



Heath
Specialist Consultants

FINAL REPORT

**Investigation in terms of Section 106 of
the Provincial Government Municipal
Systems Act, 32 of 2000**

PROPOSED RENAMING OF ADDERLEY AND WALE
STREETS, CAPE TOWN

AUGUST 2001

1. INTRODUCTION

The Mayor of The Unicity of Cape Town designed a proposal to change the name of the following streets as part of a reconciliation campaign: -

- Adderley Street to Mandela Avenue
- Wale Street to FW de Klerk Avenue

The Mayor also had other motivations for the renaming of the streets.

During April 2001, the Council of The Unicity decided to set a process in motion inviting comments by the public on the proposed renaming of the streets.

An article was published in a Newspaper (Mail & Guardian) on 8 June 2001, alleging *inter alia* fraud.

Following this article an affidavit by Mrs Victoria Johnson, a legal advisor in the Legal Advisors' division, was disclosed and published by the top structure of the Democratic Alliance. This affidavit contained negative allegations against The Unicity employees and Councillors.

The last two revelations really rocked the boat. We were appointed as investigators on Monday, 30 July 2001. Initially it was agreed to hand over a report to the Minister on 14 August 2001, but by reason of the extent and duration of the Public Hearing, the Minister was requested to extend this date to 21 August 2001. On Saturday, 18 August 2001 at the end of the Public Hearing, all the Advocates indicated that it would be impossible for them to deliver Heads of Argument during the course of the following week and the Minister was then requested to extend the date to 28 August 2001.

As a result of the urgency in this matter, a limited investigation was conducted before the Public Hearing and a number of witnesses were interviewed, some at the initiative of the investigators and some at the initiative of the witnesses or the lawyers.

It was decided to conduct a Public Hearing not only by reason of the provisions of Section 106 (2) read with the provisions of the Provincial Commission's Act, but also in view of the fact that it appeared that there were certain key figures or key witnesses who could make a contribution to the investigation. It was also decided that in the interest of the public and in the interest of transparency that a very important facet of the investigation would therefore be conducted in public by way of a Public Hearing.

2. **APPOINTMENT**

Mr P Uys, the Western Cape Minister of Local Government and Development Planning, has in terms of Section 106(1)(b) of the Local Government : Municipal Systems Act, 2000 (Act 32 of 2000) designated us, Advocate W H Heath SC (Chairperson) and Mr M Campbell as investigators, *“to conduct an investigation in terms of section 10 6(2) of the said Act read with the Western Cape Provincial Commission Act, 10 of 1998, into the following matters:* -

“Alleged maladministration, fraud, corruption or other serious malpractices committed by any person or persons in the public participation exercise undertaken by the City of Cape Town regarding the proposed renaming of Adderley -andWaleStreets”.

3. SCOPE OF THE INVESTIGATION

Section 106(2) of Act 32 of 2000 incorporates the provisions of Sections 2, 3, 4, 5 and 6 of the Western Cape Provincial Commission's Act 10 of 1998. The objective of this incorporation is to empower the investigators to conduct Public Hearings, to ensure the presence of witnesses and to make provision for offences by witnesses, or in respect of witnesses, and to make also provision for obstruction of the "Commission".

There are no accused or respondents; but should the investigators find that maladministration, fraud, corruption or serious malpractices were committed by any person, then the investigators will report and make recommendations accordingly.

Different approaches are apparent from the Heads of Argument, filed by the Legal Representatives for Mr Marais, The Unicity, Mr Kieser and Mr Smit. We will deal with the relevant issues.

One of the issues is whether, as Advocate Louw calls it, and I quote, *"mere maladministration, fraud or corruption will not ordinarily suffice. What is required is, wilful conduct of a criminal or near criminal nature which also has a causal significance in the sense of pre-judice to or a failure of the administration of a Municipality"*.

In the Supplementary Heads of Arguments, on behalf of the Unicity. This submission was disputed and various reasons were advanced. The reasons include a reference to the fact that even on the definition in paragraph 7 of Advocate Louw's Heads of Argument, provision is made for illegal, unethical, negligent or immoral behaviour and the submission is that these elements do not represent wilful conduct of a criminal or near criminal nature.

We do not find any indication in the Legislation, nor for that matter in the Terms of Reference, that it is provided that we should investigate only maladministration, fraud or corruption which is linked to or qualified with a wilful conduct of criminal or near criminal nature and we reject this contention. (Heads of Argument, Adv. CY Louw SC –page 2).

We also do not accept the contention that the reference to maladministration, fraud or corruption must be linked with a form of malpractice.

In paragraph 3 of Mr Louw's Heads of Argument, it would appear that he limits his submissions to allegations made directly or indirectly by Mrs Johnson and we find this surprising. Not only is there no reference or mention made in our Terms of Reference to the affidavit by Mrs Johnson, nor is there any indication anywhere that our investigation is limited to allegations made by Mrs Johnson. In addition to this, this point was raised before the Public Hearing started and it was indicated that we do not see the affidavit by Mrs Johnson as a chargesheet or a summons or as a limitation to the investigation or as a basis for the parameters of the investigation.

In terms of the provisions of Section 106, it is provided that the Minister has the power to exercise his discretion if he, and I quote, “... has reason to believe...”. There is no indication that whatever he had in his possession on which he based his “reason to believe” and which would be the jurisdictional facts to exercise his discretion, set the parameters for the investigation.

At the commencement of the investigation the affidavit of Victoria Johnson was handed to the investigators. This affidavit contained a number of allegations against a number of people indicated in the affidavit. This is not regarded by the investigators as a charge sheet or a summons, but it is regarded as information, which was made available to the investigators assisting them in their investigation.

We are of the view that we are not limited to the affidavit of Mrs Johnson and that we are entitled to investigate and consider anything relevant to the issues referred to hereinafter.

In our view the major issues are: -

- (i) Maladministration.
- (ii) Fraud.
- (iii) Corruption.
- (iv) Other malpractices.
- (v) Credibility.
- (vi) Substantial facts.

4. **ANALYSIS OF THE EVIDENCE**

We will now deal in some detail with the different witnesses and the applicable evidence relevant to the investigation and our findings. The evidence is analysed in the sequence, which it was tendered, in order to stick as closely to the text as possible. The evidence is not summarised in the sequence of the witnesses.

4.1 **CHURCHES**

4.1.1 **Oikodome Christian Centre**

Senior Pastor C F M Doman

Pastor Doman is the Senior Pastor of the Oikodome Christian Centre (a relevant community church). This church has been in existence for the past twenty years and consists of 900 members.

Pastor Doman meets with Pastor T J Noble and other Ministers of Religion on a regular basis. On a number of occasions the street-renaming issue was discussed and following the guidance by Pastor Noble, Pastor Doman and some of the other ministers submitted submissions.

Pastor Doman's submission, in which he identified himself and his church as indicated above, stated that, and I quote, *"I hereby agree that it is a good thing to change the names of the streets of Wale and Adderley to FW de Klerk and Nelson Mandela"*. He furthermore added that it would be a good gesture in line with their Prayer and Reconciliation Day, which was held on 21 March 2001 at Newlands .

By reason of the evidence by Peter Marais and Johan Smitt that a number of churches supported Pastor Noble, as well as the perception that the congregation of those churches agree and support the renaming of the streets, we conducted a consultation with Pastor Doman and his affidavit, which was drafted, was made available to all the lawyers.

The relevant passage in his affidavit states (on a translation of it) that the issue was not discussed by him or his colleagues with the congregation and they had also not dealt with it in any detail during their Sunday services. He did discuss it with the six (6) members of their Executive and he was advised that it would be a positive approach to support the renaming of the streets. However, no voting took place at the church and no ballot papers ('stem briefies') were made available to the congregation. Pastor Doman states in paragraph 7 of his affidavit that he never tried to create the impression that he was supporting the renaming of the streets on behalf of his whole congregation.

Any inferences which were drawn from the fact that his congregation consists of 900 members and that they support the renaming of the streets were therefore not correct. What is clear, is that he personally, as well as the members of his Executive, supported the renaming of the streets.

4.1.2 **Valley Christian Fellowship**

Pastor PC Vers

We are not going to deal in detail with the Valley Christian Fellowship. The letter addressed to the Mayor by Pastor Vers dated 18 May 2001 is signed on his behalf.

He also stated that they have more than 350 congregates. However, no indication is given as to whether the members of the congregation were actually consulted or whether they support the proposal of the Mayor.

4.1.3 **DutchReformChurch**
[GrooteKerk]

This church sent a submission dated 17 May 2001, to the Mayor following a discussion, which they had, had with the Mayor. The relevant passage reads as follows: -

“1. Die kerkraad neem kennis van en ondersteun die beoogde n aamsverandering en besluit om mee te doen aan verrigtinge wat daarmee verband hou”.

It therefore appears that the management of the church supported the changing of the street names, but there is no indication whether they had consulted the congregation or what the view is or was of the majority of the congregation.

4.1.4 **St Georges Cathedral**

The conclusion of this church's submission dated 17 May 2001 and received by the office of the Mayor on 17 May 2001, reads as follows: -

“The Vestry resolve unanimously to reject the proposal to rename Adderley and Wale Streets”.

The Office of the Mayor received this letter on 21 May 2001.

4.1.5 **Archdiocese of Cape Town - Reginald Cawcutt (Auxiliary Bishop)**

He lodged his strongest objection and comments that it would be an imbecilic idea and protests in the strongest way possible. The letter is dated 30 April 2001 and was received by the City on 8 May 2001.

4.1.6 **New Covenant Christian Church
Pastor T J Noble**

According to the evidence, Pastor Noble is the spiritual advisor to the Mayor, appointed in terms of a contract.

The evidence is that he had and still has regular contact with the Mayor. It was indicated during the Public Hearing, that during April and May he spent approximately an hour or two hours with the Mayor at every meeting. Pastor Noble's evidence was that, by reason of the variety of matters the Mayor was involved in at that stage, and due to the fact that the Mayor needed spiritual support and advice, they spent approximately an hour or two hours discussing those matters and praying (for those matters). The Mayor disputed this evidence and indicated that included in the hour, or two hours, is Pastor Noble's travelling time and also the time that he needed to find transport. The time that he actually spent with the Mayor was therefore much shorter. It is not clear why there is such a dispute between the two on this issue.

Pastor Noble was convinced that it would be beneficial to the city and that it would make a substantial contribution towards reconciliation, if the Mayor's proposal was accepted and implemented. This inspired him to approach his own congregation as well as the other Ministers of Religion mentioned previously in order to inform them about the proposal and the benefits of having the proposal implemented.

He dealt with the proposal in a sermon, on the basis of supporting it, but he did not deal with the possible rejection thereof. He was confident that at least the majority of the people would support the proposal.

He arranged with a parishioner of the congregation to draft a pro-forma letter addressed to the Mayor and which supported the proposal and which was to be made available for signature by the parishioners of the congregation. He was expecting substantial support. The parishioners of his congregation were dealing with the distribution of the letters and getting them signed.

The signed letters, which had been collected, were handed to Pastor Noble and he took them to the Mayor's office. Even though he submitted that he never opened or read a single one of the letters beforehand, he was convinced that all the letters were in support of the Mayor's proposal.

Although the Mayor was, according to evidence, busy in a meeting when Pastor Noble arrived at his office, he interrupted this meeting and came out to speak to Pastor Noble. Pastor Noble testified, " *When I arrived at the Mayor's offices, the Mayor*

was present but he did not touch the letters but he called Mr Kieser to come and collect the letters and I actually handed the letters over to Mr Kieser". (See pages 334 –335).

Pastor Noble testified that he indicated to his congregation at the Sunday meeting that they could vote against the Mayor's proposal, but Pastor Noble had difficulty in explaining why only one pro-forma official letter was prepared, which was in support of the Mayor's proposal.

When the letters were counted afterwards, it was found that Pastor Noble had actually handed in 127 letters of support. This was of course contrary to the expectation which Mr Johan Smit had expressed, that 300 letters were due to come in from the congregation of Pastor Noble. Pastor Noble admitted that he had informed Mr Johan Smit that he was going to bring in letters and that he indicated that he had received an indication from the congregation that about 300 people were supporting the proposal and that he was expecting to bring in about 300 letters. Pastor Noble further testified that this conversation between Mr Smit and himself took place after a meeting which they had with the Mayor. He could, however, not remember whether he had told the Mayor about the letters. When he was confronted with this statement, his reaction was that, *"I cannot help sometimes I remember things. You too sir, you have things that you will remember and things that you will not remember in life. I clearly remember that I told Johan, I clearly remember that I told Johan". (See page 348).*

At page 332, he explains why he had not discussed the renaming of the streets with the Mayor. According to him, the Mayor was too busy, but what is surprising is that he discusses all different kinds of problems which the Mayor experienced with the Mayor. (See page 347 – 348).

At page 332, he states that he had different political parties in his congregation. He discussed the matter with the congregation because he believes that the church cannot be a political. This goes hand in hand with what he has stated on page 333 that he had informed the congregation of the proposal and that it was open to the public to voice their opinion.

He testifies that if he had found anybody who was against the proposal, then he would have created the opportunity for such a person to oppose the proposal.

The evidence of Mr Johan Smit was that he had information that the 300 letters would be arriving at their offices on the Monday or Tuesday of a specific week. Pastor Noble said that there was no specific arrangement with the people but they had to hand in the forms as soon as possible, as there was a due date for the public opinion. It is therefore either unlikely that Pastor Noble would have informed Mr Smit when he was going to bring the letters in or alternatively he did do so regardless of the arrangement with the parishioners of his congregation. (See page 350).

Noble denies that he told Mr Smit when he was going to bring the letters in. This is a clear contradiction with the evidence of Mr Smit. (See pages 353, 585 – 586).

He denies that he had told the Mayor about the support and the letters that he was due to receive whereas at page 348, his evidence was that he could not remember. (See page 356).

In reaction to the question whether he has been involved in a similar project with regards to other institutions, Pastor Noble said that he couldn't recall. This is with reference to a period of 1½ year.

Noble explained why he did not discuss this issue with the Mayor and explained that the Mayor is a very busy man. He indicated that he was not sure and that he would have to consider it. Later, he added that, and I quote, *"I'm sure, sir"*. (See page 370).

On page 373, he deals with the 300 letters of support and he states next to lines 20 and 21 that, *"it was brought to my knowledge and we've seen that there was about 300 people..."*. At page 374, Mr Gauntlett quoted from the letter which Pastor Noble addressed to the Mayor, which *inter alia* stated that, *"This letter serves the full support of the New Government Christian Church Congregation of +/- 1000 members"*. This is a far cry from 300 members who supposedly supported the proposal and it is even more remote from 127 people who eventually signed a letter of support.

What is surprising is that Noble did not even read a single one of the letters that he handed over to the Mayor's office. Notwithstanding the end result of the letters, Pastor Noble indicated that the leadership of his church actually had the support of a thousand parishioners. (See page 379).

He deals with the fact that one person very often writes on behalf of a number of people and the members of the family then just make a cross or they just sign. That led to a situation where they felt the need to open a school to teach people to read and write. At the bottom of the page he indicated that, *“this was a public opinion, this was the voice of my church. I took in front of 1300 - plus members, only 300 indicated, we only got our 127 letters, sir”*. (See page 384). Notwithstanding this statement, he stated in his letter to the Mayor that a thousand people supported the proposal. (See page 406).

At page 402, Pastor Noble testified that, *“if it is right, if it’s biblically, morally right I can do it, sir”*. He was now referring to dealing with this matter in his church. He however did not discuss it with the Mayor because that was not part of the role that he was supposed to play as spiritual advisor to the Mayor. (See pages 401 -402).

4.2 **HANDWRITING EXPERT EVIDENCE**

A number of documents were submitted to an expert to analyse the handwriting and signature on the petitions, which were received by the City Council. At various instances the expert had arrived at the conclusion that more than one signature next to the names of different people is the handwriting of the same person.

It is clear from all the interviews conducted, from evidence at the Public Hearing and from statements acquired by the investigators that the employees of the City Council were not informed that the same person had signed in various instances on behalf of other persons. In theory the employees of the City

Council and for that matter the sub -committee appointed to consider the submissions, were or could potentially have been misled by the contents of the petitions but we will deal in detail with these matters later when we deal with the different witnesses.

To the extent that the number of “votes” are in favour of the proposal of the Mayor, serious question marks arise with regard to the number and quality of these ‘votes’ or ‘submissions’.

Although Mr Kieser and also Mr Marais were at pains to explain that this was not a referendum or a voting exercise, the exercise undertaken by those who were acting on instructions or on own initiative to collect signatures on the petition forms were never instructed or educated or informed what was required according to Mr Kieser and Mr Marais with regard to the reasons why the names of the streets should be changed or should not be changed; they simply embarked on an exercise to collect signatures in favour of the proposal. The same applies to the letters that were made available by Mr Ehrleigh as well as by Pastor Noble without giving the option to the people they approached and/or without leading or assisting them in making up their minds whether they were or were not in favour of the renaming of the streets.

We would like to comment at this stage that all the signatures, which the expert did not comment on critically, save for a few exceptions, are not indicative of people who cannot write. This applies to the petitions and applies to the many letters that were handed in. We do however accept that there are many illiterate people, but that difficulty has been overcome in many

respects and one of the areas where it has been overcome, is in petitions and election campaigns where a person simply makes a mark.)

4.2.1 Mrs UE Pick

The expert indicated that on the first page of the document numbered 95 and the page itself is numbered 3, and in particular, opposite numbers 1 – 11, all the particulars filled out, are in probability the handwriting of the same author. She also confirmed that the particulars opposite number 20, are in her handwriting.

On the page marked 4, she indicated that it was possible that it was the same author who had ** their particulars opposite numbers 2 and 3 and the same applies to 4 and 5, because, as she indicated, very often she trusted the people and that it was quite common that one person would complete all the particulars. She then did not always see that the person whose particulars appeared next to a number, actually signed a document. As far as the particulars opposite to numbers 4 and 5 are concerned on page 4, she indicated that it could be the same handwriting.

The particulars opposite numbers 16 to 19, may be the same handwriting, but she was not watching the people who were writing, because she was involved in a debate with the people about the renaming of the streets. She testified that it is probably the same handwriting. The same applies to numbers 20 and 21.

On the third page, starting with the name, Dvan Schoor, there are two names marked in orange. Her reaction to this was that it is probably the same person who had written that. The two items opposite 22 and 23 is actually her own handwriting.

On the first page there are two signatures in pink and she testified that the husband asked his wife to sign for him as well. She heard this, but she was busy with the other people. She indicated to them that it was an offence and the reaction of the man was that she must send the people who would look into the offence to him. When it was pointed out to her that it is indicated that the two "R's" in the signatures opposite to number 9 appear to be the same according to the expert, she said that she swears that the two signatures belong to each individual.

The signatures opposite to numbers 18 and 19, is indicated by the expert to be similar in style and execution. Her reaction was that she does not remember, but she did not take it seriously, because she knows the people.

With regard to the "s" marked by the expert on the page marked 4, which is indicated by the expert as possibly the same author, she confirmed that each individual had signed personally. The same applies to those marked in orange.

With reference to the name and address in orange on page 5, her reaction was that the signature is the same. It was pointed out to her that she was not referred to the signature, but she again stated that the signature was the same handwriting. She qualified that on page 18 of the transcription.

On page 5, the particulars in blue, she had written those particulars because the two persons indicated to her that they could not see properly. She added that the one had glasses and she indicated that she writes too ugly (lelik) and the other she wrote on her behalf and the second one, F Sambaba, indicated that her glasses was too weak and therefore she completed the particulars on her behalf. She agreed that the signatures were nicely between the lines.

She insisted that the two Clayton's opposite numbers 8 and 9 on the page numbered 3, signed individually and personally. On page 23 of the transcript, she stated the following: -

“Soos ek voorheen ook vir u gesê het, in ons gemeenskappe is die manier van, kyk jy gou vir my daar en teken jy gou vir my daar, usien en, maarekiseintlik, ek hou nie van dit nie en daarom is ek baie jammer dat, ek meen ek voel, nee ek voel eintlik 'n bietjie af omdat dit nou ingesluit het juis by my”.

She referred to a practice amongst their own people where the one would sign or write on behalf of the other and she was sorry that it actually happened to her that some of the people on Exhibit “F” had signed on behalf of somebody else.

4.2.2 **Mrs SMajiet**

This lady was approached by Mr Freddie Adams to obtain signatures in support of the change of street names. Her form is number 126.

In an affidavit by Mrs Majiet, she states that she informed Mr Freddie Adam that the signatures next to numbers 3 to 14 were all signed by Mrs S Matthysen and this was confirmed by Mrs S Matthysen in an affidavit, that she had actually signed these signatures.

As far as all the other signatures on page 1 to 6 are concerned, Mrs Majiet stated under oath that all the people signed their own signatures. This is contrary to the evidence of the expert who indicated that one person probably appended the signatures next to numbers 17 and 18 and same applies to the signatures opposite to numbers 22 to 26.

As far as the list numbered 1085 is concerned, Mrs Majiet stated that the Brophy's next to number 16 to 20 did not sign in her presence, but all the other people had actually signed in her presence.

As far as the page numbered 1085 is concerned, the expert in his report indicates that the signatures opposite to numbers 6, 7 and 8 appear to have been written by the same hand. As far as the signatures opposite to numbers 17 and 18 are concerned, they are similar in design and execution, which suggest that the same author possibly wrote them.

We mentioned above that the signatures opposite numbers 17 and 18 are similar in design and that the signatures opposite to numbers 16, 19 and 20 appear to have been written by the same person.

Again there is a likelihood of fraud.

4.2.3 Hildegard August

She received a list from Freddie Adams. She was also informed that she had to have the list ready by the next morning.

She then attempted to acquire sufficient signatures in a hurry.

Opposite to numbers 1 and 2, it is indicated by the expert that there is a high probability that the same author had signed opposite those two names. In the affidavit by Hildegard August, she indicated that Hildegard is her first name and Marlene is her second name and that she had in fact written her own names and addresses and that she signed both those signatures opposite to numbers 1 and 2.

According to her affidavit, her husband, Gary August had signed his own name.

Zenia August is her child of seven (7) years old and she had written her name and address but the child personally signed next to her name.

Ganaé August is her other child aged nine (9) years who also signed her own signature.

The names next to numbers 6 and 7, Deon Apollis and Trevor Apollis and Cedric Apollis next to number 8 are the friends of her husband. She signed on behalf of Deon and Trevor in the last column. The reason, stated by her, was to complete the form as quickly as possible. The next morning, Freddie Adams and Bonnie came and fetched the form from me.

According to her affidavit, she simply handed the form afterward to other people in order to get them to complete it in a hurry.

It is indicated by the expert that the handwriting as far as the names and addresses are concerned next to numbers 15, 16 and 17 is actually the handwriting of the same author. As far as the signature next to numbers 24 and 25 are concerned, the expert indicates that it probably belongs to the same author.

The approach of Hildegard August indicates a reckless approach and she did not care about the correctness or reliability of the petition.

4.2.4 **Mrs M Samuels**

The page which she completed was 1087. The expert indicated that the first and last signatures were probably that of the same author as well as the signature opposite to number 14. Mrs Samuels gave an explanation, but what is amazing, is that she did not simply sign on behalf of the other two people, but she actually signed a proper signature as if she was imitating their signatures. The signatures appear to have a nice flourish to them. Her explanation of the signatures next to numbers 14 and 26 are not satisfactory and in general her evidence did not impress.

4.2.5 **Mrs B Jacobs**

The expert indicated that the signatures on petition list number 1083, next to numbers 10 and 11 on what are probably the signatures of the same author, the signatures next to numbers 14 and 15 are probably the same author and the signatures next

tonumbers16and17areprobablythesameauthor.Thesame appliestothesignaturesnexttonumbers24and25.

InanaffidavitbyCheryl Hendricksitisstatedthatshewasnever approachedbyanybodytosupportthechangeofthenamesof thestreetsandshe denies that it is her signature, which is next tonumber22onpagenumber1083.Thislistforms partofthe report in respect of the examination of documents by the ForensicScienceLaboratory,WesternCape.

The first person on that page, Theresa Naidoo, stated in an affidavitthatshehadsignedtheformbecauseshewasinformed byCarolineCloete thatBonitaJacobs(aCouncillor) informed her that she must sign the form because they were going to change street names in Cape Town. She indicates that she never read the form and she did not have any details as to the change of names of streets. She states that she did not know why she signed it, she never read the form and it was never explained to her, what street names were supposed to be changed.

JoleneRobertsonwhosenameisnexttonumber4onthesame page, stated that she was informed by Caroline Cloete that BonitaJacobsins tructedherto: -

“obtainmysignaturebutIdidnotknowwhatitwasabout saveforthefactthatIwasundertheimpressionitwastoobtain ahouseandIwasnotawareofanyproposaltorenamestreets inCapeTown”.

4.3 **INDIVIDUALS**

4.3.1 **Mrs U E Pick**

Mrs Pick is a Councillor and she has been a Councillor for since May 1996. She was responsible for sending in the two sets of documents, which form part of Exhibit "F". She explained that she had read the advertisement in the newspaper and she was eager to support the proposal of the Mayor.

She had sent in the second set after it was published in the newspapers that fraud was allegedly committed with regard to the so-called petitions. Her evidence at page 407 is that as a result of the newspaper report, she decided that if anything may have happened, then she wanted to be personally reliable, because she had taken the initiative.

As far as the first set is concerned, she had completed that and she left it at the Post Office and then her employee, Mrs Jacobs, took the initiative without consulting her to acquire more signatures and she had given her the page which was actually the last page of the first set of documents which was filed by her.

She indicated that she approved of the initiative taken by Mrs Jacobs and that she trusted her as well. However, she wanted to make it her own responsibility and therefore she decided to replace the last page of the first bundle with a new page with new signatures which were collected by her and which started with the name 'D van Schoor'.

She testified that she had sent in both bundles of documents. (See page 411). She identified the first bundle as the bundle, which now carries the number 671 and the second bundle as the bundle, which now carries the number 195.

The page, which was replaced, is the one in the first bundle which carried the name at the top as the first name, Ivor Rodney Johannes. (See page 412).

At page 413, she stated that she had personally acquired each one of the signatures on the last page of the second bundle. She is also satisfied that each one of those names is a genuine name and a genuine signature.

She testified that she had also sent a letter before she had sent in the petitions in order to support the proposal. (See page 415).

With regard to Exhibit "F", she testified that the name UE Pick on the first page of the petition is actually her name.

Mrs Pick testified that she was not aware of the fact that Mr Kieser was actually the responsible person in that department. She qualified to say that she knew that he was the head of the Legal Section, but she did not know that he was in control of the street project. (See page 417).

She was confirmed, on behalf of Mr Kieser, with a statement that she had phoned Mr Kieser after the Mail & Guardian report was published. Her reaction to that was that she does not read the Mail & Guardian but eventually it became clear that she was aware of the allegations in the newspapers that fraud was allegedly committed with regards to signatures, which form part of petitions. She confirmed that she had phoned him after it was

published that fraud was allegedly committed and she suggested to him that she wanted to withdraw the first set of documents and wanted to replace it with the second set, but she confirmed that this attitude was that both sets should be filed.

4.3.2 **Freddie Adams**

On/or about 14 May 2001, Mr Freddie Adams was questioned by the Mayor, regarding his general impression of the views of the people ' *on the ground*' .

Following this discussion, Mr Adams, approached employees of the City Council, in particular Mr Johan Smit, in order to acquire information regarding the submission process. Mr Smit promised to let him have something. On returning to his office, he discovered an envelop with ' *petition forms*' – the origin of which was unknown to him.

His evidence was that he handed approximately ten (10) forms over to people in the Mannenberg area.

He received some of the forms back and handed them in. Mrs Majiet, who canvassed for signatures in Mannenberg, made an allegation that she had told Mr Adams that Mrs Matthysen had signed for a number of people. Mr Adams has not had the opportunity yet to react to this and we do not draw any inferences from this statement.

4.3.3 Mr JFSmit

Mr Smit was a political journalist at, ' *Die Transvaler*' newspaper. Thereafter he worked for Minister Leon Wessels as a ministerial spokesperson and now for the past 4½ years he has been working for Mr Marais, first as ministerial spokesperson at the province and the past 7 months at the City of Cape Town.

He testified that all media contact was through him and that this has led to an enormous workload. The renaming of the streets added substantially to his workload.

He had to arrange regular media conferences. In order to assist him in his work, he received copies of the items that were presented to Exco. The advertisement, in terms of which comments were invited from the public, was also submitted. He edited it and his evidence is that he had actually edited it meticulously. (See page 439). We have no doubt that he is an extremely busy person.

His evidence is furthermore that when Exco had taken a decision (and the same applied earlier to the cabinet on provincial level), his role was to disseminate it to the media and he would actually, and I quote, "*sell it with passion*". He stated that he actually then acts as a messenger for the council. (See page 440).

As far as the present issue was concerned, he said that his experience was that people, who were against it, would write immediately and file their submissions, whereas those who are in favour of it, would simply refrain from commenting.

He also explained that he had an excellent relationship with Mrs Victoria Johnson and he referred in some detail to the contact between them.

He referred in his evidence to a discussion between himself and Pastor Noble and to the fact that Pastor Noble informed him that he would be submitting 300 letters supporting the initiative. He stated that he was very excited and that it was his sensation that something was working well, in fact, he shared it with journalists. He was excited because there were not only negative comments, but also positive comments (page 445). (See also pages 444, 453, 479 and 480).

He dealt in some detail with his personality and that he is fond of joking. We accept that he uses a lot of body language. This also became clear during the course of his evidence.

He also indicated that he had regular contact with their legal office and that he often discussed matters with Mrs Johnson and Mr Kieser. He added, *“dit is een vandietake watekhet, isom uit te vind hoe loop die ding met die straat hernaaming”*. (See page 446).

He furthermore indicated that it was necessary to go to the legal office in order to get information, on a regular basis, of what the progress was with the renaming of the streets. (If this is so, why then the loopholes in the Press Club speech and why does the Mayor testify that Smit does not have access to information at the Legal Section's disposal).

He also testified that if Mrs Johnson had just shared her concerns with him, he could have explained matters to her and she would not have become involved in an affidavit, which has, to a large extent, been damaging to his reputation.

At page 448, he testified that he shared his information about this project with everybody as he was very excited and he saw himself as a messenger. He shared the information with those who wanted to know and even those who were not interested to know. He stated that there was progress without anybody canvassing and that his impression was that it was happening voluntarily. (See page 449).

With regard to the advertisement, he testified that the objective of the initiative was that people were supposed to comment, and I quote, "*Sê jousê. Dit was die advertensie*". (See page 450). He therefore indicated that people were supposed to voluntarily express their views and that this would have been in line with the advertisement. He commented on the message, which was conveyed to the media (it is not clear in what fashion or in what manner), and stated that this was not a referendum, but that it was merely an invitation to comment and that the comments were to be considered. He also indicated that at the end of the exercise, they would have arranged a media conference where the detail would have been announced.

He was aware of Councillor Ehrleigh's efforts to make letters of support available to other councillors who were responsible to distribute it to the public. At page 453, he indicated that it was clear to him at that stage that canvassing was in process.

Healsostatedatpage455,thathehadmademediastatements to the effect that they were not counting numbers, but that the viewsofthepublicweretobeconsidered.

When he deals with the speech, which the Mayor had made at the Press Club, he states that the speech was very carefully prepared by him with the assistance of Mr Fourie. He got information from Mr Fourie and a few other people, where after the speech was carefully written and they meticulously avoided mentioning numbers. They did not want to mention any numbers. Herepeats on page 505 that the speech was written with care in order to avoid any reference to numbers. He added that they wanted to avoid a reference to numbers, because the whole debate in the media at that stage was about numbers and support.

At page 464, Mr Smit testified that he demonstrated to Mrs Johnson how signatures were going to be acquired, by putting it in rather blunt terms what it is about and to say to them, *“do you support it, and if so, just sign”*.

At page 465, he actually testified that he found the renaming process amusing.

Smit's reaction to the Mail & Guardian article was that they had to react to it and that they had to investigate who was behind it. He confirmed that he very strongly believed that somebody was setting a trap. When it was put to him on page 515 that his reaction to the Mail & Guardian was not a responsible reaction, he reacted by saying that he had already explained that he was under a lot of pressure, especially because of another case.

At page 483, Mr Smit testified that he was at all times aware of the fact that at the process of submitting and receiving submissions was to enjoy priority, and the integrity of the process was at risk. At page 485, he testified that he realised that the lack of integrity would affect the process, especially if it was driven in a certain direction.

He testified that there was probably a conflict in the role which Pastor Noble had played by promoting the proposal, since he was in the position of a consultant. (See page 487). He dealt with this aspect in more detail on page 491.

At page 496, he deals with the numbers and he expresses the view that the exact numbers were not important but rather the contents of the views expressed by the people. Notwithstanding that, he was very excited by the letters that Pastor Noble was supposed to bring in. It is clear from the contents of the letters that there were no arguments in favour of, or against the proposal. The same applies to the other petitions on which he also relied.

At page 497 he testified that it was clearly stated by his office that the public views would be respected and that there was a media statement to that effect.

At page 502, Mr Smit testified that he was uncomfortable with what the Mayor had stated at the Press Club with regard to the exact numbers and that is why he left the venue where the speech was made. He also indicated that he did not have any facts to form a factual basis for the public statement made by the Mayor. He indicated that at that stage he did not know exactly

what the figures or numbers were. He testified that he discussed it with the Mayor afterwards and the Mayor informed him that he had acquired the numbers from the legal office. It is common cause that there is no evidence supporting numbers quoted by the Mayor in his statement.

When confronted with the statement made by the Mayor and whether Mr Smit was not extremely excited about that, his reaction to that was that he was extremely busy at that point in time and he had other work to do. (See page 506).

At page 515, Mr Smit testified that at the time when he reacted to the Mail & Guardian report, he had not even yet read the petitions, but he nevertheless accused the newspaper of having stolen or fabricated the information. Mr Smit dealt in more detail at page 517 with this aspect. However, in the media statement issued by him on behalf of the Mayor as per Exhibit "L", he stated that, "*there are alleged suspect public comment handed in...*". (It is amazing that notwithstanding this statement, he reacted to the media by stating that it was probably stolen or fabricated).

At page 555, Smit testified that he informed three journalists that he was very excited about the prospect of submissions, coming in.

He testified on page 562, that they had spent three days writing the speech for the Press Club, but they never consulted the Legal Section in order to get an update on the comments. Mr Smit was surprised when it was pointed out to him that in the last paragraph on the first page of Exhibit "P", numbers were mentioned. This paragraph reads as follows: -

“Although, purely on numbers, the people of this city supported the idea of reconciliation, the honouring of the statement and the changing of the street names, we also received a great number of objections” .

His evidence was at that stage that he had no idea what the numbers were. He nevertheless was a party to making the allegation that the majority of people in the city supported the idea of reconciliation and the changing of the street names. In fact, at page 564, he states that he had in mind the 300 and the 500 letters, which were due to come in, but he did not take that into account in writing the speech. On his version, he had no idea how many letters against the proposal, were received.

At page 569, he confirms that his speech created the impression that the majority of people were supporting the proposal.

At page 571, he added that he informed the media after the Press Club meeting that the Mayor received the information from the Legal Section. Mr Kieser, in his evidence denied that the Mayor had received any information from him. There is no indication of any other person who had made the information available to the Mayor. (See also page 573). Smitt testified that he couldn't recall that he had discussed the matter with Mr Kieser. We find that highly unlikely, taking into account the importance of the matter and in view of the fact that he had to shield calls from the media and also in view of the fact that he was shocked when the Mayor made that announcement at the Press Club. (See also pages 575 –576).

4.3.4 MrBK Kieser

Mr Kieser is employed as Chief Legal Advisor at the Unicity in Cape Town. His secretary is Nadiema Davids and one of his colleagues who has given evidence is Mrs Victoria Johnson.

Although the responsibility to deal with the logistics of the proposal by the Mayor to change the names of Adderley and Wale Streets was left to the Legal Section, the capacity to make a decision on the proposal was not delegated. According to Mr Kieser, their role was to receive submissions by the public, to manage it and eventually to hand it over to the sub-committee, which was appointed to consider the submissions. The communication with the media was left to the spokesperson, Mr Johan Smit.

Mr Kieser delegated the management of the process to Mrs Victoria Johnson. He was entrusted with the responsibility to advise the Mayor and the Executive Committee with regard to the management of the submissions received.

Mrs Johnson was instructed to draft the advertisement for the newspapers, inviting submissions. It was approved by Mr Kieser and eventually also approved by Mr Smit, the spokesperson for the Mayor.

The advertisement reads as follows: -

“Renaming of Adderley and Wale Streets

Have your say!

His Worship the Mayor of the City of Cape Town has made a proposal for the renaming of Adderley - and Wale Streets, Cape Town. The Executive Committee of the City of Cape Town has supported this proposal, which must still serve before the full Council.

The proposal is for Adderley Street to be renamed Nelson Mandela Avenue and for Wale Street to be renamed F.W. De Klerk Laan with effect from June 16, 2001. What do you think?

Please submit your written comments by no later than 21 May 2001 to:

The Acting Municipal Manager

For attention: Victoria Johnson Fax: [021] 400 -1238

1st Floor No 1 Adderley Street,

Cape Town, Private Bag X9181,

8000 Cape Town”

The following are the features of the advertisement, which was the communication with the public to submit submissions: -

- It is stated in the advertisement that the Mayor has made the proposal for the renaming of the streets.
- The Executive Committee of the City of Cape Town had supported the proposal which was still due to serve before the full Council.

- In terms of the advertisement, the public were invited to state, and quote, “*what do you think?*”
- The public were requested to submit their comments in writing.
- The comments were due to arrive at the offices of the Council by no later than 21 May 2001.

We would like to record the following comments with regards to the advertisement: -

- The Mayor and Mr Kieser were at pains to explain that this was not a voting process or a referendum and that the public were invited to advance reasons why they were in favour of or against the proposal. There is, however, no indication in the advertisement that they actually invited reasons for supporting or not supporting the proposal, but comments were in fact invited.
- The “*petitions*” and letters canvassed for and/or collected did not deal at all with comments or reasons in support of or against the proposal.
- Mr Mara testified that he explained his motivation for the proposal in speeches. There was no evidence that these speeches were published or that they would have reached all sections of the community.

- No indication is to be found in the advertisement of any oral consultation with institutions or individuals. However, Mr Kieser in his evidence at page 605 indicated that it was envisaged that the Mayor would discuss his views with important institutions such as the ‘ *Handelsinstituut, the churches, banks, etc*’ . He stated that this was part of the public participation process. Mr Kieser also stated that the process eventually moved onto a very low level of participation.
- There is no indication that the motivations aired by the Mayor in speeches or during discussions with institutions, actually reached the rest of the population of the Unicity jurisdictional area.
- Even Pastor Noble referred to the newspapers as a source of his knowledge of the proposal. It may well be that he was referring to the advertisement although he did not state that in such exact terms.
- That there was confusion with regard to what was required from the public is clear when the following features are taken into account:
 - the petitions contained no comments;
 - many of the letters collected *in masse*, did not contain any comments, but they were all drafted in exactly the same terms which actually then do not amount to ‘ *comments*’;

- judging from the contents of some of the submissions against the proposal, it is clear that no provision is made for any motivation;
 - it appears from some of the affidavits in the possession of the investigators (and which were made available to the lawyers) that many of the people who had signed the petitions alleged that they did not even know what it was for and in some instances they even believed that it was for something completely different;
 - there is no indication that the Mayor conveyed the message correctly to Mr Freddie Adams, not only because there is no indication in his evidence or that of the Mayor, but also in view of the fact that he was happy to distribute the petitions.
- Mr Kieser in various passages in the evidence however made it clear that the contributions by the public were to be and were in fact judged, at least by him, in categories in accordance with the different reasons or arguments supporting or opposing the proposal.
 - It would appear that even the sub-committee was ignorant. Mr Kieser was present at the meeting of the sub-committee on 14 June 2001. By this time Mr Keiser was very well aware of the contents of the petitions received as well as the letters drafted by Councillor Ehrleigh, not only because they were considered at the

urgent meeting on 8 June 2001, but also because he was in control of all the documentation. He also knew that Pastor Noble handed in a number of letters in support and he actually received personally. We have no doubt that the Mayor was aware that the sub-committee had commenced with its work unless he was completely uninformed, not only by his staff, but unless he did not keep track of this important event in the process of renaming the streets. However, it is necessary to deal with the brief to the sub-committee. As far as paragraph one of the instructions to the sub-committee is concerned, they were entrusted with the discretion to disregard any comments, which were suspect. Although the word 'comment' is such a simple English word, which does not really require any definition, we cannot imagine or accept that a mere signature or a mere vote in support or against the proposal could ever constitute a comment. We refer to the definition of 'comment' in the Concise Oxford Dictionary at page 227, where it's indicated that a comment is a " *remark, especially critical, an opinion or put differently an explanatory note, written criticism or explanation*".

- From this point of view, the sub-committee was not supposed to consider any one of the petitions and could completely have disregarded them. Similarly, some of the objections to the proposal were also merely lists and not only disclose a lack of knowledge of what was required, but obviously should have been disregarded by the sub-committee.

- The signatures obtained by Mrs Pick did not even have any heading to the signatures, but it is just a blank piece of paper with in some instances the word 'Mamre' at the top and in some instances not even that. She had then either not read the advertisement or even she, a Councillor, did not realise that the Mayor had invited comments on the proposal. We cannot imagine that Mrs Pick did not attend any one of the Council's meetings or that she was never involved in any discussion on any level where reference was made to the renaming of the streets, but even if all of that is accepted, then it is clear that this Councillor did not even know of, or consider the requirement of a comment.
- The letters designed by and on behalf of Mr Ehrleigh have certain problems. I quote from one of these letters and they all read the same: -

"I, the undersigned, support the proposal of the Mayor, Exco and City of Cape Town to rename Adderley Street as 'Mandela Avenue' and Wale Street as 'FW de Klerk Lane' in the interest of reconciliation between all the people of Cape Town, our province in the country and to honour these two good leaders".

This would appear to be an attempt to at least state what is supported, but again, a comment is not really forthcoming in these letters. Apart from this, everybody was invited to submit their own comments and here one is faced with hundreds of letters drafted in exactly the

same words. This is not indicative of a voluntarily and spontaneous contribution to the proposal. However, these letters are closer to a comment than the petitions or the signatures collected by Mrs Pick.

- The typical petitions had the following heading: -

“Hereby, we the undersigned, declare that we fully support the proposed name change of Ad derley Street to Mandela Avenue and Wale Street to FW de Klerk Laan. This is indeed a gesture of peace that will be to the benefit of the process of reconciliation and goodwill. Once again the City of Cape Town can set an example of peace”.

Again these are not separate comments, but assuming that everybody associated himself/herself with that, one could possibly argue that these people commented on the proposal by referring to reconciliation. However, taking into account the indications of fraud and suspicion with regard to these signatures (which the sub-committee to a certain extent apparently already realised), the sub-committee would probably eventually have been entitled, after having employed experts, to disregard these petitions.

- The letters drafted on behalf of Pastor Noble, reads as follows: -

“Ek, _____, ID
 _____ by bogenoemde adres wil graag
 my steun aan Mnr Peter Marais weergee om die
 straatname, Wale -en Adderleystraat na F.W. de Klerken
 Nelson Mandelat te verander”.

These letters similarly contain no comment and they were drafted on instructions of and under the supervision of a leader of the community who is also the spiritual leader of the Mayor. He, notwithstanding his contact with the Mayor, notwithstanding his regular visits to the City Council and notwithstanding the fact that he is an educated man, obviously did not realise that he and his congregation were supposed to comment on the proposal of the Mayor.

- Many of the letters in opposition to the proposal can be criticised on the same basis. There are many of the letters which are simply sarcastic or derogatory and for that reason they do not really contain any comment, which could make a contribution.
- At the same time, there are numerous letters with lengthy discussions and so many addressed to the Mayor personally, discussing issues with the Mayor. We accept that the Mayor would not have had the time to read all the letters or even many of them, but in order to make an educated contribution to any debate which could

eventually follow, we cannot imagine that he would not and should not have read at least some of the letters, which should have been pointed out to him by his staff who were supposed to have read all the letters. This should, on his version, have been pointed out to him by the sub-committee on a proper evaluation of the comments which the sub-committee were obviously called upon to consider.

In paragraph 5 of the recommendations to the sub-committee, they were encouraged to treat comments solicited differently in evaluating them. All letters canvassed fall within this category, but there is no indication that Mr Kieser considered those letters against the background of this recommendation to the sub-committee and that he would draw their attention in particular to this problem. (See page 33, Exhibit "B").

Mr Kieser testified that the role of his office was to manage the public comments and Mr Smit would deal with the media relations. According to his evidence at page 599, he personally had to advise the Executive Committee as well as the Mayor how the process was to be managed and was managed from time to time. He testified at page 600, that he was intensively engaged in the strategic planning of the project but he was not on a day-to-day basis involved in the administration thereof. He did ask his staff at one stage to keep a log and he told them from time to time that the matter was confidential. The evidence of Mrs Johnson and Ms Davids was that they had actually decided to keep a schedule of submission to monitor the inflow, as they had received no instructions from Mr Kieser. (See pages 276 – 278).

He testified that he received instructions from the Mayor that the documents were to be treated confidentially and therefore he was not prepared to disclose the documents to anybody without the permission of the Mayor. (See pages 662 –672).

Kieser testified in detail that it was never the intention to conduct a referendum, but it was a question of inviting comments and he was then planning to arrange with the sub-committee to consider the submissions.

The Council was afterwards supposed to address the objections or arguments against the proposal.

He became disillusioned about the process because the reaction from the public was on such a 'low level' as he put it, since they did not address the main issues, such as the issue of reconciliation. It was arranged that appointments would be made on behalf of the Mayor and for the Mayor to discuss the project with important Institutions and it was decided that this would be part of the public participation process. (See page 605).

At page 606, he referred to the poor level of submissions that they have received and he actually addressed an item to the Executive Committee because he realised that it was necessary to get the submissions on track again. There's however no indication that he considered advertising again or lay down criteria and to publicise whatever guidelines he and of course the Mayor had in mind.

At page 610, he refers to the fact that he had in mind that the public had to be educated and informed as to the true impact of submissions and what was required as the basis for submissions, but there is no indication that he had positively taken any action or that he had specifically advised the Mayor to take action or that he had even requested the Mayor for any permission to take any action insofar as that may have been necessary.

At page 613, he testified that the sub-committee was entrusted with the evaluation of the documents and he also referred to the fact that if anybody had conducted a referendum in his office then it was done without his knowledge, co-operation or approval. He made it clear in his evidence that this was no referendum. However, at the same time, the Mayor on more than one occasion became involved in evaluating the votes and in particular the number of votes. It is also clear from his evidence that it was his idea that the numbers were in fact irrelevant as he put it in his evidence, and I quote, *“op hierdie stadium, nee, was getalle irrelevant gewees. Die idee was om die, om die argumente te identifiseer, dit in die pers aan te spreek. Die getalle was vir my inligting om te weet hoeveel mense ons sou kon, ‘of te vrede stel’ of hulle probleem te aanspreek”*. He therefore saw the exercise as one that with regard to submissions against the proposal that they would dispose of those by solving the problems or by explaining the problems. The impression which is created is that after they had then explained or solved the problems, the opposition to the proposal could be ignored. He obviously regarded most

of the negative comments as irrelevant issues and that is why he stated at page 616, that he had considered the idea to buy space in the papers in order to lodge a campaign in order to get the true message across. Again nothing was done.

At page 619, Mr Kieser was referred to paragraph 9 of one of the items which was submitted to the Executive Committee, in which it was stated by him that the Council had received support for its intentions notably from organisations who were aware of the purpose of the exercise and then he refers to, *“die Suid -Afrikaanse Handelsinstituut, die Dutch Reform Church and the Banking Sector”*. We deal at a later stage with the contents of the letter received from the Suid -Afrikaanse Handelsinstituut as it is debateable whether it constitutes a real concept of the detail that Mr Kieser had in mind. The same applies to the Dutch Reform Church. There is no letter from the Banking Sector and therefore it is not clear what Mr Kieser had in his possession as far as the Banking Sector was concerned. He added that he received information which was dealt with in paragraph 9 of his submission to the Executive Committee from the Mayor and other role -players. He also deals in some detail with his discussion which he had with Pastor Noble.

At pages 650 or 651, he deals with his submission to the Executive Committee and his view that the Council would have to address the objections, because if they did not do that, it would become a competition between the rich and

the poorer sectors in the community. There is still however no indication that any attempt was made to educate the well -educated people and even less so, the poor people. There is no indication of any attempt to make criteria available in simple language to the uneducated people as he calls them.

At page 652 to 653, he deals with the fact that the sub - committee was off track, according to him, when he joined them at a certain stage and that he had to inform them as to what they were supposed to do. These were senior people and members of the Council and it is amazing that even they were so uninformed if the message of Mr Kieser and of the Mayor was so clear. Even in the instructions to the sub - committee there is no indication of the criteria to be used with regard to the contents of submissions. However, he was satisfied at that stage that there were sufficient checks and balances in place in order to prevent an equitable result.

Mr Kieser also referred to the communication between him and the Deputy Mayor, but we do not see that issue as of much consequence in this case. We must confess that we find it shocking that the Deputy Mayor was not entitled to get access to the documents and that even she would have to apply for permission to get access to the documents. Kieser described the Deputy Mayor as a politician. If there is an explanation for this, then it was not forthcoming.

Mr Kieser stated that the way in which the affidavit by Mrs Johnson was made public as a maladministration and that it impacted negatively on a project, which was, according to him, obviously well managed. He is of the view that it would have made a difference if he could have supplied Mr Leon (the leader of the Democratic Alliance) with the facts. He was not given the opportunity.

He expresses the view on page 682, that if the process was allowed to run, then the security measures and safety measures that were in place would have solved any irregularities and any false signatures would have had no impact on the process. It is not clear who at the sub-committee was supposed to deal objectively and expertly with the technique whether the signatures were false.

At page 694, Mr Kieser deals with the statements made by the Mayor at the meeting of the Press Club. He indicates that after the Mayor had delivered his famous speech ('*beroemde toespraak*'), he personally made an attempt to try and establish where the Mayor had got this information from and then gave instructions to his staff to count the people ('*mense*'). He had no idea where the Mayor had obtained the information from on which he had based the ratio of 2.5 and that he had not given him any information. Again he did not approach the Mayor and he did not discuss the problem with him. His reaction in evidence was that what the politicians say is not part of his administration of the project. (See page 694).

As far as Victoria Johnson is concerned, Mr Kieser stated that he is of the view that she has not done anything on purpose and that he was even prepared to destroy his own claim against her, should she make such a statement.

At page 701, Mr Kieser testifies that his impression was that although the churches had not approached the matter in a professional manner, they at least realised what the crux of the matter was that the message which they had brought out was then in line with what the Mayor had envisaged.

We cannot with any stretch of imagination see how the letters which originated from Pastor Noble's church, deal with any submission or argument for or against the renaming of the streets and how anyone could consider debating, whatever reasons are to be found in those letters on the proper level testified to by Mr Kieser or on any level for that matter. What is clear from those letters is that they stated that they support the proposal.

Advocate Muller in his cross-examination of Mr Kieser dealt in some detail with the provisions of the schedule to the Municipal Systems Act.

At page 725, he does not deny that he had used abusive language but he indicates that it must have been in some other context and not in the context of his duties as administrator of the Council.

When he was questioned on his remarks, which according to Mrs Johnson he had made with regard to the value of the opposing submissions, he reacted after he

had been questioned in detail at page 731, by saying that he was not prepared to admit or deny that he had made the statement, that he had already indicated that he does not remember that and should suffice.

According to his evidence, Mr Kieser is an experienced lawyer. He explained his involvement following the report in the Mail & Guardian newspaper. He explains that he was extremely annoyed that there was a leak and that he would see to it that any official who was responsible for the leak, would be prosecuted. He was also concerned about the fact that there was a link with the Mayor in the report.

4.3.5 **Mayor Peter Marais**

Mr Marais is the Mayor of the Ucity and he has been in that position since the end of the year 2000.

Mr Marais developed a proposal to rename the two streets repeatedly referred to in this case and he based the proposal on reconciliation and various other factors. Obviously we do not comment on the merits of this proposal, but it is clear from his evidence that he intended the renaming of the streets to serve as a symbol to promote reconciliation, to encourage tourism, etc.

In his evidence, Mr Marais stated that he wanted to hear from the public what their comments are regarding such a drastic step to rename two of the main streets, and I quote, “ *Is the public on the side of reconciliation and to what extent do they feel that a big step like that would*

satisfy their appetite, or do they have alternative ways of honouring these two gentlemen, could they propose alternative ways”. He did not intend a head-counting exercise and he explained in detail what the implications of that would have been. He also stated that this would have been too simplistic, and I quote, *“If it was necessary for me to do that, why bother then to ask the Exco and the Council to also have a say in it? Then we must say ‘the result of this public participation will determine whether the streets are renamed”*. (See page 833 – 834).

He stated at page 834, that he was surrounded by trusted and experienced officials and he could tell them what he wanted to achieve, pay them well and let them do the job. His style is not to stand and watch how people file things, where they file it, how they categorise it and all those things. He also stated that the best department to have managed the submissions was the Legal Department.

He was then taken in detail through Exhibit “B”, which contains items to the Executive Committee etc.

At pages 838 to 839, he stated that in order to give effect to the initiative, he conveyed to Mr Kieser, and I quote, *“I said ‘Ben, we mustn’t let anything go wrong. We must come out of this clean. When we take a decision the people out there in the public must be satisfied there was no corruption”*.

He testified that there was no indication before the Mail & Guardian article that corruption or any act of impropriety, fraud or irregularity was committed. He was happy until then that the process has been properly managed and administered.

On page 846, Mr Marais testified that he had never discussed the matter of this project with Pastor Noble. He testified that he overheard him on two occasions that he was supporting the proposal and this happened in particular, because he does not maintain a closed door office.

On the issue of canvassing, he testified that Mr Leon stated that there is nothing preventing anybody from canvassing. That in itself is not illegal or undesirable. The problem actually comes in with falsification of signatures. He agreed with Mr Leon that it must be left to the people to decide for themselves, how they want to act and they must do so in their own handwriting, without falsifying signatures. It is common cause that many letters were printed and petitions were made available which were signed by a variety of people and it is not in dispute that many signatures have in fact been falsified. He also dealt with the arrangement with Mr Kieser that they would take precautionary measures to protect the submission received.

At page 854, Mr Marais testified that he had never set eyes on the documents.

He testified that Mr Smit and Mr Fourie prepared the speech for him, which he delivered at the Press Club. His evidence is that no reference was made to any figures or numbers, because numbers were not the issue in the matter. (See page 859). Mr Marais refers to the needling by the media. He said that he heard from the John Scott contingent that they were saying that the public opinions were overwhelmingly against it. (See page 860). In reaction to this discussion which he overheard, he stated the following, *“I reacted immediately and I made a conservative estimate of what I thought the feeling was at that point in time. I never expected this to be – I didn’t take out a pocket calculator and say ‘hey, so many times so many is so many’”. I never tried to give a scientific figure to say that it is exactly so much. I gave the view, the expression, the estimate, which I know could change again, but that was my view at the moment as I see how public opinion at that point in time felt, because I had meetings with the Afrikaanse Handelsinstituut”*. (See page 861).

At page 862, he testified that he had a meeting with Mr Fanie Bekker, President of the Afrikaanse Handelsinstituut and he stated that they supported the idea and they invited him to address all the different branches of the Afrikaanse Handelsinstituut. He added that he knows that they have more than 1000 members. He also testified that he had a meeting with the Dutch Reform Church.

Mr Mara testified that with reference to the Press Club, he could never mislead his audience and he added that the estimate 2.5:1 was actually a conservative estimate, because it was possibly at that time 5:1. He added at page 865 that he had access to the Legal Department document to which he had referred, he had contact with Absa Bank and the Dutch Reform Church.

He added at page 867, that only a stupid person could think that he can mislead the media, they will probe and probe and you cannot mislead the media.

When he was asked to comment on the project and the management of that in general he stated that there was absolutely nothing wrong with it and that they tried to style it to perfection. In cross-examination by Mr Gauntlett, he commented on the foul language used by Mr Kieser and on the winking by Mr Smit. He stated at page 873, that he was of the view that malpractice must be drawn closer and that it means not to follow rules and orders normally associated with clean administration or respecting instructions from the City Manager in carrying them out, and quote, *"but I found nothing"*.

From pages 880 onwards he was taken by Mr Gauntlett through a number of media reports in which it is recorded that he had stated and confirmed that the submissions in support of the proposal outnumbered those against it. He deals with the detail of the responses in the various forms and he categorised it basically into two categories, namely

on the one hand those in writing, which were opposed and those that he had, arising from his discussions with people who supported the proposal. (See pages 886 – 887).

Mr Gauntlett suggested to him alternative statements that he could have made at the Press Club and he put it to him that he could have gone one way or the other. Mr Marais' reaction to that was, *"Yes. I was just a bit – you see I try to push that line, Council as strongly as I could"*. (See page 887). He then dealt with a certain John Scott employed by one of the newspapers and he addressed the point driven by John Scott that the number opposing the proposal was rising all the time and he added, and I quote, *"So it became a bit of a tug of war between me and the Cape Times"*. (See page 888).

The passage reads further as follows (see pages 888 – 889): -

Mr Gauntlett : Yes, no that is clear. But could you help me; I'm trying to understand then why one doesn't answer in kind, by saying "you want to talk numbers, these are the numbers", and give hard numbers.

Mr Marais : Because it's too dynamic the situation, it changed every hour.

Mr Gauntlett : But then if you can't do that, on what basis is one representing that numbers go one way rather than the other?

MrMarais : Well like I say it's a jigsaw. One minute you are on top and the next minute you might be down. I didn't know. The next day the Chamber of Commerce came in and said they don't support it as enthusiastically as the Handelsinstituut, but at that point I knew that we were winning the game.

MrGauntlett : Well, in terms of the formal responses as of that date, on the 24th May – on the 23rd May, on EXHIBIT D we have the figures and if you had looked in your drawer, you would have seen that – where is it?

MrMarais : Which I didn't.

MrGauntlett : Ja, which you didn't. That it was – there had been a big influx, in circumstances we'll get to, of 491 for and against was 562. Now, I appreciate Mr Marais and you have been frank about the, as it were provocation from your non-close friend Mr Scott, that you were under, but from an administration viewpoint, do you still consider that the way you dealt with the numbers on that day was truthful and proper?

MrMarais : I was truthful in my assessment as I summed up the situation at that point, because talks and discussions I've had with a wide variety of people and organisation. I was truthful but I wasn't mathematically accurate because at that point I was a politician, not a mathematician".

Mr Marais testified that after he had had discussions with Absa, the Afrikaanse Handelsinstituut, the Anglican Church and other organizations that they still had to go back to their respective Councils to get their sanction. Mr Gauntlett confronted him with Exhibit "T", which refers to views already expressed by the Chamber of Commerce and which already appeared in the newspapers on 28 April 2001.

In the Cape Times dated 7 May 2001, the Anglican Archbishop of Cape Town already issued a statement in which they opposed the proposition and Cosatu called it a silly sideshow and protested against the misappropriation of funds.

Mr Gauntlett referred to the opposing views of the Dean of the Cathedral of the Church of the Province of South Africa, the Anglican Church. At the middle of page 891, Mr Marais indicated that the people who drafted his speech, knew about these letters of opposition and he also admitted that he knew about that when he was making the speech at the Press Club. When he was confronted with the question why he did not play open cards with the media and why he did not tell them that they were powerful organisations and significant bodies opposing the proposal, he reacted as follows at page 892:-

“I wasn't going to get into a slanging match on how many people are for or how many people are against it. I was trying to show trends and only on a basis of questions, that they came to the actual numbers. It

wasn't in my speech, numbers. It was when they started questioning and saying there's overwhelming rejection of the idea, I had to counter it by saying I don't think there's much overwhelming objection to the idea".

Mr Marais made the following statement on page 892 about access to the reports that the legal advisors had and also with regard to the input by the legal advisors: -

"My legal advisors don't write my speeches. My speeches are written by two people who don't have access to these documents. Now I mean, they write my speech and you are confusing two people here. The one is Ben, the Head of my Legal Department, who has access to these, and Veronica, and they see every letter. And then you have my speech writers, who don't have that same privilege".

When he was confronted with more significant institutions as it was put and which were not disclosed at the Press Club, he stated, and I quote, *"If the writer at the time had the information you put before me, I would say, I would have said that's a mistake. They should have put the whole picture. I don't know what information who wrote the speech had at his information at that stage".* (See pages 896 –897).

The following was put to him at page 897: -

"But isn't the difficulty this; that it's for the writers and ultimately Mr Marais I suppose for you in communicating with the public and with the media, to

make sure either that nothing is said or that the facts are accurately stated?"

Mr Marais replied as follows: - *"Yes of course, at all times".*

At page 899, when he was confronted with the reference to the ratios of 2.5 and 5, the question was put to him that he had no responsible basis for those statements. He replied as follows: -

"No, no scientific method was employed to get to 2.5. No scientific method accepted the calculations in my own mind as to the people that I personally saw that told their support, I know how many members they've got and how big they are and the 417 on the other hand which the Legal Department said that's the only objections we received so far".

At page 901, he conceded that if he had conferred with his staff and/or known about the opposition quoted to him, he would possibly have been less confident. He added the following: -

"A politician can only go by what he is being fed, the information at his disposal at that particular time. Had I had other information at my disposal at that time that show the contrary, I wouldn't have lied, I would have said that is the trend, but I will try and reverse it".

He added in reaction to the question that he would have made a very different speech, but he can only be guided by what he is being fed.

On a different topic, he was questioned about the statement which Mrs Johnson has made and Mr Marais' reaction to that was that it was not her job to do the adjudication and it was not her job to say there is anything suspicious and to run to the Deputy Mayor, and I quote, *"but she thought that's her job and if people don't know their job descriptions, then the city has a serious problem"*. (See page 90 4).

At page 926, Mr Marais confirmed that he had actually read the advertisement, which was published on his behalf. He indicated that with hindsight he was not satisfied with the contents. He was of the view that it is ideal for the very rich people. He added that the advertisement should have made it clear to the poor people that they could voice their comments in the form of a petition. He also found the idea of reconciliation and uniting people and respecting leaders etc. missing in the advertisement. He conceded that there are no guidelines and that it is too vague. It is meant for the 'intelligentsia' and not for those who cannot understand. He added at page 929 that he supplemented the contents of the advertisement when he had a press conference where he widely covered the reasons. He deals in detail with those comments on page 929. It was also a mistake to have invited written comments, as many people cannot write.

He testified that he did not see the need for experts to assist in the sub-committee, but that the sub-committee could call in experts if and when it would become necessary. (See page 932).

Mr Marais testified that if the recommendation by the sub-committee was to abandon the proposal, then he would have taken it to Exco and if Exco had not supported it, he would have taken it to a full Council and only if the full Council had supported the recommendation that they should abandon the proposal, would he have abandoned it. (See page 934).

At page 939, Mr Marais commented that all people should be given the option and should have been given the option to support or not to support the proposal.

4.3.6 **Mrs Victoria Johnson**

Mrs Johnson made an affidavit which eventually enjoyed wide publicity and about which a number of people feel aggrieved. Particularly on the one hand because it was published and on the other hand because they did not have the opportunity to react thereto in order to put the matter in perspective.

Mrs Johnson testified that she had given a copy to the Deputy Mayor who in turn wanted to give it to Mr Leon. Mrs Johnson had no objection to that. However, when it became clear that they intended publishing it, she objected to that and she called for an undertaking that Mr

Leon and/or his party would indemnify her against any claim that might be instituted against her. She was informed that no indemnity was forthcoming and that they would nevertheless publish it. She was most unhappy about this. This was the version at the hearing and any reports contrary to this are probably not correct.

Nadiema Davids corroborated some aspects of the affidavit and evidence of Mrs Johnson, but in many respects she did not confirm it.

Mrs Johnson was under a lot of pressure and she was probably one of the typical and famous examples of a whistleblower who is not enjoyed nor appreciated by colleagues or superiors.

We have evaluated her evidence and we were not impressed with her evidence in many respects at the public hearing save to the extent that her evidence was confirmed and corroborated by other witnesses. However, both Mr Smit and Mr Kieser indicated that she was *bona fide* in what she had said, but that she was under a wrong impression and that she should have consulted them. They stated that, that could have avoided many problems. Judging the matter at this point in time, we are of course of the view that those considerations do not affect whether there were malpractices or whether there was maladministration.

We also need to deal with the conduct of Mrs Johnson. We have already indicated that the evidence was far from satisfactory. At the same time, we are very disappointed

in the fact that the attitude disclosed by the Mayor, Mr Kieser and Mr Smit, is not conducive to whistle blowing. Judging from the example which was made of Mrs Johnson, or which was perceived to have been made, we are of the view that other employees of the City Council may in future hesitate, or even refuse to become involved in whistle blowing.

4.4 **Mail & Guardian Report**

We do not intend commenting on the contents of this report at this stage, save to the extent that we have already done it, which is linked to the evidence, which we have considered. We are however disappointed regarding the reaction to this report. The most important question, namely the question of alleged fraud, was not uppermost in the minds of the officials when this article was published. They were looking for the culprit who had leaked the information and they were trying to protect the Mayor. To the extent that the Mayor required protection, this attitude is understandable. To the extent that a whistle blower was responsible for the information which was leaked to the media, it is very unfortunate that such a whistle blower had opted for this course of action. This may be due to the fact that there is no proper procedure and protection in place for whistle blowers, but on the other hand, it might have been done for financial gain.

However, if this report was not published, it is our perception that the investigation by Advocate van der Westhuizen or this investigation would not have been called for.

5. **FINDINGS**

5.1 **“Petitions”**

5.1.1 **MrsUEPick** **(Councillor)**

She is the owner of the Post Office where the pensions are being paid out. She therefore knows the contents of pension forms. She in fact had used blank pension forms to collect names, addresses and signatures.

Mrs Pick personally only sent in a few pages to the City Council. We have no doubt that she had seen each and every page. She got the ‘pensions’ page from Mrs Jacobs – a single page, which was the last page of the bundle.

Against the above mentioned background we accept that it is probable that she saw that the last page was a page with the particulars of pensioners. By handing in this last page, she committed fraud by making a representation to the officials at the City Council that the people whose particulars appear on that page, supported the project to the obvious prejudice of the projects and she had probably done so with the intention to defraud the officials.

Furthermore, she had sent in her individual letter and after that she had signed her name as the first name on the list. She therefore ‘voted’ twice. This is another basis on which a case of fraud can be investigated. Her excuse was that it would be difficult to explain why her name was not on the list.

Finally she sent in the second batch of documents after the Mail & Guardian report. The report by the expert, as well as the affidavits by individuals whose names appear on her petitions, are relevant.

We have investigated various other persons who had taken petitions around and we have obtained affidavits from some of the people on those petitions who deny either that they had signed or that they had known what the forms were about. We have dealt with the signatures of people other than those whose names appear in those positions, or of children, or copied or simulated signatures.

We have already dealt with the detail of the analysis by the expert and that detail should also be referred to the police.

5.1.2 **Mrs B Jacobs**
(Councillor)

From the information at our disposal and in particular from the report by the expert, it is clear that fraud was committed and/or that people were misled as to the reason why they were signing the so-called petitions and in some instances they simply complied with the message from Bonita Jacobs.

5.1.3 **Mrs S Majiet**

Mrs Majiet is a community worker who was approached by Mr Freddie Adam to solicit support for the renaming of the streets. It is clear from the evidence of the forensic expert that fraud was committed in respect of the lists completed by her.

5.1.4 **MrsHAugust**

Mrs August also received lists from Freddie Adams, who had informed her to have them completed by the next day. She admits to appending signatures of people whom she knew to list indicating number 1081, without their permission.

5.1.5 **MrsMSamuels**

Mrs Samuels gave an explanation that she simply signed on behalf of other people who could not write. However, the signatures appended to the list, have a flourish to them, which would indicate that the intention was to mislead the recipient of the list, to assume that the signature was a true signature. The possibility of a fraud investigation by the South African Police Services are to be considered.

5.2 **MrBKKieserandMrJSmit**

When the evidence of Kieser in particular, but also the evidence in general is considered, to the effect that the public failed to bring the message across and that the submissions (opposing) are of a "low" level, then it is obvious that he should have taken steps to rectify the position. We have dealt with the shortcomings of the advertisement, which fit in with the "poor" submissions. "Petitions" and letters were on their way. He testified that he considered buying space in the newspapers. If this was a problem then he had done nothing to correct it. He had done nothing about the shortcomings in the advertisement. On his version, he should have taken drastic steps, but he did not. The closing date was extended and he still did nothing.

Mr Kieser heard that the Mayor had made a statement that the ratio was 2.5:1. He did nothing to discuss it or to correct this information and for that matter to steer the matter in the direction which would be in line with the true position. He did not approach the Mayor or Mr Smit.

He had many letters from “notable” organisations in his possession opposing the proposal, but he refers in the item to Exco only to “notable” organisations supporting the proposal.

His failure to communicate with Mr Smit and the Mayor about the ratios quoted is serious and in the absence of an attempt by the Mayor or Mr Smit to communicate with him, he should have taken the initiative.

Mr Smit was also aware of the canvassing and the petition scenario. He similarly did not consult Mr Kieser nor did he advise the Mayor to consult Mr Kieser. As a representative of the Mayor, he had similarly failed to warn the Mayor that the process was going wrong. Mr Smit had also failed in his role as spokesperson for the Mayor and in his role to deal with the media efficiently.

He failed to keep himself informed, especially before commenting to the media, by making statements, which could be described as reckless statements to the media without confirming the facts or any allegations, and by allowing things to run as it was running in his section. He was not acting in the best interests of The Unicity, or for that matter, of the Mayor's office.

Mr Smit ‘ *carefully and meticulously*’ wrote a speech for the Mayor and was at pains, according to him, not to mention any figures, but then on the first page in the last paragraph of that speech he created a completely incorrect perception as to the position of support or opposition to the Mayor’s proposal. Had he checked with the Legal Section, which was the obvious office to consult, and had he applied his mind to the facts acquired by him, he could never have prepared a speech with that paragraph as part of the speech.

What exacerbated the position is the fact that when the Mayor made a statement, which came as a complete surprise to him, which actually forced him to leave the venue where the speech was made, he consulted the Mayor about it and the Mayor informed him he had received the information from the Legal Section. Any prudent spokesperson would at that stage have approached the Legal Section for exact details not only in order to be able to protect the Mayor, but also to promote the perceptions sketched by the Mayor of the number of support. If he had then received the detailed information from the Legal Section (which according to the Mayor was in support of the proposal), then he could have dealt with the facts and could have motivated the statements made by the Mayor and afterwards by himself to the media. Apart from that, according to him, he was not even curious or too busy to be curious to pick up the phone and to phone Mr Kieser to get confirmation of the percentage or the ratio mentioned by the Mayor.

The next issue is Mr Smit’s reaction to, and his explanation for his reaction to the Mail & Guardian report dated 8 June 2001.

The report was obviously sensational, but at the same time it was making serious allegations against the Mayor in various respects and also as far as the renaming process was concerned. Instead of an honest attempt to motivate and even participate in an investigation or to recommend to the Mayor to have an investigation conducted at that very point in time, he decided to make the serious allegation that the petitions were either stolen (ostensibly by the Mail & Guardian) or had been fabricated by them. Instead, they were only interested in finding the culprit who had leaked the information to the media. The sub-committee could see that some of the petitions were not in order and that is why they rejected 70 of the signatures. In cross-examination, Mr Smit admitted that the petitions were highly suspicious. Pending an investigation at that point in time, he could have much more carefully prepared media statements.

We accept that it is the right of any citizen of South Africa to have a view of things and that Mr Smit was also free to have his own view, which was supportive of the proposal. However, as a responsible officer in the office of the Mayor, it was not acceptable to openly support or even canvass or supporting a canvassing for "votes" in support of the proposal. He was obliged to convey an objective view to the media.

We add the following comment with regard to Mr Kieser and Mr

Smit: -

- (i) They were not acting with fairness, openness and in an equitable fashion, even if it is just on the basis that they failed to take action. They failed to update themselves and also failed to disclose the complete and true picture.

- (ii) The Council and the Administrative staff are accountable to the community. Mr Kieser, by not managing the process properly and Mr Smit by not managing the public image properly, were in fact not acting in an accountable fashion. In terms of the provisions of Section 4(2) of the Municipal Systems Act, they failed to promote accountable governance and similarly therefore did not assist the Mayor to practice accountable governance. In terms of Section 6, they were not facilitating a culture of public service and accountability amongst the staff by not setting an example and by not controlling the process properly. They did not promote honest and free communication between themselves and their local community as envisaged by Section 6 .
- (iii) In terms of Section 5 of the Municipal Systems Act, by not advertising the requirements properly and by not managing it properly and by not correcting the mistakes, they actually were not allowing the members of the community to '*contribute to the decision making processes of its Municipality*' .
- (iv) They did not guide the community in submitting written and oral recommendations, representations and complaints to the administration. (Mr Kieser by not taking action and Mr Smit by not issuing proper and reliable statements).
- (v) Furthermore they did not conduct themselves impartially and without prejudice and untainted by personal self interest. The derogatory attitude demonstrated by Mr

Kieser with regard to the 'comments' received, the abusive language used by him etc. are examples of negative conduct. In the case of Mr Smit by failing to deal with the media and the public impartially and without prejudice and without personal self-interest and in particular without establishing what the true position was, was actually not conducting himself impartially and without prejudice and untainted by personal interest.

- (vi) In terms of the provisions of Section 17(2) of the Municipal Systems Act, they did not allow the local community to participate fully in the affairs of the community since they did not supply the community with sufficient information. Smit failed in his duty by reporting to the community facts, which were unconfirmed or even distorted.
- (vii) Schedule 2 of the Code of Conduct (provided for in Section 69 of the Municipal Systems Act), provides as follows: -
- Section 2 thereof deals with the requirement that the lawful policies of the Municipality should be executed loyally, the functions of Office should be performed in good faith, diligently, honestly and in a transparent manner. They did not act in a manner that the spirit, purpose and objects of Section 50 are promoted. They were not acting in the best interest of the Municipality, and I quote, *"...in such a way that the credibility and integrity of the Municipality are not compromised"* .(Section 50 of the Municipal Systems Act and Section 195 of the Constitution).

Our conclusion is therefore that Mr Johan Smit and Mr Ben Kieser are guilty of maladministration and/or malpractices on the grounds dealt with in detail in the summary of the evidence and in the summary above.

We find it amazing that the first question that they had not put to themselves is whether there was any truth in the allegation that fraud was committed. Corruption in the process of this project and the management thereof would most definitely impact seriously on the process and the evaluation of the management of the process.

We accept unconditionally that Mr Kieser was not involved in any fraud perpetrated. Surely the most important issue at that stage was to investigate whether any fraud was committed. Any action against an official responsible for the leak could always follow later.

We have sympathy with his concern for the Mayor, but it is amazing that neither Mr Kieser, nor Mr Smit discussed the statements made by the Mayor with regards to the numbers, which were reported in the Mail & Guardian. We simply do not accept that they are truthful as far as that is concerned. Mr Kieser mentions at page 741 that the Mayor phoned him over the weekend and that they then discussed the appointment of the Committee. No mention was made that he discussed the fraud with the Mayor or even requested the permission of the Mayor to conduct an investigation into the fraud allegedly perpetrated.

He was confronted at pages 744 and 745 with the "votes" by Pastor Noble. He indicated that he was against canvassing votes, but nevertheless in the case of Pastor Noble it was

acceptable to Mr Marais, since it was an exercise to support reconciliation. (The effect of this statement is that any exercise to oppose reconciliation on the basis of canvassing for votes would therefore be improper).

Mr Kieser indicated on page 763, that he did not really expect any “votes” in favour of the proposal. Ostensibly a large number of “votes” in favour of the proposal were canvassed and he was aware of this fact.

From page 773 onwards, Mr Kieser was confronted by Advocate Muller on the question why in his item to the Executive, he did not mention that there were notable organisations against the proposal. His reaction to this was, and I quote, “*omdat ons: - die besware het ek in kategorieë gesit en die argumente mee gedeel. Dit was nie die ‘solution’ nie*”. (See page 774). This reply is difficult to understand and it does not assist with the question whether such organisations are notable or are not notable organisations.

At page 778, when he explained the numbers in his report to Exco, he equates spelling mistakes with numbers which were accidentally included in the item to the Executive.

5.3 Mr P Marais

The Mayor, in honouring two well-known statesmen had as objective, the promotion of reconciliation, the city of Cape Town and various other issues.

We accept that Mr Marais in his position as Mayor is extremely busy and relies heavily on his Councillors and employees, not

only to run his office and position effectively, but also to promote the image of his office and the image and role of the City Council to the benefit of the community, which is served by the City Council.

In giving his evidence, Mr Marais often created the perception that he was delivering a political speech and that he was playing for the cameras. However, we accept that this is part and parcel of his life and that to a very large extent that is what he does most of the time.

The management of his proposal was delegated to Mr Kieser and his team and Mr Smit was responsible for dealing with the public and the media. He was also entrusted with writing speeches for Mr Marais. Both the Legal Section as well as Mr Smit was in the position to supply the Mayor with relevant information with regard to this project. The Mayor should have consulted his spokesperson and his staff concerning any management of the project by him or any promotion by him or any other activities that he may have been involved in, which were relevant to this particular proposal. Although Kieser was his legal advisor, he also was to a certain extent his ears and his eyes, the same applies to Mr Smit.

We would like to state that we do not believe the evidence of either Mr Marais or Pastor Noble that they had not discussed this issue, not only in view of the fact that they covered so many other issues during their discussions, but also in view of Pastor Noble's particular interest in this project and also in view of their regular contact during this period.

We have dealt with the role that Mr Kieser has played and the fact that he has either not informed, or not properly informed Exco, or even in certain instances supplied Exco with an unbalanced report. All of this would obviously not be of assistance to the Mayor, who is also a member of Exco and he would rely heavily on the items submitted by Mr Kieser.

As far as the advertisement is concerned, Mr Marais candidly admitted that it did not deal with the criteria set by him and that therefore the public was not properly informed. It furthermore did not make provision for criteria to inform people that he would also have had discussions and meetings in order to gauge the feelings of the community of Cape Town. He did refer to the fact that he made speeches in which he dealt with the issues, but we were not supplied with copies of the speeches or reports of such speeches.

There is no doubt that the advertisement was not in line with what the Mayor had conveyed to us at the Public Hearings and that which he had intended to invite the public to do. In fact, the advertisement was crucial to the commencement and driving of the project and it was crucial to the criteria set to the public.

Mr Marais should have realised the shortcomings much earlier and if he had acted responsibly, he should have taken the necessary action.

We find it difficult to believe that the Mayor did not from time to time call in Mr Kieser to establish what the actual state of affairs were with regard to the comments on his proposal. Surely he

would have required this information in making speeches or in dealing with the media (which he had done and he did make statements). Unless she had refrained completely from referring to the number issue, he would require reliable information or should have qualified any statements made by him. By not consulting the staff regularly, he was either acting amateurish, unprepared or even reckless. Mr Smit has told us that notwithstanding the fact that he decided to refrain from relying on numbers, the media continued to do so. The Mayor and Mr Smit, did either not react to, or did not arm themselves to react to the speculation in the media. The speculation in the media is very often in itself an unhealthy state of affairs and by not dealing with the problem they were in fact exacerbating the problem.

In a report dated 21 May 2001, and handed in as Exhibit "S", it is reported that the Mayor had *inter alia* stated, and I quote, "*There is enormous support for this initiative but it became clear that we need to open and extend the process*". There was no dispute that this was a true reflection of what he had stated. On Mr Marais' version, and for that matter on the version of Mr Smit at that point in time, Mr Marais had no idea what the actual state of affairs were. On the version of Mr Smit and Mr Kieser as well as Mr Marais himself, he made no attempt to consult the office of Mr Kieser and similarly Mr Smit made no attempt to consult the office of Mr Kieser at this point in time.

Although the Mayor consulted some institutions who, according to him, supported him, it is also clear from the evidence that other institutions had clearly voiced their views against the proposal. In addition to this, there was no way in which the

Mayor could have known what the information was in the office of Mr Kieser and therefore he could not even weigh his information up against the information in possession of Mr Kieser's office.

What the Mayor did know is the information, which he had received first of all in the item to the Executive Committee, dated 15 May 2001 where mention is merely made of 417 objections and no mention is made of any supporting submissions. The other document, which the Mayor had in his possession, was the item dated 22 May 2001, presented to the Executive by Mr Kieser. We have already dealt with the quality of this presentation.

Therefore at that time, the Mayor already had an indication of opposition to the proposal. Mr Kieser failed to refer to the extent of the opposition in his possession at the time of writing the item.

When the Mayor made his speech to the Press Club on 24 May 2001, stating that, *"Although, purely on numbers, the people of this city supported the idea of reconciliation..."*, he had, and he knew (judging from his own evidence), no evidence from which he could have drawn the inferences which he did.

We will now analyse what was at his disposal at the offices of the City Council on that date: -

- According to Exhibit "D", 1053 representations had been received by 24 May 2001, of which 491 supported the proposal and 562 were against the proposal.

- The Chamber of Commerce and Industry in Exhibit “T”, issued a press release in terms of which it indicated that 94% of the 3300 of their members whom they had surveyed, were not against and only 3% were in favour of the proposal.
- We accept that the Dutch Reform Church in Cape Town supported the proposal to the extent that we have already indicated.
- The Afrikaanse Handelsinstituut supported the proposal subject to a certain qualification.
- There is no letter from Absa Bank or any indication in writing from Absa Bank.
- St Georges Cathedral, in a letter dated 17 May 2001 and received by the City Council on 21 May 2001, indicated that they were against the proposal. Again they did not indicate that all the parishioners were against or for the renaming.
- The Archdiocese of Cape Town in a letter dated 30 April 2001, lodged a strong objection to the proposal.
- The Simon van der Stel Foundation earlier objected to the proposal.
- The Cape Town Heritage Trust, in a letter dated 15 May 2001, opposed the proposal.
- Tafelberg Publishers, in a letter dated 7 May 2001, objected to the proposal.

- Cape Cultural Heritage Development Council, in a letter dated 28 April 2001, objected to the proposal.
- Rondebosch Rosebank Ratepayers and Business Association objected to the proposal.
- Rondebosch Civics Association objected to the proposal.
- Bergvliet -Meadowridge Ratepayers Association objected to the proposal.

The statement in the last paragraph of page 1 of his speech was therefore simply not correct. When he added during question time, that it was probably 2.5 : 1, it was not based on fact and could never have been in terms of any factual foundation, especially if he had consulted the Legal Section. It is in dispute whether he had consulted the Legal Department. His statement that he was conservative and that it was actually 5 : 1, is therefore even more reckless. When Mr Marais was questioned at pages 883 to 885 on the speech, which he had made at the Press Club, he agreed with the statement by Mr Gauntlett, that, and I quote, *“A politician needs the press like a ship needs water”*. In fact, that was his salutation in his speech to the Press Club.

He agreed that the media is the most important way, with the electronic or with the written media, to communicate with the people. He also agreed that it was an important way of being accountable to people. He furthermore agreed with the statement that it is for that reason important to be as accurate as one can in dealing with the press.

Mr Marais therefore realised that in addressing the Press Club and by disclosing the numbers that he had done, that he was actually communicating with the public. Not only was he misinforming the media, but he was also misinforming the public to whom he is accountable. It must furthermore be taken into account that before his speech at the Press Club, he was already approached and confronted by the media with leaked information that more than 400 letters were received against the renaming of the streets. In his letter addressed to Mr Tony Leon dated 28 May 2001, as per Exhibit "U", he indicated that he promised the media that he would address this issue in his speech and he added, "*which I did*". He also added, and I quote, "*... it is true that the Yes's outnumbered the No's to the extent that I revealed at that point in time*". He was warned in advance. Not only did he not prepare himself for this speech to react to media questions, but also he stated an untruth to Mr Tony Leon when he made the statement that the "Yes's" outnumbered the "No's" and indirectly he was actually confirming his statement that the ratio was 2.5:1.

The fact that the evaluation was left to a sub-committee does not excuse this conduct, as this was his message to the media and to the public. It appears to be likely that this was an attempt to persuade the public that the majority of people in this city were in favour of the proposal. Any responsible person would realise

under such circumstances that his statement would probably influence or confuse people. The fact of the matter is that these were misleading, and to say the least, confusing statements made by him.

Codes of Conduct are also established for Councillors, in terms of the provisions of Section 54 of the Municipal Systems Act. Schedule 1 contains various provisions and we will comment on those, which are relevant: -

- (a) Councillors are required to perform the functions of their office in good faith. In good faith, honestly and in a transparent manner. In view of what we have stated with regards to Mr Marais' evidence, we are of the view that he did not perform the functions referred to in good faith, honestly and in a transparent manner. t
- (b) Councillors are required at all times to act in the best interest of the Municipality and in such a way that the credibility and integrity of the Municipality are not compromised. We are satisfied that the Mayor's conduct referred to, namely the omission to confirm information, the omission to act reliably, to exaggerate and distort facts, are all evidence that he was not acting at all times in the best interest of the Municipality and that he in fact compromised the credibility and integrity of the Municipality.

If the Mayor was aware of the fact that Mr Smit was not confirming or establishing the facts which were reflected in his speech at the Press Club, then he should have taken action. If he was not aware, then the question still arises, whether he could safely rely on what was stated in the speech, taking into account what was known to him at that stage or what should have been known to him at that stage with which we have dealt with in some detail above. t

This issue may have contributed to acts of maladministration or malpractice by Mr Smit and is evidence of maladministration or malpractice by the Mayor.

The Mayor is accountable for every aspect of his position and if what he has said is true, then he did in fact not make effective use of the resources at his disposal. He did not act impartially, fairly, equitably and without bias. (See Section 195(1) of the Constitution).

His position is a position in which a person carries two hats. On the one hand he is - the Mayor of everybody in his community or his city - and on the other hand he is a politician. That would have complicated his position but we are still of the view that he should have conducted himself in such a manner that he exhibited a high standard of professional ethics, that he made effective use of resources and that he showed impartiality and that he acted fairly, equitably and without bias.

He also did not maintain a satisfactory degree of transparency by providing the public with obviously incorrect information at a high profile meeting such as that of the Press Club. The same may apply to his other speeches or meetings with the media.

Notwithstanding what he had stated repeatedly in his evidence, he did not create an atmosphere which was

conducive to or which would promote, or encourage written submissions, recommendations or representations, which are prescribed by Section 5 of the Municipal Systems Act. In particular, his conduct was not, and I quote, *“untainted by personal self interest”*. (See Section 5 of the Municipal Systems Act).

6. **RECOMMENDATIONS**

6.1 **South African Police Services Investigation**

We recommend that the evidence of fraud should be referred to the Police for investigation and consideration.

6.2 **Disciplinary action**

Disciplinary action, if any, will be in the hands of the City Council and they would have to consider this report and consider whether any disciplinary actions should be instituted.

We do recommend disciplinary action against Mr Kieser and Mr Smit.

We also recommend action against the Mayor.

7. **GENERAL**

Other witnesses also gave evidence at the Public Hearing and we have considered all their evidence but do not find it necessary to deal with their evidence in any detail.

We have also considered the statements which were acquired from other witnesses and in particular witnesses involved in the writing of letters, canvassing for signatures both on the basis of letters and on the basis of so-called petitions. More documentation than was presented and actually handed in or dealt with at the Public Hearing was in our possession, but we have not found it necessary to attach any weight for the purposes of this investigation to them. By saying that, we are not suggesting that they are not relevant, but from our point of view they do not affect the conclusions that we arrived at.

In general, as far as Exhibits in our possession are concerned, the parties were invited by us and had ample opportunity at the Public Hearing to study those documents and the lawyers have often consulted the documents in our possession. At the end of the Public Hearing they were again invited to visit our offices should they find it necessary to study the documentation in our possession and they have not made use of this offer. We also indicated to them that any statements that we would acquire after the Public Hearing would be made available to them and we added an invitation that should they require any of those witnesses to be called for cross examination by them, that we would make the necessary arrangements. We have received no such request. No lawyers visited our offices in order to study any documents in our possession. No document in our possession is secret and all documents or statements in our possession form part of the official record together with the transcription of the Public Hearing.

8. **FINAL COMMENTS**

We would like to thank each and every individual employed and not employed by the City Council or by the State for the contribution that they have made to facilitate this investigation, particularly taking into account that we were under enormous pressure to finalise this report.

We envisage that this report would be utilised and implemented in a pro-active fashion.

We are grateful to the Advocates and Attorneys for having supplied us with extensive Heads of Argument in the limited time at their disposal. The Heads of Argument have been of great assistance to us.