARI: Right. But as I said, my looking at it holistically, there were other factors that had to be addressed here. Remember ...[intervenes].

CHAIRPERSON: Just a minute, just a minute. Even before you substantiate on them, if you say there was enough to discipline Brigadier Mkhwanazi, would those factors have impacted negatively on what you agree was enough to
20 discipline Brigadier Mkhwanazi?

ADV BEHARI: It would have impacted, possibly impacted, in terms of the evidence trail and possible ...[intervenes].

CHAIRPERSON: You love evidence trail, Brigadier. I am sorry. You love this evidence trail. Yes, yes, let me listen.

ADV BEHARI: May I, Chair?

CHAIRPERSON: Yes, please.

ADV BEHARI: Chair, on page 14 of my affidavit, on 62. I think earlier on in answering, but we asked did you give a way forward?

CHAIRPERSON: Which paragraph?

ADV BEHARI: Paragraph 62. I think we referred to that earlier.

CHAIRPERSON: Yes.

ADV BEHARI: And I said in my engagements with Colonel
10 Erasmus, if the investigations were complete, charges could be proceeded without extending the suspension. So in what has been presented by, in the docket itself, mine was to say to him you can still proceed with the charges without extending these. And then you come back to 63. If the investigation required further statements, those should be obtained without delay.

So in all I am trying to do, I am pushing for credibility in terms of the way we finalise the process. If you relied only on the MOU and said, okay, now this is a
20 donation process that was followed, the fact is Chris Steyn brings in, although he says the statements came through, or the MOU came to his knowledge, Mkhwanazi, which I agree, misrepresented Chris Steyn on that basis. But then he has a curve ball to it, but this was the process.

So surely he should have applied his mind and

seen that this document is not approved. Did he merely take it by the word, and this is what I am saying in terms of the evidence trail, did he merely look at an unsigned document? You can see there is no signatures there. Yet he proceeds to do what he did.

CHAIRPERSON: You see, even in response to questions by Commissioner Baloyi, you did the same thing of suggesting that, no, no, no, no, no, actually the Chief of Police was in the wrong here, basically saying he is the one
10 who ought to have been charged. And now again you seem to be suggesting the same thing, but this time about Mr Chris Steyn. And the one person who is not in the wrong in your book is Brigadier Mkhwanazi. Everybody else is in the wrong, but not Brigadier Mkhwanazi.

ADV BEHARI: Respectfully, Chair.

CHAIRPERSON: Yes?

ADV BEHARI: I have said it very clearly. Mkhwanazi, Mr ...[intervenes].

CHAIRPERSON: I corrected Commissioner Spies when he
20 said Mkhwanazi, there is no A there. It is Mkhwanazi, Mkhwanazi, please.

ADV BEHARI: Mkhwanazi is in the wrong or was in the wrong in the misrepresentation. Chair, again, I am focussing on the fact that ...[intervenes].

CHAIRPERSON: Did you ever say that anywhere? You

accept now that he was in the wrong and you have accepted a few questions back when I engaged you that he could be disciplined on that. Are you on record anywhere as having said that? Nowhere, are you?

ADV BEHARI: Chair, because I was focussing on our City's case.

CHAIRPERSON: On your evidence trail.

ADV BEHARI: On my evidence trail.

CHAIRPERSON: Which you so love, yes.

10 **ADV BEHARI**: My apologies, Chair, if I am offending you.

CHAIRPERSON: Yes, yes.

ADV BEHARI: But if you allow me then ...[intervenes].

CHAIRPERSON: Yes, yes.

ADV BEHARI: I was in that environment. I do this on a regular basis in terms of going to the full scope of the evidence trail. Mkhwanazi, I already accepted there were allegations within him. That is why I did not focus on him and what he ...[indistinct]. I focused on what is our case as a City. What do we need to ensure that we cover up all the
20 loopholes so that we have a successful case against Mkhwanazi?

The same issue was my concern on the Chief of Police. And if he says, I am hearing now that he says that the document never came before him, he denied it. My look at that stage of the affidavit of Jarmaine Fortein. I looked

at the affidavit of Liezel Tyers, his secretary, who printed those documents and left there.

So those are the issues in the engagement. So in terms of getting us with all the witnesses. So if Chief of Police comes now and says no, no, no, I was not aware of it, then surely Chief of Police will be called in some way to answer. Even not as an implicated or accused person, but in a witness environment which he would have been testifying. So in order to strengthen the City's case, Chair
10 ...[intervenes].

CHAIRPERSON: Who denied what document? Somewhere in this response you said somebody denied some document. Who denied what document?

ADV BEHARI: If I may, I do not know if I am quoting what you stated, Commissioner Baloyi, which the Chief came and said that the documents did not come. I do not know if I misunderstood that.

CHAIRPERSON: All right, no I just wanted to.

ADV BEHARI: Ja.

20 **CHAIRPERSON**: You see what confuses it, what confuses me is that my focus is on Brigadier Mkhwanazi. Now when you go on quite wide, you know, I get confused along the way.

ADV BEHARI: I hear you, Chair.

CHAIRPERSON: Now, did you in this lengthy advice to

Colonel Erasmus, did you anywhere say of all the things I am saying, but we have a good case on which Brigadier Mkhwanazi may be disciplined? And that case is that he has misrepresented that there is in existence the donations memorandum, on that we have a good case, did you say that to Erasmus? Did you say that to Erasmus? To Colonel Erasmus, I am very sorry for not using the term.

ADV BEHARI: I did not say that to Colonel Erasmus because I have accepted that Brigadier Mkhwanazi's
10 statements also confirm that he did misrepresent to Chris Steyn. My focus has always been on what is our case, because I find that when people in an environment in many courts will come through and change, so we can secure from a City's wide position and secure that Chris Steyn in no way puts the City's case at risk. And these are the other issues. So that is what my interest was.

So when I said to Lt-Col Erasmus in paragraph 62 if the investigation was complete, so if he felt it was complete, proceed without extending the suspension
20 because ...[intervenes].

CHAIRPERSON: You see, my difficulty is that of all the many things you said and of all the many difficulties you said were facing the EMPD, not once do you say, but we have a good case here. That is my problem.

ADV BEHARI: Chair ...[intervenes].

CHAIRPERSON: It is like you just did not want to make any pronouncement against Brigadier Mkhwanazi. So of all the many things, the difficulties and everything else that you raised, not once do you say, however, we have a very good case against Brigadier Mkhwanazi on this narrow or on this limited aspect. Nowhere.

ADV BEHARI: Chair, as I said, for me engaging with him, I accepted the MOU story, I accepted the fact of the operational plan issues. My focus was then on us
10 concretising our case. And hence I said to him if you feel that all the investigations are complete ...[intervenes].

CHAIRPERSON: That is about your case. That is about your case. What I am raising with you is about your case. It may not have been about the entire case, but it was a crucial part of the case because it related to the registration of the motor vehicles. That was a crucial issue. That was a key part of the case against Brigadier Mkhwanazi. Why are you silent about that?

ADV BEHARI: Chair, it was a key point, it was a key issue
20 with regards to the case against Mkhwanazi for the donations. The issue would be on the witnesses of Chris Steyn because that is, it is not about him being disciplined, Chair. It is about him testifying on behalf of the City. He says that you are giving, you have received a letter of donation.

CHAIRPERSON: Who testifying for the City?

ADV BEHARI: Chris Steyn.

CHAIRPERSON: I am talking about Brigadier Mkhwanazi, the case which is quite strong, you have accepted yourself, you have accepted that on this there is a misrepresentation.

ADV BEHARI: Yes, Chair.

CHAIRPERSON: And you have also accepted quite early on when I was engaging you, you have accepted that this was a prosecutable case. This was a case on which he
10 could be disciplined. You have accepted that?

ADV BEHARI: Chair, I confirm that.

CHAIRPERSON: Yes?

ADV BEHARI: I have accepted that.

CHAIRPERSON: Yes.

ADV BEHARI: But beyond that, beyond a prosecutable case, the actual process to continue with the prosecution and to make sure that it is a successful prosecution, that is where my focus was on. So in engaging with Erasmus, this is what I am saying to him, how do we close the loopholes?
20 If the witness has come in to show that there was, he processed the donations and he received an MOU which was unsigned, at the very face value he should have realised that this is not approved and raise a question with him.

CHAIRPERSON: On this limited aspect, you did not need

Mr Jeff Wicks. Agree? On this narrow, on what I have been referring to as a limited or narrow issue, you did not need Mr Jeff Wicks.

ADV BEHARI: No, on that issue ...[intervenes].

CHAIRPERSON: Just this limited issue.

ADV BEHARI: We did not need Jeff Wicks ...[intervenes].

CHAIRPERSON: Yes, okay.

ADV BEHARI: I was looking at this docket and the possible charges, there were almost six charges, I think.

10 **CHAIRPERSON**: You have already said you did not need him. On this narrow limited issue, you did not need Deputy Chief Mzolo.

ADV BEHARI: No, I did not need Mzolo.

CHAIRPERSON: Yes. On this narrow issue, you did not need DCP Gcwabe.

ADV BEHARI: No, I think Gcwabe was important to have come through in terms of speaking to the donations, especially with the R300 000 donations, what he understood by the process of the donations ...[intervenes].

20 **CHAIRPERSON**: Throughout in my debate with you, leading up to your agreement that he could be disciplined, Brigadier Mkhwanazi could be disciplined, throughout there has been no mention of a statement by Mr Gcwabe. Your agreement was based on the fact that there was a misrepresentation by Brigadier Mkhwanazi and that just on

that basis, he could be disciplined. That has nothing to do with DCP Gcwabe. Do you agree?

ADV BEHARI: On the narrow constraint you referred to, based on Mkhwanazi's ...[intervenes].

CHAIRPERSON: I deliberately referred to it as a limited or narrow issue. Do you agree that that did not need DCP Gcwabe?

ADV BEHARI: Chair, on that particular issue, no, but ...[intervenes].

10 **CHAIRPERSON:** Chris Steyn ...[intervenes].

ADV BEHARI: Chris Steyn was important in that, Chair.

CHAIRPERSON: Thank you. You did not need him. That is your answer. Then, the letter from – yes, yes, definitely you did need Mr Chris Steyn, but I am not sure about the letter. But definitely he would have had to be a witness, but I am not sure about the letter you are referring to. I will stop.

20 **ADV BALOYI SC:** Ms Ncube, can I just finish off on the earlier topic? Just to correct what you say in your statement. At paragraph 58, where you speak about DCP Gcwabe's statement, which suggested that the entire senior management team of EMPD had knowledge of CAT VIP's involvement in EMPD operations. That is in your statement at paragraph 58.

Now, DCP Gcwabe's statement is in a file. It is in

the Xolani Nciza file. You should have it there. And it is File 2 of 2, page 277. File 2 of 2, annexures at 277. I have read it. Nowhere does it speak to what you are saying in that paragraph. And so, your paragraph 58 misrepresents what that statement says, and this was part of the investigation file that was conducted by Mr Erasmus.

All it says is, and it is a bit on the long side, and I do not want to read it unless the Chair says it is necessary to read it into the record. You can have a quick read to
10 refresh yourself. But you will see, and you should agree with me that it says nothing about the entire senior management team of EMPD having knowledge of CAT VIP's involvement in EMPD operations.

ADV BEHARI: Chair, there is a document that I looked at. I will find the document. I am not sure if it is supplementary, but it referred to a report being sent through on the training. I am not sure if it is ...[intervenes].

ADV BALOYI SC: Yes, the statement speaks about the ...[intervenes].

20 **ADV BEHARI:** When I was giving the training academy report back in one of the Chief senior management team. So the training report is not exactly of the contents, but the training report would have been in terms of the training and the money received.

ADV BALOYI SC: Yes.

ADV BEHARI: So if he gave the Chief senior management team, the Chief senior management team would have been then the Chief of Police and the division heads, or I indicated the cost is continuing due to assistance from the private company that printed the issues.

ADV BALOYI SC: Yes.

ADV BEHARI: So they would have been aware of that in the private company in terms of linked as per the 300 books. So that is what I was referring to, Chair. So if it is
10 interpreted as saying that no, but this is what I took, the Chief senior management team was briefed by Gcwabe as to ...[intervenes].

ADV BALOYI SC: Maybe that did happen, but in this case you have the file, so you are making these comments from Mr Erasmus' file after he – this is after Mr Erasmus speaks to you and you say, you do not say a report to senior management team, you say the content of DCP Gcwabe's statement which suggested that the entire senior management – what I am pointing out to you is this
20 statement, which on the evidence before us was part of what was collected during the investigation, this statement says nothing that supports what you are saying in paragraph 58.

ADV BEHARI: Chair, I was talking to this paragraph 5.

ADV BALOYI SC: Which paragraph 5?

ADV BEHARI: Paragraph 5 of Gcwabe's statement, when I was giving training academy report back in one of the Chief senior management team, I indicated the course is continuing. So in the reporting of the team, if you look at the, follow the thread, it spoke about the 300 and the 300 or the donations and so on, what was required. Hence, I should have added that the external donor, so the external donor came from, I think it was - but somebody linked ...[intervenes].

10 **ADV BALOYI SC**: Mr Behari, in that statement, you say that – in fact, firstly, the assistance came from Medicare 24. It did not come from the CAT VIP. So, what you are saying in your paragraph 58 is not correct. There was no assistance for stationary from CAT VIP. So it is not correct what you are saying there. Just on that point alone. So on that point alone, can we agree that the training came from Medicare 24? Or the stationary assistance, not from CAT VIP. So you are not correct to say it came from CAT VIP. We have agreed to that.

20 Two, nothing in this paragraph 5 says the senior management of EMPD were aware of CAT VIP's involvement in the operations of EMPD. There is nothing. However you choose to read the statement of DCP Gcwabe, nowhere does it confirm what you are saying in your paragraph 58. Can we agree that?

ADV BEHARI: We can agree that, Chair. I just want to know, in terms of the private company, so the evidence has been showing that the Medicare, okay, I accept it was not CAT VIP, but Medicare. It seemed to be those two companies that were together in the involvement at City of Ekurhuleni. But it indicated that the course is continuing due to the assistance we got from the private company.

ADV BALOYI SC: Yes, that is not CAT VIP. It does not say that. You see, what you represent in paragraph 58 is
10 very specific. You cannot change the CAT VIP that you have put in there to now read as if it is not there. You have said Gcwabe confirmed the involvement of CAT VIP in the affairs, in the operations of EMPD and you say it is in his statement. His statement makes no mention of CAT VIP's, right? Of CAT VIP. It does not mention it. That is all I am checking with you. Firstly, that you accept the statement.

ADV BEHARI: Yes.

ADV BALOYI SC: It does not say what you have said in your paragraph 58. But two, I am also making the
20 correction that the stationary assistance did not come from CAT VIP. It came from Medicare 24.

ADV BEHARI: No, I accepted that.

ADV BALOYI SC: Okay.

ADV BEHARI: I agree with Medicare, but it was from a private company and they ought to have known where the

donations came from.

ADV BALOYI SC: Yes, and then still in that file, if you would go to page 282, and there are two, this is the intention to suspension letter. It should read, intention to suspend. And the employee is Julius Mkhwanazi, then Director of Specialised Services. And it is signed by Mr Nciza and Ms Gxasheka and it has provision for signature by Chief of Police, or they copied the Chief of Police. Now there are two parts to it. And I would like to start at page

10 282, the lower part of it, where they talk about:

“The employer has reasonable cause to believe that given your position...”

And they are addressing Brigadier Mkhwanazi at the time, Director Mkhwanazi:

“...your position and role in the municipality, your presence in the workplace may:

20 [1] Jeopardise the investigation that are required to be conducted on the matters raised herein.

[2] You may interfere with potential witnesses.”

What should be three is numbered two again. It says:

“You may commit further acts of misconduct.”

Now, when you speak to Mr Erasmus and you say in your paragraph 62 of the statement:

“If the investigation was complete, charges should be proceeded with, without extending the suspension.”

Did you have any regard to the potential to interfere with witnesses, which was an explanation why he was suspended? Did you have regard to the potential to commit further acts of misconduct? And if you did consider them, why did you advise Mr Erasmus that if you have completed your investigation, he must come back to work?

ADV BEHARI: Chair, I did consider the concerns raised here or the issues stipulated here. And why I advised Lt-Col Erasmus to proceed immediately with the disciplinary proceedings because there is a provision in the disciplinary code. If you proceeded on when I met Lt-Col Erasmus before the 24th, when the suspension would have expired, if you proceeded with that, then you can have this provision for the further period to continue to be extended for a further three months. That is in, I think, 16.4 of the disciplinary code as well. So if the disciplinary process has started, he will continue to be on suspension.

ADV BALOYI SC: No. He is suspended for three months. The letter says that. He is suspended for three months. At least that was the evidence that the suspension is for three

months. Now, you say to Mr Erasmus if you have completed the investigation, proceed to charge without extending the suspension. Without extending the suspension is let it lapse. So he will come back to work. That is what it means. It needed to be extended if it was going to endure beyond three months. You accept that. It would have to be extended.

ADV BEHARI: That is what the initial period provided for was three months.

10 **ADV BALOYI SC:** Yes. And you say to Mr Erasmus, to Colonel Erasmus, that proceed to charge but do not extend the suspension. That is what you are saying.

ADV BEHARI: But, Chair, if you proceeded to charge, 16.4 of the disciplinary code, the suspension or utilisation of the employee in another capacity, the suspension for a fixed period and a predetermined period is stated there for three months:

20 “However, where circumstances prohibit
 the conclusion of the disciplinary
 proceedings...”

So if you are charging, that means you are starting off the disciplinary proceedings. Then the time frames could be extended for a further three months.

ADV BALOYI SC: Yes.

ADV BEHARI: So hence I asked him to proceed

immediately. Because if he proceeded immediately, he is still on suspension. That is a week before that actual suspension. If he proceeded and terminated, he would have been then to ask for a further three month suspension. And the proceedings here, once the proceedings start, the suspension continues.

ADV BALOYI SC: No, it does not continue automatically, Mr Behari. It is a suspension for a fixed period. It is for three months, and that is why there is a request to extend,
10 right? It does not continue in perpetuity. There is three months period and there is a request to extend it because of the recognition that if it is not extended, it will expire. That is why Mr Erasmus comes to you. He did not need you to say to him, charge him now so that the extension carries on if that was the position. He came to you because of the realisation that we are about to have this suspension expire. So he comes to you and you advise and say, charge him without extending.

ADV BEHARI: Yes, Chair. If you charge the – he saw me
20 about a week around that period before the suspension expired. If you charged him immediately on that day, say the next day, the proceedings would have started effectively. And then 16.4 in my assessment kicks in. 16.4 of the disciplinary code to say that if it is not possible to finish it, the suspension continues for a further three

months.

ADV BALOYI SC: Can you read that into the record?

ADV BEHARI: 16.4 of the disciplinary code:

“The suspension or utilisation of the employee in another capacity shall be for a fixed period and determined period and shall not exceed a period of three months.”

So that is where we are dealing with:

10 “On the date that the Municipal Manager who is authorised representative is satisfied that there is a *prima facie* case that an act of misconduct has been confirmed...”

That date then would have been the 12th of April from when Nciza decided that there is a case to carry on with. Then the three months would have then came to an end for the suspension on the 24th, but if you proceeded immediately, because it is serious, we are saying that it is a serious
20 issue. If you proceeded immediately, that means you still have an extended period until ...[intervenes].

ADV BALOYI SC: I ask that you read it into the record. The rest will be a debate about what it means. I needed you to read it into the record.

ADV BEHARI: So it says:

“However, where the circumstances prohibit the conclusion of the disciplinary proceedings within the aforementioned time frames, such suspension or utilisation in another capacity can be extended for a further three months.”

ADV BALOYI SC: Yes. Suspension can be extended. It does not extend automatically. It can be extended. That is the operational word. So the extension is defensible. You
10 can defend it on the basis of the clause that you have read. That is how you defend the extension. You say it is authorised by 16.4 to extend the suspension.

ADV BEHARI: Yes.

ADV BALOYI SC: It does not extend automatically.

ADV BEHARI: Chair, I accept that. What I am saying is, given the veracity and seriousness of what has been raised, and my saying to proceed immediately if your investigations are complete, proceed immediately. And then, the first time
20 for which to finish the initial period for the first three-month period would have ended on the 12th of July. Then when the other cases are going on, there would have been a strong case to make out to say, no, let us proceed.

That in itself would be the HOD HR would have had that way to grant the extension and given the entire process, she would have granted it. So I am saying this

was a fine way of which I thought could have been a way forward as well.

ADV BALOYI SC: Okay. And then lastly, from me at least, still at that page 282, and this goes to – I just want you to look at what the charges were, and then on the back of this very past conversation that you have had with the Chairperson about what letters you required or what statements you still required, I just want you to look at the charges.

10 The first charge is gross dishonesty in respect of a letter of confirmation allegedly issued by you on about the 21st of October 2021. Do you remember what that was about?

ADV BEHARI: I think that letter was to whom it may concern.

ADV BALOYI SC: Yes, that this man, that whoever is the bearer of this letter.

ADV BEHARI: Yes.

ADV BALOYI SC: Yes. So that did not require Mzolo,
20 Wicks, and Gcwabe, and Steyn to say anything, right?

ADV BEHARI: No. Chair, on its own, it did not require if you proceeded with that charge, to say that you issued a letter which was you did not have the authority to issue such a letter, a blanket letter.

ADV BALOYI SC: Yes.

ADV BEHARI: Because we do not know who could have been using the letter for what purposes.

ADV BALOYI SC: Yes. So what I am saying to you is that the shortcomings that you have listed here as potentially risky to any disciplinary proceedings, none of them are applicable to that charge. It has nothing to do with it.

ADV BEHARI: Specifically on that, no, Chair.

ADV BALOYI SC: This particular charge, right? The second one, it says:

10 “Failure to perform your tasks diligently
 and to the best of your abilities by
 issuing an unauthorised letter to
 civilians.”

It is still the same thing.

ADV BEHARI: It is the same letter.

ADV BALOYI SC:

20 “Allegations of gross dishonesty and
 possible corruption by receiving a
 donation in excess of limits as prescribed
 by council.”

Here we know it is at 300, at least that is what we were told. It is related to the R300 000 training materials.

ADV BEHARI: That is not correct, Chair. There is no limitation to the amount of donations you can receive.

ADV BALOYI SC: Yes. No, no, I am not debating whether

there is such a thing. I am saying this charge, allegations of dishonesty, this did not involve Mr Wicks at all. You did not need a statement from Mr Wicks for this. You did not need a statement from Mr Steyn for this. Or you did not even have to take into account Mr Steyn's statement about this.

ADV BEHARI: Yes.

ADV BALOYI SC: All right. And you did not need Mzolo for this. Maybe you needed Gcwabe. We do have an
10 affidavit from Gcwabe.

ADV BEHARI: Just for clarity, Chair, if I may?

ADV BALOYI SC: Yes.

ADV BEHARI: On Roman numeral three, allegations of gross dishonesty and possible corruption by receiving a donation in excess of the limits as prescribed by council policy. Chair, this is, for me, an incorrect charge. I mean, what are the limits prescribed in council? So these are the issues we have to look at.

ADV BALOYI SC: Maybe it is an incorrect charge, but it is
20 not one of the things you listed in your statement as one of your areas of concern. So remember what we are doing. The exercise that we are doing now is you have told us from paragraph 56 up to 59 what you pointed out as areas that would undermine the case of the City, of the municipality, right, if not addressed. So I am working on that basis. And

I am saying Roman figure three relates to the donation for printing material.

That is the charge. It would have failed, maybe, if you are correct, it may have failed because there is no limit to donations. But that is not what you have said here in your statement. You do not say, I told Erasmus that that charge will not succeed because there are no limits. You are not saying no limits to donations. That is not what you are saying to him.

10 **ADV BEHARI**: Chair, the engagement with Erasmus was holistically and a generalistic[sic] issue of what I believe. Now, here, in terms of Roman numeral three, firstly, it is not there because if the vehicles were being donated, that is a donation. The R300 000 donated for the materials was also a donation. So, if we are saying that this part three refers to the R300 000, which I cannot see specifically here, normally, you go and explain which specifically is.

So, if it is the R300 000, then it would have been Gcwabe. It would have been Steyn because he is also then
20 dealing with the vehicles issue. So, there is three important aspects to clarify from them.

It would not have been a Jeff Wicks because Jeff Wicks has done a thing, but it could have been really Mzolo because Mzolo's part of this entire process spoke to the continuation of instructions that Mzolo gave to Mkhwanazi

during that acting period.

ADV BALOYI SC: Okay.

ADV BEHARI: So, hence, I am saying if you look at that, that is my response to you.

ADV BALOYI SC: All right. Let us do Roman figure four:

“Allegations of violating council policy by not declaring the donation so received and/or not submitting said donation to the finance department of the municipality.”

10 So, we know we are not talking about vehicles in Roman figure four. And I would like you to say in your statement, paragraph 56, 57, 58, 59, which you say relates to this Roman figure four charge.

ADV BEHARI: So, you are talking about the vehicles. If you are talking about a donation, Chair, you are talking about a donation irrespective of the form. It could be in cash or it could be in other assets.

ADV BALOYI SC: Okay. Mr Behari, in Roman figure four, what do you see referring to vehicles? Why do you think
20 anything in Roman figure four refers to vehicles?

ADV BEHARI: It says allegation. So, in Roman numeral three, we speak about donations generally. So, in terms of true donations pertaining to this matter was the vehicles and then it was the – although we said it was an irregular process.

ADV BALOYI SC: So, you are saying he was being charged for not declaring to finance vehicles that have been donated to the municipality. Is that what you say this charge was about?

ADV BEHARI: That is what I am saying. He has been charged for all the donations, R300 000 plus the vehicles.

ADV BALOYI SC: Yes, but we agree it did not have anything to do with Mr Wicks' statement. You did not need a Mr Wicks' statement for this charge.

10 **ADV BEHARI:** No, I agreed on that with the Wicks' itself, Chair.

ADV BALOYI SC: Okay, let us move on to five:

“Allegations of allowing and/or directing Metro Police officers under your command to perform illicit and/or unauthorised duties operations.”

Can you agree it has nothing to do with Mr Wicks' statement or absence of? It has nothing to do with the absence of a statement from Deputy Chief Mzolo. It has nothing to do
20 with the statement of DCP Gcwabe that we have discussed and has nothing to do with the letter from Mr Steyn. Can we agree that?

ADV BEHARI: Chair, before I come to agreeing or not, I am not aware of what this is. Allegation of allowing and/or directing Metro Police officers under your command to

perform illicit or unauthorised duties operations. I am not sure what that was referring to specifically.

ADV BALOYI SC: Exactly the point. Why would you say that the case against him on this Charge 5 is unsustainable if you know nothing about it? All you have is Charge 5 written the way that it is, but you express a view that the case against Brigadier Mkhwanazi is at risk. The charges may not be sustainable, and yet you say you know nothing about that Roman figure five.

10 **ADV BEHARI:** Chair, it does not specify to what incident specifically is being referred.

ADV BALOYI SC: Yes, I see that.

ADV BEHARI: All right. Now, in terms of the witnesses that have been, the statements that have been on the file itself, there was nothing then to say that this witness is going to deal with this charge and so on. So hence, that is why I ask, is your investigation complete? Proceed. But there is no indication here, and I understand the allegation of allowing Metro Police officers. There is no allegation
20 supported by the evidence of the witnesses' statements to say that Mkhwanazi ...[intervenes].

ADV BALOYI SC: It is not one of the things you point out, is my point to you, Mr Behari, that it is not one of the things you point out in your advice or in your conversation with Mr Erasmus. You do not say to him go and get more

information about the Charge 5. You are very specific about what you say are the shortcomings. You have named them, and we cannot walk away from that.

You have named what you have identified as shortcomings, and all I am putting to you, or I am discussing with you, is these shortcomings that you have identified, none of them speak to Charge 5. It is simply that.

ADV BEHARI: So I will have to cross-reference in that, is
10 it anywhere in that investigation bundle that you can refer
this letter to me?

ADV BALOYI SC: What do you want to see in the
investigation bundle?

ADV BEHARI: I want to see that this document itself,
whether it was included in the Erasmus bundle.

ADV BALOYI SC: Well, if it was not included in the
Erasmus bundle, I will be very worried because then you
expressed a view about the prospects of a disciplinary
hearing when you do not know what the charges are. So in
20 your favour, I assume you have seen this charge sheet
when you say to Mr Erasmus this case may not be at risk, in
that the charges may not be sustainable.

ADV BEHARI: Chair, I dealt with the response to Erasmus
in looking at the statements that he had provided by the
witnesses.

ADV BALOYI SC: So you did not see the charge sheet?

ADV BEHARI: I wanted to see if I had not missed it perhaps in that, but I did not recall to this extent here.

ADV BALOYI SC: Mr Behari, I would expect that you have seen this charge sheet. If you are going to express a view, you could not express a view based on statements in the file. You would have looked at what are the charges and then looked at what the statements, what is the evidence that they say they have collected to prove these charges.

10 And if you did not do that, then you, I will not even call it dereliction of duty. If you did not have the charge sheet in front of you, then it is even more concerning that you would have expressed views about the prospects of a disciplinary hearing if you did not have the charge sheet in front of you. And it is a charge sheet. I would expect you to remember it, that you saw it or not.

ADV BEHARI: Chair, I looked at the investigation report.

ADV BALOYI SC: Yes.

20 **ADV BEHARI:** The investigation report of Erasmus when there was a request for disciplinary tribunal.

ADV BALOYI SC: Yes.

ADV BEHARI: The document signed by the Chief was saying allegations ...[intervenues].

ADV BALOYI SC: Okay. If you look at that bundle, the very first page, investigation report starts at page 17 to

286. This page is 282. So you did have this suspension letter in front of you.

ADV BEHARI: In the bundle that was provided, is that part of the investigation report?

ADV BALOYI SC: Yes, it is. So you would have had it in front of you. Without taking any further time from Ms Segeels-Ncube, the point that I was making to you, I sought to make in this exercise was to demonstrate to you that if you had had regard to these charges, if you had proper
10 regard to these charges, you would have seen that the charges that are being put to Brigadier Mkhwanazi did not depend – their success, in fact, the success of the disciplinary hearing did not depend on the things that you have listed here as material that must still be procured and therefore not advising on the extension of the suspension. It is really all that I needed to demonstrate.

ADV BEHARI: Chair, as I have mentioned, I have looked at it, the entire report of Erasmus, and in terms of the charges here, and I will still look at where the document fits
20 in that, but in terms of the charges here, it does not seem like five has any links to anywhere in the report.

So hence my question is, from what I have detected, or what I have considered, these were the questions I have posed in terms of the witnesses. So if there was such a thing where it was very clear, and I could

have seen who are the witnesses still required, or whether it was addressed in the witness list that it was there.

ADV BALOYI SC: All right. Thank you, Mr Behari. Ms Ncube?

ADV SEGEELS-NCUBE: Thank you, Commissioner. Mr Behari, just for your benefit, that document that Commissioner Baloyi is referring to, if you stay in the annexure bundle that she has been dealing with, page 21, it has an index of evidence collected during investigation,
10 which is part of the investigation report. You go to page 21. Do you have it?

ADV BEHARI: Page 21, I have got it.

ADV SEGEELS-NCUBE: Index of evidence collected during investigation. And if you go to page 22, you will see that the last document there says intent to suspend suspension letter of Brigadier J Mkhwanazi.

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: And that is the document she was exploring with you.

20 **ADV BEHARI**: Okay.

ADV SEGEELS-NCUBE: So it was part of the file.

ADV BEHARI: Okay.

ADV BALOYI SC: Thank you, Ms Segeels.

ADV BEHARI: Thank you.

ADV SEGEELS-NCUBE: Then can I just go back to, not the

merits of your guidance that you gave to Colonel Erasmus, because that has been explored fully by the Commissioners. I want to go to your involvement in the extension itself, as set out in your statement at page 13, paragraph 54.

ADV BEHARI: Paragraph 54, yes.

ADV SEGEELS-NCUBE: Yes. Now, you will recall that you say in your statement that Colonel Erasmus came to you in late May 2023. You are responding in your statement to allegations made by, amongst others, Mr Nciza. Can we go
10 to his statement? It would be one of the files that has been provided to you. And I want to go to page 17, where he speaks about the extension and the events that transpired.

CHAIRPERSON: Paragraph?

ADV SEGEELS-NCUBE: Paragraph 43, Chair, page 17 of Mr Nciza's statement. Do you have it?

ADV BEHARI: Yes, I do.

ADV SEGEELS-NCUBE: Paragraph 43:

20 “In the middle of May 2023, Lt-Col Erasmus raised concerns with me about the possible expiration of Brigadier Mkhwanazi's three-month suspension period. The suspension was due to expire on 24 May 2023. I advised him that if the EMPD required an extension of Brigadier Mkhwanazi's suspension

period, they must submit a written motivation signed by Chief Mapiyeye. That request must then be addressed to Ms Gxasheka, HOD HR. I received the extension request and discussed it with Ms Gxasheka, and she agreed to sign and extend the suspension. On or about 22 May 2023, it was submitted to Ms Gxasheka. On the night of 23 May 2023, I received a missed call from Doctor Mashazi. I called her back some 30 minutes after the time stamp of the missed call. She had found out about the request for the extension of Brigadier Mkhwanazi's suspension period. In that call, Doctor Mashazi was virulent, aggressive, and accused me of being personal hateful and that I was targeting Brigadier Mkhwanazi. She yelled at me and told me that Chief Mapiyeye and I hate Julius.”

Then if we can go to paragraph 47:

“I calmly explained to Doctor Mashazi that I do not even have the power to suspend employees and extend their

suspension periods. I attempted to explain that the powers rest in Ms Gxasheka as the Human Resources HOD. Doctor Mashazi shouted that she will also call her, referring to Ms Gxasheka, and will tell her that Brigadier Mkhwanazi is coming back to work.”

And then if we skip the next paragraph, go to 49:

10 “I immediately tried to call Chief Mapiyeye, but I could not reach him. Finally, we spoke later that day, and Chief Mapiyeye informed me that he had also received a nasty telephone call from Doctor Mashazi. He shared that Doctor Mashazi had told him in no uncertain terms that this Brigadier Mkhwanazi must come back to work. On that day, I also attempted to reach Ms Gxasheka, unsuccessfully. She responded to me
20 late that night. At around 00:49, I received a WhatsApp from Ms Gxasheka, saying please draft a resumption of duty letter for Brigadier Mkhwanazi as he is resuming duties today. She mentioned in another message that I hope Chief

contacted him.”

Now, I want to place you in the sequence of events. Were you the person that told Doctor Mashazi about the request for an extension?

ADV BEHARI: No, no. I spoke to Doctor Mashazi about the considerations I had in that document. There was nothing about extension. The only extension that came to me to support was from Erasmus. The issue of the extensions, I know nothing about. As I said, in terms of the
10 process going forward, it would have been, the ultimate decider would have been HOD HR. I was assisted about two weeks, or within the last week of pay, to assist in terms of a compliance comment to support the extension. I was not involved in that process.

ADV SEGEELS-NCUBE: Okay. Now, you would have seen what he says in his statement that he was approached in the middle of May already regarding the extension. I think my difficulty in accepting the version that you are putting forward before the Commission, that Lt-Col Erasmus
20 approached you on guidance regarding the suspension, is that the extension of the suspension, is that at this point a request was already in the process of being made.

As you had said earlier on, the HR process for the extension was already underway. So it is difficult to understand why somebody from Internal Affairs, Lt-Col

Erasmus, who had now given the matter over to Mr Nciza, who is an HR specialist, you will accept that, correct?

ADV BEHARI: Ja.

ADV SEGEELS-NCUBE: And then would come to you, somebody that has not been involved in the process at all, to ask you for guidance on what could possibly be the eve of the decision being made, but the request was already submitted to Ms Gxasheka.

ADV BEHARI: Chair, I am not sure, as I said, this was
10 when I looked at the statements from Nciza. But he came to me to support, maybe this is why he understood the difficulties and he asked if I could support such a thing. Because I am not aware from the process going to the HR, via Nciza, as per what you said. I only know that when he came to me, Colonel Erasmus came to me, about can I support the extension of the suspension. These are uncovered later on during the evidence and the record.

ADV SEGEELS-NCUBE: No, Mr Behari, you said when you
20 spoke to him, he told you that the extension process was already with HR. That was your evidence earlier on. And he was just coming to you for guidance. Now why is he coming to you for guidance on a process that is already underway, and a decision which according to Mr Nciza, Ms Gxasheka is in support of, she is going to approve the extension. Then what happens is you get involved and all

of a sudden there is a change of heart. Ms Gxasheka gets told, according to Mr Nciza, that she must not approve the extension.

ADV BEHARI: Chair, I have not discussed the issue of the extension request to City Manager. I discussed with City Manager, giving an update on the issues I found in the file. I did not talk to the extension issues, in terms of granting, I only explained to what my discussions were with Erasmus, in terms of what I found in the file. Erasmus came to me to
10 support the extension. Perhaps he thought that I could have assisted them and it would have made the decision of Gxasheka easier. I was not aware of all of the other engagements in terms of the threats and so on. I was not aware of this.

ADV SEGEELS-NCUBE: Well, of the role players involved, it can only be one of two people possibly that told Doctor Mashazi. It was either you or it was Ms Gxasheka. But we know at some point she was in favour of the extension and then she changes her mind. Chief Mapiyeye would not have
20 told and neither would Ms Nciza, because they say they found out, she found out about it.

ADV BEHARI: I mentioned to Doctor Mashazi that there was a request to look at the docket to support an extension. These are the issues I picked up. Beyond that, I was not involved in the further process. So I had a discussion to

talk about the documents that I found and the process I found, which needed to be addressed further. And not to, because if that was the case, I would not have then proceeded to look at suggesting, let us proceed immediately with the disciplinary process. If there was something that I was waiting, because I suggested to Erasmus that we could proceed immediately. If it was a matter of me now trying to impact that and giving her an update, why would I suggest something like this to proceed immediately?

10 **ADV SEGEELS-NCUBE**: Mr Behari, in all that you have just said now, you have admitted that you informed Doctor Mashazi about the request for the extension of the suspension.

ADV BEHARI: Chair, I mentioned earlier on when you asked me did you give an update who you communicated with. And I did communicate to Doctor Mashazi. And in terms of giving an update on the issues. So when I said to Erasmus, it was not mine to say, no, stop it. I did not know what was going to be the resultant impact of that, because I
20 have to give an update to the City Manager to say this is where I found, I think we must concretise our case this way, and I have spoken to Erasmus about that. Hence, I suggested in paragraph 62 let us proceed to Erasmus, the Lt-Col. Let us proceed immediately.

ADV SEGEELS-NCUBE: Why do you need to give an

update to the City Manager? She is not part of the process. According to Ms Nciza, he is not even authorised to grant the suspension, the extension. It must be motivated by Chief Mapiyeye and approved by Ms Nciza. The City Manager has no involvement. Gxasheka, my apologies. So on what basis then do you feel that you should inform the City Manager about a process, which when she gave evidence here herself said that she does not get involved in that process?

- 10 **ADV BEHARI**: The City Manager does not get involved in the process because it is delegated to the HOD. But when the initial suspension happened, the initial suspension, I think sometimes in February, Gxasheka, the City Manager was aware of the process and that there was suspension, there are these allegations, there are serious allegations about CAT VIP and so on. So my response to the City Manager, Doctor Mashazi, was as a result of her being aware of that process. So she knew about the involvement or the suspension, which at the beginning was involved.
- 20 And I understand she knew about it and there was no objection at that stage. But to go further than from what I am involved, everything that we deal with, you escalate it and you say to the City Manager, I have dealt with this stuff, this is the way the process is. I did not know thereafter what was the take on that.

ADV KHUMALO SC: Mr Behari, why did you feel the need to go inform the City Manager about the request by Chris Erasmus? Because it has nothing to do with her. It is an HR issue that can be dealt with by HR people. You have already said she is aware of the serious allegations. So you do not need to tell her about those.

They come to you as head of legal seeking legal advice on the extension of a suspension. That has nothing to do with the City Manager. You then go and tell her that
10 Erasmus is seeking the extension of the suspension. So the very first question that was put to you, was it you? It could only have been you. Your initial answer was no. But then in the course of answering other questions, you actually admitted that it was you who told the City Manager about the request to extend the suspension.

ADV BEHARI: Chair, I think at the very outset when I was asked about who did you brief on it, I mentioned City Manager and I mentioned HOD. Now in terms of the relationship when I spoke to Lt-Col Erasmus, after that I
20 had to brief the City Manager and say on this issue, critical issue, this is what the next stage is. I am asked to support an extension and I have dealt with it and engaged with Lt-Col Erasmus. So thereafter whatever happened transpired from there, who was called and so on, I do not know, Chair.

ADV BALOYI SC: The question is why do you brief the

City Manager? This level of employee, Mkhwanazi, does not fall with, as I have understood the evidence, he is not in the category of people where the City Manager becomes involved with his disciplinary action or disciplinary action against him. And the City Manager confirmed that, does not belong there. You speak to Erasmus, as Commissioner Khumalo says, because Erasmus has come to you to ask for guidance according to you.

Why are you discussing this with the City Manager?

10 If you are concerned about briefing the City Manager to keep her in the loop, it seems to me that is a job for HOD human resources, not your burden. You do not get to grant extensions of suspension. You have nothing to do with this process other than Erasmus has come and spoken to you now. Why are you speaking to the City Manager about a mid-level manager?

ADV BEHARI: Chair, the issue was greater than a mid-level manager. The issue was about the involvement of CAT VIP and Medicare 24 in our city. The City Manager at
20 that level, when she decided to decide to go on and approve the initial, talk to the suspension initially, would have to be briefed into the process of flow in terms of what are we uncovering, how are we supporting that to finalise the disciplinary.

ADV BALOYI SC: Is your short answer that Doctor

Mashazi was involved with this disciplinary steps and process against Brigadier Mkhwanazi? Is that the short answer to what you said?

ADV BEHARI: No, Chair. The initial complaint came through, it became aware of the entire City. She is the accounting officer of the City.

ADV BALOYI SC: Yes.

ADV BEHARI: So as that, there was an interest in terms of what is happening with the matter.

10 **ADV BALOYI SC:** No, she did not ask you. Your evidence is you met with her and then you told her this among other things. So this is not a case of she called you, at least that is not what you have said, that she called you and asked you what is happening. You were talking to her and you mentioned this.

ADV BEHARI: Yes.

ADV BALOYI SC: And the question is, but this is none of her business at this point. There is an ongoing disciplinary process. And all that you have been asked, by the way, is
20 about, according to you, to give guidance on extending a suspension. That is all you have been asked.

Erasmus did not approach you to discuss and get advice on the merits of this disciplinary action. He has come to you in your statement to say, to get guidance on the extension. What is there to discuss with the City

Manager? Why are you speaking to the City Manager about this?

And I want to propose something to you, that you are discussing this with her because you know her interest. Interest not as neutral, but because she is close to Mkhwanazi. You know she does not want Mkhwanazi to be disciplined. That is why you are talking to her about this. I want to propose that.

That is a real reason why you discuss this with her,
10 when, in fact, it is none of her business at this point. It is still under Gxasheka's and Nciza's control to run the process up to where they wish to take it to finality. So it has nothing to do with her. And you knew that. You know that she is not involved with it. And so I am suggesting to you, the reason you discuss it with her is because you knew her direct interest in disciplinary action against Mkhwanazi, one. Two, you knew that she does not want disciplinary action to be taken against him and that is the only reason that you talked to her about it.

20 **ADV BEHARI**: Chair, on point one and two, I do not support that. I do not agree with that. I did not know what her direct interest was and there was nothing about not taking disciplinary action against Mkhwanazi. Because if that was the case, it would have been stopped in the previous time when the suspension was started in February,

when it was approved. It would have stopped then. My interest was, and I briefed the City Manager on all critical issues relating to the City.

Every matter that comes through in which I have dealt with, I give the City Manager an update to say I have dealt with it. On this matter to say that Colonel Erasmus came to me, we are looking at how we can finalise, make sure that the charges are concrete, to make sure what evidence is required, and that is what the extent of my
10 discussion. It was very brief in that regard.

Nothing further. I was not aware of any other interests the City Manager had, and I was not part of any other interests. It was about just looking at – and on a daily basis, Chair, on many matters, as long as it is the interest of the City, we give that briefing.

ADV BALOYI SC: All right. Thank you, Mr Behari.

ADV KHUMALO SC: And then you say you advised the City Manager on the shortcomings of the City's case against Mkhwanazi. So in other words, what you state in paragraph
20 56 to 61, that is what you told the City Manager.

ADV BEHARI: Chair, in stating that to the City Manager, it was about how we can cure the defects, how we can look at finalising the process, which I discussed with Erasmus. That is what my engagement was, because my interest was to see that we do not have a case where we do not cover all

our bases, and that is what, since I have been there in the City, in all our cases, not only in this one here, but in all matters, whichever space. So I did tell the CM we need to cover on these issues. Here are the issues I found. We need to cover them.

ADV KHUMALO SC: You see, Mr Behari, exactly what you said in the middle of your answer, we do not have a case. That is exactly what Doctor Mashazi said, that she was acting on your advice.

10 **ADV BEHARI:** Yes.

ADV KHUMALO SC: You advised her that the City does not have a case against Mkhwanazi. In fact, she went on TV to say something to that effect.

ADV BEHARI: Chair, based on the circumstances as it stood, I mean, the narrow constraints which were mentioned by the Chair and so on, on individual charges, yes, but holistically, in terms of what I required, and this is what I briefly said, to say that there are still these issues that we needed to finalise.

20 **ADV KHUMALO SC:** I mean, even Gcwabe's affidavit, in paragraph 3 he says Mkhwanazi misrepresented the facts to him. Mkhwanazi said to him there is a signed memorandum, and it is on 277 and 177. We have been there before, so you must have seen it. 277.

ADV BEHARI: Chair.

ADV KHUMALO SC: You can read it, it is there, paragraph 3.

ADV BEHARI: No, I do not discount what you are saying, Chair. Mkhwanazi contacted me indicating that the EMPD had signed a memorandum.

ADV KHUMALO SC: He says Mkhwanazi said there is a signed memorandum.

ADV BEHARI: Ja.

ADV KHUMALO SC: So everything Gcwabe says about
10 donations happens because Mkhwanazi misrepresented the facts to him. Mkhwanazi misrepresented the fact that there is a memorandum that he signed.

ADV BEHARI: Chair ...[INTERVENES].

ADV KHUMALO SC: You know there is no signed memorandum.

ADV BEHARI: I know that, Chair. And Gcwabe, as a divisional head, ought to have done his process and asked him, where is the signed memorandum?

ADV KHUMALO SC: You see, you are doing exactly what
20 Chair warned you not to do. You are asked about Mkhwanazi. You deflect, you go to the people he dealt with, and you say they are the ones who should have done something. Mkhwanazi should not have misrepresented the facts. It is as simple as that.

ADV BEHARI: Chair, I agree that he should not have

misrepresented, but there must be some level of due diligence to the person who is receiving that representation, who is in a position of power and knowledge within the City. It cannot be that everybody comes and says to you, that you go on and make decisions and take action without verifying the sources, without verifying the facts on which you are presented to.

ADV KHUMALO SC: Mr Behari, I have said this before, at the risk of repeating myself. When you realise that all
10 those people have not done what they are supposed to do, the answer is to investigate and charge them. The answer is not to say, because they did something wrong in the past, we do not have a case against Mkhwanazi. That is incorrect.

ADV BEHARI: Chair, that will amount to several separations of the process. Remember this arises from one incident. It arises from one incident. It arises from the engagements of the donations, it arises from CAT VIP and Medicare 24 being in the City. Now, if you are going to
20 start doing individual charges, when we could have holistically sorted out who has done what, who could have been accountable, because if there is going to be denials, why should we go with a weak case, and then say, okay, now we can charge the other people, investigate, investigate. That is one of the issues we are trying to

curtail, that you cannot have too many processes arising out of one incident, Chair.

ADV KHUMALO SC: Are you going to show us a memorandum where you say to the City of Ekurhuleni or the City Manager, let us investigate and charge all these people?

ADV BEHARI: Chair, there is no such memorandum.

ADV KHUMALO SC: Because it does not exist.

ADV BEHARI: It does not exist.

10 **ADV KHUMALO SC:** Because you did not tell her that these people should be investigated. You did not say to her, on the face of these documents, Steyn did something wrong, we must investigate him. On the face of these documents, Gcwabe did something wrong, we must investigate him. On the face of these documents, Mapiyeye did something wrong in relation to the draft MOUs that were sent to him, we must investigate. You never did any of that. What you said to the City Manager was that we do not have a good case against Mkhwanazi. And that is why we are
20 here and talking to you today.

ADV BEHARI: Chair, the progress or the engagement of the City Manager would say I have received this report. These are all the issues I have looked at. Now, in us finalising that would have looked at if there are other cases. And hence my engagement with Erasmus was. So at that

stage, I did not go to the extent of saying because they would have come as a witness for the City, Gcwabe has said this. As a witness for the City, Steyn has said this.

Now, if Erasmus then was to finalise, that would be risking our case against Mkhwanazi. That was the focus. We are looking at the case against Mkhwanazi. If subsequently we found that there was any statements that were inconsistent, we could have went through that. But the main issue here was to cover the serious issue of
10 Mkhwanazi, the donations, the CAT VIP, and who was involved in the process.

It could have also included Chief of Police. It could have also included Revo Spies and Gcwabe. So this is what I am saying that from my side, it was about having holistically to look at how we are going to deal with the matter. My brief update was with the City Manager to say these are the concerns I have. Thank you.

ADV BALOYI SC: So was your difficulty that only Mkhwanazi is being charged and the Chief and Spies and
20 others are not being charged? I am asking on the back of the last thing you said now.

ADV BEHARI: Chair, that is not the difficulty I had. I was happy with Mkhwanazi being charged for whatever it is. But it was much more serious, and I said Mkhwanazi, but what else? Because there is much more incidents of

...[intervenes].

ADV BALOYI SC: Why are you asking what else when an individual is being charged? Sorry, I do not understand. An employee is accused of serious misconduct. Serious misconduct. And the process has started. According to you, the City Manager supported it at the beginning. And indeed, that is the evidence of Mr Nciza and Chief Mapiyeye that before any steps were taken against Brigadier Mkhwanazi, they went to speak to the City Manager. And
10 when they were asked the question, both witnesses, when they were asked why did you do that, they said we did that because we know that they have a close relationship and we did not want to get into trouble about it. We wanted to inform her in advance. And she was supportive of whatever action we are going to take.

So we know that and you have just confirmed she knew from the get-go. Disciplinary certain steps are taken against this one employee. Why do you now, when you are asked by Mr Erasmus to guide him about an extension, you
20 now go and speak to the City Manager? Why in that speaking to the City Manager do you now start saying, what about the others? As if it has any consequence whatsoever for disciplinary steps being taken against the individual.

ADV BEHARI: It had no consequence and I did not raise that with the City Manager. The issue I have raised with

Erasmus in our conversation, which other witnesses are outstanding? Because the evidence is pointing ...[indistinct] to say that it is CAT VIP and all the way in the City. And I am taking it back to the issue of the State of The City Address. Who was involved in the State of The City Address? It was also Mkhwanazi that was involved in the State of The City Address. And that is why I am saying it is a very serious issue.

But you are focussing on a donation issue? Yes, 10 by all means. You are focussing on the MOU issue? By all means. But then what is the process that was followed from the State of The City Address? Who are all the people who should be informed? That was never discussed with the City Manager. The City Manager gave an update as to accordingly Gcwabe, we need to sort this matter out, we need to finalise this.

So we concretise our case against Mkhwanazi. If it came up later on there were other officials involved from the further investigation, then so be it. It could have taken 20 place. I did not give a comment or a memorandum to the City Manager in that regard.

ADV BALOYI SC: Okay. So when you spoke to the City Manager, what, you told her that the case against Mr Mkhwanazi is not good? You would have said that, because that is what you advise Mr Erasmus?

ADV BEHARI: Ja. I said there was, yes, there was concerns that I had on these issues, yes.

ADV BALOYI SC: Okay. Thank you.

ADV SEGEELS-NCUBE: Thank you, Commissioner Baloyi. Mr Behari, I think we can probably move on to your evidence earlier on when you were leading your own evidence. You had said that after the 22nd of June 2023, when you engaged with Chief Mapiyeye, you did not have any further involvement in this matter until 2025, with the
10 exception of the IPID issue. Is that correct?

ADV BEHARI: No. IPID issue happened in 2023 November, I think, the November period.

ADV SEGEELS-NCUBE: It was September, yes. That is when the – yes. But other than that aspect, you had no involvement in Commissioner Mkhwanazi's disciplinary issue for two years, until 2025?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: Okay. Now, we know that in May, the suspension is then not extended, and Commissioner
20 Mkhwanazi comes back to work. And what happens to the disciplinary process?

ADV BEHARI: Because it was gone into the HR space, I did not go back further and look at it. Erasmus did not come back to me. Chief of Police, I think, on the 22nd sent me a letter. 22nd of June 2023.

ADV SEGEELS-NCUBE: 21st of June, yes.

ADV BEHARI: I did it on the 21st, but it was served in my office on the 22nd.

ADV SEGEELS-NCUBE: Yes. That was following the discussion you had with him on that same day?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: Okay. I am speaking about – so after June, there is ...[intervenes].

ADV BEHARI: I had no engagements on that until the IPID
10 document came through.

ADV SEGEELS-NCUBE: Okay. Now, your evidence was that on the 22nd of August 2023 the City Manager issues this directive, which has this legal review extra step, legal review assessment that is done by your team. And that is in August 2023. In May 2023, you had given Lt-Col – what is his name now – Erasmus, your views on the matter. You are now in charge in August 2023. There is a directive by the City Manager that you must do a review. Why is it that you do not go back to that matter and say, what has
20 happened here? We now have somebody who is facing serious allegations back at work, and I have not heard back from anyone after I told them that they must look into these deficiencies.

ADV BEHARI: Chair, once I deal with, in my environment, dealing with all the departments, from day to day, I do not

have the luxury to go back. So if it has happened that way, the direct further process will be through the HR process. If it came back to me for some other reason, for some other compliance, I would have dealt with it. The matter never came back to me. So it is very difficult to follow up on cases when I have given an opinion, and that happens with all the other departments.

If I am seeking a given opinion or discussion and say what can be done, I would think that you would either
10 implement what I am saying, if you decide not to proceed, then it is, of course, entirely up to that. But I do not follow up on these matters in all the departments I am dealing with. If I have a discussion with you, I will say to you this is what I think should happen, and thereafter it closes from there. If it comes back to me in another system where you say I have addressed these issues, let us take it further, I would have taken it further.

ADV SEGEELS-NCUBE: But this is such a serious matter that you felt the need to voluntarily inform and brief the City
20 Manager on it because she was involved in some way in that process. So between the two of you, nobody is asking questions about the continuation of these disciplinary proceedings on charges which you both consider to be serious charges and somebody that is back in employment with the City.

ADV BEHARI: Chair, it was not only that he was back in employment, I understood that he was also applied for a position and was given a higher position. So it is not only in this matter. It is looking at what I am dealing with, but I do not have the luxury of it. I have got other departments. Same thing. I would give City Manager a briefing if I have met with the environmental department. If it is something, I will give a briefing and say this is what it is, this is what I have recommended and we will wait for it to come back.

10 But I do not go back and follow up because then it becomes an HR process specifically until it comes back to me by some query or another.

ADV SEGEELS-NCUBE: I think people call what you are doing right now otherism. We are not talking about other matters. We are talking about this specific matter which deals with Brigadier Mkhwanazi. You know that he is back at work. You have raised concerns with Lt-Col Erasmus about this investigation and about the disciplinary proceedings.

20 You have reported to the City Manager about this. On your own version, you say the City Manager considered this to be such a serious matter. I am struggling to understand what is the benefit of this 22 August 2023 legal review assessment, this extra step that is supposed to be more efficient, make disciplinary processes more efficient,

when one of your biggest matters are slipping through your fingers and the person is at work. You are not doing anything about it and you knew about it even before this directive came into effect.

ADV BEHARI: Chair, the issue of otherism is trying to show in terms of my responsibilities in the City. I have done that. Neither did Lt-Col Erasmus nor the Chief of Police come back and say, can we address this issue, can we proceed further? Thereafter, I do not get involved in the
10 HR process. So to what extent do I have to go into every matter where another HOD has been fully briefed of what is required, does not do anything further, and the matter does not come back to me. It moves on. When you talk about otherism, I am trying to give you the reality of the environment that I am in. Thank you.

ADV KHUMALO SC: But you did get involved in this matter, even after that. You did get involved.

ADV BEHARI: Are you talking about the IPID?

ADV KHUMALO SC: No. The email. The anonymous
20 email. It raised the very same issues and it caused you to cause a forensic investigation. So you got involved with the Mkhwanazi matter. You did.

ADV BEHARI: I was involved in the Mkhwanazi to the extent that I have described here.

ADV KHUMALO SC: And that email was specific. That

email said you and Doctor Mashazi and Ms Gxasheka covered up for Mkhwanazi. So that email was very clear. In case you had forgotten about the Mkhwanazi matter, that should have jogged your memory. Instead, you go after the people who wrote the email. You do not deal with what happened to Mkhwanazi. These were such serious allegations. *Prima facie* owned the documents. He was guilty of misconduct. Two instances of misrepresentation. According to you, unprompted, unlawful behaviour.

10 **ADV BEHARI**: Chair, the Mkhwanazi matters were ...[indistinct] investigation. We completed on the 22nd of June 2023. Thereafter, an email came through the BX-BX email, which made the allegations of cover-ups, which gave information on that. It released information on other aspects, which I believe that escalated against – in fact, it was received by all. All the addresses there, I am not sure if it included the City Manager, but I believe it did. And when it was raised to me saying, as deputy information officer, what are we doing about this? I told City Manager I
20 think we should get hold of internal audit and let them take the process further.

The internal audit Chief, audit executive at that stage then proceeded further to instruct one of the internal auditors and they proceeded to do the investigation. It is not ...[intervenes].

ADV KHUMALO SC: It is wrong, Mr Mashazi, to create the impression that after June – sorry, Mr Behari.

ADV BEHARI: Did you say Mr or Ms?

ADV KHUMALO SC: You did not hear. That is good. That is good. You did not hear. That is good. You did not hear. I was simply saying it is wrong of you to say after the June meeting you never got involved until the IPID or in 2025.

ADV BEHARI: No, the BX-BX came in, but not to the extent of engaging with the matter. The BX-BX, when I say
10 ...[intervenes].

ADV KHUMALO SC: I think they are coming to that later on. Maybe let us just park it there to say it is wrong that you never got involved in anything related to the charges against Mkhwanazi. Maybe it was for different reasons, but...

ADV BEHARI: Ja, so it is not dealing with what I have dealt with Erasmus and so on. It was a separate process thereafter.

ADV SEGEELS-NCUBE: Well, you have said that the Chief
20 also did not do anything. That is not correct, though, because in his letter that he sends to you on the 21st of June, he is reminding you that charges need to be filed as soon as possible by the 22nd. Is that not correct? Do you want me to take you to it?

ADV BEHARI: No, I have got the document.

ADV SEGEELS-NCUBE: It is in JM, Mapiyeye's statement, and it is ...[intervenes].

ADV BEHARI: Ja, see, I have got the document. Chief writes to me ...[intervenes].

ADV SEGEELS-NCUBE: Just give us the page number again.

ADV BEHARI: No, I thought you had the – I am referring to my copy of the document there.

ADV SEGEELS-NCUBE: I will get the page number.

10 **ADV BEHARI**: But do you have that? Can you refer that to...

ADV KHUMALO SC: Is it JM32?

ADV SEGEELS-NCUBE: That is correct.

ADV KHUMALO SC: 182, Mapiyeye Annexures.

ADV BEHARI: I have that document, ja.

ADV SEGEELS-NCUBE: Yes. So this is the letter that you were referring to earlier on that you had received on the 22nd of June, even though it is dated the 21st.

ADV BEHARI: Yes.

20 **ADV SEGEELS-NCUBE**: And if we look at, I think it is at the second page, the second paragraph is paragraphs undated:

“This indicated period of three months must be before the 12th of July 2023. Taking into consideration the charge

sheets needs to be served as per...”

And then he says section 7.8:

“The employer representative shall within five days of his appointment formulate and serve the charges to be brought against the employee.”

So he is setting out for you the steps that must be followed.

And then he says:

10 “The delay is of great concern as the alleged misconduct was exposed by the media. A very senior officer is involved and is of such a serious nature that it will permanently damage not only the reputation of the EMPD but also of the City of Ekurhuleni should the postponement of serving the charge sheet be furthermore postponed. A perception is also created that the officer involved and the very serious misconduct

20 exposed are being protected and swept under the carpet. You are considered noting urgent attention and way forward is appreciated.”

What did you do about this letter?

ADV BEHARI: Chair, on the 21st I had one hour or

approximately one hour engagement with the Chief. And we got all the information where I explained to him, Chief, firstly on paragraph 3, Chief, 24th of May 2023 is when it expired. The suspension would have expired. But give me the timelines because what happened is, if you want me to deal with the issue, I have told you what are the problems that I think and I think this is how we can also expose in terms of you getting involved in different areas. The MOU came to your attention.

10 I heard later on he denied it, but the MOU came to your attention. There is no explanation what happened. Other issues of the State of The City Address, you noticed that there was other companies or other employees from other companies there ...[intervenes].

ADV SEGEELS-NCUBE: Mr Behari, you are doing it again and I do not mean to interrupt you. You can explain yourself afterwards. I just want to know what was your response to this letter because you are telling me about your discussion before the letter comes. So if you look at
20 the first paragraph of the letter on page 182, it says:

“Further to our discussion regarding the above matter.”

So this is after you had told him all of what you are telling us now. He sends you the letter because he says:

“As discussed earlier today and agreed

upon, that I shall provide you with a copy of the internal dossier listing all the documentary evidence whereupon the decision to proceed with the disciplinary matter has been based and that you will peruse this during the 22nd of June 2023 and provide a way forward urgently as per the background listed hereunder.”

So what was your response to this letter?

10 **ADV BEHARI**: I did not respond to the letter because the dossier did not come to me. The documents, he says here, on the 21st, it shall serve to me, I shall provide you with a dossier of the documents. So he did not send me all those documents. There was other explanations which you have fully in the meeting which we discussed, the timelines that were followed and so on.

20 So I did not respond further because I have explained to the Chief what needs to be done and how we can address the matter. There was nothing, no need for me to go further to tell him again, to respond to another letter to him to say how it can be. All the things the Chief has said to me here was what was contained in the discussion on the 21st as well.

ADV SEGEELS-NCUBE: Mr Behari, I think you are going to be hard-pressed to convince four lawyers that you as a

lawyer did not respond to this when you did not receive the documents. So you do not get the documents back from him and you are not requesting it.

ADV BEHARI: I did not get the documents from the Chief. He needed me to respond under very strict timelines. I had to give him a response by taking into consideration the above stipulation. It means the charge sheet must be served on or before 22nd of June 2023. So a document is served before me. I have not got the documents.

10 **ADV SEGEELS-NCUBE:** No. Mr Behari, in the second paragraph after he says further to our discussion, he says, and that you will peruse this during the 22nd. It was an agreement and agreed upon that I shall provide you with the copy and you will peruse during the 22nd of June 2023. So you knew about the tight timeline. And you do not get the documents from him on the 22nd, but you do not follow up with him and say there were no documents attached to your letter or when am I getting the documents? You want an answer as soon as possible, but I do not have the
20 documents.

ADV BEHARI: Chair, what was conveyed to me at that stage was that the appointment of the presiding officer in mid-June, in our letter engagement, he wanted me to – I said to him I will look at the documents urgently. The documents never came to me.

The issue of taking into consideration of the above stipulation means the charge sheet must be served on or before the 22nd. That was never discussed. So you are asking me to assist you and I will look over it on the 22nd, but you do not say to me that we have to finalise this by the 22nd of June.

And that is where, as I said, I spoke to the Chief. So if the Chief did not take it up further and bring it to my attention and say let us do it, go ahead, and you serve a
10 document to me on the 22nd of, to the letter dated, you serve it to me on the 22nd of June. And then you say to me it has to be done, the charge sheet must be served on or before the 22nd of June. What can I do as a head of legal in terms of serving a charge sheet or not serving a charge sheet?

ADV SEGEELS-NCUBE: But then, Mr Behari, you say to him I have not had time to have a look at the documentation. What is it that you want to do, Chief? And then you have a discussion. You do not ignore him. He is
20 telling you that this is an urgent matter that needs to be attended to. There has been a delay which is recorded here, which is clearly not of his doing because he is complaining about the delay. He says I have a concern about the delay, and you are delaying him further.

And I find it hard to believe that a lawyer of your

many years of experience, 28 years as you say, when you do not receive supporting documents, you do not go back to the lay person and say to him you have not given me the documents to consider, bearing in mind you have considered these documents before. He has nothing new. There is nothing new that he has in these documents that Lt-Col Erasmus did not already give to you a month earlier.

ADV BEHARI: Chair, the opening paragraph or the second paragraph, as discussed earlier today, when we had our
10 meeting on the 21st, I shall provide you with a copy of the internal dossier listing and all the documentary evidence whereupon the decision to proceed with the disciplinary has been based. That is what then was met on the 12th of April when Nciza decided to proceed with disciplinary.

So there is additional documents that you were supposed to have proceeded. And then he sent the document to me on the 22nd of June. Taking into consideration the above stipulation, it means the charge sheet must be served on or before the 22nd of June.

20 On the 22nd of June, I had no documents. I was not even at work on the 22nd of June. I only came back the following Tuesday. If he had contacted me and said, where are you? We need this. I would have followed it. It is a two-way issue. I have all other issues to deal with, other than as you mentioned that. But that is the reality of my

environment, Chair.

I cannot go, if a Chief has committed to give me documents, Chief has committed to follow up, even though he is a layperson in terms of the law itself. I do not know to what degree he is involved as a layperson, but the commitment which he made to me was to bring the documents.

And, Chair, I cannot go and chase after the Chief. He is a senior manager at my level. He is committed to do
10 that issue. He did not do it. I was not there on the 22nd. I had left out of the province. I got back. But he could have still called me and said to me, but can you not finalise this?

But if it had to be on the 22nd, if the deadline was 22nd, what else could I have done to assist the Chief when he knows that the 22nd deadline only came to me after this? Taking into consideration that it means that a charge sheet must be served on the 22nd. That is ...[intervenes].

ADV BALOYI SC: Mr Behari, if you look at page 181, someone receives, acknowledges receipt of the dossier.
20 Who is that?

ADV BEHARI: That is the PA, Louis Engelbrecht.

ADV BALOYI SC: That is your PA?

ADV BEHARI: Ja.

ADV BALOYI SC: So it was delivered on the 22nd because she acknowledges, he or she acknowledges receipt on the

22nd of June. So you cannot say the Chief did not deliver the dossier. Maybe you did not see it because you say you were out of the office, but someone in your office accepted.

ADV BEHARI: I was out on the day when she acknowledged receipt of that, but it was delivered on the 22nd.

ADV BALOYI SC: Yes, no, that is fine. Let us take it step by step. You say he never delivered it, and I am correcting you to say, well, according to Engelbrecht, it was delivered
10 to your office on the 22nd.

ADV BEHARI: Chair, it was delivered on the 22nd, but then I was out of the office. But it delivered, the entire documents that we – these were the complete internal affairs EMPD investigation dossier. The engagement between us was that you look at the documents that led to the 12th of April decision to proceed.

So that is the extent where I looked at any additional, because we have covered all the other documents. My engagement with him during the meeting
20 was on the issues as we looked at what are the challenges that we could foresee.

So I was not there to correct the documents to say that, Chief, this is lacking and so on. But it is impossible on that day to serve the charges on the 22nd and what kind of engagement would I have done to intervene in the

serving of the charges.

ADV BALOYI SC: But you see, in that first paragraph of that letter he says it was agreed upon that he would provide an internal dossier and then you will peruse this during the 22nd. And I have not heard you deny that there was such an agreement.

ADV BEHARI: No, no, there was in the discussion that we had, Chair.

ADV BALOYI SC: It was agreed that you would peruse it
10 on the 22nd.

ADV BEHARI: But not realising that it had to be done by the 22nd, Chair, because the charges had to be drafted or served by the 22nd.

ADV BALOYI SC: Yes.

ADV BEHARI: In fact, I do not know where I got the information. I will just look at, but there is some information where he says it should be served by the 19th of June.

ADV BALOYI SC: Ja, he may well have done that. What I
20 am running past you is you agreed with him that you would consider the dossier on the 22nd of June 2023 and you are not denying that there was such an agreement. And for me, the relevance of my question really is because you say well, when could I have done it? I was not in the office on the 22nd. But if you are not denying that you agreed as he

records in the first paragraph, you must have thought you would be able to do it on the 22nd, even if you are not in the office.

ADV BEHARI: No, we did talk about me looking and assisting in the process, but not knowing, he did not mention to me that it is due on the 22nd, on the same day.

ADV BALOYI SC: Okay.

ADV BEHARI: Whereas, if you look at the last paragraph in that first page, it was supposed to – it says the charge
10 sheet was supposed, submitted by DH Nciza and scheduled to be served for the 19th, it had to be done by the 22nd. And I am saying he sends me on the 22nd, expecting me to get involved on the 22nd.

CHAIRPERSON: Let us take a short adjournment and resume at 16:10, and from 16:10 we will sit until 17:00. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

COURT: Ms Segeels-Ncube?

20 **ADV SEGEELS-NCUBE**: Thank you, Chair. Mr Behari, you were still dealing with JM32, which is the letter of 21 June 2023.

ADV BEHARI: That is correct. Correct.

ADV SEGEELS-NCUBE: You were mentioning something about 19 June.

ADV BEHARI: Chair, in my discussions with Chief Mapiyeye, he dealt with the issue of what we engage and how I could look at the way forward on that. The appointment, he said the appointed presiding officer, Advocate Sibisi [?], compiled six charges after perusing the investigation docket. The charge sheet was submitted to DH Nciza and scheduled to be served on the 19th, but was not yet served.

10 So in engaging with him, when he asked me on the way forward, I was not aware that I needed to give, firstly, why the charge sheet was not served when it was there already on the 19th? And then he writes to me a letter on the 22nd, or 21st, but received on the 22nd, to state on the 22nd the charges will be served.

Now to the extent that service of charges is not dealt with by legal, but I would have suggested a way forward to assist in the matter. But on the 22nd, I am called upon now to suggest a way forward on the charges being served. There is no explanation why they were not served
20 on the 19th, from what I looked at the letter. And there were no engagements, of course, I had further with the Chief of Police, but that was one of the concerns I had.

The 22nd of June was clearly with no explanation why those charges were not served on the 19th. So I do say that yes, I did commit to assisting him, but the 22nd was

impossible to, with me not being in the city as well, to have done anything on that, Chair.

ADV SEGEELS-NCUBE: Okay. Why did the meeting of 21 June 2023 with the Chief happen in the first place?

ADV BEHARI: It happened, as I said, arising out of the engagement with Hennie Erasmus and whatever was required. Thereafter the charges were, well, I was not aware of the process then until Chief came to me. There was a meeting arranged, I have got that on the calendar.
10 And then Chief, when he came to me about the issue, and I explained to him what were the concerns that I had, but then he said the charges needed to be drafted. The charges were drafted.

And then I said, okay, fine, let us see how we can follow up to have them served. But then the charges were on the 19th, so clearly whatever happened in my engagements with Erasmus was not taken into account. They proceeded on the same basis with the charges. And then if the charges were to be served, that would kick off
20 the disciplinary process.

ADV SEGEELS-NCUBE: But he would not have voluntarily engaged you. He was liaising with Nciza, Mr Nciza and HOD and Lt-Col Erasmus. He would not have voluntarily engaged you, so there must have been something that happened that he was either told to speak to you about this,

or you contacted him.

ADV BEHARI: Chair, I did not contact him. I spoke to Erasmus about some time back, it is almost a month after that, about what still needed to be done in the matter. So when Erasmus moved forward, it seemed that whatever I said to him, he decided to go ahead with the charges. And then Chief of Police came to me thereafter. I did not make an arrangement for a meeting for him to come through.

I just got a calendar invite on my thing to say Chief
10 of Police meeting. Why he came through for me, because the service of charges is not my area. We discussed the issues which I raised as a concern again, and with him, in terms of what were the implications, some of the implications of not having the witnesses. Thereafter, I see the document to say that I must assist with the charges, with the serving of the charges. But that is an HR function, Chair.

ADV SEGEELS-NCUBE: If it is an HR function, why did you not just say that to him? Why did you not just say, this is
20 not a legal function, it is the 22nd of June 2023, I do not need to be involved?

ADV BEHARI: Chair, he came to me after my engagement, so the full discussion was what I had with Erasmus as well. He came to me to see if I could assist in processing it. By that time it was, he never told me that it was due on the

22nd. He said it was supposed to have served on the 19th, it was not served.

That is the letter he sent me afterwards. But on that date, he wanted to know how can I assist in the process forward. But the letter that he sent to me shows it was supposed to be served on the 19th, and then he says, okay, it was not served, without explaining to me what the situation was.

ADV SEGEELS-NCUBE: Okay. So when did you tell him
10 that it is not a legal function, it is an HR function and it can go ahead without your involvement?

ADV BEHARI: No, I did not tell him that because he was dealing with Nciza. You see, all the stuff is about Nciza and so on. He was dealing with Nciza, but he came to me after I met with Erasmus, and I explained to him what the situation was. I discussed the same things that I discussed with, I think, on the concerns of that. But it seems that they had continued to proceed, to process the charges and proceed. So I did not have any engagements on that. My
20 issue was, okay, let us see how we can finalise it. Come here, let me see how we can, because the service of the charges is not with me, it is with EMPD and with the HR.

ADV SEGEELS-NCUBE: So the dossier gets delivered to you on the 22nd of June, like Commissioner Baloyi had indicated, to your office. It is sitting there. You do nothing

about it.

ADV BEHARI: Chair, I was not, yes, I was not around on the 22nd. I got back on the Tuesday of the following week ...[intervenes].

ADV SEGEELS-NCUBE: And then?

ADV BEHARI: Sorry?

ADV SEGEELS-NCUBE: Did you follow up?

ADV BEHARI: No, by that time, the date, when I looked at the date, it had already gone past for service of the
10 document. I did not do anything further. I did not follow up.

ADV SEGEELS-NCUBE: Okay. So that was one of the instances that we, I think, what Commissioner Khumalo was saying, well, you were involved. There was another trigger event, which was the IPID report. And before we go to the report, can I just understand how you got sight of the report? How did you get into possession of that report?

ADV BEHARI: So the IPID report came, comes through the ordinary, all reports from regulatory bodies come through to
20 the Office of the City Manager. I would get involved in the matter from a compliance, just look at what are the issues. Whether it is a public protector, IPID, any report. That is what my role was.

When I received the report, it was addressed to the Chief of Police. So we did not get involved in that

disciplinary process, but I engaged with my DH to say, DH, can you look at the fraud and corruption issues? And then how do we interpret the issue of however, what must we do? Because the engagement with Mr Khanyi, we have a call by the City Manager, which he arranged a meeting with him, was to say that we are still finalising the investigations, because the question was, why have they not arrested him? They could not give a response, they said we will inform you when you are arresting him. And that is where I got
10 involved in it.

ADV SEGEELS-NCUBE: Now can we just take a step back? If we go to your statement, page 37, at paragraph, you deal with it from paragraph 179. Page 37. At paragraph 180, you say:

20 “On or about September 2023, IPID delivered a report to the City, containing preliminary findings on various EMPD matters. The report contained disciplinary recommendations and referred to potential criminal conduct. Several of the findings were framed in broad terms, pending prosecutorial direction from the National Prosecuting Authority.”

Now you say various EMPD matters. What are you referring

to as various EMPD matters? Are you referring to more than one employee involved in here, or one employee but various matters relating to just that employee?

ADV BEHARI: The matters related to Mkhwanazi, and this various fraud, corruption, and so on. So that is what we are referring to.

ADV SEGEELS-NCUBE: Okay, so it was just related to Brigadier Mkhwanazi?

ADV BEHARI: Yes.

10 **ADV SEGEELS-NCUBE:** Okay. Is that the report that is at JM19? So JM would be Chief Mapiyeye's annexures, page 103.

ADV BEHARI: 103?

ADV SEGEELS-NCUBE: Yes, 103 JM19.

ADV BEHARI: 103, is this the last page? From 101 to 103.

ADV SEGEELS-NCUBE: No, it is 103, and it is JM19. It is the Independent Police Investigative Directorate document. Are you in the annexures of Chief Mapiyeye?

20 **ADV BEHARI:** I am in the annexures of Chief Mapiyeye. I have got page 101.

CHAIRPERSON: Are you taking us to the last page?

ADV SEGEELS-NCUBE: I think mine says 103. Let me just look at that.

CHAIRPERSON: Because JM19 starts at 101, and 103 is

the signature page.

ADV SEGEELS-NCUBE: Chair, then I think we are working off not the same bundle.

CHAIRPERSON: It is an IPID letter.

ADV SEGEELS-NCUBE: I do have the IPID letter. Mine just starts on 103, not 101, which is MPS Memorandum. Is that the one?

CHAIRPERSON: Yes, that is the heading we have, and paragraph 1 is headed Summary of Allegations.

10 **ADV SEGEELS-NCUBE**: Yes.

CHAIRPERSON: The complainant alleged that in February.

ADV SEGEELS-NCUBE: I think my electronic bundle may be just incorrectly numbered then.

CHAIRPERSON: Yes.

ADV SEGEELS-NCUBE: So it is 101. You have it as 101, 102, and 103?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: Okay. So that is the document that you are referring to in paragraph 180 of your
20 statement.

ADV BEHARI: That is correct.

ADV SEGEELS-NCUBE: And we know that this was directed to the Chief of Police. Now, you do not say how it came into your possession. You just say in 181:

“The City Manager requested that Legal

Services Department prepare a draft response.”

How did you come into possession of the document?

ADV BEHARI: A copy was provided to me from the office of the City Manager.

ADV SEGEELS-NCUBE: The City Manager gave it to you? Okay. And was this via e-mail, or were you with her somewhere?

ADV BEHARI: No, no. From the office upstairs. My office
10 was down, so she would have delivered a copy through there.

ADV SEGEELS-NCUBE: Okay. Then you also mention somebody by the name of Mr Osborne Khanyi. What is the relevance of his involvement?

ADV BEHARI: So after the documents were received, remember it was served on the Executive Mayor and Chief of Police in a meeting. After the document was received, I was called. I am not sure exactly, but I was called to the office by Ms Nciza to say the City Manager has arranged
20 with Mr Osborne Khanyi. Osborne Khanyi is from IPID. From what I understood, he was a high-commissioned officer.

And that is when we had the engagements of, because in terms of the classification of the matter on corruption, and we asked Osborne, but why have you not

arrested him because of the serious fraud and corruption allegations? And then we were informed that, no, you will give us information in terms of us going forward further with regard to the case.

But I was not aware in terms of what the discussions they had with the HR processes and with Chief Mapiyeye and so on. The only, from our side, was looking purely at the fraud and corruption in terms of further processes that we need to initiate from the legal
10 department, which included other remedies that we needed to include.

ADV SEGEELS-NCUBE: Okay. So were you in a meeting with Mr Khanyi?

ADV BEHARI: I was called to that meeting. The City Manager and Osborne Khanyi were already there, and I was called to that meeting.

ADV SEGEELS-NCUBE: Okay, so you were present in that meeting.

ADV BEHARI: Yes.

20 **ADV SEGEELS-NCUBE**: And in that meeting, he is presenting this report.

ADV BEHARI: Ja. Well, we already had received the report, remember, through the Office of the Executive Mayor. So City Manager called him in for a meeting. When I called in the meeting, the document was already there.

And then I asked him, but in terms of fraud and corruption, the serious case number as well, what, why have you not arrested Mkhwanazi already for the fraud and corruption? Then he mentioned to me, but the DPP is still dealing with the matter. We will give you a progress as soon as that happens.

ADV SEGEELS-NCUBE: Okay. And was the MMC Community Safety in that meeting?

ADV BEHARI: The MMC Community Safety was in a
10 previous meeting with the Executive Mayor when the report was first delivered. Chief of Police was in there with the Executive Mayor and certain office bearers from IPID.

ADV SEGEELS-NCUBE: So there were two meetings with Mr Khanyi?

ADV BEHARI: Ja.

ADV SEGEELS-NCUBE: One you were not part of?

ADV BEHARI: The first meeting, Mr Khanyi was part of a meeting that was held at the Office of the Executive Mayor on the 9th of November. 9th of November, I said. 9th of
20 September, sorry. The meeting seems to have been on the 9th of November. The report, IPID report is dated 1st of September 2023.

ADV SEGEELS-NCUBE: Yes.

ADV BEHARI: But the meeting and handover with the IPID head was at the Mayor's ...[indistinct] on the 9th of

November 2023. At the meeting was the MMC, Masuku, it was the Executive Mayor Ngodwana, it was Mr Osborne Khanyi, and Robbie, I cannot make it clear, Mtuso ...[indistinct] and ...[indistinct] was from the Mayor's office, and that is the copy of the register that I have.

ADV SEGEELS-NCUBE: But at this stage, the Chief of Police had already received the letter. It was addressed to him early on, or was that also where he received the letter, at that meeting?

10 **ADV BEHARI**: I do not see the Chief's name here. So, I know I received a copy to deal with my issues. I am not sure what happened with the Chief of Police, with the entire document given, because the Chief of Police, the report was addressed to him and I received a copy for my issues in terms of the compliance issues, that we need to look at.

ADV SEGEELS-NCUBE: And you would have received that when, in November?

ADV BEHARI: It would have been after the 9th of November. It was the Mayor's ...[indistinct]. I am not sure
20 when the Mayor delivered the City Manager, but it could have been in the week or so of that 9th of November.

ADV SEGEELS-NCUBE: Okay. Now, in that meeting, you meet with Mr Khanyi, and he is telling you that they are still busy with investigations.

ADV BEHARI: That is what he mentioned to me, that they

refer to fraud and corruption in terms of the recommendation. And I said to him, but why did you not arrest him? You know, these are serious charges. And he said to me, no, it is still with the DPP for decision. And I said to him, so, on my aspect, he was waiting for the DPP to conclude and then give us the report for us to follow up on the fraud and corruption aspects in terms of our processes, through MPAC and Council, and other processes we need to put in place.

10 **ADV SEGEELS-NCUBE**: Okay. On page 102, paragraph 2 of that document, there is an instruction that is given by IPID to initiate disciplinary proceedings against Director Julius Doctor Mkhwanazi. Do you see that? It says you are directed to initiate disciplinary proceedings.

ADV BEHARI: On page 102?

ADV SEGEELS-NCUBE: 102. As I understand it, your document is, it has page 2, it is page 2 of the document.

ADV BEHARI: So, 103, I have got an IPID recommendation. Is that the paragraph you are referring
20 to?

ADV SEGEELS-NCUBE: No. I am looking at the one that says, it is your page 102, it is internal page 2, and the heading is two case docket contents, right at the top.

ADV BEHARI: Okay.

ADV SEGEELS-NCUBE: Do you see case docket contents?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE:

“In terms of section 30 of the IPID Act 1 of 2011, read with the SALGA Disciplinary Procedure Collective Agreement issued on 1 February 2018, you are hereby directed to initiate disciplinary proceedings against Director Julius Doctor Mkhwanazi.”

10 Do you see that?

ADV BEHARI: Yes, I see that.

ADV SEGEELS-NCUBE: And it says, the investigation into this matter is complete.

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: Okay. Now, when you were having this meeting with Mr Khanyi from IPID about Commissioner Mkhwanazi, what are you asking him about these disciplinary proceedings because you are directed to initiate it?

20 **ADV BEHARI:** I have never asked him about the disciplinary proceedings, ma'am. This letter was directed to the Chief of Police. So, I was not really involved in the disciplinary. My aspect was, look at the compliance matters as regards fraud and corruption. There are other processes that we initiate if we find fraud and corruption. So, mine

was never to deal with the disciplinary process at all.

ADV SEGEELS-NCUBE: But that cannot be because we know that from 22 August 2023 you are performing this legal review assessment function where you are to be the extra step in the compliance insofar as disciplinary proceedings are concerned. Now, you are sitting here with a document that is directing the EMPD, it is directing the City to institute disciplinary proceedings. What do you do about it?

10 **ADV BEHARI**: Chair, the 2022 letter from the City Manager ...[intervenes].

ADV SEGEELS-NCUBE: 2023.

ADV BEHARI: Sorry, 22 August letter from the City Manager was to talk about our internal processes, our internal investigations. This matter here, like any other report, came directly. It was already investigated. They are issuing a directive. It was already, and the directive was to the Chief of Police, not to me.

I looked at the other processes, especially where I
20 am concerned to say, but if you are looking at however the docket is referred to the DPP for a decision, what would the implication be for us in terms of me informing other processes?

The year that did not deal with the 22 August scenario, 2023 at all, because there was a directive coming

from the IPID on that issue. The only issue was, which I raised with Mr Khanyi, was you are directing on the one side to proceed with it, but then you are saying the recommendation based on the above information contained in the case docket, IPID recommends that disciplinary steps be taken against director Julius Mkhwanazi for the contravention of MP disciplinary process collective agreement, standard of conduct themselves with honesty and integrity. However, the document is referred to DPP for
10 decision.

So, if it is a directive that is issued there, to go into further now has created some doubt in terms of, that is why I cleared it up with Khanyi. I am not involved in a disciplinary process. The 22 August 2023 was not for me to decide. This is already a completed investigation from external authorities, regulatory bodies.

ADV SEGEELS-NCUBE: No, Mr Behari, on your own version, you are the extra step in terms of compliance. If you go to your statement at page 11, paragraph 41, you
20 say:

“On 22 August 2023, the City Manager issued a directive requiring that all disciplinary and grievance matters involving senior personnel be subjected to a compliance review by legal services

prior to finalisation of charges or
outcomes.”

Now, here, you are sitting with the person from IPID. There is a directive that is directed to the Chief of Police to institute proceedings. You are sitting there with him. You, at this stage, know nothing about whether the disciplinary proceedings have been instituted by the Chief of Police, correct?

ADV BEHARI: I have no idea of what happened there with
10 the Chief of Police. It is correct.

ADV SEGEELS-NCUBE: Okay. So, do you go back to the Chief of Police after this meeting and say, are we complying with this directive from IPID?

ADV BEHARI: Chair, you are linking the IPID directive to the 22nd, where I was the added leg of compliance. Those are two different functions and for two different purposes. The one for the 22nd was to look at our internal investigations from the departments themselves and then to refer that for me to assist in terms of the three tiers, in
20 terms of further investigation and so on.

This was a completed report. The only way we could have proceeded further against this if we did not agree with it was to review it. But, we did not take it on review. I was looking at the criminal aspects, the issue of the fraud and corruption and my obligations in terms of the

Chief would have run a parallel process with regard to going through the HR. That is, we are separate on that issue.

ADV SEGEELS-NCUBE: But, Mr Behari, you knew of the existence of disciplinary proceedings against Commissioner Mkhwanazi then already. You knew about this since May of 2023 when you had the discussion with Lt-Col Erasmus. All of a sudden those proceedings, you say after June 2023, you have nothing to do with those proceedings. You meet with Mr Khanyi where there is a directive in this letter. You
10 read the letter. You saw that there is a directive to institute proceedings. You say to him, we should have, we already started the process, I will follow up with the Chief to find out what happened to that process because the last I heard was June 2023. I do not know what happened after that.

ADV BEHARI: Chair, to the extent of what you are suggesting, counsel, is I looked at this as a separate process. That process ended or where it was thereafter of my involvement on the 22nd with the service of charges or so, I never followed up on that issue. I have dealt with that
20 because I would expect then to be a comeback to say we have not finalised or whatever. I had nothing further from there.

On this matter now, if it came about in September but in November the service of the City, I was looking at purely my functions. It had nothing to do with the

appointment on the 22nd of August or and so on. Just purely my functions and that would mean then accepting that the Chief of Police would have taken that to HR to complete the direct, ask for the directive.

But then again, from my side, the directive in my discussions with Osborne Khanyi, you are directing on the one hand to say proceed with disciplinary but then you still go and make it a IPID recommendation which was to say that there is DPP. I would have been interested in that DPP
10 issue to follow up to say how do we respond from that side.

ADV KHUMALO SC: Ms Ncube, can I just take us back to 21 June 2023 and we will come back to this issue. I must get your surname right. You know, late in the afternoon, I might get it wrong again. Mr Behari, page 28 of Chief Mapiyeye's statement, paragraphs 102 and 103. You would have seen it before because you refer to it in your statement.

ADV BEHARI: 28?

ADV KHUMALO SC: Paragraph 102.

20 **ADV BEHARI:** Chair, on page 28 I have got number 22, 26, 27.

ADV KHUMALO SC: We are in the Mapiyeye statement. You have it?

ADV BEHARI: I have got it, Chair.

ADV KHUMALO SC: Yes. Page 28.

ADV BEHARI: Yes, Chair.

ADV KHUMALO SC: Yes, remember Ms Ncube asked you about that meeting of the 21st of June 2023 and how it came about?

ADV BEHARI: Yes.

ADV KHUMALO SC: And you said you did not know. You suggested that it may have been initiated by Chief Mapiyeye. This is what he said in his statement:

10 “On 21 June 2023 and following
discussions initiated by Ms Gxasheka
and Advocate Behari, HOD Legal
Services, I was pressured to hand over
the docket dealing with Brigadier
Mkhwanazi to Advocate Behari. This I
did as per my memorandum to Behari
dated 21 June 2023.”

So it is that memorandum we looked at. And then he says:

“I was instructed to withdraw the charges
against Brigadier Mkhwanazi.”

20 So that was the outcome. The outcome was that he was instructed to withdraw the charges against Mkhwanazi and in fact he did.

ADV BEHARI: Was he instructed by me? Chair, firstly, the meeting of 21 June only involved Chief Mapiyeye and myself. So I deny that it was involving Gxasheka as well. I

know that it was myself and Chief dealing with the issues of what I discussed with Erasmus. I am not aware that Gxasheka was there for any reason and that I was forced to withdraw subsequently. I did not ask him to withdraw any charges.

ADV KHUMALO SC: I will tell you why Gxasheka was involved. Because a week earlier, on the 15th, she had given an instruction that Mkhwanazi must be returned to his position. And arising from that discussion, this meeting
10 took place. And in this meeting he was instructed to give you the dossier. So the agreement to give you the dossier was in the form of an instruction, which he then did. But the reason why you did not take the matter further is because you are aware that on the 22nd he accepted or followed the instruction and duly withdrew the charges against Mkhwanazi. And that is on page 182 of our bundle, the Mapiyeye JM section. It is JM33.

ADV BEHARI: 182. He withdrew the charges, Chair? 182 of Mapiyeye bundle?

20 **ADV KHUMALO SC:** Yes. 182 Mapiyeye, JM33. That was the outcome of that entire exercise. He was instructed to withdraw the charges, and he did. So if you read that with 103 of his statement, I have already taken you there.

ADV BEHARI: Chair, on 182, I have got you to 2nd of February allegations are very serious against that, correct?

To date the matter has not been concluded. I, as a municipal police commissioner, I have taken the decision to withdraw the internal investigation process and the case number. Is that including the charges, Chair?

ADV KHUMALO SC: Yes. So this is the outcome of the meeting on the 21st.

ADV BEHARI: Chair, but he is withdrawing the internal investigation from what I am reading here. Is the internal investigation now – and it does not make sense because the
10 internal investigation was completed.

ADV KHUMALO SC: No, Mr Behari, you know what the internal investigation is. This matter was at the stage where a charge sheet was prepared.

ADV BEHARI: Yes.

ADV KHUMALO SC: You have been taken to page 180. Advocate Sibisi was instructed together with attorneys, they prepared six charges. So when the discussion is taking place between you and Chief Mapiyeye, you are aware of those facts. Now, he is asking you on page 180 for urgent
20 guidance.

ADV BEHARI: Yes.

ADV KHUMALO SC: He said so. I am seeking agent guidance on the way forward. It is on page 180, the very first paragraph.

ADV BEHARI: Yes.

ADV KHUMALO SC: He says in his statement, the outcome of that meeting was that I was forced to hand over the dossier and then I was instructed to withdraw the charges against Brigadier Mkhwanazi.

ADV BEHARI: Chair ...[intervenes].

ADV KHUMALO SC: So the reason why, this is what I am putting to you, the reason why you did not follow up is because you know that he was instructed to withdraw the charges and he did. Because otherwise you would have
10 asked him, what happened to the charges?

ADV BEHARI: Chair, I was not aware of that instruction to withdraw. It says here, instruction to withdraw the internal investigation process. I do not see that, the issue of the charges. And I spoke to Advocate Sanele Sibisi, Chair. When we were looking at that ...[intervenes].

ADV KHUMALO SC: No, can you please not talk about Advocate Sibisi?

ADV BEHARI: But what I am saying, Chair, is this document talks to withdrawal of the investigation process. I
20 do not understand that how now he says that I instructed him or he was instructed to withdraw the charges. By whom? Because I did have a meeting with Chief, between Chief and I, and the same engagements I had with Erasmus were also conveyed in that meeting. So, when you say instructed to withdraw the charges, I am not sure who

instructed him because this letter talks to withdrawing of the internal investigation process, Chair.

ADV KHUMALO SC: Yes, but you know what that process is because the day earlier you were discussing the process and the process was that a charge sheet had been prepared. It was just a waiting service.

ADV BEHARI: Chair, to withdraw the internal investigation process, I understand that from reading it now, would have been a concluded investigation. If it was about withdrawing
10 the charges ...[intervenes].

ADV KHUMALO SC: Advocate Behari, you and I are advocates.

ADV BEHARI: Ja.

ADV KHUMALO SC: Chief Mapiyeye is not an advocate. So when he says withdrawal of a process, you know exactly what he means. He does not have to say the charges. A disciplinary process includes the charges. You and I as lawyers should understand that when a lay person speaks, they want to use the exact language that you and I use
20 when we engage with each other.

ADV BEHARI: Chair, I respect what you are saying. The issue for me is from what I am looking at now, it is not clear because I did not give any instructions on withdrawing the charges. I engaged with Chief of Police and I had no involvement in any withdrawing of charges. And this is not

very clear to me.

Yes, the internal investigation process for me is the investigation that was in the internal affairs. And that would have been no sense because from any Erasmus' position, it was finished already in March. So I do not understand what you are talking to.

ADV KHUMALO SC: But having seen this, do you now accept that this is what became of the charge sheet and that process?

10 **ADV BEHARI:** But there was no – was there any withdrawal, formal withdrawal of charges? I cannot see that anyway. Because it is Chief of Police writing to Brigadier Mkhwanazi. And in that he says I am withdrawing the internal investigation process. So if it is one layperson writing to another layperson, I do not know how that is to be understood because it should have been explicit. If there was to withdraw the charges, which he says in his statement, then he should have said he would withdraw the charges.

20 **ADV KHUMALO SC:** But he says so in his statement.

ADV BEHARI: Yes, Chair, but I am saying he says that in his statement, which is not in accordance to what you put to me on page 182, which is withdraw the internal investigation process.

ADV KHUMALO SC: I am saying it is the same thing,

Advocate Behari. I am saying it is the same thing. So the withdrawal of the charges is the withdrawal of the investigation process. The Chair put to Chief Mapiyeye when he was here. In his evidence, the Chair put to Chief Mapiyeye that the effect of that second paragraph is that the charges were withdrawn, and he reluctantly accepted that.

ADV BEHARI: Chair, as I said, from my side, it is about what is here contained in that letter. What Chief Mapiyeye
10 says is that he was instructed to withdraw, I did not give any such instruction to withdraw charges. So I am not sure. And the meeting that I had with Chief of Police was between myself and him. And hence, hence the letter, this is 180. The letter he writes to me speaks about:

“As discussed earlier today and agreed upon, I shall provide you with the comments.”

It was between myself and him. He copies Ms Gxasheka. In the two I can see there, but I was the one with him in the
20 meeting.

ADV KHUMALO SC: You see, Advocate Behari, there is a reason why he copies all those people. There is a reason why he says it is addressed to, not just you. Look at it carefully. It is addressed to you and Linda Gxasheka. She is not CC'd. It is actually addressed to her. It is not a CC.

And the reason he is addressing it to the two of you is consistent with what he says in his statement that following discussions initiated by Gxasheka and yourself.

ADV BEHARI: Chair, yes. I was not part of the discussions with him. I had a meeting with him separately on the issues related to Erasmus. So at this stage, I do not – yes, he is writing to myself and so on, but again, and then he is asking then to be done before 22 June. So if he is addressing to Gxasheka ...[indistinct] Gxasheka as well,
10 then again it is not clear who needs to be doing what because I am not involved in the withdrawal of charges.

ADV KHUMALO SC: I am going to leave it there for now. I think we can safely say that the outcome of that meeting is that the charges were withdrawn.

ADV BEHARI: I would say it does not make, for me it is not making, it is not coherent in the sense of his second, but an investigation was withdrawn to Mkhwanazi. If you say it was included charges, Chair, I will leave that for you in terms of what he said.

20 **ADV SEGEELS-NCUBE:** But, Mr Behari, you know that by the 22nd of June the charge sheet had not gone out.

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: Because you say that in the – because it shows in the letter that he was seeking your guidance on that aspect and he told you that it should have

gone out on the 19th. So as the Chair had discussed with Chief Mapiyeye when he gave evidence, the effect of it, of withdrawing the investigation is that those charges were not ever going to be filed. You knew that they had not been filed by the 22nd of June.

ADV BEHARI: Chair, accepting that I am one of the addressees in this matter. Now, I had a meeting with Chief and I discussed to say let me look at how we can further it. But now in terms of this letter here which he writes on the
10 21st, it includes now HOD Linda. So, he is talking to me because I was not aware that charges had to be on the 22nd. He said to me it is supposed to be filed on the 19th. but can you assist in the way forward?

The day when taking into consideration the above, the charge must be served on the 22nd of June, he did not discuss that with me, Chair. So if that were the case, I could not do anything practically on the 22nd of June to serve the charges. Nor am I involved in the serving of charges. I have no engagement in the serving of charges.

20 **ADV SEGEELS-NCUBE**: So you had no knowledge that the investigation had been withdrawn?

ADV BEHARI: I had no knowledge of the investigation. Well, the investigation being withdrawn was now in terms of the letter to Mkhwanazi. But I had no issue of the charges to be withdrawn. I was not aware of that.

ADV SEGEELS-NCUBE: My question is very specific. You did not know that the investigation had been withdrawn by Chief Mapiyeye?

ADV BEHARI: Chair, I have seen that. I cannot tell you exactly when I saw it, whether it was in consideration of the bundle or not. Yes. So it spoke about the investigation being withdrawn, and that would have drawn my attention to that document.

ADV SEGEELS-NCUBE: When did you know about that?

10 **ADV BEHARI**: Chair, we have been in a consultation process in looking at all the documents from Erasmus. I am just going to see whether it was in the bundle as well in that Erasmus. I am not sure at this stage.

ADV SEGEELS-NCUBE: Were you aware when you met with Mr Khanyi from IPID that the investigation, the internal investigation had been withdrawn?

ADV BEHARI: I was not. If it was withdrawn of the internal investigation, yes. But on the withdrawal of the charges itself and discontinuing of the investigation, of the
20 disciplinary charges, no, I had no knowledge. It was apart from because I did not follow up with that. When we had Khanyi come through with the disciplinary, I spoke only to the IPID report.

ADV SEGEELS-NCUBE: Okay, but so you knew that the investigation had been withdrawn by the time you met with

Mr Khanyi?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: Okay. So by 9 November, you knew that it had been withdrawn?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: Now why are you making a distinction with the charges? Because as far as you knew, by the last you knew of the 22nd June, the charges had not gone out. The charges had not gone out. So how does the
10 charges still stand when the investigation had been withdrawn and you knew about that?

ADV BEHARI: I knew the investigation was withdrawn in terms of the content of the letter. I am not sure who withdrew it and who did what. I did not follow up on that process. So when I spoke to Khanyi, of course, I know that the City's processes had not proceeded with the charges being served and so on. And to go back to what I spoke to Hennie Erasmus about, to say, Lt-Col, if you have finalised your investigations, proceed immediately to serve the
20 charges with the disciplinary because it was not about me getting involved in the process. Because if they had not done that, this is what I spoke to Hennie Erasmus, all of this matter would have been addressed.

ADV SEGEELS-NCUBE: Okay. So, if I am to understand, then insofar as the IPID report or memorandum directed the

City to institute disciplinary proceedings against Commissioner Mkhwanazi, you did not have any involvement in that? You did not follow up on that? You did not have a discussion with the Chief of Police about that?

ADV BEHARI: No. It was a process for disciplinary, for the directive you mentioned, was on that side. Mine was only on other processes when I engaged with my divisional head to look at fraud and corruption.

10 **ADV SEGEELS-NCUBE:** Okay. Now, were you aware of what the consequences for the institution for the City would be if they do not comply with the directive from IPID?

ADV BEHARI: Yes. In terms of the legislation, I did not deal with it specifically, but again, it was a directive from IPID which would have been followed up between IPID and the Chief of Police and HR. I was not involved in that process.

ADV SEGEELS-NCUBE: Okay, but are there consequences for the accounting officer who, as you said, is your
20 accounting officer, you are the person that sees with giving her legal advice if she does not ensure that these charges are, that the disciplinary proceedings are not instituted?

ADV BEHARI: The accounting officer would have been, yes, accountable overall. She would have engaged with, or should have engaged with Chief of Police and HR to look at

whether the charges, that process has taken place. Mine was on the issue of interest was on the DPP instructions if there were criminal prosecutions and then how we dealt with that in terms of going forward in other processes.

ADV SEGEELS-NCUBE: Okay. So, now when there is a directive that there must be proceedings instituted, you withdraw yourself from that process, but when it was an internal investigation, you inserted yourself in the process.

ADV BEHARI: When there is a regulatory body directive, 10 that is a directive unless we decided to take that on a review process or something like that, then I would get involved in it. It is a directive to the Chief of Police served on the Executive Mayor and then to the City Manager's office.

The issue of the internal processes is a specific directive from the City Manager to the extent that you need to bring the additional leg. It is not about any convenience or otherwise. It is about what I must do when it comes to an internal investigation and in terms of this. I also deal 20 with that issue there.

ADV SEGEELS-NCUBE: Okay. So, why were you then involved in the response, the drafting of the response to the IPID memorandum?

ADV BEHARI: The response on the drafting of the IPID, the draft of the IPID memorandum was to look at

information specifically on the fraud and corruption and what were the definitions. Hence, I gave it to my divisional head to look at what were the definitions, where do we see in the IPID report. What can you ascertain to that? Because when we deal with that issue, then we could finalise in terms of DPP instructions and then our legal processes could have carried on.

ADV SEGEELS-NCUBE: But the IPID report was not asking you for a response regarding the criminal process. It was
10 asking for a report on the disciplinary process. If you look at page 103 of the report, it says:

“Conclusion. IPID awaits your report relating to when the disciplinary actions were instituted and how the matter was finalised to enable the institution to comply with the provisions of section 30(c) of the IPID Act.”

It had nothing to do with the criminal charges.

ADV BEHARI: Chair, again, IPID was requesting a report
20 from the Chief of Police to say give us a report on progress on that. Ours was only to look at the compliance in terms of the criminal charges. Hence, we started drafting our report to deal with the criminal charges. The issue of IPID's directive goes to the City Manager, to Mapiyeye, and to HR. So the progress report would have been coming from that

side.

ADV SEGEELS-NCUBE: But, Mr Behari, why are you responding on the criminal charges? It says to you that they want to report on the disciplinary actions and then they say to you the docket is referred to DPP for decision. It does not need anything from you. You are not even the accused. If there is an accused insofar as the DPP process is concerned, that is going to be Commissioner Mkhwanazi and he must get his own representation to deal with that.

10 You are looking out for the interest of the City. The City is being asked to respond about a report on the disciplinary proceedings. You ignore that but you want to address the criminal issues.

ADV BEHARI: Chair, you say ignoring the report on the disciplinary charges. Again, that is streamlined through the Chief Office and the HR. I was not involved in that. In terms of the DPP instructions, it is important in terms of when it comes to us of only criminal charges that are being laid, that is when you would look at, and then what other
20 processes in the City would have to be invoked in terms of reports to the City. Hence the engagement was after meeting with Khanyi and the DPP instructions, we were waiting for that document to say what are the other processes that need to be invoked in terms of the process of finalising on the IPID findings. That is where I was

involved. So I was not involved in that other process with the Chief of Police and with the HR.

ADV BALOYI SC: Mr Behari, this report contains only one instruction and it is that you institute disciplinary proceedings. That is the only instruction there is.

ADV BEHARI: Yes.

ADV BALOYI SC: And then in page 103 it says a docket is referred to DPP for decision. That is it. The rest of it summarises what the investigation has, it analyses, that is
10 what they use, the word they use, what the investigation has found. So you are not required by this report to do anything at all in the line of what you have done. The municipality was called upon to conduct a disciplinary process against Mr Mkhwanazi.

You tell us in paragraph 181 of your statement what it is that the City Manager instructed you to do. You do not claim that it came out of the report. You say the City Manager said to you, you prepare a draft response acknowledging receipt of the report and addressing certain
20 technical issues that IPID did not clarify, including the status of matters referred to the Director of Public Prosecution for decision.

That is one that your City Manager said you should look at. The scope and confidentiality of the report, and three, the distinction between preliminary investigative

observations and findings capable of immediate implementation. So you have told us what it is that the City Manager wanted you to look at and prepare a response.

That has nothing to do with what is contained in this document. And so the question is, what relating to the instruction from IPID were you dealing with, did you want answers from IPID about?

ADV BEHARI: Chair, the clarity was sought, nothing to do with the disciplinary directive. This was in terms of us
10 checking on the issues of the corruption, the fraud, and the status of the report, which we would then get further information from IPOD as regards the full DPP decided to arrest or proceed with the case. I would have to give a report on that basis to the MPAC and to council. So that is the aspect where my part, which I spoke to the City Manager about.

ADV BALOYI SC: Why did you care? Why does it matter to you what IPID is doing with the DPP? The report does not ask you to do anything at all. In fact, it is not even the
20 municipality that is being referred to the DPP. It is an employee. Why does it matter to you what is happening at the DPP, between the DPP and IPID?

ADV BEHARI: Chair, it is an employee that has been involved, but it concerns the City. It then ...[intervenes].

ADV BALOYI SC: And you are told to discipline that

employee and that is the one thing you do not do.

ADV BEHARI: Chair, it is not about me not doing the discipline. I think I have addressed that issue. There were processes that I followed and what needed to be done between HR and all the other parties.

ADV BALOYI SC: But you also told us that you now have the power to review processes and that was Mr Nciza's evidence as well, that things, you are restructuring the powers that you got now such that things have to come
10 through you. He could no longer prepare charge sheets and just discipline people. You had to do the approval. So we know as a date of this report you now have that power.

ADV BEHARI: Chair, the power was not for me to discipline. I did not ...[intervenues].

ADV BALOYI SC: The power was to check for compliance, to review what they are doing.

ADV BEHARI: Yes.

ADV BALOYI SC: Yes.

ADV BEHARI: And to recommend to the HR HOD, who
20 approves.

ADV BALOYI SC: Yes.

ADV BEHARI: So the internal process, this was already a finalised report by a regulatory body.

ADV BALOYI SC: Sorry, by?

ADV BEHARI: By a regulatory body.

ADV BALOYI SC: Yes.

ADV BEHARI: Now, that does not come into the scope of what Nciza mentioned that the powers were taken away because if in this matter, you had an HOD HR that already had a directive from IPID to proceed with that disciplinary. Mine was looking into other processes to MPAC and to council to report on this employee that has been now charged, who had been arrested because of serious issues with regard to IPID.

10 Chair, if I may, I think it was somewhere in Nciza's document. IPID seem to have been involved in this matter from about April 2023, which I only saw in the transcript. But here dealing purely with what my obligations in terms of the criminal aspects, it is still an obligation from the compliance aspect.

ADV BALOYI SC: But what is your obligations in terms of the criminal aspects, as you put it?

ADV BEHARI: Chair, if there was an employee arrested for this serious corruption and fraud, the obligations would be
20 for me to do a report to MPAC, the Municipal Public Accounts Committee, to say that this is what we are finding, this is what ...[indistinct], we need to consider then to council how do we, if it implicates aspects in the City, do we need to do anything further in respect of a pension retention or whatever ...[intervenes].

ADV BALOYI SC: Sorry, in terms of what?

ADV BEHARI: A pension retention, if there is a loss of the City, to calculate our losses and then we will claim that from the pension and so on through the HR process. But mine was to report on the issues, to MPAC and to council, to say that these are the issues of compliance or non-compliance that we are finding in the City.

ADV BALOYI SC: Okay.

CHAIRPERSON: Mr Behari, you will recall that earlier I
10 reminded you what part of the context is, and that is what Chief Mapiyeye, Commissioner Spies, and Mr Nciza are complaining about concerning you, is that you were protecting Brigadier Mkhwanazi. That is the context.

Now, the issue Commissioner Baloyi is raising with you, which is IPID recommends that Ekurhuleni must institute disciplinary proceedings against Brigadier Mkhwanazi. What do you do? You do nothing about that, but what you do instead is to try to respond blow-by-blow to the criminal process that has been instituted, and which has
20 not been referred to Ekurhuleni, and indeed it ought not to have been referred to Ekurhuleni. It has been referred to the Director of Public Prosecutions.

That indeed is where a process of that nature resides. And you then try to respond to that process, which is with the DPP, instead of responding to the

recommendation to Ekurhuleni. That, I suggest to you, ties in with a complaint made against you by the Chief of Police, Chief Mapiyeye, Commissioner Spies, and Mr Nciza. It actually ties in with it, because you say this one is within what we as Ekurhuleni can do.

They recommend to us to discipline Mr, or rather Brigadier Mkhwanazi. We are just going to be silent about that. It is within our control. What is not within our control is the criminal process. Let us go for the criminal process.

10 Let us try to stop that criminal process. Let us try to show why it is unfounded. It ties in with a complaint by these three employees of Ekurhuleni. What is your comment to that?

ADV BEHARI: Chair, firstly, on the IPID report, the departments were addressed to deal with the disciplinary directive. My issue was not about challenging the DPP instructions or whatever against the employee. Ours was to look at from Mr Khanyi, when you say DPP is dealing with them, why are you not arresting them? If I was going to be
20 protecting Julius, as the environment created, why would I look at why did you not arrest him quickly? Why did you not arrest him in terms of the process?

Even up to now, Chair, I am not aware of the DPP having finalised those instructions. It was not about challenging and protecting anybody from being charged. It

was purely to look at what are the obligations, I have to respond to because the implications of an officer or official being charged in terms of fraud and corruption, there are other implications in terms of which I will have to do a report to MPAC and so on.

It was never, and in no way did I speak to Khanyi to say that we want to challenge the investigation or the part of the DPP. That is their stories. That is for them to deal with. What is concerned is when are we expecting, because
10 we would have proceeded with that from the Director to Chief of Police and HR, that is a disciplinary process. Mine is to see that ...[indistinct].

How do we, for my purposes, in reporting to MPAC and council to give a full understanding of what is going on and what could be the other measures we implement to deal with it. It is not about challenging any report.

CHAIRPERSON: Let us look at the heading of the letter written by Mr Zulu and Mr ...[indistinct], which had your full support, you said so earlier. You say ...[intervenes].

20 **ADV BEHARI:** Yes, Chair.

CHAIRPERSON: You even took it to the Municipal Manager, but that you wanted to correct some little administrative thing, but not so much the content of what the letter raised. Look at the heading, Boksburg CAS 262/03/2023, corruption, fraud, and corruption (Julius

Doctor Mkhwanazi).

The reference to the CAS number, that is clearly the criminal process, and it is only that criminal process that this letter addresses. And the two people who have signed this letter are your juniors. And in fact, in so many words, in your statement before us today, you say you appointed Mr Zulu because of his experience in prosecuting.

ADV BEHARI: Yes.

10 **CHAIRPERSON:** So you basically wanted to attack the criminal process, even if you are doing it within the municipality. The idea was to say there is nothing here. That is the point I am making. And indeed, indeed, if you go through the entire letter, it deals with the charges and it will say the elements of such and such a criminal offence are A, B, C, D. A, B and C have not been satisfied because of A, B, C, D reasons.

It is trying to puncture holes through the possibility of any criminal charges. So it is on that basis, and you
20 identified with this, you identified with this letter, it is on that basis that I suggest to you that there may well be, and I think that is an understatement to say there may well be, there may well be substance in the attack by Chief Mapiyeye, Commissioner Spies and Mr Nciza, which is to the effect that you were protecting Brigadier Mkhwanazi.

ADV BEHARI: Chair, the issue of that letter was, yes, it refers to the criminal processes, because my interest would have been to report on that. The initiator of that issue, I referred you in Njabulo to look at the elements. What do we need to look at in terms of my report to MPAC and to council, where we cover this and we say to them this evidence is linked to that.

The DPP process can never be a challenge for us internally. The only issue we get involved in in terms of the
10 City is any of the City officials who are charged as a result of their holding an office representing the City. But not, if the cases were against Julius Mkhwanazi, it should have been then proceeded by the DPP.

Mine and my interest in the team, speaking to Njabulo specifically, was to say let us look at the issue because we need to do our report and that is why the document never went out. It was in preparation for engaging with that once we received the DPP, to look at our finalisation in terms of what report do I have to do from a
20 compliance report to MPAC and to that, to say that this is what the engagements are, this is how the fraud is covered, this is how the corruption issues are covered and that is the report we did. We have no power to engage with that ...[intervenes].

CHAIRPERSON: And nothing at all, nothing at all about

the recommendation which concerns something that was within the remit of the municipality, the recommendation to discipline. Completely silent on that.

ADV BEHARI: Chair, because that was a process in terms of the directive by IPID to the Chief of Police for the disciplinary process. That would have been accepted, would have continued that way. My interest was then to look at then what is our reports in terms of compliance. One of the delegated functions is for me to report on
10 compliance of noncompliance issues to council and to the Mayor and to the City Manager. So those are the functions I was looking at from the criminal aspect.

CHAIRPERSON: I suggest again that you were not in the least bothered by that recommendation because you knew that, *ag*, this does not bother us. It is within what we can do within the municipality that does not bother, and we know what we are going to do about it, which is nothing.

ADV BEHARI: Chair, I was not aware, I do not know where that process has taken or what. I was not involved in that
20 HR process or the issue of Mapiyeye in terms of the IPID report. I did not accept there was going to be nothing because mine was focussing on the other aspect.

That departments there, they are responsible for that. They got a directive on the disciplinary process, and they ought to have done that. It is not about me knowing

that there was going to be nothing. Mine was to say that this is what my purposes are. I was very clear to DH and Zulu, let us look at these charges because they will have to be a report from me to council to deal with those issues.

CHAIRPERSON: I find it strange, I find it, this is one document from IPID. It deals with the criminal process which has been referred to the DPP, and then the recommendation to IPID. You have instructed Mr Zulu to deal with this, and he is assisted by Mr Makhwiting on that
10 document.

I do not understand this thing about that document being completely silent on the issue about the recommendation to discipline, because if in your mind that was an issue that had to be attended to by Chief Mapiyeye, I would have imagined that this document should have said so.

We have dealt only with the criminal process because I, as the head of legal, Mr Behari, believe that the recommendation to discipline falls within Chief Mapiyeye,
20 and that he is going to attend to that. So I am going to be silent on that. This document does not say. It is just silent on that.

ADV BEHARI: Chair, it is silent on the disciplinary process because the directive came there from IPID. The parties who it was addressed to, the Chief of Police, to continue

with that process. Mine was only focussing on the criminal aspect. Hence it is silent in that document that we did not want to cloud the issues about, we seem to be attacking the finding or the directive on the disciplinary process. Ours was purely to do the report on the fraud and corruption, to make the findings once the Khanyi had confirmed, because he did give us an undertaking to confirm once the evidence is finalised. And then we could have included that in my report to MPAC and the council.

10 **CHAIRPERSON**: Thank you.

ADV BALOYI SC: Mr Behari, this letter or this report from IPID, what suggestion does it contain?

ADV BEHARI: Chair, I have already said the document was not finalised. It WhatsApp snot finalised ...[intervenes].

ADV BALOYI SC: No, no, I am not asking about a finalised document. Your letter at paragraph 11 says:

20 “Respectfully, the suggestions of IPID, given such material omissions and failure to thoroughly investigate, risks the City in any further processes herein.”

The question, which raises the question, what suggestions did you see contained in this IPID document?

ADV BEHARI: Chair, we focused on the issue of the DPP.

ADV BALOYI SC: Is that a suggestion? Did you consider

it a suggestion?

ADV BEHARI: There is two aspects to it, Chair. If you are saying to me, if you are saying to us in the City, proceed to discipline, proceed to discipline. When you say then, however, so when we looked at the documents and the word term suggestion, of course, it could have been another word used. Hence the document was never finalised, it was never sent out. It was still in its draft form to deal with it ...[intervenes].

10 **ADV BALOYI SC**: Ja, no, let me stop you. Where is the suggestion? Your letter says the suggestions of IPID cannot be given effect to. They risk the City, you say, in any further processes. My question is, in this IPID document, what did you consider to be a suggestion in this IPID document?

ADV BEHARI: As I said, Chair, we have not finalised the full report. The suggestion was used at that stage when they drafted the document. Now, when we had finalised, towards finalising a proper document in terms of addressing
20 after we received to Khanyi, we would have dealt with it. For me, the issue was, you are saying in the recommendations this is the process for ...[intervenes].

ADV BALOYI SC: Can we agree the IPID document contains no suggestion to you, to the City?

ADV BEHARI: Chair, there is no suggestion. Hence I am

saying this document was not finalised.

ADV BALOYI SC: No, no, I think we will go quicker, Mr Behari. Can we agree this letter, this report from, or this communication from IPID does not contain a suggestion to the municipality?

ADV BEHARI: Chair, the first part of that read initially openly it was a directive.

ADV BALOYI SC: It is an instruction.

ADV BEHARI: If I look at the titling of the document.

10 **ADV BALOYI SC:** What do you want me to look at?

ADV BEHARI: The titling of the document was a clear directive. It says to proceed with disciplinary.

ADV BALOYI SC: No, it is not the title. There is a summary of allegations, which is paragraph 1 which summarises, and then paragraph 2, case docket contents, and then that reads:

“In terms of section 30 of the IPID Act,
read with a SALGA disciplinary
procedure, you are hereby directed...”

20 Yes, is that what you are looking for? You are hereby directed to initiate.

ADV BEHARI: Yes, yes.

ADV BALOYI SC: Yes, that is an instruction. It is a direction to the City.

ADV BEHARI: It is an instruction?

ADV BALOYI SC: Yes, it is an instruction.

ADV BEHARI: Ja.

ADV BALOYI SC: It is not a suggestion.

ADV BEHARI: No, no, no, no.

ADV BALOYI SC: Okay.

ADV BEHARI: The second part, and I am trying to find my document.

ADV BALOYI SC: Ja, you can find it. The second part in page 103, under the heading IPID recommendation, it says
10 that:

“IPID recommends that disciplinary steps be taken.”

And then it then carries or concludes:

“However, docket is referred to DPP for decision.”

And then the conclusion:

“IPID awaits your report relating to when the disciplinary actions were instituted and how the matter was finalised to
20 enable the institution to comply with the provisions of section 30(c) of the IPID Act.”

And my question is, where in these paragraphs do you read what you refer to as a suggestion in your letter?

ADV BEHARI: We were still looking into the latter part on

page 103.

ADV BALOYI SC: Which latter part? Where it says the docket is referred to the DPP for decision?

ADV BEHARI: No, above that.

ADV BALOYI SC: Sorry?

ADV BEHARI: Above that.

ADV BALOYI SC: Above that it says:

10 “Based on the above information
 contained in the case docket, the IPID
 recommends that disciplinary steps be
 taken.”

ADV BEHARI: Yes. So, Chair, where it was clear at the outset the directive comes through, so that was clear, we accepted that. Now when we came to the second part we were dealing with then, what is the implication, why would you have it necessary? If you are saying to us as a City, we recommend that you proceed with the disciplinary, then say that. Why was it then to come and say that however the document has been referred to?

20 So we were still looking at that, Chair. That is why we did not finalise the document, to get the additional information. So that is why I am then saying that ...[intervenes].

ADV BALOYI SC: So you wanted IPID to give you what they gave to the DPP, so that you do what with it?

ADV BEHARI: No, Chair. The issue was if you are recommending disciplinary.

ADV BALOYI SC: Yes.

ADV BEHARI: Recommend it.

ADV BALOYI SC: They have done so. It is very clear, they have directed and they have recommended in the concluding paragraphs.

ADV BEHARI: The aspect of then however, however, what must I? So you are saying to me I am recommending, I do
10 not want to go to definitions of how we understood it, but it just means it gives a different – for me it meant that the word however actually contradicts what was being said.

ADV BALOYI SC: No, it does not. You see, you cannot read this document selectively. The concluding paragraph says you must submit a report. So clearly in this paragraph and consistent with the recommendations, the direction and the recommendation, the concluding paragraph says you must submit a report about the disciplinary process. Now your letter does not say anything about that.

20 It does not say we cannot submit a report to you because we are not running a disciplinary hearing, so your concluding paragraph we are not going to be able to meet it. In fact, your letter says the suggestion you make after all these material omissions, your suggestion, right, will create problems for the City. I am still to hear from an

answer from you, what in this three-page document did you consider to be a suggestion from IPID?

ADV BEHARI: Chair, in looking at for our purposes, the report for IPID on the disciplinary process will come from a different entity. It will come from ...[intervenes].

ADV BALOYI SC: No, no, I have heard that. There is no value in ...[intervenes].

ADV BEHARI: So when we ...[intervenes].

ADV BALOYI SC: Sorry, Mr Behari, and I do not mean to
10 be disrespectful to you. You have said that repeatedly. I am asking you a simple question because on my reading of these three pages, I do not see a suggestion. I do not understand it to contain any suggestion, so that is where my question comes from. Help me see like you, what did you consider to be a suggestion from IPID in this letter?

ADV BEHARI: Chair, on the issue of the criminal aspects and the last page 103 of that document, I am saying that on the one hand you are saying we recommend disciplinary processes. However, now what does mean is, should we
20 now hold off on the disciplinary ...[intervenes].

ADV BALOYI SC: No, Mr Behari, I am sorry ...[intervenes].

ADV BEHARI: Chair ...[intervenes].

ADV BALOYI SC: No, Mr Behari, I am sorry. We have only so much time. You repeat the same thing over and over. You have not – it is simple. You can point me to a

line which you consider to be a suggestion. I am not asking you for an explanation. I have read the letter. I do not see any line in there that amounts to a suggestion, and I am simply asking you, please point me to where you say it is a suggestion from IPID. It does not require explanation. If you want to say to me that however, docket is referred to DPP for decision, you consider it a suggestion, it is what it is. But I am asking you, point to this letter, point a paragraph, a line, and say that is where the suggestion is.

10 **ADV BEHARI**: Chair, in page 103.

ADV BALOYI SC: Yes, 103, okay.

ADV BEHARI: So, mine is to say that when we read the document, but if you say we recommend disciplinary, say it and stop. And then you want to report on disciplinary, that is it. But when you are saying to me, however, it is sent to the DPP, it may just be an interpretation at the end of the day, but it has come to us. That is why we never finalised that letter. It was never sent out because we were still dealing with it.

20 **ADV BALOYI SC**: Okay. Let me, one last try from me. Did you, where they say we recommend, the IPID recommends that disciplinary steps be taken, is that what you consider to suggestion?

ADV BEHARI: The recommendation part, read together with ...[intervenes].

ADV BALOYI SC: No, no, no. Remember, it is me who is trying to understand your evidence. So, and so my question is formulated so that I can understand what it is you are saying. It does not help to say more if that is not what I am trying to get clarity on. Am I to understand you to be saying in that paragraph where it says IPID recommendation, that paragraph is what you understood to be a suggestion, or it is a suggestion you are referring to in your letter?

ADV BEHARI: Chair, as I said, we have not finalised that
10 letter. So we are talking to a letter that we still have to look at the full content of it. At that stage, when they use the word suggestion, it looked at as if they were not certain in terms of, by the use of the word however.

ADV BALOYI SC: Okay.

ADV BEHARI: So the directive on that is important. It goes through that HR process and so on. The report asks for the HR to say whatever you want with that. But from a criminal aspect, dealing with purely with the DPP, that is where our interest was, and dealing with that issue, and Mr
20 Khanyi, tell us what ...[intervenes].

ADV BALOYI SC: So what did you understand to be the suggestion in that paragraph?

ADV BEHARI: I understood to be as they proceed with it, the recommendation is to do this and dealing with the Khanyi and the criminal process. However, it is the DPP's

instructions ...[intervenes].

ADV BALOYI SC: No, sorry. IPID recommendation is the heading. It says we recommend disciplinary action, and then it concludes, however, docket is referred to DPP for decision. What do you consider to be the suggestion in this paragraph?

ADV BEHARI: Chair, on the first part of the letter, it is a directive issued by IPID.

ADV BALOYI SC: To institute disciplinary proceedings?

10 **ADV BEHARI:** Disciplinary action.

ADV BALOYI SC: Yes, in that paragraph.

ADV BEHARI: In that paragraph.

ADV BALOYI SC: Yes.

ADV BEHARI: You are now coming to the latter part of that in the same report.

ADV BALOYI SC: Yes.

ADV BEHARI: And you say now we recommend. We are recommending disciplinary action, which is the difference really from directive ...[intervenes].

20 **ADV BALOYI SC:** And you have said that has nothing to do with you, it is an HR thing.

ADV BEHARI: It is an HR process.

ADV BALOYI SC: Okay, so we are sorted with the first part. You are not concerned with HR, and so not concerned with the disciplinary action. That leaves us now with

however docket is referred to DPP for decision. Is that the part that you say is a suggestion? And it has to be because it is the only part that is remaining under IPID recommendation, which has nothing to do with disciplinary action.

ADV BEHARI: Chair, the disciplinary action part in the directive, the document must be read holistically. So the first part, you are directing to say we are directing the disciplinary process be taken. So that will be covered
10 between Chief Mapiyeye and HR. But then you go back in the same document, and you now come and say the recommendation. So it is a softer approach to a directive. And then you have to come to the issue and say that furthermore, however, and that is why it could have been interpreted to be a suggestion. Hence, we do not finalise the document, Chair. We do not finalise it because there were other information before we give a proper document out.

ADV BALOYI SC: Okay, all right. I guess I cannot take it
20 further, at least not this afternoon. Thank you, Chair.

CHAIRPERSON: Ms Segeels-Ncube?

ADV SEGEELS-NCUBE: Thank you, Chair. Yes, Chair, we will resume tomorrow at 09:30.

CHAIRPERSON: Yes.

ADV SEGEELS-NCUBE: Thank you, Chair.

CHAIRPERSON: Mr Behari ...[intervenes].

ADV BEHARI: 09:30, thank you, Chair.

CHAIRPERSON: We are adjourned, and please be here before 09:30. So we may start at 09:30 tomorrow morning.

ADV BEHARI: That is fine, Chair.

CHAIRPERSON: Let us adjourn.

INQUIRY POSTPONED TO 10 FEBRUARY 2026

INQUIRY ADJOURNS
