

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

## SOUTH AFRICAN REVENUE SERVICE

### BEFORE COMMISSIONER

THE HONOURABLE MR JUSTICE NUGENT (RETIRED)

### ASSISTED BY

PROF M KATZ  
MR V KAHLA  
MS M MASILO

### HELD ON

DAY 15

27 SEPTEMBER 2018

PAGES 2362 - 2640

### HELD AT

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Brooklyn, Pretoria



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1 [PROCEEDINGS ON 27 SEPTEMBER 2018]  
 2 [10:08] MS STEINBERG: Just one minute. Good  
 3 morning, Judge, panel. We call Mr Luther Lebelo who is the  
 4 group executive of employer relations in SARS.  
 5 COMMISSIONER: Morning Mr Lebelo.  
 6 MR LEBELO: Morning Judge.  
 7 COMMISSIONER: Thank you very much for  
 8 coming to give evidence.  
 9 MR LEBELO: Thanks.  
 10 COMMISSIONER: Will you affirm that the  
 11 evidence you give will be the truth, the whole truth and  
 12 nothing but the truth, if so will you say I do?  
 13 MR LEBELO: I do.  
 14 EVIDENCE OF MR LEBELO  
 15 MS STEINBERG: Morning Mr Lebelo. Thank  
 16 you for coming.  
 17 MR LEBELO: Morning Advocate.  
 18 MS STEINBERG: Mr Lebelo, you wanted to  
 19 give evidence here today and I know you have a lot to say,  
 20 you've given your files in advance. Before we get there,  
 21 there are just a couple of issues that are troubling us  
 22 that we'd like to put to you in relation to the documents I  
 23 sent you on Friday, I believe. The first relates to an  
 24 invoice from a firm of attorneys that were went to SARS on  
 25 the 31st of July 2016 and the invoice reads as follows. It

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1 says, the reference, SARS's reference is Luther, which I  
 2 presume is you and Makwakwa and it says, "consultation with  
 3 counsel finalisation of the opinion, travel to SARS to meet  
 4 with Jonas and present the opinion, acquired comments and  
 5 instructions to work on the letter, that was on the 1st of  
 6 July 2016 and then on the 12th of July, travel to SARS and  
 7 attended a meeting with Mr Makwakwa, travelled back to  
 8 Sandton and incorporated Mr Makwakwa's input," and then  
 9 there's a disbursement of a payment to an advocate who had  
 10 been briefed to write an opinion. Since you were the  
 11 reference given here, I assume that you asked for the legal  
 12 opinion which SARS asked or which you asked for after Mr  
 13 Moyane received a letter from the director of the FIC on  
 14 the 17th of May 2016 and the letter said that there are  
 15 suspicious transaction reports concerning two SARS  
 16 employees and one of those is Mr Makwakwa. Is it correct  
 17 that you then briefed these attorneys to seek an opinion  
 18 from counsel on that report?  
 19 MR LEBELO: Thank you so much for the  
 20 question and good morning to the Commission and once again  
 21 thank you for giving me the opportunity to come before you.  
 22 The answer is that, no I, in fact I saw this opinion for  
 23 the first time when you sent it to me the other day. The  
 24 only time really when I heard about Mr Makwakwa's matter is  
 25 when it appeared on the newspapers, I never heard about Mr

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1 Makwakwa's matter. The reference to me is that because I'm  
 2 the head of labour relation and the budget is under me the  
 3 arrangement is that the lawyers will either do a reference  
 4 to me so that it directs me to the area or they do it my  
 5 office, one of the office people. When we, so all that  
 6 happens, if we get something like this coming from the  
 7 office of the Commissioner, my office will verify with them  
 8 and say is this true that this work was done, is it true  
 9 that there was proof of work and once that happened then we  
 10 put our signature. When we signed, when I signed the  
 11 affidavit, I mean the invoice the, I then discovered that  
 12 the attorneys arranged to meet with me, so the meeting did  
 13 not take place, so it is arrange a consultation with me,  
 14 which then they later cancelled, I was not even aware so  
 15 they put an appointment, they later cancelled. That's all  
 16 that this does but I never briefed them, I never knew about  
 17 Mr Makwakwa's matter until the day that it appeared on the  
 18 papers.  
 19 MS STEINBERG: So do you know who briefed  
 20 the attorneys to get an opinion on this issue?  
 21 MR LEBELO: It's Mr Moyane.  
 22 MS STEINBERG: Mr Moyane?  
 23 MR LEBELO: Yes, when we verified the  
 24 invoice before we signed it. It was confirmed -  
 25 MS STEINBERG: It was Mr Moyane.

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1 MR LEBELO: Yes.  
 2 MS STEINBERG: You know the instruction  
 3 concerns us and I'll tell you why. Mr Moyane had received  
 4 this report from the FIC which said that Mr Makwakwa and  
 5 another person were under suspicion and he did two things  
 6 that are of concern to us. The one is that, the first step  
 7 he seemed to have taken was to ask attorneys to instruct a  
 8 counsel to provide and I read from the opinion. "Urgent  
 9 legal advice on the legality and consequences of an  
 10 investigation conducted by FIC against its chief officer Mr  
 11 Makwakwa," and the legal advice that Mr Moyane sought was  
 12 actually whether the FIC complied with the law in  
 13 conducting the investigation against Mr Makwakwa, whether  
 14 his rights were violated by the FIC. Now the opinion says  
 15 the FIC did what they were entitled to do and within the  
 16 four corners of the law. But it is of some concern to us  
 17 that that was the first thing he did when he was told that  
 18 one of his senior staff might be involved in financial  
 19 crime. The second thing that concerns us is that on this  
 20 invoice we see that Mr Makwakwa himself was told and  
 21 consulted about the fact that the FIC suspects him of  
 22 financial crime. Now I'm not sure if you're aware but it's  
 23 a crime to tip off a suspect of the FIC.  
 24 MR LEBELO: Unfortunately I wouldn't be  
 25 of help because I, like I'm saying I saw this opinion of

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1 the first time.

2 MS STEINBERG: Okay.

3 MR LEBELO: I don't know who was briefed

4 to do what and all this.

5 MS STEINBERG: So it's something you're

6 saying Mr Moyane can answer for but nobody else?

7 MR LEBELO: Yes, or the lawyers that were

8 briefed and all that. But I was not involved.

9 MS STEINBERG: Okay. I'm glad you

10 cleared that up.

11 COMMISSIONER: Can I just clarify though.

12 Did you sign off the invoice?

13 MR LEBELO: Yes.

14 COMMISSIONER: Did you not ask what that

15 was all about?

16 MR LEBELO: No, no, so the office of the

17 Commissioner briefed their lawyers from time to time. So

18 they can brief them on civil or labour matter. Then when

19 the invoice come all we do is that we verify with them

20 whether they are aware of the briefing, whether the work

21 has been done and once they confirm that the work has been

22 done we proceed with the signing. But we don't interrogate

23 and check who briefed what. So, so ja that's that.

24 MS STEINBERG: The second invoice that I

25 sent you, it's the one dated 31st of May 2017 and again on

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1 the face of the invoice it appears -

2 MR LEBELO: Sorry, I'm just trying to get

3 to it.

4 MS STEINBERG: Okay. 31st of May.

5 MR LEBELO: From the booklet it will be

6 number 1, is it number 1 because the booklet was -

7 MS STEINBERG: I'm not sure the order you

8 have it in but the, if you look at the invoice date.

9 MR LEBELO: Ja.

10 MS STEINBERG: It's 31st of May 2017. The

11 date is on the top right hand corner and it's called

12 opinion on powers of the Commissioner.

13 MR LEBELO: Okay the one I have is the

14 one that is, the headline, the heading is opinion on

15 powers, yes.

16 MS STEINBERG: Yes.

17 MR LEBELO: Opinion on powers of the

18 Commissioner.

19 MS STEINBERG: Ja.

20 MR LEBELO: Thank you.

21 MS STEINBERG: And again the reference

22 here is Luther Lebelo.

23 MR LEBELO: Yes.

24 MS STEINBERG: And this opinion, excuse

25 me this invoice seems to concern two matters that the

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1 attorneys were briefed to look into. The one is, it says

2 that they received instructions from the office of the

3 Commissioner with regard to allegations against the

4 Commissioner in the book entitled the Maputo Connection and

5 they were asked to read that book and then to draft a

6 memorandum, counsel then drafted a memorandum on that book.

7 Did you give that instruction?

8 MR LEBELO: No. The invoice, the acting

9 Commissioner called me about two weeks ago and asked me

10 about the invoice but his concern was that when he reads

11 the invoice it looks like Mr Moyane asked for something

12 that can be interpreted as personal.

13 MS STEINBERG: Yes.

14 MR LEBELO: And I then asked the

15 attorneys who dealt with the matter and then they provided

16 an explanation to Mr Kingon, I was under the impression

17 that that explanation was CCd to the Commission. So there

18 is the whole explanation of an email that is being

19 explained here to Mr Mark Kingon. But I never briefed the

20 matter. I didn't even know that there was a briefing on

21 the matter. Like I'm saying that the difficulty there is

22 that the Commissioner can call the lawyers and say to them

23 give me an opinion on whatever that he's busy with, you

24 know get an opinion on a civil matter of Mr Whoever and

25 then what happens is that the lawyers because they then

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1 categorise that this matter is a legal matter or whatever

2 they'll put a reference of the person who is responsible

3 there. Ours is to verify whether the work was done and

4 then if the work is done then we pay them and in this case

5 it's the same thing. I never, I was not, I was never

6 involved in that briefing.

7 MS STEINBERG: Do you think it would be

8 proper for Mr Moyane to spend SARS's money to get an

9 opinion about some incriminating references to him in a

10 book about his life before he became the Commissioner of

11 SARS?

12 MR LEBELO: If you allow, let me not

13 venture into that. I think it will be unfair without

14 knowing the facts. I think it's better that when he comes

15 he can explain, if he comes, just to explain what is the

16 story because I just see the book this and that and that so

17 I don't know what was the background, what was the context.

18 MS STEINBERG: Okay. The second item in

19 this invoice, that's working on an opinion with senior

20 counsel regarding the powers of the Commissioner to deal

21 with bonuses and salary increment outside ministerial

22 consent. Do you see that?

23 MR LEBELO: Yes.

24 MS STEINBERG: Now that concerns, there

25 was a fairly public spat between Mr Moyane and the then

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1 finance Minister Mr Gordhan. Mr Gordhan saying it's  
 2 improper for the SARS' officials to determine their own  
 3 bonuses. Mr Moyane saying that they are entitled to do  
 4 that by law. Did you, did you give this instruction to the  
 5 attorney?  
 6 MR LEBELO: No. But I was involved, but  
 7 not giving the instruction, but I know -  
 8 MS STEINBERG: How were you involved?  
 9 MR LEBELO: I know that part of the, ja,  
 10 so what happened is the, there was an issue between SARS  
 11 and the Ministry about the payment of bonuses and Mr Moyane  
 12 then sought a legal opinion from attorneys as to, so let me  
 13 explain, so in SARS because we're structured, so you've got  
 14 Exco members, you have got group executives and you've got  
 15 the bargaining unit. So the question was whether the  
 16 Minister must approve the bonus for SARS' employees and  
 17 they sought a legal opinion from the attorneys. The  
 18 attorneys said no the Commissioner can pay the bonuses  
 19 without the approval of the Minister and I may not get my  
 20 facts right here, because I didn't know that that is the  
 21 line that you're going to take and then they sought another  
 22 legal opinion from senior counsel, it also said no he  
 23 doesn't have to get approval from the Minister and they  
 24 sought another legal opinion which said the same thing. So  
 25 in my knowledge and I'm saying I might not be very

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1 specific, the Commission maybe can ask for the opinions and  
 2 look at them. That is what I remember about the issue  
 3 about the powers of the Commissioner. But of course other  
 4 things happened, national, the National Treasury had a  
 5 different view and there were issues with the courts, I  
 6 don't know what happened in the courts because then I was  
 7 not, I didn't get involved that far. But what I remember  
 8 was that the opinion that was sought and on the basis of  
 9 the opinion the bonuses were paid and AG came and  
 10 questioned and then SARS threatened to take AG to court and  
 11 I don't know what happened.  
 12 MS STEINBERG: That's right.  
 13 COMMISSIONER: Mr Lebelo, can you,  
 14 perhaps you can help me on this because I've seen they have  
 15 alleged that the opinions were sought and I've asked for  
 16 those opinions and I can't find an opinion that says you're  
 17 entitled to pay the bonuses. I found three opinions I  
 18 think it is about the powers of the Commissioner to appoint  
 19 people and so forth. But none of them I can find deal with  
 20 the question of bonuses as you've said it, they said that  
 21 he may pay the bonuses. So there may be other opinions  
 22 that I'm not aware of but those are the only ones that have  
 23 been produced to me and they say nothing about payment of  
 24 bonuses. Could you help me when you're finished your  
 25 evidence to see if we can find the opinions you're talking

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1 about that said you may pay the bonuses, could you do that  
 2 for me after your evidence.  
 3 MR LEBELO: No problem.  
 4 COMMISSIONER: So that I could find  
 5 those.  
 6 MR LEBELO: No problem.  
 7 MR KAHLA: Just a quick follow up, Mr  
 8 Lebelo. If the first opinion said the Commissioner was  
 9 empowered to make those payments, why was it necessary to  
 10 get the second and the third? Do you have any knowledge of  
 11 that?  
 12 MR LEBELO: Ja, I was not deeply involved  
 13 in the sense that somebody will decide let's get another  
 14 one but my understanding at the time was that the first one  
 15 was coming from attorneys and there was a feeling that  
 16 these matters are very serious we must get an opinion from  
 17 a senior counsel and that is when senior counsel, I forgot  
 18 his name, got us an opinion and then understand that  
 19 another senior counsel was also briefed. But I'm not so  
 20 sure what was the moving parts there. So that, for all  
 21 those opinions.  
 22 COMMISSIONER: The difficulty is that I  
 23 can't find any opinion about the bonuses. So perhaps we  
 24 can leave that for the moment and come back to it once you  
 25 can just, you know I need to look at these opinions and I

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1 can't find one, I find there is an opinion from Advocate  
 2 Maleka for example -  
 3 PROF KATZ: Question here.  
 4 COMMISSIONER: Just a minute.  
 5 PROF KATZ: Oh sorry.  
 6 COMMISSIONER: And so I think it's very  
 7 important because there was this dispute and it, the  
 8 Auditor-General qualified or he put a note into the  
 9 accounts that this was unapproved expenditure. The bonuses  
 10 were unapproved and so forth and they ought to have been  
 11 approved. So it's quite an important issue. It's one of  
 12 those on our terms of reference. So perhaps when we break  
 13 you'll help me because I'd like to clear this up now and  
 14 I'll get the opinions and see if those are the opinions  
 15 you're looking at and then we can just see what they  
 16 actually dealt with, is that okay?  
 17 MR LEBELO: Maybe, not when we break, I  
 18 think the best people to help the Commission -  
 19 COMMISSIONER: Ja.  
 20 MR LEBELO: On this matter will be the  
 21 chief financial officer because they ran with the process  
 22 to the end, with all the opinions and stuff like that. So  
 23 maybe, because I don't want to come with sketchy things.  
 24 Maybe they can, the Commission after this can engage the  
 25 chief financial officer.

<p style="text-align: right;">Page 2374</p> <p>1 COMMISSIONER: I'll do that but I'm just  2 concerned that your evidence was that the opinions said you  3 may pay the bonuses. Now I just want to see if that's  4 correct or not because it's been worrying and I've been  5 trying to find these opinions and maybe you can help me on  6 that. It may be that you're not correct that the opinion  7 simply dealt with the powers of the Commissioner to appoint  8 people. So we'll look at that because I just want to, I'm  9 concerned about you know you raise a matter, I didn't  10 expect about these bonuses which has been bothering me for  11 quite a while. So perhaps we can look at that.</p> <p>12 PROF KATZ: Sorry if I could just ask one  13 question there. Mr Lebelo, you are group executive  14 Employment Relations. Is questions of payment of bonuses  15 not inherently in your, the scope of your position?</p> <p>16 MR LEBELO: Ja, so when it arose I think  17 at the time I was, because it arose as payment of bonuses  18 which is done by HR and that is how I got involved. Then  19 it took its own shape as it goes but the bonuses, the  20 decision to pay bonuses are the work of HR.</p> <p>21 PROF KATZ: Nothing to do with Employment  22 Relations?</p> <p>23 MR LEBELO: Ja, I'm part of the HR.</p> <p>24 PROF KATZ: So what was your view on all  25 of that?</p>	<p style="text-align: right;">Page 2376</p> <p>1 has been referenced to where your name is placed as the  2 reference in relation to the instructions and the invoices  3 that have to be paid pursuant to those engagements does  4 your corporate legal services play any role, are they  5 involved in the instructions to attorneys or are they  6 totally in the dark as well?</p> <p>7 MR LEBELO: No, they're involved. So the  8 difference is, we've got a legal department, so the legal  9 department has got budget for what it does. But the budget  10 for labour related matters sits with HR and it sits under  11 me. So that is the only difference and that is why there  12 is sometimes a grey area of you start with a labour matter,  13 it jump this way, where does the invoice come. But legal  14 deals with taxes and all that and they've got their own  15 budget, they brief their own lawyers.</p> <p>16 MR KAHLA: No, I'm just trying to  17 understand if that is the case, if you take this issue  18 around, you call the book, is it The Maputo Connection  19 would it have been considered to be a labour relations  20 matter for it to have your name as a reference?</p> <p>21 [10:28] MR LEBELO: Ja like I am saying it is  22 grey so sometimes it starts with something else and it ends  23 with something else. It might end on the other side, it  24 may end on the side of, on our side. But if it ends on our  25 side all you have to do is to verify whether the work was</p>
<p style="text-align: right;">Page 2375</p> <p>1 MR LEBELO: Like I'm saying that, my  2 understanding and let me use the word carefully, my  3 understanding was that there were three opinions that were  4 sought which opinion said we can pay bonuses and then like  5 I'm saying a lot of things happened. But the people who  6 started running with it, when the AG interfered was the, I  7 mean when the AG intervened was the chief financial officer  8 and it ran its course and I think he is far better place to  9 take you through the history and give all the background.</p> <p>10 COMMISSIONER: Would bonuses not get  11 approved by Exco though? I mean isn't it Exco -</p> <p>12 MR LEBELO: No.</p> <p>13 COMMISSIONER: Does HR decide whether  14 there are bonuses to be paid or does Exco decide?</p> <p>15 MR LEBELO: No, so what happened is the,  16 at the beginning of the year and I'm not very au fait, I  17 don't want to get into trouble for myself. So what I  18 understand is that at the beginning of the year we budget  19 for bonuses. Then when it's time for bonuses HR will draft  20 a submission which submission must go to National Treasury  21 to say we are requesting the following bonuses, obviously  22 HR will draft it, the Commissioner will sign if he's happy.  23 Then it goes to National Treasury. Then National Treasury  24 will decide.</p> <p>25 MR KAHLA: On these matters that there</p>	<p style="text-align: right;">Page 2377</p> <p>1 done -</p> <p>2 MR KAHLA: I'm trying to understand from  3 your verification it must than have gone through a stage  4 that ends up fitting the labour relations category for want  5 of a better word. Would you have had some knowledge about  6 what it is for it to then suddenly fit into the labour  7 relations category? It may have started off as a  8 contractual dispute on something else but it moves into the  9 labour relations space where you are in, do you get to know  10 about what the matter is about for it to justify your  11 involvement and procurement from your budget?</p> <p>12 MR LEBELO: Yes and no. So let me give  13 an example now. We're busy with a disciplinary process of  14 some senior SARS officer and I know that the Acting  15 Commissioner is dealing with the matter, he is briefing  16 some lawyer somewhere. And he might bring the invoice to  17 me and when he bring the invoice to me I must just ask  18 these lawyers are saying this is what they've done, is it  19 true. Then his office confirms, then I'll do the payment  20 because he doesn't have a budget for legal matters.</p> <p>21 MR KAHLA: Ja.</p> <p>22 MR LEBELO: So it's not a yes or no, it  23 depends.</p> <p>24 MR KAHLA: Okay let me just take straight  25 onto The Maputo Connection. The invoice would have come</p>

<p style="text-align: right;">Page 2378</p> <p>1 with your reference, so you would have had to confirm that 2 it is a labour relations matter and you would have 3 interacted with whoever it is. In this instance it was the 4 Commissioner. Did you interact with the Commissioner on 5 The Maputo Connection instruction? 6 MR LEBELO: Ja so what will happen is my 7 office will call the office of the Commissioner and say 8 here's an invoice from the lawyers who are claiming to have 9 done particular work. Can you confirm the invoice? If 10 they confirm the invoice then we make the payment on the 11 basis that they confirm the invoice. 12 MR KAHLA: But would they have confirmed 13 that this invoice in relation to the Maputo connection for 14 example relates to a labour relations matter for which it 15 can justifiably be defrayed from the budget of labour 16 relations? Would that assessment be made by you or your 17 team? 18 MR LEBELO: My team will do that. 19 MR KAHLA: And they did it in this 20 instance? 21 MR LEBELO: Yes. Actually after doing 22 that they even sign, so if this was an original invoice 23 you're going to see a signature of somebody from my team. 24 MR KAHLA: So in the view of your team 25 The Maputo Connection instruction was a labour relations</p>	<p style="text-align: right;">Page 2380</p> <p>1 thing that they do is to verify whether the work was done. 2 So the biggest verification is not whether it's a labour 3 matter, the biggest verification is whether the work was 4 done. And if the work is done and the Commissioner says we 5 must pay it from our budget we pay it from our budget. 6 MR KAHLA: But doesn't it trouble you 7 that it might be a matter that perhaps should sit properly 8 on the budget of somebody else within SARS that you are 9 having the responsibility to defray it from your budget 10 when it's got nothing to do with your areas. 11 MR LEBELO: It does, it does and you'll 12 see a lot of them and this is the issue that we raise with 13 the office of the Commissioner, you'll see that a lot of 14 them they're not really straight labour relations like this 15 one of the AG and it takes a shape and because it started 16 being paid by us it comes to us and start to affect our 17 budget we shouldn't budget for. So we've been raising it 18 with that office that as much as we respect the work they 19 do, as much as we respect the power that they have, but we 20 need to find a way where we separate the two budgets 21 because it just messes up the budget. Fortunately now the 22 new process that has been instituted now is that the 23 instructions are centralised and it was part of resolving 24 that problem. So the head of legal will now deal with all 25 instructions to herself and then we will decide which law</p>
<p style="text-align: right;">Page 2379</p> <p>1 matter, was an employee relations matter. 2 MR LEBELO: I suppose, but the point I'm 3 making is, you see the problem with invoices when they come 4 like this, like the invoice that was read about you 5 consulted with Mr Makwakwa on something else. Then they do 6 something on something else. So it becomes grey, so we 7 normally paid that. It's an area that we're struggling to 8 resolve to say where do you draw a line where a lawyer does 9 too many things and in the midst affect a lot of other 10 areas. 11 COMMISSIONER: You see the problem here, 12 I just asked for the invoice, "received instructions from 13 the office of the Commissioner," which as you say the 14 instructions come, "with regard to allegations against the 15 Commissioner in the book titled The Maputo Connection." 16 And I think that the difficulty is to see what that has to 17 do with Employee Relations, that's the problem. Can I see 18 that other invoice please? 19 MR KAHLA: Just a quick follow up, if 20 you'll allow me, Judge. If we then take this particular 21 notation in relation to this invoice how did come about 22 that either yourself or members of your team assess that to 23 be an Employee Relations matter? 24 MR LEBELO: You know in the mail, 25 especially when it comes from the Commissioner, the biggest</p>	<p style="text-align: right;">Page 2381</p> <p>1 firms will be briefed. So you just go there and say I'm 2 looking for this service, she will do that looking at all 3 the other firms. And I think going forward it will resolve 4 this problem. 5 COMMISSIONER: There's another one, I see 6 it's headed SARS/FICA which is Financial Intelligence 7 Centre. And that would not seem to fall within Employer 8 Relations. 9 MR LEBELO: Ja and it's the same problem 10 – 11 COMMISSIONER: Which budget should it 12 come from if you want to go and consult with attorneys 13 about the FICA report? 14 MR LEBELO: Ja and it's the same problem, 15 so if you remember the FICA matter – 16 COMMISSIONER: Ja. 17 MR LEBELO: - properly, so FIC came to 18 SARS and say we have got a suspicious transaction and the 19 suspicious takes a number of forms. The first one is that 20 they must check whether there was tax violation which is a 21 tax matter. You must check whether there was a labour 22 matter as well, whether, you know some monies were – 23 because one of the things that was raised there in the FIC 24 report was that some monies that were paid by SARS to the 25 employee were also suspicious. And then it venture into</p>

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1 misconducts and that's the problem I'm raising because it  
 2 has an element of a tax, it has an element of misconduct,  
 3 it also has an element of criminality. So what – but like  
 4 I'm saying with the new model that we put in place it will  
 5 solve all those problems because it's now centralised.

6 COMMISSIONER: But are you saying that  
 7 this one was properly, the one with the FICA that that was  
 8 in fact your cost centre it should have come from?

9 MR LEBELO: Ja I wouldn't say that –

10 COMMISSIONER: Because I mean I've seen  
 11 the FICA report.

12 MR LEBELO: Yes.

13 COMMISSIONER: The FICA report is about  
 14 flows of money allegedly.

15 MR LEBELO: Yes and Judge, you'll  
 16 remember that the very same report ended up us charging  
 17 someone. So it ended us disciplining someone and that mix  
 18 –

19 COMMISSIONER: No but I mean the point is  
 20 that this consultation and this opinion was not about  
 21 whether Mr Makwakwa had done anything wrong it was about  
 22 whether FICA has done something wrong.

23 MR LEBELO: Yes.

24 COMMISSIONER: I mean there were no  
 25 disciplinary proceedings against FICA for example.

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1 MR LEBELO: Yes and I think maybe – okay  
 2 I repeated that, as late as last year we then came with a  
 3 new model because these complaints was coming from both  
 4 sides. So legal also complained that we're paying labour  
 5 matters because there was a grey area, we also complained  
 6 that we are paying legal matters. And then we agreed that  
 7 legal is going to be centralised and then the bridging is  
 8 going to be centralised and the head of legal is going to  
 9 do everything. And that is how we resolved it and I think  
 10 going forward we are no longer experiencing much of this.

11 PROF KATZ: Sorry, can I ask one  
 12 question? Mr Lebelo, the focus has been on where it should  
 13 be debited, the fees, but surely as a senior executive at  
 14 SARS when you get things from FICA and allegations you get  
 15 inherently involved and get concerned what's going on, are  
 16 we doing right. Were you not heavily involved then in the  
 17 matter?

18 MR LEBELO: The matter of Mr Makwakwa.

19 PROF KATZ: The FICA report ja.

20 MR LEBELO: No, no I was not heavily  
 21 involved.

22 PROF KATZ: But shouldn't you be at  
 23 senior position in SARS with FICA making allegations?

24 MR LEBELO: No so I report to the head of  
 25 HR, Mr Tebogo Mokwena and my understanding without giving

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1 evidence is that the Commissioner decided that the head of  
 2 HR himself will deal with issue of the thing. I was left  
 3 off the hook that's why I'm saying I only heard about it in  
 4 the newspapers, so that is the decision that they had made.

5 MS STEINBERG: Do you have a discretion  
 6 as to whether – when you get those invoices, do you have a  
 7 discretion as to whether to say yes I'll sign and pay the  
 8 money from my cost centre or no I won't?

9 MR LEBELO: Look there are a number of  
 10 them that we push back, literally push back and say this  
 11 doesn't work –

12 MS STEINBERG: So you do have a  
 13 discretion.

14 MR LEBELO: Ja so some of them they force  
 15 us and say well you must pay it, it's coming from the  
 16 office of the Commissioner, so it's a discretion that you  
 17 exercise that it must be pushed back.

18 MS STEINBERG: Wasn't it clear to you on  
 19 the fact of the invoice about the FIC that Mr Moyane's  
 20 conduct was improper?

21 MR LEBELO: No I didn't even know that  
 22 there was an FIC report from someone, I just saw that there  
 23 is an instruction to source an opinion on something about  
 24 the FIC. So I didn't know the background that they are  
 25 doing this because there is a report from FIC.

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1 COMMISSIONER: And so did I understand  
 2 you correctly earlier when the attorney charged or arranged  
 3 a consultation with Mr Lebelo, do you say there was no  
 4 consultation with the attorney?

5 MR LEBELO: No, no.

6 MS MASILO: Mr Lebelo, are there legal  
 7 advisors or legal consultants who are based in the office  
 8 of the Commissioner or who were at the time who would have  
 9 then briefed counsel since you are saying they were not  
 10 briefed by your division or by your section?

11 MR LEBELO: No normally what will happen  
 12 is, under normal circumstances the Commissioner will use  
 13 the legal department for whatever instructions. So he  
 14 doesn't have a legal person sitting there who helps him to  
 15 do the briefing.

16 MS STEINBERG: Okay.

17 MR LEBELO: Sometimes he'll brief them  
 18 alone, but sometimes he'll drag them or sometimes he'll  
 19 drag us and say come on we want to instruct. Sometimes he  
 20 instructs us to instruct them.

21 MS STEINBERG: So really you're saying  
 22 you approved invoices on the Commissioner's say so that  
 23 that work was done.

24 MR LEBELO: Yes with the proof of the  
 25 work being done.

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1 MS STEINBERG: Sorry.

2 MR LEBELO: With the proof of the work  
3 being done.

4 MS STEINBERG: What is the proof of the  
5 work being done?

6 MR LEBELO: The opinion.

7 MS STEINBERG: So you did see the  
8 opinion.

9 MR LEBELO: No, no I'm saying that when  
10 the invoice come, so the lawyers says I travelled to  
11 Sandton, I came back and that whoever I did all those kinds  
12 of things. But it was about the opinion. And when the  
13 invoice come like this then we ask was the work done. If  
14 they confirm the work has been done we sign. But we don't  
15 say to them attach all the work to show that it has been  
16 done, we don't go that far.

17 MS STEINBERG: Can I move on?

18 COMMISSIONER: Yes.

19 MS STEINBERG: I also gave you two  
20 invoices that relate to the work of this Commission. The  
21 one is dated 28th February 2018. Now that's the one for 26  
22 400 odd.

23 MR KAHLA: 28 Feb 2014.

24 MS STEINBERG: 2018, this year.

25 MR LEBELO: 2018. I am just trying to

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1 get to that but ja.

2 MS STEINBERG: Take your time.

3 MR LEBELO: I don't seem to find it. Is  
4 it, which heading of the invoice again?

5 MS STEINBERG: Sorry.

6 MR LEBELO: Which heading of the invoice?

7 MS STEINBERG: It says Commission of  
8 Inquiry.

9 MR LEBELO: Commission of Inquiry. I  
10 can't find it here.

11 MS STEINBERG: Shall I just read it to  
12 you?

13 MR LEBELO: Please.

14 MS STEINBERG: It says – so it's the 28th  
15 of February this year, it says, "Commission of Inquiry  
16 reference Luther Lebelo," and it says, "on the 28th of  
17 February 2018 perusal of files, collation of documents in  
18 preparation of the inquiry, discussion with Mr Lebelo,  
19 acquire documents and send same to Mr Lebelo." And that's  
20 a nine hour fee. Now can you tell us what that involved?

21 MR LEBELO: Ja I think the Commission  
22 will remember that when I came for the consultation one of  
23 the things I said was that I'm going to ask the lawyer that  
24 worked on these matters to prepare us the files that were  
25 ready for the hearing for that time which files I'm going

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1 to present. And that is the work that we did.

2 MS STEINBERG: No but this pre-dates –

3 COMMISSIONER: This is February, I don't  
4 think the Commission had been established yet. I can't  
5 remember –

6 MS STEINBERG: This pre-dates the  
7 establishment, it's February this year, this Commission was  
8 only established towards the middle of the year.

9 MR LEBELO: Okay I remember, my apologies  
10 because I don't have the invoice. So what happened is when  
11 the Commission was announced in December –

12 COMMISSIONER: Sorry, just give him the  
13 invoice, if he hasn't got the invoice, it seems only fair  
14 that he should look at it.

15 MR LEBELO: Ja so what happened is when  
16 the Commission was announced in December I was appointed to  
17 act on the 1st of February as a chief officer being a member  
18 of Exco. So Exco took a decision that they must start with  
19 a team that must start preparing for the Commission, so  
20 every member was asked to put files together, about KPMG,  
21 that was just the guesswork of what work needs to be done.  
22 And I was tasked that I must facilitate that and Mashie  
23 Moodley because it was expected that they had a lot of work  
24 that was done by Mr Moyane. He appointed them to be the  
25 liaison person and I was appointed to be the liaison

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1 person. The work stopped because when they came and met  
2 with me I said them that look I think we'll go everywhere  
3 because the Commission just got announced about governance,  
4 we don't know what that means and we are going everywhere.  
5 And I said let's stop until we get a terms of reference, so  
6 this was those early consultation that took place.

7 MS STEINBERG: Then the other invoice,  
8 the final one that should be in your pack is the one you  
9 referred to earlier.

10 MR LEBELO: Okay.

11 MS STEINBERG: And that's the invoice  
12 dated 30 June this year and it's called SARS Project  
13 Modernisation. I think it's mistitled, SARS Project  
14 Modernisation. Do you have that one? We did send it to  
15 you, it should be there.

16 MR LEBELO: Ja I received this from you,  
17 the way it is filed so I don't – no it's not here. These  
18 two invoices, this invoice and that invoice –

19 COMMISSIONER: Mr Siyo, will you just go  
20 and help the witness to see if he can find it? It's dated?

21 MS STEINBERG: It's the 30th of the 6th  
22 2018.

23 COMMISSIONER: Thank you.

24 MR LEBELO: Oh yes, thanks.

25 MS STEINBERG: Now this invoice has

<p style="text-align: right;">Page 2390</p> <p>1 really two items. The one is compiling the documents which 2 I presume are these for your testimony, is that right? So 3 the attorneys, you briefed the attorneys to put together 4 these files - 5 MR LEBELO: Yes. 6 MS STEINBERG: - for this hearing. The 7 other says Listening to Audio Recording. That was on the 8 30th of June 2018. What audio recording was that? 9 MR LEBELO: The Judge will remember that 10 the lawyers were talking about an audio recording that 11 they - 12 COMMISSIONER: Sorry? 13 MR LEBELO: I was saying that the Judge 14 will remember that in one of the emails from the same 15 lawyers they were talking about an audio recording that 16 they wanted to give you with some sticks. So I when I was 17 asking they told me that they listened to that as part of 18 the preparation of the file. 19 MS STEINBERG: So that was the memory 20 stick that Mr Mpfu, on the 29th of June sitting here in the 21 Commission, is that the audio stick - 22 MR LEBELO: No, no I don't know, I don't 23 know what he said. I don't know what Mr Mpfu had, so I 24 don't know whether it was the same one. 25 MS STEINBERG: So who gave the attorneys</p>	<p style="text-align: right;">Page 2392</p> <p>1 MR LEBELO: No I gave them the 2 instructions to prepare me files which we had in 2014 in 3 preparation to the Commission. So they did a number of 4 things, they read documents, they do this, they listen to 5 an audio in preparation of that. 6 MR KAHLA: Please help me. You 7 instructed them to prepare your files, were these files 8 that were in possession of the attorneys or were they files 9 that were in your possession at SARS? 10 MR LEBELO: No it was in the possession 11 of the attorneys. 12 MR KAHLA: Including these audios? 13 MR LEBELO: Yes. 14 COMMISSIONER: But had you listened to 15 the audio before? 16 MR LEBELO: No. 17 [10:48] MS STEINBERG: How do you know the audio 18 was in their possession? 19 MR LEBELO: They told me. 20 MS STEINBERG: They already had it? 21 MR LEBELO: Yes. 22 MS STEINBERG: So it's mere coincidence 23 that it happened, that they listened to this audio the day 24 after the hearing in which there was a memory stick shown? 25 MR LEBELO: I think they'll better</p>
<p style="text-align: right;">Page 2391</p> <p>1 the audio stick? 2 MR LEBELO: The attorneys will explain, I 3 don't know. 4 MS STEINBERG: You don't know, you had 5 nothing to do with the audio. 6 MR LEBELO: No I don't know. 7 MS STEINBERG: So when you then signed 8 off on this invoice who did you check with about that the 9 attorney actually had done this work with the audio stick? 10 MR LEBELO: I checked with the attorneys 11 then they explained that it was an audio regarding Mr Janse 12 van Rensburg, but I don't know who gave them the video. 13 MS STEINBERG: So you didn't check 14 internally in SARS that the attorneys actually did that 15 work. 16 MR LEBELO: No, no remember listening to 17 the audio was part of the work that I asked them to do. 18 MR KAHLA: Who gave them the audios, was 19 it yourself, did you give the attorneys the audio? 20 MR LEBELO: No they had the audio, 21 remember these files were there and the audio and all the 22 evidence since 2014. So they had this since 2014. So I 23 don't know who gave them the audio. 24 MR KAHLA: But you gave the instructions 25 for them to listen to the audio.</p>	<p style="text-align: right;">Page 2393</p> <p>1 explain that. 2 COMMISSIONER: Ja. 3 MR LEBELO: I think they'll better 4 explain that. 5 MS STEINBERG: I'd also, as I recall 6 your, the attorney said that the audio related to an 7 interview with Mr Van Rensburg with regard to project 8 Sunday Evenings. 9 MR LEBELO: Ja. 10 MS STEINBERG: I wonder why the 11 Commission hasn't been favoured with that audio stick? 12 MR LEBELO: I also don't know. 13 MS STEINBERG: And it doesn't seem to be 14 part of the files they prepared for you. 15 MR LEBELO: No, the last email they sent 16 they said they've got the audio, they wanted to deliver it 17 to the Commission and I don't know, I saw there, I don't 18 know what happened after that, what - 19 COMMISSIONER: Do you know I think and 20 I'm just speaking from memory, I've had so much 21 correspondence, I think in fact that memory stick, the 22 attorneys said that they were sending it or they did send 23 it. I don't recall. I certainly haven't listened to 24 anyone. But I think there was some mention of it in one of 25 the letters from the attorneys. So -</p>

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1 MS STEINBERG: You're right, Judge.  
 2 COMMISSIONER: - sorry, am I right?  
 3 MS STEINBERG: You're right that they  
 4 mention that but you see my concern, Judge –  
 5 COMMISSIONER: Yes.  
 6 MS STEINBERG: - is that's on the 17th of  
 7 September, right, a week ago and the matter only arises  
 8 because we ask the attorneys –  
 9 COMMISSIONER: Okay.  
 10 MS STEINBERG: - what is the audio? We  
 11 see this on the invoice. Now if we hadn't asked the  
 12 question then we wouldn't have been given the audio stick.  
 13 It's only in response to our question and that concerns me  
 14 that there's an audio stick floating around that SARS is  
 15 paying money to listen to but we are not favoured with that  
 16 audio stick.  
 17 COMMISSIONER: I understand.  
 18 MS STEINBERG: Particularly, Judge,  
 19 because we are accused sometimes of not presenting all the  
 20 evidence. It's of great concern to me that we get the  
 21 evidence.  
 22 MR LEBELO: I think it's a fair concern.  
 23 I'll suggest that they –  
 24 COMMISSIONER: No, look, I know it is  
 25 concerning, you've written very often about how biased this

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1 Commission is. We've spoken about it. I think I've spent  
 2 more time with and you'll agree, Mr Lebelo, and anyone else  
 3 in this Commission.  
 4 MR LEBELO: And you also agree that when  
 5 you are done I'll visit you.  
 6 COMMISSIONER: No, maybe or maybe not,  
 7 we'll see.  
 8 MS STEINBERG: Okay. So, Mr Lebelo –  
 9 COMMISSIONER: I must say just thinking  
 10 about that, it's never gone out into the press how much  
 11 time I've spent with you and we have spent a lot of time,  
 12 haven't we.  
 13 MR LEBELO: Sure.  
 14 COMMISSIONER: We've gone back and forth,  
 15 you've told me I'm biased, you've come back and said I'm  
 16 very sorry, I had a sleepless night. You're not biased and  
 17 then I get a letter saying you're biased. We've had a lot  
 18 of time together and I haven't seen that in the press that  
 19 I've been speaking to Mr Lebelo for probably, what, four,  
 20 five hours?  
 21 MR LEBELO: Ja, four, five times.  
 22 COMMISSIONER: Ja.  
 23 MS STEINBERG: You've said I'm biased  
 24 too.  
 25 MR LEBELO: I thought we were taking a

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1 break. Thank you so much. And thank you to you, Judge,  
 2 for always being available to meet us. It means a lot to  
 3 us.  
 4 MS STEINBERG: You know, Mr Lebelo, I  
 5 must just say it's very frustrating to be called biased and  
 6 to be called biased publicly when people who call us biased  
 7 don't then give us the evidence to present. We don't hold  
 8 anything back and that's why I raise this about the memory  
 9 stick.  
 10 MR LEBELO: Yes.  
 11 MS STEINBERG: Because we were told that  
 12 there are these incriminating intercepts and all sorts of  
 13 things but we never see them. Then we're accused of being  
 14 biased. So we've asked many, many times anybody with  
 15 relevant evidence and particularly evidence that might  
 16 contradict what we've heard so far, please to come forward  
 17 with that evidence.  
 18 MR LEBELO: At least to my credit I've  
 19 been wanting to come and -  
 20 MS STEINBERG: And here you are -  
 21 MR LEBELO: - credit. Yes.  
 22 MS STEINBERG: - perhaps it's time to  
 23 turn to -  
 24 MR LEBELO: Yes.  
 25 MS STEINBERG: - to your –

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1 COMMISSIONER: Tell us what it is you  
 2 wanted to tell us after that introduction.  
 3 MR LEBELO: And once again let me thank  
 4 the opportunity to be here. Like I said my, I'm the group  
 5 executive, I'm employment relations. I've been in this  
 6 field for almost 15 years. I've been in SARS for 11 years  
 7 and for the greater part I've been quite involved in a  
 8 number of things for a lot of reasons because of the nature  
 9 of my job sometimes forces me to do that. The reason why  
 10 I'm here, the major reason why I'm here is that over a  
 11 couple of years, and I can say roughly four years, a  
 12 particular narrative has been created and if you like  
 13 ratified which suggests that either myself, I participated  
 14 in what has been known a purge for, some of my colleagues  
 15 whom I worked with for many years which I had very good  
 16 relationships with and or I was used in that place to purge  
 17 my colleagues which I really worked with them and I  
 18 respected. And you'll remember that the one thing that  
 19 really put me in a very painful state is when one of famous  
 20 books been written where I was quoted as a Moyane hitman  
 21 and what, what and all those kind of bad words and it was  
 22 very painful for me and my family because when you portray  
 23 someone as a suspension hitman you create an impression  
 24 that this guy is, this guy just enjoys suspending people.  
 25 And as an activist myself I know that in this country when

1 a person loses a job the average of eight more that are  
2 robbed of food and I didn't want to be related to a person  
3 who had been purged. But I also knew that it's a difficult  
4 one, I must say. Judge, you will remember I, I'll one  
5 minute want to come and one minute I'm confused because I  
6 had to deal with my emotions a lot.

7 The one part is that if I don't come and tell the  
8 truth and the story that I know the stigma of being a  
9 suspension hit and being a purger will continue for the  
10 rest of my life. But if I come also and tell the truth  
11 that I know that the sensitivities of those truth it will  
12 continue to do what I hated for the last four years which  
13 is to keep on saying these things that I am going to say  
14 today which does not only hurt the integrity of the people  
15 that we are talking about but it hurts also their families  
16 and their futures. So you're caught in between. If I  
17 don't come I'll be known as this person, it affects my  
18 career. If I come again you are caught in between, but I  
19 drew a line that says if Judge Nugent keep on saying if  
20 you've got evidence come forward, let me do that. So that  
21 is in the main the reason why I'm here. So the reason  
22 really I'm here, I'm here for the terms of reference, I  
23 forgot the number of things, 1.7 on whether the senior  
24 employees and experienced employees who left here, we, they  
25 left and I might not be using the right word, they were

1 its salt or any organisation which worth its salt will have  
2 made the same decision. So I'm purely here to say when the  
3 decision was made, this was the first before us, the  
4 employees might not have attended a hearing therefore they  
5 are not guilty, you can't accuse them of guilt. But we are  
6 saying that any employer with the evidence that was before  
7 us would've made the same decisions that I made. And I  
8 want to say it boldly that if the same facts are presented  
9 to me now I'll make the same decision that I made then and  
10 that's the confidence.

11 But to really say you'll see the evidence, I've  
12 never had something to think of purging anyone. But I  
13 think the important thing and thanks so much, the important  
14 thing for me is that purging is like victimisation. It's  
15 not in the form, it's in the substance. So somebody can  
16 look, it can look like it's a nice disciplinary but  
17 underground the substance is the one that does the purge  
18 and for them to prove that there was no purge you need to  
19 deal with the substance. And I'm going to just give a  
20 quick background of the process that led to the pay of the  
21 disciplinary so that you understand what happened. So –  
22 and I'm going to deal with the issues of Mr Ivan Pillay, Mr  
23 Johann Loggerenberg, Mr Piet Richer and Mr Ulises Picken  
24 and a little bit I'll explain in short my role in the media  
25 because the other narrative is that I, I was brought in the

1 purged or they were not purged.

2 COMMISSIONER: Coerced is the word.  
3 MR LEBELO: Coerced, ja, they were  
4 coerced. Thanks, Judge. They were coerced to leave. I'm  
5 – so I come here and say I was the head of Labour  
6 Relations. I had a head who was the head of HR but the  
7 reality is that as a labour relation I was relied upon by  
8 both my head of HR and to an extent Mr Moyane though at  
9 that time Mr Moyane was very close to the head of HR. So  
10 I'm here to say that at the time of making the decisions  
11 which decisions I support –

12 COMMISSIONER: So this is what time, Mr  
13 Lebelo?

14 MR LEBELO: This was the time –

15 COMMISSIONER: Was then Mr Pillay and so  
16 forth –

17 MR LEBELO: Yes.

18 COMMISSIONER: - when all that rogue unit  
19 stuff was going on?

20 MR LEBELO: Ja, from 2014 –

21 COMMISSIONER: Ja.

22 MR LEBELO: - upwards, that we made  
23 decision on the basis of particular facts and particular  
24 circumstances and as the circumstances will unfold you'll  
25 then discover that any head of labour relation who worth

1 media to push away Mr Lackay so that I take over and I  
2 become the defender of corruption and SARS capture or  
3 whatever the story might be. So I'll also try to explain  
4 how did I ended up to be there and what are things and what  
5 are lessons that we have learned.

6 Now the first background is that it must be  
7 understood that the allegation about the existence or not  
8 of the rogue unit it happened around April 2014. So April  
9 2014 just for the benefit it was the time when Mr Pillay  
10 was the acting Commissioner. So the first media started  
11 like this. It started because Mr Johann Loggerenberg's  
12 former girlfriend confessed that she has got information  
13 that there is a unit in SARS, the unit is doing illegal  
14 work and all other manner of accusations. It landed in the  
15 newspaper, as a matter of fact there was pressure that  
16 action must be taken with Mr Johann Loggerenberg. Nothing  
17 happened there. And then – actually I can just say that  
18 the allegations was that there was a unit that was  
19 undertaking illegal and unlawful actions, that the unit was  
20 unlawfully and illegally following South African traders  
21 and SARS employees. The unit members placed trackers on  
22 the trucks of trades illegally. The unit recorded  
23 conversation of taxpayers and employees unlawfully.

24 COMMISSIONER: What are you reading from?

25 MR LEBELO: From the –

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1 COMMISSIONER: No what are you reading  
 2 from there?  
 3 MR LEBELO: My summary.  
 4 COMMISSIONER: Sorry?  
 5 MR LEBELO: My summary.  
 6 COMMISSIONER: I see but where are these  
 7 allegations? Is this in the newspapers that the  
 8 allegations –  
 9 MR LEBELO: Ja, it was generally in the  
 10 newspapers but remember it went and then became real  
 11 stories when we started doing the disciplinary but I'm just  
 12 summarising what –  
 13 COMMISSIONER: No, I'm just trying to get  
 14 the dates in mind. The Sikhakhane panel was appointed to  
 15 look into the relationship between Mr Van Loggerenberg and  
 16 Ms Walters, nothing about a unit.  
 17 MR LEBELO: Ja, I'll get to that.  
 18 COMMISSIONER: The Sikhakhane panel was  
 19 asked to look, well decided to look into the unit only  
 20 after October I think it was.  
 21 MR LEBELO: Yes, I'll get to that, Judge.  
 22 COMMISSIONER: Ja. But those allegations  
 23 were not allegations that were being made at or before, at  
 24 the time you're talking about. Those were not the initial  
 25 allegations.

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1 MR LEBELO: They were the initial  
 2 allegations.  
 3 COMMISSIONER: They were?  
 4 MR LEBELO: Yes. These were the –  
 5 COMMISSIONER: The -  
 6 MR LEBELO: These were the initial  
 7 allegations that were made by Mr Loggerenberg's former  
 8 girlfriend at the time and maybe I'll request because I  
 9 know that there is a lot that we know both –  
 10 COMMISSIONER: No, I just want get it in  
 11 my mind what you're reading from and –  
 12 MR LEBELO: Okay.  
 13 COMMISSIONER: - what, where the  
 14 information is coming from.  
 15 MR LEBELO: Thanks so much. And then out  
 16 of that noise that was coming because other newspapers  
 17 joined, then Mr Ivan Pillay at the time the acting  
 18 Commissioner appointed Advocate Moeti Kanyane to, he called  
 19 it a fact finding but to kind of say just zoom in to this  
 20 allegation from Mrs Walter and let's see whether there is  
 21 meat into it. And the problem with Kanyane is that he  
 22 didn't help much because firstly Mrs Walter didn't  
 23 participate in the thing and they didn't have enough time  
 24 to finish the process.  
 25 But if you look into and I know that the

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1 Commission will have the copy, but if you look into Mr  
 2 Kanyane's document he still raises issues with Mr  
 3 Loggerenberg and say this thing was not completed but there  
 4 are issues about the relationships and stuff like that.  
 5 The – during the time and this is important for me, during  
 6 the time Mr, it's not clear whether Mr Johann Loggerenberg  
 7 put himself on a special leave or Mr Pillay, but Mr Johann  
 8 Loggerenberg was put on a special leave. Now the only  
 9 problem with a special leave is that in SARS we don't have  
 10 such process called a special leave. So you say either you  
 11 are suspended or you are not suspended. So there were  
 12 issues about the issue of the special leave but I'm saying  
 13 it here because the other impression that was created was  
 14 that I suspended him and all that. So I'm just putting it  
 15 here that as early as that time he was put on special  
 16 leave. There were a lot of stories there.  
 17 The important part that I want to mention here  
 18 and I'm mentioning it deliberately because there's been a  
 19 version. So during that time Mr Johann Loggerenberg was  
 20 given legal assistance and I'll deal with it when I deal  
 21 with the file which I'm on that to over a million Rand, was  
 22 given and it was a funny one because there are serious  
 23 allegations against the employee. You establish a  
 24 Commission that must investigate the misconduct but the  
 25 employee is given a senior counsel and two junior counsel,

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1 just for an example. So it's a funny one, we never, we  
 2 don't do that because if you are accused of doing something  
 3 wrong we can't give you that, but I'll deal with that at a  
 4 later stage. The – on the 3rd of September and that is  
 5 where the problems started, if I were to use the word. On  
 6 the 3rd of September Mr Lackay then announced the  
 7 establishment of the Sikhakhane panel. So he announced  
 8 that there's going to be an investigation on the same  
 9 allegation that had been raised about Mr Johann  
 10 Loggerenberg. It started with the –  
 11 COMMISSIONER: Mr Van Loggerenberg and Ms  
 12 Walter.  
 13 MR LEBELO: Yes.  
 14 COMMISSIONER: Ja.  
 15 MR LEBELO: The allegation raised by Mr  
 16 Walter. It became a huge investigation. So almost all  
 17 matters were, almost all the people that had matters were  
 18 in there, including Mr Ivan Pillay, Mr Johann Loggerenberg,  
 19 Mr Piet Richer, Mr Adrian Lackay. So they went and did the  
 20 investigation. Now it is important to remember that at  
 21 that time it was before Mr Loggerenberg, I mean Mr Pillay  
 22 was still the acting Commissioner. Now the Sikhakhane made  
 23 a number of findings but I want to read the following for  
 24 the record for a purpose that I'll explain later. So one  
 25 of the findings that it made is that "an unlawful

<p style="text-align: right;">Page 2406</p> <p>1 establishment of a unit which operated covertly which 2 created a climate of fear, intrigue and subterfuge with 3 SARS". 4 So we accept that there was, he discovered that 5 there as a unit that was established unlawfully and that 6 created that environment and he went further and say he had 7 "prima facie evidence of the established, the establishment 8 of the unit without having the requisite statutory 9 authority was indeed unlawful". So he comes and say they 10 established a unit without having the legal authority 11 therefore it makes it unlawful. And he said he had "prima 12 facie evidence of abuse of power and resources by the unit 13 by engaging in activities that resides in other agencies 14 without the unlawful authority to do so" and he ends by 15 saying that "prima facie evidence suggests that the 16 activities of the special projects, the special project 17 have included rogue behaviour that had the potential to 18 damage the reputation of SARS" and this - 19 MS STEINBERG: Carry on. 20 MR LEBELO: Yes. And this is the last 21 one which is important "Commissioner to move speedily to 22 put in place a process to ensure that the NRG or HRU are 23 fully disbanded. Persons involved are debriefed, protected 24 from intimidation and are integrated into SARS official and 25 civilian structure" and I'm saying it's important because</p>	<p style="text-align: right;">Page 2408</p> <p>1 part, Sikhakhane report was firstly attacked but secondly 2 because it was focusing so much on Mr Johann Loggerenberg, 3 it made recommendations about Mr Loggerenberg, but in the 4 body it kind of alleged on other people. So it will say we 5 have discovered that there is unit. The unit was unlawful, 6 it was reporting to Mr Pillay. And Mr Loggerenberg was the 7 head of the unit and then at the end that they are talking 8 about recommendations to discipline Mr Johann Loggerenberg. 9 So there were some factors that made us to feel that we 10 need another independent investigation to test whether the 11 allegation of Sikhakhane was correct. 12 COMMISSIONER: But just, I just want to 13 get a clarification of that. Did you ever get, because you 14 say you didn't rely on Sikhakhane report, did you get an 15 opinion from anyone to say it was unlawful? I mean how did 16 you know it was unlawful? Why did you think it was 17 unlawful to establish this unit? 18 MR LEBELO: Not – 19 COMMISSIONER: I'll tell you why I ask 20 that because I've asked people, they seem to get very upset 21 if I ask whether it was unlawful. But I can't see why it 22 was unlawful. 23 [11:08] And I have seen an opinion from Advocate Trengove 24 to Mr Moyane saying SARS is entitled to establish units. 25 Obviously, there are limits to what they can do. So, it</p>
<p style="text-align: right;">Page 2407</p> <p>1 when we were told that the unit must be disbanded, I've 2 always understood that it comes from Sikhakhane. I started 3 hearing stories later that it was part of something else, 4 but I'm saying from where I was sitting, when I was briefed 5 that is what I understood. Then what then had to - 6 MS STEINBERG: Can I ask you a - 7 MR LEBELO: Yes. 8 MS STEINBERG: - question at this point? 9 Did you or anyone else at SARS ever enquire as to whether 10 Advocate Sikhakhane was right that the unit was unlawful, 11 the establishment of the unit was unlawful? 12 MR LEBELO: I'll answer that - 13 MS STEINBERG: No, I'm asking you to 14 answer that now. 15 MR LEBELO: Can I answer it in my story? 16 Because it's – I'm going to answer it somewhere else. 17 MS STEINBERG: I'd actually prefer you to 18 answer it now. 19 MR LEBELO: Yes. So what we did is and 20 maybe this is important but I would really prefer that you 21 allow me to answer it later. We did not prefer charges for 22 the employees on the basis of Sikhakhane. So that is 23 crucial important. Neither did we prefer charges for the 24 employees on the basis of KPMG. What we did when the 25 Sikhakhane report came, Sikhakhane report, exactly that</p>	<p style="text-align: right;">Page 2409</p> <p>1 would help me if you dealt with that. Did you ever get an 2 opinion saying it was unlawful and if so, can you tell me 3 why it was unlawful? 4 MR LEBELO: I think, Chair, I'm not 5 competent to say why it was unlawful or whether it's 6 unlawful, but the important part is that we established a 7 panel headed by senior counsel and other lawyers and they 8 come with a conclusion, right? That's the conclusion you 9 take. 10 COMMISSIONER: Which panel is that? 11 MR LEBELO: It's the Sikhakhane panel. 12 COMMISSIONER: No, but you said you 13 didn't rely on Sikhakhane. 14 MR LEBELO: Yes. 15 COMMISSIONER: I'm trying to find out why 16 people thought this unit was unlawful, unlawfully 17 established. By the way, I'm not saying that the, you 18 know, if some of the members of this unit – I think there 19 were six of them – if they went and did some funny things. 20 That may be unlawful but the establishment of the unit 21 itself and the existence of the unit itself seems to have 22 simply been accepted by everyone as being unlawful. 23 MR LEBELO: It's not necessarily true. 24 MS STEINBERG: Well, that may be so, 25 that's why I want to try and -</p>

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1 MS STEINBERG: I can -  
 2 COMMISSIONER: - get to the bottom of it.  
 3 MS STEINBERG: I asked -  
 4 COMMISSIONER: The -  
 5 MS STEINBERG: Mr Commissioner, I asked a  
 6 question and I'm waiting for the answer.  
 7 COMMISSIONER: I know, that's what I'm  
 8 waiting for as well.  
 9 MS STEINBERG: Yes.  
 10 COMMISSIONER: If you'd bear with me, Ms  
 11 Steinberg.  
 12 MS STEINBERG: I hadn't finished my line  
 13 of questioning.  
 14 COMMISSIONER: I know. I understand.  
 15 Did you get an opinion from anyone to say it was unlawful?  
 16 MR LEBELO: No.  
 17 MS STEINBERG: Do you know, do you know  
 18 of the existence of two legal opinions, one by a SARS  
 19 internal lawyer and one by Mr Trengove SC, of the 1st  
 20 September 2015 that says it actually is lawful. Are you  
 21 aware of those opinions?  
 22 MR LEBELO: No. No. No.  
 23 MS STEINBERG: Well, just to tell you  
 24 that before Mr Pillay established the unit, he sought an  
 25 opinion from within SARS as to whether legislation allowed

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1 him to set up a unit like this, and he was told that the  
 2 legislation did allow him to do so. You're not aware of  
 3 that opinion?  
 4 MR LEBELO: No.  
 5 MS STEINBERG: Are you not aware of Mr  
 6 Trengove's opinion?  
 7 MR LEBELO: No.  
 8 MS STEINBERG: That opinion, it appears,  
 9 was commissioned by Mr Moyane and Mr Trengove gave that  
 10 opinion on the 1st of September 2015, and he said that  
 11 special investigative methods along the lines of the unit  
 12 may lawfully be used by SARS, and he gives 11 guidelines as  
 13 to how they may lawfully do the work that they did. And  
 14 the reason, that is why I ask you the question. You get  
 15 the Sikhakhane report and I think it's common cause that  
 16 SARS took drastic action on the basis of that report, or  
 17 the opinion expressed in that report.  
 18 MR LEBELO: Oh, yes.  
 19 MS STEINBERG: And I ask you, did you  
 20 ever test the founding assumption?  
 21 COMMISSIONER: I think he's just said he  
 22 didn't rely on the Sikhakhane report.  
 23 MR LEBELO: I didn't rely on it. And let  
 24 me -  
 25 MS STEINBERG: But then what did you rely

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1 on?  
 2 MR LEBELO: And maybe I will do, let me  
 3 explain my role.  
 4 COMMISSIONER: Just, if you don't mind,  
 5 let him answer the questions.  
 6 MR LEBELO: Let me explain my role.  
 7 COMMISSIONER: Just, let's, just hang on.  
 8 Let's just take this slowly.  
 9 MR LEBELO: Okay.  
 10 COMMISSIONER: Did you, is that correct,  
 11 you did not rely on the Sikhakhane?  
 12 MR LEBELO: Yes.  
 13 COMMISSIONER: And is it also correct  
 14 then that you did not seek outside opinion as to whether  
 15 this establishment of this unit was unlawful or not? Is  
 16 that correct?  
 17 MR LEBELO: Yes.  
 18 COMMISSIONER: Sorry? Is that correct?  
 19 MR LEBELO: Yes. And maybe let me - yes,  
 20 sorry, just -  
 21 COMMISSIONER: Just let me follow up.  
 22 Sorry, Mr -  
 23 MR LEBELO: No, no problem.  
 24 COMMISSIONER: We had a long talk since  
 25 then. On what basis then did you say the unit was unlawful

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1 if you had never taken an opinion on it and you didn't  
 2 follow Sikhakhane. I don't quite understand. Can you  
 3 explain that?  
 4 MR LEBELO: And I'll make this request  
 5 again, but if it's denied I will stop it, that if I were to  
 6 allowed to finish my background, it will answer that  
 7 question succinctly.  
 8 COMMISSIONER: Okay, off you go. Thank  
 9 you, then.  
 10 MR LEBELO: Thank you so much. So, I was  
 11 still on the issue of the Sikhakhane. One of the things  
 12 that then happened is that we have got this report from  
 13 Sikhakhane and we approached senior counsel to advise us on  
 14 what to do. Senior counsel in this case is Advocate Britz,  
 15 and I know there was an earlier opinion and a second  
 16 opinion. And Advocate Brassey I am at the Sikhakhane and  
 17 he said the employer can do the suspension.  
 18 When the decision was made -  
 19 COMMISSIONER: Sorry, you're looking at  
 20 me, Ms -  
 21 MS STEINBERG: No, no. I -  
 22 COMMISSIONER: Oh. Sorry. Carry on,  
 23 carry on, Mr -  
 24 MS STEINBERG: Carry on.  
 25 MR LEBELO: Yes, if I'm allowed to carry

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1 on. The problem then was whether Mr Moyane can suspend a  
 2 deputy Commissioner. His view is was that he cannot, and  
 3 there were others that he can. And then he went -  
 4 MR KAHLA: Counsel, or is his view?  
 5 Counsel or Moyane?  
 6 MR LEBELO: Yes, Mr Moyane's view was  
 7 that he can't -  
 8 MR KAHLA: He can't.  
 9 MR LEBELO: - he can't suspend a deputy  
 10 Commissioner without the Minister's go ahead. There were  
 11 other things that he was saying he can. We went to  
 12 Advocate Brassey for another legal opinion and he gave the  
 13 legal opinion that say he can. But still he just didn't  
 14 want to do it without the Minister's approval probably  
 15 because he was still new.  
 16 I got a call the night before the suspension from  
 17 him saying the Minister has now agreed that we can proceed  
 18 with the suspension. The spokesperson at National Treasury  
 19 at the time, Mr Jabulani Sikhakhane will be helping us with  
 20 the media statement. I must go and meet him in the morning  
 21 of the suspension. I went and met him in the morning. He  
 22 did the statement and Mr Ivan Pillay, Mr Richer were  
 23 suspended the following day. I mean that same afternoon.  
 24 And it's also important to pause here that the  
 25 suspension were done by Mr Moyane and Mr, I mean Mrs

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1 Elizabeth Dlamini-Kumalo. Mrs Elizabeth Dlamini-Kumalo was  
 2 the head of HR who I was reporting to.  
 3 MS STEINBERG: Can I stop you there? You  
 4 know, one of the things that Advocate Brassey says in that  
 5 opinion, he says that SARS will not be able to escape the  
 6 need to give Mr Pillay a proper hearing before his  
 7 relationship with the service, that SARS, is terminated.  
 8 We know that the court overturned that suspension precisely  
 9 because he wasn't given a hearing. In fact, what we know  
 10 is that Mr Pillay on the eve of his suspension, handed  
 11 Commissioner Moyane a 34-page document, explaining why he  
 12 believed the allegations were baseless.  
 13 Mr Moyane responded by saying, "Dear Mr Pillay, I  
 14 acknowledge receipt of your envelope with two sets of  
 15 documents. I have not read the 34-page document. I cannot  
 16 approve your request to circulate the report to chief  
 17 officers. At this stage I do not consider it appropriate  
 18 that you share your views with the chief officers as this  
 19 could be construed as an attempt to influence or impose  
 20 your views on them."  
 21 So, what we know is that Mr Brassey said to SARS  
 22 it's unlawful to suspend anyone without a hearing. Now,  
 23 not only was there not a hearing, but Mr Pillay went to the  
 24 trouble to draft a document which Mr Moyane refused to even  
 25 read.

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1 MR LEBELO: Yes.  
 2 MS STEINBERG: How do you account for  
 3 that?  
 4 MR LEBELO: No, no, the, so, when the  
 5 suspension happened, it's common cause that Mr Pillay took  
 6 us to court and key among it was the issue about the  
 7 hearing. When he came back, he was given six weeks to  
 8 respond to the allegation why he must not be charged, and  
 9 that allegation is there.  
 10 MS STEINBERG: No, no, but I'm asking  
 11 you -  
 12 MR LEBELO: So, the merits here -  
 13 MS STEINBERG: - about before his  
 14 suspension, not afterwards.  
 15 MR LEBELO: No, let me just finish. Let  
 16 me just finish. The -  
 17 MS STEINBERG: You know, I'm sorry, I  
 18 must say that the rules here are that you answer the  
 19 question put to you. I find it hard to be told to wait and  
 20 wait.  
 21 MR LEBELO: My apologies.  
 22 MS STEINBERG: Can you answer the  
 23 question? And then you're free to qualify it or expand on  
 24 it however you want.  
 25 MR LEBELO: Okay. If you can just phrase

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1 it again?  
 2 MS STEINBERG: No, I was saying, you're  
 3 in a, you are employment relations. You get an opinion  
 4 from Mr Brassey that says don't suspend. You are not  
 5 allowed to suspend anyone without giving them a hearing.  
 6 We now know that SARS not only didn't give Mr Pillay a  
 7 hearing, but actually refused to read the document that he  
 8 had written to try and defend himself, and I want to know  
 9 why.  
 10 MR LEBELO: I don't know. That decision  
 11 was taken by Mr Moyane. Not to read the document of Mr  
 12 Pillay. The suspension of Mr Pillay was as per the advice  
 13 of lawyers, so they advised us to do what we have done. We  
 14 did that, the Labour Court came and said you're wrong, you  
 15 should have given him time. We came back and give him six  
 16 weeks to respond.  
 17 MS STEINBERG: No, but I've just shown  
 18 you that a lawyer advised you had to give a hearing first.  
 19 MR LEBELO: Yes, and I don't know how  
 20 much I must give and I must explain that I'm just here to  
 21 explain the process and the part that I played. And I'm  
 22 saying that even in the court case of Mr Pillay, Advocate  
 23 Brassey was there. And for those who worked with  
 24 Advocate Brassey they will know that he will not have went  
 25 there if he didn't believe that there is a case. But for

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1 me I say -

2 MS STEINBERG: No, no. No, no, Mr

3 Lebelo?

4 MR LEBELO: I'm saying we -

5 MS STEINBERG: You haven't answered my

6 question. You were head of -

7 COMMISSIONER: I think we must just get

8 the rules straight here. If counsel asks a question, give

9 the answer. It doesn't mean that you are confined to that,

10 but give her the answer so she knows what the answer is and

11 the panel knows that the answer is and we don't get

12 confused. And if you want to explain your answer

13 thereafter, as she said to you, go ahead and do so, but I

14 think we, it's very important that when the question is

15 asked, we should know what the answer is. Is that okay?

16 MR LEBELO: Yes.

17 MS STEINBERG: You got an opinion that

18 indeed said you could bring charges against Mr Pillay.

19 That's correct. But the same opinion said before you do

20 so, you've got to hear the other side. You've got to give

21 him a chance to put his version. Now, you are the, were

22 the executive in charge of employer relations. You run

23 these disciplinaries. They fall within your unit. And I

24 want to know why, in the face of the advice from senior

25 counsel that you must give Mr Pillay a hearing, why you did

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1 not?

2 MR LEBELO: But how we used to operate

3 until that Labour Court judgment is that we'll call a

4 person in and say to the person we're intending to suspend

5 you, tell us why we should not suspend you, and then we'll

6 proceed with the process. So, all the disciplinaries that

7 we were doing at that time, until the court told us that

8 we're wrong, we were following the same process.

9 But after that, then we learned that we haven't

10 been following the process and from there, employees are

11 given time. And I don't know whether the answer helps,

12 or -

13 MS STEINBERG: But -

14 COMMISSIONER: Well, it doesn't help me,

15 because I didn't know the court said that you mustn't

16 follow the process.

17 MR LEBELO: No, no, the court said that

18 you didn't follow -

19 COMMISSIONER: That you must. That's

20 exactly why -

21 MR LEBELO: No, they said that we didn't

22 follow the process.

23 COMMISSIONER: You didn't? They didn't

24 follow the process of hearing him.

25 MR LEBELO: Yes. Yes.

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1 COMMISSIONER: And counsel says well, why

2 didn't you hear him first? In fact, on the contrary, you

3 said we won't listen to you. Then she asked why? Can you

4 just answer that we can move on?

5 MR LEBELO: No, like I said, the person

6 who says we're not going to even hear you and who

7 proceeded, who proceeded - remember that Mr Moyane had the

8 head of HR, he had me, he had the lawyers dealing with the

9 matter, and they decided to proceed that we are going to

10 suspend him on that day.

11 MS STEINBERG: No, you are, with respect,

12 you're confusing two issues. Mr Moyane said I'm not

13 reading your defence of yourself and I'm not letting other

14 people read it. That was his decision. But you in your

15 capacity are the one, you are the one running the

16 disciplinary process. You chose not to hear Mr Pillay

17 before suspending. You were told by senior counsel that

18 you may not do that, and I want to understand why you

19 ignored that advice.

20 MR LEBELO: Yes, the way we treated Mr

21 Pillay on that day is the way we treated the rest of the

22 employees we were suspending.

23 MS STEINBERG: But now I struggle -

24 COMMISSIONER: Okay, let's move on.

25 MS STEINBERG: Sorry, can I -

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1 MR KAHLA: Can we just -

2 COMMISSIONER: Can we move on?

3 MR KAHLA: I think, just before we move

4 on, I want to understand maybe two things. The

5 Commissioner seeks counsel's advice and counsel says qua

6 Commissioner, you have authority to suspend a deputy

7 Commissioner. But, of course, you still have to go through

8 certain hoops, including hearing the Deputy Commissioner.

9 I want to now understand, when there is

10 consultation with the Minister for the bolstering of the

11 decision to suspend, does the Minister get furnished with

12 the advice of Advocate Brassey, including that he needed to

13 be heard? And does the Minister get advised whether in

14 fact he has been heard, and linked to that I need to

15 understand the critique that Mr Pillay provided, which of

16 course we know was not read. Am I correct to say that the

17 Minister was not informed of that critique in being asked

18 to make the determination around his suspension?

19 MR LEBELO: Yes, I was not privy to the

20 conversation between Mr Moyane and the Minister in terms of

21 whether he gave the Minister all the documents or he just

22 told him that I'm about to suspend a person. I don't know

23 what was the information there.

24 MR KAHLA: But in your role, would it not

25 have been your responsibility to advise the Commissioner

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1 around the steps that need to be taken when executing a  
 2 suspension?  
 3 MR LEBELO: No, it's my role. But  
 4 remember, about the Minister, we always held a view that,  
 5 or the legal opinion had a view that we can suspend without  
 6 involving the Minister, but he's the one who felt that he  
 7 needed the Minister to know. So, I'm not so sure in the  
 8 conversation of needing the Minister to know what did he  
 9 give the Minister. I think that's the only thing.  
 10 MR KAHLA: Okay, let's put aside the  
 11 Minister now. On the understanding as already provided by  
 12 the advice of Advocate Brassey, the Commissioner had the  
 13 power to suspend a deputy Commissioner once certain steps  
 14 have been, he's gone through certain steps. The critique  
 15 by Mr Pillay, do you know if it was ever considered, or  
 16 you, it's the fact that has already been said that he said  
 17 look, I'm not going to go through the 34 pages. You also  
 18 know that he never went through the 34 pages?  
 19 MR LEBELO: Yes, I learned when we went  
 20 to court when – I think in the court all these things were  
 21 narrated, that he never went through the document. I think  
 22 he confirmed that he never went through the document.  
 23 MR KAHLA: But in the ordinary course in  
 24 your role as the executive, group executive for employee  
 25 relations, would you not have been involved in advising

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1 around the process? What is – maybe help me understand.  
 2 MR LEBELO: Yes.  
 3 MR KAHLA: With all the experience you've  
 4 said you have, what is your role in getting the  
 5 Commissioner to exercise his powers correctly?  
 6 MR LEBELO: Yes, in this matter, because  
 7 the matter was with the deputy Commissioner, my head of HR  
 8 was the one who was running with the Commissioner. But  
 9 what I also know is that they were also working with the  
 10 attorneys to help the Commissioner to conclude this  
 11 process. So, in that matter, like I said, the suspension  
 12 was done not by me, by my manager. That was my manager's  
 13 job, because my manager also, though he's not the head of  
 14 ER, when matters are about senior people, that's where she  
 15 gets involved.  
 16 So, the whole process and all the advisors, I  
 17 know they were having lawyers, because I know that the  
 18 suspensions themselves – and I'm not so sure whether they  
 19 were drafted by Advocate Brassey – but I know that the  
 20 suspensions themselves, the intention was drafted not by my  
 21 office, was drafted by the lawyers.  
 22 MR KAHLA: So, in relation to those very  
 23 senior people, neither the Commissioner nor the chief  
 24 officer for HR bears any value in your contribution?  
 25 MR LEBELO: No, no, no, I'm saying when

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1 it's senior matters like that, the Commissioner deals with  
 2 my, with the head of HR, to deal with that kind – that's  
 3 why they're the ones who suspended Mr Pillay here.  
 4 MR KAHLA: But aren't you the executives  
 5 primarily responsible for advising on issues relating to  
 6 employee relations? And so, I'm really wanting to  
 7 understand the kind of faith that's placed on your  
 8 contribution by either the Commissioner or the chief  
 9 officer for HR on those matters, or do they place little  
 10 trust in your contribution and therefore look for help  
 11 elsewhere?  
 12 MR LEBELO: It depends. So, when I  
 13 started, I spoke about Mr Makwakwa. There was an issue  
 14 about Mr Makwakwa submitting a document in May. I didn't  
 15 know about it until September, there is a newspaper. I  
 16 don't know why they didn't involve me, and I don't go and  
 17 say why didn't you involve me, because they make a  
 18 decision. So, it depends whether they want to involve me  
 19 or they don't want to involve me. If they don't involve  
 20 me, I don't impose myself, but I think on this matter, like  
 21 I said when I opened, that the head of HR and the  
 22 Commissioner are the ones who decided and they're the ones  
 23 who did the suspension.  
 24 COMMISSIONER: When you went to court,  
 25 were you involved in the court proceedings?

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1 MR LEBELO: No, no, no, I just went to  
 2 court to represent SARS. No, no, no, I was not -  
 3 COMMISSIONER: I understand.  
 4 MR LEBELO: Yes.  
 5 COMMISSIONER: But did you help when they  
 6 were drawing the papers for court and so forth?  
 7 MR LEBELO: No. No. We were helped by  
 8 Advocate Brassey and he was representing.  
 9 COMMISSIONER: And were you not involved  
 10 at all?  
 11 MR LEBELO: No.  
 12 COMMISSIONER: But, I mean, this is ER  
 13 stuff. I mean, you're going to court about employee  
 14 relations, and you say you didn't go to court? You didn't  
 15 go to court? Or?  
 16 MR LEBELO: No, no, no, I went to court.  
 17 COMMISSIONER: Yes?  
 18 MR LEBELO: But what I'm saying is the  
 19 papers and all the, the affidavit that was signed by the  
 20 Commissioner, the papers, the submission was done by  
 21 Michelle Moodley and Advocate Brassey.  
 22 COMMISSIONER: But did you read the  
 23 papers before they went to court?  
 24 MR LEBELO: I should have, yes.  
 25 COMMISSIONER: Did you then say look,

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1 Advocate Brassey said there must be a hearing and Mr  
 2 Moyane, there has not been a hearing. In fact, on the  
 3 contrary, you refused to hear it. Did you say anything of  
 4 that before you got to the court?  
 5 MR LEBELO: Yes -  
 6 COMMISSIONER: Because actually it got to  
 7 the court. It's not as though it was settled or anything.  
 8 MR LEBELO: Yes, so there were two. So,  
 9 you had one of Mr Piet Richer. And you had the one of Mr  
 10 Ivan Pillay. The one of Mr Piet Richer was settled before  
 11 the courts, but on the other one, the lawyers felt that  
 12 they can make an argument. So, we agree that on the Piet  
 13 Richer one – and the reason why the Piet Richer, the Mr  
 14 Piet Richer one was difficult, was that it was done while  
 15 he was not even in the office.  
 16 And then on the other ones, because the lawyers  
 17 decide and they discuss and they say we can fight this  
 18 matter, then they decided that on the other one of Mr  
 19 Pillay they think they can find.  
 20 [11:28] And that was the view of the senior counsel and I  
 21 went to court with them.  
 22 MS MASILO: Mr Lebelo, you said the  
 23 practice was that you would suspend any other employee  
 24 without giving them an opportunity to be heard, did you  
 25 feel it was correct to do that with the deputy Commissioner

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1 of SARS? Hence you followed the same process?  
 2 MR LEBELO: No, the, I, look on hindsight  
 3 and as a I said on hindsight as the court said we should  
 4 have given him enough time to respond because the  
 5 allegations are very, very serious. But I'm saying at that  
 6 time what we do is, with the junior employees we'll come in  
 7 and say we have got this evidence against you, we want to  
 8 suspend you, tell us why we shouldn't suspend you. Then  
 9 they argue there and whatever, and make a decision there  
 10 and then but I agree totally as the court said that you  
 11 must give people a chance, especially senior people. We  
 12 just, we just suspended one senior person now, we gave them  
 13 time. But since that court, even the junior employees we  
 14 give them reasonable time to go and consider.  
 15 COMMISSIONER: You say since that, I  
 16 hope, I would have thought you didn't need a court to tell  
 17 you that you should.  
 18 MR LEBELO: The court did.  
 19 COMMISSIONER: Ja, but I mean are you  
 20 saying that before that you never used to give people  
 21 hearings?  
 22 MR LEBELO: No, not in that long time.  
 23 COMMISSIONER: Ja.  
 24 MR LEBELO: We'll say -  
 25 COMMISSIONER: Ja.

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1 MR LEBELO: Probably the following day  
 2 or -  
 3 COMMISSIONER: Sorry you did give people  
 4 hearings beforehand?  
 5 MR LEBELO: No, not a long time. So  
 6 we'll say to you we are about to suspend you here you are  
 7 on video taking a bribe at the border, tell us why we  
 8 should not suspend you.  
 9 COMMISSIONER: No that's what I'm saying,  
 10 did you do that before the court proceedings?  
 11 MR LEBELO: Yes.  
 12 COMMISSIONER: Or did it only start after  
 13 the court proceedings?  
 14 MR LEBELO: No we were doing that but  
 15 what the court seemed to have emphasised is sufficient  
 16 time.  
 17 COMMISSIONER: Ja.  
 18 MR LEBELO: When the allegations are  
 19 serious. So I'm saying we've extended the sufficient, we  
 20 are no longer doing it like the way we are.  
 21 PROF KATZ: Can I ask one question on  
 22 that. Having been told you need to give time and the  
 23 senior person, why was it, what was the imperative of going  
 24 flat out and doing it, what was driving the necessity to  
 25 have that suspension without any fairness or procedure?

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1 MR LEBELO: I wouldn't know what was the  
 2 pressure because when the court said we must give him time,  
 3 we gave him even six weeks.  
 4 COMMISSIONER: No, no, no. The first  
 5 suspension he wasn't given any time, in fact he was told  
 6 we're not going to hear what you say.  
 7 MR LEBELO: Yes.  
 8 COMMISSIONER: Now what was so, what  
 9 drove that, that you just ignored all the procedures and  
 10 just went ahead? That's I think what Professor Katz is  
 11 asking.  
 12 MR LEBELO: No I really -  
 13 COMMISSIONER: What was driving that so  
 14 urgently that you refused to hear him?  
 15 PROF KATZ: What was burning that Mr  
 16 Pillay had to be suspended forthwith, no fairness, no  
 17 procedure, nothing?  
 18 MR LEBELO: I wouldn't know that, like  
 19 I'm saying I got a call the night before that you must do  
 20 it tomorrow. So I wouldn't know what was the pressure  
 21 there.  
 22 COMMISSIONER: Sorry you got a call the  
 23 night before?  
 24 MR LEBELO: Yes.  
 25 COMMISSIONER: The night before the

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1 suspension?

2 MR LEBELO: Yes.

3 COMMISSIONER: Saying you must do it

4 tomorrow?

5 MR LEBELO: Ja, that the Minister has

6 agreed, go to National Treasury office to help you with the

7 statement for it to be done tomorrow.

8 COMMISSIONER: And did you say to Mr

9 Moyane but we can't do that, Advocate Brassy said we can't,

10 we haven't had any hearing, did you not say that to him?

11 MR LEBELO: Ja, I'll just repeat.

12 COMMISSIONER: We must just get clarity

13 on this so that we can move on.

14 MR LEBELO: For sure. So what we'll do,

15 what we used to do is you would come in, if we are going to

16 suspend you and we'll say to you we are about, we are going

17 to suspend you tell us why we should not suspend you and

18 for us we assume that was a hearing, because then we give

19 you all the evidence as you are sitting here then you say

20 well you can't suspend me because the person who is sitting

21 here is not me, it's my twin brother, whatever reason that

22 you give, so we are not giving, we are giving according to

23 the court sufficient time for people to do this. Sometimes

24 some of them we'll give them, because somebody will say

25 okay give me until tomorrow, we give them until tomorrow.

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1 So we are not doing it sufficiently and it's exactly what

2 we did with Mr Pillay. So we didn't give Mr Pillay

3 sufficient, my understanding is that when they got in there

4 they said to him these are the allegations that we had,

5 this allegation has been there since whatever time we want

6 to suspend you tell us why we should not suspend you.

7 COMMISSIONER: No but I think we must

8 just slow down, Mr Lebelo. Otherwise you're going to get

9 into difficulty if you don't understand the question. I

10 always say to witnesses just listen to the question and

11 answer it. Otherwise the witness gets into a bit of a

12 problems. We're dealing with the question of the first

13 suspension. I know that later, after the court had set it

14 aside then you went through another process. But let's

15 just start with the first one and that is the one where he

16 was told, he wasn't given any time, in fact he was told we

17 will not listen to you. That's the one we're talking about

18 and you say the night before the suspension you were phoned

19 and told you must suspend him the next day and you had been

20 told by Advocate Brassy that you should not until you've

21 given him a hearing. The question is why didn't you then

22 say but we can't suspend him, do you understand the -

23 MR LEBELO: Yes.

24 COMMISSIONER: Ja. So let's not move to

25 the next one until we've dealt with this one.

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1 MR LEBELO: Yes, and my answer to that

2 Judge is, is that, so the way, the way we did it with him

3 is exactly how we were doing it. We interpreted giving a

4 chance, meaning that when you are in that room, when we say

5 to you we have got evidence against you, here is the

6 evidence you must convince us why we should not suspend

7 you, in the same, at the same time. That we interpreted to

8 mean that we have given you an opportunity and I understand

9 that, that is exactly what they did with Mr Pillay to say

10 there are these allegation, we intend to suspend you and

11 I'm assuming and whatever, whatever so what we did there,

12 the reason why I didn't intervene because it was how we

13 used to do it. That for us the interpretation of

14 opportunity simply means we come in and say here is the

15 evidence, tell us why we should not suspend us, I mean why

16 we should not suspend you, then we make a decision.

17 COMMISSIONER: Look, sorry, just a

18 minute. Look we're going to move on from here. But I'll

19 give you one, just make sure that you do understand the

20 question. We are talking about a time when he wasn't even

21 that short opportunity, he was told we will not hear you,

22 take your 34 page document away I don't want to read it. I

23 don't even want my Exco to see it, you may not give it to

24 Exco. So this is not a matter of we're talking about a

25 short period of time. We're talking about a period, a time

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1 at which he has been told positively we will not listen to

2 you, do you, are you with me? Now the question is why,

3 when he's been told we will not listen to you does one go

4 ahead with the suspension and I think, you know have a

5 chance to answer that and then I think we must move onto

6 the next point.

7 PROF KATZ: Can I just say on this.

8 We're not talking about a mechanical time period, we're

9 talking about one of the most senior people in SARS, surely

10 apart from any court requirements you want to know is it in

11 the best interest of SARS to fire this man. Let's hear

12 him.

13 COMMISSIONER: Suspend.

14 PROF KATZ: Oh to suspend him, this is

15 serious implications for the organisation. He may well

16 have good explanations. So quite apart from law, even just

17 fairness and listening or taking cognisance of the needs of

18 the organisation, you want to hear the person. What drove

19 the necessity not to?

20 MR LEBELO: Thanks for that. Maybe just

21 let me, so on the following day that I'm talking about, Mr

22 Pillay was called in and told that these are the

23 allegations, we're intending to suspend you, tell us why we

24 should not suspend you. So that little nice, I mean that

25 little activity -

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1 MS STEINBERG: Who called him in and told  
 2 him?  
 3 MR LEBELO: Mr Moyane and Mrs Khumalo.  
 4 MS STEINBERG: So they called him in and  
 5 said we're going to suspend you.  
 6 MR LEBELO: Yes. We're intending to  
 7 suspend you.  
 8 MS STEINBERG: We're intending to suspend  
 9 you.  
 10 MR LEBELO: Yes.  
 11 MS STEINBERG: He then came back with a  
 12 document and said well these are my reasons why you  
 13 shouldn't suspend me and they said well we're not going to  
 14 read them.  
 15 MR LEBELO: No. So in that meeting he  
 16 then responded the way he responded. There is a letter  
 17 from Mr Moyane saying that in that meeting he said I've  
 18 told you five times that I want to resign. So in that  
 19 meeting he was given a chance to respond. My understanding  
 20 of that letter, that it was refused to be read was not in  
 21 that meeting, it happened before the meeting. So when the  
 22 allegations were made he prepared a document and gave it to  
 23 Mr Moyane before the suspension and said I want to share it  
 24 with the Exco and then, that is when he refused to read the  
 25 document. But on the day of, on that day when he was

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1 suspended, in the room he was given that chance to respond  
 2 and he responded the way he responded.  
 3 COMMISSIONER: Well you weren't there in  
 4 that room?  
 5 MR LEBELO: Yes.  
 6 COMMISSIONER: So I think, let's not  
 7 worry, it's a rather - too controversial to have, you  
 8 telling us things that -  
 9 MR LEBELO: Okay that's fine.  
 10 COMMISSIONER: You don't know about. All  
 11 you know about is that there's a letter saying I won't  
 12 listen to you and then there's a letter saying you're  
 13 suspended, that's what the document shows.  
 14 MS STEINBERG: And the haste with which  
 15 this was done and the lack of just the basics of fair  
 16 procedure do raise questions as to whether or not this was  
 17 a purge, that's where you started but I think it's a very  
 18 reasonable inference to make.  
 19 MR LEBELO: Yes.  
 20 MS STEINBERG: That when the deputy  
 21 Commissioner in contrary to the advice of senior counsel is  
 22 not heard, is not given an opportunity but is suspended as  
 23 quickly as possible it's a reasonable inference that  
 24 there's an attempt to purge. What do you say about that?  
 25 MR LEBELO: Ja, like I said I'm here to

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1 see the process that I played exonerate, I'm not, I was not  
 2 part of the purge, I don't know why it was rushed. But I  
 3 was just following a process that I will follow. Like I'm  
 4 saying in this case the advice that I gave them which  
 5 advice, which they told me that they did was that you get  
 6 in there, you say here are the allegations, the person is  
 7 given a chance to respond, if you're convinced, you're  
 8 convinced, if you're not convinced you proceed.  
 9 MR KAHLA: I suppose the difficulty I've  
 10 been having for some time is that on the one hand Mr  
 11 Lebelo, I see you as the executive, the group executive, to  
 12 whom reliance ought to be placed on advise in relation to  
 13 these matters and it worries me that you give me the  
 14 impression, at least myself that your role did not address  
 15 or your contribution did not address the issues that need  
 16 to be addressed and as I asked whether was it a question of  
 17 the Commissioner and the chief officer of HR having little  
 18 faith in the quality of your contribution on these  
 19 decisions.  
 20 MR LEBELO: I wouldn't say so. I think,  
 21 because we involved some senior lawyers working with them,  
 22 I think they preferred to work with the senior lawyer but I  
 23 don't think it's about the confidence because we have got  
 24 other, hundred cases that we're dealing with where I get  
 25 involved and this was a very unique, I think for, in the

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1 history of SARS it was the first time that you, and I'm  
 2 saying this carefully, that you suspend a deputy  
 3 Commissioner under such noise if you like and a lot of  
 4 mistakes have been made there and a lot of lessons have  
 5 been learned. At least for me.  
 6 MS STEINBERG: Shall we move on?  
 7 COMMISSIONER: I think so.  
 8 MR LEBELO: So, thank you so much,  
 9 Advocate Brassey -  
 10 MS STEINBERG: Not even close.  
 11 MR LEBELO: So the decision that get made  
 12 was that now that we have suspended the colleagues and  
 13 begin an investigation and all the troubles that I've  
 14 raised with KPMG we need another investigation into the  
 15 allegation and that partly answers the question whether  
 16 we've got a legal opinion or whether it was necessary. So  
 17 we said let's get another investigation because there is so  
 18 much noise about this Sikhakhane and there was a lot of  
 19 issues that they didn't even finish their job and other  
 20 people were not there and all that and Advocate Brassey was  
 21 approached, and approached at, to run an investigation  
 22 again on the allegations that were raised against Mr Pillay  
 23 and I must state that at that time I'll say this carefully  
 24 that KPMG hasn't even started their work. So -  
 25 COMMISSIONER: Haven't even?

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1 MR LEBELO: Started their work. In real  
 2 times.  
 3 COMMISSIONER: Ja they -  
 4 MR LEBELO: They were briefed in December  
 5 and they were trying to get themselves into order -  
 6 COMMISSIONER: Well they weren't, they  
 7 were first of all briefed in October, the first signature  
 8 for SARS on the contract is towards the end of October and  
 9 KPMG put their signature to the contract at the end of  
 10 December. So they had been right from October -  
 11 MR LEBELO: Yes.  
 12 COMMISSIONER: They had already been  
 13 approached and SARS had decided to appoint them. So I'm  
 14 just helping you there to get the facts on that.  
 15 MR LEBELO: Oh that's correct. I was  
 16 talking about the job that -  
 17 COMMISSIONER: No, no I understand, they  
 18 started in January.  
 19 MR LEBELO: Ja, they started in January  
 20 as KPMG and the point I'm making is that we disregarded,  
 21 and I'm using the word carefully, we disregarded both the  
 22 Sikhakhane and KPMG I can't even say we disregarded because  
 23 by the time the charges were preferred they were still  
 24 finding their way into the investigation so the, what then  
 25 happened is that Brassey had a team that then re-

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1 interviewed all the people that were interviewed as part  
 2 of, if you like starting from scratch and they interviewed  
 3 over 30 people again on the allegations that they were  
 4 raised and then they met with us and I must say that, at  
 5 that time we took a decision that the attorneys on record  
 6 will work with Mr Brassey and we are not going to get  
 7 involved. The only time we will get involved is we had,  
 8 somebody was coordinating so if they want to interview  
 9 Advocate Steinberg then our person will say Advocate  
 10 Steinberg you need to, you must go to Sandton to be  
 11 interviewed. So we decided that from this one we are not  
 12 going to get involved, it must be our attorney on record  
 13 and Mr Brassey's team. They came, they then came back and  
 14 said we have found prima facie evidence and we have even  
 15 drafted the charges, here are the following charges and of  
 16 course as a matter of fact you test them as an employer,  
 17 you test them against and all that, and all that and then  
 18 we found that the evidence that they had was solid, if I  
 19 were to use the word. They then did the following things.  
 20 They then said to us what do you, what, do you prefer a  
 21 particular presiding officer, because they are regular  
 22 charges and our advice was that as part of that  
 23 independence we want them to go and get a presiding officer  
 24 because remember at the time the noise about the fairness  
 25 of this thing was very, very strong and they went and

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1 approached the former deputy chief justice Sandile Ngcobo  
 2 to chair the disciplinary.  
 3 COMMISSIONER: Chief justice.  
 4 MR LEBELO: Former chief justice yes,  
 5 former chief justice Sandile Ngcobo to chair the inquiry  
 6 and I'm mentioning this deliberately to say that goes to  
 7 show how independent we want the process to be, because if  
 8 you then doing the payers you must influence all these  
 9 people on the line and at least I don't even find that we  
 10 can influence the chief, so I think the point I'm making is  
 11 the intention really was to say to the colleagues we are  
 12 doing this independently, it's run by these people, we  
 13 don't want them to be involved. You'll then remember that  
 14 around February -  
 15 MS STEINBERG: Sorry I want to ask you a  
 16 question here before you go on. You say the charges were  
 17 framed and you saw that they were solid.  
 18 MR LEBELO: Yes.  
 19 MS STEINBERG: Now the reason I asked you  
 20 and I ask you again, on what legal basis did you say that  
 21 this unit was unlawful, is this, because the very same  
 22 charge somebody went, undertook surveillance activities for  
 23 example. If it is lawful for a SARS employee to do that  
 24 then that charge is meaningless. If it is unlawful for a  
 25 SARS employee to do that then that might constitute a

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1 proper charge. So by the time that charge sheet came and  
 2 you said it's solid I'm asking you on what legal basis had  
 3 you been advised and did you query whether in the first  
 4 place it is lawful or unlawful for SARS employees to  
 5 undertake these kind of activities. You say you didn't  
 6 rely on Sikhakhane, what did you rely on?  
 7 MR LEBELO: We relied on the  
 8 investigation by Advocate Brassey.  
 9 MS STEINBERG: No, no, Mr Brassey did not  
 10 offer an opinion, Mr Brassy -  
 11 MR LEBELO: Investigation.  
 12 MS STEINBERG: Yes, but I'm asking you,  
 13 I'm not asking about an investigation, Mr Brassey never  
 14 said to you SARS may not conduct these activities, he's  
 15 never said that. I'm not talking about evidence that  
 16 people may have conducted these activities. I'm saying  
 17 what was your legal basis to assume that it was unlawful  
 18 for them to conduct these activities?  
 19 MR LEBELO: Well let me ask, whether I  
 20 understand what you say. So Advocate Sikhakhane makes a  
 21 conclusion. We go to Advocate Brassey. Advocate Brassey  
 22 does an investigation and he came back and say the conduct  
 23 was unlawful and illegal and he put that on the charges.  
 24 So, I'm not so sure what the question is, because then all  
 25 we are saying is that when Brassey also confirmed that

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1 according to him and the work he has done with this team it  
 2 comes the same conclusion that these things were unlawful.  
 3 We went with him.  
 4 MS STEINBERG: No I think, Advocate  
 5 Brassey was never asked to give SARS an opinion as to  
 6 whether the very basis of the charges, what underpinned all  
 7 those charges, namely that these people should not be doing  
 8 what they did.  
 9 COMMISSIONER: Well you say doing what  
 10 they did, it depends what you mean, you mean that the unit  
 11 itself.  
 12 MS STEINBERG: Yes.  
 13 COMMISSIONER: Doing ordinary  
 14 surveillance of tobacco people and so forth.  
 15 MS STEINBERG: I'm saying -  
 16 COMMISSIONER: Just separate that -  
 17 MS STEINBERG: Yes.  
 18 COMMISSIONER: From what is alleged to  
 19 have been done by the individuals.  
 20 MS STEINBERG: Yes, and there's two  
 21 things there Judge. Firstly was the establishment of the  
 22 unit unlawful but then there's a related question. If that  
 23 as Mr Trengove has said in fact SARS may undertake  
 24 surveillance for example then when you look at a charge  
 25 that says employee X undertook surveillance it's only a

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1 charge if your underlying legal assumption is that the SARS  
 2 employee may not do that.  
 3 [11:48] COMMISSIONER: No, I understand that, I  
 4 am just saying just be careful when you just say doing  
 5 that, and let's be clear on what that is. Is it putting  
 6 listening devices into people's homes or whatever. That's  
 7 all I asked, I don't want an explanation, I just want to  
 8 request you when you say people are doing that to identify  
 9 what the that is.  
 10 MS STEINBERG: I understand, Judge.  
 11 MR LEBELO: Ja all I'm saying is I don't  
 12 know whether they – remember the charges were drafted by  
 13 Brassey so Brassey after doing investigation drafts charges  
 14 and say I've relooked into this investigation, I'm  
 15 concluding that there was unlawful activity. And here are  
 16 the charges. And we said to him that they will even do the  
 17 prosecution and I guess that is the purpose of a  
 18 disciplinary, the purpose of a disciplinary is that it  
 19 gives you an opportunity to go and rebut what you alleged  
 20 to have been done. So I don't think it would have said to  
 21 Brassey then give us an opinion on what you've already  
 22 resolved that what you have found is illegal. And of  
 23 course we created a disciplinary, we called the Deputy  
 24 Chief Justice to say we want this thing to go through the  
 25 independent process, those who have got different views

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1 will contest themselves there. And I think that's how we  
 2 interpreted it.  
 3 COMMISSIONER: You know you said you'd  
 4 come to it, but you haven't. My difficulty still is even  
 5 before Advocate Brassey drew charges you'd suspended people  
 6 on the basis of what they were doing was unlawful. Mr  
 7 Richer, if I remember correctly was suspended because of  
 8 his involvement in setting up this unit. So was Mr Pillay  
 9 and I keep saying on what basis was it said that it was  
 10 unlawful and justifying the suspensions let alone the  
 11 disciplinary. Now can you just answer that once and for  
 12 all then we can move on?  
 13 MR LEBELO: Well let me go because that's  
 14 what I've been asking that –  
 15 COMMISSIONER: You told us you didn't act  
 16 on Advocate Sikhakhane's view, you didn't take an opinion  
 17 and can I get clarity on what basis it was said that the  
 18 setting up and operation of this unit was unlawful? If you  
 19 can give me a clear answer to that then I will be very  
 20 happy to move on whatever the answer might be.  
 21 MR LEBELO: And maybe for that, Judge, I  
 22 will then skip the point that I was making because what I  
 23 was doing I was giving a background and then I'll go to the  
 24 details of the files so that I explain –  
 25 COMMISSIONER: Certainly.

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1 MR LEBELO: - what was explained to be  
 2 the reason why it was regarded as unlawful. So the  
 3 presentation in the files and by the way I must make this  
 4 point otherwise I'll fail, that around February the  
 5 Minister announced that the advisory board led by retired  
 6 Judge Kroon and all of the things that Judge Kroon was  
 7 supposed to do or was requested to do was to also look into  
 8 the allegation as contained in Sikhakhane. And he did  
 9 that, so he asked us for the report, he asked us for the  
 10 files, he asked us for the files that are as well because  
 11 at that time the charge was already preferred. And he came  
 12 to the same conclusion that – he came to the same  
 13 conclusion that there is wrongdoing here and I know that  
 14 you have that on. And I'm just over-emphasising the point  
 15 that when these things were happening we had no reason to  
 16 doubt all these legal minds that they'll be wrong, from  
 17 Sikhakhane, from Brassey, from the Judge. But I'm going to  
 18 the facts now –  
 19 COMMISSIONER: No but you know I'm going  
 20 to give you one more chance then we'll move on and if you  
 21 haven't answered the question don't criticise me for saying  
 22 that you didn't answer the question. So let me be clear.  
 23 Judge Kroon came a lot later, Advocate Brassey came a lot  
 24 later. At the time you suspended them you said this was -  
 25 what they'd done was unlawful in setting up this unit and

<p style="text-align: right;">Page 2446</p> <p>1 running this unit. You had not, you said, relied on  2 Advocate Sikhakhane who thought it was unlawful, you had  3 not taken a legal opinion as to whether it was unlawful.  4 Now let's not worry about Kroon or Judge Kroon and Advocate  5 Sikhakhane and so forth. Tell me on what basis it was  6 considered to be unlawful to operate, to establish a unit  7 to look into the illicit industries?  8 MR LEBELO: If you got to file, there are  9 a number of files there, so the first file is the file of  10 written Pillay 1 and 2.  11 MS STEINBERG: Which file must I go to?  12 MR LEBELO: One. So the presentation of  13 the evidence that was presented then was taking six points,  14 six major points from the file. The first one is that the  15 allegation at the time or the response at the time that  16 this unit was formed by the Minister in terms of the  17 evidence here, is not correct. Secondly that the Minister  18 was asked to approve funding to the value of 48.9 million  19 to establish a unit for NIA, so it was not about that one.  20 The third one was that the unit indeed, in terms of the  21 evidence, that the Brassey investigation discovered that  22 they were involved in illegal activities, that Mr Pillay  23 purchased equipment which can only be purchased by the  24 National Intelligence Agency and that he accepted equipment  25 utilised for converting intelligence from the US embassy</p>	<p style="text-align: right;">Page 2448</p> <p>1 presently have the capability including the legislated  2 mandates. So on the 2nd of February SARS writes a letter to  3 – okay the last part is that they are raising the R49.9  4 million to help NIA to establish this unit. So on the 2nd  5 of February SARS agrees that they don't have they  6 legislative mandate to collect tactical intelligence  7 invariably means penetrating and intercepting organise  8 criminals.  9 MS STEINBERG: Sorry where does it say  10 they don't have a legislative mandate?  11 MR LEBELO: Look at 2.1. So 2.1 says  12 collecting tactical intelligence invariably means  13 penetrating and intercepting organised criminal syndicates.  14 MS STEINBERG: Yes.  15 MR LEBELO: And the second one said that.  16 Now this memo –  17 MR KAHLA: So that portion, when you read  18 fully that paragraph it says that point.  19 MR LEBELO: Yes.  20 MS STEINBERG: Shall I read the  21 paragraph?  22 MR KAHLA: Yes please.  23 MS STEINBERG: Collecting tactical  24 intelligence invariably means penetrating and intercepting  25 organised criminal syndicates. This is an activity for</p>
<p style="text-align: right;">Page 2447</p> <p>1 which the witness was going to be called to say that was  2 against the country's laws. And the last being that he  3 attempted to purchase an equipment which is for converting  4 intelligence work. Now dealing with the first one about  5 the memo I want to refer the Commission to page 28 of  6 bundle A and page 28 of 1 is a memo written by – I just  7 want to make sure that we're on the same page. No it's  8 actually on page 31, sorry so page 31 is a memo that was  9 written by Mr Pillay on the 2nd of February to Mr Gordhan  10 and directed to the Ministry. Now this memo was written on  11 the 2nd of February.  12 MR KAHLA: Which year?  13 MR LEBELO: 2007.  14 MR KAHLA: 2007?  15 MR LEBELO: Yes. Now this memo is  16 significant for a number of reasons, so if you look at the  17 heading of the memo it talks about the request is to find  18 an intelligence capability within NIA in support of SARS.  19 That's the subject and the memo says to seek approval to  20 fund a special capability within NIA to supply SARS and law  21 enforcement agencies with the necessary information to  22 address the illicit economy. And it went further and say  23 this is about collecting tactical intelligence invariably  24 means penetrating and intercepting organised criminal  25 syndicates. This is an activity for which SARS does</p>	<p style="text-align: right;">Page 2449</p> <p>1 which SARS does not presently have the capability including  2 the legislative mandate to manage clandestine activity.  3 MR LEBELO: So the investigators then  4 concluded that SARS was aware that they don't have the  5 legislative mandate. But that's not the only problem so if  6 you look at paged 32, the document –  7 MR KAHLA: Before you move on further  8 there are too many bits and pieces of this puzzle. You've  9 taken us now to the memo of 2007 Feb. I want to just get  10 the chronology right, we've got this memo you're making  11 reference to then there's the advice of Mr Trengove, at  12 what point does that advice of Mr Trengove come in, is it  13 before or is it after?  14 COMMISSIONER: This is long, long –  15 MR KAHLA: A long time after this?  16 MR LEBELO: Ja. So –  17 COMMISSIONER: Can I just assist because  18 it's important to get the chronology. There was an  19 opinion, internal opinion given within SARS to Mr Pillay,  20 the date, I don't have the documents, so we will be given  21 the date, in which the opinion was expressed that SARS  22 indeed is entitled to investigate illicit economy. That  23 date was?  24 MS STEINBERG: I'm just looking, Judge.  25 COMMISSIONER: Yes.</p>

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1 MS STEINBERG: Carry on.  
 2 COMMISSIONER: No, no I'd like to just  
 3 get that date if you've got it because my colleague's asked  
 4 for chronology and he's right. One should see things in  
 5 chronological order.  
 6 MS STEINBERG: Let me have a look.  
 7 PROF KATZ: The time is 12:00.  
 8 COMMISSIONER: Can we have a cup of tea,  
 9 Mr Lebelo? Would you like a cup of tea?  
 10 MR LEBELO: Yes.  
 11 COMMISSIONER: So would I. Can we break  
 12 for a cup of tea?  
 13 MR LEBELO: Ja.  
 14 MS STEINBERG: I found it if you want it.  
 15 COMMISSIONER: Okay well let's just  
 16 finish this, what date is it?  
 17 MS STEINBERG: Okay it's the 22nd of  
 18 January 2007.  
 19 COMMISSIONER: Okay and then -  
 20 MR KAHLA: The 22nd of January?  
 21 MS STEINBERG: January.  
 22 MR KAHLA: 2007.  
 23 MS STEINBERG: Ja and there's a legal  
 24 opinion from a lawyer within SARS at the request of Mr  
 25 Pillay telling Mr Pillay that it would be lawful for SARS

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1 to set up this capability.  
 2 MR KAHLA: But was that advice in  
 3 relation to a request to have NIA then set up that  
 4 capability or was it in relation to SARS setting up that  
 5 capability within SARS?  
 6 MS STEINBERG: SARS.  
 7 MR KAHLA: So that's the 22nd of January  
 8 2007 they advise they have the power to set up that.  
 9 MS STEINBERG: Yes.  
 10 MR KAHLA: But then a few days later,  
 11 about five days later they arrive at a different view. Is  
 12 that - I'm trying to understand the seniority.  
 13 MS STEINBERG: Well somebody else arrives  
 14 at a different view, yes.  
 15 COMMISSIONER: All right that's the 5th,  
 16 what date was that in February that you're reading from?  
 17 MR LEBELO: The 2nd.  
 18 COMMISSIONER: The 2nd of February.  
 19 MR LEBELO: Yes.  
 20 COMMISSIONER: Okay let's stop at that,  
 21 have a cup of tea and come back.  
 22 [INQUIRY ADJOURNS INQUIRY RESUMES]  
 23 [12:24] COMMISSIONER: Mr Lebelo, I just want to  
 24 make one thing very clear. You've spoken about Advocate  
 25 Brassey and you will remember there is a bit of

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1 correspondence between you and your attorney which was not  
 2 very complimentary of me that you CCd to me. Remember  
 3 that?  
 4 MR LEBELO: Yes.  
 5 COMMISSIONER: And you had said in there  
 6 why don't they speak to Brassey. Well we have spoken to Mr  
 7 Brassey and I just want to make it clear that we accept Mr  
 8 Brassey drew that charge sheet and we accept as well that  
 9 he wouldn't have done so and I accept it without  
 10 reservation unless he felt he had a proper basis for  
 11 drawing that charge sheet. So let me get that absolutely  
 12 clear that Advocate Brassey would've had a, in his mind at  
 13 least, whether he's right or wrong doesn't matter, I mean  
 14 advocates can be wrong. Do you know how many times they've  
 15 told me I've been wrong in the courts? But we accept that  
 16 Advocate Brassey felt he had a basis for the charge sheet.  
 17 So -  
 18 MS STEINBERG: Please continue.  
 19 MR LEBELO: Thanks so much. The and I  
 20 needed to make the point as well, I'm not sitting here  
 21 saying somebody is guilty, I'm just sitting here and say at  
 22 the time Advocate Brassey and the team thought there is a  
 23 case to be answered, there is a prime facie case to be  
 24 answered. Now the memo - so I've mentioned the issues that  
 25 the memo raises and the memo gets signed by the deputy

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1 Minister. At the time it was Deputy Minister Moleketi and  
 2 he signs the memo but he says, he makes a comment which is  
 3 an interesting comment that supported however this is a  
 4 strange way of executing what I consider to be an economic  
 5 mandate by NIA. It seems as though it's an add-on rather  
 6 than part of the NIA mandate and this is approved on the  
 7 22nd of October, as you can see on page 31. Now -  
 8 COMMISSIONER: Well that's October 2008?  
 9 MR LEBELO: 7.  
 10 COMMISSIONER: 7.  
 11 MR LEBELO: 7, yes. Sorry, I'm saying  
 12 October, it's February.  
 13 MS STEINBERG: No that -  
 14 COMMISSIONER: No, let's get the date  
 15 correct. Is it -  
 16 MR LEBELO: Yes, February - yes.  
 17 COMMISSIONER: - 2007?  
 18 MR LEBELO: 2007 the 22nd of February,  
 19 that is when the Minister signs. Now I want to then take -  
 20 and the important thing here to draw from at least the  
 21 investigators was that SARS seemed to acknowledge itself at  
 22 this time that they don't have a legislative mandate,  
 23 that's why they want the Minister to give them money to  
 24 help to establish this in the NIA. So I want to -  
 25 MS STEINBERG: Let's just say Mr Gordhan

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1 seems to assume that but Mr Pillay had been advised a few  
 2 days earlier that SARS actually does have the legislative  
 3 mandate to do that.  
 4 MR LEBELO: Ja, the only difficulty is  
 5 that Mr Pillay has also signed the memo. So –  
 6 COMMISSIONER: No, I understand but have  
 7 you got that, you said you hadn't, you didn't have that  
 8 document.  
 9 MR LEBELO: No.  
 10 COMMISSIONER: I'm surprised, why didn't  
 11 you have that other document, the opinion, when you started  
 12 –  
 13 MR LEBELO: I don't know.  
 14 COMMISSIONER: - but it was in your file,  
 15 that's where we found it.  
 16 MR LEBELO: In the file?  
 17 COMMISSIONER: Not in your, the ones you  
 18 gave me but in the SARS records.  
 19 MR LEBELO: No, I –  
 20 COMMISSIONER: I'm a bit surprised that  
 21 it wasn't there. Can we, can you just show it to him?  
 22 MR LEBELO: Sorry, I just –  
 23 COMMISSIONER: If you just look at, I  
 24 think at the last paragraph. She'll probably, he or she, I  
 25 don't know.

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1 MR LEBELO: No, I've never seen that  
 2 document.  
 3 COMMISSIONER: So that wasn't available,  
 4 that wasn't, you didn't see that at the time you took this  
 5 action?  
 6 MR LEBELO: No. We – like I said this is  
 7 the work that was done somewhere and people came and said  
 8 this is what they found.  
 9 MR KAHLA: Could you please just read for  
 10 me again that note by Deputy Minister Moleketi?  
 11 MR LEBELO: Okay. So it's understood  
 12 that the memo is asking for money to form a unit helping  
 13 NIA.  
 14 MR KAHLA: I just want that –  
 15 MR LEBELO: That part.  
 16 MR KAHLA: - that note.  
 17 MR LEBELO: It says "Supported, however  
 18 this is a strange way of executing what I consider to be an  
 19 economic mandate of NIA. It seems as though this is an  
 20 add-on rather than part of the NIA mandate".  
 21 COMMISSIONER: Okay.  
 22 MR KAHLA: Okay, so you were saying that  
 23 you, NIA as far as he was concerned already had that  
 24 mandate.  
 25 MR LEBELO: Yes. So he's saying NIA has

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1 got the mandate –  
 2 MR KAHLA: Okay.  
 3 MR LEBELO: - and that confirms and I  
 4 don't want to get much but that confirms in the eyes of the  
 5 investigators that that part we can confirm that is the  
 6 mandate of the NIA.  
 7 MR KAHLA: But the Minister does not  
 8 suggest that it has exclusive mandate.  
 9 MR LEBELO: No. That's not what we are  
 10 saying. All we are saying is on paragraph 2.1 SARS is in  
 11 its own memo acknowledged that it doesn't have a  
 12 legislative mandate to do this and that's why it's asking  
 13 money to establish in the NIA. That is what it  
 14 established. Now if I take the Commission to page 33, no,  
 15 not, sorry, page 28. On page 28 and this is where the  
 16 contradiction come where they wanted Mr Pillay to explain  
 17 in that hearing is that it looks like by the 8th of February  
 18 2007 he is sent a memo which memo establishes this unit.  
 19 So let me explain the difference. So the memo goes to the  
 20 Minister, leaving SARS on the 2nd. The Minister approves it  
 21 on the 22nd and that memo says give us R49 million almost to  
 22 form a unit so that this unit can operate within NIA  
 23 because we don't have a mandate. Only to find that earlier  
 24 than that on the 8th of February Mr Pillay is forming the  
 25 very same unit with the same terms.

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1 COMMISSIONER: Why do you say that? What  
 2 is that document?  
 3 MS STEINBERG: Can I help?  
 4 MR LEBELO: It's page 29.  
 5 MS STEINBERG: So this is an internal  
 6 memorandum. It's from Mr Pillay to Mr Magashula who at  
 7 that stage was the chief operating, the chief operator,  
 8 excuse me, the chief officer Corporate Services, 8th of  
 9 February 2007. So this is days after Mr Pillay has been  
 10 told he can in fact lawfully set up a unit. And he seems  
 11 to be acting on it because he says "the topic is  
 12 specialised capability to focus on the illicit economy and  
 13 the purpose is to obtain approval for the appointment of  
 14 personnel with specialised capabilities (internal and  
 15 external)" and under discussion it says "combating  
 16 smuggling of prohibited goods and substance is part of  
 17 SARS' mandate and as you may know a need exists for a  
 18 specialised capacity to enable SARS to make inroads in  
 19 understanding the illicit economy in order to take decisive  
 20 steps to minimise the following" and there's a list  
 21 "including smuggling of cigarettes and importation of  
 22 counterfeit goods, illegal importation of second-hand  
 23 vehicles, illegal harvesting of abalone and its supply,  
 24 importation, exportation and manufacturing of drugs.  
 25 Fundamental to combating the illicit economy is the

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1 capability to penetrate and intercept the activities of  
 2 crime syndicates. A memo explaining the need for creating  
 3 such capacity with a high degree of operational security to  
 4 address illicit economic has been submitted to the  
 5 Minister. The customs border control units recruitment  
 6 process was utilised to short list and assess potential  
 7 candidates" and the recommendation that he asks be approved  
 8 "In pursuance of the above it is proposed that SARS create  
 9 the special capability through the appointment of 14  
 10 external resources and the transfer of 12 internal  
 11 resources from the enforcement and risk division" and then  
 12 it refers to annexure A. "The structure of this new  
 13 capability is attached as annexure B. The posts 26 should  
 14 be obtained from CBCU and transferred to the GM enforcement  
 15 and risk's cost centre to protect the identities and postal  
 16 information of the employees".  
 17 COMMISSIONER: Okay, so what –  
 18 MR LEBELO: Ja. So the point is that on  
 19 the one side you are forming a unit as illegal, and the  
 20 purpose of that, I mean if you look at the purpose of the  
 21 memo it says we don't have the capability and the whatever  
 22 and that's why we want to form it there. On the other side  
 23 you are forming a unit.  
 24 COMMISSIONER: Which – where are you  
 25 forming a unit? He's talking about capability.

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1 MR LEBELO: No, and then maybe that's why  
 2 I was disrupted a bit. So where I referred the Commission  
 3 is where then there is a memo that before the Minister  
 4 approves the money there's a memo already which shows that  
 5 people have been recruited, people are ready to accept jobs  
 6 and I want to take the Commission to pages 30, there is a  
 7 structure on page 30 and you will see that the following  
 8 employees already accepted offers on this day for that  
 9 unit.  
 10 COMMISSIONER: Ja.  
 11 MR LEBELO: There –  
 12 COMMISSIONER: You keep on saying the  
 13 unit, the capability. I don't know if this now the  
 14 capability within NIA or a separate unit. What –  
 15 MR LEBELO: Okay.  
 16 COMMISSIONER: You – he only – he doesn't  
 17 talk about a unit, he talks about a capability.  
 18 MR LEBELO: Okay. So –  
 19 COMMISSIONER: Which is what – sorry,  
 20 which is what had been said in the earlier memorandum to  
 21 the Minister.  
 22 MR LEBELO: Yes, the memo –  
 23 COMMISSIONER: The capability within NIA.  
 24 MR LEBELO: Ja, the memo to the Minister  
 25 says we are requesting 48.9 million to work, to help NIA to

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1 form this unit which will do among other things illicit  
 2 economy because we acknowledge we don't have a mandate.  
 3 But on page 29, and that memo is approved on the 22nd. But  
 4 on page 29 you have already recruited people for the units,  
 5 you already got approval from HR and in fact on page 30 Van  
 6 Rensburg has already accepted an offer on the 14th of  
 7 February, always noting the 22nd, De Waal has already  
 8 accepted on the 15th, Carl Fourie has already accepted on  
 9 the 16th, Keith (inaudible) has already accepted on the 17th  
 10 and Anton has already accepted on the 15th. And it's  
 11 important because all I'm saying is that this created a  
 12 discrepancy for a prima facie evidence of either the memo  
 13 that went to the Minister was intended to mislead the  
 14 Minister for, because that what happens to the 49 million  
 15 is not very clear. So they couldn't get any information.  
 16 So they concluded that somebody must explain that you're  
 17 asking the Minister for the 49 million but a few days  
 18 before that you've already formed the unit. What happened  
 19 to the 49 million because also in terms of Treasury rules  
 20 you can't ask for money to buy a house and then use it to  
 21 buy something else? So Brassey and the team, Advocate  
 22 Brassey and the team said Mr Pillay had to explain –  
 23 COMMISSIONER: Ja, I think –  
 24 MR LEBELO: - and more importantly –  
 25 COMMISSIONER: Ja, sorry, that's not what

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1 Mr Brassey said because I don't want to embarrass Mr  
 2 Brassey by having someone else interpret what he said.  
 3 MR LEBELO: No, I'm saying –  
 4 COMMISSIONER: Ja.  
 5 MR LEBELO: - I'm simply saying the  
 6 evidence that they told us and this is the argument that  
 7 they said they had –  
 8 COMMISSIONER: Ja.  
 9 MR LEBELO: - for the charges.  
 10 MR KAHLA: Could you help me exactly on  
 11 that? You have the letter or the memo to the Minister –  
 12 MR LEBELO: Yes.  
 13 MR KAHLA: - which ultimately gets signed  
 14 on the 22nd and having been signed by the Deputy  
 15 Commissioner and the then Commissioner on about the 2nd.  
 16 What I want to really just get, I want to get, that you  
 17 help us just zoom in to these two bits, the 8th of Feb that  
 18 you've just, that counsel has just read to us. Are these  
 19 supposed to be exclusive of one another or inclusive of one  
 20 another? Maybe let me put it more simply. There's one bit  
 21 around setting up enabling the NIA to set up certain  
 22 capability and you have on this memo of about the 8th, am I  
 23 correct, the 8th of Feb requests for setting up certain  
 24 position in relation to other capability. Are we saying  
 25 that it is not, it's inconceivable that the NIA would've

<p style="text-align: right;">Page 2462</p> <p>1 been funded for a certain portion of the capability which 2 in any event the Minister of Finance had already said in 3 his view they already had that capability, they already had 4 that mandate. Are you saying that you could not possibly 5 have set up a certain capability within NIA and still set 6 up perhaps some corresponding capability within SARS when 7 one takes into account that they had already received, Mr 8 Pillay had received advice saying that it was okay to do 9 so. It was okay for SARS to create that capability and the 10 impression I'm getting now, I don't know, the opinion 11 that's now, that you've now seen for the first time was 12 that ever brought to the attention of Advocate Brassey? 13 MR LEBELO: No, not as far as I know but 14 I think the important thing here is that prima facie it 15 looks like the same requests that they're making to the 16 Minister is the same thing that they've already established 17 as a unit because the reasons for establishing the unit 18 before the Minister and the reason for the memo are the 19 same, it's to deal with illicit economy. But what is 20 important is this is an allegation that the prosecutor or 21 whoever that was running the hearing wanted Mr Pillay to 22 explain. It can be explained like I'm saying, I'm not 23 saying they are guilty or anything. I'm saying this was 24 the reason why the charge was made to say that the 25 establishment of the unit, it's not correct that the</p>	<p style="text-align: right;">Page 2464</p> <p>1 MR LEBELO: Here they are requesting for 2 money. 3 COMMISSIONER: Ja. 4 MR LEBELO: And the same inference is 5 that they don't have money at the time. 6 COMMISSIONER: Ja. 7 MR LEBELO: So they could not have 8 recruited in anticipation of the Minister. If the request 9 was to say to the Minister we want to form a unit, but we 10 already have the money but we just want you to form a unit, 11 it's different. But here are requesting for money, it 12 means you don't have money to form the unit. 13 COMMISSIONER: Okay. 14 MR LEBELO: You want to have the money to 15 form the unit and that is the inference. 16 COMMISSIONER: Okay – 17 MR LEBELO: But like I said I'm saying 18 this is what – 19 COMMISSIONER: I understand – 20 MR LEBELO: - was the oxymoron. It 21 caused a contradiction to say somebody must explain and the 22 investigators felt that it must be explained. 23 COMMISSIONER: Okay – 24 MR LEBELO: And it can be explained, I'm 25 not saying it can't –</p>
<p style="text-align: right;">Page 2463</p> <p>1 establishment of the unit was done by the Minister because 2 the Minister never approved any unit. He approved money to 3 establish a unit for NIA, not for SARS. But on the other 4 side it looks like the very same unit does the same thing 5 and as you – 6 COMMISSIONER: Sorry, just finish that. 7 On the other side? 8 MR LEBELO: On the side it looks like the 9 same, the unit that they are saying that don't have a legal 10 mandate for, they already established it before the – 11 COMMISSIONER: But I don't see that 12 that's a necessary inference. So they're hiring people, 13 why is it, why should we not infer that they're hiring 14 people already in anticipation of putting them within NIA? 15 Because that's what they wanted to do. They wanted the 16 money in order to hire people, NIA was not going to pay for 17 this, to hire people to put into a ring-fenced unit within 18 the NIA. So I'm not sure why you say we should draw the 19 inference that they set up an – 20 MR LEBELO: No – 21 COMMISSIONER: - a unit outside the NIA. 22 MR LEBELO: The difficulty is, Judge, 23 that in terms of the policy, when he said they had 24 structure you must have budget. 25 COMMISSIONER: Ja.</p>	<p style="text-align: right;">Page 2465</p> <p>1 COMMISSIONER: Ja. 2 MS STEINBERG: And one – 3 MR KAHLA: But the only question I'm 4 trying to understand, I mean the question I'm raising 5 trying to understand something from you is whether in the 6 view of SARS, perhaps let me say in the view of Mr Lebelo 7 it was inconceivable that you could create some capability 8 within SARS which you've already been told by your internal 9 legal advisors that you can create certain capability and 10 still perhaps fund, enable the funding of certain 11 capability within NIA, those could not work hand in hand? 12 MR LEBELO: Ja, that's why I'm saying 13 prima facie. It clearly looks like the unit that was 14 formed before the memo of the Minister was to do exactly 15 what it is mentioned in the Minister's letter, prima facie. 16 Because prima facie simply means somebody can come with a 17 bomb and explain himself. But remember this is what 18 Brassey's investigation takes us to and says these are the 19 evidence that we have, we believe we can prove this and, 20 and, and. And like I said we really didn't want, not that 21 we're not, not that we didn't interfere but we really, if 22 they give us confidence because that was a strong team of 23 lawyers. I mean I remember Advocate Michael van As was 24 part of that. We then say to them if that is the case then 25 let it proceed and our inclination was that Mr Pillay must</p>

<p style="text-align: right;">Page 2466</p> <p>1 just come and answer some of the questions.</p> <p>2 MR KAHLA: So you believe that you could</p> <p>3 prove that these could not coexist?</p> <p>4 MR LEBELO: Yes, remember –</p> <p>5 MR KAHLA: You, on the face of it you</p> <p>6 said –</p> <p>7 MR LEBELO: Prima facie –</p> <p>8 MR KAHLA: - something was to be answered</p> <p>9 –</p> <p>10 MR LEBELO: Ja.</p> <p>11 MR KAHLA: - because you believed that on</p> <p>12 the face of it these two could not coexist.</p> <p>13 MR LEBELO: Yes, prima facie, what I saw</p> <p>14 here was very clear that the two, they're asking the same</p> <p>15 thing that they did before and that is what they are doing</p> <p>16 here. And if advocates who were going to prosecute the</p> <p>17 matter also feel the same way I respected that.</p> <p>18 MR KAHLA: No, but the point I'm really</p> <p>19 getting to is that I'm not querying whether there was a</p> <p>20 capability to be put at SARS and that capability to be put</p> <p>21 at NIA, I'm really trying to understand now from an</p> <p>22 employee relations perspective in the, in devising these</p> <p>23 charges it was your view that there could never be a</p> <p>24 justification to have these two co-existing.</p> <p>25 [12:44] MR LEBELO: No, just like the Judge said</p>	<p style="text-align: right;">Page 2468</p> <p>1 you look at page 29, the next memo.</p> <p>2 COMMISSIONER: These are the documents</p> <p>3 he's got in front of him.</p> <p>4 MR LEBELO: It says the topic,</p> <p>5 "Specialised capability to focus on the illicit economy".</p> <p>6 MS STEINBERG: That's the memo I read</p> <p>7 out.</p> <p>8 MR LEBELO: Yes. And if you go after A,</p> <p>9 B, C, D, and E, so let me, hang on. So, the purpose is, "A</p> <p>10 specialised capability to focus on illicit economy". When</p> <p>11 you go to the memo to the Minister -</p> <p>12 MR KAHLA: And the page number for the</p> <p>13 memo to the Minister?</p> <p>14 MR LEBELO: The page number for the memo</p> <p>15 to the Minister is page 30. And this one -</p> <p>16 COMMISSIONER: No, I don't think it's</p> <p>17 page 30.</p> <p>18 MR LEBELO: Oh, so this -</p> <p>19 MR KAHLA: Page 31.</p> <p>20 MS STEINBERG: Page 31.</p> <p>21 COMMISSIONER: 31.</p> <p>22 MR LEBELO: 31, sorry. So, if you look</p> <p>23 at, if you look at the purpose of the memo to the Minister,</p> <p>24 you can draw a conclusion of similarity. It says:</p> <p>25 "To seek approval to fund a special capability within ER to</p>
<p style="text-align: right;">Page 2467</p> <p>1 the charges are not drafted by me.</p> <p>2 COMMISSIONER: Listen to Mr Kahla's</p> <p>3 question, it's always a good idea.</p> <p>4 MR LEBELO: That's alright, I hear the</p> <p>5 question. Judge, when you put a charge – and that's why</p> <p>6 you call it prima facie and you call it an allegation, it</p> <p>7 doesn't mean it can't be disproved – but you believe that</p> <p>8 with what is before you, you have got more facts to prove</p> <p>9 it than the opponent, and in a lot of cases people come and</p> <p>10 prove the allegations different.</p> <p>11 MR KAHLA: Yes, no for the -</p> <p>12 MR LEBELO: No, I'm not taking that away,</p> <p>13 that they can.</p> <p>14 MR KAHLA: Yes. What I'm trying to</p> <p>15 understand is, as far as you were concerned, did you</p> <p>16 consider it inconceivable that there will be certain</p> <p>17 capability, lawfully established within SARS, in addition</p> <p>18 to capability to be funded within the NIA? Were those</p> <p>19 contradictory?</p> <p>20 MR LEBELO: Yes. And I'll, let me</p> <p>21 explain why.</p> <p>22 COMMISSIONER: Sorry, is your answer yes?</p> <p>23 MR LEBELO: Yes, but let me -</p> <p>24 MR KAHLA: They were contradictory?</p> <p>25 MR LEBELO: Yes. Let me just explain, if</p>	<p style="text-align: right;">Page 2469</p> <p>1 supply SARS and law enforcement agency with the necessary</p> <p>2 information to address the illicit economy." And also the</p> <p>3 memo of the 29th talks about the purpose being to focus on</p> <p>4 the illicit economy.</p> <p>5 And if you go on the memo of the 29th, far bottom,</p> <p>6 the words start with "fundamental". The memo from the unit</p> <p>7 that was established says: "Fundamentally to</p> <p>8 combating the illicit economy with the capability to</p> <p>9 penetrate and intercept the activities of crime syndicates,</p> <p>10 a memo explaining the need for creating such capability</p> <p>11 with a high degree of operational security to address the</p> <p>12 illicit economy has been submitted to the Minister."</p> <p>13 Even that statement is not necessarily correct,</p> <p>14 because what has been submitted to the Minister is not the</p> <p>15 establishment of a structure. It's the request to have</p> <p>16 money to establish a structure somewhere else. So, this</p> <p>17 contradiction has to be explained.</p> <p>18 MR KAHLA: But I don't know whether</p> <p>19 there's much to that contradiction though, because if I</p> <p>20 look into page 30, you're looking at funding an</p> <p>21 intelligence capability within NIA in support of SARS. And</p> <p>22 if I then look into page 29, you're seeking approval for</p> <p>23 the appointment of personnel with specialised capabilities</p> <p>24 and those capabilities could well have been within SARS.</p> <p>25 What I'm struggling with is why, in your</p>

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1 assessment, you could not have had these co-existing? Why  
 2 must it be the one or the other? And how come you come to  
 3 that inference on the basis of what we're reading here?  
 4 MR LEBELO: I will try to answer it. All  
 5 I'm saying is, the people who did the investigation believe  
 6 they can prove their case. They took us through and they  
 7 showed us this contradiction and it was fair to believe  
 8 that there is a contradiction that needs to be explained,  
 9 and the disciplinary support that. The disciplinary  
 10 support the employer getting a feeling that something  
 11 doesn't knock and they put a charge together for you to  
 12 answer.  
 13 COMMISSIONER: Well -  
 14 MR KAHLA: I'm done with that.  
 15 COMMISSIONER: You know, I'm not sure we  
 16 need to go through all this, because as I've said to you,  
 17 you're correct, Advocate Brassey drew the charges, now an  
 18 advocate would not draw those charges unless he felt that  
 19 there was some basis for them at all, and so we accept  
 20 unreservedly that Advocate Brassey thought there was some  
 21 merit in the charges and – do we need to look any further  
 22 back then? That's where you were. Advocate Brassey said  
 23 you were, had a reasonable basis.  
 24 MR LEBELO: Yes.  
 25 COMMISSIONER: And shouldn't we proceed

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1 from there on?  
 2 MR LEBELO: Yes, I will -  
 3 COMMISSIONER: Is that okay?  
 4 MR LEBELO: Yes.  
 5 COMMISSIONER: Ms Steinberg?  
 6 MS STEINBERG: Well, it's -  
 7 COMMISSIONER: So then, so the charges  
 8 were then drawn, and then what happened next? After the  
 9 charges were drawn and then you'd set up the disciplinary  
 10 inquiry -  
 11 MR LEBELO: Yes, I think it's -  
 12 COMMISSIONER: - a chairman under former  
 13 chief, Chief Justice Ngcobo.  
 14 MR LEBELO: Yes.  
 15 COMMISSIONER: Okay. Let's go on.  
 16 MR KATZ: Sorry, where we were at is you  
 17 asked the former chief justice. Did he accept the  
 18 appointment?  
 19 MR LEBELO: He, we discussed the facts  
 20 and the – so one of the, so that was the first clarity that  
 21 needed to be sought. The second clarity that needed to be  
 22 sought was in relation to the purchasing of the equipment.  
 23 So, in the evidence, Advocate Brassey and the team  
 24 discovered on page 448 to 461 that – and I'll move as fast  
 25 as that because of time.

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1 COMMISSIONER: No, that's fine.  
 2 MR LEBELO: 448 to 461, that Mr Pillay  
 3 purchased equipment of intelligence and covert nature,  
 4 which equipment cannot be purchased for, by an institution  
 5 like SARS for the purposes that has been raised about the  
 6 mandate. So, there was a request, I mean there was then a  
 7 point that the allegation must be sorted out. So, if you  
 8 look into, see page -  
 9 COMMISSIONER: Okay, I'm just a bit wary  
 10 of going on to that, because it's the subject of criminal  
 11 charges that are still pending, so I know, I understand you  
 12 say that there was, as I say, Advocate Brassey says he felt  
 13 that there was a basis for all of the charges, including  
 14 that one.  
 15 MR LEBELO: Okay.  
 16 COMMISSIONER: But I'd rather not go into  
 17 the details of that because it's the, you know, there's  
 18 criminal proceedings are still going on in relation to that  
 19 and I don't want to interfere in any way.  
 20 MR KATZ: Sorry, can I just ask the  
 21 Judge?  
 22 COMMISSIONER: Okay, thank you.  
 23 MS STEINBERG: May I just ask a question  
 24 at this point?  
 25 COMMISSIONER: Okay.

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1 MS STEINBERG: You know, I'm curious  
 2 about the fact that the purchase of this equipment is said  
 3 to be unlawful. Yesterday I read from a memorandum that  
 4 was written on the 1st of September 2016 in which Mr Yegen  
 5 Mundi gets approval from our chief officer, Hlengani  
 6 Mathebula to purchase these, this type of equipment. Now,  
 7 I'm confused as to why the same SARS that says it's  
 8 unlawful in this case now approves it a couple of years  
 9 later.  
 10 MR LEBELO: No, this -  
 11 MR KAHLA: Counsel, is that exactly the  
 12 same equipment?  
 13 MS STEINBERG: It's a similar type.  
 14 It's -  
 15 PROF KATZ: For the same purpose?  
 16 MS STEINBERG: It's for the same purpose.  
 17 It's safe houses, surveillance – it's the same type of  
 18 equipment.  
 19 MR LEBELO: I think I'll take the heed  
 20 from the Judge, firstly to say that remember, when this  
 21 work was done, decisions were made by Advocate Martin  
 22 Brassey. He made decisions at the time with the  
 23 information that was before him. And I think probably the  
 24 Judge goes there to say as we questioned this, it's like we  
 25 are questioning his whatever, which decision he made at the

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1 time. I'm not aware of equipment that can be interpreted  
2 as illegal being bought, and of course, if there is anyone  
3 who has bought equipment that are illegal, must, you know,  
4 must explain why would you buy the equipment that are  
5 illegal.

6 But I'm not assuming anything. I don't know. I  
7 haven't seen the equipment, I haven't seen anything. But I  
8 agree that the charges that are here which are preferred by  
9 Advocate Brassey, he preferred them, he and his team were  
10 willing to go and defend them before the former chief  
11 justice, and of course, Mr Pillay had all the right as  
12 well, like any other employee, to also defend himself, so  
13 in as far as being contradictory to the criminal case, I  
14 think I -

15 MS STEINBERG: I suppose I'm asking a  
16 little different question here. That you are part of the  
17 leadership of this organisation, and I'm really asking you  
18 to account that the same organisation that charges people  
19 on this basis in 2015, the following year approves exactly  
20 the same conduct. I'm asking you to explain how that comes  
21 about?

22 MR LEBELO: Suppose that the unfairness  
23 is that I am even more careful to conclude that somebody  
24 has approved equipment that are illegal. I haven't seen  
25 them. All I'm saying is if there is an illegal conduct in

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1 SARS, and it's brought before management, management has  
2 got a responsibility to make sure that people account to  
3 that allegation. So, if there is such an allegation like  
4 you are saying and it's brought and indeed it is illegal,  
5 because I don't even know what kind of, and there's a  
6 question is whether it's exactly the same equipment is  
7 something else.

8 But I can't say whatever. If it was brought to  
9 me I didn't do anything and I did something for somebody  
10 else, that's different. But I was not even aware that the  
11 equipment that are illegal that are -

12 MS STEINBERG: So, were you not aware  
13 that the tactical task team got approval to buy all sorts  
14 of equipment for this kind of investigation into the  
15 illicit economy, the same type of equipment?

16 MR LEBELO: Not at all. Not at all.

17 MS STEINBERG: How do you account for the  
18 fact that in 2015 it's considered by SARS illegal and in  
19 2016 it's not?

20 MR LEBELO: I don't know whether SARS  
21 considered anything, really. And that's why I'm saying if  
22 it was brought to us and we looked at it and say it is  
23 okay, it's different to say but before you said it's not  
24 okay, now you're saying it's okay. I've never, I was not  
25 aware that their approval of equipment for whatever

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1 purpose, I've never seen them. I'm hearing it for the  
2 first time as you are mentioning it. So, it might not be  
3 fair to say but you have done nothing with this one and the  
4 other one, and - because if transactions, I mean, if things  
5 are happening in the organisation they must be brought  
6 before management for them to make a call. I'm not aware  
7 of that approval.

8 MS STEINBERG: Well, I think I'll ask Mr  
9 Mathebula tomorrow when he comes.

10 MR LEBELO: Yes.

11 MS STEINBERG: Because he is the person  
12 who approved it. But it is curious.

13 MR LEBELO: Yes.

14 MS STEINBERG: And it is why I started  
15 and really still haven't got an answer to the question.

16 What was the legal basis for suspending Mr Pillay in the  
17 first place? Who actually said that what they were doing  
18 was unlawful? Because no one has ever actually given us a  
19 satisfactory answer to that, and in fact SARS seems to  
20 think, as of last year, it's not unlawful.

21 MR LEBELO: Yes, and I thought I  
22 responded. Maybe -

23 MS STEINBERG: No, no, before, when he  
24 was suspended you didn't have Mr Brassey yet.

25 MR LEBELO: Yes. He was suspended

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1 because there were allegations of possible misconduct. You  
2 then go and investigate, and the investigation might come  
3 and say there is nothing, and the investigation might come  
4 and say there is something.

5 MS STEINBERG: No, but I'm asking you why  
6 it was considered unlawful?

7 COMMISSIONER: Just let him finish. Just  
8 let him finish, ma'am.

9 MR LEBELO: Yes.

10 MS STEINBERG: He's not answering my  
11 question, Judge.

12 COMMISSIONER: No, I know. Well, let him  
13 finish not answering your question, then we'll go back to  
14 the question if necessary if he's not answering the  
15 question. Just, please, I don't want, this is not a show  
16 here. Please. This is a serious Commission.

17 MR LEBELO: And we are getting into  
18 different debates.

19 COMMISSIONER: No, we -

20 MR LEBELO: So, the debate is there is a  
21 Commission by Sikhakhane, Advocate Sikhakhane. It comes  
22 with allegations. We go to counsel to and say Counsel,  
23 guide us on what to do. Counsel looks at this thing and  
24 say you may suspend pending an investigation. And we do  
25 exactly that. We go -

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1 MS STEINBERG: No, you don't.  
 2 MR LEBELO: But let me finish. Sorry,  
 3 sorry, that I'll say let me finish because -  
 4 COMMISSIONER: Okay, you -  
 5 MS STEINBERG: Please finish. Please  
 6 finish.  
 7 MR LEBELO: So we do exactly that. So,  
 8 we suspend the colleagues. We institute an investigation  
 9 and we even go a step further, we institute an  
 10 investigation by a different set of eyes, if you like, to  
 11 say look into what Sikhakhane has already said, but do the  
 12 investigation. They go and interview over 30 people and  
 13 they come back and say we are concluding the same thing  
 14 that Sikhakhane has concluded, and here are our grounds.  
 15 We say to them guys, go further, get an independent chair  
 16 who must test the allegations, and they go and get  
 17 Justice Ngcobo, who was willing to chair the hearing.  
 18 Now, the argument about the legalities, like now  
 19 I was showing two memos and there are views about the two  
 20 memos, and I can show more other things that there will be  
 21 two views about those things, and that is the purpose of a  
 22 hearing. The job of a, I mean the duty of a disciplinary  
 23 hearing is to allow the accused an opportunity to explain  
 24 what the employer thinks are discrepancies.  
 25 COMMISSIONER: You haven't actually

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1 answered her question, so – but we've been through this,  
 2 because her question was, before you had gone to, seen  
 3 Brassey, etcetera, and all this disciplinary thing had been  
 4 investigated, Mr Pillay was suspended. So, let's not look  
 5 at what happened after.  
 6 MR LEBELO: No. No. Let me -  
 7 COMMISSIONER: No, let me finish. You  
 8 had gone to Mr Brassey to ask if you suspend him. Mr  
 9 Brassey hadn't advised you on whether it was, these things  
 10 were lawful or not. He had just told you about suspension  
 11 and you must give a hearing before. That's all he had  
 12 said. And he was suspended. Now the question has always  
 13 been, and you told me now, just now you told me you didn't  
 14 rely on Sikhakhane, now I hear that Sikhakhane is relied on  
 15 in some way, Advocate Sikhakhane. The question is simply,  
 16 and we – on what basis did anyone think it was unlawful?  
 17 Did you have an opinion of some kind? And you, I think  
 18 you've said no. All we've had is Advocate Sikhakhane.  
 19 I'm repeating myself saying I think it's  
 20 unlawful. Fair enough, he might be right, he might be  
 21 wrong. But you didn't rely on him. So that's the question  
 22 that counsel keeps coming back to, and I think we should  
 23 move on from that, because we've been through it so many  
 24 times.  
 25 MR LEBELO: Maybe - yes.

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1 COMMISSIONER: If you want another chance  
 2 to answer it, please do.  
 3 MR LEBELO: Yes. It will be, let me  
 4 clarify it, because I think there is – we relied on  
 5 Advocate Sikhakhane for the suspension.  
 6 COMMISSIONER: Well, I thought you said  
 7 you didn't?  
 8 MR LEBELO: No, no. No, let me make the  
 9 point. After the suspension, we then asked a team to  
 10 investigate the charges.  
 11 COMMISSIONER: I understand.  
 12 MR LEBELO: So, we did not rely on Mr  
 13 Sikhakhane for the charges.  
 14 COMMISSIONER: I know. We've heard that.  
 15 MR LEBELO: That's the difference I'm  
 16 trying to -  
 17 COMMISSIONER: But for the suspension.  
 18 MR LEBELO: Yes.  
 19 COMMISSIONER: You say you relied on  
 20 Advocate Sikhakhane.  
 21 MR LEBELO: Yes, after we got an opinion  
 22 from counsel.  
 23 MR KAHLA: But you ignored the critique  
 24 or rebuttal that Mr Pillay had provided in relation to what  
 25 Advocate Sikhakhane had written?

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1 MR LEBELO: Not quite. So, when Mr  
 2 Pillay was suspended for the second time, he was given six  
 3 weeks to give a rebuttal, if you like, to convince SARS  
 4 why -  
 5 MR KAHLA: We're still on the first  
 6 suspension, isn't it? We're on the first suspension, but  
 7 the questions around the legality -  
 8 MR LEBELO: Yes.  
 9 MR KAHLA: - of that related to the first  
 10 suspension.  
 11 MR LEBELO: Yes. All I'm saying is  
 12 before we suspended him for the second, before we finalised  
 13 the last suspension, he was given six weeks to convince us  
 14 why he should not be suspended. What is accepted is that  
 15 on that first meeting where they said the two of them and  
 16 say we're about to suspend you now, and then he gave  
 17 reasons, they said the reasons are not enough, the document  
 18 that you are referring to, like I said, the one that they  
 19 refused to look at, it happened before, it was not during  
 20 the suspension. It happened before the suspension. On the  
 21 day of the suspension, that document was not there.  
 22 MR KAHLA: Yes.  
 23 MR LEBELO: What was there was the  
 24 conversation. Then the court said to us you didn't give  
 25 him enough time to convince you why he should not be

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1 suspended, and that is when you provide more time.  
 2 MR KAHLA: But still, before the  
 3 suspension, you had Sikhakhane's report -  
 4 MR LEBELO: Yes.  
 5 MR KAHLA: As well as a critique on  
 6 Sikhakhane's report, so when you say, because you have now  
 7 done a full swing and said you've placed reliance on  
 8 Sikhakhane, and I'm simply just trying to understand when  
 9 you placed reliance on Sikhakhane this time, did you take  
 10 into account the document that had preceded the suspension,  
 11 the 34 pages that, from what counsel had read, were simply  
 12 discarded?  
 13 MR LEBELO: Okay. So, Sikhakhane comes  
 14 with a report. We go and seek counsel on what to do. And  
 15 counsel says you can suspend Mr Pillay. We get into a  
 16 meeting, we suspended him, he takes us to court. Court  
 17 says you must revoke that suspension because you do not  
 18 give him enough time to respond to you. And then we come  
 19 back and then we give him enough time to respond.  
 20 So, the – and I don't know why is it called a  
 21 swing – I said the suspension happened on the strength of  
 22 the Sikhakhane. The disciplinary charges was not relied  
 23 from Sikhakhane, was relied from an independent  
 24 investigation.  
 25 COMMISSIONER: Yes, look, I think we

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1 should move on now, because Mr Kahla asks you, you've got  
 2 the, if you now say you relied on the Sikhakhane report –  
 3 did you also, why did you not read the 34-page response to  
 4 the Sikhakhane? Why do you say well, I'm going to rely on  
 5 what Sikhakhane says, but I don't want to hear what the  
 6 response is? That was the question. But I think we're  
 7 moving on now, if we can?  
 8 MS STEINBERG: Yes.  
 9 COMMISSIONER: And now we're getting to,  
 10 I think -  
 11 MS STEINBERG: Just, sorry.  
 12 COMMISSIONER: I think we're getting to  
 13 where the disciplinary proceedings had started and we  
 14 accept that there is in Mr Brassey's view, right or wrong,  
 15 he felt there was a basis for that. What happened to the  
 16 disciplinary proceedings?  
 17 MS STEINBERG: Judge, just one thing  
 18 before we go on. You know, the trouble with not reading  
 19 what people want to say is that then you don't know the  
 20 other side of the story.  
 21 COMMISSIONER: Okay.  
 22 MS STEINBERG: So, I've just checked that  
 23 34-page document, and Mr Pillay actually tries to explain  
 24 exactly what Mr Kahla was getting at. And I just want to  
 25 highlight that.

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1 [13:04] He says that, that the conclusion that this is  
 2 Advocate Sikhakhane about the covert nature of the NRG. In  
 3 reaching that conclusion the panel made three errors. The  
 4 first one is that it relied on untested allegations from  
 5 the media. But the second two I think go to what Mr Kahla  
 6 was probing. It conflated the unit as was contemplated in  
 7 2007 and the unit that came to be after it became clear  
 8 that the NIA would no longer host the contemplated unit.  
 9 The two are not the same and the third is that the panel  
 10 did not distinguish between discreet investigations and the  
 11 covert gathering of intelligence which is aimed at National  
 12 Security and that belongs, the latter belongs in the realm  
 13 of the NIA. So, in fact a different prima facie reading of  
 14 that evidence was actually provided but disregarded and  
 15 that's the point I'm raising before we go on.  
 16 COMMISSIONER: Thank you -  
 17 MR LEBELO: You see, my comment there is  
 18 that so Mr Pillay gave a document; Mr Moyane disregarded  
 19 that document. The process of suspension was different  
 20 from the document and maybe Mr Moyane will explain why he  
 21 disregarded the document and he discarded those facts. But  
 22 for the purposes of convincing why he should not be  
 23 suspended the document was not brought before the -  
 24 COMMISSIONER: Before you?  
 25 MR LEBELO: Ja, before us and in this

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1 case before Mr Brassey.  
 2 COMMISSIONER: I'm not sure what - it was  
 3 given to Mr Moyane?  
 4 MR LEBELO: Ja.  
 5 COMMISSIONER: And he said I don't want  
 6 to read it?  
 7 MR LEBELO: Ja, so -  
 8 COMMISSIONER: But I understand he also  
 9 said please don't tell any of the Exco because they might  
 10 get influenced by it?  
 11 MR LEBELO: Ja, there was some issues  
 12 about the document which is all I'm saying is when they  
 13 give you a chance in the suspension you bring all your  
 14 facts. I'm saying those facts are not considered by Mr  
 15 Brassey because they were not brought as part of the facts  
 16 that that must be considered clear -  
 17 COMMISSIONER: Now do you say Mr Brassey  
 18 even didn't even see that document?  
 19 MR LEBELO: No.  
 20 COMMISSIONER: So, no one saw that  
 21 document because it went to Mr Moyane -  
 22 MR LEBELO: Mr Moyane -  
 23 COMMISSIONER: He said this is a secret  
 24 between me and I'm not reading it but don't let anyone else  
 25 read it. That's the long and the short of it? But you say

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1 you didn't see it either?

2 MR LEBELO: No.

3 MR KAHLA: When did you get to share of

4 that document, of its existence?

5 MR LEBELO: I can't say the specific

6 time.

7 MR KAHLA: So -

8 MR LEBELO: Sometimes in the media you

9 will hear that there was a document. I remember there was

10 City Press that say there is a document like that and then

11 the letters that said no, I never gave somebody a document.

12 So, there was (inaudible) about the document but the

13 important part for us like the Judge is summing up is that

14 Mr Pillay went to Mr Moyane as the manager at the time and

15 say I've got this document that wants to rebut the

16 allegations. But that was before we get into the

17 suspension and all those kind of things and Mr Moyane says

18 don't - I'm not going to read it, don't give it to Exco

19 members. That the conversation they had, the two of them.

20 On the other side we go only the suspension and later on we

21 said to Mr Pillay, Mr Pillay, we're intending to suspend

22 you, tell us why we should not suspend you and for some

23 reason he didn't bring that document to convene the

24 suspension. So, in the consideration of the suspension the

25 document was not -

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1 MR KAHLA: Does that concern, you know,

2 in this respect, that the suspension which you carried out

3 on the strength of the Sikhakhane report had actually

4 ignored the rebuttal of the Sikhakhane report?

5 MR LEBELO: Not quite. Remember -

6 MR KAHLA: So, no moment to you that

7 there was a rebuttal?

8 MR LEBELO: So, once you reach a labour

9 relations site, if you reach an ER site and we say to you

10 we intending to suspend you we give you an opportunity to

11 bring any document that you think will convince us. If you

12 and your manager some point had a conversation and gave

13 each other a document there, it is not brought there

14 unfortunately it can't be considered and I do not know and

15 I can't - Mr Pillay had legal representation - so I do not

16 know why he decided not to bring it there. I can't answer

17 that but all I'm saying is that if you don't bring whatever

18 evidence to convince us why we should not suspend you there

19 is no way that you know about the suspension.

20 PROF KATZ: I'm getting confused on that.

21 You were told to give extra time so that he could rebut?

22 MR LEBELO: Yes.

23 PROF KATZ: And he seeks to rebut?

24 COMMISSIONER: No, no.

25 MR LEBELO: No.

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1 COMMISSIONER: No, let me clarify it. He

2 got the document. He was suspended, I think, on the 5th of

3 December, is that right? And off he went to the labour

4 court and I think on the 18th of December the labour court

5 said and with reference to that document you didn't give

6 him a chance to be heard and in fact you stopped him being

7 heard. That's what the labour court said and so he went

8 back and in January I think it was on about the - I can't

9 remember the date - but then you wrote a long letter to

10 him, to Mr Pillay, so in here the allegations. Do you want

11 to respond and I don't know if he did respond, Ms

12 Steinberg? That's the one part that's gone out of my mind.

13 But he did respond and he was suspended again on the 21st of

14 January, is that right?

15 MR LEBELO: Yes.

16 COMMISSIONER: Those are the facts?

17 MR LEBELO: Yes. The only point is that

18 in the response he did not include that. So that

19 conversation took place before he was suspended between him

20 and Mr Moyane.

21 PROF KATZ: He did seek to rebut, not

22 with that?

23 MR LEBELO: Yes, he sought to rebut with

24 information.

25 PROF KATZ: Yes.

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1 MR LEBELO: And the lawyers who were

2 advising us looked at the rebuttal and said it still

3 doesn't answer the question and that's why the suspension

4 was -

5 COMMISSIONER: Okay, are we able to now

6 get to the disciplinary?

7 MS STEINBERG: We are, Judge.

8 COMMISSIONER: Thank you.

9 MS MASILO: Ms Steinberg, I just have one

10 question, Judge. Mr Lebelo, you told us that you were not

11 part, you were not in the meeting during which Mr Pillay

12 was suspended. It was Mr Moyane and your boss, the Chief

13 Officer. How do you know that Mr Pillay didn't have the

14 document on hand asked again, you know, I mean asked Mr

15 Moyane to consider it at the time when he was suspended for

16 the first time because you were not there?

17 MR LEBELO: Remember, after the

18 suspension obviously they briefed me that this is what

19 happened and he gave the reasons, we decided to suspend and

20 then we went to the labour court. We came back and we gave

21 him another opportunity but to answer to your question, the

22 briefed me about what happened. So, I know from their

23 briefing that the document was not submitted there.

24 MS MASILO: Okay.

25 MR LEBELO: And even when we gave more

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1 time it was not submitted and it might be for some legal  
 2 advice or something like that.  
 3 MR KAHLA: What they didn't tell you that  
 4 the document had in fact long been with the Commissioner?  
 5 MR LEBELO: Ja, that's why I'm explaining  
 6 that that is the conversation that between him and the  
 7 Commissioner as the line manager. But the process runs its  
 8 own course. So, you must decide whether you're going to  
 9 bring the same conversation you had with your manager into  
 10 the process or not and that decision you can make.  
 11 COMMISSIONER: Excuse me for a moment. I  
 12 think I must - do you say you were briefed afterwards and  
 13 the told you about this document, Ms Kumalo and -  
 14 MR LEBELO: No, they briefed me on what  
 15 happened in the suspension. COMMISSIONER: Did  
 16 they tell you about this document?  
 17 MR LEBELO: No.  
 18 COMMISSIONER: Did you still not know  
 19 about this document?  
 20 MR LEBELO: No.  
 21 COMMISSIONER: Did neither Ms Kumalo nor  
 22 Mr Moyane say Mr Pillay wanted to give us this document?  
 23 MR LEBELO: No, I've never seen the  
 24 document. I heard about the document sometime in the media  
 25 or somewhere but I've never seen the document.

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1 MR KAHLA: Did it concern you that there  
 2 was in the media reference to this document? It had an  
 3 impact on the employee relations decision that had to be  
 4 taken and you had never been furnished with it?  
 5 MR LEBELO: Ja, remember when we gave Mr  
 6 Pillay six weeks to provide reasons for those long lists of  
 7 charges, that's where he decides what he puts to motivate.  
 8 That is the decision that he makes. So, he might have a  
 9 conversation with his boss and say I'm thinking about this  
 10 thing but once you open the ER process if he doesn't bring  
 11 the document he doesn't bring the document and I wouldn't  
 12 necessarily be aware because didn't see the document. So,  
 13 I don't know whether the document was rebutting what was  
 14 there or was not rebutting what was there because the  
 15 document was even written before the charges were put to  
 16 him.  
 17 COMMISSIONER: Anyway, so we know that  
 18 then from this that the suspension took place. Mr Moyane  
 19 knew that there was a rebuttal. You say he didn't tell  
 20 anyone. He refused to read it. He refused his Exco to see  
 21 it. He didn't even show it to the people when the  
 22 disciplinary charges were being drawn, didn't disclose it  
 23 then and it was never disclosed to anyone. Is that what  
 24 you're telling us?  
 25 MR LEBELO: Yes, as far as I know.

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1 COMMISSIONER: Okay, that's fine. Let's  
 2 get on to the disciplinary then.  
 3 MR LEBELO: Maybe the last point I want  
 4 to make before we get to the disciplinary is the and just  
 5 to remind myself here that I'm here to say that the process  
 6 that we followed I want to convey the Commission that I was  
 7 - it was not a purge. I was not part of the purge. If  
 8 there were errs that were made were errors that were made  
 9 but it was not a purge. I want to convince the -  
 10 PROF KATZ: Are you saying a different  
 11 thing? It may have been a purge but you say if it was a  
 12 purge it wasn't my purge?  
 13 MR LEBELO: I was not part of that. But  
 14 the important thing is just to refer the Commission to page  
 15 553 -  
 16 MS STEINBERG: Sorry, is this now file 2?  
 17 MR LEBELO: File 2, ja.  
 18 MS STEINBERG: Will you give me a moment?  
 19 What page, Mr Lebelo?  
 20 MR LEBELO: 552 and in summary the page  
 21 talks to, at least in my believe at the time, that -  
 22 MS STEINBERG: Well, let's just tell the  
 23 Commissioners what it is so that they can follow.  
 24 MR LEBELO: No problem.  
 25 MS STEINBERG: This is a letter from

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1 Mashiane Moodley Monama Attorneys and it was written to  
 2 Cliffe Dekker Hofmeyr Attorneys and it concerns Mr Pillay  
 3 and the South African Revenue Service and it's dated  
 4 January the 12th 2015.  
 5 MR LEBELO: So, the letter refers to a  
 6 number of meetings. This is one of the meetings where I  
 7 was sent and asked to meet with the legal representatives  
 8 of Mr Pillay because Mr Pillay wants to resign and the  
 9 point I'm making is that my understanding with all the  
 10 evidence that I had was that Mr Pillay on the time wanted  
 11 to resign and this meeting was the meeting in Sandton  
 12 chaired by Mr Hulley who was the former president's lawyer  
 13 where Mr Pillay came there and we met and I was told to go  
 14 and fetch a resignation because he's going to resign. He  
 15 doesn't want to be part of these things. We went there and  
 16 when we got there then there was different views that the  
 17 meeting didn't come right. So, the letter there is in  
 18 response to that meeting and I also want to refer -  
 19 COMMISSIONER: So, what is the relevance  
 20 of that?  
 21 MR LEBELO: The relevance of that, Judge,  
 22 is as opposed to have been pushed he requested to resign,  
 23 at least from where I was sitting. I'm just getting that  
 24 so that I - if I can just be given a moment?  
 25 MR KAHLA: What would have constituted

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1 being pushed?

2 MR LEBELO: Remember I said that I wanted

3 to explain the role I played of which explanation wants to

4 say that if there was, there was a plan like the Judges

5 say, I was not part of that plan.

6 MR KAHLA: Okay.

7 MR LEBELO: So, the allegations that

8 continued to say I was part of the plan they are not

9 correct. I'm just showing my role and the innocence of

10 that role if you like.

11 MR KAHLA: Okay, so what does this letter

12 got to do with - there was a letter that indicating that he

13 wanted to resign already by January?

14 MR LEBELO: Yes.

15 COMMISSIONER: Okay, we've got that.

16 MR LEBELO: And there was another meeting

17 where he wrote another letter where he also said I want to

18 resign and he put conditions to the resignation.

19 COMMISSIONER: Let's get through that

20 quickly. There were some discussions even the former, the

21 current President?

22 MR LEBELO: Yes.

23 COMMISSIONER: Got involved in some of

24 the discussions. He was the Deputy President at the time.

25 A resolution was being sought. I want to now go to the

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1 disciplinary proceedings. As I understand there were

2 discussions about resigning at quite an early stage.

3 MR LEBELO: Yes, and from time to say,

4 when this discussion happened it stopped, we stopped

5 processes all the time.

6 COMMISSIONER: Okay.

7 MR LEBELO: Because there were big people

8 who were getting involved in the discussion and of course

9 the last one was when there was a meeting in Cape Town with

10 the former Deputy Minister where the resignation happened

11 and I was asked to do the media thing and stuff like that.

12 The point I'm making is from all this time I thought, my

13 understanding was that, you know, there is a talk that the

14 two of them want to sort and one wants to resign and for

15 that I administered the documents between him and Mr Piet

16 Richer where he was given a settlement of 18 months and all

17 the time until that point I always thought, even if you

18 look at the settlement and you look at the condition of the

19 settlement in looked like a settlement of people who are

20 not fighting, if you like and at no point was I ever asked

21 to put pressure on Mr Pillay. We spoke at the CCMA and

22 there was never a problem.

23 COMMISSIONER: Okay -

24 MS STEINBERG: Can I just clarify?

25 MR LEBELO: The only -

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1 MS STEINBERG: Can I just clarify?

2 MR LEBELO: Ja.

3 COMMISSIONER: Let's settle down.

4 MS STEINBERG: Are you wanting us to draw

5 an inference from these documents that he wasn't pushed or

6 pressurised to resign?

7 MR LEBELO: Yes.

8 MS STEINBERG: I'm afraid I can't draw

9 that inference from these documents. Because he offered

10 his resignation is not proof of the fact that that he

11 didn't feel pressured to resign.

12 MR LEBELO: Ja, all I'm saying is from -

13 remember, the Judge is correct that you are not saying

14 there is no other things. You are saying the role you

15 played as the head of ER was a role, if you like, innocent

16 under the circumstances and -

17 MS STEINBERG: I didn't ask you that -

18 MR LEBELO: Let me just finish? So, I'm

19 saying because I was part of the facilitation of the

20 resignation meetings, some of them, it was at that time

21 that I even spoke to him and he will tell me look, I'm

22 whatever years, I want to leave. I can't taint my name.

23 So, all this time that was understood. If you don't take

24 the inference I think it's fair but I'm making the

25 inference. But if you don't take it I think it's fair that

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1 you don't have to take it.

2 MR KAHLA: Hence I asked earlier, Mr

3 Lebelo, what would have constituted being pushed from a

4 job? I mean, you're an Employee Relations expert. What

5 are the circumstances that must exist for someone to

6 consider himself being pushed from a job?

7 MR LEBELO: Let me explain the

8 fundamentals of this process. There are two important

9 fundamentals. One is that the Sikhakhane panel

10 investigation was not instituted - okay was instituted by

11 Mr Pillay. So, it had good intention if you like. The

12 second one is that we come back and then institute an

13 independent investigation and the independent investigation

14 come and say there are charges and then we say to them go

15 and get an independent, like a retired Judge in this case,

16 go and get an independent presiding officer who must listen

17 to these things and that is the degree at which a labour

18 relation, that's the process of independence and me having

19 run so many disciplinaries when a matter seem to be

20 contaminated, if you like, this is the process we follow.

21 We make sure that we allow, we appoint lawyers. We give

22 them sole powers and we make sure that we get an

23 independent chairperson.

24 COMMISSIONER: Look, I think I'm going to

25 interrupt. You know that wasn't the question that was

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1 asked and I've told you before in your own interest please  
 2 listen, don't try and answer it too quickly. Listen and  
 3 make sure you understand the question otherwise it's unfair  
 4 on you because one might eventually say look, Mr Lebelo  
 5 doesn't want to answer questions and I think the problem at  
 6 the moment is you didn't listen to the question from Mr  
 7 Kahla. Mr Kahla's question was not in relation to this as  
 8 I understand it. What are the circumstances in which a  
 9 person can be considered to be pushed? Am I right, Mr  
 10 Kahla?

11 MR KAHLA: That's correct. General - I'm  
 12 saying you're an Employee Relations expert. At least  
 13 that's how you put yourself out when you started and I'm  
 14 really just want to take that into account and try and  
 15 understand from your experience what are the circumstances  
 16 that would have to exist for someone to justifiably say I'm  
 17 pushed?

18 MR LEBELO: It's a difficult question  
 19 because the circumstances differs but normally there'll be  
 20 a concoction of charges. So you'll come and imagine  
 21 charges just to put a person outside and you come, if you  
 22 like, a kangaroo investigation with a predetermined outcome  
 23 and then you set your chairperson who must come with the  
 24 outcome because normally when people are pushed they are  
 25 pushed - there is an outcome, then we say we do this and

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1 you realise that I've got no choice here, you know. This  
 2 chairperson is a friend of whoever. You can see when that  
 3 thing is set and that's why in my former response to your  
 4 question misunderstanding it thinking you are talking about  
 5 this one. I was just saying the pillars we have put  
 6 because it's prima facie you need to be seen to be fair.  
 7 So, the pillars we've put, we wanted to show that we are  
 8 fair, that we want an independent outcome. Even if say for  
 9 instance we got a presiding officer that is within SARS,  
 10 for instance and he's junior to the Commissioner and this  
 11 person is deputy, you can see that this person report to  
 12 the Commissioner, the Commissioner can influence. I think  
 13 the biggest normally is the final person who's going to  
 14 make the decision how independent is that person.

15 PROF KATZ: So, the only point that Mr  
 16 Kahla's point came from and counsel is he made a point  
 17 saying the offer to resign is indicative that he wasn't  
 18 pushed and it was voluntary resignation. I don't think  
 19 we've got sufficient to draw that inference. I think  
 20 that's the only point where

21 COMMISSIONER: Anyway, let's move on.  
 22 Let's move on. We'll decide in due course whether the  
 23 facts show that he was pushed or not pushed.

24 MR LEBELO: Definitely.

25 COMMISSIONER: Let's move on. Can I -

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1 MS STEINBERG: Judge, just housekeeping  
 2 matter?

3 COMMISSIONER: Ja, it's getting late.  
 4 MS STEINBERG: Its 25 past 1.  
 5 COMMISSIONER: Can I just hear the answer  
 6 to my, what happened to the disciplinary proceedings.  
 7 [13:24] MS STEINBERG: Judge let's take -  
 8 COMMISSIONER: Then let's move on or do  
 9 you want to do it later?

10 MS STEINBERG: Let's take that question,  
 11 but we have a witness due at 2:00 and I'm just wondering if  
 12 we shouldn't ask the secretary just to do the courtesy -  
 13 COMMISSIONER: Yes.  
 14 MS STEINBERG: - of letting her know that  
 15 it's very unlikely she's going to be heard at 2:00. We're  
 16 going to want to break for lunch at some point and then  
 17 given the number of files I suspect there's quite a lot  
 18 more evidence that Mr Lebelo wants to put before us.  
 19 COMMISSIONER: But is there, Mr Lebelo?  
 20 I think that we know what happened now, if Mr Brassey you  
 21 say drew charges, you feel that there was justification for  
 22 the charges, Mr Pillay resigns, they have discussions about  
 23 resignation. Eventually he resigns on the eve of the  
 24 disciplinary proceedings. Is that right? And there was  
 25 just - one was leading up to the disciplinary proceedings

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1 before he resigned, is that right?

2 MS STEINBERG: Correct.  
 3 COMMISSIONER: And what happened to the -  
 4 there's another opinion from Mr Brassey -  
 5 MS STEINBERG: Yes.  
 6 COMMISSIONER: - he tells me. Can we  
 7 just see that opinion and then we move on I think.  
 8 MS STEINBERG: Can I ask the secretary  
 9 just to -  
 10 COMMISSIONER: Yes. Would you do - you  
 11 know who they are and you can contact them. Thank you.  
 12 How long do you think we - I don't think we're going to be  
 13 a lot longer are we? I really think that we're near - I  
 14 know we had a lot of conversations and I know you wanted to  
 15 show that you personally felt that you had proper grounds  
 16 for what you did and we've heard what you say. So is that  
 17 okay, Mr Lebelo, we're not going to be too long are we?  
 18 MR LEBELO: Ja there's only one point.  
 19 So on the other matters, I'm going to move faster. I  
 20 suppose they're not as complex if you like as this one. So  
 21 the only point I want to make, Judge, was in respect in  
 22 particular to Mr Pillay when he was here, the issue about  
 23 the settlement, that we seem to have violated the  
 24 settlement. SARS seems to have violated the settlement  
 25 because it agreed that it's not going to raise any or all

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1 investigations at least in is understanding including  
 2 criminal will not proceed. And as I was listening I  
 3 thought there is a bit of a missing link there. So what  
 4 happened is –  
 5 COMMISSIONER: I'm sorry, I like thinks  
 6 logically and chronologically. Can I, for the last time  
 7 I'm going to ask know what happened in the lead up to the  
 8 disciplinary proceedings. Now I'm not going to tolerate  
 9 anyone moving away, I want it and we're going to move on.  
 10 Is that okay? Then we'll come to your point after the  
 11 resignation.  
 12 MS STEINBERG: Fine with me, Judge. Do  
 13 you want to hear from me what Mr Brassey –  
 14 COMMISSIONER: No I want – I know Mr  
 15 Brassey gave another opinion, I want all the information  
 16 that was available at that time. And if we're dealing with  
 17 that I don't want to take just little bits of it. Let's  
 18 put on record all the information that was heard. Because  
 19 let me tell you I've spoken to Mr Brassey, I've seen his  
 20 opinions, at your request that I should, I would have done  
 21 so anyway by the way. And I remember Mr Brassey, leading  
 22 up to that, said there is not a strong enough case to go on  
 23 with. Am I right? Something to that effect.  
 24 MS STEINBERG: Yes I'm just finding it,  
 25 but right on the eve of the disciplinary hearing Mr Brassey

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1 gave his final opinion to you. And he says it's an advice  
 2 on evidence basically and he recommends in that opinion,  
 3 this is dated 29 April 2015, just before the disciplinary  
 4 hearing was about to take place. And he says the opinion  
 5 starts "Yesterday we recommended to our client SARS that of  
 6 the three sets of charges currently being pressed against  
 7 Mr Pillay the charges concerned with the so called Rogue  
 8 Unit should be held in abeyance. Our advice was premised  
 9 on the fact that the evidence so far as we have been able  
 10 to gather it is far from conclusive on these charges. And  
 11 the witnesses who might be called to substantiate the case  
 12 were proving to be uncooperative. In response our client  
 13 represented by Mr Luther Lebelo has instructed us that all  
 14 three charges should be pressed together and we will  
 15 happily submit to such instructions." What follows is what  
 16 Mr Brassey describes as a very brief advice on evidence.  
 17 And he says "The documentary evidence on the activities of  
 18 the Rogue Unit is as presently advised thoroughly  
 19 unsatisfactory" and so on. So he tries to persuade SARS to  
 20 continue with the other two charges, but to drop the Rogue  
 21 Unit charges, but he's told no go ahead on all the charges.  
 22 And to add to that I have carefully looked through your  
 23 files and I see no signed witness statement, not one.  
 24 COMMISSIONER: Well anyway let's have no  
 25 argument on that. That's what Mr Brassey said, he said

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1 that he advised you that, what do you say about that?  
 2 MR LEBELO: If it was brought to me  
 3 because I'm just – I said if it was brought to me because  
 4 yesterday I asked, I don't know if it was part of the file,  
 5 it was supposed part of the things I was supposed to  
 6 explain.  
 7 COMMISSIONER: Oh didn't it get here?  
 8 MR LEBELO: Ja I saw and I requested that  
 9 can you please submit what is related to what Mr Brassey  
 10 said and I didn't see – so it's difficult for me to really  
 11 respond –  
 12 COMMISSIONER: Well look at it over lunch  
 13 and then we can respond. I think we're going to break for  
 14 a little while, Ms Steinberg, we're going to break for a  
 15 little while and then –  
 16 MS STEINBERG: Ja, ja sure.  
 17 COMMISSIONER: That document, I'm not  
 18 sure where that came from, did Mr Brassey send it? No.  
 19 MS STEINBERG: No this was part of SARS  
 20 documents.  
 21 COMMISSIONER: It's part of SARS  
 22 documents, okay we're going to break for how long? Should  
 23 we make it a bit shorter? Three quarters of an hour.  
 24 MS STEINBERG: Should we resume at  
 25 quarter past two?

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1 COMMISSIONER: Is that okay? Thank you.  
 2 MS STEINBERG: That's three quarters of  
 3 an hour.  
 4 COMMISSIONER: Mr Lebelo, we'll come back  
 5 at quarter past two, thank you.  
 6 [INQUIRY ADJOURNS INQUIRY RESUMES]  
 7 [14:24] COMMISSIONER: Thank you, Mr Lebelo.  
 8 We'll continue.  
 9 MS STEINBERG: So before the lunch break  
 10 I read from a memorandum of Advocate Brassey who said that  
 11 he recommended that the third charge, the rogue, so called  
 12 rogue unit charge be dropped. Mr Lebelo, as I understand  
 13 you say you never saw this memo, is that right?  
 14 MR LEBELO: I can't remember seeing the  
 15 memo. This is four years ago, I can't, even in our  
 16 archives, my office, even when they were giving information  
 17 they've never come across the memo and I haven't seen it.  
 18 So it's difficult to even comment about the contents  
 19 because I don't know what was the memo about.  
 20 MS STEINBERG: It's surprising because  
 21 you were running the process that it says his client is Mr  
 22 Luther Lebelo.  
 23 MR LEBELO: Ja. All I'm saying is and  
 24 that's why yesterday I sent two emails to the Commission  
 25 and asked them to send any other document that I'll be

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1 using here and it would have been helpful if I received it  
 2 at least yesterday because I could've refreshed. You just  
 3 gave it to me now two minutes ago and –  
 4 MS STEINBERG: But you know we got –  
 5 MR LEBELO: - and I can't –  
 6 MS STEINBERG: Sorry.  
 7 MR LEBELO: Ja.  
 8 MS STEINBERG: We got this from SARS and  
 9 because you were running the process and it was written for  
 10 you, I made the assumption that you'd be well aware of it.  
 11 MR LEBELO: No.  
 12 MS STEINBERG: You know in your  
 13 discussions with us you relied very heavily on Advocate  
 14 Brassey's advice.  
 15 MR LEBELO: Yes.  
 16 MS STEINBERG: So it was a safe  
 17 assumption to make that you'd read his advice.  
 18 MR LEBELO: No, that's why yesterday when  
 19 I saw some letter that was saying Advocate Brassey is  
 20 saying this or he is saying that, I didn't understand what  
 21 it means. I sent two emails and say please send whatever  
 22 opinion you are referring to so that I get time to look at  
 23 it and like I'm saying the difficulty is you're talking  
 24 about four years ago. But a memo like this I've never seen  
 25 it.

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1 COMMISSIONER: Well let's just get to the  
 2 heart of it. He says there that he had advised that some  
 3 of the charges, I don't think be dropped but not pursued at  
 4 that stage, is that correct? Is that the advice you got?  
 5 MR LEBELO: That's why I'm saying, Judge,  
 6 I need, I'll fairly need to look at it.  
 7 COMMISSIONER: No, forget about what's in  
 8 the document. Did he, you must've been present, did he  
 9 ever say that to you, do you say?  
 10 MR LEBELO: I can't remember.  
 11 COMMISSIONER: You can't remember.  
 12 MR LEBELO: The – I think the difficulty  
 13 with the process is that especially on most of the end of  
 14 the settlement, the interest that had been dropping because  
 15 the dominant thing was the settlement and meeting with  
 16 politicians and stuff like that. So the interest little  
 17 bit dropped there.  
 18 COMMISSIONER: Okay, so –  
 19 MR LEBELO: But I can't remember that  
 20 four years ago that –  
 21 COMMISSIONER: Okay, so you can't  
 22 remember that but you say you can't remember Advocate  
 23 Brassey advising you that you shouldn't proceed with the  
 24 charges that he refers to? You say you can't remember  
 25 that?

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1 MR LEBELO: No, I can't recall.  
 2 COMMISSIONER: And you say you can't, can  
 3 you not remember him saying look the witnesses are  
 4 uncooperative and the case is by no means conclusive, do  
 5 you not remember him telling you that?  
 6 MR LEBELO: I don't remember.  
 7 COMMISSIONER: And you don't remember him  
 8 telling you that the documents were, what is the word?  
 9 MS STEINBERG: He said thoroughly  
 10 unsatisfactory.  
 11 COMMISSIONER: Thoroughly, you say that  
 12 you didn't know that either?  
 13 MR LEBELO: I can't remember.  
 14 COMMISSIONER: Okay.  
 15 MR LEBELO: It –  
 16 COMMISSIONER: Let's move on.  
 17 MR KAHLA: But if anything that same  
 18 opinion where Advocate Brassey says despite the  
 19 reservations he had about this third set of charges, the  
 20 rogue unit charges, he was instructed by the client, that  
 21 presumably isn't it, is it -  
 22 MS STEINBERG: Yes.  
 23 MR KAHLA: - Mr Lebelo?  
 24 MS STEINBERG: That's what he says. He  
 25 says in response, he said "we advised that on the evidence

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1 as far as we've been able to gather it, it's far from  
 2 conclusive on these charges and the witnesses who might be  
 3 called to substantiate the case were proving cooperative."  
 4 He says "in our response our client, Mr Luther Lebelo, has  
 5 instructed us that all three charges must be pressed  
 6 together". So according to this Mr Brassey told you, Mr  
 7 Lebelo, not to continue with the third charge and you said  
 8 no, my instruction to you is to continue with all three.  
 9 MR LEBELO: I think, and you are talking  
 10 about – you know so the document that you sent to me on  
 11 Friday which I only got on Tuesday you attached some  
 12 opinions here which you could've made the same assumption  
 13 that I could've received these opinions. I immediately  
 14 Tuesday night asked and say I see there is a reference to  
 15 the opinions of Advocate Brassey, can you send it to me.  
 16 There was no response and I followed it tomorrow. And I'm  
 17 not so sure whether you think it is fair that a story as  
 18 long as this, I see somewhere they talk about a pre-  
 19 hearing, a general approach that I must answer to the  
 20 document. I'm not so sure and that's why I requested in  
 21 advance that please give me the opinions. By the way this  
 22 is four years ago. In that four years I've dealt with over  
 23 200 cases of discipline. So I wouldn't remember that there  
 24 was a conversation and like I'm saying the whole team  
 25 closer to the settlements it was becoming very clear that

1 this case is not going to continue because the settlements  
 2 were heated. By the time they were bringing the deputy  
 3 president at the time we just felt that this case is not  
 4 going to continue. So I may not remember that of all the  
 5 opinions that he has put together this is what he said,  
 6 what was the grounds for if I said he must combine them  
 7 together, what are the grounds for combining them together,  
 8 what are the facts. I don't think it's fair that you'll  
 9 expect me to really answer a document that you just gave to  
 10 me five minutes ago.

11 MR KAHLA: I have an appreciation that  
 12 you would've dealt with so many cases but I suspect that  
 13 this was amongst the most significant of those cases and  
 14 indeed this is one of those that you've elected to  
 15 take the Commission through the process around and why that  
 16 process was justified and legitimate. So my struggle is  
 17 with the fact that you can't recall on this particular  
 18 matter that you yourself have attached a lot of  
 19 significance on, the advice that was given to you directly,  
 20 we're not talking about advice that may have been given to  
 21 somebody else and you would've gotten it third hand. We're  
 22 talking now in this instance it's reference to you having  
 23 said, notwithstanding the difficulties that Advocate  
 24 Brassey was foreseeing in relation to the rogue unit  
 25 charges, you still gave the instructions on behalf the

1 client to go ahead. Are you saying that you've got no  
 2 recollection of?

3 MR LEBELO: No. Like I'm saying, you see  
 4 this is six days before the settlement took place, six days  
 5 before the meeting in Cape Town where the settlement took  
 6 place. All I'm saying is it could've been helpful like  
 7 with any other document that I received it on time, I read,  
 8 I don't even understand the context of that and pre-hearing  
 9 and what was – maybe I could've recollected, went back to  
 10 my computer and checked what was the conversation I had  
 11 with the client and what was the reason why I gave the  
 12 reason that I gave. But I'm not so sure. If you want me  
 13 to guess, I can guess. Or if you want me to take time to  
 14 read it I can read it but I haven't read, I haven't even  
 15 read the whole document because I just received it now as  
 16 we walked in.

17 MR KAHLA: Do you think getting an  
 18 opportunity to read it would help you address the question  
 19 whether or not you had given instructions as suggested by  
 20 counsel?

21 MR LEBELO: I don't know. Depending what  
 22 it will be referenced to what.

23 MR KAHLA: That is with reference to the  
 24 instructions on whether or not to proceed with all the  
 25 charges including the rogue unit charges which your own

1 counsel had suggested he foresaw difficulties in dealing  
 2 with those.

3 MR LEBELO: So, ja. So the issue here is  
 4 that Advocate Brassey says witnesses are not cooperating  
 5 and he's suggesting that the charge on the unit be put in  
 6 abeyance and he says the client said put them together. So  
 7 there should've been a sub-process of why I would conclude  
 8 like that because that is what he's saying. Either we met,  
 9 there were some facts that I looked at or whether that  
 10 client, I was consulting with the attorneys because  
 11 remember there was a middle person between me and Advocate  
 12 Brassey. Whether that instruction I gave it to the  
 13 attorneys, I can't recollect. But what I'm saying is if  
 14 that is true that that he said let's put them in abeyance  
 15 and I said well put them together, possibly that happened  
 16 but I cannot recall. That's why I'm saying it would've  
 17 been very important that I just get the document –

18 COMMISSIONER: Okay, well look, I'll tell  
 19 you what, let's assume in this regard. We don't have a  
 20 very heavy programme tomorrow, do we? Well we must get on  
 21 with it, so what I suggest is this. Take that overnight  
 22 and we'll just have to deal with that question tomorrow, if  
 23 you'll come back tomorrow and you can respond to us on  
 24 that. Advocate Brassey says you instructed him to do that,  
 25 if you say that Advocate Brassey was not telling the truth

1 in that memorandum in which it was written at the time,  
 2 it's not a later construction, it's a contemporaneous  
 3 document. If you say he wasn't telling the truth in that  
 4 document you will come and tell us. Shall we do it  
 5 tomorrow morning?

6 MR LEBELO: Ja, I wouldn't say that and  
 7 I'm not saying that. All I'm saying is I will also need to  
 8 understand what informed the advice that I gave.

9 COMMISSIONER: No, the question is, that  
 10 is not the question. The question is, is that correct as  
 11 what Advocate Brassey records in that document, is it  
 12 correct that he told you this? He said the case is not  
 13 strong, the documents are, whatever, I can't remember the  
 14 name, but you instructed him to continue. That's all the  
 15 question is, it's a factual issue. Not what was in your  
 16 mind, just is that correct. It's very simple. Do you want  
 17 to come back tomorrow and tell us whether you can recollect  
 18 that or not?

19 MR LEBELO: Ja, Judge, I think given that  
 20 it was written on the 29th, Advocate Brassey had no reason  
 21 to lie.

22 COMMISSIONER: So can we accept that  
 23 that's actually what happened as he recorded at that time?

24 MR LEBELO: Ja, that he did that and that  
 25 I advised that combine the charges.

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1 COMMISSIONER: And then the question  
 2 obviously arises well why did you tell him to proceed even  
 3 though the documents were not satisfactory, the witnesses  
 4 were not satisfactory and the case was not strong?  
 5 MR LEBELO: But that's exactly the  
 6 question that –  
 7 COMMISSIONER: Well come back and tell us  
 8 –  
 9 MR LEBELO: - I have a problem with.  
 10 COMMISSIONER: Okay, you come and tell us  
 11 tomorrow. Would that be in order? Okay.  
 12 MS STEINBERG: Judge, I must just pause  
 13 to defend the workings of this team because we do get  
 14 accused of being unfair and biased.  
 15 COMMISSIONER: No, you're right. Carry  
 16 on.  
 17 MS STEINBERG: Now we met with Mr Lebelo  
 18 on a number of occasions and he relied explicitly and at  
 19 length on the opinions of Advocate Brassey. From that I  
 20 drew the assumption that he had, not only the opinions he  
 21 liked but the opinions he might not have liked. I made  
 22 that assumption. If - my assumption was clearly wrong, you  
 23 didn't have it but I want you to understand that I did not  
 24 withhold this from you. I have got thousands of pages from  
 25 you and from SARS and it was reasonable to assume given the

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1 reliance you placed on Mr, on Advocate Brassey and the fact  
 2 that you briefed him that you would've been the recipient  
 3 of his opinions. And for that reason we didn't provide you  
 4 with Mr Brassey's opinions. What we provided you with is  
 5 the one document from Mr Brassey we knew you wouldn't have.  
 6 We had written to Mr Brassey to say there is an opinion  
 7 here that your attorneys say was authored by you but your  
 8 name is not on it. Can you please confirm whether this was  
 9 indeed authored by you and I sent you his reply and his  
 10 reply said no it was not authored by me, but I do support,  
 11 he said I did support the general trends in that letter.  
 12 So the reason I sent you that letter is because I knew you  
 13 didn't have it and the reason I sent you those invoices is  
 14 because it's not something you had raised with us. I  
 15 didn't want to take you by surprise. I likewise with the  
 16 FIC document, I didn't want to take you by surprise.  
 17 However on the issue Advocate Brassey, you relied on  
 18 Advocate Brassey and that was my assumption that you would  
 19 have all his opinions.  
 20 COMMISSIONER: That's fair, okay.  
 21 MS STEINBERG: Please continue.  
 22 MR LEBELO: The – let me just, I want to  
 23 make one or two points before. The – and I want to  
 24 emphasise the point that when I came and gave the files my  
 25 understanding and the observation I've seen in the

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1 Commission is that I come here and say this is the process  
 2 I followed like I've explained and this was the evidence  
 3 that was led for on the hearing. So I'm not for the second  
 4 part, so the second part is not to defend what is in the  
 5 hearing. It's to say those who prepared and they're  
 6 willing to go and prove facts, this is what they have.  
 7 Whether how much you agree with and how much you do not, I  
 8 didn't prepare myself for that because I never thought I'll  
 9 be interrogated for that evidence. So I thought let me put  
 10 that so that as the question come they appreciate that,  
 11 that I might, I'll struggle to answer questions because  
 12 you're asking me about things that happened somewhere else.  
 13 So that is the first part that I wanted to raise. The  
 14 second part is that I would've preferred that I go through  
 15 the other parts of the evidence, time allowing and I'm  
 16 available again, if that is the case and I'll tell you why  
 17 I want to do that. It's that we got, I can't find the  
 18 right word but we got bogged down on this rogue unit and  
 19 dah, dah, dah. But there are other charges that are as  
 20 serious that even if Advocate Brassey dropped the charge of  
 21 the rogue unit, even if I said to him drop the charges of  
 22 the rogue unit that was not going to stop the disciplinary  
 23 hearing.  
 24 COMMISSIONER: No, I –  
 25 MR LEBELO: So the problem with the, how

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1 the conversation has taken place is that there is one  
 2 charge and that one charge is on the rogue unit. If you  
 3 don't prove that charge, the case collapses. There are  
 4 serious allegation and I'm saying I want to plead that even  
 5 if I can't do it today, that I'm given a chance to come and  
 6 present but I'm also pleading that it must not be assumed  
 7 that I will answer the questions. My job is to say I was  
 8 given these files, I was shown this evidence, I was  
 9 convinced as they were convinced as lawyers that they've  
 10 got a case and that is all I want to do. So the way it is,  
 11 it, that's the point I really want to –  
 12 COMMISSIONER: Ja, well as I said to Mr  
 13 Lebelo, I can't see why there's any point in going through  
 14 your whole file and you telling the whole story, we know as  
 15 you've told us, as you've said as many times, Advocate  
 16 Brassey drew the charge sheet, it wasn't only rogue unit of  
 17 course. I accept because Advocate Brassey is a reputable  
 18 advocate and I practiced with him, I accept that he felt  
 19 that he had a basis for that. Well there it is. You came  
 20 to show us as you said that you had a basis to go on.  
 21 Advocate Brassey said you had a basis to go on, well that's  
 22 fair enough. What else do we need to know? But the point  
 23 about that is that when it came to preparation for the  
 24 trial, for the disciplinary hearing, he then had second  
 25 thoughts. He said this is not enough to prove the case.

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1 The witnesses are not cooperating and the documents are not  
 2 satisfactory. So of course it would've gone on, on the  
 3 other charges, that's what he says, just don't proceed on  
 4 these charges and I accept that's what he says. Go on, on  
 5 the other charges which he believed you could make a case,  
 6 whether he's right or wrong is another matter. But he said  
 7 these shouldn't proceed. So I don't, I'm not sure why it's  
 8 necessary to go through your whole file on the other  
 9 charges. If we accept that Advocate Brassey had advised  
 10 you that there was a basis for the charges being brought.  
 11 MR LEBELO: Ja, I think the only  
 12 difference, Judge, you'll remember that the reason why I  
 13 said I wanted to come was to prove two things in the main.  
 14 It was to prove the evidence that was in the file –  
 15 COMMISSIONER: Ja.  
 16 MR LEBELO: - to justify that a  
 17 reasonable person and –  
 18 COMMISSIONER: Ja.  
 19 MR LEBELO: - these people might not be  
 20 found guilty –  
 21 COMMISSIONER: Ja.  
 22 MR LEBELO: - that prima facie there is  
 23 evidence for somebody to stand before a hearing which  
 24 answer to the question to –  
 25 COMMISSIONER: Ja.

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1 MR LEBELO: - a large extent about  
 2 Advocate Kahla saying what is crazy, that the evidence if I  
 3 were to present the evidence it will show an ordinary  
 4 person that indeed there are questions to be answered,  
 5 there is prima facie evidence. The second one was to also  
 6 demonstrate that if you were to look at the activities that  
 7 led to the resignations you will, can also draw an  
 8 inference –  
 9 COMMISSIONER: No, let's not draw -  
 10 MR LEBELO: - draw an inference that –  
 11 COMMISSIONER: Let's not draw inferences.  
 12 This – we will draw inferences in due course.  
 13 MR LEBELO: Okay.  
 14 COMMISSIONER: But it's pointless to have  
 15 a debate on what inferences to draw on this.  
 16 MR LEBELO: Judge, I used the wrong word,  
 17 that from one sitting with, if I were, and I was involved a  
 18 little bit in some of the settlements, but I wanted to show  
 19 that the settlements were, from where I was sitting, were  
 20 done in good faith and this is what happened and from there  
 21 it shows that the role that I played was the role that  
 22 sitting wherever that I'm sitting a person in my position  
 23 would've played. With a lot of hindsight, yes, some of the  
 24 questions that are asked by Advocate Kahla, ja, I think he,  
 25 yes. But that's the name of this thing, it's not a science

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1 and art decision that we make -  
 2 COMMISSIONER: Okay.  
 3 MR LEBELO: - advised by - so I'll really  
 4 request that –  
 5 COMMISSIONER: Well if you want an  
 6 opportunity to come back again we'll give you an  
 7 opportunity to come back again. I suggest that in order,  
 8 because we've got a programme for today. What I suggest if  
 9 it's acceptable to you, let's get on with the other things.  
 10 If you feel you want to come back to give further evidence  
 11 come and have another chat with me, we've had quite a few,  
 12 and we'll do the best we can to let you come back again if  
 13 you feel that there's something more to say. Would that be  
 14 fair?  
 15 MR LEBELO: Ja, it will be. No, that's  
 16 fine, Judge. As long as I'm, I'll be given a chance to  
 17 come and say my say.  
 18 COMMISSIONER: Well we'll talk about it  
 19 and we'll see what else you've got to say and –  
 20 MR LEBELO: Okay.  
 21 COMMISSIONER: - you'll come and talk.  
 22 MR LEBELO: But the point in closure that  
 23 there are other six, seven charges that are very, very  
 24 serious.  
 25 COMMISSIONER: I understand that, I

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1 understand that and we understand from Mr Brassey who was  
 2 willing to on with the other charges.  
 3 MR LEBELO: Okay.  
 4 [14:44] MS STEINBERG: Judge we can talk about  
 5 the possibility of Mr Lebelo coming back tomorrow but  
 6 perhaps we should not do that here and now.  
 7 COMMISSIONER: Ja.  
 8 MS STEINBERG: But I think that remains  
 9 an option.  
 10 MR LEBELO: Thank you so much.  
 11 COMMISSIONER: Well that's fine, that's  
 12 what I said, I don't think we should waste time debating  
 13 this now.  
 14 MS STEINBERG: Ja.  
 15 COMMISSIONER: Well then we'll have a  
 16 talk again after today and we'll see if we can arrange  
 17 something else to accommodate you and so forth. That's  
 18 okay, I'm sure.  
 19 MR LEBELO: Yes.  
 20 COMMISSIONER: Do you want to carry on  
 21 with anything else then or do you want to just leave this  
 22 over?  
 23 MS STEINBERG: Well I have other  
 24 questions, not related to these files for Mr Lebelo.  
 25 COMMISSIONER: Well do you want to deal

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1 with those then, we'll come back to the files?  
 2 MR LEBELO: Can I, I'm also quite, it's  
 3 quarter to 3, I've been -  
 4 COMMISSIONER: I'm older than you and I'm  
 5 not tired.  
 6 MR LEBELO: But when you're having lunch  
 7 Judge, you're having your pipe, so I'll really plead Judge  
 8 that you know the brain can take as much.  
 9 COMMISSIONER: Do you want to stop now?  
 10 MR LEBELO: If I'm allowed.  
 11 COMMISSIONER: That's fine.  
 12 MR LEBELO: When we resume -  
 13 COMMISSIONER: I think, I actually think,  
 14 Mr Mathebula's coming to give evidence tomorrow.  
 15 MS STEINBERG: Ja.  
 16 COMMISSIONER: I've briefly seen the  
 17 statement that he's gave you. I think he says some things  
 18 about you that you might like to hear in any event  
 19 tomorrow. So I suggest you come and hear his evidence and  
 20 then when we can look at what happens after that. Thank  
 21 you. Shall we leave it at that then? Thank you very much  
 22 Mr Lebelo, is that okay guys?  
 23 MR KAHLA: Ja.  
 24 COMMISSIONER: Yes, Ms Steinberg?  
 25 MS STEINBERG: Judge we call Ms Mogola

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1 Makola.  
 2 COMMISSIONER: Good afternoon Ms Makola.  
 3 MS MAKOLA: Good afternoon, Judge.  
 4 COMMISSIONER: Will you affirm that the  
 5 evidence you give will be the truth, the whole truth and  
 6 nothing but the truth. If so will you say I do.  
 7 MS MAKOLA: I do.  
 8 EVIDENCE OF MS MAKOLA  
 9 COMMISSIONER: Thank you.  
 10 MS STEINBERG: Afternoon, Ms Makola, you  
 11 came to the Judge a little while back saying you would like  
 12 to give evidence and I'm wondering from your side what that  
 13 evidence is that you would like to share.  
 14 MS MAKOLA: Thank you. The first meeting  
 15 that I had with the Judge was when he came to meet with us,  
 16 as a group, as members of the Exco to invite us to support  
 17 and participate in the inquiry. So that was the first  
 18 meeting. My second meeting was a day after we had the  
 19 Treasury authorities testifying at the Commission. One of  
 20 the officials from National Treasury spoke about how the  
 21 current SARS Exco was destroying the institution. Meaning  
 22 SARS and that we were incompetent and I think either he  
 23 implied or expressly said that we were corrupt. I took  
 24 serious exception to that and up until that point I had  
 25 actually made a decision not to watch the proceedings here,

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1 I wanted some distance from it because I found it to be a  
 2 distraction. But when I heard that and I heard it on my  
 3 way home in the car on 702, I got very upset. I sent a  
 4 text to the acting Commissioner Mark Kingon and told him  
 5 that I took exception to what he said and that I was  
 6 actually minded to speak to the Minister about how we were  
 7 being spoken about, particularly as some of us had only  
 8 been here about 14, 15 months. I've been at SARS since the  
 9 3rd of July 2017. So that's the first thing.  
 10 So, and I told Mark that I was also minded to  
 11 speak to the Commission to set the record straight because  
 12 I felt it was extremely offensive what, the things that  
 13 were being said because I felt that whoever was making  
 14 those statements didn't even know who the people, some of  
 15 the people he was talking, he or she was talking about. I  
 16 don't know whether did this gentlemen even, would even  
 17 recognise me in public. So I took exception to that. I  
 18 then was advised to call Georgio to arrange a meeting with  
 19 the Judge and the Judge kindly accepted. When I came to  
 20 speak to the Judge my, I had one objective to tell him  
 21 about who I was. My qualifications and my experience. I  
 22 told him that I had worked as Bowmans and that I was a tax  
 23 lawyer there and been a partner at Bowmans since the 1st of  
 24 March 2008. That I had extensive experience and also that  
 25 I had the academic qualifications that qualified me for the

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1 job and I also said to the Judge that I was distressed by  
 2 the things that were being said about us and I also pointed  
 3 out to the Judge that I had only been at SARS since the 3rd  
 4 of July 2017. The two things that the Judge said was that  
 5 if the SARS executive wants to set the record straight then  
 6 they must come and make submissions just like everybody  
 7 else at the public hearing and I was also asked to convey a  
 8 message to my Exco colleagues that we must be prepared to  
 9 do that. I went to my office, sent an email to my Exco  
 10 colleagues that this is the expectation from the Judge. So  
 11 that was the end of it. So my objective at that second  
 12 meeting where it was just the two of, with the Judge was to  
 13 set the record about who I was and I left it at that. The  
 14 next thing I knew I got an email to come and meet with the  
 15 evidence leader, that was yourself to come and talk about  
 16 the kind of evidence I would want to give at the  
 17 Commission, because the expectation was that all Exco  
 18 members would have to come and testify in public and when I  
 19 met with you I made it very clear that I was confused  
 20 because to be honest I hadn't been here long enough and I  
 21 also pointed out that you know I'm not everybody's cup of  
 22 tea.  
 23 I get along with some people, I don't get along  
 24 with certain people and I also explained, and in fact I  
 25 think I even said this to the Judge and I recall that my

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1 parting shot was that I'm having a midlife crisis Judge and  
 2 I'm going to enjoy it. So if I'm going to be having fights  
 3 with people, some people I'll make unhappy, I'll apologise  
 4 in certain instances but I don't expect everybody to like  
 5 me and I think that was, that was the gist of what I also  
 6 said to you and I told you about two difficult  
 7 relationships because you did ask me who it is that I  
 8 didn't get along with, I told you about two people. It was  
 9 the Commissioner, who has been suspended and a former  
 10 colleague who subsequently resigned, Jonas Makwakwa, I told  
 11 you about that and also at the end, I told you why I had a  
 12 difficult relationship with them and I also explained at  
 13 the end that I don't know that this is, and I think my  
 14 words were I'm sorry this is not juicy enough and you said  
 15 look we'll decide. So I was surprised when I got the email  
 16 last week asking me to come and testify because the email  
 17 didn't tell me what kind of information would be required  
 18 of me, what kind of documentation would be required of me  
 19 and I'm still confused as to why I'm here but I'm willing  
 20 to cooperate. So any questions that you would like to ask  
 21 me about the stuff that you and I discussed that particular  
 22 day I'm happy to discuss it.  
 23 COMMISSIONER: Let me just make it clear.  
 24 Do you wish to give evidence or don't you?  
 25 MS MAKOLA: Judge to the extent that my

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1 relationship, my difficult relationship with those two  
 2 individuals has had an impact or sheds light on how things  
 3 operated I'm happy to give it.  
 4 COMMISSIONER: That's fine.  
 5 MS MAKOLA: Because I'm not, I don't  
 6 think it's within my discretion to say no to you. This is  
 7 not about me after all, it's about the organisation and if  
 8 my role here and my presence here is relevant to the  
 9 inquiry then I'm perfectly willing to -  
 10 COMMISSIONER: No, no I just want to get  
 11 it clear though. I don't want you to feel that you're  
 12 under compulsion to give evidence because you're not. You  
 13 did come to see me as you correctly say and I said to you  
 14 well it's no good coming in and telling me this in  
 15 confidence as it were.  
 16 MS MAKOLA: Confidence.  
 17 COMMISSIONER: Out there in the public  
 18 and as I understood it you wanted to give evidence and I  
 19 will say you're quite correct, it was about a month into  
 20 this Commission or so, I came to Exco, I attended a meeting  
 21 of Exco and I said to Exco look the organisation for, in a  
 22 number of respects is under investigation. Now Exco whose  
 23 the management of this organisation I would expect that  
 24 they would wish to assist me, to tell me what's going on in  
 25 the organisation, make recommendations as to what should be

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1 fixed etcetera. Well you were, and thank you very much by  
 2 the way, you were the first one it come forward and you did  
 3 come forward because things had been said by Treasury, I  
 4 think it was Treasury or Judge Davis or whatever, it's fair  
 5 enough but if you don't want to give evidence you must tell  
 6 me, I don't want to force you. It's up to you entirely,  
 7 you must make the choice.  
 8 MS MAKOLA: Look Judge, one of the things  
 9 I also mentioned to you was that my reputation is important  
 10 to me.  
 11 COMMISSIONER: Yes.  
 12 MS MAKOLA: I didn't grow up in a rich  
 13 family and I think I've worked very hard to get where I am  
 14 and my name is all I have and I also told you that I have a  
 15 three year old whom I'm hoping that one day will be  
 16 literate enough to be able to read papers and when my child  
 17 reads about me, when the day comes I want her to be proud  
 18 of the woman who raised her and if I can ensure that here,  
 19 in this room and by being truthful and honest.  
 20 COMMISSIONER: Yes.  
 21 MS MAKOLA: I'm perfectly willing to do  
 22 that. That's the first thing. Secondly there is a whole  
 23 country out there that's watching what we do and I am the  
 24 chief of enforcement, my job is made ever more difficult by  
 25 the distrust. I can tell you a story, this year we had a

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1 visibility campaign regarding outstanding returns. We went  
 2 all over the country and one of the locations that I went  
 3 to help distribute pamphlets was in Limpopo. There's a  
 4 taxpayer who was rude to one of the people that were,  
 5 members of the team who was distributing who said why  
 6 should I file a tax return, you pay refunds over to the  
 7 Guptas and then you come here just because now you can't  
 8 meet your targets, you come here you want to collect. That  
 9 makes my job very difficult.  
 10 COMMISSIONER: No I understand that.  
 11 MS MAKOLA: So I think the upshot of it  
 12 is that Judge, to the extent that I can help I'm here.  
 13 COMMISSIONER: Okay. Well that's fine,  
 14 if you're willing to be here, that's, I appreciate that  
 15 very much. But I think, one must understand that when one  
 16 comes here, if a witness wants to come, is willing to come  
 17 and talk to us there may be other question that we would  
 18 have as well, you understand that?  
 19 MS MAKOLA: I understand.  
 20 COMMISSIONER: You're a member of Exco.  
 21 MS MAKOLA: Yes.  
 22 COMMISSIONER: And I think there are  
 23 questions that we would like to ask about how the members  
 24 of Exco see SARS at the moment. So if you don't mind  
 25 please tell us what you want to say about what Treasury or

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1 Judge Davis or whoever it was said, tell us what you want  
 2 to respond but I think that I would also like to know, I'm  
 3 sure that maybe counsel does as well, about where's Exco in  
 4 all of this. We've had, what 60 witnesses, 55 and I've  
 5 never heard from Exco.  
 6 MS MAKOLA: I'm here.  
 7 COMMISSIONER: That's fine.  
 8 MS MAKOLA: I think before we proceed,  
 9 just so that we don't get side-tracked. I mean, I don't  
 10 know Advocate if you've got questions for me but I know  
 11 that something was said about me, that I told somebody to  
 12 get out of my office.  
 13 COMMISSIONER: Ja.  
 14 MS MAKOLA: I want to make it  
 15 categorically clear that I did say that, to that gentleman.  
 16 COMMISSIONER: That you?  
 17 MS MAKOLA: I did tell him to get out of  
 18 my office.  
 19 COMMISSIONER: Yes.  
 20 MS STEINBERG: So we're talking about Mr  
 21 Denath?  
 22 MS MAKOLA: Yes, I did tell him to get  
 23 out, the important thing to note also which I know wasn't  
 24 mentioned, I didn't pick it up in the transcript is that I  
 25 was not alone with him in my office. There was Elise Van

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1 Schalkwyk who is my HR business partners. She was in that  
 2 meeting. That's the first thing. So she witnessed the  
 3 entire thing. I was first with Yousuf because I felt that  
 4 he really was pushing his luck with me. He was insisting  
 5 that I give him a position which he said was his and I had  
 6 been told firstly that he didn't qualify for that role, he  
 7 didn't meet the qualifications and to be honest with you I  
 8 didn't have any knowledge of the background because these  
 9 were things that happened well in, before I arrived and  
 10 they had to do with the operating model and the  
 11 restructuring. But he insisted when he came from  
 12 suspension that he wanted the position that was his and I  
 13 told him that I couldn't give him that position, firstly I  
 14 had started interviewing people for that position and those  
 15 people that I started interviewing were already going for  
 16 assessments. So we were too far in the process, that's the  
 17 second thing. But the point is he didn't qualify for the  
 18 position to begin with. Secondly I wasn't the first one to  
 19 interview people for that role.  
 20 When I arrived at SARS in July I remember getting  
 21 a meeting request to go and conduct interviews and it was  
 22 for the same role and my office manager and I decided that  
 23 I couldn't participate in those interviews and those things  
 24 had to be cancelled because firstly I needed to understand  
 25 the role of the fraud investigations division and what it's

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1 mandate was and how it and whether or not I actually was  
 2 comfortable having them reporting to me. That was the  
 3 first thing and also I just, I needed to understand the  
 4 business of whether or not I actually needed an executive.  
 5 So that process was canned and then we advertised  
 6 the position internally, certain people didn't qualify.  
 7 They didn't meet the requirements and they didn't get  
 8 shortlisted. There was a whole big issue about the fact  
 9 that certain people didn't get shortlisted. I don't know  
 10 why those people expected to be shortlisted if they didn't  
 11 meet the requirements and eventually I got a point where I  
 12 had a discussion with one of my Exco colleagues that look  
 13 I'm not comfortable with how, with the interference in this  
 14 process. I don't want, if this person doesn't meet the  
 15 requirements I'm not comfortable with it, they had been  
 16 acting in this position but I'm not comfortable with him  
 17 just being interviewed just because they went and  
 18 complained that they were not shortlisted and now all of a  
 19 sudden they need to be interviewed and I said if that's the  
 20 case then I'm going to recuse myself, even though I'm head  
 21 of, the ultimate head of the unit I'm not going to put the  
 22 interview, because I don't want to be participating in a  
 23 process that I'm not comfortable with.  
 24 MS STEINBERG: Can I just clarify the,  
 25 there are two concerns from Mr Denath's part.

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1 MS MAKOLA: Yes.  
 2 MS STEINBERG: Which were also confirmed  
 3 by the anonymous witness early on and perhaps you can just  
 4 give us your view on them.  
 5 MS MAKOLA: Which concerns were those,  
 6 Ma'am?  
 7 MS STEINBERG: Sorry.  
 8 MS MAKOLA: Which concerns were those?  
 9 MS STEINBERG: I'll tell you now.  
 10 MS MAKOLA: Okay.  
 11 MS STEINBERG: The first was that, and as  
 12 I recall this is in his grievance letter but I may be  
 13 wrong.  
 14 MS MAKOLA: I've got a copy of the  
 15 grievance letter here.  
 16 MS STEINBERG: He said that when Bain  
 17 came to restructure and redesign the model long before your  
 18 time, the understanding was and in fact the practice  
 19 followed in many cases was that where your job description  
 20 didn't change, even if that position was elevated as it was  
 21 in his case you wouldn't have to reapply for your job and  
 22 he cites a few examples where that happened of people who  
 23 were in a particular job, say senior manager and it was  
 24 decided that in fact that job warranted an executive  
 25 position. So the job description didn't change.

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1 MS MAKOLA: Ja.

2 MS STEINBERG: But the post was elevated

3 with the same job description to that of executive. Now he

4 says that's exactly what happened and the documents seem to

5 show that Bain accepted that his job description should

6 stay as it is but that it would be translated into an

7 executive position.

8 MS MAKOLA: Ja.

9 MS STEINBERG: Now he says other people

10 didn't have to reapply for those jobs. He then got

11 suspended, came back and thought well other people didn't

12 have to reapply for their jobs, I got unfairly suspended, I

13 was told there was a sham investigation against me, that

14 job is owing to me and I come back and I'm told I can't

15 even apply for it and so the injustice continues.

16 MS MAKOLA: Ja.

17 MS STEINBERG: That's number 1, if

18 perhaps you want to respond to that.

19 MS MAKOLA: I can respond to that.

20 MS STEINBERG: Please.

21 MS MAKOLA: In part. So in every step

22 that I took with regards to this process after I sort of

23 assumed control of it, not the first set of interviews. I

24 was always guided by HRBP. So I didn't even know who

25 Yousuf was and at some point people were not even willing

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1 to sort, I think people were afraid to even tell me why he

2 had been suspended. But I got guidance from my HRBP. If

3 there was anything untoward in the process they would have

4 told me. I had no reason to distrust the advice that I

5 got. To the point that we ended up interviewing people and

6 sending them for assessments I tried the advice that I got

7 from my HR guys.

8 I wasn't putting pressure on anyone to proceed

9 with the process regardless of anything. We, I understood

10 that we could interview for that and as I'm telling you

11 now, I was told that he didn't qualify, he doesn't even

12 meet the minimum requirements of the job. So I worked on

13 the basis of the advice that I got. So I understand and I

14 know that he's said as much to me that that job was his and

15 it was elevated, the job description hadn't changed. I

16 cannot talk to that. I don't know the SARS behind HR and

17 how grading of positions happens. I can only talk to my

18 role in this and role was I needed to appoint somebody in

19 that role because, and then we needed to make sure that

20 vacancy was filled because there is a funding constraint.

21 But throughout I was guided by HRBP and I'm assuming that

22 that, whatever we did and I have no reason to distrust the

23 lady, so far she's kept me in line, not that I would have

24 wanted to get out of line but she's kept me in line so if

25 there's, if Yousuf is of the view that the advice that I

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1 received which led to me making the decisions that I made

2 is incorrect I can't talk to that. I took the advice as I

3 got it.

4 MS STEINBERG: But is it not worth now

5 perhaps asking the questions, as to whether perhaps you

6 were incorrectly advised, I'm not sure saying you were.

7 MS MAKOLA: Ja.

8 MS STEINBERG: But before, there's

9 another case, because Mr Denath says he's now going to

10 bring a case against SARS. Is it not worth exploring -

11 MS MAKOLA: Certainly, I think -

12 MS STEINBERG: The correctness of what he

13 says, since no one's been appointed yet.

14 MS MAKOLA: There's a problem, we were,

15 we had made an offer to somebody and they wanted more money

16 and we couldn't afford to pay them what they wanted.

17 MS STEINBERG: Well that means an offer

18 hasn't been accepted.

19 MS MAKOLA: Ja. So I'm happy to look

20 into it. If I'm, HR incorrectly advised then I can only

21 apologise but like I said I had no reason to doubt the

22 advice that I was being given. I don't think Elise has

23 anything to gain from standing in Yousuf's way. So I can

24 talk, we will look into it and if there's a governance

25 process that needs to be followed to make sure that he gets

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1 the position then by all means it should be done.

2 MS STEINBERG: Look I think in truth

3 there was a lot of confusion around Bain's new operating

4 model and the post created.

5 MS MAKOLA: Mm.

6 [15:04] MS STEINBERG: And I wouldn't be

7 surprised if Elise was confused because most people were.

8 But the fact remains that It seems that Mr Denath can show

9 that in circumstances like his people were elevated with

10 their positions. So it would seem it's worth looking at,

11 at whether what he says is correct.

12 MS MAKOLA: Absolutely because my

13 understanding is that yes there were instances where people

14 didn't have to apply for those positions. They were just

15 placed, but certain people who didn't qualify for the

16 positions or the job description sheets and they had to

17 apply. That's how it's been explained to me in a manner

18 that I with my non-HR brain could understand. But I'm

19 happy to have the matter looked into and you know, Elise is

20 also, I'm pretty sure she wouldn't have an issue to come

21 and explain this. Unfortunately I can't explain the Bain

22 thing, I can't explain HR positives, I'm really clueless on

23 that. But I do take your point that it's worth looking

24 into.

25 MR KAHLA: Could I just follow up, Ms

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1 Makola?

2 MS MAKOLA: Yes.

3 MR KAHLA: In the discussion you had with

4 Mr Denath, did he raise this issue around that he should

5 have actually, in terms of the process that had been

6 followed in other jobs, he too should have simply been

7 confirmed and the HR person respond to that around that

8 well your impressions are incorrect.

9 MS MAKOLA: Look he did explain that

10 because he took some time to take me through the

11 background. You know I had said look ultimately I need to

12 know what the end game is of this particular meeting. The

13 HR person was in the room, he still insisted because the

14 main reason that he and I were actually having that meeting

15 is because two days before they had, I think it was the

16 current person acting in that position as executive and

17 Elise met with them and they said look there are two

18 positions that are open. There is senior manager

19 syndicates and another one. I can't remember what the

20 senior manager role or what the other senior manager role

21 was. And I said look you need to pick one and he said no

22 and apparently he insisted on coming to see me. And my

23 response when those two ladies said look he insists on

24 coming to see you and I said look there's nothing I can do.

25 I mean if there's an HR Process that says he can't get the

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1 actual position there's nothing I can do. But in any event

2 if he wants to meet he can come and meet.

3 And I said but one condition that I have is that

4 I don't want to be talking about other people because he –

5 what I understand is that he felt that he was entitled to

6 the position of executive and that somebody else was

7 entitled to the position of senior manager syndicates. And

8 I said I don't want to talk about other people, I want to

9 talk about him and him alone because I'd gotten tired of

10 people coming to my office to complain about their

11 colleagues and you know so and so is doing this to me, so

12 and so is doing this to me. And I didn't want to have the

13 particular conversation. So when he came into our office

14 he did take some time to explain the background to me. I

15 can't, offhand recall, although it's quite some ago, I

16 can't recall what Elise's response was when he explained

17 that he, in his view, he should have gotten the position.

18 I did have to sort of nudge him and say look, Yousuf,

19 ultimately I need to know what the end game is here. What

20 exactly are you expecting to be the outcome of this

21 particular meeting? But I can't remember what Elise said

22 in that meeting and unfortunately we didn't make minutes.

23 MS STEINBERG: I think the context that

24 one must take into account is we heard a lot of evidence –

25 MS MAKOLA: Mm.

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1 MS STEINBERG: - that the Bain process

2 was used to get rid of employees –

3 MS MAKOLA: Ja.

4 MS STEINBERG: - that were not in favour.

5 Either to literally drive them out or to put them in these

6 supernumerary positions.

7 MS MAKOLA: Ja.

8 MS STEINBERG: And Mr Denath is saying

9 that's exactly what happened to him. So I'm suggesting

10 that when you review all of this you do take into account

11 that that's what we've heard.

12 MS MAKOLA: I've also heard the same

13 thing. People have said this many a times and in fact

14 there is a process that were currently engaged and

15 currently an organisation to deal with the supernumerary

16 positions. You know unfortunately I don't anything about

17 the Bain exercise, but I'm willing to interrogate, to be

18 educated by my colleagues and I don't know whether any of

19 them would be willing to confirm that look there was a mess

20 up here. I can only commit to looking into it and

21 collectively with my colleagues to find a solution to it.

22 I have no interest in denying Yousuf a position, I only met

23 the guy once and that was the day that he and I butted

24 heads. I don't know who he is, I didn't know why he had

25 been suspended, I didn't what (inaudible) and for the

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1 longest time I couldn't get anyone to tell me why he had

2 been suspended. So I've got nothing to gain from this, I

3 don't know the man.

4 MS STEINBERG: I accept that. I do find

5 it curious that you said you found the work of the

6 Commission a distraction.

7 MS MAKOLA: I do.

8 MS STEINBERG: If I may just finish. I

9 think if you had perhaps paid attention to what happened

10 here you might understand better where Mr Denath comes

11 from. So I'm interested to know why you found, why you

12 thought that what goes on here is a distraction as a chief

13 office of this organisation.

14 MS MAKOLA: It does nothing for me, it

15 keeps me awake at night. So and to try and manage my

16 energy levels and to stay committed to the course because

17 ultimately we still have a job to do and I wanted to be

18 able to focus on my job. I'm not saying it's not

19 important, I know it's important and that's why it is here,

20 but for me I chose to try and not to get too involved in

21 this. But to the extent of the Commission wanting to speak

22 to me I'm perfectly willing which is why I'm here and the

23 Judge says are you willing to give evidence or not. I'm

24 here to give evidence, but it's difficult for me to focus

25 when people are all over talking about things that happened

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1 especially things that I have no first-hand knowledge of.  
 2 I can't explain a lot of these things and I've had many  
 3 conflicts with people in meetings talking about they were  
 4 affected by the introduction of the operating model and am  
 5 operating model that I have no understanding of.  
 6 MS STEINBERG: But isn't it your job to  
 7 try and heal the extraordinary damage that's been inflicted  
 8 here over the last few years? And therefore to understand  
 9 that damage.  
 10 MS MAKOLA: No it is and I take it  
 11 seriously and I've tried where I could, but I don't think  
 12 me assisting in the healing process requires me to stay  
 13 glued to a TV screen watching the proceedings. I'm very  
 14 sensitive to what people have said and I've said as much.  
 15 People that have gotten upset with me when I've said maybe  
 16 I've been appearing insensitive, I've apologised and I've  
 17 said look I don't know what happened, but I understand that  
 18 it's caused a lot of damage. So I think it's important and  
 19 I've seen people who have been broken. In fact I'm working  
 20 with one of those people who even lost their marriage. And  
 21 some people have even contemplated suicide, I'm not  
 22 insensitive to that, but I don't think to show my  
 23 sensitivity I need to be glued to a TV screen.  
 24 Unfortunately I have to collect debt, we have a R148  
 25 billion in debt that needs to be collected, we have

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1 outstanding returns of – at some point it was over 41  
 2 million. At some point then it ends up being 66 million  
 3 and now it's sitting at 35 million. I'm constantly under  
 4 pressure and if I'm going to sit and watch TV and I can't  
 5 get things done, but it doesn't make me insensitive to what  
 6 people have gone through. And this is not the first  
 7 environment where I've seen people being affected in  
 8 negative ways by restructuring. I'm not insensitive to  
 9 that, I've even met some of them. So it is my job to  
 10 assist with the healing process.  
 11 MS STEINBERG: Yes I'm not suggesting  
 12 you're insensitive, I'm suggesting that if you're going to  
 13 manage to play a role in the healing of the organisation  
 14 you do need some insight into what happens.  
 15 MS MAKOLA: Which is why I've been  
 16 willing to listen to people, from my first week I've been  
 17 getting emails from people that was in enforcement who  
 18 wanted to talk to me of what they've been put through. I  
 19 don't know if all of it has merit, but I've been perfectly  
 20 willing notwithstanding the protocol that applies within  
 21 SARS. I mean some people have said to me there is  
 22 protocol, we can't just walk into your office. And I've  
 23 said to them I'm very confused by that because I'm not used  
 24 to that. I worked at Bowman's where people referred to me  
 25 by my first name, even 22 year olds referred to me by my

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1 name, not Ms Makola. I come here and I'm being referred as  
 2 Ms Makola or Ma'am. And people make me my coffee and that  
 3 kind of thing. So I – it's a difficult environment to me,  
 4 the protocol was something – a lot to get used to. Not  
 5 once in my 16, 17 year working life have I ever been  
 6 referred to as Ma'am, not even by my PA.  
 7 MS STEINBERG: Judge, I think you had a  
 8 question.  
 9 COMMISSIONER: You know what I'm having  
 10 difficulty with this, this is a major organisation of 14  
 11 000 people and the leadership structure who lead this  
 12 organisation are yourself and others. I don't get a sense  
 13 of the appreciation, you've got your own job you say, but  
 14 part of your job is to lead the organisation.  
 15 MS MAKOLA: Yes.  
 16 COMMISSIONER: And I hear you say well I  
 17 must talk to – sort out – look at Mr Denath, but why has it  
 18 not been done before? In other words this question of  
 19 leadership which doesn't recognise that it's a problem that  
 20 must be overcome and that's what leadership does. But now  
 21 you say well I'll go look into it.  
 22 MS MAKOLA: I can explain. I never got  
 23 to speak to –  
 24 COMMISSIONER: Sorry –  
 25 MS MAKOLA: Sorry.

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1 COMMISSIONER: It just worries me a bit  
 2 about the future of this organisation if that is the top  
 3 leadership's approach to it which is you know I'm sorry,  
 4 but I'll look into it.  
 5 MS MAKOLA: Judge, I got advice from my  
 6 HR –  
 7 COMMISSIONER: Sorry.  
 8 MS MAKOLA: I got advice from my HRBP.  
 9 COMMISSIONER: Yes I understand.  
 10 MS MAKOLA: - process. SARS has a rule,  
 11 if you are on suspension you're not allowed to have contact  
 12 with SARS employees.  
 13 COMMISSIONER: Ja.  
 14 MS MAKOLA: According to – even if I had  
 15 been minded to speak to Yousuf I couldn't do that, he's not  
 16 allowed to – he wasn't allowed to contact me until the day  
 17 he came back.  
 18 COMMISSIONER: No, no I understand that,  
 19 but afterwards when he did come back –  
 20 MS MAKOLA: He insisted in coming to meet  
 21 and we did meet.  
 22 COMMISSIONER: I know you met, but you  
 23 seem to have dismissed his problem.  
 24 MS MAKOLA: No I didn't.  
 25 COMMISSIONER: Well then was it you're

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1 going to look into now?  
 2 MS MAKOLA: Well I've been asked to go  
 3 and look at whether or not the advice that I got was  
 4 incorrect.  
 5 COMMISSIONER: Ja.  
 6 MS MAKOLA: And I will look into it and  
 7 have it interrogated, but I had no reason to doubt the  
 8 correctness of the advice. And yes I told Yousuf to get  
 9 out of my office, but that's because he was being rude to  
 10 me.  
 11 COMMISSIONER: No I understand yes –  
 12 MS MAKOLA: I didn't kick him out because  
 13 he had a concern. I listened and when it got uncomfortable  
 14 I said to him you know what – because he threatened to go  
 15 and embarrass me and also to take me to the CCMA and I said  
 16 to him you can take me to the CCMA if you want. And he  
 17 suggested, he said look of course you don't worry about me  
 18 taking it to the CCMA because it's your money. And I took  
 19 exception to that. I said look I take exception to have  
 20 been portrayed as somebody who misuses public funds. So  
 21 that's why I ended up asking him to leave my office. It's  
 22 not because I wasn't sensitive to what he's been through.  
 23 COMMISSIONER: No I understand, but it's  
 24 just you know the Exco here, I think is the top management  
 25 of a 14 000 person organisation and these things sound to

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1 me as if they're being dealt with as you would expect of  
 2 the top organisation, the top leadership. And the  
 3 leadership is – you've got your role in enforcement, but  
 4 doesn't it go broader than just looking after my role and  
 5 if HR tells me X then I just do what HR does. Is that how  
 6 you see the function of the top leadership here?  
 7 MS MAKOLA: Like I said I had no reason  
 8 to doubt the advice and where for us my colleagues and the  
 9 legal (inaudible) where I've had issues with the advice  
 10 that I was given I questioned it. And it has led to tense  
 11 – a difficult relationship between me and some of my  
 12 colleagues because I don't just take the advice as it's  
 13 given to me. If I had a reason to doubt it I would have  
 14 said something. But I didn't have reason to doubt -  
 15 PROF KATZ: Can I ask one question,  
 16 sorry? One surprise I've had following on what the Judge  
 17 and Counsel have said one of our terms of reference is  
 18 against the background of everything that's happened is to  
 19 make recommendations on remedial action.  
 20 MS MAKOLA: Yes.  
 21 PROF KATZ: Now the top structure of the  
 22 organisation it's input on that would be quite significant  
 23 and that's been my surprise that we haven't had Exco on top  
 24 coming and saying this is where we are. These are the  
 25 problems.

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1 MS MAKOLA: Yes.  
 2 PROF KATZ: We'd like to give you our  
 3 inputs to help you to make recommendations on remedial  
 4 action.  
 5 MS MAKOLA: And I know it's the same  
 6 issue that the Judge had when I met with him, the second  
 7 meeting that the SARS Exco hadn't been to see him. I can't  
 8 defend it, I know that subsequent to that we did talk about  
 9 – in fact I probably met the Judge for the first time that  
 10 we need to make a submission. We got recommendations from  
 11 their team of SARS who said look you need to making  
 12 submissions to the Commission so that they understand what  
 13 your position is in respect of the issues that have arisen.  
 14 Some of us have been following up, one of my colleagues has  
 15 been following up with the Acting Commissioner to find out  
 16 where we are in the process of presenting the submission.  
 17 I cannot defend that, it doesn't look good and there's no  
 18 way that I can say I can make it look good. The point is  
 19 by now we should have done something, in fact the Judge  
 20 took his time to come and see us. That's all I can say.  
 21 COMMISSIONER: Well I have been told tell  
 22 me that you're an Exco, I have been told and correct me if  
 23 I'm wrong, that Exco is waiting to make a they call it a  
 24 joint submission. But what they're waiting for is to hear  
 25 all the evidence first. They're going through the

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1 transcripts carefully and when they've gone through the  
 2 transcripts they are going to make a submission. Is that  
 3 correct?  
 4 MS MAKOLA: That was the initial thought.  
 5 COMMISSIONER: Well sorry is it still the  
 6 thought?  
 7 MS MAKOLA: It shouldn't have been and  
 8 after I –  
 9 COMMISSIONER: Sorry can I just get  
 10 clarity? Is that the position at the moment?  
 11 MS MAKOLA: It looks that way, but it  
 12 shouldn't be, Judge because after I –  
 13 COMMISSIONER: I want to know because I'm  
 14 sitting – no one from Exco has come and told me about this  
 15 joint submission. But you're from Exco. Is it correct  
 16 that that's what Exco intends doing?  
 17 MS MAKOLA: Judge, we do want to make a  
 18 joint submission and in fact after I met with you we spoke  
 19 about expediting this process. One of my colleagues,  
 20 Mamati (inaudible) has been following up with the Acting  
 21 Commissioner about this as to why we have not made the  
 22 joint submission. As recently as yesterday somebody, an  
 23 employee of SARS who's been sitting and watching the  
 24 proceedings said why haven't Exco done anything to make a  
 25 submission. So my understanding and my view was that that

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1 position had changed. There was an urgency about it, but  
 2 something hasn't moved and people have been following up  
 3 with the Acting Commissioner. I don't know why that has  
 4 still not been done.

5 COMMISSIONER: But you're a member of  
 6 Exco.

7 MS MAKOLA: Yes but we haven't got an  
 8 answer from the Acting Commissioner, we've been following  
 9 up because we need to do this.

10 COMMISSIONER: No but are you – I mean  
 11 you're not – that's the Acting Commissioner –

12 MS MAKOLA: Yes.

13 COMMISSIONER: - but the Acting  
 14 Commissioner is not the whole of Exco.

15 MS MAKOLA: No he's not.

16 COMMISSIONER: You must let me finish  
 17 otherwise you won't hear what my concern is. You see my  
 18 concern is the reactive approach of Exco apparently you say  
 19 was, I don't know if it's – the reactive approach which is  
 20 let me hear all the evidence and then I'll make a  
 21 submission. It just doesn't strike me as the leadership  
 22 position, the leadership in an organisation takes the pro-  
 23 active role. But here we're seeing it's almost like junior  
 24 employees who are waiting to hear it and then come and  
 25 defend it as it were. It just seems to me a bit odd. I

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1 don't know if my colleagues who are in business, these are  
 2 businessmen, I'm just a Judge, what do I know about running  
 3 an organisation.

4 MS MAKOLA: Look I accept that's that how  
 5 it looks to you, but I'm also trying to give you another  
 6 angle to it that there is a discussion that's happening. I  
 7 can't explain the thinking, we've been following up.  
 8 Mamati has been pushing and pushing –

9 COMMISSIONER: But haven't you talked  
 10 about this in Exco?

11 MS MAKOLA: We have.

12 COMMISSIONER: And have you said to  
 13 yourselves look we are the leadership here, we must take  
 14 the lead in the organisation, we've been hearing evidence.  
 15 I think, I don't know 60 witnesses we've heard, we heard  
 16 evidence of people being frightened in this place,  
 17 intimidated and felt – where is the leadership coming and  
 18 explaining it? You say they still haven't decided what to  
 19 do. But is that correct, you haven't decided what to do?

20 MS MAKOLA: Short of forwarding you the  
 21 email correspondence that's been flying around amongst Exco  
 22 members, I don't know if there's anything else I can say to  
 23 you.

24 COMMISSIONER: Well I must say I would  
 25 like to see this email correspondence because I haven't

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1 heard a word from Exco, you're the first person and thank  
 2 you for coming to see me although I did say to you at the  
 3 time it worries me a little that you came to see me because  
 4 someone had mentioned you.

5 MS MAKOLA: Yes.

6 COMMISSIONER: And I'd said to you but  
 7 it's fair enough, but why do I only get a reaction from  
 8 someone in Exco because they are mentioned? Why not talk  
 9 about the organisation? That's what my concern is, that's  
 10 what I conveyed to you I think.

11 MS MAKOLA: Ja and I understood where you  
 12 were coming from.

13 COMMISSIONER: And I think it's a fair  
 14 point isn't it?

15 MS MAKOLA: Very fair and which is why  
 16 when I finished my meeting with you I went straight to my  
 17 office and sent an email to all of my colleagues. There  
 18 was a debate that happened afterwards about whether or not  
 19 we should be coming here. What I do recall you said you  
 20 want Exco members to come and speak to you publicly because  
 21 this is a public hearing.

22 COMMISSIONER: No, no that's not correct.  
 23 I didn't say I wanted, I said that's what I would expect to  
 24 have happened in a big organisation.

25 MS MAKOLA: Sorry about that –

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1 COMMISSIONER: Convey that to your  
 2 colleagues that that's what I would have thought would  
 3 happen that the first people who had come forward with  
 4 these terms of reference would be the management. And yet  
 5 one has to start with the people at the bottom as it were  
 6 because we haven't heard from management. People, a lot of  
 7 the people at the bottom have come to say what's going on  
 8 here.

9 MS MAKOLA: Mm, I know –

10 COMMISSIONER: But I haven't heard a word  
 11 from Exco.

12 MS MAKOLA: Well you can ask me now.

13 COMMISSIONER: Well I will ask you now,  
 14 do you know that people are afraid in this place?

15 MS MAKOLA: I know, I was one of those  
 16 people.

17 COMMISSIONER: Sorry.

18 MS MAKOLA: I was one of those people who  
 19 –

20 COMMISSIONER: Also afraid?

21 MS MAKOLA: Yes.

22 COMMISSIONER: Afraid of what?

23 MS MAKOLA: Because I was told that I  
 24 needed to keep my head down and stop being so outspoken  
 25 when I had disagreements with some of my Exco colleagues.

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1 COMMISSIONER: By whom?  
 2 MS MAKOLA: Some of my direct reports  
 3 because they saw me having heated debates with one of the  
 4 people that I said I didn't have a good relationship with.  
 5 I had a very strained relationship with Jonas Makwakwa and  
 6 I was very outspoken about how unhappy I was, what I  
 7 perceived to be interference and the division that I'd been  
 8 employed to run.  
 9 COMMISSIONER: So you've also been  
 10 afraid.  
 11 MS MAKOLA: Yes.  
 12 COMMISSIONER: Well how does one run an  
 13 organisation when the top management is afraid?  
 14 MS MAKOLA: Well I don't know, but I'm  
 15 human, Judge.  
 16 COMMISSIONER: I'm sorry, you know to ask  
 17 these questions, but they are very burning questions for  
 18 the future of this organisation.  
 19 MS MAKOLA: Look, Judge –  
 20 COMMISSIONER: If the top management is  
 21 afraid well then I can understand why the people down below  
 22 are afraid. And I say well what's going to happen to this  
 23 organisation. Must it go forward with everybody being  
 24 afraid including the top management?  
 25 MS MAKOLA: Look I can't say all the top

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1 –  
 2 COMMISSIONER: If all the board of  
 3 directors of a company were to say I'm afraid of anyone I'd  
 4 say well please go and get another board of directors. I  
 5 mean you can understand my problem.  
 6 MS MAKOLA: Ja I can understand your  
 7 problem –  
 8 COMMISSIONER: So what do you want to  
 9 respond to that? I mean should you be in the position that  
 10 you're afraid?  
 11 MS MAKOLA: That's up to you, Judge.  
 12 COMMISSIONER: No it's not up to me.  
 13 MS MAKOLA: No but I mean –  
 14 COMMISSIONER: It's not up to me, I asked  
 15 for your view.  
 16 MS MAKOLA: Look I have accepted the  
 17 offer of employment in this position because I felt that I  
 18 was qualified for it. So if the view is that because I  
 19 have a tendency to be afraid when I'm warned to watch my  
 20 mouth and having disagreements with some of my Exco  
 21 colleagues is that that disqualifies me for the job there's  
 22 nothing I can do about that.  
 23 COMMISSIONER: Ja.  
 24 MR KAHLA: Did you start watching your  
 25 mouth or did you continue to raise the issues of concern

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1 that you found merited being raised?  
 2 MS MAKOLA: I've always said like I'm  
 3 uncultured, I don't always edit myself, so I would get  
 4 upset and I would speak up about what made me unhappy. I  
 5 had several meetings where the Commissioner Nthomena called  
 6 me in to address my difficult relationship with certain of  
 7 my colleagues.  
 8 [15:24] Because I was extremely vocal, and even at the  
 9 Exco meetings I've been extremely vocal where I felt that  
 10 people were treading in territory that they shouldn't  
 11 unless they had an understanding of how the business  
 12 worked, that particular business unit worked. I haven't  
 13 been able to watch my mouth.  
 14 MR KAHLA: But, with yourself having  
 15 raised the issues with the acting Commissioner –  
 16 MS MAKOLA: Yes.  
 17 MR KAHLA: - rather with the Commissioner  
 18 –  
 19 MS MAKOLA: Yes.  
 20 MR KAHLA: - were there any ways of  
 21 working devised to make sure that you don't have this  
 22 problem, the kind of problem that give rise to the fear?  
 23 MS MAKOLA: None to my satisfaction. The  
 24 outcome of each of those interactions was always that we  
 25 must work as a team, we must work as a team, we must be

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1 collegial to each other. But what I felt was that you  
 2 can't expect people to be collegial to each other if  
 3 certain of those people are feeling disrespected. And I  
 4 made it very clear that I was feeling undermined and  
 5 disrespected by some of my colleagues, and then, I mean, it  
 6 was, one of them at some point he wanted to tell me that I  
 7 shouldn't have appointed a certain person in the position  
 8 because they felt that that position, that person wasn't  
 9 qualified for the position.  
 10 He even went so far as to say look, I made that  
 11 person who he is. I mean, I, because I've been here for a  
 12 long period of time and I understand these people. And I  
 13 took exception to that.  
 14 MR KAHLA: And in your opinion, that  
 15 person was properly qualified for the role?  
 16 MS MAKOLA: I felt he was qualified.  
 17 COMMISSIONER: You know, I've heard about  
 18 you and how it affected you. Perhaps I'm talking about  
 19 someone else. I'm talking about the people that you  
 20 manage.  
 21 MS MAKOLA: Yes.  
 22 COMMISSIONER: All the, but I mean, have  
 23 you done anything about that? That's been going on since  
 24 you arrived apparently. I really am concerned -  
 25 MS MAKOLA: Yes, look I – sorry.

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1 COMMISSIONER: You know, let me, let me -  
 2 MS MAKOLA: I'm -  
 3 COMMISSIONER: You know, there's some,  
 4 there's some people -  
 5 MS MAKOLA: I feel terrible. I'm sorry,  
 6 I apologise.  
 7 COMMISSIONER: No, no, I don't want you  
 8 to feel terrible. I really do not.  
 9 MS MAKOLA: Okay, I apologise.  
 10 COMMISSIONER: I don't want you to feel  
 11 terrible. We've got a job to do and we've got to report on  
 12 this organisation which is a vital organisation, a massive  
 13 one to run and a vital organisation. And, you know, we've  
 14 had people who don't even want to be seen in our office for  
 15 fear of repercussions. Do you know that?  
 16 MS MAKOLA: Yes.  
 17 COMMISSIONER: One woman, I think it was,  
 18 she took sick, she pretended she was going to the doctor.  
 19 MS MAKOLA: Yes.  
 20 COMMISSIONER: Came round the back door.  
 21 MS MAKOLA: Yes.  
 22 COMMISSIONER: Now, are you aware of that  
 23 atmosphere in this place?  
 24 MS MAKOLA: The atmosphere here?  
 25 COMMISSIONER: Talk about your own

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1 particular position. What have you done for them? That's  
 2 what I'm interested in.  
 3 MS MAKOLA: For the people that I work  
 4 with directly?  
 5 COMMISSIONER: Sorry?  
 6 MS MAKOLA: For the people that I work  
 7 with directly?  
 8 COMMISSIONER: No, for the 14 000 people  
 9 who work here.  
 10 MS MAKOLA: That I can't assure every  
 11 single person because I don't have contact with every  
 12 single person. I haven't - but I have an open-door policy.  
 13 Anybody can come and see me, and even people who are not in  
 14 my division come and share their concerns with me. And  
 15 it's those instances where I felt that it needed to be  
 16 dealt by somebody in addition to me. I've gone to the HR  
 17 head and said look, this person, a person, she was a young  
 18 lady who came to tell me she's a graduate, who told me that  
 19 she was being ill-treated by her supervisor. I took that  
 20 matter up. I agreed that I'll look into it and I went and  
 21 spoke to the head of HR. So, I do try.  
 22 COMMISSIONER: No, that's somebody who  
 23 comes to your door and I can expect that would be quite  
 24 proper from a group executive, or an executive, someone in  
 25 that thing. I'm talking about the chief officers who make

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1 up the Exco which runs the whole place, 14 000. You're  
 2 not, are you suggesting that they must sit back and wait  
 3 for someone to knock on their door? You'd understand my  
 4 problem?  
 5 MS MAKOLA: I understand, Judge. I  
 6 actually have tried to travel to other offices. You have  
 7 to understand. I haven't been here long enough to go to  
 8 each and every office, but I have tried. I can't say that  
 9 what I've done is a stellar job, but I really have tried.  
 10 To the extent that I've even invited some of the senior  
 11 managers that I hardly have contact with to come to  
 12 workshops and we had, even had a strategy discussion last  
 13 year where some of the senior managers that I don't work  
 14 with directly, they don't report to me directly, and I, one  
 15 of the things I said to them, I said if you don't  
 16 everything by the book, I will go to war with you.  
 17 That is the speech that I made. And I said I'll  
 18 go to war with you. I said as long as it's based on the  
 19 act, because we are a creature of statute anything beyond  
 20 that I can't back you. And I've always been clear with my  
 21 colleagues and my enforcement division that, to the extent  
 22 that you feel that you're being forced, I'm asking you to  
 23 do something that is unethical, you are most welcome to  
 24 defy me and even report me, because it's not what I'm here  
 25 for, and I'm also not prepared to be made to do things that

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1 I feel compromise my integrity. I said that to my team.  
 2 MR KAHLA: Ms Makola -  
 3 COMMISSIONER: Ms Makola -  
 4 MR KAHLA: Have you dealt with this? I'm  
 5 looking now at the Exco as a collective.  
 6 MS MAKOLA: Yes?  
 7 MR KAHLA: You've been aware of this  
 8 sense of cultural fear, intrigue, etcetera.  
 9 MS MAKOLA: Yes.  
 10 MR KAHLA: Have you discussed this,  
 11 discussed it as Exco and determined what measures have to  
 12 be taken by the Exco to deal with this rather than just  
 13 good individuals on an individual basis and those who I  
 14 probably mean you don't have to mind about them, just  
 15 looking now, you're the leaders of the organisation.  
 16 MS MAKOLA: Yes. Yes.  
 17 MR KAHLA: And you are aware as an  
 18 organisation that as the leaders, there is this problem.  
 19 MS MAKOLA: Yes.  
 20 MR KAHLA: Has something been discussed  
 21 around what must be done to deal with that?  
 22 MS MAKOLA: Yes. And it has been  
 23 discussed and some things have been done. I don't know if  
 24 they've had the desired impact, but we have tried. The  
 25 Commissioner, the acting Commissioner, we agreed that, you

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1 know, he sends out these newsletters and like good feel  
 2 stories and talks to the staff, because it was clear that  
 3 there was a lack of communication. We needed to reassure  
 4 people. And whatever statements he issued, we all had had  
 5 sight of them and we approved that the message should go  
 6 out. I don't know whether it has comforted people, but  
 7 what I have seen there is that since the 19th of March  
 8 people have been more open. They have felt more  
 9 comfortable, being open about what they've been through. A  
 10 lot of them direct their concerns to Mark and he makes  
 11 sure, whichever division the person reports in, the chief  
 12 officer would be tasked with addressing that issue.  
 13 So, there is a change. People are sort of less  
 14 afraid of coming forward and talking about their  
 15 experiences.  
 16 COMMISSIONER: No, sorry, you're talking  
 17 about now the periods since, of the acting Commissioner?  
 18 What about the period you were here when the Commissioner  
 19 was here? What did you do then?  
 20 MS MAKOLA: Look, I don't ever recall us  
 21 discussing those, and I also don't recall there being much  
 22 by way of openness from employees to elevate their concerns  
 23 to him. Again, I can only speak to the people that have  
 24 come to me directly. Maybe I shouldn't have waited for  
 25 them to come back to me, to come to me directly. I should

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1 have travelled more, but I was, I thought I was doing the  
 2 right thing by trying to learn the business. But those  
 3 people who came to talk to me about their concerns, I did  
 4 try and do my best.  
 5 COMMISSIONER: No, but I'd like to just  
 6 hear what you say in response to Mr Kahla's question.  
 7 MS MAKOLA: Yes.  
 8 COMMISSIONER: During the period that the  
 9 Commissioner was here.  
 10 MS MAKOLA: Yes.  
 11 COMMISSIONER: Did Exco discuss what was  
 12 happening here and the fear that was being here, you know,  
 13 that was prevalent and so forth?  
 14 MS MAKOLA: Yes.  
 15 COMMISSIONER: Did you have no  
 16 discussions at that time?  
 17 MS MAKOLA: I don't think we did, because  
 18 I don't recall us ever having that particular discussion.  
 19 COMMISSIONER: Why not?  
 20 MS MAKOLA: I don't know why.  
 21 COMMISSIONER: Well, I mean, you were one  
 22 of Exco. Why wasn't it initiated?  
 23 MS MAKOLA: I don't know, Judge.  
 24 COMMISSIONER: Okay.  
 25 MS MAKOLA: I can't explain it.

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1 COMMISSIONER: That's fine.  
 2 MR KATZ: I was going to put the question  
 3 slightly differently. At that stage, was Exco a functional  
 4 body? Was it dysfunctional? Now, our concern is this is  
 5 one of the most fundamental institutions in the country.  
 6 MS MAKOLA: Yes.  
 7 MR KATZ: And we're talking about the top  
 8 leadership of that. Was it a dysfunctional? Functional?  
 9 MS MAKOLA: From where I was standing, I  
 10 think we could have done better. Like I said, I, I mean,  
 11 there were two people that are in Exco that I couldn't bear  
 12 to have a conversation with, and that speaks to a  
 13 dysfunctional Exco. The reason I had conflicts with them  
 14 is because I felt that they were interfering and  
 15 undermining, so I decided at some point that look, whatever  
 16 I, even if I elevated the issues to the Commissioner he  
 17 wasn't going to address them to my satisfaction so I  
 18 decided that, you know, I'll keep my interaction with them  
 19 at a minimum. I don't think it was the wisest decision to  
 20 make, but at that time I thought it was the right one to  
 21 do. It was a better option than having, butting heads with  
 22 people constantly.  
 23 MR KAHLA: Who was the second one? You  
 24 mentioned Mr Makwakwa. Who was the second one you had  
 25 difficulties?

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1 MS MAKOLA: There's, I should have said  
 2 three. There was Jonas and I also didn't have a good  
 3 relationship with Refilwe Makwene, and the Commissioner and  
 4 I were not very close. I did get a sense that I just  
 5 wasn't his type of person.  
 6 COMMISSIONER: Did you ever confront the  
 7 Commissioner on the problems that you saw here? And say,  
 8 Commissioner, we're the Exco and this must be done. Did  
 9 you ever confront him?  
 10 MS MAKOLA: Which particular problems?  
 11 The dysfunction in Exco? Or the fact that people were  
 12 afraid?  
 13 COMMISSIONER: No, no, the problems in  
 14 the organisation. You know, for example, that everyone was  
 15 afraid, including yourself. Did you confront the  
 16 Commissioner and say we must correct this?  
 17 MS MAKOLA: No, I did not.  
 18 MS MASILO: Ms Makola, were the members  
 19 of Exco aware of the fear and the other concerns which have  
 20 been raised by employees? Did you talk, I mean, just  
 21 between yourselves, without being in a formal Exco meeting,  
 22 were you, did you get a sense that everyone was aware of  
 23 it, and maybe there was no platform to, there was no  
 24 platform in which to discuss it in the presence of the  
 25 Commissioner?

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1 MS MAKOLA: Look, I can't speak for other  
 2 people, because I don't -  
 3 MR KAHLA: They'd prefer you to be, yes.  
 4 MS MAKOLA: I can't speak for other  
 5 people. One that I can tell you is that I started being  
 6 very careful with certain people, because I didn't know who  
 7 to trust. I was the last of the Exco members to arrive and  
 8 I had concerns about certain things that I saw happening  
 9 when I confided in people and say look, I don't understand  
 10 why this kind of thing is happening. I didn't get any joy.  
 11 But as to the fear amongst the employees, I know of it -  
 12 not because I've felt it as well - but because people did  
 13 come to speak to me about it.  
 14 But I don't, I couldn't, I didn't feel safe  
 15 elevating this to the Commissioner at the time and I don't  
 16 remember even talking to my Exco colleagues about it,  
 17 because usually with these people, when they came to  
 18 confide in me about these things, they were fearful already  
 19 and they would not have been comfortable with me. In fact,  
 20 a lot of them would say look, you know, just, if you could  
 21 keep it to yourself. People are generally, were generally  
 22 afraid.  
 23 So, how do I do that? Like go and divulge and  
 24 then what happens to that person afterwards? I don't know  
 25 whether they get victimised or not, and I mean, even as

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1 recently as now, a gentleman in one of my divisions came to  
 2 me to tell me that he thinks that a recruitment process  
 3 that didn't go his way was, you know, wasn't conducted  
 4 properly, and - you know, actually, it's not that one.  
 5 It's somebody else who complains as well, but he also had  
 6 issues with his senior management, and when I said to him  
 7 look, I'm going to talk to your senior manager and find out  
 8 exactly what happened, and what his response was like look,  
 9 yes, you can talk to them, but, you know, you must just  
 10 appreciate that there's a fear of victimisation.  
 11 COMMISSIONER: When you say you didn't  
 12 feel safe raising it with the Commissioner, why not?  
 13 MS MAKOLA: Well, I've seen how he  
 14 reacted when I had questioned certain things.  
 15 MS STEINBERG: Are you aware that as we  
 16 sit here today, there are many, many people who are still  
 17 scared of the current executive, of certain members on the  
 18 current executive.  
 19 MS MAKOLA: Yes.  
 20 MS STEINBERG: Are you aware of that?  
 21 MS MAKOLA: I wouldn't dismiss it. I  
 22 wouldn't dismiss it. I would accept that there are some  
 23 people.  
 24 COMMISSIONER: If you could just sit back  
 25 a little bit.

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1 MS MAKOLA: Sorry.  
 2 COMMISSIONER: Yes.  
 3 MS MAKOLA: I wouldn't dismiss it. I  
 4 don't know if those people would come and confide in me and  
 5 tell me that they're afraid of me or the other members of  
 6 Exco, but I wouldn't dismiss that possibility.  
 7 MS STEINBERG: Because I've been told  
 8 again and again, some people who won't even come and  
 9 testify.  
 10 MS MAKOLA: Yes.  
 11 MS STEINBERG: Not because they're scared  
 12 of Mr Moyane, but because they're scared of a couple of  
 13 people who are, were on his executive and still on his  
 14 executive.  
 15 MS MAKOLA: Yes.  
 16 MS STEINBERG: So, I wonder how the  
 17 executive is addressing that? That's not historical,  
 18 that's real time.  
 19 MS MAKOLA: Yes. Look, I don't know  
 20 which members they say they're afraid of, but obviously  
 21 that's a perception that we need to take on board and deal  
 22 with it. I can speak for, I don't know if anybody's afraid  
 23 of me, but like I said, I am not everybody's cup of tea.  
 24 So, to the extent that anybody is afraid of me, I will take  
 25 it as a criticism that I need to address my manner in the

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1 manner in which I interact with people.  
 2 MS STEINBERG: No, I'm not suggesting  
 3 they're afraid of you.  
 4 MS MAKOLA: No, no, it's fine. Even if  
 5 they're saying it they're entitled to feel the way that  
 6 they do, and it's up to me to take that on board and  
 7 address it. And I think every other member of the Exco, to  
 8 the extent that they are aware that they're being, they're  
 9 feared by our more junior colleagues, then we need to take  
 10 that on board as a valid criticism, because, you know, just  
 11 because we don't see ourselves as scary individuals, but if  
 12 somebody is saying that I'm afraid, that feeling is valid  
 13 and it needs to be addressed and we have to find a way to  
 14 interact with our colleagues in a less frightening manner.  
 15 MS STEINBERG: Well, I think it's a  
 16 little bit more complex than that, in that as we've  
 17 understood the evidence this far -  
 18 MS MAKOLA: Yes?  
 19 MS STEINBERG: - the atmosphere of fear  
 20 was created deliberately. It wasn't a by-product.  
 21 MS MAKOLA: Yes.  
 22 MS STEINBERG: It was created  
 23 deliberately. You know, the first step that the  
 24 Commissioner took was to suspend his Exco.  
 25 MS MAKOLA: I've heard of that, yes.

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1 MS STEINBERG: And start investigating  
 2 people. Putting up cameras, which frightened people.  
 3 MS MAKOLA: Yes, sure.  
 4 MS STEINBERG: Now there are still  
 5 members of the executive who are associated with that  
 6 strategy. So, it's not a question of sensitising them to  
 7 the fact that people are scared. It runs a little deeper  
 8 than that.  
 9 MS MAKOLA: Yes.  
 10 MS STEINBERG: It's understanding, they  
 11 appeared to be part of a strategy.  
 12 MS MAKOLA: Yes.  
 13 MS STEINBERG: To create a reign of  
 14 terror which they did successfully.  
 15 MS MAKOLA: Yes.  
 16 COMMISSIONER: Well, we'll decide -  
 17 MS STEINBERG: And they're still here.  
 18 COMMISSIONER: Yes, but are we going to  
 19 weigh all that up as to what it was? But I think that what  
 20 you want to know from her is that there is that fear and  
 21 one wants to know what Exco is aware of and do they do it?  
 22 But how that was created, I think, is a matter we must just  
 23 leave for us to decide.  
 24 MS STEINBERG: Yes.  
 25 COMMISSIONER: But I want to ask another

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1 one and that is, we've heard a lot of evidence from people  
 2 in supernumerary positions, very skilled people -  
 3 MS MAKOLA: Yes.  
 4 COMMISSIONER: - and they're sitting in  
 5 supernumerary positions. Are you aware of that?  
 6 MS MAKOLA: I'm aware of that, and we  
 7 also, that's one of the things that we're addressing at the  
 8 moment.  
 9 COMMISSIONER: No, but I mean, you've  
 10 been here for a year.  
 11 MS MAKOLA: Yes.  
 12 COMMISSIONER: At the Exco.  
 13 MS MAKOLA: Yes.  
 14 COMMISSIONER: And they've been sitting  
 15 there - why has nothing been done about that from the Exco  
 16 side?  
 17 MS MAKOLA: It is being done now.  
 18 COMMISSIONER: No, I understand it's  
 19 being done now.  
 20 MS MAKOLA: Yes.  
 21 COMMISSIONER: There's an acting  
 22 Commissioner. What I want to know is why nothing was done  
 23 by Exco about that while the Commissioner was here? I  
 24 mean, the - when did you start, by the way?  
 25 MS MAKOLA: 3rd of July 2017.

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1 COMMISSIONER: July '17? And the  
 2 Commissioner was suspended?  
 3 MS MAKOLA: 19th of March 2018.  
 4 COMMISSIONER: It's quite a long time to  
 5 be sitting there with knowing that all these  
 6 supernumeraries are there.  
 7 MS MAKOLA: Yes.  
 8 COMMISSIONER: Skilled people, and  
 9 nothing happening.  
 10 MS MAKOLA: Look, to be honest with you,  
 11 I didn't understand that there was anything wrong with  
 12 those positions. I found the structure as what it was. I  
 13 had no inkling that there was an issue with those  
 14 positions.  
 15 MS STEINBERG: Okay. You know, now that  
 16 we're on it, you mentioned that you felt that your  
 17 portfolio, that certain members of the executive had  
 18 interfered with your portfolio.  
 19 MS MAKOLA: Yes.  
 20 MS STEINBERG: You mentioned the one  
 21 incident where Mr Makwakwa had tried to control who you  
 22 appoint.  
 23 MS MAKOLA: Yes.  
 24 MS STEINBERG: But you mentioned another  
 25 couple of incidents to me which I do think are relevant.

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1 MS MAKOLA: Yes.  
 2 MS STEINBERG: And I think you should  
 3 tell the Commission about those incidents.  
 4 MS MAKOLA: Okay.  
 5 COMMISSIONER: Yes, carry on.  
 6 MS STEINBERG: The one being, it concerns  
 7 a taxpayer, and I'd rather you didn't name the company -  
 8 MS MAKOLA: Mention the name.  
 9 MS STEINBERG: - if you don't mind.  
 10 MS MAKOLA: Okay.  
 11 MS STEINBERG: It concerned their debt of  
 12 R54 million. Perhaps you can just tell us what happened  
 13 there?  
 14 MS MAKOLA: Okay. Before I tell you  
 15 about that, it wasn't influencing who I had hired I had  
 16 already hired the individual. He was just expressing that  
 17 maybe I had hired the wrong person.  
 18 MS STEINBERG: The wrong one, yes.  
 19 MS MAKOLA: So, with this particular  
 20 taxpayer, they owed SARS a debt, and you must understand, I  
 21 don't do, get involved in the operational stuff. That's  
 22 not a forte that I need to be getting involved, but it was  
 23 elevated because the taxpayer was complaining that a  
 24 committee had refused to grant them a suspension of payment  
 25 of the debt. So, this issue was elevated and I looked into

1 it with the debt management team and then obviously the  
 2 relationship person who said look, you know, it's sort of  
 3 taking, we're being heavy handed with the taxpayer.  
 4 So, we started engaging with the taxpayer  
 5 because, and what I was, then I also did speak to the audit  
 6 team to understand what the issue was. What I was told by  
 7 the audit team was that look, the suspension request was  
 8 denied because the taxpayer was in a position to pay the  
 9 debt. In fact, I had made that very clear, that they could  
 10 pay the debt but they were refusing to pay it because they  
 11 had an issue with the merits of the assessment. And my  
 12 response to that was that, but I have yet to come across –  
 13 MS STEINBERG: Sorry.  
 14 MS MAKOLA: - and my response to that was  
 15 that I have yet to come across a taxpayer who readily  
 16 accepted an assessment that's been issued against them.  
 17 They, taxpayers are, especially when the assessment is for  
 18 a huge amount, they tend to fight. So that that was always  
 19 the argument that I made, and then also, I said look, it  
 20 looks like they don't meet the requirements of section 164  
 21 of the Tax Administration Act which governs requests for  
 22 suspensions.  
 23 So, they threatened to take us on review, the  
 24 decision of the committee on review, and that's fine.  
 25 Obviously, that made us very uncomfortable, and they were

1 requested to provide more information for the committee to  
 2 consider, whether or not to reverse its earlier decision.  
 3 They provided that information and the committee still came  
 4 to the same conclusion that they couldn't grant the  
 5 suspension.  
 6 And on the 22nd, around there, early this year, I  
 7 went, I was in Durban for the (inaudible) tenth campaign,  
 8 but I also met with the taxpayer and their tax advisor, and  
 9 I was with two of my colleagues from the debt management  
 10 division. And we discussed with the taxpayer, the taxpayer  
 11 had certain concerns, and then one of them was whether or  
 12 not they would get paid interest if they paid the debt in  
 13 full pending the outcome of the dispute – there was an  
 14 objection that they had lodged.  
 15 We said we'd look into it. So, there were a few  
 16 things that we needed to get back to them on. Next thing,  
 17 a few weeks later, I stumbled into a boardroom and I see  
 18 the people from the company with their tax advisor sitting  
 19 in that boardroom. And I got confused. They looked  
 20 familiar but I knew I didn't have a meeting with them. But  
 21 it turns out that they were having a meeting with Jonas and  
 22 I think Refilwe was also a part of the meeting. And I  
 23 wanted to, and I was obviously distressed because surely I  
 24 should have been part of that because we're trying to  
 25 collect the debt and we needed to give, to have a holistic

1 view.  
 2 I don't know what happened at that meeting, but I  
 3 was seriously upset about it to the point that I went to  
 4 the Commissioner and told him now look, I feel like there's  
 5 no place for me here, the way that things are done. I  
 6 don't understand why Jonas and Refilwe would have a meeting  
 7 with the taxpayer in my absence on a matter this crucial,  
 8 especially since in fact debt management is tasked with  
 9 collecting a revenue and if a committee has made a  
 10 decision, why are we sort of questioning the decision of  
 11 the committee?  
 12 I do remember also there were emails flying  
 13 around between me and Jonas where he sort of implied that  
 14 the committee that had made the decision to refuse the  
 15 suspension was biased.  
 16 [15:44] Because it was loaded with, these numbers were  
 17 primarily from the data management division to which I  
 18 responded and I said look, firstly I think it said that it  
 19 wasn't correct and then I said to him, look, I am unwilling  
 20 to overturn a decision that was made by a committee. I  
 21 can't do that and I even remember asking for a copy of the  
 22 terms of reference of that particular committee. And I  
 23 sent a copy of that just to indicate that there are ways in  
 24 which the committees make their decisions and how those  
 25 decisions can be reversed and that no single individual can

1 overturn it and I said look we cannot. The three of us  
 2 communicated because it was me and him and some other  
 3 person in I think relationship management. I said look we  
 4 cannot do this. We can't overturn a decision of a  
 5 committee. The committee will have to reconsider the  
 6 position that it took but we can't sit here and debate the  
 7 merits of a decision made by a whole group of people. So  
 8 that was the one matter and –  
 9 MS STEINBERG: But the upshot was that  
 10 the suspension was granted, notwithstanding the committee's  
 11 decision.  
 12 MS MAKOLA: The – but it wasn't granted  
 13 by him. There was additional information that was again  
 14 provided by the taxpayer which was brought to the committee  
 15 and eventually the committee based on that information in  
 16 front of them had decided to grant the suspension. But you  
 17 know leading up to that there was friction between myself  
 18 and him and what I, and also I thought it was, it wasn't  
 19 right that we should question the decision of a committee  
 20 of people who are supposed to exercise independent judgment  
 21 on a decision. So but ultimately the committee based on  
 22 additional information was, it was provided and Jonas  
 23 doesn't sit on that committee by the way.  
 24 MS STEINBERG: Okay.  
 25 MS MAKOLA: So the chairperson is a

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1 different person but they did finally grant the suspension.  
 2 So that was one of the things I found objectionable in how  
 3 he and I related.  
 4 COMMISSIONER: Well indeed, why, I didn't  
 5 get all of that perhaps but the committee had said no we  
 6 won't suspend it and then is it Mr Makwakwa meeting with  
 7 the taxpayer?  
 8 MS MAKOLA: Yes. He –  
 9 COMMISSIONER: Discussing suspending it?  
 10 MS MAKOLA: I don't know what they  
 11 discussed, but –  
 12 COMMISSIONER: Well he came back to you  
 13 and said that committee is biased and you should suspend  
 14 it, is that right?  
 15 MS MAKOLA: Ja, it was an email but that  
 16 was prior to that particular meeting that –  
 17 COMMISSIONER: Why was he meeting with  
 18 the taxpayer?  
 19 MS MAKOLA: I have no idea, Judge.  
 20 COMMISSIONER: Is that usual?  
 21 MS MAKOLA: I've met with taxpayers so  
 22 it's not unusual for chief officers. What I found unusual  
 23 was that the chief officer of enforcement was not part of  
 24 the meeting. It was Jonas and Refilwe who were there and  
 25 the chief officer of enforcement or at least somebody from

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1 –  
 2 COMMISSIONER: Jonas and?  
 3 MS MAKOLA: And Refilwe.  
 4 COMMISSIONER: Refilwe.  
 5 MS MAKOLA: - of legal.  
 6 MS STEINBERG: Refilwe Makwene.  
 7 MS MAKOLA: Ja. What I found odd was  
 8 that nobody from enforcement was there at least –  
 9 COMMISSIONER: Yes.  
 10 MS MAKOLA: - and that was what made me  
 11 get very upset and speak to the Commissioner and I was in  
 12 tears when I spoke to him. I said look I feel like I don't  
 13 have a role here, I don't have a place here because I've  
 14 been –  
 15 COMMISSIONER: Well a - you say you went  
 16 and you were in tears because you didn't have a role,  
 17 doesn't it go a bit further than that? I mean why are they  
 18 talking to the taxpayer after the committee has said no?  
 19 So doesn't it go a bit beyond just your own personal  
 20 position, isn't it a worrying thing?  
 21 MS MAKOLA: Look, it was worrying,  
 22 particularly because none of the people who were directly  
 23 involved in a discussion with the taxpayer, I mean take me  
 24 out of it because –  
 25 COMMISSIONER: Ja.

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1 MS MAKOLA: - I only had one meeting with  
 2 a taxpayer because it was escalated to me but the debt  
 3 management guy and I remember I was with one of them when  
 4 we stumbled into the boardroom, even he did not know about  
 5 it. And in fact to, in addition to me being in tears in  
 6 the Commissioner's office I did call one of my colleagues,  
 7 I think he was the acting Commissioner now and I had said  
 8 him, I think I'm going to resign. I can't work like this.  
 9 MR KAHLA: What was the reaction of the  
 10 Commissioner to that?  
 11 MS MAKOLA: He said to me, look he feels  
 12 that I belong at SARS. I'm qualified for the job and that  
 13 he didn't have any ulterior motives for hiring me other  
 14 than based on my qualifications and that in his view I did  
 15 have a place at SARS. But you know if I felt that I didn't  
 16 have a place he couldn't stand in my way. So I think that  
 17 was his way of trying to reassure me.  
 18 MR KAHLA: But did he start, did he do  
 19 anything else to sort of change deal with the working  
 20 environment, deal with ways of working and so that people  
 21 understand what can or can't be done?  
 22 MS MAKOLA: Look, he, I know - the emails  
 23 that he would send and he also there was a meeting that I  
 24 was called into, it was me and Jonas and Refilwe who were  
 25 in that meeting and where he said look obviously he

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1 understands that there's an issue here but we need to be  
 2 collegial, we just work as a team and we must learn to talk  
 3 to each other, instead of sending emails we must talk to  
 4 each in person. So that was his way of trying to deal with  
 5 it but from where I was standing it was ineffective and I  
 6 took a decision that my engagement with those two  
 7 colleagues would be very minimal.  
 8 COMMISSIONER: Was that, but I tell you –  
 9 sorry and maybe I don't understand the processes here. But  
 10 what seems to me to be more worrying than that you were  
 11 being excluded is a debt, the committee had said no and  
 12 then Mr Makwakwa and Ms Makwene are meeting with the  
 13 taxpayer to discuss now going back and saying go and  
 14 persuade the committee to overturn this. I mean I can  
 15 understand the taxpayer being unhappy and saying I want to  
 16 submit further information to the debt committee, but was  
 17 there no discussion between you and the Commissioner as to  
 18 what on earth Mr Makwakwa and Ms Makwene were doing  
 19 discussing the affairs of a taxpayer after the committee  
 20 had said no, you can't have a suspension. Was there no  
 21 such discussion between you and the Commissioner?  
 22 MS MAKOLA: There was that one  
 23 discussion.  
 24 COMMISSIONER: What did he say about the  
 25 taxpayer issue? Forget about whether you should feel that

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1 you're in the organisation or not, did he not say anything  
 2 about the taxpayer? You look as if you're trying to  
 3 remember. I would've thought it would be very clear in  
 4 your head if –

5 MS MAKOLA: It was a while back, Judge.  
 6 It was a while back and I want to be, it was a while back  
 7 and I don't want to say anything –

8 COMMISSIONER: No, that's fine –  
 9 MS MAKOLA: - that is not true.  
 10 COMMISSIONER: - but that's, it seems to  
 11 me it's a very important thing in a tax organisation –  
 12 MS MAKOLA: I can't remember –  
 13 COMMISSIONER: - that – am I wrong? I  
 14 mean –  
 15 MS MAKOLA: I can't remember whether he  
 16 did raise a concern. What I think he did say he would  
 17 discuss, have a discussion with Jonas or something to that  
 18 effect. But I, Refilwe's involvement I think the way that  
 19 it was subsequently explained to me by a junior member of  
 20 the staff was that because a taxpayer had threatened to  
 21 take us to court, to take the committee on review so it was  
 22 decided that legal would meet with the taxpayer, I don't  
 23 know what they discussed at that meeting and to this day I  
 24 don't know what they were, what the outcome of that meeting  
 25 –

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1 COMMISSIONER: But you were told that by  
 2 a junior member, you say?  
 3 MS MAKOLA: Yes, I was.  
 4 COMMISSIONER: Well what did you ask  
 5 about the senior managers, the people as to what was going  
 6 on? I mean you can't rely on the junior surely to tell you  
 7 what's going on at the top.  
 8 MS MAKOLA: Look, like I said, Judge, the  
 9 best way I knew how to deal with this was to go and firstly  
 10 speak to the Commissioner and tell him that I find this  
 11 undesirable.  
 12 PROF KATZ: But can I just ask the  
 13 process of when the committee decided not to grant the  
 14 suspension, that would've been communicated to the taxpayer  
 15 in accordance with ordinary channels.  
 16 MS MAKOLA: Yes. There's –  
 17 PROF KATZ: Not by Mr Makwakwa and Ms  
 18 Makwene.  
 19 MS MAKOLA: No, there's usually a letter  
 20 that I think goes, that goes from the chair of the  
 21 committee. But I think, just to also give context it was,  
 22 because there are different levels of these committees.  
 23 There was a first committee that decided this and their  
 24 decision was not to grant a suspension and then I think it  
 25 was elevated to the second level, well the higher level of

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1 a committee and that committee I think also came to the  
 2 same decision and I think that was also part of the  
 3 argument that I had with Jonas was that it's not just a  
 4 lower level committee, another committee, a higher  
 5 committee had been –

6 PROF KATZ: So two levels that happened –  
 7 MS MAKOLA: Ja.  
 8 PROF KATZ: - and that's communicated to  
 9 the taxpayer in accordance with ordinary channels.  
 10 MS MAKOLA: Ja.  
 11 PROF KATZ: Then the taxpayer goes to Mr  
 12 Makwakwa.  
 13 MS MAKOLA: No, I don't think – they  
 14 didn't go to Jonas Makwakwa, they went through the  
 15 relationship person because remember it's a large business  
 16 client. Well I do not remember, I did mention that they  
 17 were a large business client but they, because of the large  
 18 business, the taxpayers have sort of a relationship  
 19 interface person. So they were speaking to that particular  
 20 person. If I remember that there was another meeting of  
 21 the committee where that relationship person made  
 22 submissions again. I don't know whether it was the second  
 23 level or another level who motivating for the suspension to  
 24 be granted because of the reputation of that particular  
 25 taxpayer at the time. And even then after that person had

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1 made those submissions the committee still took a decision  
 2 to not grant the suspension based on the information that  
 3 was before them. But subsequently with the additional  
 4 information the other, the last committee finally decided  
 5 to grant the suspension but there was additional  
 6 information that I know did come through.  
 7 PROF KATZ: But that extra information,  
 8 did that flow after a discussion between that taxpayer on  
 9 the one hand and Mr Makwakwa and Ms Makwene on the other  
 10 hand?  
 11 MS MAKOLA: I think it did because I was  
 12 in the meeting, I sat in on the meeting where their  
 13 suspension was finally granted.  
 14 MS MASILO: Ms Makola, if had it not been  
 15 for – so the committee made a final decision not to grant  
 16 the suspension.  
 17 MS MAKOLA: The earlier ones, yes.  
 18 MS MASILO: The earlier one and then the  
 19 meeting happened. Was that the decision not to grant the  
 20 suspension was that made before the last or the higher  
 21 level committee was going to decide on the matter or was it  
 22 after that the last committee had, I mean was that the last  
 23 committee which made the decision.  
 24 MS MAKOLA: I'm battling to understand  
 25 the question.

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1 MS MASILO: Okay. I don't know how many  
 2 tiers of committees do you have but you told us about the  
 3 first committee and the second committee. Which committee  
 4 makes the final decision? The second committee?  
 5 MS MAKOLA: I think there was a third  
 6 committee. I think we've got tier 1, tier 2 and tier 3.  
 7 MS MASILO: Okay.  
 8 MS MAKOLA: I think it was tier 3 that  
 9 had to consider the request for suspension again and that  
 10 committee did grant the suspension.  
 11 MS MASILO: Okay.  
 12 MS MAKOLA: But the earlier ones had  
 13 refused to grant it and I think even tier 3 there was a  
 14 point where it was, they sent a letter to the taxpayer to  
 15 ask for additional information. I think the taxpayer was  
 16 also unwilling to provide additional information. So it  
 17 was a very difficult interaction even with the taxpayer but  
 18 subsequently the taxpayer did sort of relent and provide  
 19 the information that which the committee requested to  
 20 consider and they came –  
 21 COMMISSIONER: Sorry, let me just get  
 22 that. The taxpayer didn't want to submit the information.  
 23 MS MAKOLA: That was what I was told by  
 24 the audit team –  
 25 COMMISSIONER: I can understand the

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1 taxpayer being very anxious to submit more information but  
 2 who – so you had to extract the information from the  
 3 taxpayer in order to grant what the taxpayer wanted?  
 4 MS MAKOLA: I wouldn't say extract  
 5 because they were arguing with the request. I think their  
 6 view was that they'd already provided this information –  
 7 COMMISSIONER: - turns out.  
 8 MS MAKOLA: Ja and why was the committee  
 9 asking for more information. So I think that was their  
 10 view. I wouldn't – I think – look, Judge, by the time the  
 11 relationship had soured.  
 12 COMMISSIONER: Ja.  
 13 MS MAKOLA: So and also they were quite  
 14 suspicious of the audit team. They felt that the audit  
 15 team was biased.  
 16 COMMISSIONER: Ja.  
 17 MS MAKOLA: So there was a level of  
 18 distrust from the very beginning.  
 19 COMMISSIONER: Ja.  
 20 MS MASILO: But now what's confuses me is  
 21 if the tier 2 committee had said no, why would SARS issue a  
 22 communication to the taxpayer saying it's been declined?  
 23 Would it not have been the decision of the third committee  
 24 to say no, before SARS declines.  
 25 MS MAKOLA: No. So the different levels

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1 of committee they're monetary thresholds that govern which  
 2 matters go to which committee. So the first level of  
 3 committee, I think that's where it went and then the  
 4 request was not granted. The taxpayer had an issue with  
 5 that. So the best way – so if I refuse to give you what  
 6 you want, there's no point in you coming back to me to  
 7 reconsider my decision if I'm convinced I'm right. So I  
 8 think the decision was that go to the high level, you know  
 9 this must be referred to the high level committee, maybe  
 10 they'll come to a different decision. That's the checks  
 11 and balances. And that committee didn't come to a  
 12 different decision. And so, and I think by the time I was  
 13 brought into this matter was when the taxpayer I think was  
 14 complaining and the relationship managers were like were  
 15 raising issues about how this taxpayer was being treated  
 16 and that we're being unfair, we'd been too heavy handed  
 17 with this particular taxpayer. So it was, there was just  
 18 friction even between the audit team and the relationship  
 19 management team.  
 20 I think that by then even the, by the time that I  
 21 sort of got pulled into the discussions it looked like that  
 22 relationship had soured from the very beginning because I  
 23 think even during the audit process the taxpayer felt that  
 24 the audit team was biased towards them and I remember even  
 25 our legal colleagues had to have another look at it. There

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1 was a colleague, I think a senior manager I can't remember  
 2 to give an opinion, to go through the file and give an  
 3 opinion as to whether or not the assessment that had been  
 4 raised were defensible.  
 5 MS MASILO: So was the taxpayer persuaded  
 6 to provide the information by that meeting?  
 7 MS MAKOLA: I don't know. I wasn't at  
 8 that meeting. I don't know why they ended up cooperating  
 9 with the committee, that made the final decision to grant.  
 10 I don't know, I can't, I don't want to speculate that that  
 11 particular meeting had anything to do with it but the point  
 12 is I know that the Chair of the committee did send a letter  
 13 to the taxpayer because it was important that the  
 14 relationship be mended and there was a lot of distrust  
 15 between the SARS audit team and the taxpayer. So somebody  
 16 more neutral had to sort of – the view was that maybe it's  
 17 better if somebody more neutral wasn't directly getting,  
 18 wasn't directly involved in the matter, should have a  
 19 discussion with the taxpayer. And I mean the chair of the  
 20 committee is the chief office of finance and I recall that  
 21 there were discussions that were held between him and some  
 22 of my legal colleagues. I don't know whether he even,  
 23 whether he did meet with the taxpayer but the point is a  
 24 lot happened between the meeting between Jonas and Refilwe  
 25 and the taxpayer and that the final decision that was made

1 there were other interactions between the chair of the  
 2 committee and the taxpayer. And I think it was to  
 3 encourage them to at least cooperate with the process,  
 4 provide the information that the committee felt was needed  
 5 to look at the decision with a fresh pair of eyes.

6 MR KAHLA: Am I right in understanding  
 7 you that there was not, you are not making issue about  
 8 those two chief officers that had met with the taxpayer but  
 9 with them having met with the taxpayer in the absence of  
 10 the enforcement chief officer?

11 MS MAKOLA: Yes, I, I mean I felt that  
 12 was not the right way to approach it and there was no, and  
 13 if we're going to presenting and I think I also said that  
 14 look we're giving the wrong impression to a taxpayer that  
 15 the different parts of the organisation don't talk to each  
 16 other. I mean how and then what is, what impression does  
 17 it create to a taxpayer when the person that the met with  
 18 earlier in the year is suddenly not in the meeting, not  
 19 invited in the meeting, I mean and to this day I don't  
 20 really fully understand why at least somebody from debt  
 21 management, it didn't have to be me, it could've been  
 22 Claremont it could've been Chris, it could've been Yegen  
 23 Naidoo, but none of those people were invited and we in  
 24 fact, not just the fact that we're not invited, we didn't  
 25 even know that the meeting was happening. The only reason

1 I knew about that meeting was because I walked into a  
 2 boardroom in which I thought I was supposedly to meet, have  
 3 a meeting with another person and that's when I realised I  
 4 recognised the people in that room.

5 PROF KATZ: Sorry, can I ask just one?  
 6 The additional information that tilted the scale, did you  
 7 know what it was? Was that material? Should it have had  
 8 that impact?

9 MS MAKOLA: Look, I'll have to get that  
 10 information but I know we debated this issue at length and  
 11 to the point where I was accused by, not accused but  
 12 somebody jokingly said look you're very angry about this  
 13 because I had a particular view which I think was  
 14 influenced by prior discussions about why it is that the  
 15 client was, the taxpayer was asking for a suspension. So I  
 16 don't know if that answers your question.

17 PROF KATZ: But, sorry, did Mr Makwakwa  
 18 and or make representations to the final committee?

19 MS MAKOLA: No, he wasn't in the room.  
 20 It was a member of the legal division.

21 MR KAHLA: Am I correct in assuming that  
 22 whatever the fights you'd had before the decision that was  
 23 ultimately taken you were comfortable that it was justified  
 24 on the merits?

25 MS MAKOLA: Yes, I was. But remember it

1 was preceded by quite an intense debate in, by all of us  
 2 that were in the meeting and I think even Refilwe was  
 3 there, I can't remember who else was in the meeting but  
 4 there was an intense debate and I think that's how it  
 5 should be. You know you must ventilate these things and  
 6 interrogate the legislation that we're applying and that's  
 7 the only way we can be comfortable, at least a well thought  
 8 out decision is reached.

9 MS STEINBERG: But it seems to me the  
 10 problem is not so much one of personal relationships,  
 11 however bad they are. The problem is a governance problem.  
 12 Now we heard evidence early on from Sunita Manik who ran  
 13 the LBC before the changes happened and we heard about very  
 14 strict controls over who could and couldn't meet with the  
 15 taxpayer, particularly around questions of settlements of  
 16 debt etcetera. She told us that in those days there was  
 17 absolutely no question of a Commissioner or a CO meeting  
 18 with the taxpayer. There were designated committees and  
 19 designated people and it could not be countenanced that  
 20 other senior people could then step in when a taxpayer was  
 21 unhappy. But it sounds like there aren't those kind of  
 22 governance procedures anymore, am I right?

23 MS MAKOLA: Look, I don't – the  
 24 Commissioner always took the view that he shouldn't meet  
 25 with taxpayers but I, I mean I as a chief officer of

1 enforcement I've met with several taxpayers. When  
 2 something gets escalated to me because taxpayers would  
 3 write to the Commissioner and complain that they've been  
 4 ill-treated by someone, it could be debt management or an  
 5 auditor is misbehaving, or is untoward towards the  
 6 taxpayer, then that would be sort, that email would be  
 7 forwarded to me. There's a process that I found there. So  
 8 these emails would be forwarded to me to deal with. Then a  
 9 decision would be taken whether or not I should be in the  
 10 meeting to meet with this particular taxpayer to hear,  
 11 because sometimes these taxpayer would insist that they  
 12 want to meet with a senior person and if that's the head of  
 13 the enforcement division then that's it and I don't often,  
 14 I don't meet with every single taxpayer who wants to meet  
 15 me. I always assess because I get the sense that certain  
 16 taxpayers sort of take chances with us. Maybe they know  
 17 that I'm fairly new in the organisation so they think that  
 18 they can give me a different version of the story and  
 19 meanwhile this matter has been running long before I  
 20 arrived.

21 So I also exercise my discretion and lately I've  
 22 actually said I actually shouldn't be involved in  
 23 operations. So I didn't – look I don't know, I didn't know  
 24 about that, what Sunita told you but what I found here was  
 25 that it wasn't unusual for me at least to meet with certain

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1 taxpayers. I have in fact the very first taxpayer that I  
 2 met with was also asking for a suspension, a very big  
 3 taxpayer that they had an issue with us collecting a debt  
 4 and understandably so. So I did participate in those  
 5 meetings. I didn't think there was anything wrong with it  
 6 otherwise somebody should've said something. I mean –  
 7 MS STEINBERG: No, I'm not asking about  
 8 you, I'm saying are there protocols as to who is these  
 9 circumstances is permitted to meet with the taxpayer? I'm  
 10 not asking you to defend –  
 11 MS MAKOLA: Ja.  
 12 MS STEINBERG: - you meeting with them.  
 13 MS MAKOLA: Ja.  
 14 MS STEINBERG: I'm saying, I'm asking are  
 15 there protocols.  
 16 MS MAKOLA: Ja.  
 17 MS STEINBERG: I am saying I am asking  
 18 are there protocols?  
 19 MS MAKOLA: None that I am aware of.  
 20 MS STEINBERG: That would say well –  
 21 COMMISSIONER: She said none –  
 22 MS STEINBERG: She said none, none you  
 23 are aware of?  
 24 [16:04] MS MAKOLA: And that's always a  
 25 discretion because we always discuss when I taxpayer and in

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1 some cases I've been advised that, better not and we've  
 2 also –  
 3 MS STEINBERG: So it's discretionary.  
 4 MS MAKOLA: Ja. But it's not something I  
 5 think we should make a habit of, like we should be very  
 6 circumspect on it because taxpayers can abuse the  
 7 relationship as well.  
 8 MS STEINBERG: Well I would suggest there  
 9 should be protocols but I hear that there aren't.  
 10 MS MAKOLA: I'm fully on board with that.  
 11 MS STEINBERG: Ja. Just on the final  
 12 incident, that was around something –  
 13 COMMISSIONER: Sorry, sorry I've just got  
 14 to ask this question.  
 15 MS STEINBERG: Sorry Judge.  
 16 COMMISSIONER: And you accept that it's  
 17 not the way it should work. Have you done anything, did  
 18 you do anything on Exco to question this thing of just  
 19 having a discretion to talk to taxpayers? You now say yes  
 20 of course there should be protocols. My concern still is  
 21 the Exco, not now but beforehand, did you not think to  
 22 yourself as the senior person at the tax collection agency  
 23 that there should be protocols? I'm not being critical of  
 24 you, I just want to know how this Exco works.  
 25 MS MAKOLA: No it's fine. Look, I don't

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1 remember us questioning it and also taxpayers don't meet  
 2 with every chief officer, like for instance the chief  
 3 officer of information systems.  
 4 COMMISSIONER: No, no, we're talking  
 5 about protocols though.  
 6 MS MAKOLA: Look, I didn't question the  
 7 system that I found. I said it's a discretion and I don't,  
 8 what I do know is that it was deemed inappropriate for the  
 9 Commissioner to descend into that area. But there are  
 10 taxpayers who demand specifically that they want to see the  
 11 boss of the people that they're interacting with.  
 12 COMMISSIONER: Ja.  
 13 MS MAKOLA: And when that happens, I  
 14 don't know how you refuse because we've –  
 15 COMMISSIONER: Sorry, I don't want to  
 16 interrupt you, I just wanted to know about protocols. It's  
 17 –  
 18 MS MAKOLA: I never asked about it but I  
 19 also didn't think that there was anything improper.  
 20 COMMISSIONER: About not having  
 21 protocols?  
 22 MS MAKOLA: No about me meeting with  
 23 taxpayers.  
 24 COMMISSIONER: No not you, we're not  
 25 worrying about you, we're not critical of you at all.

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1 We're just talking about protocols, whether there should or  
 2 shouldn't be protocols in a tax collection agency as to who  
 3 meets with taxpayers. There are no such protocols, you  
 4 were never told of any protocols, and you think there  
 5 should be protocols but no one raised it –  
 6 MS MAKOLA: No, no one raised it. Maybe  
 7 probably nobody thought there as anything wrong with it,  
 8 ja.  
 9 MS STEINBERG: Okay. Can I move on?  
 10 COMMISSIONER: Yes, thank you.  
 11 MS STEINBERG: So the final instant it's  
 12 one of actually the issue has received a fair amount of  
 13 publicity because it concerns the rehabilitation funds of  
 14 Optimum Coal Mine, the Koorfontein Coal Mine and there was  
 15 an incident around that which I think would be useful to  
 16 share with the Commission.  
 17 MS MAKOLA: Are we allowed to mention  
 18 taxpayer names now?  
 19 MS STEINBERG: You know that one has  
 20 received so much publicity that it seems to me appropriate.  
 21 MS MAKOLA: As long as I don't get into  
 22 trouble for –  
 23 COMMISSIONER: Maybe I'll get into  
 24 trouble for allowing you to but I think let's carry on.  
 25 We're interested in the rehabilitation fund.

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1 MS STEINBERG: Judge, I checked with you  
 2 beforehand and we did agree that this is a taxpayer that  
 3 can be named.  
 4 COMMISSIONER: I understand. I  
 5 understand Ms, please, just, you know. You know I told  
 6 people earlier that counsel acts on instructions from the  
 7 Commission. Now the Commission acts instructions from  
 8 counsel.  
 9 MS STEINBERG: I'm confirming that I'm  
 10 acting on your instruction, Judge.  
 11 COMMISSIONER: Let's deal with the  
 12 rehabilitation fund now.  
 13 MS STEINBERG: Okay.  
 14 MS MAKOLA: So this matter relating to  
 15 these two rehabilitation funds was again brought to my  
 16 attention and it was the Commissioner who told me that he'd  
 17 been told by Refilwe Makwene that a taxpayer was  
 18 complaining about how long an audit was taking place. And  
 19 I said look, I'll look into it obviously if the auditors  
 20 are doing something that they shouldn't do, granted there's  
 21 nothing in the TAA that prescribes how long it should take  
 22 to conduct an audit but the point is we obviously have to  
 23 be reasonable. We're an administrative body, we can't just  
 24 take out time. But he said look, the taxpayer had  
 25 elevated. I hadn't seen those emails. He said that the

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1 taxpayer had sent emails to Refilwe complaining about this  
 2 and I said I'd look into it. I called the group executive  
 3 of investigative audit and I said, look, what's going on?  
 4 I hear that there's an issue. I think she sent me a memo  
 5 to explain, to give me the background and she said she  
 6 asked somebody to prepare the actual auditor who was  
 7 involved to explain that this is what's happening. We've  
 8 asked for information from the taxpayer, there's a delay  
 9 and it was the usual story that you would get from an  
 10 auditor but why?  
 11 COMMISSIONER: Let's just see what the  
 12 problem. The problem had the money remained in the trust  
 13 or had it been used for other purposes?  
 14 MS MAKOLA: That was one of the issues  
 15 that was being looking into.  
 16 COMMISSIONER: Yes.  
 17 MS MAKOLA: So, and then the Commissioner  
 18 said look, he wants this audit to be wrapped up quickly.  
 19 And then I spoke to Desiree and the legal team and I said  
 20 look, there's this issue where I'm being told that the  
 21 audit has been delayed and the Commissioner wants this  
 22 thing done very quickly. And I remember I was very  
 23 uncomfortable with that kind of interaction because my  
 24 understanding was that the Commissioner doesn't get  
 25 involved in taxpayer issues and more importantly I hadn't

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1 seen those emails from the taxpayer and I think by now the  
 2 taxpayer who claims to have, who would be very familiar  
 3 with SARS process that they've been audited several times,  
 4 they would know who to talk to if they wanted to escalate  
 5 the issue, but they seemed to have escalated it to legal.  
 6 And I remember calling Refilwe, I think she was in Paris at  
 7 the time on a conference and I said look, I hear that  
 8 there's this issue, what's going on, because now we're  
 9 being put under pressure to wrap up this audit fairly  
 10 quickly in fact by Wednesday within three days. And I said  
 11 look, I'm uncomfortable with that because I can't tell  
 12 auditors to rush an audit. Firstly no taxpayer has a right  
 13 to demand that their audit should be finished, wrapped up  
 14 within a certain above days and I said also this audit  
 15 process, the integrity of the audit process into question  
 16 because let's suppose that the outcome of the audit goes  
 17 against the taxpayer, they will be the first people to  
 18 complain that we were biased, in fact we rushed through the  
 19 audit so the quality of the audit process would be in  
 20 question. So I said we need to take, obviously we need to  
 21 be reasonable but we need to do it properly and we cannot  
 22 be put under pressure by a taxpayer to wrap this thing up.  
 23 And then there was another email I think where the taxpayer  
 24 again was very unhappy and again that email didn't come to  
 25 me. So at some point we made a decision, it was myself -

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1 COMMISSIONER: Where did the email go to?  
 2 MS MAKOLA: It goes to, they went to  
 3 Refilwe those emails from that particular taxpayer so I  
 4 remember it was myself, Desiree Lawrence, Charles Makola,  
 5 sorry I can't remember who else but I think there was legal  
 6 person, I think it was Nico Alberts where we arranged to  
 7 meet with the representative of the taxpayer and by then  
 8 I'd seen the letters because I asked Refilwe to forward  
 9 those emails to me so that I could see what was going on  
 10 and there was a threat there that somebody at SARS had  
 11 disclosed confidential information and that's why this is  
 12 in the newspapers and then that needed to be dealt with and  
 13 then of course there was an issue about, there was, SARS  
 14 was auditing the marking that a return for a particular  
 15 year be filed even though the type of filing was, hadn't  
 16 sort of happened, there wasn't time to submit. But then  
 17 there were questions relating to the audit itself. So I  
 18 said look, let's just meet with this taxpayer and  
 19 understand what the issues are. We went to the meeting, it  
 20 was held, I think in Hilton, this is Hilton House and I was  
 21 very clear with the taxpayer, like I was, I said look, can  
 22 you give me a list of your concerns? Tell me what the  
 23 issues are so that we can agree a process going forward.  
 24 And the commitment that we made, I remember one of the  
 25 commitments, she listed all those things, the disclosure

1 and all of that. And the commitment that we made I said  
 2 look, we can't guarantee that we'll finish the audit on a  
 3 certain date but we will expedite because they kept saying,  
 4 like we were being told that there's a transaction that  
 5 hinged on this and we need to wrap this thing up. So we  
 6 said look, we will do our best to make sure that the audit  
 7 is completed within a reasonable time but we cannot commit  
 8 to a date, we can't say three days, two days, that can't  
 9 happen. And that meeting, we left that meeting and I felt  
 10 confident that the taxpayer understood.

11 COMMISSIONER: Okay, but let's just  
 12 define what the problem was that was being dealt with  
 13 there. The taxpayer, had the taxpayer made the deduction  
 14 for the money put into the rehabilitation fund?

15 MS MAKOLA: I can't remember what it was,  
 16 I don't get to involved here. The matter only came to me  
 17 when there were complaints so I wasn't too involved in the  
 18 audit but that's information that can be available.

19 COMMISSIONER: Anyway, so what happened  
 20 to the audit?

21 MS MAKOLA: So the audit did get  
 22 finalised and we were being asked by the Commissioner's  
 23 office to provide regular updates. It did get finalised  
 24 and after that I distanced myself, I said I don't want to  
 25 get too involved. So it did finalise. And then a letter

1 was sent to the taxpayer informing them of the outcome of  
 2 the audit.

3 COMMISSIONER: What was the outcome of  
 4 the audit?

5 MS MAKOLA: I think it was, they were not  
 6 going to, on the one year where there was an actual return  
 7 to audit the finding was that there would be no  
 8 adjustments. And the other year there couldn't be a  
 9 finding because that return hadn't been filed yet, it  
 10 wasn't time to file it so that year couldn't be audited.  
 11 And then a letter was sent to the taxpayer and again I  
 12 think by this time I was in London at an OC conference and  
 13 then I got a phone call from Desiree telling me that she  
 14 had been given an instruction to withdraw the letter that  
 15 had been sent to the taxpayer informing them of the outcome  
 16 of the audit. And then I said to her, no, that's not going  
 17 to happen. I said that's not going to happen and she said  
 18 no she'd been given that instruction by Refilwe, she'd been  
 19 sent an email, I hadn't been copied on an email. I know  
 20 that Tomela was copied on that email. So I phoned Refilwe,  
 21 I said but Refilwe, what's going on? Why are you giving an  
 22 instruction, and I actually said to Desiree when I spoke, I  
 23 said go and tell Refilwe that nothing's going to happen  
 24 until I come back and I will decide how we're going to  
 25 handle this, but we're not going to withdraw a letter

1 because it gives the wrong impression to the taxpayer that  
 2 deal every time they complain and also what does it mean  
 3 for us? But apparently the taxpayer claimed that the  
 4 letter that had been sent informing them of the outcome of  
 5 the audit was confusing. But once again by then the  
 6 taxpayer's representative had my cell number, had my email  
 7 address so they could easily have called to tell me that  
 8 there was an issue with the letter but they didn't.  
 9 Instead they sent an email, I think they sent it to the  
 10 Commissioner and the Commissioner forwarded it to Refilwe  
 11 and then there was an instruction that was sent to Desiree  
 12 to withdraw the letter and I wasn't copied on that email.

13 COMMISSIONER: So what happened?

14 MS MAKOLA: I came back from London and I  
 15 think it was a Friday and I came straight to the office. I  
 16 met with Refilwe and I met with Tom Moyane and he  
 17 apologised for the fact that I hadn't been copied on the  
 18 email, which I found odd, that I hadn't been copied on the  
 19 email even though the letter had gone through, basically  
 20 from one of my business units. And then I said to them  
 21 look, this is how I would propose we address this matter.  
 22 We cannot withdraw that letter. If there's confusion then  
 23 we need to amplify the letter that we've sent to the  
 24 taxpayer and tell them what our initial letter which they  
 25 found confusing meant. But I was not going to withdraw

1 anything because they'd create a wrong impression.

2 And I said to them also with the scrutiny that  
 3 SARS is under the last thing we want is to be doing  
 4 anything that's going to make us look like, especially with  
 5 the particular taxpayer, anything that's going to look like  
 6 we're doing favours for this particular taxpayer and that's  
 7 what I said in that particular meeting on the Friday. And  
 8 then I can't remember, I think it was the following day,  
 9 suddenly we were called to come back because the  
 10 Commissioner was still, he said he was confused by why is  
 11 it that we hadn't, we couldn't say in the letter that  
 12 everything was fine, including the year that we hadn't  
 13 audited but we couldn't audit it because the tax return  
 14 hadn't been filed. And I tried to explain this to him on  
 15 the phone. It was a lengthy telephone conversation, it  
 16 took a whole hour. At some point he said the taxpayer when  
 17 he said he was satisfied he was satisfied with the  
 18 explanation but then he sent me and Refilwe and myself said  
 19 we needed to meet at the office. It was a Saturday. We  
 20 went back to the office on Saturday and I explained to  
 21 them. I said we cannot say to a taxpayer and guarantee an  
 22 outcome of an audit that we hadn't conducted. I said we've  
 23 said what the finding was in respect of the year that we've  
 24 audited but we can't say that on the subsequent year  
 25 because the tax return hadn't been filed and we cannot give

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1 those guarantees because in fact the legislation doesn't  
 2 even allow us because prescription, I can't remember, it  
 3 used to be section 59, I can't recall offhand which section  
 4 it is of the Tax Administration Act which says you can re-  
 5 open an assessment if there's misrepresentation of fact or  
 6 – ja.

7 COMMISSIONER: Ja, okay so you said to  
 8 them look, we can't say there's been an audit when there  
 9 hasn't been an audit, that's essentially – so what happened  
 10 next after that?

11 MS MAKOLA: So that's where we left it at  
 12 and I think a letter was sent to the taxpayer to explain  
 13 and I think in fact before –

14 COMMISSIONER: To explain to the taxpayer  
 15 that you can't do this unless there has been an audit?

16 MS MAKOLA: I can't remember what the  
 17 letter said but there was communication, interaction with  
 18 the taxpayer by the team to explain to them, to ask them to  
 19 explain what it is that they found confusing in the initial  
 20 letter so that they could clarify the confusion.

21 COMMISSIONER: And then what happened  
 22 next?

23 MS MAKOLA: And there were subsequent  
 24 interactions with the taxpayer which I wasn't involved in  
 25 but I think there was a letter that was finally sent to the

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1 taxpayer to explain that. And when we were asked for, when  
 2 the Commissioner asked me for an update on the matter, I  
 3 asked the team to provide me an update and there was a memo  
 4 that was prepared in think by Nico Alberts which he sent to  
 5 me and I forwarded it to the Commissioner's office.

6 COMMISSIONER: Okay.

7 PROF KATZ: Can I just get clarity on one  
 8 thing here? It's one thing to finalise an audit, it's  
 9 another thing in finalising it to say there are still  
 10 problems or we give you a clean bill of health. What was  
 11 the requirement, to give a clean bill of health or simply  
 12 to finalise with all, stating all the problems?

13 MS MAKOLA: My expectation was that if  
 14 you're familiar with the tax legislation is that you would  
 15 give, you would tell the taxpayer that there's an audit  
 16 that was conducted, we looked at this and these are the  
 17 adjustments that we are making, if there are adjustments to  
 18 be made or we're not making the adjustments. But what I  
 19 felt was happening after that letter had been sent to the  
 20 taxpayer, the taxpayer who said they were familiar with the  
 21 audit process at SARS so they should be familiar with the  
 22 letters that we send after an audit has been conducted.  
 23 They said they found the letter confusing. And what the  
 24 sense that I got was that the expectation was that we  
 25 should give them a clean bill of health and I said we can't

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1 do that. We could not do that, more importantly because  
 2 even the Tax Administration Act, and section 59 before that  
 3 allows SARS to go back and re-open assessments unless –

4 COMMISSIONER: I understand the reasoning  
 5 but the point is they wanted a clean bill of health, they  
 6 wanted a –

7 MS MAKOLA: I don't know if the taxpayer  
 8 wanted that because they didn't articulate that to me but  
 9 that's the sense that I got from the discussion that I was  
 10 having with the Commissioner because he kept saying but why  
 11 can't we say this in the letter and I said we can't.

12 PROF KATZ: Quite simply finalising.

13 MS MAKOLA: Yes.

14 PROF KATZ: It's finalising with the  
 15 clean bill of health.

16 MS MAKOLA: That's the expectation ja,  
 17 because what I understood was that there was a transaction  
 18 that was happening on which sort of the outcome –

19 COMMISSIONER: That's fine. I think  
 20 we've had your answer, thank you very much.

21 MR KAHLA: Just a question from me on  
 22 this, how did it come about that the matter got into the  
 23 public domain? How was the taxpayer's matter landing up in  
 24 the public, how did the taxpayer's matter land up in the  
 25 public domain?

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1 MS MAKOLA: I don't know and I've tried  
 2 to investigate and I can't find the source of the leak.  
 3 The taxpayer thought that it was us and they were very  
 4 suspicious even when the audit team had to go, because they  
 5 said they had the documents. They wanted the audit team to  
 6 become an audit at their premises because they were worried  
 7 that somebody at SARS had leaked that information. Who  
 8 that person was I don't know but the first time that I  
 9 became aware that they were all happening in respect of  
 10 those two rehabilitation trusts was when this issue was  
 11 escalated to me, when it apparently the taxpayer complained  
 12 that there was an undue delay in finalising the audit.

13 MR KAHLA: I suppose you've got protocols  
 14 relating to protecting taxpayer information in your hands,  
 15 don't you?

16 MS MAKOLA: Ja –

17 MR KAHLA: I suppose we've got human  
 18 beings as well.

19 MS MAKOLA: We've got human beings as  
 20 well, ja. But ideally if we were all following the rules  
 21 then these leaks wouldn't happen but then again you're  
 22 dealing with human beings and not everybody follows the  
 23 rules. But I don't know who leaked that particular  
 24 information. Like I said I didn't know that there was even  
 25 an audit happening until the matter was escalated to me.

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1 MS STEINBERG: The outcome of the audit  
 2 was favourable to the taxpayer?  
 3 MS MAKOLA: I think there were no  
 4 adjustments that were made and there's an opinion that  
 5 explains the basis upon which the audit would be finalised.  
 6 Nico Alberts was the person providing the legal input into  
 7 the process.  
 8 MS STEINBERG: In fact as I recall the  
 9 outcome was that SARS owed the taxpayer money.  
 10 MS MAKOLA: Yes, I think there was a  
 11 small refund that was due.  
 12 MR KAHLA: Again even in that matter in  
 13 relation to that outcome, on its merits you're accountable  
 14 that it had been properly determined the audit outcome.  
 15 There's nothing that left you uncomfortable in relation to  
 16 the audit outcomes?  
 17 MS MAKOLA: No, and the reason is because  
 18 of the team that was involved. It wasn't just the auditors  
 19 that were involved, so the checks and balances from legal  
 20 as well. I wanted somebody from legal to be part of the  
 21 process throughout, provide guidance. Their job is not to  
 22 condone what we do, it's to provide legal advice on whether  
 23 or not what we're doing, the assessments that we're issuing  
 24 are defensible and because of that I felt comfortable that  
 25 the right decision had been reached. But again I didn't do

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1 the audit myself, I don't know whether I would have come to  
 2 a different conclusion if I had been the one doing the  
 3 audit. But I was satisfied that they'd done a thorough  
 4 job.  
 5 MR KAHLA: You're satisfied that the  
 6 auditors never felt under pressure to render a particular  
 7 outcome, they still did the job as they were expected to do  
 8 the job?  
 9 MS MAKOLA: Yes, and I gave the clear  
 10 instruction that I would never give an instruction to  
 11 anyone in audit to finalise an audit within a few days if  
 12 that was not possible, because that compromises the  
 13 integrity of the audit process and the quality and it also  
 14 puts us at risk because what if the assessment that comes  
 15 out as a result of that truncated process goes against the  
 16 taxpayer? It gives the taxpayer a basis for saying that  
 17 you didn't follow a proper process, you're biased and you  
 18 rushed and you didn't consider all the material facts and  
 19 that was a risk, one of the risks that I highlighted in all  
 20 the discussions that we've had, so, and they took the time  
 21 that they needed, obviously being mindful of the fact that  
 22 you obviously, this thing had to be finalised and they are  
 23 not the only taxpayer for whom these things, the speed with  
 24 which an audit happens is an issue. There are other  
 25 taxpayers who raise an issue as to the length of an audit

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1 where it can be explained because somebody didn't provide  
 2 the relevant information or they provided incorrect  
 3 information and that could be the reason, but where there's  
 4 a delay, we have to address it because the taxpayer needs  
 5 certainty but we still have to do a thorough job. There's  
 6 a balance that needs to be struck.  
 7 MS STEINBERG: Can I move off this topic?  
 8 I want to ask you about a memorandum that very recently  
 9 came to our attention that you sent to Mr Kingon on the 8th  
 10 June this year. And the subject is a request for access to  
 11 SSA's Act 70 recording.  
 12 MS MAKOLA: Yes.  
 13 MS STEINBERG: And really it's a request  
 14 that you make to the acting Commissioner to write to the  
 15 head of the SSA to get a particular recording.  
 16 MS MAKOLA: Ja.  
 17 MS STEINBERG: And what you explain is  
 18 that in June 2016, over a year before you were in this  
 19 organisation, it was brought to SARS's attention by the SSA  
 20 that they're in possession of a legally obtained telephonic  
 21 conversation between SARS employee Yegen Mundi and a  
 22 particular taxpayer I am not going to name.  
 23 [16:24] But who is described here as suspected of  
 24 smuggling cigarettes.  
 25 MS MAKOLA: Yes.

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1 MS STEINBERG: And you say the recordings  
 2 were among others Yegen Mundi reportedly provides  
 3 information related to competing taxpayers to this alleged  
 4 cigarette smuggler and reportedly discusses other SARS  
 5 employees with the taxpayer, it's the employees who were  
 6 investigating him and they were planning, were played in a  
 7 meeting attended by the SSA and SARS. You carry on and say  
 8 the SSA requested at that time that the then SARS  
 9 Commissioner Mr Moyane formally request the recordings via  
 10 the office of the director general. Mr Moyane was briefed  
 11 on the matter and you attach various affidavits to show  
 12 that he was briefed on the matter, as was Mr Mathebula and  
 13 I want to ask him about this tomorrow and Mr Moyane refused  
 14 to write that letter to the SSA and as a result SARS never  
 15 did get that recording. Now you point out that in terms of  
 16 section 34 of the Prevention and Combating of Corrupt  
 17 Activities Act SARS is required to report matters involving  
 18 corruption, theft, fraud, extortion, forgery and the  
 19 uttering of a forged document to the South Africa Police  
 20 Service. Once the recordings have been received, reviewed  
 21 and analysed these matters may need to be reported to the  
 22 SAPS in terms of that Section 34.  
 23 MS MAKOLA: Yes.  
 24 MS STEINBERG: Now I'm aware that SARS  
 25 did receive that recording subsequent to Mr Kingon's

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1 request and my question to you really is, what is SARS  
 2 doing in terms of Section 34 of the act?  
 3 MS MAKOLA: I'll have to get an update  
 4 from Carla Da Silva who is the head of the fraud  
 5 investigations unit because that request in that memo I was  
 6 making it on her behalf. There is an investigation that is  
 7 being conducted relating to those tapes. I must just note  
 8 that I was under the impression that you couldn't ask me  
 9 about these things, these tapes but you've asked and I  
 10 can't say no. But I can get you an update from the head of  
 11 the fraud investigations unit to see where they are and  
 12 what the progress is on the investigations. I try not to  
 13 get involved in the operational because I want to avoid any  
 14 suggestion that I'm interfering or targeting people that,  
 15 because there is this decision that this unit was being  
 16 misused by more senior people to target certain  
 17 individuals.  
 18 MS STEINBERG: The tobacco task team  
 19 you're talking about?  
 20 MS MAKOLA: Just, even the fraud  
 21 investigations division because tobacco task team was part  
 22 of fraud investigations or anti-corruption. But I can get,  
 23 I can ask for Carla to provide an update on where they're  
 24 at if you need that information.  
 25 MS STEINBERG: That would be helpful.

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1 COMMISSIONER: Did that recording only  
 2 come to light after Mr Moyane was suspended?  
 3 MS STEINBERG: Yes -  
 4 COMMISSIONER: Was it ever received by  
 5 SARS?  
 6 MS STEINBERG: No, no what happened is Mr  
 7 Moyane was asked to send the letter so that the SSA would  
 8 release the recording and he refused to send the letter.  
 9 COMMISSIONER: And did it so that that  
 10 recording never -  
 11 MS STEINBERG: Never arrived, only now in  
 12 the last couple of months -  
 13 COMMISSIONER: Yes.  
 14 MS STEINBERG: Pursuant to Ms Makola's  
 15 memo that SARS has received it. But she's correct to say  
 16 that if somebody in SARS had information about corruption  
 17 within SARS there was a legal obligation on them to report  
 18 it.  
 19 MS MAKOLA: Should we send the memo,  
 20 under progress update?  
 21 COMMISSIONER: I don't know, do we need  
 22 to know what has happened since, is it, Mr Makola says that  
 23 she's need to first make an inquiry into that, do you want  
 24 her to or not?  
 25 MS STEINBERG: Well it seems to be

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1 relevant to governance questions, so yes.  
 2 COMMISSIONER: Would you make inquiries  
 3 and update us on what's happening.  
 4 MS MAKOLA: Okay so just to be clear, you  
 5 want, do you want to be informed of the fact that an  
 6 investigation is undergoing or do you want to know how far  
 7 the investigation is?  
 8 MS STEINBERG: Just broadly.  
 9 MS MAKOLA: Okay.  
 10 MS STEINBERG: We don't need the details  
 11 but broadly.  
 12 MS MAKOLA: Okay. Would you mind if I  
 13 discussed it with Mr Kingon first because like I say I was  
 14 under the impression that I couldn't be asked questions on  
 15 the SSA thing.  
 16 MS STEINBERG: No course you can.  
 17 MS MAKOLA: Okay.  
 18 MR KAHLA: The -  
 19 COMMISSIONER: Carry on.  
 20 MR KAHLA: Thanks Judge. Did the  
 21 Commissioner set out why he was n to prepared to make the  
 22 request as he need to in relation to this recording?  
 23 MS MAKOLA: Not that I know of, because  
 24 remember this goes all the way back to 2016. I wasn't here  
 25 and it's not apparent from, I don't even know if Carla was

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1 the one who made that request but, to the Commissioner but  
 2 I don't know what his reasons were for not wanting to, for  
 3 refusing to assist.  
 4 MS STEINBERG: Well his email, he was -  
 5 MS MAKOLA: It was a one line email at  
 6 best.  
 7 MS STEINBERG: He said he didn't like the  
 8 tone of the request.  
 9 MS MAKOLA: Sorry I now remember that  
 10 email. It was a one line email, I think ja.  
 11 COMMISSIONER: He didn't like the tone of  
 12 the request?  
 13 MS STEINBERG: He said he didn't like the  
 14 tone of the request, I will bring it tomorrow because it's  
 15 relevant to Mr Mathebula's testimony. He didn't like the  
 16 tone of the request, who is the upstart who sent this, yes  
 17 I don't need a response. That's what the email says I  
 18 remember it.  
 19 MS MAKOLA: Can I just confirm, just to  
 20 correct, myself. I have seen that email.  
 21 COMMISSIONER: Let's go back a bit. I  
 22 think Norman gets cross.  
 23 MS STEINBERG: And he's the boss.  
 24 MS MAKOLA: Apologies. Sorry.  
 25 COMMISSIONER: No, no don't worry. Just

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1 relax, don't worry.  
 2 MS MAKOLA: I'm trying to relax Judge.  
 3 MR KAHLA: Have you seen the email in  
 4 respect of which the Commissioner had difficulties with the  
 5 tone?  
 6 MS MAKOLA: I've seen a hardcopy of that  
 7 email, ja.  
 8 MR KAHLA: Okay.  
 9 MS MAKOLA: I don't know if it was Carla  
 10 who showed it to me but it sounds like something I've seen  
 11 before.  
 12 COMMISSIONER: We'll see them tomorrow,  
 13 will we?  
 14 MS STEINBERG: Yes.  
 15 MS MASILO: How different is that email  
 16 requesting that, requesting the Commissioner to make the  
 17 request from the letter that you wrote to Mr Kingon?  
 18 MS MAKOLA: I don't know if they're  
 19 different. I think the recipients are the ones that are  
 20 different. They made different decisions. It's the same  
 21 request, right assist in obtaining those tapes but they're  
 22 directed to different people. One took a different  
 23 approach, another, you know so I, I don't think there was a  
 24 difference in the substance. Maybe the way in which they  
 25 look, the format of the request but I think the ultimately,

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1 fundamentally the differences was the recipients of the  
 2 requests.  
 3 MR KAHLA: Not the tone?  
 4 MS MAKOLA: I don't know, like I, maybe  
 5 there's a difference in the tone, I don't know but people  
 6 have different writing styles and not everybody likes -  
 7 COMMISSIONER: SSA has their writing  
 8 style.  
 9 MS MAKOLA: Ja, and I have my own writing  
 10 styles, somebody else has a writing style but I don't know  
 11 that the writing style -  
 12 COMMISSIONER: We'll see those documents  
 13 tomorrow.  
 14 MS MAKOLA: The main I think, the main  
 15 issue is the fact that substance was we needed, those tapes  
 16 needed to be obtained.  
 17 COMMISSIONER: Exactly.  
 18 MS MAKOLA: Regardless of how the request  
 19 was articulated.  
 20 COMMISSIONER: Any way we'll hear about  
 21 that all tomorrow.  
 22 MS STEINBERG: So my final question  
 23 really bring us full circle. You initially came forward to  
 24 say you were angered at the remarks made that the current  
 25 executive is incompetent. Now a lot of the evidence we've

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1 heard, an inordinate amount of time has been spent hearing  
 2 about how SARS's capacity to combat internal corruption as  
 3 well as taxpayer malfeasance has been decimated in the last  
 4 few years and in fact the National Prosecuting Authority  
 5 raised serious concerns in Parliament recently. Saying  
 6 that the number of cases that are now referred to, well  
 7 there aren't any really referred to them, practically none  
 8 and I looked through SARS's annual reports and one does see  
 9 a very worrying decline in the cases successfully  
 10 prosecuted. So in 2013, 2014 72.1% were successfully  
 11 prosecuted. 2014/2015 95.5%, 2015/2016 34.3%. We get to  
 12 this year 2017/2018 and its 21.4% and really the question  
 13 is, is it not accurate to say that the space is not being  
 14 competently managed, given these declines?  
 15 MS MAKOLA: Look I have, I've been  
 16 looking at the criminal investigations space for a while.  
 17 There are some challenges there. But firstly just to, I'll  
 18 deal with the internal stuff, I just want to deal with the  
 19 NPA what they're saying. Yes, this year there's been a  
 20 decline in the number of cases referred to them. However  
 21 there are over a thousand cases sitting with the NPA from  
 22 previous years which have not, there are over a thousand  
 23 cases with the NPA which have not made their way into court  
 24 yet.  
 25 MS STEINBERG: And that problem is on the

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1 NPA's side you are saying?  
 2 MS MAKOLA: Yes, they're also under  
 3 resourced. So there is a backlog of cases that haven't  
 4 been prosecuted yet. Myself and the management of the, in  
 5 fact I've even mentioned this Exco that we may end up  
 6 having to make a decision about what to do with those cases  
 7 because the thing about human memory is that it fails the  
 8 longer it takes. So if you're going to have a case that's  
 9 been sitting with the NPA for five years by the time you  
 10 prosecute it what are the chances that the witnesses that  
 11 you interviewed when you were investigating will be  
 12 reliable. So there is a backlog at the NPA. Internally  
 13 we're having challenges, there's a challenge of capability.  
 14 Some of our investigators are not performing at the desired  
 15 level and this is something that I've been aware of and in  
 16 fact we're engaged in the process now which is quite  
 17 painful. Where we, it has resulted in conflict between us,  
 18 SARS as an employer and the trade unions because we've had  
 19 to assess whether or not some of our investigators are  
 20 actually competent to be investigators, to even be called  
 21 investigators because the job that they're doing is shoddy.  
 22 I signed off on the cases that get handed over to the NPA,  
 23 so I read through the investigation file and I have been  
 24 raising concerns, like the quality of some of those  
 25 reports, case reports is shocking. I mean never mind the

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1 typos, but they're not great. There's not much depth. So  
 2 we acknowledge that there are those shortcomings but we're  
 3 doing something about it and then there's a supply of case,  
 4 because we have a whole process, you know the  
 5 investigation, the investigators are also criminal  
 6 investigations as a unit can't cherry pick their own cases.  
 7 So the cases, before they get to criminal investigations  
 8 they have to make their way through sort of a risk  
 9 assessment. So that we have an independent and impartial  
 10 person assessing whether or not a case is worthy of  
 11 investigation. So you have, we have a division called  
 12 criminal case selection. So those are the people who do  
 13 risk, we identify cases that need to be investigated. So  
 14 those cases once they've identified them they get fed  
 15 through into the criminal investigation space and then  
 16 these people investigate and for someone to be prosecuted  
 17 and then it gets handed over to the NPA. SAPS and then the  
 18 NPA.  
 19 So there's an entire value chain that goes into,  
 20 it's not just CI, there is case selection which is under  
 21 resourced as well. So things take some time and the  
 22 shortage of cases has actually been escalated to me by some  
 23 of my senior managers but by then even the group executive  
 24 had raised it with me that the end flow of cases is  
 25 concerning this year. There's a capability and an issue.

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1 There's also capacity issue that we are aware of and that  
 2 we're trying to do something about. It's a painful  
 3 exercise because they're also human beings that we're  
 4 dealing with and some people we've wanted to mobilise them  
 5 into other divisions because they're not, we don't feel  
 6 that they're qualified to be working in the investigations  
 7 space. So what I'm, I think the upshot of it is that yes  
 8 there are shortcomings internally which we're aware of and  
 9 which we are addressing and will require us to make some  
 10 very tough calls which don't always go down very well  
 11 obviously, you're dealing with human being and their  
 12 training is involved but ultimately we need to find a way  
 13 to resolve this. But there's also a, I have a process that  
 14 we have no control over what happens at the NPA and we are  
 15 having multiple discussions with them as well about the  
 16 backlog and they have no, I mean they, I think they are  
 17 also under resourced and so it's difficult.  
 18 MS STEINBERG: I wonder if you're aware,  
 19 you know the common thread in the evidence from the  
 20 criminal people, what used to be National Projects and  
 21 Centralised Projects and was destroyed in the new operating  
 22 model, the common thread is that why these units used to be  
 23 effective was because in that whole value chain that you  
 24 described people worked together so that there was a 360  
 25 view of complex syndicates.

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1 MS MAKOLA: Ja.  
 2 MS STEINBERG: Taxpayers with many  
 3 tentacles but what happened in the new operating model was  
 4 that these units were fragmented so that nobody ever had  
 5 the 360 view anymore and all our witnesses from the  
 6 criminal space said that is the primary problem that stops  
 7 them from being able to do their investigations and  
 8 preparation. Are you aware of that, are you dealing with  
 9 that?  
 10 MS MAKOLA: I'm aware of it. Not only am  
 11 I aware of it but I've, I'm also trying to sort create  
 12 something similar that gives us a 360 view of a case. I  
 13 know there's all sorts of talk about it, the National  
 14 Project and Special Projects and whether or not, I don't  
 15 want to mention the name, but we're actually at the moment  
 16 are in the process of establishing a unit of that kind  
 17 which will have not only civil auditors but criminal  
 18 investigators and risk assessors and people who will do  
 19 evidence support to investigate those high risk areas that  
 20 have been identified such as illicit financial flows,  
 21 tobacco fraud, alcohol, fuel, textiles and the syndicates,  
 22 the VAT syndicates and the other syndicates, I think there  
 23 has been an acceptance that those things worked. I don't  
 24 know why they were dismantled but there is an  
 25 acknowledgement and I've certainly spent enough time with

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1 some of the people who used to work in those teams to  
 2 explain to me how effective those were and why they were  
 3 effective and one of the things that made them effective is  
 4 that the agility and speed with which they were able to act  
 5 because in these kinds of matters, especially with VAT and  
 6 fraud syndicates if you don't act quickly to secure the  
 7 money you can just forget because you're not going to  
 8 collect and these are some of the things that have resulted  
 9 in our debt book ballooning to what it is because we can't  
 10 actually collect. That money is gone. But because there's  
 11 a process that's mapped out we have to audit these  
 12 individuals and issue assessments but we can't collect on  
 13 those assessments and that's what we end up having to  
 14 address the ballooning of the debt book by doing temporary  
 15 write off because we can't find the money anywhere and when  
 16 I read through the case reports I can see the money goes  
 17 into one bank account and as soon as it does, it gets  
 18 spread into other bank accounts and then it's gone. So  
 19 even if you raise that assessment you're never going to  
 20 collect. So we need to move with speed and be agile and  
 21 that's why and that's been a recommendation of that, how  
 22 effective that is and that's what we're trying to do with  
 23 the new team.  
 24 COMMISSIONER: What I'd like to know is  
 25 why won't you try to do it in July last year?

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1 MS MAKOLA: I was new and trying to learn  
 2 the business.  
 3 COMMISSIONER: Sorry.  
 4 MS MAKOLA: I was new in the organisation  
 5 and I was trying to learn the business.  
 6 COMMISSIONER: Have you just come across  
 7 this problem now?  
 8 MS MAKOLA: Which problem?  
 9 COMMISSIONER: Well the problem of the  
 10 non-integrated approach to -  
 11 MS MAKOLA: It took me a while to  
 12 understand Judge. I don't, I mean I think I was also  
 13 cautioned not to start making big changes without actually  
 14 understanding the environment.  
 15 COMMISSIONER: Ja.  
 16 MS MAKOLA: It's a complex environment.  
 17 I wanted to be cautious and actually understand because if  
 18 I introduce a change in an environment that I don't  
 19 understand I don't think it's going to be effective. So I  
 20 needed to understand that.  
 21 COMMISSIONER: Ja. Thank you.  
 22 MS STEINBERG: Mr Kahla, are you wanting  
 23 to ask something?  
 24 MR KAHLA: No, no.  
 25 MS STEINBERG: Oh, you know I never, it

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1 comes in again but I never got to tell you the second  
 2 concern that Mr Denath raised and the witness before him.  
 3 That concerns SARS's internal corruption busting capacity.  
 4 MS MAKOLA: Yes.  
 5 MS STEINBERG: And the concern there is  
 6 that just before that team was broken up it had received  
 7 these reports saying they were the best in the country.  
 8 Now those people who established the unit, that is the best  
 9 in the country are now not even being interviewed for the  
 10 top job and that's the second concern and I think it  
 11 relates now to my question what is SARS doing about this  
 12 broken internal corruption unit and why are the people who  
 13 did so well not being considered for the job?  
 14 MS MAKOLA: So I don't know if they  
 15 applied, number 1.  
 16 MS STEINBERG: Oh they did.  
 17 MS MAKOLA: So maybe they were not  
 18 shortlisted. SARS, I know one of the people who, in fact  
 19 both Carla and Yousuf probably wouldn't have met the EE  
 20 requirements because if you want to recruit someone who is  
 21 not an EE candidate the you'd have to do a deviation. So I  
 22 think that's the reason they didn't even get shortlisted.  
 23 MS STEINBERG: What is the EE requirement  
 24 here?  
 25 MS MAKOLA: I think it was supposed to be

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1 black women. So they're neither of those.  
 2 MS STEINBERG: So neither of them are  
 3 black women?  
 4 MS MAKOLA: Ja. So that's the reason  
 5 they were not interviewed. It wasn't like, I have nothing  
 6 to gain from preventing either of them from applying for  
 7 the job. But that's EE is important. There's a -  
 8 COMMISSIONER: Are the positions vacant?  
 9 MS MAKOLA: Yes, because a candidate  
 10 that, to whom I had made the offer, I'm talking about the  
 11 executive one didn't accept it.  
 12 MS MASILO: But is the EE requirement so  
 13 important that you would overlook people who are, I mean  
 14 who have so much experience who could do the job and you  
 15 know and make the division to be more efficient?  
 16 MS MAKOLA: Look -  
 17 MS MASILO: If you can do a deviation, as  
 18 you say you can.  
 19 MS MAKOLA: That's probably what we'd  
 20 have to do but like I said there's something I need to,  
 21 this is something I need to address about whether or not  
 22 things went wrong because it may be that the advice that I  
 23 got from HR was incorrect and Yousuf should occupy that  
 24 particular position, because that's the only one I can talk  
 25 to. But it certainly, from as a South African and also

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1 having been at SARS for this, for just over a year  
 2 employment equity yes is important. I don't know whether  
 3 at the expense of quality, because I don't want to assume  
 4 that any EE candidate would compromise the quality of the  
 5 work in there. So I think I want to be careful there  
 6 because there are EE candidates that we have interviewed  
 7 and whom we found impressive.  
 8 [16:44] So I didn't interview them just on a whim. I  
 9 didn't make an offer to that women on a whim, you know she  
 10 seemed qualified for the job. The only reason that she's  
 11 not here is because the financial offer wasn't satisfactory  
 12 to her. So, I don't want to make a statement to the effect  
 13 that the EE and the non-EE candidates are better than each  
 14 other because that's not something I'm very comfortable  
 15 with.  
 16 MS MASILO: And for how long has the  
 17 position been vacant?  
 18 MS MAKOLA: For a while but it pre-dates  
 19 my arrival, ja.  
 20 COMMISSIONER: Sorry, how long has it  
 21 been vacant did you say for while? How long?  
 22 MS MAKOLA: Ja, well, I arrived in July  
 23 that position was already vacant and there were interviews  
 24 that -  
 25 COMMISSIONER: Is that a year, you mean?

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1 MS MAKOLA: Hm, in some areas some  
 2 vacancies take long to -  
 3 COMMISSIONER: Ja, well obviously it  
 4 takes a year. How long do you think it will still take  
 5 before -  
 6 MS MAKOLA: I think it would depend on  
 7 the outcome of my discussion about the advice, the HR  
 8 advice that I got about whether or not this particular  
 9 position should actually just be given to Yousuf or not.  
 10 If the outcome is that in fact what we did was incorrect  
 11 and that Yousuf should occupy that position then it  
 12 shouldn't take long. But if the view is still that look, he  
 13 doesn't qualify for the position then we would have to  
 14 interview and there is an issue obviously financially, you  
 15 know. Our allocation from the National Treasury has been  
 16 cut severely. So, we can't even afford in certain  
 17 instances to fill those vacancies because there's just no  
 18 money to go around. So, it may be that that position gets  
 19 given to somebody because there's no money or maybe it  
 20 takes longer to fill or it may be filled overnight because  
 21 there is somebody at SARS who qualifies to fill that  
 22 position. But as to whether or not an EE versus non-EE  
 23 should have been better, I can't talk to that because an EE  
 24 candidates can do certain things would just as good a job.  
 25 MS STEINBERG: I'm sure there are.

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1 There's an alarming attrition rate in this space from the  
 2 figures I see -  
 3 MS MAKOLA: And for investigations in  
 4 particular.  
 5 MS STEINBERG: Ja, in criminal  
 6 investigations in particular and, you know, one of the  
 7 concerns here is the number of experienced people leaving  
 8 SARS. So, I would imagine it's a concern whether or not  
 9 there's an EE requirement that internal people with many  
 10 years of experience and these A report cards do get placed.  
 11 MS MAKOLA: I think any organisation  
 12 would be concerned about losing skilled resources but not  
 13 having spent enough time with the people because some of  
 14 them I don't even know who they are, so I can't talk to - I  
 15 don't have dealings with these people. So, I would have to  
 16 look at their exit interviews and notes. Maybe they get a  
 17 better financial offer somewhere else or maybe they left  
 18 because they're unhappy but I think every individual has  
 19 their reasons for leaving but the attrition is alarming  
 20 regardless of the reasons for the attrition. Obviously if  
 21 we could hold onto these people that would be first prize  
 22 but sometimes you can't really hold on to people because  
 23 they got better opportunities out there.  
 24 MS STEINBERG: Well if they can't get  
 25 promoted then it is unlikely that one would hang on to

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1 them.  
 2 MS MAKOLA: Yes, I know that that's also  
 3 an issue because I think there is no promotions policy at  
 4 SARS. You have to wait for it. So, appointments are  
 5 vacancy driven so you can't just get promoted. You have to  
 6 wait for a vacancy to open up and then you apply for that  
 7 vacancy.  
 8 MS STEINBERG: If you're a black woman in  
 9 this case?  
 10 MS MAKOLA: I think I've seen white  
 11 people applying as well. But the point its vacancy driven.  
 12 There's no promotion policy that I'm aware of.  
 13 MS STEINBERG: Mr Kahla has -  
 14 MR KAHLA: Just one question on my side,  
 15 Ms Makola. We've gone through the areas where there're no  
 16 protocols. We probably need to devise protocols. I think  
 17 there's one area I've heard of here in relation to  
 18 applications for preservation orders for example where  
 19 you've got protocols that suggest that you've got to have  
 20 approvals of about eight to 12 officers.  
 21 MS MAKOLA: Hm?  
 22 MR KAHLA: I don't know whether you heard  
 23 that testimony amongst the information that have been  
 24 distracting to you.  
 25 MS MAKOLA: I haven't. Remember,

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1 unfortunately, I use the unfortunately word because I've  
 2 been avoiding watching the proceedings because I consider  
 3 them to be a distraction, however, I am familiar with that  
 4 particular concern and it has to do with the approval of  
 5 legal costs for some of these processes and because I know  
 6 about it because the people who have raised this issue are  
 7 within debt management which reports to me and they've  
 8 raised an issue about how long it takes for approvals to be  
 9 obtained. I know of a matter where a request was made, I  
 10 think June 2017, and to this day it hasn't been approved.  
 11 As to what the delays are I don't know and there'd been a  
 12 few of those that were escalated to me and I've also  
 13 escalated them to the acting Commissioner to say look,  
 14 these are the challenges that I'm finding, you know,  
 15 whether or not we get approval for cost of a tax enquiry or  
 16 a liquidation or a preservation order, those kind of  
 17 things. They just seem to be taking longer than the team  
 18 would like and they find that it compromises the prospects  
 19 of collection because the longer it takes the harder it  
 20 gets to be able to collect.  
 21 MR KAHLA: Has Exco dealt with that? Has  
 22 Exco been appraised of and is it dealing with this or is it  
 23 just left to you -  
 24 MS MAKOLA: No, no.  
 25 MR KAHLA: To try and find a solution

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1 with your colleagues?  
 2 MS MAKOLA: Myself and the acting  
 3 Commissioner are dealing with it. In fact, yesterday  
 4 morning we met with some of the senior people in the legal  
 5 department to discuss precisely these kind of concerns and  
 6 it clearly talks to - I think what one of the people who  
 7 were in the meeting said that there's an issue of  
 8 accountability because the budget, the budget for legal  
 9 fees is sort of under the control of legal. But then you  
 10 have enforcement which wants to take a particular legal  
 11 process, either conduct a check enquiry or obtain a  
 12 preservation order. So, we are the ones who initiate the  
 13 processes and then want legal to sign off on the fees and  
 14 yet they're the ones who're accountable for the budget. So  
 15 that was one of the reasons that will be given about the  
 16 challenges that we've been having in obtaining approvals  
 17 speedily. But we're addressing that and it was very clear  
 18 that everybody is committed to resolving it because it  
 19 actually has tarnished the reputation of the organisation.  
 20 I know there was a story in the papers a few months ago  
 21 where lawyers and advocates actually said like that they  
 22 refuse to do work for SARS because it takes too long to  
 23 have their bills paid. So that is an ongoing issue but we  
 24 are taking it seriously and we are looking into it and I  
 25 think the reason that the acting Commissioner has involved

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1 me in this is because think my division, enforcement, is a  
 2 user of legal services more than any other division. So,  
 3 we need to have a better relationship, a working  
 4 relationship with clear accountability for who pays for  
 5 what and how long approvals get obtained. But that is, I'm  
 6 aware of that problem.  
 7 COMMISSIONER: It sounds to me that all  
 8 these initiatives have only started since Mr Kingon is  
 9 here?  
 10 MS MAKOLA: I would beg to differ, Judge,  
 11 because the issue of the legal fees that was escalated long  
 12 before he became acting Commissioner.  
 13 COMMISSIONER: I'm interested so much in  
 14 the fees but taking a year to get approval to get a  
 15 preservation order for example?  
 16 MS MAKOLA: Look, those things were  
 17 escalated to me.  
 18 COMMISSIONER: Ja.  
 19 MS MAKOLA: And Refilwe and I try to sort  
 20 some those things out.  
 21 COMMISSIONER: Well, I hope they get  
 22 sorted out.  
 23 MS MAKOLA: Me too, Judge.  
 24 COMMISSIONER: Is there any more?  
 25 MS STEINBERG: There are a couple more

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1 things that -  
 2 COMMISSIONER: Okay, carry on, Madam.  
 3 What is the time?  
 4 PROF KATZ: Its seven minutes to five.  
 5 COMMISSIONER: Carry on. I didn't know  
 6 there were more things.  
 7 MS STEINBERG: There were just a couple  
 8 more things that arose in testimony that I think are worth  
 9 following up. I've kept notes of them. The one, it was  
 10 the testimony of Mr Lateef as I recall and he spoke about a  
 11 very litigious taxpayer also involved allegedly in the  
 12 criminal world where he had been instructed to hand over  
 13 the files, also some strange things. But then somebody  
 14 took a decision to conduct an audit review and that was  
 15 communicated to the taxpayer and he held this up in court,  
 16 the taxpayer and that would be the end of SARS's years of  
 17 litigation against him. Now I believe that that matter has  
 18 been followed up on and I'm just wanting to hear from you  
 19 what happened there?  
 20 MS MAKOLA: So, ja, this audit review  
 21 thing I was informed of it soon after I arrived and I  
 22 checked the Tax Administration Act, there's no such and the  
 23 view internally was that there was no such thing as an  
 24 audit review on a taxpayer. I had various interactions  
 25 with different people as to why such an instruction was

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1 given and the basis for it. I mean I'm told that the  
 2 taxpayer had made an allegation that there was bias against  
 3 from the other auditors and that kind of thing. But  
 4 because of that decision to do this audit review and the  
 5 fact that it was communicated to the taxpayer I don't know  
 6 why it was communicated to the taxpayer, litigation  
 7 stalled. So, we couldn't move. So, the person from debt  
 8 management who was sort of responsible for trying to  
 9 collect the outstanding debt escalated this to me and then  
 10 I ended up speaking to Mr Lateef and he gave me the  
 11 background and again there was clearly - I think this thing  
 12 had actually been considered by the legal division and they  
 13 say there's no such thing in the audit review. But nobody  
 14 was making a decision and eventually I got a copy of the  
 15 report from the person who was supposed to be doing an  
 16 audit review. I worked through the report and I said to  
 17 let's discuss. You're making pretty serious  
 18 recommendations here and serious allegations about people  
 19 based on documents that you reviewed and then his reason  
 20 was look, I can't review any other documents because  
 21 Mohammed Lateef wouldn't give me those documents. I spoke  
 22 to Mohammed and asked why it is that those documents are  
 23 not made available and he said no, there is a governance  
 24 process. I wanted the request to be in writing and he  
 25 wouldn't give it to me in writing so I wasn't going to give

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1 that information to him. He had to just make that request  
 2 in writing.  
 3 So last year in December this thing was just  
 4 stalling. I arranged a conference call. I called, I think  
 5 Mohammed Lateef was on the call, I think Deon was on the  
 6 call, Siphon Bavuma, Manini Madishsa from legal were on the  
 7 call. I can't remember who else and I was on the call and  
 8 then again had this debate, is there such a thing as an  
 9 audit review in the Tax Administration Act? No. I said  
 10 okay, if that's the case is there anywhere that we can  
 11 revoke what was communicated to the taxpayer and section 9  
 12 of the Tax Administration Act was quoted, like you can  
 13 change your mind and inform the taxpayer look, we changed  
 14 our mind we're withdrawing. So, I said okay, somebody must  
 15 write a letter and I'll sign it. Manini Madishsa drafted  
 16 the letter. It was sent to my office, I signed it and I  
 17 said somebody must sent it to the taxpayer and say look,  
 18 that audit review is not happening and since then I'm told  
 19 that the litigation has proceeded because that was the  
 20 issue that until something was done about that decision the  
 21 litigation was just going to stall and nothing was going to  
 22 happen. There is controversy as to who ultimately gave  
 23 that instruction and there's no clarity about it. There's  
 24 debate as to whether it is the Commissioner or one of the  
 25 chief officers who gave the instruction for the audit

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1 COMMISSIONER: Thank you.  
 2 [INQUIRY ADJOURNED]  
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1 review. But I think that's something that can be cleared  
 2 up in people's testimony. But that's what I found when I  
 3 was here and I mean even Siphon Bavuma actually raised it  
 4 with me. We had (inaudible) look, there's an issue on this  
 5 particular matter. I'll let you know about it and I saw  
 6 the documents and ja, it took until December to have a call  
 7 to just say we need to have a holistic view of this. What  
 8 is the advice from legal? Tell us, is there such a thing?  
 9 Please confirm and they said look, there's no such a thing.  
 10 So how do we overthrow the earlier decision and the said  
 11 look, I think it was section 9, I can't remember which  
 12 section it is off hand and the letter was sent and -  
 13 MS STEINBERG: So, is the litigation back  
 14 on track?  
 15 MS MAKOLA: I'm told that it is. I can't  
 16 say exactly where on track it is but I know that there's no  
 17 impediment to it proceeding now. So that decision was  
 18 withdrawn.  
 19 MS STEINBERG: Okay, then no more  
 20 questions from me.  
 21 COMMISSIONER: Thank you very much for  
 22 coming to talk to us.  
 23 MS MAKOLA: Thank you.  
 24 COMMISSIONER: What time tomorrow?  
 25 MS STEINBERG: Nine o'clock tomorrow.

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