

**IN THE SUPREME COURT APPEAL OF SOUTH AFRICA  
(BLOEMFONTEIN)**

**APPEAL CASE NO 424/19**

**GP CASE NO 6175/19**

In the matter between:

**HELEN SUZMAN FOUNDATION**

Applicant

and

**ROBERT McBRIDE**

First Respondent

**THE INDEPENDENT POLICE INVESTIGATIVE  
DIRECTORATE**

Second Respondent

**MINISTER OF POLICE**

Third Respondent


**PORTFOLIO COMMITTEE ON POLICE:  
NATIONAL ASSEMBLY**

Fourth Respondent

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**REPLYING AFFIDAVIT  
IN RESPONSE TO THIRD RESPONDENT'S ANSWERING AFFIDAVIT**

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I, the undersigned,

**FRANCIS ANTONIE**

do hereby make oath and state that:

1. I am an adult male director of the applicant, the Helen Suzman Foundation ("**HSF**"), situated at 6 Sherborne Road, Parktown, Johannesburg, a non-governmental organisation whose objectives are to defend the values that underpin our constitutional democracy, to defend the rule of law and to promote respect for human rights.
2. I deposed to the founding affidavit dated 20 April 2019 ("**the founding affidavit**") in the application for leave to appeal to this Court, and I am duly authorised by the HSF to depose to this affidavit on its behalf. I adopt the definitions used in the founding affidavit unless the context indicates otherwise.
3. The facts contained in this affidavit are to the best of my knowledge both true and correct and, unless otherwise stated or indicated by the context, are within my personal knowledge. Where I make any legal submissions, I do so on the advice of the HSF's legal representatives.
4. This affidavit replies to the answering affidavit filed on behalf of the third respondent ("**the Minister**") dated 22 May 2019 ("**the Minister's answering affidavit**"). Any allegation in the Minister's answering affidavit which is not admitted, and to the extent that it differs from, or is not addressed in, what is stated in this affidavit or the founding affidavit, is denied.



## THE CONCESSION AS TO WHAT WAS DECIDED BEFORE COURT

5. The Minister, respectfully, confuses the issues. He argues, on the one hand, that the settlement agreement did not interpret the IPID Act. He also states - correctly - that the settlement agreement gave effect to an agreement that "*under s6(3)(b) of the IPID Act, the Portfolio Committee finally decides whether to renew an IPID director's five year term*" (para 5). This agreement, given judicial weight through the settlement agreement, now constitutes a judicial interpretation of the IPID Act.
6. It is this interpretation of the IPID Act which was the live issue before Court and which was then privately agreed. It is trite, however, that private agreements cannot interpret legislation or determine rights *in rem*, and these private agreements cannot simply be rubber-stamped, without more, by Courts.
7. The interpretation of s6(3)(b) of the IPID Act is a matter of significant constitutional moment, and to suggest that the Minister, Mr McBride and the Portfolio Committee could themselves agree on an interpretation and, through agreement, make this a binding order forever interpreting that section, is contrary to established precedent.

## APPEALABILITY OF THE ORDER AND REASONS A QUO

8. The Minister describes the Order of the court *a quo* as "*modest*", "*run-of-the-motion-court-mill*" and "*unremarkable*". With respect, the Minister's attempt to downplay the effect of the Order evidences the Minister's misunderstanding of the far-reaching effects of the Order, which have already been discussed in the founding affidavit. It is furthermore inconsistent with the Constitutional Court's finding in *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Limited* (CCT91/17) [2019] ZACC 15; 2019 (6) BCLR 661 (CC); 2019 (4) SA 331 (CC), in particular paragraph 25 thereof where the Court said this:



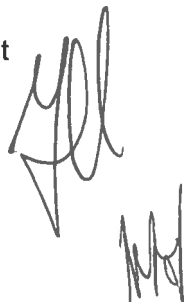
"There are sound reasons why a court should carefully scrutinise a settlement agreement before making it an order of court. Once a settlement agreement is made an order of court, it is interpreted in the same way as **any judgment or order and affects parties' rights in the same way**. Madlanga J in Eke put the matter thus:

"The effect of a settlement order is to change the status of the rights and obligations between the parties. Save for litigation that may be consequent upon the nature of the particular order, **the order brings finality to the lis between the parties; the lis becomes res judicata (literally, 'a matter judged')**. **It changes the terms of a settlement agreement to an enforceable court order.**" (my emphasis).

9. As the Minister himself states in his answering affidavit, the Order **declared** the Minister's decision on the renewal of Mr McBride's term of office one which had to be confirmed or rejected by the Portfolio Committee. The Court *a quo* thus laid its judicial hand on the Order as a result of a settlement agreement reached between the respondents; however, the constitutionality of the underlying interpretation of the IPID Act which was being given effect to was never ventilated in open court and no argument on the merits of the matter was advanced by the parties, despite the HSF's submissions - supported by Constitutional Court precedent - to the contrary. There is simply no legal basis on which an order of that nature could ever be issued.
10. Therein lies the remarkable nature of the Order - the Order directs performance by the Minister and the Committee on the basis of a manifestly unlawful and unconstitutional interpretation of the IPID Act. What compounds this remarkability is that this interpretation was never even debated or judicially considered, but was rather simply agreed, in private. The final effect of the Order is that the power to renew the term of office of the Executive Director of IPID lies in the hands of political actors and exposes IPID to undue political interference.
11. Further, there is now judicial precedent - and sanction - through the Order that the Minister (an individual political actor) plays an important part in the renewal process, being afforded the power (if not responsibility) to make a preliminary decision. It is

this preliminary decision which then falls to be considered by the Portfolio Committee.

12. Given the above, the Order cannot be allowed to stand. It was reached in a constitutionally impermissible manner, and it endorses a constitutionally impermissible interpretation which breaches fundamental jurisprudence pertaining to the need for effective independence.
13. The Minister further attempts to convince this Court that the Order did not decide anything but merely declared that which the Minister had already conceded (that his decision on the renewability of Mr McBride's term was a preliminary decision) and provided Mr McBride with what he prayed for in his notice of motion before the court *a quo* (for the Portfolio Committee to make the final decision on the renewability of his term within a certain time frame).
14. This is, however, the very issue. The fact that a litigant prays for the unlawful, or even that all parties to a matter agree to an unlawful result, does not mean that there is no issue which must be debated or judicially considered. In giving effect to the private agreement reached by the parties, the court *a quo* effectively decided the interpretation of the IPID Act and lent the imprimatur of the Court to such interpretation. Again, the HSF's arguments in this regard have been confirmed by the Constitutional Court in *Buffalo City supra*.
15. It is clear that these declarations by the Court *a quo* amounted to decisions, which decisions have final effect and are appealable. The Order is also greatly prejudicial to the administration of justice and the independence of IPID. The Court *a quo* decided to accede to the respondents' request to have the settlement agreement made an order of court. The fact that the Order was in line with what the Minister had conceded or what Mr McBride had requested of the Court *a quo* does not



exempt the Court from its duty to consider the lawfulness of the Order.<sup>1</sup> A court must consider the merits of the settlement agreement before it is made an order of court and must determine that the agreement is unobjectionable, its terms accord with both the Constitution and the law and its terms are not at odds with public policy.<sup>2</sup> The Court *a quo* merely rubberstamped the settlement agreement without any consideration of its lawfulness.

16. Similarly, the fact that "*everyone agreed that the renewal decision rested with the Portfolio Committee*" does not render the Order lawful. The Court *a quo* was required to consider the merits of the matter and hear argument on the lawfulness of the proposed Order - this it did not do, despite the fact that the HSF, which had been admitted as an amicus to the proceedings, had pointed out the duty on the Court to do so. The Minister states that "*Usually when everyone in court agrees, there is no longer a live dispute*". Indeed, this is usually the case - but only when what everyone agrees upon is actually lawful, and subject to the caveats expressed by the Constitutional Court when rights *in rem* are decided.
17. In short: the Order creates precedent and interprets how the renewal provisions of the IPID Act are to be interpreted and implemented. The Order is thus, contrary to the Minister's assertions, remarkable, unprecedented and eminently appealable.

#### **MOOTNESS AND THE PRACTICAL EFFECT OF THE APPEAL**

18. The Minister argues that the HSF's appeal will have no practical effect as the Portfolio Committee has already made a final decision not to renew Mr McBride's term, which decision must stand until reviewed and set aside. Mr McBride has taken the Portfolio Committee's decision not to renew his term on review. The Minister

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<sup>1</sup> *Eke v Parsons* 2016 (3) SA 37 (CC) at paras [25] and [26].

<sup>2</sup> *Ibid*

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argues that the HSF's challenge before this Court should rather be argued in the review application and that the HSF's application for leave to appeal is accordingly academic.

19. However, the review application presupposes that the Portfolio Committee was entitled to make its decision in the first place. It does not deal with the interpretation of s6(3)(b) of the IPID Act, which has already been decided by Hughes J in rubberstamping the private settlement agreement reached by three parties.
20. With respect, Mr McBride's review of the Portfolio Committee's decision is thus entirely irrelevant to the appeal proceedings before this Honourable Court. This appeal will determine the constitutionality and lawfulness of the Order and Reasons *a quo* and, consequently, whether the Portfolio Committee was empowered to make its decision on the renewal of Mr McBride's term in the first place. If the HSF is successful in these proceedings, that will be a death-knell to review proceedings in their entirety, as the legal underpinning for such proceedings will have been removed (it was never open to the Portfolio Committee even to consider the question of renewability).
21. This appeal will thus plainly have a dramatic practical effect, not only affecting the review proceedings but also - potentially - determining the identity of the Executive Head.
22. On the other hand, regardless of who wins the review, that victory will have no bearing on the constitutional interpretation of the IPID Act. The constitutionality and lawfulness of the Order are not in issue, and will not be determined, in Mr McBride's review.




23. Accordingly, the argument of mootness is misplaced and the Order and Reasons are appealable, and the objective questions of law occasioned thereby remain for this Court to determine.

#### **THE ORDER A QUO IS AN ORDER *IN REM***

24. As has already been demonstrated above and in the founding affidavit, the Order *a quo* clearly defined the status of the Minister's decision, the powers afforded to the Minister under s6(3)(b) of the IPID Act and the rights and duties of the Portfolio Committee rights in relation to its decision-making powers on renewals of the Executive Director's term of office. It also amounted to an unconstitutional interpretation of section 6(3)(b) of the IPID Act. The Order is therefore an Order *in rem*.
25. I have already explained in the founding affidavit why such an Order cannot be simply taken by agreement. This did not occur before the court *a quo*. Accordingly, the Order and Reasons *a quo* are unlawful and stand to be set aside.

#### **BAD POLITICAL ACTORS**

26. The Minister further argues that the Portfolio Committee is far from a political actor and the HSF's characterisation of the Committee as such is a blunt equivalence which is unsustainable.
27. The founding affidavit sets out the reasons supporting the HSF's contentions as to the constitutionally permissible interpretation of s6(3)(b) of the IPID Act. These contentions are dispositive of the Minister's arguments - I do not repeat these arguments and the relevant authorities.
28. The HSF does, however, point out that the consideration of Mr McBride's renewal, at the hands of the Portfolio Committee, was - notoriously - a political fight. It was well





reported that the ANC essentially closed ranks to oust and tarnish the image and credibility of Mr McBride. Regardless of whether this is true or not, at the very least the impression created was that the decision to renew was, essentially, a wholly political one, with the decision being taken on political lines. To this end I annex, as "RA1", a sample of news articles which make it clear that political machinations influenced, or were perceived to have influenced, the renewal decision by the Portfolio Committee.

29. I attach them merely to reinforces the need for the renewal provisions to be interpreted in the manner contended for by the HSF (or at least to be argued before Court on the merits).
30. Further, while the Minister is at pains to convince this Court that the Portfolio Committee is "*far from a 'political actor'*", the Portfolio Committee itself has admitted on oath before the Court *a quo* that it is a political entity, and has confirmed that its members would have to report back to their political party structures in order to consider the renewal decision. Moreover, our courts have recognised that the National Assembly is a political body.<sup>3</sup> Allowing this political actor to pass judgement, without any guidelines, on the security of tenure of the Executive Director (as the Order does) exposes IPID to the risk of political interference and accordingly IPID cannot be considered to be sufficiently independent.

## COSTS

31. The Minister argues that the HSF has not met the standard for appellate court interference with a trial court's decision on costs. I am advised, however, that the HSF has met this standard. I indicated in my founding affidavit that the Court *a quo*

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<sup>3</sup> *Helen Suzman Foundation v President of the Republic of South Africa and Others; In Re: Glenister v President of South Africa and Others* 2014 (4) BCLR 481 (WCC), para [101].

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manifestly misdirected itself in its award of costs against the HSF on the following grounds:

- 31.1 neither the Minister nor the Committee sought costs against the HSF;
  - 31.2 the costs award is entirely contrary to the *Biowatch* principle (in terms of which the unsuccessful party in constitutional litigation against the state is spared from paying the state's costs);
  - 31.3 the exception to the *Biowatch* principle does not apply in this case - the HSF's application for leave to appeal was not frivolous or vexatious or based on improper motives where the interests of justice require a costs order against the unsuccessful party. The HSF's application for leave to appeal was brought in the interest of ensuring that a lawful, constitutionally compliant interpretation of the IPID Act was endorsed and in order to ensure that IPID is sufficiently independent and protected from undue political influence. The HSF sought leave to appeal the Order and Reasons in its own interest and in the public interest and ought not to be saddled with a costs order for doing so. To do so would impose a chilling effect on constitutional and public interest litigation, reinterpret *amici* intervention in high profile Constitutional matters and close the doors of the Court to parties who have, thus far, made a valuable contribution to this Republic's constitutional jurisprudence.
32. Accordingly, the Court *a quo* materially misdirected itself in awarding costs against the HSF in the application for leave to appeal which warrants this Court's setting aside of the costs order.

## CONCLUSION

33. The HSF submits that it is clear, from its founding affidavit and the above, that another court may and, indeed, probably will, come to different conclusions to those



reached in the Order and Reasons. The Order and Reasons are appealable and this appeal will have a practical effect.

34. Moreover, for the reasons set out in paragraphs 76 and 77 of the founding affidavit, this matter presents the quintessential case for leave to appeal to be granted by virtue of there being "compelling reasons" as envisaged under section 17(1)(a)(ii) of the Superior Courts Act, 2013.
35. In the circumstances, the HSF persists in the relief sought in its notice of application for leave to appeal.

  
DEPONENT

I hereby certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn before me at 08 on August 2019, the regulations contained in Government Notice no R1258 of 21 July 1972, as amended, and Government Notice no R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Full names: *Masthiano Maruma*

Address: *18 Sturdee Avenue Rosebank*

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POLITICS

# ANC MPs back Bheki Cele in his battle with Robert McBride over Ipid job

25 February 2019 - 16:32  
BY ANDISIWE MAKINANA



Police minister Bheki Cele.

*Image: THULI DLAMINI*

Unleash your data. **rain** <sup>OX</sup>

ANC MPs have thrown their weight behind police minister Bheki Cele in his bitter battle not to renew the contract of Independent Police Investigative Directorate (Ipid) boss

Robert McBride.

Taking a firm political stance, one ANC MP even went as far as calling for the party to take disciplinary steps against McBride for challenging Cele.

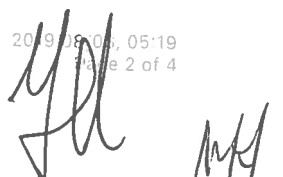
“The leader of Ipid will need to be disciplined by the party that he belongs to, whether it is ANC or DA or whatever. He must be disciplined for what he has caused us to be doing. We are drinking juices and so on, wasting time,” fumed ANC MP Livhuhani Mabija on Monday.

“He knows ... The mere fact that he started running around saying, 'hey this-and-this, my contract must be renewed', he knows he is not fit to go on in that position. Therefore he needs to be disciplined, wherever he belongs, because this is fruitless expenditure of parliament. [We are] busy dealing with things he has caused,” she added.

Parliament's police portfolio committee, to which both McBride and Cele are accountable, held a special meeting on Monday to process submissions received from both men.

Cele stated reasons for not renewing or extending McBride's five-year contract, which ends on Thursday.

McBride, in his response, warned MPs that Cele's determination not to renew his appointment was based on political considerations. He claimed that if the committee confirmed Cele's recommendation and his contract was not renewed, there would be "an undoubtable risk that several high-profile and politically sensitive investigations would be impeded or obstructed".





The thrust of McBride's argument is that Cele is not competent to decide whether or not his contract should be renewed. Instead he wants the parliamentary committee to make that decision on his future.

The Ipid Act makes provision for the extension of the Ipid executive director's five-year contract with another five-year term.

ANC MPs noted that McBride had a fixed five-year contract, which ends on February 28, saying he had no legal right to an automatic extension or renewal of his contract. They suggested that if he wants to remain Ipid head then he should apply when the position was advertised, like any other interested candidate.

"If ever he is interested in continuing, he will continue if he is interviewed, selected and given an appointment letter of that position. Then he will continue. If there is an applicant that is more competent according to how the interviews have gone, he will have to seek a job somewhere else," said Mabija.

"The leader of Ipid is not the first leader to lead Ipid. They came and they are gone. They will come when he is gone and go on with the work," she added.

Another ANC MP, Martha Mmola, called on Cele to appoint somebody else to act as Ipid boss after Thursday. Mmola did not think McBride even deserved reasons why his contract was not being renewed, as it was ending anyway. "If I was the minister, I would have said, 'Contract expires February 28, thanks.'"

Mmola said she found it ridiculous that there was even a discussion of a possible renewal of McBride's contract. "Why are we talking renewal? What is it that he is fighting for? For me this contract must not be renewed," she said.

"We are not going to waste time. It's Monday today and we are supposed to be in our constituency offices doing work. There are lots of contracts [ending] - even our contract expires this year on May 7."

Some MPs reflected on the tense relationship between Cele and McBride, saying it was clear that the two men could not work together. “There seems to be a break in trust between the two. If we have that type of situation, it means these two people can't work together,” said Jerome Maake of the ANC.

**“ Whatever the minister said and what McBride said doesn't matter. The bottom line is that these two cannot work together.**

- ANC MP Jerome Maake

“As public representatives, our duty is to ensure that government departments function optimally. It is our duty to correct certain situations. Whether the facts go this way or that way doesn't matter to public representatives, as long as that type of situation disturbs the smooth running of government departments and service delivery.

“Whatever the minister said and what McBride said doesn't matter. The bottom line is that these two cannot work together,” said Maake.

DA MPs warned that the committee would be making a mistake by endorsing the non-renewal of McBride's contract.

Dianne Kohler Barnard criticised Cele for trying to “usurp” the committee's powers, saying she was concerned that ANC MPs were under pressure to not contradict Cele.

“It's like I'm sitting in the same Rendition movie: the targeting of top guys, who then leave but later come back [after being cleared],” she said.

Another DA MP, Zak Mbhele, likened the ANC's approach to the disbandment of the Scorpions, saying they would regret it years down the line.

The IFP's Mzamo Buthelezi said the trust deficit between Cele and McBride should not compromise the latter.



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Dear ANC, you need to get it together

South Africans might not be clear who in the ANC is winning the battle, but there is little doubt that it is the people of the country who are losing, writes Howard Feldman.

LAST UPDATED: 2019-08-07, 22:58

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# MPs recommend that McBride's IPID contract should not be renewed

2019-02-28 14:08

Jan Gerber



The Portfolio Committee on Police on Thursday recommended that Robert McBride's contract as the executive director of the Independent Police Investigative Directorate (IPID) should not be renewed.

The committee has deliberated on the matter since Monday, with clear partisan lines between the ANC and DA emerging.

When it came to the adoption and recommendation of the report on Thursday afternoon, the DA's Zakhele Mbhele and Dianne Kohler Barnard were not present in the committee.

The report was adopted unanimously.

The matter landed in the committee's lap after a settlement agreement was reached two weeks ago in legal proceedings that McBride had instituted against Police Minister Bheki Cele.

Cele wrote to him to say that his contract would not be renewed.

The committee was also party to court proceedings.

In a draft order handed to the Gauteng High Court in Pretoria, the parties agreed that the decision Cele had taken to not renew McBride's term was a preliminary one that still needed to be confirmed or rejected by the committee.

More to follow.

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Robert McBride, (File, Lindile Mbontsi)

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## McBride tarnished to discredit his state capture evidence - DA's Kohler Barnard

20:47 14/03/2019 Jan Gerber

The Portfolio Committee on Police wanted to tarnish the name of former Independent Police Investigative Directorate (IPID) head Robert McBride so that his testimony before the state capture commission would be disregarded, DA MP Dianne Kohler Barnard charged on Thursday.

But ANC MP Jerome Maake countered that the opposition should leave the ANC to sort out its own problems between "fellow comrades".

Kohler Barnard's comments came after the National Assembly adopted a Portfolio Committee on Police [report](#) on Thursday, which recommended that McBride's contract as executive director of IPID not be renewed.

Introducing the report, committee chairperson Francois Beukman said the crux of the matter was that McBride entered into a contract for five years and that contract didn't include a renewal clause.



"There is no dispute about this," Beukman said.

He said it was also important to note that the IPID Act said the executive director's contract could be renewed for another term but wasn't clear on the process that had to be followed to renew it.

He pointed out that McBride wasn't removed from the post but that the decision was to not renew his contract.

Kohler Barnard, as is her wont, didn't mince her words.

### **'Angry at the level of crime'**

She described the committee's process as a bus that driven "over the cliff of partisan non-accountability".

"I have worked with various committees during my 15 years in this House, I've stood here on the podium many times, usually angry at the level of crime, corruption and criminality in the SAPS (SA Police Service) and at the poor working conditions of our SAPS members," she said as ANC backbenchers howled.

"But what I have never been, is desperately ashamed to belong to what I have until recently believed is one of the premier committees in Parliament."

"What we sat through and witnessed was a political party, turning on one of its own on, I believe, on the orders of the minister. So the executive is now determining debate in a committee that according to legislation, oversees that very body. The tail wagging the dog.

She said she voted against McBride's appointment.

"However, Mr McBride pulled up his socks and did a damn fine job."

"Our meetings were never about extending Mr McBride's contract, as allowed in the act or even appointing a new IPID head. They were, I believe, about discrediting Mr McBride so that when all is revealed to the state capture commission, it will be discarded.



"It was so obvious, I shudder to think what the court's reaction will be when they watch the footage of those three days all but eviscerated the man. He was called a liar, sneered at, he was demeaned. All with no right of reply."

"Now that's the definition of a kangaroo court."

### **'Character assassinated'**

Kohler Barnard said the committee also didn't want to include reference to McBride's successes in its report.

She said "quite possibly the reason why they now hate him with a visceral intensity rarely seen in Parliament" is because of the cases he investigated.

She said her "favourite" was the case the police's purchase of a grabber – a device to track cellphones worth around R10m – at an inflated price of around R50m. It is alleged the money was to be used to buy votes at the ANC's hotly contested elective conference in 2017.

She said when a "cadre does a good job, they're attacked, character assassinated, they are disposed of".

"There is usually somebody's hide that this activity saves."

She disputed that there was prima facie evidence of misconduct against McBride.

"Claims made against him are not evidence, they are merely allegations."

She said the roles of the IPID head and police minister were per definition adversarial.

"What if the next IPID head disagrees with the minister or finds out something he would rather keep hidden? Would you want to remove him too? And the next one too?"

"As I said when I walked out, you should be ashamed of yourselves!" said Kohler Barnard, who left the committee's deliberations when they did not include McBride's successes in the report.





**Jan Gerber**  
@gerbjan



"You're a disgrace!" DA's @DKB20 says as she leaves the Portfolio Committee on Police's discussion of findings in the McBride matter. This after her proposal to include IPID successes in the findings were shot down by ANC.

@TeamNews24

19 5:35 PM - Feb 27, 2019



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NFP MP Munzoor Shaik-Emam said there was "not a single iota of truth" in what she presented to the House. He said she "deliberately misled the House".

At the end of his speech, House chairperson Thoko Didiza said he must withdraw that, which he did.

Shaik-Emam said McBride knew his contract would not be renewed and he misled the court and the public when he said Cele wrote to him to inform him that his contract will not be renewed, while he wrote to Cele twice to ask him to initiate the process to fill the post.

He said McBride said IPID would suffer if he left, yet he applied for other posts.

According to Shaik-Emam IPID's investigations under McBride's leadership produced "all allegations, no convictions".

He said there was clearly a breakdown in the relationship between McBride and Cele.

### **'We did it in the Western Cape'**

When Shaik-Emam left the podium to return to his seat, ANC backbenchers chanted "Shaik! Shaik!" in the same way they chant "Ace! Ace!" for ANC secretary general Ace Magashule.

ANC MP and whip in the police committee Jerome Maake said: "The aim of the opposition in this House is to take over the government. This is done in many ways, sometimes even by hook or by crook."

"What this means is you've got to remove the ANC in order to rule. Who in the opposition – the DA in particular – has the qualities or capacity or even the bravery to engage in such an impossible and unachievable task?"

"We did it in the Western Cape!" someone in the DA benches chirped. He said the matter was a "simple issue complicated by some people with hidden agendas".

"In a simple society of honest people, it would simply have been a labour relations issue, which would fall under the law of contracts.

"But where certain people are involved, it becomes a matter of war, because, for them, it is an opportunity to cause havoc within the ruling party.

"Madam chairperson, Comrade McBride and Comrade Cele are senior members of the ANC, whether the DA likes it or not.

"Trying to drive a wedge between ANC members won't work," Maake said.

He added that the ANC had its own mechanisms to deal with its own problems.

"We are not to be told by the DA."

### **'Moegoe'**

The committee's decision was based on the documents before it, he said.

"Of all reasons given, the most important of them was that there was a total breakdown of trust between the two. Which is a fundamental ingredient of working together, which happens anywhere," Maake said.

"They are fellow comrades. It is, therefore, the duty of our organisation to remedy this situation for the sake of service delivery."

Maake also said the people in his village said DA leader Mmusi Maimane was a "moegoe".



"I tried to defend him, but they said, if you do that, jy's ook 'n moegoe (you're also a moegoe)," he said to laughter from the ANC benches.

"Let the opposition leave us to sort out our own problems."

"Let the opposition leave the ANC."

Despite a DA walkout, the report was adopted with 172 votes in favour and five against.

McBride's contract expired on February 28.

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# Parliament endorses decision not to renew McBride's contract

14 March 2019, 7:34 PM | SABC | @SABCNewsOnline



Tags: Western Cape, IPID, Parliament, Robert McBride



Image: SABC-News

Although Robert McBride has taken the Portfolio Committee's decision on judicial review, this has not stopped Parliament from endorsing his exit.

The National Assembly has endorsed the decision not to renew Robert McBride's contract.

The Portfolio Committee on Police earlier proposed not renewing his IPID contract.

McBride was IPID's executive director.

Even before Parliament stepped in, Police Minister Bheki Cele decided not to renew the contract.

The National Assembly voted to support the decision with 172 votes against five which wanted McBride to keep his job.

Although McBride has taken the Portfolio Committee's decision on judicial review, this has not stopped Parliament from endorsing his exit.

Police Committee Chair Francois Beukman says "It must be put on record that the committee carefully considered all the submissions, the committee concluded that the appointment of the head of IPID should not be renewed for a further term."

DA MP Dianne Kohler Barnard says "What we sat through and witnessed was a political party turning on one of its own on the orders of the minister which it is supposed to exercise."

EFF MP Nazier Paulsen says "Robert McBride's history as a liberation struggle hero does not entitle him to any position in government the position of executive director for IPID is for five years and it is disingenuous of McBride to think that he is entitled, there are other good candidates who will do the same good job."

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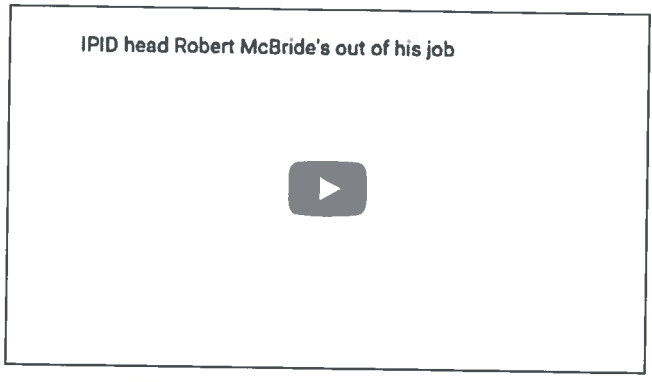
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## McBride: Not fit or political hit?

21:37 26/02/2019 Jan Gerber

Is Robert McBride a fit and proper executive director of the Independent Police Investigative Directorate (IPID) amid a slew of allegations against him, or are there political machinations to get rid of him before he unearths more embarrassing cases?

This is the question the Portfolio Committee on Police wrestled with on Tuesday as it continued to deliberate whether or not McBride's contract should be renewed.

Ad



His contract expires on Thursday.

The matter landed in the committee's lap after a settlement agreement was reached two weeks ago in legal proceedings McBride had instituted against Police Minister Bheki Cele, after Cele wrote to him to say that his contract would not be renewed. The committee was also a party to the court proceedings.



## **READ: McBride says politics behind bid to get him out of IPID**

In a draft order handed to the Gauteng High Court in Pretoria, the parties agreed that the decision Cele had taken to not renew McBride's term was a preliminary one that still needed to be confirmed or rejected by the committee.

In his submission to the committee, Cele said there was "prima facie evidence" that McBride was not fit to be the executive director.

But McBride said Cele's allegations were "feeble". In response to Cele's submission, he added that the minister's decision to not extend his term for another five years was political. Putting an acting head in his place would be bad for ongoing investigations into powerful people, he said.

Following the trend of Monday's meeting, the ANC MPs on the committee, as well as NFP MP Munzoor Shaik-Emam, fell in behind Cele. But the DA MPs seemed sympathetic to McBride's assertions that the allegations were "feeble" and that there was a political motive.



Ahmed Shaik-Emam from the NFP. (Lindile Mbontsi)

DA MP Dianne Kohler Barnard read from a statement by the ANC study group on the Standing Committee on Public Accounts, which was issued last year and praised McBride on the case against former acting police commissioner **Khomotso Phahlane**.

She said McBride also revealed IPID was investigating the police's purchase of a **grabber** - a device to track cellphones, worth around R10m – at an inflated price of around R50m. It is alleged the money was to be used to buy votes at the ANC's hotly contested elective conference.

"I believe it probably is being used against him," said Kohler Barnard. "It is probably what hit the hardest."

She said this is what could be behind the ANC's "massive swing" away from supporting McBride to having a process with a predetermined outcome to remove him.

ANC MPs took exception.

"She can't push us this far," said ANC MP Jerome Maake, the ANC whip in the committee.

"She is crossing a line."

Shaik-Emam also objected.

"The ANC is not the same as the DA," said ANC MP Leonard Ramatlakane.

A handwritten signature in black ink, appearing to be 'YLL'.

A handwritten signature in black ink, appearing to be 'MD'.

He said the DA chased former Cape Town mayor Patricia de Lille out of the City of Cape Town because she refused to consent to the building of a desalination plant which would have led to money reaching the DA coffers.

**READ: Cele explains why he thinks McBride is not 'fit' for another term at IPID**

"So, we're not like that."

He said when McBride made the claims about the grabber, they said: "Fine, arrest people."

He said it was a "red herring".

"It is for the media to write about."

He added that it was absurd that IPID's independence would be under threat if McBride wasn't there because other officers would conduct the investigations.

DA MP Zakhele Mbhele said it was not that McBride was the "sole bulwark" for the IPID.

"It is a systemic risk, not a McBride risk," Mbhele said.

"There is a systemic risk posed to IPID when there is a break in leadership, when there isn't a clear way forward."

Shaik-Emam said: "For me, it is all about the ED [executive director] securing a job for himself."





## ANC guns for McBride: 'What is he really fighting for?'

ANC MPs came out gunning for executive director of the Independent Police Investigative Directorate (IPID) Robert McBride on Monday when the Portfolio Committee on Police deliberated on the renewal of McBride's contract. The committee has worked well together over the last few years, but on Monday partisan lines were clear.

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can't see the independence of IPID being affected," he said. "The independence of IPID will be severely impacted by the renewal of this contract."

The committee also dealt with a finding by the Public Service Commission that McBride abused his authority when he unilaterally moved a female vetting officer to another department and revoked her vetting clearance after she applied for a police position.

Some of the other allegations against McBride – which ANC MPs labelled "hair raising" or casting a dark cloud over McBride – emanates from suspended IPID investigator [Cedrick Nkabinde](#). Kohler Barnard reminded the committee twice that a court found that Nkabinde had lied under oath.

The committee will deliberate on its findings on Wednesday and adopt its report on Thursday.

While the committee sat in Cape Town, the court proceedings continued in Pretoria.



News24 reported that the committee would announce its decision on whether or not to renew McBride's contract on Thursday at 12:00, while the parties were expected to appear again in court at 14:00 on Thursday after a decision has been made.

Speaking to News24 following the court case, McBride questioned whether the process in Parliament would be fair and rational.

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