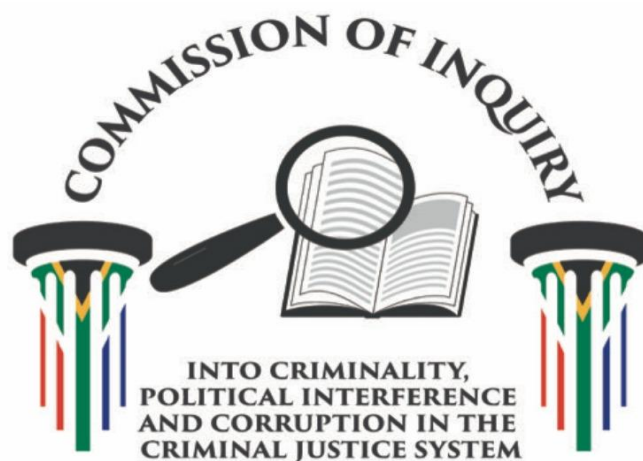


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

10 FEBRUARY 2026

DAY 57



PROCEEDINGS HELD ON 10 FEBRUARY 2026

CHAIRPERSON: Good morning, Ms Segeels-Ncube.

ADV SEGEELS-NCUBE: Morning, Chair.

CHAIRPERSON: Good morning, Mr Behari.

ADV BEHARI: Good morning, Chair. Good morning, Commissioners.

CHAIRPERSON: Thank you.

ADV SEGEELS-NCUBE: Thank you, Chair. Chair, before we begin, we had stopped at PN19, which is PN19 from Mr Nciza's statement, which was the IPID response letter. But just before we deal with that, there is some housekeeping. A document has been added to the supplementary bundle. I have discussed it with Mr Behari and given him an opportunity to consider the document, and he has done so. And that document appears in the supplementary bundle at pages 87 to 91. 86 to 91. It is an email trail with a draft document attached to it, Chair. We will deal with it in Mr Behari's evidence shortly. 86 to 91, supplementary bundle. Mr Behari, as I said, we were busy with PN19, which was the 13 December 2023 letter addressed to IPID, which you had indicated in your evidence had not been sent to IPID. Do you recall that?

ADV BEHARI: I do.

ADV SEGEELS-NCUBE: And Commissioner Baloyi had dealt with some aspects of ...[intervenes].

ADV KHUMALO SC: Just a moment. Do you see that we are struggling to find our files? Just bear with us.

ADV SEGEELS-NCUBE: My apologies.

ADV KHUMALO SC: Sorry about that. It is supplementary bundle, page?

ADV SEGEELS-NCUBE: Page 86 to 91.

ADV KHUMALO SC: Thank you.

ADV SEGEELS-NCUBE: Thank you. And now, this was the IPID response, which you had indicated was not actually
10 sent to IPID. If we can go to your statement, which is at paragraph 181, where you deal with this aspect. On page 30, we can start on 179 on page 37, which is the alleged improper involvement in the draft response to IPID dated 13 December 2023.

ADV BEHARI: That is correct.

ADV BALOYI SC: Sorry, which page are we looking at?

ADV SEGEELS-NCUBE: His witness statement, Commissioner Baloyi, page 37.

ADV BALOYI SC: Mr Behari's?

20 **ADV SEGEELS-NCUBE:** Yes, Mr Behari's statement.

ADV BALOYI SC: Okay, and paragraph ...[intervenes].

ADV SEGEELS-NCUBE: Where he – paragraph 179, where he deals with the alleged improper involvement in the draft response to IPID dated 13 December 2023.

ADV BALOYI SC: Thank you.

ADV SEGEELS-NCUBE: Now, we will deal with the contents of the letter later, but at 179 you deal with what the allegation is against you that the letter was improperly disputing IPID's findings relating to alleged fraud and corruption, and that the allegation is that that conduct was unauthorised or intended to mislead, which you deny. I am interested in dealing with paragraphs 181, 182, 83, and 84, which I discussed with you just before we convened here today. At 181, you say:

10 “The City Manager requested that the legal services department to prepare a draft response acknowledging receipt of the report and addressing certain technical issues that IPID had not clarified.”

And then you deal with what those issues were. And at 182, you say:

20 “I initiated the drafting of a preliminary internal response. The draft was intended for the City Manager's consideration and was not intended to be finalised or dispatched until IPID clarified certain outstanding matters, as Mr Osborne Khanyi promised to respond when he received instructions from the

DPP.”

Then at 183:

“The draft stated that aspects of the report were vague, pending prosecutorial decisions, and that the City required clarity before taking further administrative steps. It did not reject IPID's findings in their entirety, nor did it attempt to shield any official from accountability.”

And then 184, which is the paragraph that I want to stress:

“Importantly, the letter was never sent to IPID. It remained an internal draft and was withheld precisely because the City had not yet received the necessary clarifications from IPID regarding the confidentiality classification of the report and the prosecutorial status of certain matters.”

20 Now, you will recall that yesterday in the supplementary bundle, I had informed the Commissioners that an additional document is to be added. And if we can go to that bundle, supplementary bundle, page 84? This is a document, an email, that the Commission obtained from the City and it was from Ms Naicker. And it is an email from you on

Thursday, the 7th of December 2023, to Ms Naicker. No subject, and it says:

“Hi, Linda, please see revised letter for MMC. Advocate Zulu will submit comprehensive report later.”

And then if we go to page 85, there was an attachment, a Word attachment. That Word attachment had this one-pager which said draft for MMC and it had the details of the recipients that the letter was being addressed to, being the
10 director of investigations and information management of IPID and Mr Xulu, senior investigator IPID. And the subject is Boksburg CAS 262/03/2023, corruption, fraud and corruption. It has got a CCN number and it says Julius Doctor Mkhwanazi.

Now, if you look at that first page and you then go to PN19, which is an attachment to Mr Nciza's statement. It is page 344 of his bundle, PN19. Do you have it, Mr Behari?

ADV BEHARI: Ja, I am there.

20 **ADV SEGEELS-NCUBE:** Can you keep both documents open and can you read the first paragraph of the draft for MMC and confirm that that first paragraph is consistent with the first paragraph in PN19, which is the document that you said was an internal draft document. Can you read that one paragraph that appears on page 85 of the supplementary

bundle? Do you have the supplementary bundle, page 85?

ADV BEHARI: Yes. Must I read it out?

ADV SEGEELS-NCUBE: Yes, please read it.

ADV BEHARI: The supplementary bundle talks to a document:

10 “I refer to your memorandum, 1
September 2023, addressed to the Chief
of Police, the Ekurhuleni Metropolitan
Department. This report was submitted
to me during a meeting called at the
office of the Executive Mayor. Despite
the manner of your approach being
irregular, having excluded the HOD, HR,
and City Manager as accounting officer, I
nonetheless received the report in
annexures.”

It is the same that is contained in the 344, which is the
...[intervenes].

ADV SEGEELS-NCUBE: Yes. And it says:

20 “I have since referred the report for
consideration and implementation of the
findings.”

So this document, that one-pager, was sent to the MMC,
and that MMC would be Masuku, is it not? Community
Safety.

ADV BEHARI: That is correct.

ADV SEGEELS-NCUBE: Now, your evidence was that this document, PN19, was an internal document intended only to be for internal purposes. Did you consider MMC Masuku to be part of the internal process?

ADV BEHARI: Not at this stage, ma'am. MMC Masuku would have been, the internal would have been for us at legal, but MMC Masuku is overall, because she is overall in charge. Then she would be then, apart from legal, she
10 would be the next link, yes.

ADV SEGEELS-NCUBE: Okay. Then there is another document on page 86, and then I will ask you to address the Commissioners on your version in your affidavit. Page 86 is another email that, which we have just included in the bundle this morning and which I discussed with you. It is an email from Ms Linda Naicker on the 30th of November 2023, and it is addressed to Keletso and to Maureen. You are CC'd, one of the people that are CC'd on this letter. And the subject says forward draft response, and it says:

20 “Dear Keletso/Maureen. Reference is
 made to the meeting held with EM and
 MMC, amongst others on 09-12.”

Which I assume to be the 12th of September:

 “Attached hereto is the draft to be placed
 on MMC's letterhead, followed by her

signature, and transmitted to the
addressee.”

There was an attachment, and if you go to the attachment, it is the next page, page 87. The top of the page says draft for MMC. It has the addressees being the two IPID representatives, and it has the exact same subject matter as PN19, which you said was an internal document not intended to be sent.

And so, if we go then to page 91, we extracted the
10 properties of the file to see who the author was, and it has your name there as the author of this document. Now, having regard to this email and this letter, which I submit to you, the letter from page 87 to 90 is the identical letter to what is PN19, but for the signatures at the end.

On page 90, there are no signatures, and on your document, which you said was never sent, is the signature of your two juniors. That this document was intended to be sent by the MMC to IPID, and we know that it was never sent, but the intention was for it to be sent based on the
20 email that we have. In light of that, do you want to reconsider your version in your statement where you say that it was never intended to go out?

ADV BEHARI: I think, if I look at these paragraphs 182 to 184, and in light of the additional information provided this morning, there was always an intention to send out a report

to IPID. At that stage, I received a report from the divisional head to say it was never sent to us, but clearly the intention, as you point out now, and having looked at the matter, was clearly a document in its final form, which could have went from the City side or from our side to the City Manager, to the City Manager to MMC, and MMC to IPID. Yes, I will accept that.

ADV SEGEELS-NCUBE: You will accept what?

ADV BEHARI: I am accepting that it is a document that
10 was ready in the stage to be sent out externally.

ADV SEGEELS-NCUBE: I think we want you to accept more than that, that your version from paragraph 182 to 184 is false.

ADV BEHARI: I am not sure if it is to the extent of false, ma'am, but I am saying that when, before I came to the Commission, I ascertained from my divisional heads, did the document go out, and we were told no, but you are correct in terms of what is being said now, because on the 30th...

ADV SEGEELS-NCUBE: Mr Behari, just look at paragraph
20 184 of your statement, page 38:

“It remained an internal draft and was withheld precisely because the City had not yet received the necessary clarification from IPID.”

It was not withheld, it was sent to the MMC to append her

signature and put it on her letterhead. How do you reconcile that with being withheld? All that you knew was that it was never sent, but the intention on the 9th of November when that email is sent is for the letter to be sent.

ADV BEHARI: The intention on the letter of the 30th, or the email from Linda Naicker was to say to the intention to be sent, I agree. So when you say it was false, I mean, that is where I am trying to reconcile myself in terms of, 10 importantly, if I look at 184, importantly, the letter was never sent to IPID. It remained an internal draft, and now when I look at it, but it was, if I correlate it back to the letter or the email of the 30th of November, clearly the intention was to send it. So let me make the concession and say, okay, it was contrary to that, if it is false, in terms of what I said in 184, I accept that, and ja, I will accept it from there.

ADV SEGEELS-NCUBE: And then paragraph 185 of your statement:

20 “The allegation that the draft represented
an official stance by the City is
incorrect.”

It is not incorrect, that was a position that was the official stance by the City because it gets sent to the MMC to put on her letterhead to sign and to send to IPID. That must be

their official position.

ADV BEHARI: I agree.

ADV SEGEELS-NCUBE: Now, you obviously were aware of these emails because you copied in on that email that I had shown you. Why did you not address that in your statement at the time when you were preparing this?

ADV BEHARI: At the time of preparation of the statement, the last conversation I had was with my divisional heads, and they confirmed that the document had not gone on, not
10 gone out.

I did not have these documents, I could not access these documents, and hence I would have maybe put that in my statement had I had access to that, because as of the 2nd of December when I received these documents, the statements and all the evidence bundles, I tried to access all my emails and I could not access this because there was an incident where my emails were being deleted. But I do not want to make too much on that issue. This year, as I have seen it now, I accept that it is a document generated
20 by myself, and it had – so I did not have insight into this when I did my statement.

ADV SEGEELS-NCUBE: And when did you first become aware that the letter had never been sent to IPID? Because it suggests that when it is sent to the MMC to put on her letterhead and to sign it, that it would be sent. And for

some reason, it was not sent. When did you become aware that it was not sent?

ADV BEHARI: There was another email that, the only trail I could get, there was an email sent out by Divisional Head Makhwiting to IPID. That would give me a timeline. Because a few days before I asked him has that been sent out, because I saw the signature, I saw this document here in 344, which was signed by them. And I asked him, has it been sent out? So timeline-wise, I cannot give you the
10 exact date, but there is an email that went out. I will try and track that, and I can see. But it should have been only last, was it last year? I think it was only last year, ja.

ADV SEGEELS-NCUBE: Okay. So the letter seems to have served two purposes. One is for the MMC to send it to IPID, and for some reason, it was not sent. But then there must have been a second reason, because if we look at PN19, where it had draft for the MMC, it now has Office of the HOD. And so this is now, it appears to be a document that would go out from your office.

20 **ADV BEHARI**: Yes.

ADV SEGEELS-NCUBE: But then it is worded as I referred to, so there is one author. But if we look at page, the signatures on page 348, it has your two juniors.

ADV BEHARI: Yes, ma'am. As I said, the document, after initially receiving the IPID report, engaging with that, I did

hand it over to my divisional head, Zulu. So between him and Makhwiting, they then drafted the document. I was not around when he was signing the document on the 13th of December.

I only, after that, when I enquired as the matter came out onto the opening to resuscitate the Mkhwanazi matter, I asked him, but how far away was that? And then he told me, no, it had not gone out. He provided me a copy of the document, and that is when I am saying, but yes, it is
10 I. If I had the time to discuss it with him, I would have been the author ordinarily, or the secondary person signing overall. It will come then from the divisional head who drafted the document, and then I would have signed.

ADV SEGEELS-NCUBE: So you do not know why PN19 was signed by your juniors, and you do not know who it was sent to, because it must have been signed for a purpose.

ADV BEHARI: No, I am not aware. I know from the signature itself, but I did not finalise this document on my side. I enquired about this after becoming aware last year,
20 and then I was told, no, it has not been sent out yet, but there was always an intention to send it out to the office of the MMC.

ADV SEGEELS-NCUBE: And is there a reason why the election was made for the response to IPID to go out under the name of the MMC Community Safety? Why not under

the City Manager?

ADV BEHARI: The report came through to the Mayor and the MMC. So the MMC was involved, and she said, because she will communicate that to the IPID's office because we were asking, but if you look at the addressee in the IPID, it was the Chief of Police. City Manager would have been in the office to send as being overall in charge of the Chief of Police. So we listened to Linda, and so the communication was to Linda Naicker to look at the MMC, and then between
10 them, to liaise and see who would be sending off the document.

ADV SEGEELS-NCUBE: Well, you must have known that the decision was made, or you made the decision that the MMC must send it out because you send the email to Linda Naicker saying, for the MMC, here is the draft for the MMC. You do not say, here is the draft for the City Manager. You are sending it to Linda Naicker, who is the City Manager's PA, is that not so?

ADV BEHARI: That is correct.

20 **ADV SEGEELS-NCUBE:** And she must send it to the MMC, not to the City Manager.

ADV BEHARI: Yes, because of the way, most of the reports, forensic reports or regulatory body reports come to the office of the City Manager. This went specifically to the Executive Mayor and the MMC. The Executive Mayor gave

that to the MMC, so that is why the trail then was to go back to the MMC, and if the MMC said, no, no, I want it as an administration, she would have referred. So it would have been between the City Manager and the MMC.

ADV SEGEELS-NCUBE: I want to suggest to you that the MMC was, the decision was made for it to go under the MMC's name in order to disguise the fact that it was really the City Manager's position, but she could not officially put that as her position. The letter was protecting
10 Commissioner Mkhwanazi. It was defending the allegations of fraud and corruption against him, and she did not want her name under that letter.

ADV BEHARI: Chair, I cannot, to the extent of what is described here, but I cannot discount that as well, but the instruction was to give it to – my engagements were with the MMC's office, Mr Mapiyeye, and I have engaged with the MMC as well on the issue. But I cannot discount the fact that the City Manager did not, decided not to do that, but I was in direct communication with the MMC, especially
20 because it came through the political side.

One of the issues that the City Manager was very annoyed about was why was this report gone to the Mayor and the MMC, and it could have been then directed that way to the MMC's office. So since you received it, you deal with it, but I will just follow the instructions. I engaged with the

MMC, I engaged with the City Manager, and then I said send it to the MMC, hence the letter said to Linda to send it to the MMC.

ADV SEGEELS-NCUBE: Okay. We can move on then to deal with the next aspect, which is the contents of the response on PN19.

ADV BALOYI SC: Maybe before you do that, just to clear my confusion here. Mr Behari, the PN19 letter is dated the 6th of December 2023. And then in the supplementary,
10 these new documents in the supplementary bundle, at page 84, that is your email to Linda Naicker. That email is the 7th of December. And then you say:

“Hi, Linda. Please see revised letter for MMC. Advocate Zulu will submit the comprehensive report.”

So, and what you attach, I think what you have discussed with Ms Segeels-Ncube is page 85 is what was attached to that letter. So, and if that is so, on the 7th of December you send this draft at page 85. And the very last sentence of
20 that letter says:

“I have since referred to the report for consideration and implementation of the findings.”

This is on the 7th of December.

But on the 30th of November, still in that supplementary

bundle, at page 86, on the 30th of November you have prepared a completely different draft, which this is on the 30th of November. You have prepared a different draft, which Ms Segeels will discuss with you the contents of, but this is the one that ends with you do not accept the suggestion of IPID, and then you say to IPID to please respond within the next 10 days.

And that letter, again, would have come from the MMC, at page 87, so it would have come from the MMC.
10 So, on the 30th of November it is a completely different posture to one taken on the 7th of December, which says it will be implemented, and still coming from the same MMC. And then we know from PN19 that it is, again, a completely different letter on the 6th of December. Can you just explain what was going on here?

There seems to have been a decision not to comply, and then there is a decision to comply, and all of it comes under your hand. So you must have thought about it in a certain way.

20 **ADV BEHARI:** Commissioner Baloyi, thank you for that. If you look at document page 86, which is a letter from Linda Naicker.

ADV BALOYI SC: Sorry, page?

ADV BEHARI: Page 86 of the supplementary.

ADV BALOYI SC: Ja? This is on the 30th of November,

your email.

ADV BEHARI: 30th of November, yes.

ADV BALOYI SC: This is Linda Naicker's email.

ADV BEHARI: Linda Naicker's email.

ADV BALOYI SC: Ja?

ADV BEHARI: To the PA of the MMC.

ADV BALOYI SC: Yes.

ADV BEHARI: References made to a meeting held with the EM and MMC, amongst others, on the 9th of, or 12th of
10 September. Attached thereto the draft to be placed on the MMC's letterhead. So that was a document that was drafted in that draft form, but it correlates to, exactly to the document PN19. Thereafter, there were some revisions that were to be placed, and hence, in the email from myself to Linda I sent on the 7th of December:

“Hi, Linda. Kindly see revised letter for MMC. Advocate Zulu will submit a comprehensive report.”

That was the end of where I was there. Then on the 6th of
20 December there was a letter ...[intervenes].

ADV BALOYI SC: A day before.

ADV BEHARI: A day before.

ADV BALOYI SC: A day before you send a draft that says, from the MMC, that says:

“I have since referred to the report for

consideration and implementation of the findings.”

ADV BEHARI: Yes.

ADV BALOYI SC: Because maybe let me just explain what I am trying to clarify. It is the PN19 letter, which is the 6th of December, it is not an implementation of the findings, as you will discuss with Ms Ncube now.

ADV BEHARI: No.

ADV BALOYI SC: It is a challenge of the IPID report, and
10 yet, and unless I am reading it wrong, and yet on the 7th of December the letter that you attach says I have since referred the report for consideration and implementation of the findings. So, if page 85 in the supplementary bundle had gone out to IPID, IPID would have been under the impression, was being given the impression that its findings are being implemented. That is the impression it was being given in this draft that you are sending on the 7th, right? Do you agree with me?

ADV BEHARI: It certainly looks like that.

20 **ADV BALOYI SC:** Yes, and yet on the 6th, your office, the day before, has prepared and sent out what you say is an internal document, has sent out a document that is not implementing the IPID report. So, there is this impression, worrying impression that it seems there was an intention to mislead IPID to say we are implementing when, in fact, the

internal document clearly was not intended to implement.

ADV BEHARI: Chair, I just want to give a part where you said we are implementing.

ADV SEGEELS-NCUBE: It is on page 85.

ADV BALOYI SC: It is 85, the very last sentence.

ADV BEHARI: But to correlate that back to the, trying to get it back to the first document here.

ADV SEGEELS-NCUBE: The first document is on page, is emailed on the 30th, page 86, 30th of November, and that
10 document is to be found 87 to 90. You are the author, as we can see from 91. That document is identical to PN19. That was sent on the 30th of November. The document that Commissioner Baloyi is asking you about is on page 85, which was sent on the 7th of December, which is a one-pager that effectively says we are considering and implementing the findings of IPID.

And there is a difference of seven days. So, the 30th of November you send the long letter where you rubbish IPID's findings, but on the 7th there is a one-pager
20 where you are effectively communicating that there is going to be an implementation of the findings. So, the question is what brought about the change? Is it because the MMC did not agree with the letter that was sent to her on the 30th of November where she had to sign and put on her letterhead?

ADV BEHARI: No, Chair. We did not – I am trying to see

if this – this should have been a full document. I mean, the 85, there is – I do not think there was any other additional documents. It is just the one page. And I agree, it says here, I have since referred the report for consideration and implementation.

That is from the MMC. It was an earlier document that I have referred, she would have said I have referred the document for consideration and implementation, and which she would have done already when we had the
10 meeting for, the initial meeting. So, there is no dates and so on. And so, it is what I am finding, but the intention of the MMC, because the report was given to her and to the Mayor, would have been to respond to IPID and say I have since reported to fulfil her functions.

Her report would have gone to the City Manager to implement. City manager then would have, so this document of the 6th of December would have been drafted then for the purposes of – so it is an engagement to Linda to say that Advocate Zulu will do a comprehensive report,
20 but there is something that I am missing in it. I cannot have it in a two line, but there was never intention to – it did challenge the contents of the IPID report in terms of its year, to sign on the 13th of December. So, that is the timeline I am trying to wrap my head against.

ADV SEGEELS-NCUBE: Well, the 6th of December letter,

the letter that is dated 6 December and signed by your juniors on the 13th of December, was obviously drafted prior to the 30th of November when it was sent to the MMC. It was sent to the MMC as a draft for her to append her signature and put it on her letterhead. The wording of that letter at page 87 to 90 is identical to what is your juniors signed.

So, the draft was obviously prepared before 6 December, because what you intended to do was to send
 10 this to the MMC. Then on the 7th a different draft is sent by you to Linda to communicate a different instruction to the, or a different letter to the MMC saying, here is the revised letter for the MMC. And Commissioner Baloyi wants to know why is there a revision, and a substantial revision. We have gone from a four-page document to a one page of saying, we are going to implement the findings.

ADV BEHARI: Chair, the one-pager, as I said, I would not have – in ...[indistinct] only had a one-page of document to implement the findings. Hence, I do not know where the –
 20 and what is before me, of course, is, I cannot dispute this now. But, in terms of what I – there is no document where, even this document is unsigned, or there is no indication of any – who is, you know, who has drafted this document. But it would have been more to the – but I hear, I have since referred the report for consideration and

implementation. That would have been then an initial assessment, I believe, to the IPID to say that, then there were the follow up documents that would have been drafted in this regard.

I am not aware, as I said, I do not have the full documents on that one page. This, it seems to be an unfinished document. But ...[intervenes].

ADV SEGEELS-NCUBE: Mr Behari, can you go to page 91, which is the document properties of the long letter, the long
10 draft, which has your name as the author? Do you see the title of the document? Draft for MMC IPID Makhwanazi [sic], just as you pronounce his name, Mkhwanazi with the A. 23-11-2023. So, the document was drafted on the 23rd of November 2023 by you. It is then sent as a draft to the MM, to Linda to send to the MMC on the 30th of November for her to put her signature and send it to IPID. She does not do that clearly, because on the 7th of December you send a different letter to Linda to send to the MMC, which effectively says we are implementing the findings. It is not
20 a difficult trail to follow.

ADV BEHARI: Counsel, the page 91 refers to the author, for me authoring the document on page 87. That is a full document here, which is different from the one-pager.

ADV SEGEELS-NCUBE: Yes, that is what we are saying. The one-pager is not an incomplete document. It is only

missing her signature. It has got the addresses. It does not have a date, but is a complete letter. The report for consideration and implementation of the findings. All that it needs is her signature.

And you do not even say in the letter that you send to, the email that you send to Linda on page 84, you say please see the revised letter. You do not even refer to it as a draft letter. You say the revised letter for MMC. Then you say Advocate Zulu will submit comprehensive report
10 later. And I submit to you that that comprehensive report is PN19, because the MMC did not want to send PN19.

She did not want to put a signature on it. You change the letter on her instruction, most likely, and then you drafted PN19 as the report to IPID. This was the City's report. This is the comprehensive report that is being referred to on page 84.

ADV BEHARI: The one on page 84?

ADV SEGEELS-NCUBE: Yes, you converted the long document, page 87, into a report because the MMC did not
20 want to append her signature to it.

ADV BEHARI: Chair, the MMC at all stages in the discussion, and if you look at the – let us look at the page 85, Chair, if I may. The opening part is just the same. The issue is – and as I am saying, I am worried about this not being a full document. I have never seen a document, even

when we – that is a one-pager deals with this now.

I have since referred the report for consideration, yes. That was in a draft form. I do not know what the content of it is, but the MMC at all stages, because she was engaged in terms of referring to and reporting back to IPID. We drafted the document, but we did raise the concerns. Now, this document here of the 6th of December would have been the full report that would have been sent to the MMC's office and to the IPID.

10 Now, I ascertained from the divisional heads on the 13th, or who signed on the 13th, that this document never went out, but I see here, please see revised letter from MMC, for MMC Advocate Zulu on the 7th of December, and that is where perhaps I am struggling a bit, but there was never a document that was – as I said, I do not have a full document here, the 85 one.

I have never done any document in this time. The trail that you are referring to on page 91 refers to the other document on page 87, which then seems to be the one
20 document that comes over, is the page 87 document, the draft there to MMC, is the same document here with 344, PM19, which has the issue of the office of the HOD.

So, there was clearly an intention to send this through to the IPID. We drafted the document, but I ascertained from internal staff, it never went out to IPID.

And I do not know what was the reason for that, but from ...[indistinct] this document here, and then transposed it would have been – and even there, it does not come from the office of the HOD. I would not have sent out a document.

So, these are some of the issues I found that after the – I became aware of this, in fact, only last year, when I should have been more prudent and followed up and said, where is the documents? Why, you know, why have we not
10 sent it out or whatever it is? But that was never done, but it was not for – and I say the one-pager, I cannot for the – either no email trail for that, or trail for the document preparation for that one-pager as well. I am just checking if there is something again.

ADV BALOYI SC: Ja. Mr Behari, I am not sure what it is you are questioning about the one-pager. I mean, your draft which you admitted, which is at page 87, which was supposed to come from the MMC, that is a long letter, that later becomes PN19.

20 **ADV BEHARI:** Yes.

ADV BALOYI SC: It does not have a date and it does not have a signature at the bottom. So the fact that the one-pager does not have a date and it does not have a signature at the bottom must be irrelevant, because you have admitted page 87, which lacks a date and it lacks a

signature.

ADV BEHARI: Ja.

ADV BALOYI SC: So that cannot be a distinguishing factor for debate, or that creates uncertainty just because the one-pager does not have a date and it does not have a signature. You admit you sent the email to Linda at page 84, and you call it a revised letter. So it is a different letter to the one at page 87.

And here is what I suspect, or what I want to
10 suggest may have happened, and Ms Ncube will take it further if she wants to. You start off with the letter that you own, that page 87, the long one. You take ownership of it. That is where you start off. It is supposed to go out in the name of the MMC. Either you had a change of heart, so according to you, even before I get there, as far as you know, in fact, on the face of it, you have transmitted it to Ms Naicker. It has been transmitted.

And you then either have a change of heart, or the MMC refused to sign and append her signature to send out
20 your long letter. That is why you send a revised letter. So the MMC would have said I am not sending this out. You are going to implement, and so you do the one-pager.

But having decided to do that, you and the City Manager have agreed already before you sent the email of the 7th, have already agreed you are going to handle things

differently. That is why you have PN19 now coming under the heading of office of the HOD. It is no longer the MMC.

So the change is not only what is being conveyed to IPID, that conflicting positions that are being adopted, but in fact what was originally intended to be sent by the MMC now comes from your office, not the MMC. That is the plan.

And so it seems to me that the intention was to convey different things. The MMC would have
10 communicated if all of these had gone out, the MMC would have said to IPID we are implementing. And your department, in collusion with what the City Manager wanted to be done, would in fact be debating with IPID what they have said you must, what they have directed you must implement. That is what it looks like.

ADV BEHARI: Commissioner, I hear the trail of what your thought is. I am just saying, on the document which I agree was, 87 was a draft for MMC. This document of the office of the HOD, I am not sure what was the understanding with
20 it. I only became, I said last year, when I looked at it and enquired about it when the matter resuscitated, what has happened. Because I spoke to Njabulo Zulu, initial instruction was to him to say look at this, look at the criminal aspects on those issues, as I covered yesterday.

So only I uncovered that later on, that it was signed

by Thabo Makhwiting as acting HOD. The rationale for having the office of the HOD, the office of the HOD will never deal with that document. So that is why the content of the letter, I accept, the content of the letter I accept was drafted by my team.

I read the content of the letter and it did pick up on the issues of – and I think what Chair said yesterday also, you know, I reflected on that. It is looking like as if we are attacking a charge against an employee. And you know, I
10 have reflected on that and very clearly, it does look like that.

And to go here, my only concern is, Chair, is that page 85 of the supplementary bundle, I have never will draft a letter in this fashion. As I said, is there some kind of a trail, audit trail to show that I was the author of this? Because I do not know if it was created, but I am saying that I will never draft a letter in this fashion. I have never done that.

Even if you look at the other drafts, such that we
20 speak about please respond and I will send it to Linda and then once they agree on it, they will put in whoever needs to be done, even the MMC. But I will not do something like this and I do not recall ever having done this document.

ADV BALOYI SC: Ja, well, your email says it is a revised letter. What would you have revised? What would have

been the revision? That at least you must remember because you wrote this long letter and then you say, I have now revised the letter, find attached. What would have been the revision?

ADV BEHARI: But, Chair, on the email, that is what I am trying to say, please see the revised letter. Is it this document itself that was attached? I do not see an attachment on that document.

ADV BALOYI SC: I am asking you. Well, it has to be
10 because you say:

“Please see revised letter to MMC.
Advocate Zulu will submit a
comprehensive report later.”

So it has to be the same subject unless you produce other documents. But as matters stand, it has to be. And so my question is, if you are sending a revised letter, what would have been the revision? What would you have been saying in the revised letter?

ADV BEHARI: Well, Chair, the revised letter would have
20 been to say that, as I said, I cannot see the attachment, but let me not, for the sake of – I cannot see the attachment or the proper document here. If this is a revised letter, it does not seem to me a document I would draft on its own, standing on its own. It could be a letter just for the MMC to have written to them to say we are implementing. And then

subsequent to that, there would have been another letter prepared for the MMC or the City Manager, depending on the arrangements for it to go out.

But if it said that this is a revised letter, I do not see an attachment on the email which would normally be there, but let me – I do not want to take it further. Let me just say the MMC would have said, and the MMC did indicate from the beginning that she wanted to, we must implement the report.

10 **ADV BALOYI SC:** You say she did indicate that she wanted implementation of the IPID report?

ADV BEHARI: That is correct.

ADV BALOYI SC: Okay. So I think with that now, then 85, page 85 would make sense then. If she had indicated to you that she wants to implement, then that last sentence in page 85 ...[intervenes].

ADV BEHARI: It will make sense.

ADV BALOYI SC: It makes sense.

ADV BEHARI: It makes sense. Save for me on the other
20 stuff. I think it would make sense.

ADV BALOYI SC: Ja. All right. That last sentence says, you remember that first paragraph where you have agreed it is exactly the same as the first paragraph in PN19 and in your long letter. And then the last sentence I am referring to says:

“I have since referred to the report for consideration and implementation of the findings.”

That is the last sentence in that one-page letter that would have come from the MMC, but drafted by you. And what I am saying is then that last sentence that I have just read now is then consistent with what you are saying, that the MMC did indicate to you that you wanted the report to be implemented.

10 **ADV BEHARI**: Ja.

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

CHAIRPERSON: Sorry, sorry, Ms Segeels-Ncube. Mr Behari, you say you would never have written a letter of the nature of what is on page 85. For argument's sake, not that I am accepting what you are saying, but for argument's sake, give us what you wrote because you must have written something. You write the email to Ms Linda Naicker and you say, please see revised letter. If what is attached
20 to that email or appears to be attached to that email is what you say you would never have written, give us what you wrote because surely there must have been something that was attached to your email to Ms Naicker. Give us what you attached.

ADV BEHARI: Chair, that is where my concern

...[intervenes].

CHAIRPERSON: Which was revised and therefore no longer the long letter. Give us what you attached.

ADV BEHARI: That is why, Chair, I am saying that in the document for me to Linda, usually when you attach a document, there is an attachment on that. I do not see it here and I cannot at this stage even give you any other document for that. But so that is it, hence I am saying, let me accept that the MMC, the attitude was to implement.
10 Hence, I will support what was said here in the document. But I know that I do not normally usually write, unless it is a – I will do the full document and I will do any additions, any parts that need to be edited in the document itself, but this seems to be just to, by the MMC saying we will implement. Then there were subsequent reports thereafter. But as I said I ...[intervenes].

CHAIRPERSON: I am not sure that that answers me, but I will leave it, yes.

ADV SEGEELS-NCUBE: Thank you, Chair. Mr Behari, it is
20 probably my oversight because I did not think that we would have to have this debate about that document, but I do have the original email and I am going to flight it for you so that you can see. And we will include it in the bundle. This is your email on the 7th of December 2023 at 13:01 to Linda and there is the attachment:

“Hi, Linda. Please see revised letter for MMC.”

And then if I go to the attachment which I have opened now, that is the one-pager, do you see it?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: It is just a one-pager. That is the actual attachment. And then unfortunately I need to save the document in order to get the properties. And if I click on the document properties and I go to summary, the author
10 is Kemi Behari. And if you look at the title, it says draft revised letter for MMC IPID Mkhwanazi KB, which is your initials, 07-12-2023. Does that assist you in any way?

ADV BEHARI: It does. It does. Then the 07, so it was done after this document here was drafted. So it would have just been a single document to say, are we implementing?

ADV SEGEELS-NCUBE: Yes, that is what we have been saying the whole time is that it was revised after the ...[intervenes].

20 **ADV BEHARI:** I have the, at least I have the comfort of having seen this here. I could not – I know that ...[intervenes].

CHAIRPERSON: You see, I never understand that. I never understand that. Why should your testimony be tailored in accordance with what you see or do not see? Should your

testimony not be what actually happened?

ADV BEHARI: Chair ...[intervenes].

CHAIRPERSON: I just, I do not understand that, Mr Behari.

ADV BEHARI: Chair, my testimony is on what I can recall. It is what I can recall from that time. So when I spoke, or when I looked at what ...[intervenes].

CHAIRPERSON: I am very sorry, Mr Segeels-Ncube. Yes, yes.

10 **ADV BEHARI**: So when, in looking at the additional bundle now, 85, okay. If this was then just a part that would have been, then it means that only the opening paragraph would have been there. And it is incorrect from what is contained in the finalised PN19.

CHAIRPERSON: So it was incorrect for you to say you would never write a letter like this. We see that you have. So it was incorrect.

ADV BEHARI: It is incorrect.

CHAIRPERSON: Yes. Yes, Mr Segeels-Ncube.

20 **ADV SEGEELS-NCUBE**: Thank you, Chair. Commissioners, I will be guided by you whether we need to go through the contents of the letter because I think we dealt with the contents in a different context when we dealt with the ...[intervenes].

CHAIRPERSON: No, no, please, please, please do. I am

sure they also have quite a number of parts circled in that letter.

ADV SEGEELS-NCUBE: Okay. Thank you, Chair.

CHAIRPERSON: I think it will be the first part.

ADV SEGEELS-NCUBE: Mr Behari, I do not have too many questions about this letter, but as you heard, Chair does. Insofar as the contents is concerned, so we are on PN19, which is the one that says office of the HOD, not the draft. At page 344, which is the introductory paragraph.

10 **ADV BEHARI**: Yes.

ADV SEGEELS-NCUBE: You seem here in paragraph 1 to admonish IPID for the way in which they address the letter to the City, because you say:

“This report was submitted to me during
a meeting called at the office of the
Executive Mayor.”

So it must, you are clearly drafting it on behalf of somebody who was at that meeting and we know you initially were not in that meeting:

20 “Despite the manner of your approach
being irregular, having excluded the
HOD, HR, and City Manager as
accounting officer, I nonetheless
received the report and annexures.”

I want to understand why you are taking that position with

IPID when your evidence yesterday was that the letter was addressed to the Chief of Police and he had to address the response hereto. Why are you taking issue with the fact that they are addressing it to the Chief of Police but using it as a way to escape the fact that you were not involved in the response on the disciplinary proceedings aspect?

ADV BEHARI: Chair, the issue is not about the addressing of the Chief of Police. The issue is with the entrance into the City of the documents. Regulatory body reports come to
10 the office of the City Manager, and for implementation, it deals with administration. This went into the political space in terms of the Mayor and so on.

So that is where the issue was raised. And that is where, in terms of what CM says, but how are we implementing a report not addressed to us, but went to the political sphere? And that is where this part comes from, Chair.

ADV SEGEELS-NCUBE: But there is nothing wrong in them addressing it to the Chief of Police because is he not the
20 person that is supposed to, as you say, deal with the discipline of Brigadier Mkhwanazi, and they are proposing, in fact, they are directing a disciplinary process?

ADV BEHARI: It is not, the addressee on the document is not the issue, Chair. It is the entrance into the City, where it usually comes to the City Manager as the accounting

officer, this went through to the political space with the Mayor and the MMC, and that is where the query was about why did he go there? Is it for them to get involved, or should I get involved? So that is where the question is posed by the City Manager, hence this was drafted in that way.

ADV SEGEELS-NCUBE: No, I do not accept that, and I think the reason why you did take issue with it going to the Chief of Police is exactly because of what Chair said to you
 10 yesterday. The allegations are that you were part of a clique that was trying to protect Brigadier Mkhwanazi. The Chief of Police is on the other side of that equation. If the document goes to him, he is now aware that IPID is investigating the matter, and a response is needed for IPID, and you do not want him to be part of that process, and that is why you are taking issue with the way that IPID is dealing with this.

ADV BEHARI: Chair, I do not support that. Chief of Police was aware. If the document was addressed to him, he was
 20 aware, and I think he was made aware, and he had the response for what is required. The issue here is about why the difference, when all regulatory bodies, whether it is SIU or whoever else comes to the City Manager, why the difference in this particular matter? If it was to say, no, we do not trust the City Manager, they should have said that

some way, but why the difference? And that is what the issue was.

It was not about the addressee being the Chief of Police. It should have been addressed to the accounting officer if it is dealing with that, but Chief of Police is the – there is nothing wrong with that. The issue is not with him and whether he has knowledge or not, but that is not the issue. The issue is the entrance into the City.

ADV SEGEELS-NCUBE: Then if you go to page 345 of the
10 letter, and it ...[intervenes].

ADV BALOYI SC: Ms Ncube, maybe before you do that, if you could just remind us, either you or Mr Behari, this thing that we are dealing with in that paragraph 1, is the IPID letter addressed to the Executive Mayor, MMC? Who was it addressed to?

ADV BEHARI: It was addressed to Chief Mapiyeye.

ADV BALOYI SC: Yes.

ADV BEHARI: But it was sent through, the routing was not to the administration. It was to the Mayor and to the MMC.

20 **ADV BALOYI SC:** I see.

ADV BEHARI: So, I think that is where the concerns were on that.

ADV BALOYI SC: No, I just wanted to be reminded of what happened, in fact. Thank you.

ADV SEGEELS-NCUBE: Okay. At 344 paragraph 2, you

then deal with the allegations of fraud and corruption, and you say:

“I have consulted with internal staff and I am advised that based on the current evidence, it will be difficult to prove fraud and corruption. Your report attaches little or no value to the statement of Director Mkhwanazi (suspect).”

Now, you would remember the engagement that you had
10 with Chair about Director Mkhwanazi's statement. You say to IPID it attaches no value to that statement. If, as Chair says, if it actually, if they attached any value to that statement, is he not effectively admitting to corruption and fraud based on his statement?

ADV BEHARI: On his statement, I accepted it yesterday that it clearly is a case of corruption and fraud. Ja, but to what extent was we going to that? Not corruption so much that we could find, even on fraud. That is why I advise
...[indistinct] look at both the elements of fraud and
20 corruption and trying to link it, link it to the statement from the IPID, all the witnesses in the IPID, as well as that of Mkhwanazi.

So, this is basically drafted then to look at what were the possible issues for us would be going forward in implementation of that. So, it was not to say that, and

again, to come back to having considered what Chair said yesterday, it could be looking as if we were putting on a defence. And I say, and I accept that that could have been the way it is now being looked at, but it could be we are putting a defence, but if it is for implementation by the City, we need to look at how we can cover all the bases.

ADV SEGEELS-NCUBE: No, the paragraph starts by saying it will be difficult to prove fraud and corruption. Then you say:

10 “Your report attaches little or no value to
 the statement of Director Mkhwanazi.”

What you are effectively saying is you have not considered his version, or you have not put sufficient weight on his version, because if you did, you would have the same view as us that it will be difficult to prove fraud and corruption. You are not saying what you have just said now. In this letter, that is not what you are saying.

ADV BEHARI: Is it possible that we can go back to, because as I said, this was drafted by myself and initiated
20 by me, just finalised by Advocate Zulu. Is it possible at all to go back to that statement of Mkhwanazi in terms of what you are referring to here? Is it possible that we could look at in terms of what are the assessments done?

ADV SEGEELS-NCUBE: You want to go to Brigadier Mkhwanazi's statement?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: I think also before we go there, so that we can understand how much involvement you had in this draft report, because I do not want a situation where you will then try and disavow yourself of having been part of a particular paragraph or statement by saying that Mr Zulu was the drafter of that paragraph. So maybe if you can tell us what aspect of this letter you had actual involvement in, and also you must have approved this letter when you sent
10 it to the MMC.

ADV BEHARI: Chair, when the report came through initially, we went through the report and I asked Advocate Zulu, look at the fraud and corruption part. This is what our interest was. And thereafter, this document was drafted by Advocate Zulu. And there was a draft in terms of all these elements that we had a discussion on it, and I agreed on the definitions in terms of fraud and corruption, and did it meet what was contained in the IPID report. Hence, it is drafted in this way. So my involvement was initially to hand
20 over to Advocate Zulu to look at this particular issues, but I then familiarised myself with the entire report, and which I supported.

CHAIRPERSON: And you supported it?

ADV BEHARI: Ja. But the final signed document, Chair, I only, as I said, when I followed up last year, that is when I

realised that it was signed by another divisional head acting in my stead, and it never came back to me to finalise, but I supported the document.

ADV BALOYI SC: Just to be clear, the signed version is exactly the same as the one in the supplementary bundle, the one that you sent. Okay, that is one. Two, when you say you support it, you are not qualifying your involvement with the letter or the acceptance of its contents, because it goes under your name. It goes out from you. So you must
10 have agreed with everything that is in it. It reflects your position as well, not just the two signatories.

ADV BEHARI: Chair, at the time when it was signed by Makhwiting, I had not, as I said, it was signed when I was not in the office.

ADV BALOYI SC: Yes.

ADV BEHARI: That was the process between Njabulo Zulu. My initial phase was look at the fraud and corruption aspects and draft it. I subsequently looked at the content, and I supported the content ...[intervenes].

20 **ADV BALOYI SC:** Because it does not differ from the one that you prepared and sent to the MMC.

ADV BEHARI: No, it does not.

ADV BALOYI SC: Okay, thank you.

ADV SEGEELS-NCUBE: Thank you. So what is it that you want us to do, Mr Behari?

ADV BEHARI: It is about Mkhwanazi's statement, where he referred to it was difficult to prove fraud and corruption. Your report attaches little or no value to the statement of Mkhwanazi. So I am just going to check if we can just go there onto his statement.

ADV KHUMALO SC: What is it about Mr Mkhwanazi's statement that you want us to look at?

ADV BEHARI: Chair, the statement to the IPID. I just wanted to look at exactly what was said. I cannot refer to
10 my own copy, but I want to look at the statement just to address this issue. Because why would we then put something like that you attach little or no value to the statement of Director Mkhwanazi? There must have been something that would have led to us.

ADV KHUMALO SC: Because in the statement to the Chief of Police, he refers to both memoranda and he says the said memoranda has not been signed or approved. So that is the CAT one. And then the Medi24, sorry, on the donations, he says:

20 “This process is awaiting our finalisation of all the formalities through the Chief, including the guidance process that must be followed for the finalisation of the memorandum of understanding.”

So he accepts that the two memoranda have not been

signed and approved. So I am not sure what you want us to look at.

ADV BEHARI: Chair, I just want to look at the IPID report and the statement to say where would have been that we would have mentioned that it states that the IPID report in terms of fraud and corruption attaches little or no value, just to, from my side, address the part. So if I have a look at it quickly to say, why would it be that we would have raised such an issue to say it raises no value to the
10 statement of the Director Mkhwanazi?

ADV SEGEELS-NCUBE: Okay, I think I understand what you are saying. You want to look at the IPID report to see what they say about fraud and corruption and whether they took his statement into account and why you responded in the way that you did.

ADV BEHARI: The statement of Mkhwanazi in the IPID report.

CHAIRPERSON: Sorry, sorry, I am coming to your assistance, Mr Behari. Let us please assist Mr Behari. Let
20 us direct him to where the statement is. My co-commissioner, Commissioner Khumalo, has it. So that he may have a look.

ADV SEGEELS-NCUBE: Chair, I also understood Mr Behari to say he wants to look at the IPID report here where they suggest, where they speak about fraud and corruption and

why he would then say ...[intervenes].

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: Okay. So the IPID report is the one, JM19, which is page 101 of Mr Mapiyeye's annexures. And then Commissioner Khumalo will give you ...[intervenes].

CHAIRPERSON: Ja, will assist with that.

ADV SEGEELS-NCUBE: Yes, Brigadier Mkhwanazi's statement.

10 **CHAIRPERSON**: Yes, but whilst you are at it, Mr Behari, once you find the statement, I want you to show us where in that statement we are to find the sort of exculpatory material that would have led you to say your report attaches little or no value to the statement of Director Mkhwanazi and you making the point in the context of a suggestion that it will be difficult to prove fraud and corruption. You can only say that if in the statement that you now want there is that sort of exculpation. I hope you will show us where that exculpation is.

20 **ADV BEHARI**: Thank you, Chair. That is the purpose ...[intervenes].

CHAIRPERSON: Because it is pointless for you to say little or no value is attached to that statement if that statement does not show the sort of exculpation that says it will be difficult to prove fraud or corruption.

ADV BEHARI: Yes.

CHAIRPERSON: You get my point?

ADV BEHARI: That is what I am trying to get at.

CHAIRPERSON: So let us wait for you to find the statement and let us see you show us that exculpation.

ADV BEHARI: So, Counsel, did we find that, what Mapiyeye's bundle, let me see the bundle here.

ADV SEGEELS-NCUBE: 101, JM19, 101 is the IPID report.

ADV KHUMALO SC: Just so that we use the same bundle.

10 I was looking at the Revo Spies bundle, but I have now looked at the Mapiyeye bundle. In the Mapiyeye bundle is JM15 on page 88.

ADV BEHARI: 15.

ADV KHUMALO SC: So, just so that we use the same file and not different files.

CHAIRPERSON: I will give you enough time for you to go through it and show us what you wanted to show us and also show us what I have asked you to show us.

ADV BEHARI: Okay. So on page 88, Counsel, is this the
20 letter that Mapiyeye – was there not also an affidavit that Mkhwanazi did in the IPID when IPID spoke to him?

ADV SEGEELS-NCUBE: Not that we are aware of. The IPID report simply speaks about Commissioner Spies having conducted a preliminary investigation. It does not speak of them having interviewed Brigadier Mkhwanazi at all or

obtaining a statement from him, unless you are aware that that did happen.

ADV BEHARI: So if we are referring to this document 88, I just want to see if I may, even if it is five minutes, just to try and see, because I do recall there was an affidavit where IPID was ...[intervenes].

CHAIRPERSON: What did you say about five minutes? I am sorry.

ADV BEHARI: If I may just look at some other information,
10 because I do recall there was a document where IPID ...[intervenes].

ADV SEGEELS-NCUBE: I think there was a warning statement that you are referring to. We do not have that.

ADV BEHARI: You do not have the warning statement?

ADV SEGEELS-NCUBE: I think there was the warning. Is that what you are referring to?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: You would have seen that. Okay.

CHAIRPERSON: We will give you five minutes. We will
20 adjourn. In fact, we will come back in when we are told to come back.

ADV SEGEELS-NCUBE: Thank you, Chair.

ADV BEHARI: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Behari, I hope that gave you enough time.

ADV BEHARI: I am indebted to you, Chair.

ADV SEGEELS-NCUBE: Sorry, Chair, I just wanted to establish if Mr Behari got his document back from the attorneys.

ADV BEHARI: Yes, I have.

ADV SEGEELS-NCUBE: Okay, thank you.

CHAIRPERSON: Yes, Ms Segeels-Ncube.

10 **ADV SEGEELS-NCUBE:** Chair, if we may hand up the A13 statement of Brigadier Mkhwanazi, which formed part of the IPID docket, which was provided to us by Mr Behari. We will do the pagination and all the necessary after. Thank you, Chair. And I would propose that we put it in the supplementary bundle as the last document. Yes, Mr Behari.

ADV BEHARI: Thank you, Chair. We were at the part where we state that your report attaches little or no value to the statement of Director Mkhwanazi. Chair, the document
20 then that we considered was in the IPID report itself and not the one on page 88. We looked at the report itself, not the one on page 88, which is a letter from JD Mkhwanazi to the Chief of Police.

The document is titled – it is basically the warning statement Boksburg with CAS number 26203/2023, obtained

as at – was signed as of 21 July 2023, Chair. And Chair, the considerations and why we asked – because in that IPID report, we asked him to look at – attaches little or no value. So, we could not see any reference to the sworn affidavit by Mkhwanazi.

And the content of that sworn affidavit, if I go through paragraph 4 of that, Chair, which talks about his appointment by the Chief of Police, Mzolo. Five, when he assumed his acting in the said post, he was given certain
10 tasks. And then he correlates that to the tasks being on – I am not sure what page, but there is a document to-do list dated 15 October 2021.

In that document, Chair, on the last – so if it is a copy from mine, there would have been highlighted parts as well in that document. It is due date for SOP from security division and all 20 October 2021 reports mentioned there. So that is why it was – when we considered that. And furthermore, the report does not talk to – see the to-do list marked Annexure 2. So, these were to-do lists given to him
20 by Mzolo and for him to continue to finalise that. And in that to-do list, I think 5.10 says:

“Finalise standard operating procedure
on security division by 20.”

So, then it goes to the see memorandums marked number 3. Memorandums I wrote as part of the administrative duties. I

included the memorandum dated 18 October 2021, which served to confirm working relations between EMPD specialised in a company called CAT VIP Protection. Working relations was within the powers of the deputy Chief of Police under that operation. So, working relations, which I confirmed in my capacity as an acting chief, consists to exist until today.

CHAIRPERSON: Please refer to paragraph number so that we follow where you are reading.

10 **ADV BEHARI:** Paragraph 7.

CHAIRPERSON: I do see it is paragraph 8 that you just added.

ADV BEHARI: Paragraph 7 and then it goes on to paragraph 8, Chair.

CHAIRPERSON: Yes.

ADV BEHARI: Then see 2022 operational plan. So, at that stage, it says:

20 “Plan of the task designated for VIP and CAT VIP. Now subsequently we have heard that the operational plan was evidence to that to say it was a forged document. But this is a document considered by Mkhwanazi in a statement to IPID, which starts with the working relations between EMPD specialised

services and CAT VIP Protection came at no cost to the municipality. And as such, partnership would help to get CAT VIP Protection to earn recognition in the security industry to members of the public.”

That is the profile. And then next page, paragraph 10:

“Subsequent to the confirmation letter 18/10, duty shortage of operational cars.”

10 So that is basically what is contained in the other report as well:

“As an acting deputy Chief of Police, I approached CAT VIP to seek assistance in the form of donation of cars. The response from CAT VIP was positive, after which a memorandum of understanding was proposed. And then CAT VIP would donate four vehicles.”

And that, of course, that is a repetition of what is contained
20 in the other document. Then, Chair, there is an email from Goodman Mzolo to Julius with the to-do list attached. So, these are the documents we consider, Chair, when we look at what was in the IPID report itself. We did not look at any way it referred to this document, which was part of the interview process. It concerned that whether this was taken

into account, whether he had done any further investigations from there, did they discount what he said in that regard? So that is what the line of thinking was when we said:

“Your report attaches little or no value to the statement of Director Mkhwanazi, who is the suspect in this document here.”

Then we went on, Chair, going back to annexure page 87.

10 **ADV KHUMALO SC:** Mr Behari, can I stop you?

ADV BEHARI: Yes.

ADV KHUMALO SC: You made us adjourn for 30 minutes, and Chair made it clear to you when we adjourned that the purpose of you looking at this document was to show us where it says what you say. I mean, the sum total of this document is that the MOU was never finalised. That is what he says in paragraph 12, and then that MOU is attached as one of the documents, and it is unsigned. That is all this says.

20 **ADV BEHARI:** Chair, when we started dealing with the matter and we came to this part here, I was referred to page 88, which was a letter in another matter or in the other issue concerning the working relations with CAT VIP. So, we are coming to now the IPID report and the letter that was drafted with regard to looking at the so-called concern

areas in the IPID report.

Hence, I am saying I want to see this to see what it says, and why was our thinking behind the fact that we say that it has little or no value to Director Mkhwanazi's report or response, and that is why we looked at it, Chair. And I know my apologies if it seemed to be wasted, but for me, I needed to see it. It is clearly a document which the Commission had not looked at or possibly had maybe looked at but not had, which resulted in me looking at this
 10 document. I think it is important for that respect. This document linked to the IPID report gives us what the thought process was in completing the rest of the documents.

CHAIRPERSON: You see, the point of substance is that page 345, your letter, and I say your because you basically approved the content.

ADV BEHARI: Yes.

CHAIRPERSON: First line, you make the point, you make the point and says Ms Segeels-Ncube referred to this that it
 20 will be difficult to prove fraud and corruption. Your report attaches little or no value to the statement of Director Mkhwanazi, the suspect. How does what you have just read now, how does it show us that it will be difficult to prove fraud or corruption, if at all?

ADV BEHARI: Chair, in terms of fraud, we dealt with the

elements of fraud in this document.

CHAIRPERSON: No, what you have read, how does it ...[intervenes]

ADV BEHARI: From what I have read is that Mkhwanazi, you were saying that he was responding to or furthering the functions or the duties given to him by the Deputy Chief of Police in Mzolo. In doing that, he proceeded in this regard to say, when I assume my acting responsibilities, he had to finalise, one of the issues he had to finalise at 5.10 was
10 finalise the Semi-Operating Procedure on Security Division by the 28th of October. He then says that:

“In line with the administrative tasks, he executed my duties and designed a SOP and wrote memorandums connected to Security Division documents...”

CHAIRPERSON: Yes, we saw that and we heard you read it. I am asking you a simple question. How does it make it difficult to prove fraud or corruption?

ADV BEHARI: Chair, holistically, from the IPID report read
20 together with this document, and where we say you have not considered what he is saying here, in terms of fraud and corruption, where was the elements crafted here? Yes, so the document is essential to say that, when we say you have not considered it, in here, Mkhwanazi sets out the position, which we looked at to say, but if you are not

looking at it here, without verifying what his position is, and what he says that he was acting on instructions or acting in furtherance of another matter, then that should have been also investigated further to complete your full report. So that is part of the issue. Hence the definitions to the extent of fraud and corruption, linked to fraud and in terms of PRECCA.

CHAIRPERSON: I will suggest to you that that document has nothing that shows that it will be difficult to prove fraud
10 or corruption. There is nothing in that document that shows that. And that is why it is difficult for you to pinpoint for us where the difficulty appears or manifests.

ADV BEHARI: Chair, on page 87, the difficulty to prove fraud and corruption, I have consulted with internal staff and advised on the current evidence it will be difficult. And holistically, one of the first aspects is your report attaches no value to the statement. So that report or the statement was never discussed. Holistically, it has been difficult to prove fraud and corruption, given all the other factors that
20 we have listed here.

And it goes specifically to, if you look at it in respect of fraud, what are the issues we raise? On page 3, in respect of corruption, what are the issues we raise? So, this is why in total, given the four factors we have raised there, and also including the fact of non-consideration of

this or not dealing with this, we raise that it could be difficult to prove fraud and corruption. And hence, that is the, at the time, the undertaking was what we came to check.

CHAIRPERSON: Ms Segeels-Ncube, you were still dealing with the letter.

ADV SEGEELS-NCUBE: Thank you, Chair. Mr Behari, the next aspect on the letter relates to the issue about the benefit. I think it is on page - paragraph 5 of page 345,
10 where you deal with the registration of the vehicles was not done by the suspect but by the authorised personnel from fleet. You see that? I think you have dealt with that aspect with Chair. But later on, you deal with the fact that at paragraph 8, you say, on page 346, that:

“The fraudulently registered vehicles using the city's funds amounted to corruption because Cat benefited unduly. This is not true. The vehicles were not registered fraudulently, as you have said.
20 It is difficult to see how Cat benefited from the registration of the vehicles as they transferred ownership of their vehicles to the city. On the contrary, Cat sustained a loss of the asset while the vehicles were registered in the name of

the city.”

Now, when you take that compared to what Brigadier Mkhwanazi says in his statement, which you were referred to by Commissioner Khumalo in paragraph 12 of his warning statement, where he says:

“The donation of cars, memorandum of understanding, and delivery of vehicles was not finalised as a result of the dissatisfaction by the department EMPD.”

- 10 If it says that the delivery of the vehicles and the donation of the cars were not yet finalised, it means that Cat was in possession of vehicles registered in the name of EMPD.

ADV BEHARI: Chair, the flaw in terms of that part was that the vehicles were registered. They went to, Chris Steyn had given, when the details of the vehicles were brought through, they were registered by Chris Steyn and his delegate or other officials involved in that. And thereafter, Revo Spies, Deputy Commissioner Revo Spies raised and said, no, these are not proper in terms of
20 donations.

They went back, and that is when I think within a day or two, they registered back to CAT VIP. So, in terms of delivery, all the intention was in terms of the donation that was affected was put in place for receiving the four vehicles. The only issue then was, of course, the important

issue was that Revo Spies raised and said, no, the donations are not following the process. Hence, they were returned. And that is our understanding from what is contained in the documentation.

ADV KHUMALO SC: Sorry, why do you say they were returned? What was returned?

ADV BEHARI: The vehicles were returned in terms of ownership vehicles.

ADV KHUMALO SC: No, no, Mr Behari, you are a lawyer.
10 You know how multiple properties transferred in law. If Mkhwanazi has never seen the vehicles, and EMPD or Ekurhuleni was never in physical possession of the vehicles, why do you say they were given to Ekurhuleni and then they were returned? They were never given to Ekurhuleni. What happened was that registration documents were completed, and the cars were registered in the name of Ekurhuleni.

ADV BEHARI: Yes.

ADV KHUMALO SC: But there was never delivery of any
20 vehicles. And those vehicles remained in possession of CAT VIP. That is the factual position.

ADV BEHARI: Chair, I never said that there was physical delivery of those vehicles. I said the changes were given because Mkhwanazi gave the details to Steyn. He registered the vehicles. When I talk about return, I mean

return of ownership, not the physical vehicles. That means they went back and they re-registered the vehicles again out of the name of Ekurhuleni back to the donor. So, there was never any time where I suggested that the vehicles were physically ...[intervenes]

ADV KHUMALO SC: What was the benefit for Ekurhuleni during that time? Between the date when they were registered in the name of Ekurhuleni and when they were registered back to Cat. What was the benefit to
10 Ekurhuleni?

ADV BEHARI: There was no exact benefit at that time. But if you look at the entire intention of the process was for the vehicles, Ekurhuleni to receive four vehicles. It was just a donation. Once the issues were raised and said this is not an acceptable process, had that not been finalised, it would have been a benefit to the system.

ADV KHUMALO SC: So, the benefit is the intention?

ADV BEHARI: The benefit in terms of what was going to happen. Had that process finalised and there were
20 deliveries, there would have been a benefit to the system.

ADV KHUMALO SC: But when you prepare this memorandum, you know that the process was never finalised. So, you cannot look forward and say had it been finalised. You know that it was not finalised when you are doing this response to IPID.

ADV BEHARI: But Chair, it goes to the intention of donating the vehicles. That is covered everywhere else.

ADV KHUMALO SC: No, the intention does not matter, Mr Bahari. When you prepare this report, you know that that never happened. Whatever the intention was, it never materialised. You know that.

ADV BEHARI: Chair, the vehicles were transferred. So, transfer of ownership happened. And then transfer out of ownership happened. The delivery itself would have been perfecting and finalising the process. That never happened.

ADV SEGEELS-NCUBE: Thank you, Chair. Chair, I have no further questions on this document.

ADV BALOYI SC: Can I just ask? This one statement, paragraph 5, it lists the functions that Mr Mkhwanazi, Brigadier Mkhwanazi, says he was tasked. Administrative tasks. That is what he calls it. Which of these do you, and they range from 5.1 to 5.12, which of these did you consider to authorise him to do this transaction of accepting donations, of entering into MOUs with Medicare and CAT VIP?

ADV BEHARI: Chair, there is no one instance to say to him giving you any authority to authorise. In effect, if there was such an authority, you know, there would be.

ADV BALOYI SC: Sorry, I cannot hear you properly. Maybe just move forward a bit.

ADV BEHARI: So, I am saying that in terms of the provisions there, there was nothing authorising him in terms of the functions given to him.

ADV BALOYI SC: Yes.

ADV BEHARI: But overall, the functions were to seem to finalise standard operating procedure on the security division by October 2021. In that standard operating procedures, finalised standard consolidation of comments. So, all of these functions here was what he used to
10 continue to say, I am finishing the orders. So hence I am saying it should have been explored by IPID to say, what exactly were your functions?

ADV BALOYI SC: No, you explored it. That is why you are commenting that he is not guilty. It would be difficult to prove fraud and corruption. It is because you have looked at this. You actually tell IPID that he was authorised. He had certain authority from his superior who was on leave, and he acted in accordance with that. So, this is what you say at 3. You say:

20 “There is unchallenged evidence that the suspect, while acting as deputy Chief of Police, was given powers by Deputy Chief Mzolo to finalise matters relating to the security division.”

And then in the last sentence you say:

“The suspect was duly appointed to the acting position and was empowered to attend to matters relating to the security division.”

Your report does not elaborate on this. And then you say, so before I get to the Chris Steyn matter, now I look at this list of tasks which Brigadier Mkhwanazi describes as administrative tasks, and I think he is right when you look at that list. All of it looks administrative. Which do you say
10 authorised him to do the things that are the subject of the complaint and the investigation by IPID?

And it is not standard operating procedures to accept donations, to instruct Chris Steyn to register those vehicles, to consider an MOU and send it to the Chief of Police for his signature. That is not standard operating procedures. It does not fall under 5.10. And what else in that long list of tasks authorised him to do? Did you consider, when you did this letter and challenged IPID, what did you consider to fall within the mandate that he did?

20 **ADV BEHARI:** We asked IPID did he consider what he said in total. If you look at paragraph 6, in line with administrative task 4.0:

“I executed my administrative duties and designed the SOP and wrote memorandums connected to the security

division.”

ADV BALOYI SC: So, when you say paragraph 6, you mean of the?

ADV BEHARI: Of that annexure that we just attached now, we received now.

ADV BALOYI SC: Yes.

ADV BEHARI: On paragraph 6 of that, after the administrative functions are listed.

ADV BALOYI SC: Okay.

10 **ADV BEHARI:**

“And wrote memorandums connected to the security division, documents which were all escalated to the office of the Chief of Police and relevant external stakeholders.”

ADV BALOYI SC: Yes.

ADV BEHARI: So if you look at that, Chair, and you look at the other evidence there, if it involves the memorandum that we are dealing with all of this, which you say was not
20 legally compliant, not approved by the chief, but it was sent to the office of the Chief of Police and hence I am saying you should have investigated based on what Liesl Tyres mentions.

ADV BALOYI SC: But investigate what? Because the memorandum that he relies on, that he relied on, is

unsigned, and he says so. So, what did you want IPID – what are you criticising IPID for?

ADV BEHARI: Chair, he says here that he was entitled to by way of his acting appointment.

ADV BALOYI SC: And you accepted that this list from 5.1 to 5.12 authorised him to accept donations.

ADV BEHARI: But to do all in terms of ...[intervenes]

ADV BALOYI SC: No, no, no, no, Mr Behari, please try and answer my question. I am asking a direct question.

10 So, I want to know, do you say, and please point me to what it is. I am saying look at 5.1 to 5.12. Do you say anything in that list of 12 tasks empowered him or authorised him to accept a donation of motor vehicles and to get it registered in the name of the EMPD while those motor vehicles remained with CAT VIP? Because that is what happened. We know that is what happened.

ADV BEHARI: Chair ...[intervenes]

ADV BALOYI SC: Are you saying 5.1 to 5.12 authorised him to do that? And which of these tasks do you say
20 authorised that?

ADV BEHARI: Chair, 5.1, if you look at paragraph 6, which talks holistically in his affidavit, in line with administrative task which is 4.10, which is Annexure 2, I executed my= now Annexure 2 talks about doing what he has listed as from 5.1 to 5.12. It refers to 4.10:

“I executed my administrative duties and designed the SOP and wrote memorandums.”

So, I would expect that they did not deal with that in that report.

ADV BALOYI SC: No, forget IPID did not deal with it. You are looking at IPID's report. You write this response to IPID. So, you are engaging IPID. You have looked at Brigadier Mkhwanazi's warning statement. You satisfied
10 yourself that what he did falls within the tasks that are listed in there. Otherwise, you would not say what you are saying in the statement.

You would not say to them fraud would be difficult to prove, right. You would not be saying that. You would not be saying corruption would be difficult to prove unless you have engaged with it and formed a view. And that is the discussion I am having with you. I am testing you because remember, as the Chair told you yesterday, the background to this engagement with you is you colluded
20 with the CEO's, with the city manager's protection of Brigadier Mkhwanazi, who, evidence before us, is he was involved in a relationship, an inappropriate relationship with Mr Matlala and Mr Matlala's company.

That is the context in which we are having this discussion with you. So, you have to be able before us to

explain your own positions where things do not make sense. It does not make sense to me at least that you would look at IPID' letter to the city, which directs you to take disciplinary action, and then you would respond in this long letter, engaging them about proving fraud, the difficulty of proving fraud and corruption, and setting out what the difficulties are with it.

It does not make sense that you responded that way. So, I would like to know from you, the head of legal, 10 when you wrote this response to IPID, what did you see as exculpating Brigadier Mkhwanazi in his warning statement, not what he says? You see the list of tasks? You see paragraph 6 where he says:

“In line with administrative task item 4.10, which is to finalise standard operating procedures, I executed my administrative duties and designed the SOP and wrote MOUs connected to the security division. Documents which were 20 all escalated to the office of the Chief of Police and relevant external stakeholders.”

That paragraph, when you read it in this warning statement and when you looked at the tasks, what did you consider to be exculpatory of Brigadier Mkhwanazi that would make the

corruption claim and fraud claim difficult to prove?

ADV BEHARI: The exculpatory part, Chair, would have been then, in paragraph 6, where he says that the functions allocated to him in terms of 4.10 Annexure 2, he executed his admin functions and designed an SOP and wrote memorandums connected to the security division, documents which were all escalated to the office of the Chief of Police.

ADV BALOYI SC: Okay, so you are saying he is writing
10 the memorandum and escalating it to the Chief of Police was an answer, according to you, to a charge of fraud and corruption.

ADV BEHARI: It is part of the process where he says that I was authorised to do this. I was authorised to do this by my deputy Chief of Police, and I was following up on those instructions.

ADV BALOYI SC: Okay, and you accepted that he was authorised to receive a donation. Because you say, that is what he says, right. So, I am not debating with you what he
20 says. I am saying, he says this in the statement. You accept that he was authorised to accept a donation because that is what the complaint is.

ADV BEHARI: The authorisation, which I spoke to, was about him drafting these MOUs and sending them to the Chief of Police. I want to complete that train of thought.

Send it to the office of the Chief of Police, who ought to have commented and said, but this is not what is on and this is not what is said. So, him, when he states here, he should have been further delved by IPID to say, but what do you mean you have this authority to do that and send it to the Chief of Police?

Then the Chief of Police would be approached for that. Other external stakeholders, we know that would have been Medicare 24, in terms of the trail of emails we looked
10 at. But I am saying that, in terms of that, did you look at the affidavit of Mkhwanazi? Did you consider that? Because he is creating the impression here that he was authorised to fulfil and complete investigations and also inform the Chief of Police to that extent.

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

ADV SEGEELS-NCUBE: Thank you, Commissioners. Chair, I indicated that I had no further questions on that letter. May I proceed to the next issue? Mr Behari, I want
20 to deal with the issue about the change in the delegation matrix, which you deal with on page 9 of your statement, starting at paragraph 37.

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: And we did deal with it to some extent. It is in relation to the 22 August 2023 directive from

the city manager, you recall.

CHAIRPERSON: Apologies. Whilst I was looking for the statement, I did not hear the page and paragraph number.

ADV SEGEELS-NCUBE: It is page 9, paragraph 37, Chair.

CHAIRPERSON: Thank you.

ADV SEGEELS-NCUBE: Recall that we dealt with that, and in particular paragraph 41 on page 11, the 22 August 2023 delegation issue.

ADV BEHARI: Yes.

10 **ADV SEGEELS-NCUBE**: Now, you do not really give a background as to how this delegation matrix came about. Do you recall what transpired just before the directive from the city manager?

ADV BEHARI: Chair, the only issue that I know that was made, I was informed of, I was not part of, there was a meeting between the city manager and the EMPD senior management and staff to address issues that were raised by several employees in that. Thereafter, there was, I think that was on the, look at, I think it is Revo Spies, the
20 Commissioner Revo Spies's bundle.

It was where he attaches the CM meeting EMPD management. That is the only issue. That seems to be the one why the city manager then decided to relook those delegations. But there was also an issue where Mr Nciza had raised, I think it was subsequent to this, that he was

given the delegations by Mojapelo, but I think this was a document, I believe to have been the catalyst in trying to do a letter of the 22 August 2023.

ADV SEGEELS-NCUBE: If you go to Mr Nciza's statement, he deals with it quite comprehensively, what led up to that, according to him, page 24. And Commissioner Khumalo touched on it, I think yesterday, it is the Bhixi-Bhixi issue.

ADV BALOYI SC: Is it page?

ADV SEGEELS-NCUBE: Page 24, paragraph 74 of Mr
10 Nciza's statement.

ADV SEGEELS-NCUBE: Page 24, paragraph 7.

ADV SEGEELS-NCUBE: Yes, page 24, paragraph 74. Do you have it?

ADV BEHARI: Yes.

ADV SEGEELS-NCUBE: Anonymous emails.

ADV BEHARI: I have it.

ADV SEGEELS-NCUBE: Okay, and you see he refers to a date of the 20th of August 2023 when the first email was received from Bhixi-Bhixi852@yahoo.com. And the email
20 was sent to Jeff Wiggs, and Ms Gxasheka, Dr Mashazi, Deputy Commissioner Spies, Chief Mapiyeye, and yourself were copied in on it with the subject line, 'favouritism, corruption'. And the contents of the email were effectively that there is a click that is protecting Julius Mkhwanazi in respect of disciplinary proceedings, which are the

disciplinary proceedings we have been dealing with. Do you recall those emails?

ADV BEHARI: I do recall the Bhixi-Bhixi email.

ADV SEGEELS-NCUBE: Then at paragraph 78 of his statement on page 25, he says:

10 “He saw the email on the morning of the 21st of August 2023. He called Chief Mapiyeye, who indicated that he had not seen the email as yet. And he says, I did not respond and did not have an opportunity to properly consider the email because I was a witness in a labour dispute scheduled to be heard in Benoni that morning.”

At 79, he says:

20 “That very morning, I received a call from Ms Gxasheka instructing me to drop everything and to immediately get to the office of the city manager. He says he pleaded with the arbitrator to release him.”

And at paragraph 80, he says:

“On his way to the city manager's office, I received a call from Mr Tsietsie Majang of Majang Attorneys. And he informed

me that he had received a call from Advocate Kemi Behari demanding that he gets to the city offices immediately. He refused because it was a last-minute demand and he already had other commitments.”

At 26, paragraph 81:

10 “Mr Majang shared with me that from his discussion with Mr Kemi Behari, he gleaned that they suspected a leak of Brigadier Mkhwanazi's charge sheet. Mr Majang was upset because city management had stopped the disciplinary proceedings against Brigadier Mkhwanazi without an explanation to him and yet they were now demanding that he drop everything and come see him. Then he says he went to Germiston and went to Dr. Mashazi's boardroom where Ms
20 Gxasheka, Dr Mashazi, and yourself were all present.”

And he then says:

“Dr Mashazi asked him if he knew the Bhixi-Bhixi and he denied and so you would have read what he says about that

version.”

The important aspect of that is the email is sent on the 20th of August. There is a meeting on the 21st of August. He gets summonsed to this meeting. He is the HR specialist, correct? He is the division head.

ADV BEHARI: Employee relations, yes.

ADV SEGEELS-NCUBE: Yes, and on the 22nd, a delegation matrix directive is issued by Dr Mashazi which effectively transfers all his powers insofar as disciplining
10 employees are concerned over to you. Now, in light of that factual matrix that he sets out, what is your version on how this directive came about? He seems very compelling that it was all designed to protect Brigadier Mkhwanazi.

ADV BEHARI: Chair, to look at the directive of the 22nd of August, and I have said it again, in no way did it take any powers from anybody, even the HOD or elsewhere. It was an added leg in terms of where we looked at and it goes back to the HR to continue with the functions. So, in no way did that directive, it actually gave me more of a burden
20 in terms of now going back and doing a consideration of does it need to go for further investigation, does it need to go for an internal department, or do I recommend to the external tribunal?

There were factors, in fact, from the 17th that have been going on. There was, together with the meeting with

the EMPD, if this was one of the factors, I recall the meeting on the BXB email. There were several concerns. I did call Mr Majang, but not in the manner the way it is put here. I did call Mr Majang and say we have concerns because the charges, charge sheets, which CM did not receive, or the HOD HR did not, and she has been trying to get the charges.

We have concerns that these charges were now leaked or there was a leak in the BXB email, which deals
10 with all of the issues up to the attempted service of the charge, including the full content of the BXB email. So, I had no problem with that respect because I had to, as a division information officer, raise those concerns when the BXB email came through, and we did follow up on that. Now, if he is aligning that aspect to removal of any functions, there was no removal.

If you look at the exact letter, Chair, there was no removal of any functions or anything for him. This created an added leg of my involvement from a compliance
20 perspective as to what was required. I think, Chair, as I was going along further, if I may, it is just one of the first to give full disclosure and treat all the employees, especially at the EMPD. If I looked at the EMPD complaints as well, Mr Nciza's name was mentioned in the EMPD complaints as well.

So, there were complaints brought by various - so you can see clearly at the EMPD meeting, there was a crisis that was involved with the senior management. So, all of this issue in total would have contributed, not necessarily the standalone issue of the BXB email, and in any event, I was not given the overall responsibility to decide anything on disciplinaries. There was never the content as I understood it in the letter.

ADV SEGEELS-NCUBE: In the context with which you
10 understood it, so in the context with which you understood the new delegation matrix, you say that you did not have those powers.

ADV BEHARI: I never had the powers to take over any disciplinary proceedings. The only added leg was there to ensure an added leg of compliance for us to consider what is the evidence available up to even the 1st of July, I am sorry, the 1st of December, I was performing that part as well.

ADV SEGEELS-NCUBE: Can you go to that new
20 delegation? It is PN13 in Mr Nciza's statement, page 311, 311 in his annexures.

ADV BEHARI: Yes, Chair.

ADV SEGEELS-NCUBE: Before we actually deal with the document, can you tell us what was your involvement in the drafting of this document?

ADV BEHARI: I did not draft the document. I was not involved in the drafting. The concerns city manager raised was stemming from the issues at EMPD, which seems to have culminated in this process. So, the BXBX emails came in between that, and that added a further ground to see about how the possible leakage of information at the city is there. And there has been a lot of leakage in most of the departments where we are having then emails that you cannot link or very difficult to trace in terms of who has
10 been dealing with the defamatory material or what other leakage of information, personal information and so on.

So that is where the concern came from the city manager. So, it is in the cumulative part from starting off on the 17th with a meeting, and then I was informed about the meeting, and thereafter the issue of the BXBX email came out, and then city manager came up with this. So, I had a discussion in terms of I was briefed that this was going to be happening, but I was never part in drafting this document itself.

20 **ADV SEGEELS-NCUBE:** Okay, but so you were informed that you would have added responsibilities before the document was communicated to the rest of the team?

ADV BEHARI: Yes, I was informed that I have to add in terms of looking at the evidence issues and so on, and do we sustain a possibility of successful HR matters or any

other disciplinaries in all departments. And that is only because of the high expenditure being spent on labour matters, and especially lost disciplinary proceedings, lost arbitration proceedings.

So that was a measure by this accounting officer to try and stifle that and hold it to say we need an added leg before we even go out there to look at what is the evidence, is there further evidence required, or is it at this stage after the department's investigations. Do we need further
10 evidence?

Can we go on with the department to do its own internal, depending on the seriousness of the allegations, or can we go for a disciplinary tribunal? I would recommend then to the HOD to say I think at this stage we do not need we have sufficient evidence to go on with the disciplinary tribunal.

ADV BALOYI SC: Mr Behari, you say the reason for this is because of the high number and the expense of labour matters.

20 **ADV BEHARI:** Chair, apart from the high number, basically the labour department, there were a high number of lost cases at arbitrations, any other forum. Even the Labour Courts we had to recently try and stem because of more detailed investigation into that. But there was a high turnover of lost cases. And then there was also the

allegations from the EMPD offices. As you can see the clicks, it will tell you in a minute as well.

And that from the accounting officer position, even in terms of the functions it performs in terms of the SAPS Act, it was important that she gets into it. The BXB emails came in thereafter, because in the discussion with the CM and the HOD, there is a whole lot of information or process that are happening, which is exposing and possibly non-ineffectiveness of the EMPD.

- 10 **ADV BALOYI SC:** Okay, now if you look at page 312 of that document, and there are two bullet points at the top, and then there is the next full paragraph. I would like you to look at the paragraph that starts, to usher in. This is where the city manager provides her reasons for this procedure. Can you just read that, and then explain how it reconciles with what you say about the reasons for this development?

ADV BEHARI:

- 20 “To usher in expeditious, credible, consistent, and uniform management of discipline within the municipality. The following persons are hereby delegated to perform the above listed functions, as well as other functions connected therewith, as appears from the collective

agreement, in that regarding to the municipality, city managers authorise representative.”

ADV BALOYI SC: Yes, and your explanation for why this change is brought about, how does it reconcile with what you have just read there?

ADV BEHARI: Chair, my explanation is there was a cumulative proceeding that led, or started off at a meeting, 17th of August 2023, which is about three days before this.

10 And in that document, in that meeting, which is, I am looking at the recording, or the minutes submitted by Mr Spies, but there was a clear indication of a disjoint between factional parties in the EMPD. Now, that is where she looks there and says, and I suggest, to usher in expeditious, that means faster proceedings.

ADV BALOYI SC: Yes.

ADV BEHARI: Credible. Consistent. This credibility and consistency come from the allegations made by EMPD officers in that other document.

20 **ADV BALOYI SC:** So, it has nothing to do with you were losing a lot of labour matters? That is what I want to establish, that this paragraph does not say, I mean, she wrote quite a long letter, and nowhere does she provide the reason that you are providing for this change. She speaks about expeditious, which we, I accept its efficiency, it

speaks to efficiency. Credible, consistent. It has nothing to do with the big number of matters that EMPD was losing. It does not speak to that. And then uniform management of discipline.

ADV BEHARI: Chair, these are terms used in the broader aspect. If you look at credibility and consistency, because in the past they have not been credible.

ADV BALOYI SC: Can we agree consistency, you can talk about credibility, can we agree that consistency has nothing
10 to do with, it is not a reflection. Maybe let me say it differently, there is no reflection whatsoever on losses that EMPD is suffering in the bargaining council.

ADV BEHARI: Chair, we cannot agree on that.

ADV BALOYI SC: Why?

ADV BEHARI: Because it is consistency of the way labour matters are dealt with and linked to credibility. In some matters, and the loss of that was because of several reasons I have been picking up. Sometimes the investigations were not done properly, there were witnesses
20 who were supposed to have been coming through to give evidence at the last minute and pull out to intimidation.

ADV BALOYI SC: That is not a consistency issue.

ADV BEHARI: Chair, I think there is a consistency in respect of what we uncovered at the meeting.

ADV BALOYI SC: No, it is not a consistency issue. You

lose matters not because you are not consistent, you lose because you have a poor case. What you are explaining is preparation, witnesses not appearing. Yes, you will lose cases for that reason, but that is not consistency. It is not a consistency issue.

ADV BEHARI: There is no consistency in the quality of the work done. And there have been matters which I have come across, where deliberately processes were not followed to allow the employee to come back. So, there is no
10 consistency in the quality and the processing of this information. That has led to the weaknesses that we have got.

ADV BALOYI SC: I accept that explanation.

ADV BEHARI: Thank you, Chair.

ADV BALOYI SC: Yes.

ADV BEHARI: Then to go back, and I say it is very important that the content of – so, for me, I was informed after the meeting of the 17th by HOD Linda and city manager to say there are serious concerns at the EMPD.
20 We need to look at that. We need to address the matter because Mr Nciza's name was also brought in as being part of a faction at the EMPD with Spice and Chief of Police Mapiyeye. And the environment was toxic. I think we should have had sight of it. But that is all of the issues which the accounting officer and responsibility with the

SAPS Act. That is where the engagements continued. The BXB emails came in between.

ADV BALOYI SC: No, I am not talking about the BXB emails. That is a discussion between you and Ms Ncube. All I wanted to understand is your explanation for why this came about and what she says, what she gives, what the city manager gave as a reason. I wanted you to just reconcile those, and I am moving away from it.

ADV BEHARI: You are moving away from it.

10 **ADV BALOYI SC:** Yes.

ADV BEHARI: Thank you, Chair.

ADV SEGEELS-NCUBE: Thank you, Commissioner Baloyi. Now, Mr Behari, if you look at where Commissioner Baloyi had left off on page 312 after the paragraph that says ushered, and you look at the steps that the city manager has now said, this is the new process that will be followed. A2 refers to:

20 “Request for allegations to be investigated that must be submitted to HOD Corporate Legal upon determination of a *prima facie* case course for HOD Corporate Legal Services to confirm the allegations, consider the evidentiary matter, and submit a report to HOD Human Resources.”

You would agree with me there that Mr Nciza, as the divisional head, is excluded from this process?

ADV BEHARI: Chair, HOD HR and I had a discussion after that. It was not a request for allegations to be investigated. They are investigated in the departments. That is where the *prima facie* case is established. Yes, the document states that. But, in effect, what was brought in was my role, which I discussed with HOD, was only to receive matters. Even the practise since then is that I do not request for
10 allegations to be investigated.

That is not for investigation. It comes from the HODs. If there is an investigation that comes through, then we will look at that. But we look at the *prima facie* evidence. Request for allegations must be submitted to HOD Corporate Legal. Yes, I have been called in terms of the added leg of compliance to say what are you looking at, what are the allegations, and so on.

Nciza was never removed from the entire process because he was still there after I would report to the HOD,
20 HR. That would be a process for her to take forward. And it is consistent with the system of delegations of the council in terms of our compliance function, my compliance function, and HOD's function from the HR part. So, it is consistent with that aspect in terms of compliance.

ADV SEGEELS-NCUBE: Mr Bahari, words have meaning.

It says request for allegations to be investigated. It does not say that you review. It means that if somebody wants to investigate allegations against an employee, they must come and request from you that those allegations be investigated. So, it means you must approve, they have to request. What is the purpose of a request?

ADV BEHARI: Chair, perhaps, as I said, I was not involved in the actual drafting of this document. Hence, I sought clarity from the HOD, HR afterwards. Because where the party comes from is in a *prima facie* case. That is determined at the department itself after doing the investigations. Where we come to aspect to say, but when I am filing a document, is there further investigation required? Are there internal processes or external processes?

That is where the documents I have been dealing with up to now, after this thing came up. So, I do not go and give allegations. I do not deal with that. The things are dealt with at the departments. If they come and say to me, if it comes from the HOD to say, we want to proceed with this, I look at that and say, please proceed urgently. Those are some of the forms. But it is part of it. But the HOD already is involved in that processing of that. I will look at the evidence and then I will deal with the issue.

ADV SEGEELS-NCUBE: Okay, now as the head of

corporate legal, is there communication in writing from you to clarify this position? Or is there an addendum to this, from the city manager clarifying that, we are not saying that if you want to investigate an employee, you must come and get permission from Mr Behari. That is not what we are saying.

Mr Behari will simply oversee the process and make sure that a proper investigation is being undertaken. Where is that communication? To somebody like Mr Nciza, who, 10 by the way, you will recall, he sent a very comprehensive memorandum in response to this report. And what was your, what did you respond to? Because for you, this does not reflect the actual position or your understanding of what would happen. So where is your response to this?

ADV BEHARI: My response is that, Chair, there is no written memo between me and the city manager. I engage with my colleague, being the HOD, HR. There are instances when the item comes to a format of a said document. I would look at the evidence of stay and what is required for. 20 There were instances when EMPD was sending it to me, even recently.

We want a further investigation. But the chief, or the head of that will say, proceed with the investigation. And then it comes to me, as I would like to say, what else is required. Those are documents I have been signing. So,

there is no formal memo, written memo, but there are discussions between us senior managers to say that, but practically, how would that impact. And then, the *prima facie* case referral is to the HOD of that department.

ADV SEGEELS-NCUBE: Did that discussion of senior managers include Mr Nciza?

ADV BEHARI: Chair, I do not deal with Mr Nciza. It is a discussion that should have been done between him and the HOD of the department. She knows who is dealing with
10 what aspects, who is delegated to what functions. He is the division head of employee relations. He should have been consulted in terms of what are the aspects. I will do that too when I am dealing with my division heads, in terms of how we carry out the other part.

ADV SEGEELS-NCUBE: Okay, then if you look at B:

20 “Appointment of presiding officers and employer representatives to run a disciplinary hearing for more serious offences. That is delegated to the HOD human resources after consultation with the accounting officer, Dr Mashazi. The authority shall be exercised upon receipt of the investigation report with recommendations from the persons listed in A.”

Where is Mr Nciza in that process?

ADV BEHARI: The appointment of presiding officers is nowhere, never been, Chair. And that is one of the issues is the appointment of presiding officers, which is a delegated function in terms of the HOD HR. She is responsible for disciplining across the board. The city manager has the overall delegation, and hence it was crafted in this way.

Mr Nciza would have been taking up from other
10 sub-delegations from the HOD or on the directive of the HOD to say proceed with this or not. But he is not specifically here dealing with this issue. And it depends on, Mr Nciza is not in the, directly listed in the system of delegations October 2017.

ADV SEGEELS-NCUBE: Mr Bahari, just on those two that we have dealt with, can you put yourself in the position of Mr Nciza, who was really the overseer of the first disciplinary proceedings against Brigadier Mkhwanazi that started in February 2023, which comes off the back of a Jeff
20 Wiggs article, correct?

ADV BEHARI: That is correct.

ADV SEGEELS-NCUBE: Jeff Wiggs seems to be a trigger for this as well, because we are talking about the anonymous email. He receives this. How is he supposed to perceive this? He is being excluded from the process. How

can he not see it as an attempt to again try and protect Brigadier Mkhwanazi by excluding him?

ADV BEHARI: Chair, I have looked at the cumulative factors that came and led to this. Mr Nciza, and he is done a long letter. I have looked at the contents of the letter. Mr Nciza was not excluded in the process in any way. He has been the functions which are legally detailed to the HOD was reinstated to the HOD.

Mr Nciza has been acting so far on delegations,
10 which I have discussed was not to have been given in that manner. Nonetheless, it was a return to the delegation functions as per the Systems Act delegations. Yes, you may believe that, but if what has been created here totally, and where I am dealing with one of the issues, is that narrative to say that I am part of the Julius Mkhwanazi clan or click, but if he is going to be using this as well, then I am saying that there were some things that took place before that.

It starts off with the huge complaint by EMPD, and
20 that is where Mr Nciza was also referenced by certain officers as being part of a click, and that is where you are talking about city managers and addressing it to say, no, we need credible, we need consistent processes, which we are not putting the HR space and our legal processes at risk. So, if he believes that, for me, it is something reverting to

the original legal position in the city, and then he still has that relationship as employee relations, he gets from the HOD HR in any event.

ADV SEGEELS-NCUBE: But where is his due process? Because you are accusing him of certain allegations, which according to you culminates as part of the reason why this directive is being issued. He does not get engaged as to why are the costs so high, why are we losing so many cases? He is not involved in that process. He wakes up to
10 a directive that says on page 313 of that document, all that you are going to do now as the divisional head is under I, and that is handling of step 3 of the grievance procedure.

All step 3 grievances should be submitted to the office of the HOD for coordination through my office, and enquiring a register is kept. Persons responsible, the head of department, human resource management and the divisional head employee relations. On all, of all the steps taken in the disciplinary process, he is only delegated that. How is that possible for a senior person, an HR specialist,
20 to be minimised to only deal with grievances and you want to suggest that it had nothing to do with the trigger event, being the anonymous email?

ADV BEHARI: I, from my side, this culminated from the reports of the EMPD officers calling for a meeting. Because if that was the case, if the problem was as at proceeding

with the matter as of May or June, that would have been addressed at that stage. If it was removing functions from him because of that incident. This matter here came through - there was a trigger off which I could see was from the 17th of August. There were no functions given by the city manager to anybody which were not contained in the system of delegations.

So, it was a reversion to the authorised system of delegations, which I have, and I maintain. Mr Nciza had no
 10 such powers in the first place. He is a divisional head, everything reverts to, in terms of the process in the HR department, to the HOD, generally in terms of, unless he is received a special delegation, where his name is listed for a function. If the city manager had taken that away from him, then that would have been illegal.

ADV SEGEELS-NCUBE: Okay, so your evidence when you said that you do not decide whether to go ahead with disciplinary proceedings, remember that was in the context of you saying that it was just an added step of compliance,
 20 and I asked you, so if there is tension between what the HOD wants to do and what you ultimately come to a conclusion should be done, you said you do not get to decide that. But if you look at what it says about the investigation, it does suggest that you decide whether allegations will even be investigated. In other words, you

get to decide whether disciplinary proceedings are even triggered.

ADV BEHARI: Chair, the, and I am saying that the discussions stem between myself and HOD. That is why HODs up to now come and do the investigations. I have three columns that I look at in terms of that. Are there further investigations required to complete and ensure that we are covering ourselves on all bases, or can it be something of a nature that we can proceed immediately with
10 an internal disciplinary process, or do we need to go for a tribunal? Looking at that aspect of documents, I then recommend to the HOD to say, yes, I believe that there should be further investigation and so on. I do not decide on whether it is going to go ahead or not.

ADV BALOYI SC: Can I just check this? That paragraph A2 that you are discussing now, where requests for investigations must be submitted to you, this is, this new arrangement is in August 2023, and then IPID report is in September.

20 **ADV BEHARI:** Yes, it is signed September but served in the city in November.

ADV BALOYI SC: Okay, I think it does not matter. The point is it is after this new arrangement in place. So, you would have been, according to A2, you would have been the one to authorise an investigation before disciplinary action

was instituted against Brigadier Mkhwanazi if there was compliance with the IPID directive. How would you explain that?

ADV BEHARI: I just want to you mean to institute disciplinary action.

ADV BALOYI SC: Well, A2 says:

“Requests for allegations to be investigated must be submitted to you. For you to confirm the allegations, consider the evidentiary material, and submit a report to the HOD.”

So, what I am checking with you is, according to this A2, if there had been implementation of the IPID report, which was still outstanding at that time, right, the city manager knew that IPID was conducting an investigation, that is according to the evidence before us. I do not know what you knew at the time, but you would have, this A2 would have landed you on your desk with whatever material was going to be presented at the disciplinary hearing for you to confirm the allegations, to consider the evidentiary material, and then to submit a report to Human Resources.

ADV BEHARI: No, Chair, not in external regulatory bodies. IPID is a law enforcement agency, similar to the SIU, similar to Public Protection and so on. Those reports, when they come through, we have the option to consider. I

consider all the reports, and then we decide what is the next route. Do we go and review, do we address them further to get more information, and that has been happening in the process. These are for the internal processes.

ADV BALOYI SC: Okay, let us take out the review of the IPID report, because we know you did not do that, and we know the MMC, you drafted a letter where the MMC, in fact, forget the letter, you say the MMC said to you that the
10 report must be implemented, right. So, we are at a point where there is supposed to be disciplinary action, because that is what is directed should happen, and the MMC has said that must happen, you must implement that report.

ADV BEHARI: Yes.

ADV BALOYI SC: So, what I am checking with you is A2, in terms of A2, you would have been the one that looks at the allegations for disciplinary charges, so someone would have had to prepare a charge sheet, because this is now in place by the time you get to the IPID report.

20 **ADV BEHARI:** Chair, this process laid out here is for all internal matters. IPID matter, being an external matter with a directive and recommendation and so on, would go and the MMC says implement, it would then go to the function, it would be the head of department and the HR department to continue with that. We looked at, to say that what are the

legal ramifications or concerns that we would have, and then, but it is unrelated to this document.

ADV BALOYI SC: So, you are saying Chief Mapiyeye would have been entitled with Mr Nciza to carry on and get whatever necessary approvals from Ms Gxasheka, and you would not be reviewing the evidential material?

ADV BEHARI: Not for the external part, we looked at the review, or not even a review, to look at what are the challenges that we could have, but that is from a different
10 compliance perspective. It does not impact upon that issue or the process of Chief Mapiyeye.

ADV BALOYI SC: So, you would not have become involved in the disciplinary action, that is what you are saying.

ADV BEHARI: No.

ADV BALOYI SC: This was not going to apply to the IPID's directive?

ADV BEHARI: It would not, yes.

ADV BALOYI SC: Okay, thank you. Thanks, Ms Ncube.

ADV SEGEELS-NCUBE: Thank you, Commissioner Baloyi.
20 Can we then go to page 30 of Mr Nciza's statement, which deals with the second anonymous email, and paragraph 98 of his statement.

ADV BEHARI: Yes, thank you, I have it.

ADV SEGEELS-NCUBE: You then says:

“On 2 September 2023, a further email

was received from Bhixi-Bhixi. This email was longer than the first one and went into some detail implicating of Dr Mashazi in shielding Brigadier Mkhwanazi from his disciplinary proceedings. Bhixi-Bhixi even mentioned that my powers to do my work had been restricted in order to protect Brigadier Mkhwanazi, and he then attaches it.”

10 He then says:

“On the 7th of September 2023, so five days later, I was served with a pre-suspension letter and suspended soon thereafter.”

What was your involvement in his pre-suspension, in light of the new directive that had been issued on the 22nd of August 2023?

ADV BEHARI: Chair, on his pre-suspension letter, there was a complaint that came through from MECSU. That was
20 a criminal complaint lodged by MECSU to the police, to be investigated by Detective Sergeant Madhubani[?].

ADV BALOYI SC: You say it was a complaint from?

ADV BEHARI: From MECSU. MECSU is a union, a military union in the city of Ekurhuleni, where they raised a criminal complaint on fraud in terms of his qualifications. The police

officer was investigating the matter, he came and saw the HOD HR. I was called into that meeting, because when it comes to police officers and dealing with them, I come to see what is actually needed. There was a subpoena issued, and we proceeded there. That pre-suspension was as a result of that. I did not involve myself in that pre-suspension letter, that would have been created by the HOD HR.

ADV SEGEELS-NCUBE: But would there have been a
10 decision prior to the issuing of the suspension letter that the allegations must be investigated? There would have been a request for these allegations to be investigated, that resulted in the pre-suspension, which is now within your domain, because the request must come to you. There was already a police investigation.

ADV BEHARI: There was a criminal case that was opened. Those were already being investigated by the police officer. In the course of that, the HOD then requested for verification.

20 **CHAIRPERSON:** Let us adjourn, we will indicate when we will come back. Sorry for stopping you mid-sentence. Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Behari, I hope you still remember

where you were, or do you want to be prompted by a question?

ADV BEHARI: Yes, please, I think, I hope Commissioner Baloyi is feeling better. Yes, please.

ADV SEGEELS-NCUBE: Thank you, Chair. We were dealing with your involvement in the events leading up to the pre-suspension notice to Mr Nciza. We are talking about a police investigation. I am not sure what the relevance of that was.

10 **ADV BEHARI:** So, the matter of, reported by MECSU to SAPS. SAPS were busy with a police investigation. In the course of the investigation, they subpoenaed the HOD for documents. So when the HOD was subpoenaed, I actually wanted to know what is she entitled to do because we have certain, you know, looking at other legislation, POPIA and so on, and I said to her that POPIA would not apply because of the subpoena, so let us give them the information that they require. So, we were in that meeting with Madhubani. So thereafter, triggered from that, HOD
20 wrote to him to say, please give us your qualifications or what information. Then there was a response. I said, I do not have that full information with me because I did not go beyond that in terms of the entire process from thereon.

ADV SEGEELS-NCUBE: Okay, so there was no request for investigation in terms of the director. That came to you?

ADV BEHARI: Well, the request for investigation would not come to me. As I mentioned, the informal process or the communication because HOD and I, so I would not, there was already an investigation underway by a criminal complaint from MECSU on that matter. What would have come to me, HOD would have been taking the one because she still acted on that and got letters. HOD is the ultimate authority in terms of that. So, she acted on that and wrote to Nciza to get all the information, and that is when the
10 process took its course.

ADV SEGEELS-NCUBE: Okay, thank you.

ADV KHUMALO SC: If you do not mind, Mr Behari, just increase your volume. I think your sound has dropped a little bit, so we can barely hear you this side.

ADV BEHARI: I think it has been covered with the files here.

CHAIRPERSON: Perhaps please pull the mics closer to you.

ADV KHUMALO SC: Mr Behari, am I correct that sometime
20 in 2024, around March, your role changed from being head of legal to now being head of risk and legal?

ADV BEHARI: Yes, Chair.

ADV KHUMALO SC: Yes, I am not asking for an explanation.

ADV BEHARI: I will say yes, but there are still some

issues being addressed in that matter.

ADV KHUMALO SC: And your responsibility became to advise Ekurhuleni not just on legal matters, but also on risk. So things like legal risk and reputational risk, that was now your responsibility.

ADV BEHARI: Yes.

ADV KHUMALO SC: Yes, now from September, let us say November, because you said the IPID report was only sent to Ekurhuleni around October, November, but it was signed
10 in September. From November 2023 until December 2025, when you were suspended, did Ekurhuleni take any action against Julius Mkhwanazi?

ADV BEHARI: Not that I am aware of. I think there was action taken ...[intervenes]

ADV KHUMALO SC: He was suspended in December after testimony in this Commission.

ADV BEHARI: Yes, he was suspended in December 2025, but he was suspended as a result of the action being taken by the city, arising out of questions posed by the Premier.

20 **ADV KHUMALO SC:** Yes.

ADV BEHARI: So that is a process that unfolded through the Chief Auditor Executive Office. They went through the report to Council, and that is the process.

ADV KHUMALO SC: Let me put the question another way. From November 2023 until you were suspended in

December 2025, did you ever advise the city of Ekurhuleni to take disciplinary action against Julius Mkhwanazi?

ADV BEHARI: No, I did not, because, Chair, in terms of the risk function, the risk function speaks overall. It speaks about overall for the organisation-wide risk. Those matters were being addressed at different departments at different junctions. So overall risk from that part, from when I was dealing with that from 2024, I would look at the risk matrix, what are the risk reports that have to be done, where are
10 the different issues of risk. So, in terms of then, there were processes, one, that stalled.

ADV KHUMALO SC: Please do not take me to processes. My question was, did you? And your answer is, no, you did not.

ADV BEHARI: No, I did not, Chair. As I said, it was not an aspect focussing only on the one issue. The risk function focusses on a whole lot of issues. And there are templates for that. Thank you, Chair.

ADV KHUMALO SC: That is fine. Yes, I have just handed
20 you a document, and it is a transcript, yes, of the evidence of Dr Mashazi on the 1st of December 2025.

ADV BEHARI: Yes, Chair.

ADV KHUMALO SC: I had engaged her on the promotion of Julius Mkhwanazi. You will recall that until December 2023, he was a brigadier.

ADV BEHARI: Yes.

ADV KHUMALO SC: And he was responsible for corporate services, one of the divisions there. And then from December, he was promoted to Deputy Chief of Police. Remember that?

ADV BEHARI: Yes.

ADV KHUMALO SC: Yes, and the engagement between myself and Dr Mashazi was, how can Ekurhuleni, in the face of the investigation by Erasmus and the investigation by
10 IPID, reward Julius Mkhwanazi with a promotion? And she told this Commission that Mkhwanazi had been cleared and there was no investigation against him and there was no finding of wrongdoing against him, and for that reason, there was no reason why Ekurhuleni should not have promoted him. So, if you go to page 105 of 268, you will see it is numbered at the bottom of the page.

ADV BEHARI: That is correct, Chair.

ADV KHUMALO SC: Are you there?

ADV BEHARI: Yes.

20 **ADV KHUMALO SC:** From paragraph 10 of that page where it says audio clip played back, do you see that?

ADV BEHARI: I see that, Chair.

ADV KHUMALO SC: May I just take a moment to read that entire section?

ADV BEHARI: Aloud?

ADV KHUMALO SC: It is fine. You can read it aloud.

ADV BEHARI:

“The IPID report for us was very big, and I was unable to discipline anyone. We had to take that IPID report to our investigation. We appointed an independent investigator through the internal audit, and the report was out. We will share the report with you so that
10 you can start disciplining people.”

I am not sure:

“From that report, the Acting Chief of Police has done nothing wrong. He is cleared, so IPID, they say, can go ahead if they want to arrest him, but if they think he is wrong, because they are police officers, but from our side in terms of the DC and investigation, there is nothing wrong that the Acting Chief of
20 Police has done. He has been cleared by our report, and for that as long as there is nothing that they are doing from their side, if they believe that he is wrong, then there is nothing I can do as an accounting officer. He reports to me,

even the Chief of Police who is on the suspension, he reports to me. If there is any wrongdoing from his side, I must do my own investigation, and I must also subject that person to a DC. I cannot subject my officers to a DC based on a report that I myself do not understand because I have to take it to legal and legal, analyse the report and defer the
10 report to internal audit.”

ADV KHUMALO SC: Yes, so, you see, she uses the word cleared twice in that clip, and she says Mkhwanazi was cleared. Do you agree that Mkhwanazi was cleared?

ADV BEHARI: Mkhwanazi was not cleared by us.

ADV KHUMALO SC: Who cleared him?

ADV BEHARI: If I am looking at this, I am not sure we know the date of the clip, Chair, but she talks to a report of internal audit. The only report of internal audit that I am aware of was done as a result of the BXB emails where
20 there was to investigate something else. So, in no way do I believe that that report specifically cleared Julius Mkhwanazi or anybody else.

What it did say was the process seemed to be they could not find who drafted the documents. They did suggest that Julius Mkhwanazi must send through a

complaint to the information regulator, and they also commented on the fruitless and wasteful expenditure and not following of the process.

ADV KHUMALO SC: So, she was incorrect when she said there is a report that cleared Julius Mkhwanazi?

ADV BEHARI: She would have been incorrect because there were findings, and it is very clear that the audit report does not say we clear in that specific terms Julius Mkhwanazi.

10 **ADV KHUMALO SC:** And on 106, towards the bottom, just before the sentence that starts with thank you, now she is referring to the IPID report, and she says:

“I cannot subject my officers to a DC based on a report that I myself do not understand because I had to take it to legal and legal analyse the report.”

That was you.

ADV BEHARI: Is she talking to the report of IPID or she is talking to the forensic report?

20 **ADV KHUMALO SC:** No, she is talking to the IPID report. She is already said the forensic report cleared him, so she is referring to the IPID report.

ADV BEHARI: I never cleared, no one cleared up the documents that we have been dealing with in terms of the letter to IPID, but no one gave any instruction.

ADV KHUMALO SC: Mr Behari, why do you not answer the question? I say that is you when she says I took the report to legal and legal analyse the report, and I have already told you she is referring to an IPID report. Now I am saying legal is you.

ADV BEHARI: It is correct.

ADV KHUMALO SC: Yes, and she said she could not understand this report. That is why she could not act on it. But you, in fact, in your response to this report, said it is
10 vague. It does not support the charges against Mkhwanazi, and you criticised IPID. That is all you did.

ADV BEHARI: Yes, Chair. It was part of the discussion in the letter we had framed or prepared. So, all of the issues that we raised there was discussed with her, and that is hence the vagueness came for us to clarify certain aspects with IPID. But it was not about clearing Mkhwanazi in any respect. There was no way we told him he is cleared. We are dealing with the IPID report, and as per the letter and the evidence now, that is what we discussed with her.

20 **ADV KHUMALO SC:** But then as part of your duties as head of risk and legal, why did you not say to the city manager, we have an obligation to charge Mkhwanazi because that is the directive of IPID?

ADV BEHARI: But the process of charging was already processed in terms of the directive of IPID. The letter that

we looked at was to deal with exactly what are the fraud and corruption aspects.

ADV KHUMALO SC: No, I do not understand you. I am asking you a simple question. Why did you not advise the city manager that IPID has directed that Mkhwanazi should be charged? Therefore, you have an obligation to charge him.

ADV BEHARI: Chair, but it was a process already underway. It was accepted as that because of the IPID
10 report.

ADV BALOYI SC: Maybe before you answer, Mr Behari, in that same document, if you would look at page 93, in that same document, look at page 93.

ADV BEHARI: Yes, Chair.

ADV BALOYI SC: And then from line 7, she says:

“I refer the document to HOD Legal, who later informed me that the document is incomplete, and he has advised chief or whatever that they cannot take action on
20 this document. Rather, let them do the internal investigation.”

So, take that into account in your answer.

ADV BEHARI: Is this related now to, or I do not know if she is concluding the issue of the internal report? Because with respect to the IPID report.

ADV BALOYI SC: The discussion with Commissioner Khumalo is about the IPID report.

ADV BEHARI: The IPID report.

ADV BALOYI SC: Yes.

ADV BEHARI: Yes, so, what she says here is, on line 7 in

ADV KHUMALO SC: Mr Behari, you can see she is referring to the IPID report because in line 3, that is what it says. Even when you look at the IPID report, I do not know, I have it somewhere, where they write to him to implement
10 or to discipline Julius. So, from my point, I did something as an accounting officer by referring it, because it is a legal document. I referred the document to HOD Legal, that is you, who later informed me that the document is incomplete, and he has advised chief or whatever that they cannot take action on this document. I mean, that is clear advice to the city manager. The city can take action on this document. Rather, let them have to do the internal investigation.

ADV BEHARI: Chair, I did not give such an advice to the
20 city manager. Because I never engaged with Chief of Police on this. I asked if it was the previous one or not. The only other one I engaged with chief report was the internal affairs. I did not engage with Chief of Police on this matter.

ADV KHUMALO SC: We are talking about the city

manager. Mr Behari, please stop doing that. We are talking about the city manager. She says you informed her that the document is incomplete, and you advised chief or somebody, she does not know, that the city cannot take action on this document, which is the IPID report. Rather, they should do an internal investigation.

ADV BEHARI: Chair, as I am saying, Chair, that is not my advice to the city manager. The engagement with city manager was that we are addressing certain vague issues
10 in the report as per the letters that we went out. And when she said he has advised chief or whatever, I did not advise anybody for another internal investigation. I just spoke to the city manager about what are the concerns raised as per our engagements internally. And those are the only issues. I never gave city manager any advice to the extent that we said there must be another internal investigation.

ADV KHUMALO SC: So, she was not truthful in her evidence?

ADV BEHARI: If that is the case, she would have been
20 mistaken or not truthful, but not according to what I gave her.

ADV KHUMALO SC: Okay, and then did you advise that an internal investigation be done?

ADV BEHARI: I did not, Chair, because there was already an IPID investigation. I did not for another internal

investigation now. This IPID investigation was already done.

ADV KHUMALO SC: Did you tell the city manager what is contained in page, remember that document which is a draft report to IPID? Is that what you said to her about the IPID report?

ADV BEHARI: Page 21 of our letter.

ADV KHUMALO SC: I think it is 324. We do not have to go there. You know the document I am talking about, the
10 draft report to IPID or the draft response to IPID.

ADV BEHARI: Yes.

ADV KHUMALO SC: What is contained in that document? Your attitude to the IPID report.

ADV BEHARI: I discussed the content of that letter.

ADV KHUMALO SC: Is that what you told the city manager?

ADV BEHARI: It would have included the entire document.

ADV KHUMALO SC: That the charges are not sustainable?

ADV BEHARI: We believe the charges are not sustainable,
20 yes, Chair.

ADV KHUMALO SC: Yes, so, then how can you expect a city manager to proceed to charge Julia Mkhwanazi if you yourself told her that the charges are not sustainable?

ADV BEHARI: Because of the process, we are still embarking to clarify it, but I did tell her that. Yes, Chair.

ADV KHUMALO SC: But if the charges are not sustainable, you cannot charge Julia Mkhwanazi.

ADV BEHARI: Chair, but I explained to her what the process is. So, at that stage it is not sustainable, but we are engaging with IPID to get clarity on aspects.

ADV KHUMALO SC: But you never engaged with IPID. You said so yourself that the letter never went out and you never followed up to ensure that it goes out.

ADV BEHARI: Yes.

10 **ADV KHUMALO SC:** So, in fact you blocked the process because you did not engage with IPID. You told city manager that you are engaging with IPID, that is how the process will go forward. And then you never engaged with IPID, which means you stopped any chance of Mkhwanazi being disciplined.

ADV BEHARI: Chair, I never engaged with IPID because we were in the process of getting the letters to IPID to clarify what we were going to address. So, I never engaged with IPID. I never blocked any process.

20 **ADV KHUMALO SC:** Adv Behari, we are now looking backwards. We are not looking forward. We are two years later. We are looking back. You did not engage with IPID, which means it is you. You said to the city manager, the process will be I will engage with IPID. But you did not do that. So, the process stopped because you did not do what

you told the city manager you were going to do.

ADV BEHARI: Chair, what I said to the city manager was in terms of the content of our letter, which was poking on fraud and corruption, it was not talking about stopping the disciplinary process, which was addressed to the Chief Mapiyeye. The issues that I raised with city manager on the front of corruption was we were in the process of dealing with the issues. And I said to her, this is what the content of our letter is.

10 **ADV KHUMALO SC:** I repeat myself. How can they charge Mkhwanazi when you have said to them their charges are not sustainable?

ADV BEHARI: Chair, the issues we raised in terms of that, if they want to charge them in terms of what IPID says, it was a directive from IPID to that. Of course, later on we said it is a recommendation and we had our issue discussion on that. But I said to the city manager that we are engaging to clarify the issues. This is why it is vague at this stage. It is not about stopping any issues of
20 proceeding to charge Mkhwanazi.

ADV KHUMALO SC: Thank you. I am going to leave it there.

ADV BALOYI SC: Mr Behari, if you head of legal say to the city manager there is no merit, these allegations, because the charge, the formulation of the charge is based

on facts. There are certain facts. In your long letter you have given a response.

You say to IPID, this letter that never goes out, you say to IPID, Mkhwanazi did nothing wrong. That is really what you have done. You say Mzolo gave him tasks to do, right. And so, and then Mkhwanazi is telling you that when he put forward the MOU and he put the donation letter forward, it was all, he accepted the donation, it was all in execution of his tasks. That is one.

10 Two, you say he did not instruct, he did not register vehicles. Steyn registered to those vehicles. So Mkhwanazi has nothing to do with that. It has always been the practise to receive donations. Steyn explains that. So Mkhwanazi did nothing wrong. So Mkhwanazi sent the MOU to the Chief of Police and the Chief of Police, the fault of the Chief of Police that it was not completed and signed.

 So, in that long letter, you basically say Mkhwanazi did nothing wrong. You answer to the facts. He did nothing wrong. Now, how would you, and that is what you tell the
20 city manager. That response is given to the city manager. That is what you tell her. How could she, and Chief Mapiyeye when he becomes aware of this, but forget him for the purpose of what I am putting to you.

 How could the city manager then take disciplinary steps against Mkhwanazi if you, head of legal, have given

responses why what IPID is saying is unsustainable? Because remember, IPID is saying he is guilty. He is committed to this conduct. You say he did not. Look at the authorisation that he had when he was acting. Look at Steyn, what Steyn says. Look at the practise. Look at what the Chief of Police failed to do. That is a complete answer. That is an answer from you. On what basis would the city manager then proceed to charge him?

ADV BEHARI: Chair, the issue which I have raised in the
 10 letter was not about IPID or the finding that Julius Mkhwanazi did not do anything. It was about consideration of, in the IPID report, consideration of the affidavit of Julius Mkhwanazi where he said he was given this authority. If you had gone there and then done an extended investigation and found that there was no such authority, it was critical to our case, Chair.

So, it is not about saying that we are finding that Julius Mkhwanazi did not do anything. He raised in his affidavit to say, I was given these positions, I was dealing
 20 with these MOUs, I was dealing with these issues. And the issue through IPID was then, but have you considered the substance of what Mkhwanazi was doing?

ADV BALOYI SC: You do not just say, have you considered. You actually say he did nothing wrong. And I will read you a paragraph randomly. In that letter, at

paragraph 6, you say:

“At the time of the vehicle registration, the benefit of [getting more vehicles], we would have accrued to the city, had the deal been approved. The cost incurred in the registration was a step forward, was a step towards obtaining the benefit on behalf of the city. It would be challenging to argue that the registration costs constitute prejudice to the city. The registration costs should not be viewed in isolation, but as part of the entire process of acquiring the benefit on behalf of the city.”

So, your theme throughout is no, but this was to the benefit of the city. You just say that no. And it does not matter whether it is criminal or disciplinary process. You, head of legal, are saying this whole transaction was for the benefit of the city. He did nothing wrong.

20 **ADV BEHARI:** Chair ...[intervenes]

ADV BALOYI SC:

And you tell that to the city manager. How can the city manager charge him for that, for registering these vehicles, for incurring the cost of registering these vehicles?

ADV BEHARI: Chair, as if the donation had completed

legally, the intention was very clear to have benefited the city. That is what we were speaking to. It was not about him ...[intervenes]

ADV BALOYI SC: It was not to benefit the city. The vehicles were never going to be transferred to the city. We have looked at the MOU. Do not reprise what that MOU says. We have looked at it. We have looked at all those documents. We have had Brigadier Mkhwanazi here. Those vehicles were never intended to come to the city.
10 They remained with Mr Matlala's company because that was the intention. They were never intended.

So, they were going to be driven, and it happened that way. They continued to be used by Mr Matlala's people, not your city. So, there is no benefit that came out of it to the city. The MOU contains nothing that says these will come to the city. You say there is nothing wrong with all of that. And you say that to the city manager. So what I am putting to you is when the city manager says, I was advised by head of legal that there is no merit or the
20 complaints are unsustainable, and so I could not discipline, forget her motives, and I could not discipline, there is nothing wrong in her saying that because her head of legal has expressed the views that he has expressed in this letter.

ADV BEHARI: Yes, so, I have expressed that view, Chair,

and I said to you, and the document details why. Now, in respect of you say it was never intended to, at the stage when we considered that report, there was no linkage to say that it was never intended for. The only issue we picked up even from the initiation was it was a donation to the city, a donation that would speak to a document or vehicles or whatever the donation item would be being transferred to and being used by the city.

So, if there was an intention never to transfer the
 10 vehicles or never to bring it back to allow it to be used by elsewhere, I do not see that anywhere in that, Chair, specifically mentioned. But if it is a donation, understanding that part from a donation, that would have covered that the city would be the ones benefiting.

ADV BALOYI SC: You see, we are having this discussion with you, we have had the benefit of the evidence, of Brigadier Mkhwanazi even, and the documents that are involved in this. And from that evidence, we know that it was never the intention to deliver the vehicles to the city.
 20 We know that. They were always going to remain with Mr Matlala.

ADV BEHARI: Okay.

ADV BALOYI SC: That is the evidence, right. But you say that was to the benefit of the city. Because that is what you are saying. In fact, you say, on the contrary, again I pick

another random paragraph. You say:

“It is difficult to see how Cat benefited from the registration of the vehicles as they transferred ownership of their vehicles to the city.”

Well, he benefited, because he was driving around in unmarked vehicles that, when they are checked on the system, they are known to be EMPD vehicles. So, they opened doors for him to go wherever he wanted, under the

10 name of the EMPD. Then you say:

“On the contrary, Cat sustained a loss of assets while the vehicles were registered in the name of the city. There is no basis for you to say that. He always had control of these vehicles. The city is the one that is due to benefit, particularly considering that EMPD had a shortage of vehicles and there seemed to be no effort from the Chief of Police and senior
20 management to address this. The purpose of the vehicle registration was to increase the number of vehicles to be used by the EMPD.”

There are no facts for you to say that. There were no facts whatsoever, not from the documents, not from anything that

Brigadier Mkhwanazi said. Because in that warning statement that you pulled out, the warning statement, it does say that they returned. They were never delivered to the city. So, I do not know what facts you are relying on when you say they would have increased the vehicles to be used by the EMPD. Because they never came to the EMPD.

But do not lose sight of what this part of the discussion is. This part of the discussion that Commissioner Khumalo started with you is that you advised
10 the city manager, you spoke to the city manager. She saw this long letter. But you also had a discussion with her. So, when she says, my head of legal says that the complaints or the allegations against Brigadier Mkhwanazi are not sustainable, she is right. That is what you said. She is right. You said that to her.

ADV BEHARI: Chair, on two aspects. The first one is, at the time we considered the document Mkhwanazi's evidence, of course, was not there. We considered the document purely looking at the IPID report and we crafted
20 our response in that regard.

ADV BALOYI SC: But you also had his statement, warning statement. Because if you did not have the warning statement, then it raises another question. When you say to IPID you did not consider Mkhwanazi's statement, what would you have been referring to? So, you must have had

sight. Otherwise, you are commenting on incomplete information.

ADV BEHARI: We did have sight. Hence, that is the document we refer to here. When Commissioner Khumalo mentioned the other document, this is why we had insight. We asked him, did you consider the impact of that? Because in the document that is contained there, it is referred to functions continuing to deal with the issue of functions given to him by Mzolo, which included the drafting
10 of the MOUs. And for looking at then the donations issue. So, in that statement of his, linked to the IPID report, it spoke about donations. So, when you say it was not transferred, the vehicle was transferred into the name of City of Ekurhuleni.

ADV BALOYI SC: They were never given to the city. They were never available to EMPD to use. And the MOU does not say they were going to be delivered to the city. That is the simple point I am making, and that is a fact. If you read that MOU, and I am hoping that when you expressed these
20 views here, you had considered all the documents, and that would include the MOU. And if you did read that MOU, that MOU does not say they will be given to the city. It says they will remain with CAT VIP, those vehicles.

ADV BEHARI: Yes, Chair, the MOUs stated that. But in terms of the - and this is why we asked with regards to the

IPID report. If you look at paragraph 11 of his document, CAT VIP would donate, to term, donate four vehicles which would be registered under City of Ekurhuleni to be utilised by EMPD officers. So, when he came here then and said, no, it was used by them, at that stage when we crafted this document, there was no such thing before us. And the ...[intervenes]

ADV BALOYI SC: Okay, I accept that. I accept that. We can move. Thank you.

10 **ADV BEHARI:** Thank you and then come back then to Commissioner Khumalo. So, the basis of us informing was based on the consideration of that, where we come to the letter that was drafted, and I would have informed city manager based on this. There are issues that are vague, which we will be addressing.

ADV BALOYI SC: And these issues that are vague, I do not see what is vague in the IPID letter, and you and I had that discussion yesterday. When you say there are issues that are vague and you tell the city manager, and she relies
20 on that not to institute disciplinary proceedings, because that is her interest, right. Her interest is not in the criminal case. The interest is that disciplinary action be taken.

What the DPP does is a different process altogether. It is an IPID-DPP process. Your organisation's role in this, and that is why I do not understand why you

wrote this letter, but the role of your organisation arising from the IPID investigation and report to you is the directive to institute disciplinary proceedings. It is the one thing you do not address, because you say, it is with Mapiyeye, but you go and comment to the city manager to say these charges are not sustainable.

ADV BEHARI: Chair, we crafted that on the basis, I said from yesterday, the functions that were given to us is to look at the fraud and corruption part. We focused on that
10 issue. There was no link to the HR processes in any way in the document. We focused on the fraud and corruption for our processes going forward with impact and so on. In that, because you are dealing with a holistic document, we analysed the report of IPID, and those were the issues we found would be vague in terms of what we still needed to address.

ADV BALOYI SC: Was it your initiative to analyse the report, to analyse the fraud and corruption part of this report, did you, without prompting, choose to do that?

20 **ADV BEHARI:** Yes, the city manager would give us this. She came and looked at the criminal aspects of this issue.

ADV BALOYI SC: No, she did not do that, because in your statement you do not say that. In your statement, you tell us what she said to you. So, she did not say to you ...[intervenes]

ADV BEHARI: In her statement, or in my statement?

ADV BALOYI SC: In your statement, I will read, I think Ms Ncube, if you could refer us to that paragraph. You do tell us what she said to you, and it has nothing to do with what you end up doing. We looked at it yesterday. I put it to you yesterday. Yes, here. If you look at your paragraph 181 of your statement, you say:

10 “The city manager requested that the
 legal services department prepare a draft
 response acknowledging the receipt of
 the report and addressing certain
 technical issues that IPID did not clarify,
 including the status of matters referred to
 the Director of Public Prosecutions for
 decision.”

We know your letter does not do that. The scope and confidentiality of the report. We know your letter does not do that. The distinction between preliminary investigative observations and findings capable of immediate
20 implementation. Your letter does not do that. So, you do tell us what the instruction from the city manager was.

ADV BEHARI: Yes, Chair.

ADV BALOYI SC: This suggests that you went and did your own investigation of the charges.

ADV BEHARI: It is not the investigation, Chair. It is an

assessment of what is contained in that report.

ADV BALOYI SC: Yes, that was your initiative. It did not come from the city manager.

ADV BEHARI: Yes, so we briefed the city manager on that and said, so, before we move forward, we have to clarify all of the issues. So, that is what the extent of it was.

ADV BALOYI SC: Before you move forward with doing what? Because remember the letter from IPID is very specific. It asks only of one thing. It asks one thing of you.

10 When I say you, I mean the city. It is institute disciplinary proceedings. So, when you say we need to clarify before we go forward, what is the going forward to?

ADV BEHARI: The going forward to deal with the other issues you raised, Chair, which is in terms of, okay, the classification was already there, but at least on the evidence that we would be requiring to move forward in terms of first clarifying the fraud and corruption, that seems to be instrumental as well to the criminal aspects we were looking at and for our own interests in terms of the MPAC

20 and council. It would have also had an overlay into the disciplinary processes because of the evidence that was required. So, that is what the basis was to clarify.

ADV BALOYI SC: Just say that last part about the disciplinary process?

ADV BEHARI: It would have had a leg in terms of the

evidence being tested. As we got a response from that aspect, it would have had a leg on the disciplinary as well.

ADV BALOYI SC: So, if you got the answers that you were looking for, you are saying that would also feed into the disciplinary process?

ADV BEHARI: It would feed into disciplinary.

ADV BALOYI SC: Okay, thank you.

ADV KHUMALO SC: Adv Behari.

CHAIRPERSON: Let us adjourn and resume at 10 past 2.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Segeels-Ncube.

ADV SEGEELS-NCUBE: Thank you, Chair. May I proceed, Chair? Thank you.

CHAIRPERSON: Yes, please.

ADV SEGEELS-NCUBE: Mr Behari, there is just two loose ends that I want to tie up with you. The one relates to your repeated refrain about how the IPID report was addressed to Chief Mapiyeye, and he was the one that had to go ahead
20 with the disciplinary proceedings so that there was the directive that he must initiate those proceedings. Now, I just want to discuss that with you within the context of when that directive comes. You know it comes after the 22 August 2023 change of delegation. And importantly, it also comes at a time when Mr Nciza is on suspension, correct?

ADV BEHARI: Yes, I think so, Chair.

ADV SEGEELS-NCUBE: And so I just want to understand from you how was Chief Mapiyeye supposed to initiate those disciplinary proceedings, because we know by now that the first disciplinary proceedings had been withdrawn, the investigation had been withdrawn, which effectively means the charges had been withdrawn by June 2023. So how was he going to get these charges or initiate these disciplinary proceedings in light of that new directive, the
10 delegation matrix, on your version? How was he going to do that?

ADV BEHARI: Chair, he would have to engage with the HOD HR. So remember, all the disciplinaries in the City, even after that letter, and the system of delegations, the HOD's were still, HR was still ultimately responsible for disciplinary proceedings. So the HOD, being Chief of Police, will engage with that HOD.

ADV SEGEELS-NCUBE: And you are, of course, aware of the allegation by Mr Nciza and Mr, Chief Mapiyeye that Ms
20 Gxasheka was part of the clique that was trying to protect Brigadier Mkhwanazi.

ADV BEHARI: Yeah, I think, I could not avoid that allegation even from the outset. It is there. The clique was mentioned.

ADV SEGEELS-NCUBE: Yes, so you, can you appreciate

the difficulty that he would have been confronted with in not initiating those proceedings without, at the very least, even if he, even if you had to apply this new delegation matrix, if it is a directive from IPID that says institute proceedings, the disciplinary proceedings, would he still have to come in terms of that new matrix to request for an investigation to be done?

ADV BEHARI: Chair, if it is linked to the, maybe not having any confidence in HOD, Linda, because of the, being
10 identified in a clique, there are other processes available to him. Remember, it comes from the MMC Masuku who received the documents. He could have went to MMC, said, I do not trust the City Manager, I do not trust HOD HR, and I do not trust HOD Legal, so what is the further option? So MMC could have taken down his complaint and proceeded. But you cannot say that because I believe you are in a clique, we are not going to take the process for it. That would be, there is options available if you have that problem.

20 **ADV SEGEELS-NCUBE:** Okay, and then insofar as the 22 August 2023 matrix, the delegation matrix concerned, you mentioned the meeting that happens on the 17th of August when I asked you what preceded the 22 August matter or delegation matrix. Chief Mapiyeye says that there is something that happens even before the 17 August meeting.

If I could just ask you to briefly go to his statement on page 28 at paragraph 104. Page 28, paragraph 104. Are you there?

ADV BEHARI: Yes, I am there, Chair.

ADV SEGEELS-NCUBE: So he says at 104:

10 “On 15 August 2023, I delivered to the City Manager the letter of intent to institute proceedings regarding the precious stone theft allegedly committed by members of the EMPD who were reporting directly to Brigadier Mkhwanazi. When I delivered it to her, she challenged me on the fact that the letter does not make any reference to Brigadier Mkhwanazi and neither does he appear in the attached pictures. She suggested that I was persecuting Brigadier Mkhwanazi and was biased towards him and threatened to suspend me with

20 immediate effect. She immediately corrected herself and told me that she was actually suspending me with immediate effect. On 17 August 2023, the City Manager called a meeting at which she claimed the department was

dysfunctional and having at the conclusion of which she stated that she had decided that I shall take special leave with immediate effect so that I can clear my head, rest and come back neutral with no bias. I was placed on 30 days leave.”

See that?

ADV BEHARI: Yes, Chair.

10 **ADV SEGEELS-NCUBE:** All of this happens just before the 22nd of August. So we have got the 15th of August, he comes with new charges that he has got against Brigadier Mkhwanazi. The 17th, that meeting happens. Then it is the anonymous email on the 20th and the 22nd of August 2023 is the new delegation. Have you had any regard to the fact that these could also have been factors in what motivated the delegation, the new delegation matrix?

ADV BEHARI: Chair, I became aware when I received the letter of demand from, I think it was an attorneys firm, on
20 the precious stones. I am not aware of what happened prior to that in the discussions, but yes, I only became aware after that on the, as regards the meeting held with the other officers. The discussions between, on the special leave and so on, happened between Chief of Police, City Manager, and HOD HR.

I accepted it to be arising out of the complaints, which I believe were serious, in the 17th, the meeting of the 17th. So at the meeting, I think it is important that, I mean, it is on record now, so we can go through that, but there were several issues raised and I understood them, I think it was around the next day or so, that I was called in terms of a service of a letter of leave, special leave, and I understood it to be that he had requested to be placed on leave, he could not have any days' leave left, and the only
 10 option apart from unpaid leave was special leave. So that is the only aspect I dealt with it from there.

ADV BALOYI SC: Mr Behari, this meeting on the 17th of August, earlier when you were discussing this change in disciplinary steps, who takes what decision, you referred to a meeting where there were complaints, there were camps, and there were complaints, including against Mr Nciza. Is this meeting of the 17th of August?

ADV BEHARI: Ja, the 17 August, there seemed to be a meeting between Chief of Police and City Manager, which I
 20 am not aware of, Chair. But the meeting I am talking about, there was a meeting 17th where the complaints were coming from EMPD.

ADV BALOYI SC: Yes, my question is about the second, the latter.

ADV BEHARI: Ja, okay.

ADV KHUMALO SC: The meeting where everyone was present, where there were camps.

ADV BEHARI: Yes.

ADV BALOYI SC: I think that is how you described it.

ADV BEHARI: Yes.

ADV BALOYI SC: You said there were camps. You described it that way. That is a meeting of the 17th of August.

ADV BEHARI: 17th, yes.

10 **ADV BALOYI SC:** You were present in that meeting?

ADV BEHARI: No, I was not.

ADV BALOYI SC: Okay. All right, thank you.

ADV SEGEELS-NCUBE: Thank you, Chair. No further questions from me.

CHAIRPERSON: Thank you, Ms Segeels-Ncube.

ADV KHUMALO SC: Mr Behari, very quickly, can we go to that document that I asked you to look at. It is the transcript of Dr Mashazi's evidence, the very last page.

20 **ADV BEHARI:** No, and I think I understand now why you called me Mr Mashazi yesterday, Chair. You seem to be fixated on that.

ADV KHUMALO SC: Do you see now. So, Mr Behari, are you there?

ADV BEHARI: Yes, Chair.

ADV KHUMALO SC: Because from paragraph 9, maybe

just take time and read paragraph 9 to 17.

ADV BEHARI: Sorry, Chair, just to quickly the date, the page again?

ADV KHUMALO SC: The last page.

ADV BEHARI: Oh, okay.

ADV KHUMALO SC: So it will be page 110 of 268.

ADV BEHARI: Yes, Chair.

ADV KHUMALO SC: Are you there?

ADV BEHARI: Yes, sir.

10 **ADV KHUMALO SC:** From paragraph 9.

ADV BEHARI: Yes.

ADV KHUMALO SC: Dr Mashazi, start there, until where she stops just before Advocate Sello.

ADV BEHARI: Yes, Chair.

ADV KHUMALO SC: Just read it loud, please.

ADV BEHARI: -:

20 “The report was fully analysed by
Corporate and Legal, hence, I can
allow Advocate Kemi to come and talk
to the report and also talk to his
opinion about the report. And I
indicated at the beginning of my
response that if I was ill-advised or
given an opinion that is not sustainable
from the department, can we allow

therefore, allow Advocate Kemi to
come and speak to the report. That is
all I am asking.”

ADV KHUMALO SC: Yes. So it is quite clear that she
relied on your opinion.

ADV BEHARI: On that report that we drafted or me?

ADV KHUMALO SC: Yes, yes.

ADV BEHARI: Yes, on both aspects, Chair.

ADV KHUMALO SC: And she says if that opinion was
10 wrong and she was ill-advised, you must come and talk to
that because she relied on it.

ADV BEHARI: Chair, yes, she is my Accounting Officer. I
am the Head of Legal.

ADV KHUMALO SC: Ja.

ADV BEHARI: If I discuss a report with her, and if it is
incorrect in terms of what she says, then of course I must
talk.

ADV KHUMALO SC: So at least she has a defence. Her
defence is my Head of Legal said these charges are not
20 sustainable. I relied on that.

ADV BEHARI: No, correct, Chair.

ADV KHUMALO SC: So it is for the Head of Legal to now
come and defend his opinion.

ADV BEHARI: Yes, Chair.

ADV KHUMALO SC: Yes.

ADV BEHARI: That is the letter of, we were talking about the draft letter.

ADV KHUMALO SC: Yes.

ADV BEHARI: All right. So, ja.

ADV KHUMALO SC: And then finally, sorry, I may have interrupted you. You wanted to say something?

ADV BEHARI: No, I am just saying, Chair, that is what the input with Dr Mashazi was based on the drafted letter from the City of, from us, from the Legal department.

10 **ADV KHUMALO SC:** All right, and to now, to be fair to you, we have a witness that is going to be giving evidence after you, and it is Ms Gxasheka. You are familiar with her, she was HOD for ...[intervenes].

ADV BEHARI: Yes, I am. I am.

ADV KHUMALO SC: Yes. And she has prepared a statement for the Commission. We have had the opportunity to read it. You have not had the opportunity to read it. But there are three paragraphs in her statement that concern you and it is only fair that we let you have
20 regard to them and simply confirm to us whether what she says is accurate or not. I am actually thinking of giving you the three paragraphs for you to look at, and then maybe ...[intervenes].

ADV SEGEELS-NCUBE: Commissioner Khumalo, I did give it to the witness.

ADV KHUMALO SC: Oh, you have it there.

ADV SEGEELS-NCUBE: Yes, he does have it.

ADV KHUMALO SC: Thank you, Advocate Segeels. Paragraph 27.3 and 27.4 on page 9 of Ms Gxasheka's statement. Please just read those two paragraphs and confirm whether what she says is accurate.

ADV BEHARI: At 27.3:

10 “Around the month of May 2023, the
Accounting Officer called Chief
Mapiyeye, Xolani Nciza, HOD Kemi
Behari, and myself into a meeting. She
wanted answers as to why the
disciplinary hearing of erstwhile
Brigadier Mkhwanazi has not
commenced. Mr Nciza provided an
explanation, including that the
processes were at an advanced stage.
The investigation has been concluded.
The appointment of the presiding
20 officer and prosecutor is underway, and
the charges are to be drafted soon
accordingly.”

So on that paragraph, Chair, I do recall there was concerns around the delays in the process. I cannot, you know, specifically recall that exact meeting on that day, but

I do recall there were discussions in the delay of the processes.

ADV KHUMALO SC: You cannot dispute what she said?

ADV BEHARI: I cannot dispute it, Chair.

ADV KHUMALO SC: Thank you. Next paragraph.

ADV BEHARI: 27.4:

10 “Although I cannot recall all the facts
 at this point, Dr Mashazi then
 explained that the disciplinary code
 agreement talks to three months to
 conclude a disciplinary proceeding and
 that it has expired. There is no need
 to extend it. Erstwhile, Brigadier
 Mkhwanazi was to come to work.
 Instead, we were to account for why
 the investigation was not concluded, if
 not.”

ADV KHUMALO SC: Do you dispute what is recorded in
27.4?

20 **ADV BEHARI:** In terms of the meeting, yes, I am not
disputing it, Chair. As I said, I cannot recall to the extent of
it, but there was concerns about the delays in the process
up to then.

ADV KHUMALO SC: So, I take it you are not disputing
what is recorded there.

ADV BEHARI: No, Chair.

ADV KHUMALO SC: Go to page 12, paragraph 37.

ADV BEHARI: Must I read it as well, Chair?

ADV KHUMALO SC: Yes.

ADV BEHARI: -:

10 “In August 2023, the Accounting Officer raised the issues relating to how the labour relations cases are handled, especially EMPD cases, including the case of Brigadier Mkhwanazi, as it was now raised via an anonymous persons or emails. When we were called to account, HR could not fully account for it, especially Mr Nciza. The Accounting Officer raised more than the non-management of labour cases by Mr Nciza and how the issue of charges was managed. In the discussion, it was suggested that HOD

20 Kemi and me be fully involved in the issue of disciplinary process, and the instruction was very clear, hence the new procedure was developed.”

ADV KHUMALO SC: Do you dispute what is recorded there?

ADV BEHARI: No, it is actually supplements or adds to what I have been talking about in terms of the report, Chair.

ADV KHUMALO SC: All right. Just one thing. You see there, it talks about the anonymous emails, and arising from that, you appointed an audit firm, remember, to deal with the leak.

ADV BEHARI: No, Chair, when the anonymous emails came through, to our attention, I engaged with the City Manager to say these are our concerns which we need to
10 address as information officers. She then called in, I think it was, at that stage it was the CAE Lindiwe Hhleza and thereafter I did not follow the process until the appointed firm then contacted us for information as to what was required.

ADV KHUMALO SC: And then in their report, the so-called audit report, if you remember correctly, in one of the late paragraphs in their recommendations they actually recommended that a legal opinion be obtained on the prospects of succeeding in a disciplinary process against
20 Julius Mkhwanazi. Do you remember that? It is in paragraph 37 point something, 1.27 or something like that.

ADV BEHARI: Ja, I did, I did look at that part where a legal opinion needed to be obtained.

ADV KHUMALO SC: Sorry, it is actually paragraph 13.9.2 of that audit report. I think you have it in front of you.

ADV BEHARI: Yes, first obtain a legal opinion.

ADV KHUMALO SC: Just read it, please.

ADV BEHARI: Section, okay, 13.9.2:

“First obtain a legal opinion on the
City's prospects of success prior to
commencing or instituting disciplinary
action against Mkhwanazi in light of
inter alia ...”

Those aspects.

10 **ADV KHUMALO SC:** Yes, did you obtain that legal
opinion?

ADV BEHARI: No, Chair ...[intervenes].

ADV KHUMALO SC: No, no, yes or no, did you obtain it?

ADV BEHARI: This I do not believe it will be a yes or no
answer, Chair. I just want to go back to, this comes from
13.1 in the findings.

“In the circumstances, Nciza had an
obligation to first obtain a legal
opinion.”

20 So, it was about Nciza obtaining a legal opinion,
not me, Chair.

ADV KHUMALO SC: No, but it is now August. We know
that in terms of the new code, Nciza has no authority.
There is a recommendation that Ekurhuleni should obtain a
legal opinion. Only you can do that at this stage.

ADV BEHARI: Chair, in terms of the processing of the forensic reports, there is a process that we take it through. Then only that they come back to us to say, okay, implement these findings or not. So at that stage ...[intervenes].

ADV KHUMALO SC: Was it implemented either by you or by Nciza?

ADV BEHARI: Not by me, not by me.

ADV KHUMALO SC: And you know he was suspended, so
10 I do not know why you are saying Nciza should have done this, because he was suspended. He could not do this.

ADV BEHARI: Chair, if he was, as I said, Chair, there is a process to follow processing forensic reports. When you go to MPAC, which is, which the internal audit department does, then MPAC comes back and say, okay, deal with these issues. I did not deal with this issue because it was not about, the finding was not against us. It was about not proceeding further, firstly, in terms of what ought to be, and hence the findings were made against Nciza. He ought to
20 have done that. It was a finding that was made against him at that stage.

ADV KHUMALO SC: Mr Behari, I am done, but I find it strange that Nciza, who is the subject of the investigation, because he is one of the suspects, somebody suspects that he is the one who leaked the documents and he is the

author of the email and he is under investigation, then the report must go to him to implement, the very report that investigates him. I just find that very strange.

ADV BEHARI: Chair, okay, I am saying that there was a report, this is a forensic report on the findings of what transpired before. Right, the report is not for Nciza to implement at this stage. It is a report of the forensic auditor. It goes to internal audit department. Internal audit then takes that with the report to impact to say this is what
10 the situation is. These are the findings. Are there fruitless and wasteful expenditure? Where are the irregularities that occurred? And then it goes to MPAC and then MPAC makes a recommendation on the way forward. So at the time of the finding by the internal audit company or the forensic firm, it means that we found these issues that should have been done before we proceeded to that extent. So that is where, so at that stage, there is no indication to me to deal with that, Chair. I hear you, know, you are finding it strange, but that is the process I can describe in terms of
20 processing internal audit reports.

ADV BALOYI SC: Just find out, who ordered this report, this investigation, what you call the forensic investigation?

ADV BEHARI: Ja, okay. So, Chair, the, arising out of the BXB emails, when it came to our attention, I went to City Manager, we discussed the issue in terms of our

compliance. She then discussed the matter with the internal audit, Chief Audit Executive, Mr Lindiwe Hleza, and thereafter we know that Mr Philip Rakgwale, when he started acting, then he processed the matter with the appointment of the firm and engaged further on that.

ADV BALOYI SC: So, you did not appoint the firm?

ADV BEHARI: No, Chair.

ADV BALOYI SC: Okay.

ADV SEGEELS-NCUBE: Thank you, Chair. That is all for
10 the witness.

CHAIRPERSON: Thank you very much, Mr Behari. You are excused.

ADV BEHARI: Thank you, Chair.

ADV SEGEELS-NCUBE: Chair, may you indulge us with an adjournment for us to prepare ourselves for the next witness, ten minutes, please.

CHAIRPERSON: We will come in when you indicate.

ADV SEGEELS-NCUBE: Thank you, Chair.

CHAIRPERSON: Let us adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Segeels-Ncube.

ADV SEGEELS-NCUBE: Thank you, Chair. Chair, the next witness is Ms Gxasheka and there has been two statements filed by Ms Gxasheka ...[intervenes].

CHAIRPERSON: Perhaps before you go on, may I ...[intervenes].

ADV SEGEELS-NCUBE: On record, yes. My apologies, Chair.

CHAIRPERSON: Yes, yes. Please place yourselves on record.

MR MOGOTSI: Afternoon, Chair. My name is Ofentse Mogotsi from Mogotsi Attorneys. I am with my counsel, Advocate Magula. Thank you, Chair.

10 **CHAIRPERSON:** That is a bit unusual for me. It is usually the other way around. It is counsel who usually announces themselves and then say I am instructed by. That is a bit odd.

ADV MAGULA: Thank you, Chair. My name is ...[microphone off]. Thank you, Mr Chairman. My name is Magula. I am an advocate ...[intervenes].

CHAIRPERSON: Sorry, sorry, the surname?

ADV MAGULA: Magula – M A G U L A.

CHAIRPERSON: Thank you.

20 **ADV MAGULA:** Yes.

CHAIRPERSON: Thank you.

ADV MAGULA: Yes, yes, Mr Commissioner. And I am representing Ms Linda Louisa Gxasheka in this matter. It is a brief or an instruction, Mr Chair, by Mogotsi Attorneys. Thank you.

CHAIRPERSON: Thank you.

ADV MAGULA: Thank you, Mr Chair.

CHAIRPERSON: Thank you.

ADV SEGEELS-NCUBE: Thank you, Chair.

CHAIRPERSON: Yes.

ADV SEGEELS-NCUBE: Chair, yesterday afternoon we received a supplementary statement from Ms Gxasheka's attorneys and it is 44 pages long. We have not yet had an opportunity to fully prepare on that statement in order for us
10 to do her cross-examination. The intention was that we would start with her statement, but due to scheduling issues we need to reschedule her evidence so that we can start and finish it all in one go and so given that we have had such limited time to have regard to her statement and prepare on it, we have agreed on a date by when we will resume her evidence. She is under subpoena and we have agreed to the date 26 and 27 February, Chair.

CHAIRPERSON: Do you confirm, Ms Magula?

ADV MAGULA: Yes, I confirm that it is so arranged, the
20 dates are so arranged with the evidence leader to the 26th and 27th of February 2026. Confirm.

CHAIRPERSON: Thank you. I just wanted to be sure of the spelling of your name, because sometimes I have heard people say Gxasheka, so I wanted to look at it written for myself, so I see that it is actually Gxasheka. Good

afternoon, Ms Gxasheka.

MS GXASHEKA: Good afternoon, Commissioners.

CHAIRPERSON: The hearing of your testimony is postponed to 26 and 27 February. You are directed to be in attendance on that day and as you are aware, you are here on subpoena and I am sure you are aware of the consequences of your failure to be in attendance.

MS GXASHEKA: I thank you, Commissioner. I am aware.

CHAIRPERSON: There may be criminal charges, there
10 may be criminal sanctions for your failure to attend at 9:30, 9:30 on both days. Thank you. Let us adjourn and resume ...[intervenes].

ADV SEGEELS-NCUBE: At 9:30 tomorrow.

CHAIRPERSON: At 9:30 tomorrow.

ADV SEGEELS-NCUBE: Correct, Chair.

CHAIRPERSON: Let us adjourn.

ADV SEGEELS-NCUBE: Thank you.

INQUIRY ADJOURNS TO 11 FEBRUARY 2026

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