



# JUDGES MATTER

**Judicial Service Commission interviews**

**05 October 2017**

**Free State Division of the High Court**

**Interview of Adv. L Le Roux Pohl**

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CJ M. Mogoeng: Good afternoon, Advocate Pohl.

Adv. L. Pohl: Good morning, Chief Justice. Good morning, ladies and gentlemen.

CM J. Mogoeng: Are you well?

Adv. L. Pohl: Yes, thank you, Chief Justice.

CM J. Mogoeng: You look relaxed and confident or as you as nervous as some of us when we appeared before this body?

Adv. L. Pohl: I am as nervous as anybody else [inaudible 00:16].

CM J. Mogoeng: Okay. All right, okay. For how many years have you practised law?

Adv. L. Pohl: I started with articleships if I may start there in 1984 and it's been ever since then Chief Justice. So it's 33 years, if I count the articleships with it.

CM J. Mogoeng: How many years as an Advocate?

Adv. L. Pohl: 23 years as an Advocate, Chief Justice.

CM J. Mogoeng: How many as silk?

Adv. L. Pohl: It will be three years in November, Chief Justice.

CM J. Mogoeng: Yes and what is the total period of your acting stint?

Adv. L. Pohl: I acted for two full terms and another month in March of this year, Chief Justice.

CM J. Mogoeng: Have you ever had reason to be embarrassed by the length – the length of the period it took for you to deliver a reserve judgement?

Adv. L. Pohl: Not at all, Chief Justice. No, I think the longest period it took me to give a judgement was about ten to fourteen days.

CM J. Mogoeng: Never, ten months?

Adv. L. Pohl: Never.

CM J. Mogoeng: Yes. Thank you.

Adv. L. Pohl: Thank you.

CM J. Mogoeng: JP?

Ms T. N. Ntlama: Good morning.

Adv. L. Pohl: Good morning.

Ms T. N. Ntlama: How are you?

Adv. L. Pohl: Fine thanks and yourself?

Ms. T N. Ntlama: I'm fine, thank you. You've been here before haven't you?

Adv. L. Pohl: This is my third time, yes?

Ms T. N. Ntlama: Third time? All right. Don't be too surprised if I don't ask you many questions. The transcript of your last interview is before us. So I would not want to repeat the questions I asked you last time.

Adv. L. Pohl: Thank you, Judge President. Yes.

Ms T. N. Ntlama: But since that interview, you acted?

Adv. L. Pohl: I did, yes.

Ms T. N. Ntlama: In our division?

Adv. L. Pohl: That's correct, during March of this year, yes.

Ms T. N. Ntlama: Yes. Are there any challenges that you faced?

Adv. L. Pohl: Not at all, no.

Ms T. N. Ntlama: Would you say in your acting stint, not only this one, but the two other terms that you mentioned, you've been exposed to the full spectrum of work that is normally allocated to a High Court Judge?

Adv. L. Pohl: Indeed so, yes. I, for instance, did criminal trials, criminal appeals, civil appeals, civil trials, etcetera. So everything, what was given to me, I did and I was able to handle. Thank you.

Ms T. N. Ntlama: Did you cope?

Adv. L. Pohl: I did so, yes. Thank you.

Ms T. N. Ntlama: Thank you. Thank you, CJ.

CM J. Mogoeng: Thank you, JP. MEC?

COMM. S. Mashinini: Thank you very much. Morning, Mr Pohl.

Adv. L. Pohl: Good morning, Commissioner Mashinini.

COMM. S. Mashinini: How are you?

Adv. L. Pohl: Fine thanks and yourself?

COMM. S. Mashinini: Thank you very much. Just one last – one question that I want to check with you, is that, why do you think that you ready to be appointed as a Judge?

Adv. L. Pohl: Commissioner, I think the length of time that I've been involved in the law allows me to give something back to the people of South Africa and I would like to do that given the opportunity. I also think that I could in the process, advance the Constitutional values of the Republic of South Africa.

COMM. S. Mashinini: Do you think that you are going to add value to Justice System in the country?

Adv. L. Pohl: Indeed so. I do believe so. Yes, I think I bring some experience to the table, which I think is always something that is of value and as I say, I uphold and – I

would like to uphold and protect the Constitution of the Republic and advance the democratic values of that.

COMM. S. Mashinini: Thank you, Chief Justice.

CM J. Mogoeng: Thank you, MSC. Judge President Hlophe?

JP J. Hlophe: Thank you, Chief Justice. Mr Pohl, let me put the following to you, sir. There is racism on the Bench and in the profession in general and this results *inter alia* in skewed briefing patterns whereby black practitioners in general and African women in particular are excluded from the main stream.

Adv. L. Pohl: Yes.

JP J. Hlophe: What have you personally done to ensure that there is transfer of skills so that in the end black women, African women in particular also have the – are exposed rather to good work?

Adv. L. Pohl: Judge President, what I did was *inter alia* to take part in the Advocacy Training Programme with the – within the Bar since as far as back as 1996, I believe. So I've been actively involved in that regard. I've also always tried to pass on such knowledge that I do have in this regard. I have also, when the occasion arose tried to promote – there was for instance a case, where I – in my interaction in a case, came across a black female attorney, who I – assessed to be very bright and talented and I – thereafter, a week or so thereafter I heard about an attorney looking for such a person. And I told him about her and I believe she went there and she's blossoming that position.

JP J. Hlophe: Secondly, [inaudible 05:26], the Chief Justice, through you, let's talk about indigenous African languages.

Adv. L. Pohl: Yes.

JP J. Hlophe: The language of record is English.

Adv. L. Pohl: Yes.

JP J. Hlophe: Do you believe that the promotion and development and the use of indigenous languages in the final analysis is the way to go so that we can develop our own jurisprudence in our own languages?

Adv. L. Pohl: Yes, I think it's – the majority of the people of South Africa would fall under that category, Judge President. So there can be no other way than the progression in that way to be the correct way to proceed henceforth.

JP J. Hlophe: It's a small follow up, Chief Justice. Thank you, for the answer. What about the introduction of indigenous languages into the LLB Curriculum?

Adv. L. Pohl: As – Judge President, may I just ask you – do you mean as a language to be proficient with such as Afrikaans or English or whatever the case may be?

JP J. Hlophe: Yeah – I'm talking about indigenous African languages such as Sesotho, SeTswana and so on.

Adv. L. Pohl: Yes.

JP J. Hlophe: I am asking you for your opinion?

Adv. L. Pohl: Yes.

JP J. Hlophe: What about those languages being the inclusion of languages into the LLB Curriculum?

Adv. L. Pohl: Yes.

JP J. Hlophe: How about that being made compulsory so that those languages can be developed? So that in the final analysis, they can be on a par with English and Afrikaans?

Adv. L. Pohl: I would agree with that one, 100%, Judge President. I think it would be a good attribute to the legal curriculum in our universities and I, for one, would most certainly say that that would be a good thing. Thank you. [Inaudible 07:19]. No, no that's fine.

CM J. Mogoeng: Thank you, Judge President.

JP J. Hlophe: Thank you [inaudible 07:19].

CM J. Mogoeng: Thank you, Judge President. Commissioner Masuku?

Adv. T. Masuku: Thank you, Chief Justice. Good morning, Advocate Pohl.

Adv. L. Pohl: Good morning, Commissioner Masuku.

Adv. T. Masuku: Just following up on your question asked by Judge President Hlophe on transformation. You say that you've taken part in Advocacy Training?

Adv. L. Pohl: That is correct, yes.

Adv. T Masuku: Now can you share with the Commission how your involvement in the Advocacy Training was in fact an advancement of transformation?

Adv. L. Pohl: What the Advocacy Training at heart is, that it's Advocacy Training as you know; it's a structured training process within the constituent Bars in South Africa. So all pupils, which would therefore include all pupils who happen to be from the previous disadvantaged group would then take part in that. And senior counsel like myself and other counsel would then actively partake in – for instance, practical training, etcetera, Moot Courts and the like and it's a whole year process.

CM J. Mogoeng: Commissioner – President Maya?

Ms Maya: Thank you, Chief Justice. Good morning, Mr Pohl.

Adv. L. Pohl: Good morning.

Ms Maya: On the last occasion I think that you were here, you were asked whether you are fluent in any of the indigenous languages.

Adv. L. Pohl: That is correct, yes.

Ms Maya: And your answer was that you are able to follow only in Sesotho if some phrases of that language are spoken slowly.

Adv. L. Pohl: Yes that is correct, yes.

Ms Maya: Have you done anything since then to improve that situation?

Adv. L. Pohl: Commissioner, what I have done is, I have tried for a long time, not only since then but even before then through my Sesotho speaking friends and colleagues to try at the least, improve my vocabulary but I am unfortunately, not able to speak the speak the language yet fluently. And I can therefore, for instance, in a – you know, if there's a consultation then I hear the words metsi [inaudible 09:40], I know it's water or I [inaudible 09:41], I don't know, etcetera. So I don't want to let it sound to be exhaustive of my vocabulary but I have tried to increase my vocabulary at least and it has helped me in the process I think.

Ms Maya: The Chief Justice, in winding up your interview had also asked you to explain your judicial philosophy to the Commission.

Adv. L. Pohl: Yes.

Ms Maya: And your answer was that you support Ubuntu?

Adv. L. Pohl: Yes, I do.

Ms Maya: Do you still stand by that answer?

Adv. L. Pohl: I do, indeed. Of course, I uphold and protect the Constitution of the Republic. The Constitution happens to be the prime law of the land. But in that, I think it's imperative that one also appreciates and adheres to the principles of Ubuntu.

CM J. Mogoeng: Thank you. [Inaudible 10:29]. Let me just ask you a difficult question.

Adv. L. Pohl: Yes.

CM J. Mogoeng: As I assume there is nobody to ask questions and I do because I think you may just be the person to help. Judge President Hlophe asked you about racism.

Adv. L. Pohl: Yes.

CM J. Mogoeng: We say there shouldn't be any preamble. Maybe I should have a preamble. When a judge is racist or a magistrate, in all likelihood because it has since become sophisticated, he or she won't say kaffir [inaudible 11:12], no. They won't say you are inferior. It has become sophisticated. You will just see a trend of every time – let's say it's a black racist. Every time the black person and a white person have a case using the skills that he or she has to make sure that his or her own wins. You will be but this thing doesn't add up. Why is this person pursuing this line? And similarly, if he or she is white you will see a person bending over backward to make sure that his or her own succeeds to the point of becoming emotional.

Adv. L. Pohl: Yes.

CM J. Mogoeng: So what then would you suggest should be done to uproot racism in a society and everywhere it manifests? What is it that must be done practically beyond just – because everybody is denying there is racism but there is not racist.

Adv. L. Pohl: Yes.

CM J. Mogoeng: So what is it that we can do?

Adv. L. Pohl: Chief Justice, I believe that if you are in a leadership position or not only if you're in a – everybody in society should perhaps as you yourself said in the Tshwane City Judgement, said, you must internalise the preamble to the Constitution and if you do that you say we, the people of South Africa, everybody, must appreciate that there is or that there were injustices in the past and if you don't do that then you – if you don't do that you can't transform. So you have to acknowledge that there were injustices and then you must act accordingly in the future. You must – it's no use saying you're not a racist but you act differently. So your deeds really show what you do. I think all of us who may have children know if you tell a child to do something, he might not follow you. He might not do so but he is most likely to follow your example. And I think that in life whether you're a judge, a magistrate, an advocate, whatever the case may be, you must let your actions show and be of such a nature that people would want to follow you and emanate, emulate you, in the way that you live.

CM J. Mogoeng: What if you are a racist but you are not aware?

Adv. L. Pohl: Excuse me? If you -

CM J. Mogoeng: What if you are a racist as a person but you are not aware? You know, the so-called unconscious bias or unconscious racism?

Adv. L. Pohl: Yes.

CM J. Mogoeng: How do you help that kind of a person who does not think there's a problem to fix but there's a problem or you are biased against women but to you it has become so normal that you don't think there's a problem? How do you reach out to that person to realise there's a problem that must be addressed so that when they become judges you don't get surprised. A judge makes a statement that shocks

every one of you. Oh, every black person must first have sex with his daughter before the daughter can be married? You don't get shocked like that.

Adv. L. Pohl: Yes.

CM J. Mogoeng: What do you do?

Adv. L. Pohl: Well I think one has to – I mean racism – racism like apartheid, I mean apartheid was declared a crime against humanity. It's something that must be abolished to its roots. So I think if one encounters such a person, one has to – you can't say – you can't say in good [inaudible 15:02] tolerance or must just listen to it and let it go by. You have to have actively addressed that person, tell him what is wrong and within the means available to you, try and convince him to leave his ways and to move on forward.

CM J. Mogoeng: Well before I ask, I think first would be Commissioner Fourie, Minister and MEC, let me apologize to you for asking you this question.

Adv. L. Pohl: Yes.

CM J. Mogoeng: It just concerns me. I'm looking for answers; I don't have them.

Adv. L. Pohl: Yes.

CM J. Mogoeng: Commissioner Fourie?

COMM. Fourie: Thank you, Chief Justice. Good morning, Advocate.

Adv. L. Pohl: Good morning, Commissioner.

COMM. Fourie: I think I would just like to take you quickly to the comments received on your nomination.

Adv. L. Pohl: Yes.

COMM. Fourie: And I'm not going to read everything that may be applicable but just short extracts from those comments.

Adv. L. Pohl: Yes.

COMM. Fourie: The first is from the GCB.

Adv. L. Pohl: Yes.

COMM. Fourie: I'm sure you've seen that.

Adv. L. Pohl: I have, yes.

COMM. Fourie: It says, "The candidate is held in high regard by not only the members of this society but all sectors of the legal fraternity of the Free State and in other divisions for his skill and ability as a juriston lawyer. His integrity, work ethos, dedication to the interest of his clients and his willingness to assist and advise colleagues."

Adv. L. Pohl: Yes.

COMM. Fourie: Have you read that?

Adv. L. Pohl: I did, yes.

COMM. Fourie: Have you got any comment to that?

Adv. L. Pohl: I – naturally, it's a positive comment and I must agree with it. As far as I know but I don't know, I'm not privy to the subject of mind of the person that wrote the report but I must agree with it, yes.

COMM. Fourie: The Black Lawyers Association says the following:

Adv. L. Pohl: Yes.

COMM. Fourie: “The only difficulty, the Black Lawyers Association has with Advocate Le Roux Pohl, SC, is that he’s only acted for two terms.”

Adv. L. Pohl: Yes.

COMM. Fourie: “The Black Lawyers Association is of the view that he should be permitted to act for a longer period as a judge in order to prepare him to be a Judge of the High Court. At this stage, the Black Lawyers does not support his nomination and appointment.”

Adv. L. Pohl: Yes.

COMM. Fourie: “It appears that Advocate Pohl has acted for the month of March, 2017. However, this is still not sufficient time for him to be a Judge of the High Court.”

Adv. L. Pohl: Yes.

COMM. Fourie: On your questionnaire, I see that you’ve indicated that you’ve acted for the fourth term of 2013 and the 3<sup>rd</sup> term of 2014 as well.

Adv. L. Pohl: Yes.

COMM. Fourie: And not only for the month of March 2017.

Adv. L. Pohl: That is correct, yes, Commissioner and I think that comment must with respect be viewed in the total context of the 33 years that I have been involved in the law. 23 years, I’ve been an Advocate. I was a – I’m as qualified attorney. I was a State Prosecutor in the Magistrate’s Court, the Regional Court and the High Court. So I think the comment must be viewed within that context as well, yes.

COMM. Fourie: The National Bar Council of South Africa submits that in support of the two most suitable candidates, Ms Chesiwwe and Advocate Pohl for the vacant position as Judge of the High Court of South Africa.

Adv. L. Pohl: I noticed that.

COMM. Fourie: Have you seen that?

Adv. L. Pohl: I did.

COMM. Fourie: And then lastly, the Society of the Law Teachers of Southern Africa say, "It seems a bit odd that after such a long time of practicing as an advocate and being a Senior Counsel the candidate can only point to one Advocate whom he mentored for the previously - from the previously disadvantaged groups."

Adv. L. Pohl: Yes.

COMM. Fourie: "This indeed is an important point to indicate that the Advocate has not contributed a lot to issues of transformation and affording opportunities to people from previously disadvantaged groups. This factor is extremely important since it does not provide a clear picture as to how the candidate will contribute to these issues if appointed a Judge of the High Court." You've read that?

Adv. L. Pohl: I did.

COMM. Fourie: Would you like to comment on that?

Adv. L. Pohl: Yes, I think what is – what must be viewed in this context is, it is so that I only had one black pupil. But the way it worked – it works with us in the Free State is we have the bottom say ten of the junior – in seniority of the Bar, don't get pupils because they haven't got enough experience yet to teach other people. The top – the silks and the top few also don't. So you have the middle portion of the Bar, which were for a long time approximately say 20/25 people. So – and it gets rotated. You get allocated people without you having an input into who you get or who you

don't get. So it is so. I got the one and I mentored him and he passed and he is still practising. He is in fact, the longest practicing black member of the Free State Society of Advocates and he has just applied to take silk for instance. I also had a number of other pupils – but they were not from previously disadvantaged groups but it is also because they were merely allocated by the Cape [inaudible 20:20] Bar Council without me having an input in that.

COMM. Fourie: Thank you, Advocate Pohl.

Adv. L. Pohl: Thank you.

COMM. Fourie. Thank you, President.

Female: Thanks, Commissioner Fourie. I think - I can't read Chief Justice's handwriting writing now. I think it's you, Minister.

JM M. Masutha: No thank you. Actually, President, I wanted to follow on the last question that was asked.

Adv. L. Pohl: Yes.

JM M. Masutha: Because indeed I was concerned that given the number of years -

Adv. L. Pohl: Yes.

JM M. Masutha: And the diverse fields of experience that you've acquired –

Adv. L. Pohl: Yes.

JM M. Masutha: That you should only have been able to share that expertise to promote transformation in the limited way that you have been able to.

Adv. L. Pohl: Yes –

JM M. Masutha: Now, I don't think I understood the way in which the rules of your Bar operates such that it would have limited you in the manner that it did. But I'm nonetheless concerned about the final outcome that you were only able to share all of this experience just to groom only one person. Am I missing something here?

Adv. L. Pohl: Minister, no. I appreciate your concern. I just wish to reiterate and go back again. Minister, must remember I actively took part in all the structures of Advocacy Training, which in then in turn, meant that all the knowledge that I have I parted, through the structures of Advocacy Training, which is an extensive process –

JM M. Masutha: And I'm not talking about theoretical training. I'm talking about taking somebody under your wing in actual, active practice so that that person – there is a direct skills transfer in a concrete manner. Not at a theoretical level [inaudible 22:17].

Adv. L. Pohl: Thank you. Sorry, I can't take it further than I have to explain that. It gets rotated and it gets allocated to you and that is the basis for getting a pupil for a year long and it's on that basis that I had – whoever was given to me, I mentored in that regard.

JM M. Masutha: Yes, perhaps I would have asked the question differently to say given your seniority, what is it that you did to try and influence what is seemingly an inefficient system of skills transfer?

Adv. L. Pohl: Yes.

JM M. Masutha: I'm sure, being a senior person at that Bar, you also had some influence in the design and the re-design of the system. Did you make any effort to ensure that in the end, people like yourself with the vastness of skills that you've accumulated are given the opportunity to impart those skills?

Adv. L. Pohl: What I did was, I've always invited all junior advocates to come to me to show their pleadings to me before they send it out to attorneys. I've suggested alterations to that, etcetera on that basis. I must also say that at some stage and I

still believe that there is something to be explored, is that you hone your skills at the Bar I believe, mostly in the Magistrate's Court. But the problem at present in the Magistrate's Court is that you only get – the taxable amount that an attorney can tax for counsel, for junior counsel is say, it's something over a R1000 or so. So if the counsel asks R6/7000 that is an attorney and client bill that has to be sold to your client to – in other words to –

JM M. Masutha: No I – my apologies. I understand.

Adv. L. Pohl: Yes, what I'm saying is that if there is for instance just a – I'm advocating just for a slim raise in that so that more advocates, more junior advocates, more black advocates will then be briefed for – to appear in the Magistrate's Court so as to enhance their skills in that regard.

JM M. Masutha: And just the last point I want to clarify. It is clear to me that we need to change the attitude within the corporate sector, which – where the work actually emanates but equally we need to change the attitude within the profession to encourage clients to be prepared to allow black practitioners [inaudible 24.58] list with their white counterparts. Is there a genuine effort on the part of white counsel, especially senior counsel, senior, senior counsel to influence the mind-set out there? So that in the end the gates can be opened for black practitioners to also participate in, meaningfully?

Adv. L. Pohl: Yes. Minister, may I answer you in this regard? I don't know about other Bars but at our Bar we have a very active Transformation Committee and we have recently – which have recently produced a document with various suggestions, which is at this stage a discussion document. But I think most of it will be implemented and at the heart – the root of your question is really whether counsel and particular black junior counsel are able to survive in the end. So we have this fund, to which I, as you've seen in my CV, I contribute to and at the beginning of August of this year, this fund stood at R169 000. We are some 67 counsel so – and we have paid out some of this to deserving counsel. So that helps in the certain sense. Then what we – the further suggestions in this document is for instance that where an attorney is – was in any case going to brief senior and junior counsel that

senior counsel must then have a black junior counsel, which I agree with wholeheartedly. There is also a suggestion that where you do – where you have as a senior counsel, research work that you simply don't have time that you then utilise black counsel at remuneration of course. So these are the suggestions that are on the table and we are actively debating and trying to do something about it in the Free State.

JM M. Masutha: Thank you, Chief Justice [inaudible 26:52].

CM J. Mogoeng: Thank you, Minister.

COMM. S. Mashinini: MEC?

COMM. S MASHININI: Thank you, Chief Justice, just one question, Mr Pohl.

Adv. L. Pohl: Yes, Commissioner?

COMM. S. Mashinini: By your own admission.

Adv. L. Pohl: Yes.

COMM. S. Mashinini: I wanted to make a follow up to the question raised to you by Judge Hlophe around the inclusion of the indigenous languages into the LLB Curriculum.

Adv. L. Pohl: Yes.

COMM. S. Mashinini: But here is the point. The point is since the last interview that you were here seeing that importance of including indigenous language into the LLB Curriculum.

Adv. L. Pohl: Yes.

COMM. S. Mashinini: By your own efforts to improve on understanding and speaking the indigenous language, what could have disturbed you to make sure that you have that necessary improvement to make sure that when they eventually come then you are able to get into that space?

Adv. L. Pohl: Do I understand your question correctly that you are asking? What motivated me to do so?

COMM. S. Mashinini: I'm saying that your improvement since last time and now hasn't gone up enough.

Adv. L. Pohl: Yes.

COMM. S. Mashinini: What are you doing to make sure that you actually improve that area that you, yourself, you have admitted that it's so important that to include indigenous language into the LLB Curriculum?

Adv. L. Pohl: I have to say – I'm ashamed to say that I have not done more than trying to increase my vocabulary, Commissioner. I would like to give you a different answer but that is unfortunately the truth of the matter.

COMM. S. Mashinini: Thank you.

CM J. Mogoeng: Commissioner Norman?

Adv. T. Norman: Thank you, Chief Justice. Good morning, Mr Pohl.

Adv. L. Pohl: Good morning, Commissioner.

Adv. T. Norman: I just want to understand from the answers that you've given to the questions that you were asked by the Minister and the President. I just want to understand. Have you – or by the answers that you've given are you saying that you have not worked in a matter with a black junior?

Adv. L. Pohl: That is correct, yes.

Adv. T. Norman: So all the years that you've been in practice you have not done that?

Adv. L. Pohl: No, I –

Adv. T. Norman: Because I didn't want to misunderstand your answers.

Adv. L. Pohl: I've been practising as a senior for two and a half or two and three quarters of a year. It's senior counsel that gets junior counsel allotted to them. In the cases that I've been briefed, economically, it wasn't feasible. I have had, I think five cases where I've had juniors and in those cases, it was the juniors that drew in senior counsel and drew my aid in to assist them in those cases.

Adv. T. Norman: Sorry, maybe if the Chief Justice, could allow me a further question? Well, I must just say this to you. I started leading, way before I took silk. As a senior junior advocate you are enjoined [inaudible 29:50] to empower juniors. I did that way back before I took silk. So are you saying to us from that time you started coming – over ten years as an Advocate, you have never worked with a junior counsel? Even if it's a junior, junior from zero to three years?

Adv. L. Pohl: Commissioner, I accept that, what you did. What you're suggesting to me is a laudable practice. But I have not done that and it's not something that is common with us unfortunately.

Adv. T. Norman: Thank you. Thank you, Chief Justice.

CM J. Mogoeng: Thank you, Commissioner Norman. You are excused, sir.

Adv. L. Pohl: Thank you, Chief Justice. Please excuse me.

CM J. Mogoeng: Thank you.