

Judicial Commission of Inquiry into State Capture Report: Part III

Vol. 1: BOSASA



This is the report of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including organs of state, also known to the public and the media as the Zondo Commission

Chairperson: Justice RMM Zondo
Acting Chief Justice of the Republic of South Africa

Report of the Judicial Commission of Inquiry into State Capture: Part III: Vol. 1



Judicial Commission

of

Inquiry into Allegations

of

State Capture, Corruption and Fraud in the Public
Sector Including Organs of State

Report: Part III

BOSASA

Chairperson: Justice R.M.M. Zondo
Acting Chief Justice of the Republic of South Africa

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Judicial Commission

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State Capture, Corruption and Fraud in the Public

Sector Including Organs of State

Report: Part 3

Vol 1: BOSASA

Chairperson: Justice R.M.M. Zondo
Acting Chief Justice of the Republic of South Africa

Explanatory Note

1. In Part 1 of the Report it was stated that the Report would be delivered in three parts, namely Part 1, Part 2 and Part 3. Part 3 was going to be the last part of the Report. It has not been possible to complete the Report at the end of February as was contemplated at that time. Accordingly, after Part 3 there will be other Parts that will follow.
2. Part 3, which goes with this explanatory note, covers evidence heard by the Commission with regard to the BOSASA Group of Companies. There will be Parts 4, 5 and 6 which will follow in March and April 2022.
3. It was indicated in Part 1 that the reasons for the conclusion that state capture had been established would be given in Part 3. That was said because at that time the plan was that Part 3 was going to be the last Part of the Report. It does not contain those reasons. Those reasons will appear in one of the Parts that are to follow.

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PART A: INTRODUCTION

Introduction

4. This section of the Commission's Report deals with allegations of State Capture, Corruption and Fraud which related to the BOSASA Group of Companies. The BOSASA Group of Companies was not mentioned in the Public Protector's Report that led to the establishment of this Commission namely, the "State of Capture". Nevertheless, the matters that the Commission investigated that relate to BOSASA fall within the terms of reference of this Commission. In particular, they refer to extensive corruption and fraud in dealings concerning tenders that the BOSASA Group of Companies got from certain government departments and other government entities one of which was the Department of Correctional Services.

5. The evidence heard by the Commission revealed that the BOSASA Group of Companies, its Chief Executive Officer, Mr Gavin Watson, its Chief Operations Officer, Mr Angelo Agrizzi, its directors including Mr Joe Gumede, Mr Leshabane and others ran the entire BOSASA business operations on the basis of widespread corruption, bribery and fraud. The evidence revealed that corruption was BOSASA's way of doing business. It bribed politicians, government officials, President Jacob Zuma and others extensively. BOSASA and its directors and other officials simply had no shame in engaging in acts of corruption.

6. Notwithstanding the fact that Mr Angelo Agrizzi was also part of the corruption, bribery and fraud mentioned above, it needs to be mentioned that it was due largely to him that this Commission was given extensive evidence of acts of corruption, bribery and fraud that were committed by various people in BOSASA. For this the Commission is indebted to Mr Agrizzi notwithstanding the fact that the Commission accepts that Mr

Agrizzi's motives or reasons for spilling the beans may have largely been personal because he had a fall out with Mr Gavin Watson. Nevertheless, the evidence that he gave, even when there were threats to his life aimed at stopping him from giving evidence, has been very helpful to this Commission and to the country in exposing many people in and out of government who were beneficiaries of the corruption and bribes from BOSASA who would not have been exposed had it not been for Mr Agrizzi's evidence.

7. The evidence given by Mr Agrizzi also revealed what was done in order to ensure that investigations by the law enforcement agencies against BOSASA either got nowhere or that BOSASA and its directors and officials were not prosecuted even when investigations were conducted and finalised. In this section of the Report all important evidence led in regard to BOSASA will be dealt with.

8. This section of the Report deals with the following issues:

8.1. First, the legal framework for the establishment and work of the Commission. By way of a separate appendix,¹ the broader legal framework against which the research and analysis is performed.

8.2. Second, a summary of the evidence presented to the Commission in respect of its investigation into the Bosasa group of companies and the individuals associated with these companies.

8.3. Third, the analysis of the evidence presented to the Commission with reference to the Commission's terms of reference, the findings that may be warranted on the basis of the evidence and, based on the analysis, the

¹ Appendix 1.

recommendations as to whether any matter ought to be referred for prosecution, further investigation or the convening of a separate enquiry, to the appropriate law enforcement agency, government department or regulator, regarding the conduct of any persons are provided. This is relevant to term of reference 7.²

8.4. Fourth, concluding comments.

9. For the guidance of the reader of the report, no findings are made in the summary of the evidence in Part F. For the findings, reference must be made to the analysis of the evidence in Part G. The result is an element of repetition of the evidence in part G, where this is necessary for its analysis.

² Term of reference 7 provides as follows:

"The Commission shall where appropriate refer any matter for prosecution, further investigation or the convening of a separate enquiry to the appropriate law enforcement agency, government department or regulator regarding the conduct of a certain person/s."

**PART B: THE COMMISSION'S TERMS OF REFERENCE,
APPEARANCE BEFORE THE COMMISSION AND WITNESS'
RIGHTS**

10. The terms of reference record that the Commission is appointed to *“investigate matters of public and national interest concerning allegations of state capture, corruption, and fraud in the Public Sector including organs of state.”*³ The inquiry undertaken by the Commission, its findings, report and recommendations are to be guided by the Public Protector Report, the Constitution, relevant legislation, policies and guidelines, as well as the decision of the High Court.
11. Of relevance to the evidence relating to BOSASA are the terms of reference which establish the Commission’s powers to inquire into, make findings, report on and make recommendations concerning the following:
- 11.1. whether, and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive (including Deputy Ministers), office bearers and/or functionaries employed by or office bearers of any state institution or organ of state or directors of the boards of SOEs;⁴
- 11.2. whether Mr Zuma or any member of the present or previous members of his National Executive (including Deputy Ministers) or public official or employee of any SOE breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders by SOEs or any

³ Fn **Error! Bookmark not defined.**. See what can be referred to as the “preamble” to the terms of reference.

⁴ Item 1.1 of the Terms of Reference.

- organ of state to benefit the Gupta family or any other family, individual or corporate entity doing business with government or any organ of state;⁵
- 11.3. the nature and extent of corruption, if any, in the awarding of contracts, tenders to companies, business entities or organisations by public entities listed under Schedule 2 of the Public Finance Management Act;⁶ and
- 11.4. the nature and extent of corruption, if any, in the awarding of contracts and tenders to companies, business entities or organisations by government departments, agencies or entities. In particular, whether any member of the National Executive (including the President), public official, functionary of any organ of state influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest.⁷
12. In addition to the above, the Commission is empowered, where appropriate, to refer any matter for prosecution, further investigation or the convening of a separate inquiry into the appropriate law enforcement agency, government department or regulator regarding the conduct of certain persons.⁸
13. Having regard to the focus in the terms of reference on corruption and unlawful conduct in the context of procurement by organs of state, state institutions and SOEs, it is appropriate to start by considering the legal framework. In so doing, the Constitution, statutes that regulate procurement and governance, both public and

⁵ Item 1.4 of the Terms of Reference.

⁶ Public Finance Management Act 1 of 1999 ("PFMA"). Item 1.5 of the Terms of Reference.

⁷ Item 1.9 of the Terms of Reference.

⁸ Item 7 of the Terms of Reference.

corporate, and the statutory and common law crimes that may be relevant in this context have been considered.

Compelling appearance before the commission

14. The Commission's Regulations set out *inter alia* the powers of the Commission to compel appearance before it as well as the rights of witnesses before the Commission.
15. Regulation 8(1) creates an obligation on witnesses to answer questions put to them. It provides:

"No person appearing before the Commission may refuse to answer any question on any grounds other than those contemplated in section 3(4) of the Commissions Act, 1947 (Act No. 8 of 1947)."

16. Regulation 8(2) prohibits the use of evidence adduced at the Commission in any criminal proceedings, save for proceedings relating to an offence under section 6 of the Commissions Act. However, in terms of an amendment to regulation 11, "the sharing of information, records or documents with any State law enforcement agency" is permitted".⁹
17. Regulation 10(6) of the Commission's Regulations empowers the Chairperson to secure a witness' attendance by means of a directive. Regulation 10(6) provides:

"For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or

⁹ Regulation 11(5) and (6) introduced by Proclamation No. R. 24 of 2020 contained in Government Gazette No. 43563 dated 28 July 2020.

under his or her control which has a bearing on the matter being investigated, and may examine such person.”

18. Failure to comply with a Regulation 10(6) directive may constitute an offence in terms of Regulation 12(2) which provides:

“Any person who wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10 is guilty of an offence.”

19. In addition to the Chairperson’s powers referred to above, section 3 of the Commissions Act empowers the secretary of the Commission to issue summons for attendance at a hearing by witnesses.

20. In *Secretary, Judicial Commission of Inquiry into Allegations of State Capture*, the Constitutional Court was called upon to determine whether a witness issued with a summons in terms of section 3 of the Commissions Act is compelled to appear before the Commission and testify. It held as follows:

- 20.1. Once a summons is issued in terms of section 3(2) of the Commissions Act and served on a prospective witness, the witness is obliged to comply.

- 20.2. If the summons requires the witness to appear before the Commission on a fixed date, the witness must do so regardless of the witness’ standing in the community.

- 20.3. The obligation on the witness is to remain in attendance until the proceedings are concluded or the witness is excused by the Chairperson from attendance.

- 20.4. A breach of the duty to attend at the Commission in compliance with the summons and to remain in attendance as described above is an offence under section 6 of the Commissions Act.¹⁰

Witnesses' rights before the commission

21. In *Secretary, Judicial Commission of Inquiry into Allegations of State Capture* the Constitutional Court was clear that witnesses who appear and testify before the Commission have no right to remain silent. They are obliged to give evidence and answer all questions put to them, except questions which address matters falling within the ambit of section 3(4) of the Commissions Act.¹¹
22. Section 3(4) of the Commissions Act affords witnesses the protections which are enjoyed by witnesses in a criminal trial. This includes the privilege against self-incrimination.¹²
23. However, the Constitutional Court was clear that privilege against self-incrimination is not there for the asking. Instead, when seeking to claim privilege against self-incrimination, a witness must raise a question of privilege with the Chairperson and must demonstrate how an answer to the question in issue would breach the privilege. There must be sufficient grounds to show that in answering a question, the witness will incriminate him/herself in the commission of a specified crime.¹³

¹⁰ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma* 2021 (5) SA 1 (CC) at paras 81-82.

¹¹ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture* at para 93.

¹² *Secretary, Judicial Commission of Inquiry into Allegations of State Capture* at para 108.

¹³ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture* at para 109.

The way forward in this section of the Report

24. The next section of this report summarises the evidence presented to the Commission in connection with Bosasa.
25. The evidence is then analysed.
26. To assist in understanding and analysing the evidence, the following is provided –
 - 26.1. a list of key abbreviations;
 - 26.2. a list of the entities and persons to whom reference was made in the testimony of the witnesses; and
 - 26.3. a note on about each witness that gave oral testimony before the Commission.
27. The fact that a person or entity is included in the list of entities and persons to whom reference was made in the written or oral evidence, does not necessarily mean that they were implicated in corruption in the evidence. In many instances it does but a significant number of persons listed were role players that played either a neutral or a positive role.

PART C: LIST OF KEY ABBREVIATIONS

"Mr Agrizzi"	Mr Angelo Agrizzi, former Chief Operating Officer of Bosasa;
"ACSA"	Airports Company South Africa;
"ANC"	African National Congress;
"Mr Basson"	Mr Adriaan Jurgens Basson, journalist and editor-in-chief of News24;
"Mr Biebuyck"	Mr Brian Biebuyck, attorney to Bosasa;
"Mr Bloem"	Mr Dennis Bloem, Member of Parliament and previous Chair of the Portfolio Committee on Correctional Services;
"Mr Bonifacio"	Mr Carlos Bonifacio, chief accountant at Bosasa;
"Bosasa"	the Bosasa group of companies;
"Commission"	Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State;
"Consilium"	Consilium Business Consultants (Pty) Ltd;

“DCS” or “Department”	Department of Correctional Services;
“Adv de Kock”	Advocate Marijke Christene de Kock, Senior Deputy of Public Prosecutions employed at the National Prosecuting Authority;
“DHA”	Department of Home Affairs;
“DoJ&CD”	Department of Justice and Constitutional Development;
“Dr Smith”	Dr Jurgen Smith, owner of Consilium and former shareholder of Meritum Hostels;
“Mr Dutton”	Mr Frank Kennan Dutton, investigator with the Commission who, unfortunately, passed on in January 2022 before this section of the Report was delivered to the President;
“Dyambu Holdings”	Dyambu Holdings (Pty) Ltd;
“Dyambu Operations”	Dyambu Operations (Pty) Ltd;
“Equal Trade”	Equal Trade 4 (Pty) Ltd and Equal Food Traders (Pty) Ltd;
“Mr Gillingham”	Mr Patrick Gillingham, former Chief Financial Officer of the Department of Correctional Services;

“Adv Jiba”	Advocate Nomgcobo Jiba, former acting National Director of Public Prosecutions;
“Ms Jolingane”	Ms Nontsikelelo Jolingane, former Acting Commissioner of the Department of Correctional Services;
“Mr Lacon-Allin”	Mr Gregg Lacon-Allin, owner of Equal Trade;
“Mr Lawrence”	Mr Gregory John Lawrence, former employee of Equal Trade and business associate of Lacon-Allin;
“Mr L van Tonder”	Mr Leon van Tonder, previously employed at various companies in the Bosasa Group from January 1999 until May 2018;
“Mr le Roux”	Mr Richard Le Roux, employee of Global Technology Systems, formerly Sondolo IT (Pty) Ltd, a subsidiary of Bosasa;
“Ms Makoko”	Ms Thandi Makoko, director of Bosasa;
“Mr Mansell”	Mr Danny Mansell, former managing director and shareholder of Dyambu Operations;
“Meritum Hostels”	Meritum Hostels (Pty) Ltd;

“Mr Mlambo”	Mr Themba Patrick Mlambo, an investigator with the Commission;
“Ms Mokonyane ”	Ms Nomvula Mokonyane, former Minister of Environmental Affairs and former Premier of Gauteng;
“Adv Mrwebi”	Advocate Lawrence Mrwebi, former head of Specialised Commercial Crimes Unit;
“Mr Mti”	Mr Richmond Linda Mti, former National Commissioner of the Department Correctional Services;
“Ms Myeni”	Ms Duduzile Myeni, Executive Chair of the JG Zuma Foundation and former non-executive director of South African Airways;
“Mr Nxele”	Mr Mnikiwe Nxele is regional commissioner of the DCS in KwaZulu-Natal;
“Mr Oellermann”	Mr Clinton Oellermann, a project manager employed by the SIU over the period 2005 to 2012;
“NPA”	National Prosecuting Authority;
“SAA”	South African Airways;
“SAPO”	South African Post Office;

“SARS”	South African Revenue Services;
“SOE”	State-owned enterprise;
“SIU”	Special Investigating Unit;
“Mr van Tonder”	Mr Andries Johannes van Tonder, former Chief Financial Officer of the Bosasa group;
“Mr Venter”	Mr Petrus Stephanus Venter, former tax consultant to Bosasa;
“Mr Vorster”	Mr Frans Hendrik Steyn Vorster, former regional head of the Central Division of Bosasa’s facilities management operations;
“Mr Zuma”	Mr Jacob Gedleyihlekisa Zuma, former President of the Republic of South Africa and of the African National Congress.

PART D: LIST OF PERSONS AND ENTITIES

28. A list of the main persons and entities referred to in the evidence before the Commission relating to the business dealings of Bosasa and various government departments and officials is provided below.

Bosasa Group of Companies

29. The Bosasa group of companies consisted of:¹⁴

29.1. Dyambu Operations (Pty) Ltd (1996-2000) (formerly Meritum Hostels (Pty) Ltd), was re-named Bosasa Operations (Pty) Ltd (2000-2017), and again later re-named African Global Operations (Pty) Ltd (2017);

29.2. Bosasa Security (Pty) Ltd, re-named Black Rox Security Intelligence Services (Pty) Ltd;

29.3. Bosasa Youth Development Centres (Pty) Ltd;

29.4. Leading Prospect Trading 111 (Pty) Ltd t/a Lindela;

29.5. Sondolo IT (Pty) Ltd, re-named Global Technology System (Pty) Ltd;

29.6. Phezulu Fencing (Pty) Ltd;

29.7. Bosasa Supply Chain Management (Pty) Ltd, formerly SeaArk Africa (Pty) Ltd;

¹⁴ An organogram of the structure of the Bosasa Group of Companies, its affiliates and associates is attached as annexure E1 and annexure E2 to Mr Agrizzi's Initial Affidavit.

- 29.8. ON-IT-1 (Pty) Ltd;
- 29.9. Sun Worx (Pty) Ltd;
- 29.10. Kgwerano Financial Services (Pty) Ltd.

Companies associated with Bosasa

30. The following companies were alleged to have been used to generate cash for Bosasa:

- 30.1. AA Wholesalers CC;
- 30.2. Riekele Konstruksie BK;
- 30.3. Liquor Outlets and Sales t/a Jumbo Liquor Wholesalers, re-named to Captain Liquors;
- 30.4. Equal Trade 4 (Pty) Ltd;
- 30.5. Equal Food Traders (Pty) Ltd;
- 30.6. Lamozezf (Pty) Ltd;
- 30.7. F&R Phakisa Operations (Pty) Ltd.

31. The following companies were alleged to have been used to make payments for Bosasa:

- 31.1. Miotto Trading (Pty) Ltd;

- 31.2. Consilium Business Consultants (Pty) Ltd;
- 31.3. BEE Foods (Pty) Ltd;
- 31.4. Sinkoprop CC / (Pty) Ltd;
- 31.5. L&J Civils (Pty) Ltd.

Bosasa directors and employees

32. The Bosasa directors consisted of:¹⁵

- 32.1. Mr Gavin Watson, Chief Executive Officer and shareholder (positions held from 1996 until his death in 2019);
- 32.2. Mr Danny Mansell, former managing director and shareholder;
- 32.3. Mr Johannes "Joe" Gumede, executive chairperson and executive director of Bosasa Security;
- 32.4. Mr Papa Leshabane, executive director, spokesperson, head of media and human resources;
- 32.5. Mr Syvion Dlamini, director of youth development centres;
- 32.6. Mr Trevor Mathenjwa, managing director of Sondolo IT;

¹⁵ An organogram of persons that Mr Agrizzi dealt with, including government officials, and the positions they held is attached as annexure A to Mr Agrizzi's Initial Affidavit.

- 32.7. Dr Jurgen Smith, owner of Consilium Business Consultants and former shareholder of Meritum Hostels;
- 32.8. Mr Ishmael Dikane, director of catering for the DCS;
- 32.9. Ms Thandi Makoko.
33. Bosasa employees referred to in the evidence include:
- 33.1. Mr Agrizzi, Chief Operations Officer (1999 to 2017);
- 33.2. Mr Tony Perry, company secretary;
- 33.3. Mr Andries van Tonder, Chief Financial Officer (1995 to 2018);
- 33.4. Mr Carlos Bonifacio, chief accountant;
- 33.5. Mr Leon van Tonder, IT manager (1999 to 2018);
- 33.6. Mr Frans Vorster, logistics manager (1996 to an unknown date);
- 33.7. Mr Jacques van Zyl, accountant;
- 33.8. Mr Mark Taverner, procurement (Gavin Watson's brother-in-law);
- 33.9. Mr Richard le Roux, regional technical coordinator (2002 to at least the date of his evidence);
- 33.10. Mr Gavin Hundermark, IT specialist; and
- 33.11. Ms Rieka Hundermark, accountant.

Persons rendering professional services to Bosasa

34. The following persons acted as consultants or rendered professional services to Bosasa:

34.1. Mr Petrus Venter, tax consultant (former employee of D'Arcy-Herrman, formerly Bester Viljoen Inc);

34.2. Mr Sesinyi Seopela, consultant and advisor to Gavin Watson (through Consilium Business Consultants);

34.3. Mr Kevin Wakeford, consultant;

34.4. Mr Aneel Rahadkrishna, consultant to the DHA on contract negotiations;

34.5. Mr Brian Biebuyck, attorney to Bosasa.

Members of the National Executive, public officials and functionaries of Organs of State

35. The following public officials were mentioned in evidence before the Commission related to Bosasa, although not in every case as having been involved in allegations of corrupt activities:

35.1. National Executive

35.1.1. Former President Jacob Zuma;

35.1.2. Former Deputy President Cyril Ramaphosa;

- 35.1.3. Ms Nomvula Mokonyane, Minister of Water and Sanitation (2014 to 2018) (previously Premier of Gauteng Province, 2009-2014);
- 35.1.4. Mr Ngconde Balfour, Minister of Correctional Services (2004 to 2009);
- 35.1.5. Mr Thabang Makwetla, Deputy Minister of Correctional Services (2014 to 2019), and current Deputy Minister of Defence and Military Veterans.
- 35.2. Department of Correctional Services
- 35.2.1. Mr Patrick Gillingham, Chief Financial Officer (commencement of tenure in this role unknown to his resignation in 2010);
- 35.2.2. Mr R. Linda Mti, National Commissioner (2001 to 2006);¹⁶
- 35.2.3. Mr Vernie Petersen, National Commissioner (2007 to 2008);
- 35.2.4. Mr Xoliswa Sibeko, National Commissioner (2008 to 2009);
- 35.2.5. Mr Tom Moyane, National Commissioner (2010 to 2013);
- 35.2.6. Ms Nontsikelelo Jolingana, Acting National Commissioner ("Middledrift") (September 2013 to mid-2014);¹⁷ and
- 35.2.7. Mr Zach Modise, National Commissioner (2014 to 2017).

¹⁶ <https://www.gov.za/correctional-services-commends-l-mti>

¹⁷ <https://citizen.co.za/news/south-africa/196690/modise-named-acting-commissioner-correctional-services/>

35.3. National Prosecuting Authority

35.3.1. Adv Nomgcobo Jiba, former acting National Director of Public Prosecutions;

35.3.2. Adv Lawrence Mrwebi, former head of Specialised Commercial Crimes Unit;

35.3.3. Adv Menzi Simelane, former National Director of Public Prosecutions;

35.3.4. Adv Glynnis Breytenbach, former Deputy Director of Public Prosecutions;

35.3.5. Adv Willie Hofmeyr, Deputy National Director of Public Prosecutions and Head of SIU (2001-2011).

35.4. South African Post Office

35.4.1. Mr Siviwe Mpisa, Head of Security;

35.4.2. Mr Maanda Manyatshe, Chief Executive Officer.

35.5. Airports Company of South Africa

35.5.1. Mr Siza Thanda, Head of Security;

35.5.2. Mr Thele Moelma, Head of Risk.

35.6. Members of Parliament

35.6.1. Mr Vincent Smith, 'Magagula' and Ms Winnie Ngwenya, African National Congress ("ANC") Members of Parliament sitting on the Portfolio Committee on Correctional Services;

35.6.2. Mr Cedrick Frolick, ANC Member of Parliament;

35.6.3. Mr Dennis Bloem, Member of Parliament Chairing the Portfolio Committee on Correctional Services (2004 to 2009), first with the ANC then moving to Congress of the People ("COPE").

35.7. Other

35.7.1. Mr Gwede Mantashe, (at the times relevant to this report) politician, Secretary-General of the ANC (2007-2017);

35.7.2. Ms Duduzile Myeni, Executive Chair of the JG Zuma Foundation (2008-date), non-executive director of South African Airways (2009-2017);

35.7.3. Mr Andile Ramaphosa, son of President Cyril Ramaphosa;

35.7.4. Mr Desmond Nair, Chief Magistrate, Pretoria; and

35.7.5. Mr Hlaudi Motsoeneng, former Chief Operating Officer, South African Broadcasting Corporation.

36. In the next section of this summary, an overview of the witnesses who testified about Bosasa and its dealings with various government departments and officials is provided.

PART E: THE WITNESSES TESTIFYING ON BOSASA

37. The allegations relating to the business dealings of Bosasa and various government departments and officials emerged primarily from the evidence of Mr Angelo Agrizzi, the former COO¹⁸ of Bosasa.
38. The evidence presented by Mr Agrizzi was supplemented by the evidence of an additional 12 witnesses.

Mr Angelo Agrizzi

39. Mr Agrizzi's evidence was led at the Commission's proceedings of 16 to 18, 21 to 24, 28 and 29 January 2019, 28 to 29 March 2019, 13 March 2020 and 24 June 2021.
40. In addition, he deposed to affidavits in support of his evidence before the Commission as well affidavits in response to applications for leave to cross-examine him and affidavits filed by individuals in response to Rule 3.3. notices. The first affidavit, dated 15 January 2019 ("**Mr Agrizzi's Initial Affidavit**"), broadly addressed issues that were canvassed in Mr Agrizzi's oral testimony. The second affidavit, dated 26 March 2019 ("**Mr Agrizzi's Supplementary Affidavit**"), addressed some of the queries raised by during his evidence and clarified certain issues arising from Mr Agrizzi's Initial Affidavit.

¹⁸ Chief Operating Officer.

41. Mr Agrizzi confirmed the truth and correctness of the affidavits deposed to by him and acknowledged that the contents thereof were self-incriminating. He was, nevertheless, willing to testify and confirmed that he was not influenced to do so.¹⁹
42. Mr Agrizzi confirmed that he was involved or aware of corruption from the inception of his employment right up to his resignation; even though the extent of his involvement in these activities may have differed from time to time.²⁰ Mr Agrizzi testified that these activities became prevalent from 2004/2005 and had lasted for the last thirteen years.²¹
43. Mr Agrizzi explained that the reason for his decision to divulge the unlawful activities that had taken place at Bosasa, after a long period of time, was that he became seriously ill and following his recovery, he decided to *“clean up where we had made mistakes before”*.²²
44. Mr Agrizzi was employed by Bosasa from 1999 until 15 December 2016. Throughout this time, he was involved in corrupt activities at Bosasa. Given the passage of time, he was not able to recall all of the details of the various corrupt activities alleged to have taken place, or the precise times when certain of the corrupt activities took place.²³

¹⁹ Transcript, day 34, p 26; day 75, p 5.

²⁰ Transcript, day 76, p 136.

²¹ Transcript, day 76, p 136.

²² Transcript, day 34, p 29.

²³ Transcript, day 34, p 28.

Mr Andries van Tonder

45. Andries Johannes van Tonder was the CFO²⁴ of Bosasa (“**Mr van Tonder**”). Mr van Tonder was employed at Bosasa from 1995 (when it was named Meritum Hostels) until his employment terminated on 2 May 2018 in terms of a separation agreement.²⁵ He was summonsed to appear before the Commission, but nevertheless testified voluntarily.²⁶
46. Mr van Tonder’s evidence was led at the Commission’s proceedings on 29 and 30 January 2019. He also deposed to an affidavit in support of his evidence which is dated 28 January 2019 (“**Mr van Tonder’s Affidavit**”).²⁷ He confirmed the truth and correctness of this affidavit and acknowledged that the contents thereof were self-incriminating.²⁸
47. Mr van Tonder explained that he did not assist law enforcement agencies with information on Bosasa’s business dealings at an earlier stage because he had become complacent and had participated in the unlawful conduct. In addition, he was assured by the Bosasa Chief Executive Officer, Gavin Watson (“**Mr Watson**”), that investigations by the Special Investigation Unit (“**SIU**”) were under control as Mr Watson had powerful connections at the highest level in government. Mr van Tonder lived a comfortable life and was concerned about future employment elsewhere. This dissuaded him from approaching the law enforcement agencies.²⁹

²⁴ Chief Financial Officer.

²⁵ Transcript, day 42, p 135.

²⁶ Transcript, day 42, pp 119 and 120.

²⁷ Exhibit T1.

²⁸ Transcript, day 42, p 119.

²⁹ Transcript, day 42, p 121.

48. In the main, Mr van Tonder testified on the SIU investigation into Bosasa's dealings with the Department of Correctional Services ("**DCS**"), gratuities given to officials of the DCS, the relationship between Bosasa representatives and officials at the DCS, Bosasa's cash generation and storage strategies, and the South African Revenue Services ("**SARS**") investigation into Bosasa's SeaArk operations.

Mr Frans Vorster

49. Frans Hendrik Steyn Vorster ("**Mr Vorster**") was employed at Bosasa as the regional head of the Central Division which included facilities management of mine hostels, the Lindela Repatriation Facility ("**Lindela**") and youth centres. Mr Vorster was employed at companies in the Bosasa Group in various positions from 1996. The precise date of the termination of his employment with Bosasa is unclear.
50. Mr Vorster was summonsed to appear before the Commission, but nevertheless testified voluntarily.³⁰ His evidence was led at the Commission's proceedings on 30 January 2019. He also signed a written statement in support of his evidence before the Commission, which is dated 28 January 2019 ("**Mr Vorster's Affidavit**").³¹ He confirmed the truth and correctness of this statement and acknowledged that the contents thereof were self-incriminating.³²
51. Mr Vorster's evidence primarily addressed Bosasa's efforts to secure the contract for the management of Lindela and vehicles purchased for officials of the DCS.

³⁰ Transcript, day 43, p 97.

³¹ Exhibit T2

³² Transcript, day 43, p 97

Mr Richard le Roux

52. Mr Richard le Roux (**“Mr le Roux”**) was summonsed to appear before the Commission. He nevertheless testified voluntarily.³³ He was aware that the incidents referred to in his statement before the Commission may incriminate him in potentially serious offences.³⁴
53. At the time of his testimony, Mr le Roux was employed at Global Technology Systems (**“GTS”**), formerly Sondolo IT (Pty) Ltd (**“Sondolo IT”**), a subsidiary of Bosasa.³⁵ Mr le Roux was employed at GTS since 2002.
54. Mr le Roux’s evidence was led at the Commission’s proceedings on 31 January 2019 and 24 June 2021. He also deposed to an affidavit in support of his evidence before the Commission which is dated 28 January 2019 (**“Mr le Roux’s Affidavit”**).³⁶ Mr le Roux deposed to a supplementary affidavit on 30 June 2020 (**“Mr le Roux’s Supplementary Affidavit”**).³⁷ He confirmed the truth and correctness of the affidavits and acknowledged that the contents thereof were self-incriminating.³⁸
55. Mr le Roux was responsible for the implementation of Special Projects at Bosasa which included the purchase and installation of security systems for Bosasa’s high profile associates. His evidence dealt primarily with the Special Projects undertaken for public officials.

³³ Transcript, day 44, p 5.

³⁴ Transcript, day 44, p 4.

³⁵ Mr le Roux testified at the Commission on 31 January 2019. Independent research reveals that a CM26 Special Resolution for Voluntary Liquidation of GTS was registered on 14 February 2019.

³⁶ Exhibit T3.

³⁷ Exhibit T21

³⁸ Transcript, day 42, p 119.

Mr Leon van Tonder

56. Leon van Tonder ("**Mr L van Tonder**") was previously employed at various companies in Bosasa from January 1999 until May 2018. Mr L van Tonder is Andries van Tonder's younger brother.³⁹
57. Mr L van Tonder testified at the Commission's proceedings on 31 January 2019. In addition, he deposed to an affidavit in support of his testimony ("**Mr L van Tonder's Affidavit**").⁴⁰
58. Mr L van Tonder testified primarily on the deletion of data relating to Bosasa's efforts to secure DCS tenders.

Mr Dennis Bloem

59. From 1994 to 1996, Dennis Victor Bloem ("**Mr Bloem**") served in the Senate as a member of the ANC. From 1996, he sat on the National Council of Provinces and from 2014 he served in the National Assembly.
60. During his time in the Senate and the National Assembly, Mr Bloem served on the Portfolio Committee on Justice and Correctional Services. For the period 2004 to 2009, Mr Bloem was the Chairperson of the Portfolio Committee.⁴¹
61. In the main, Mr Bloem testified at the Commission regarding the contracts concluded between Bosasa and the DCS. He testified at the Commission's proceedings on 1 and

³⁹ Transcript, day 44, p 142.

⁴⁰ Exhibit T4.

⁴¹ Transcript, day 45, p 3.

14 February 2019 and deposed to an affidavit on 30 January 2019 in support of his testimony.⁴²

Mr Adriaan Basson

62. Adriaan Jurgens Basson ("**Mr Basson**") is employed as the editor-in-chief of News24, a digital publication owned and published by Media 24 (Pty) Ltd.⁴³ He testified before the Commission on 5 February 2019 and deposed to an affidavit in support of his testimony, dated 28 January 2019.

63. His evidence related to the personal threats and intimidation with regard to his professional work following his reporting on allegations of corruption at Bosasa.

Mr Frank Dutton

64. Frank Kennan Dutton ("**Mr Dutton**") is employed by the Commission as an investigator. He is the lead investigator dealing with, amongst other matters, the Bosasa investigation.⁴⁴

65. Mr Dutton testified at the Commission's proceedings on 5 February 2019. His evidence pertained to the discrete issue of an incident which Mr Agrizzi testified took place at the Sheraton Hotel in Pretoria. Mr Dutton deposed to an affidavit in support of his testimony dated 4 February 2019.⁴⁵

⁴² Exhibit T5.

⁴³ Exhibit T6, p1 at para 2.

⁴⁴ Transcript, day 46, p 65.

⁴⁵ Exhibit T7.

Mr Gregory Lawrence

66. Gregory John Lawrence is currently the managing director of a business called AfriTrade Distributors.⁴⁶ He commenced employment in 1993 with Greg Lacon-Allin ("Mr Lacon-Allin") in a catering company called Granthams Integrated Food Services (Pty) Ltd. He was appointed as a catering manager responsible for Impala Platinum Mine.⁴⁷
67. Mr Lawrence testified at the Commission's proceedings of 5 February 2019. He also deposed to an affidavit in support of his evidence before the Commission which is dated 4 February 2019 ("Mr Lawrence's Affidavit").⁴⁸ He was aware that his evidence may implicate him in improper acts or unlawful activities but nevertheless testified voluntarily.⁴⁹
68. In early 1996, before taking up employment with Bosasa, Mr Agrizzi was appointed as Mr Lawrence's assistant catering manager. Mr Lawrence was later dismissed following allegations from Mr Agrizzi that Mr Lawrence was inflating prices and overcharging clients.⁵⁰
69. Mr Lawrence then became involved in the supply of non-perishable foods and alcohol to the export market, predominantly in the Southern African Development Community ("SADC") region.⁵¹ Given that his company did not have the requisite funding to carry

⁴⁶ Transcript, day 46, p 17.

⁴⁷ Mr Lawrence's affidavit, p 1 at para 4.

⁴⁸ Exhibit T9.

⁴⁹ Transcript, day 46, p 17.

⁵⁰ Mr Lawrence's affidavit, p 1 at para 4.

⁵¹ Transcript, day 46, p 20.

costs pending payments for the stock, Mr Lawrence approached Mr Lacon-Allin for assistance.⁵²

70. Mr Lawrence then joined Mr Lacon-Allin's company known as Equal Trade 4 (Pty) Ltd which was based in KwaZulu Natal, but which Mr Lawrence ran from his home in Gauteng. Mr Lawrence was responsible for looking after the clients he had brought to the company from his previous venture.⁵³
71. Mr Lawrence would provide clients who had crossed the border into South Africa with their consignment of alcohol and would be paid mostly in cash. The cash received would on average amount to between R1.1m and R2.5m per consignment, depending on the makeup of the load. This would then be banked into the company's account. Cash deposits into the company's bank account were subject to a fee of between 1.5 and 1.8%. As a result, in about 2012, Mr Lacon-Allin told Mr Lawrence to take the cash from the business to the Bosasa Head Office instead of to the bank.⁵⁴ Mr Lawrence's testimony before the Commission focused on this arrangement.

Mr Themba Mlambo

72. Themba Patrick Mlambo ("**Mr Mlambo**") served the Commission in the capacity of investigator. He is tasked with *inter alia* conducting investigations into allegations pertinent to the work undertaken by the Commission.
73. Mr Mlambo testified at the Commission's proceedings on 5 February 2019, 1 and 2 April 2019 specifically in relation to his investigation into the security upgrades and

⁵² Lawrence's affidavit, p 2 at para 6.

⁵³ Transcript, day 46, p 21.

⁵⁴ Transcript, day 46, p 24.

installations referenced in Mr le Roux's testimony. In addition, Mr Mlambo deposed to two affidavits in support of his evidence.⁵⁵

Mr Petrus Venter

74. Petrus Stephanus Venter ("**Mr Venter**") is a tax consultant and was previously employed by Bester Viljoen Inc. (later Maseng Viljoen Inc and then D'Arcy-Herrman Inc) external auditors and tax consultants to Bosasa from 2004 until August 2018.⁵⁶
75. Bester Viljoen Inc performed the annual statutory audit, tax and company secretarial related services for Bosasa from around early 2005 onwards.⁵⁷ This included all companies in the Bosasa Group, including its subsidiaries.⁵⁸ Bester Viljoen Inc performed its first audit for Bosasa in the 2006 financial year. Mr Venter worked on the tax side of the business.⁵⁹
76. Prior to his employment at Bester Viljoen, Mr Venter was an auditor at SARS for approximately thirteen years.⁶⁰ During 2004, whilst at SARS, Mr Venter assisted a colleague with an audit on Bosasa.⁶¹ Bester Viljoen Inc was appointed by Bosasa following it becoming aware of the fact that Mr Venter was no longer employed at SARS.⁶²

⁵⁵ Exhibits T8 and T11.

⁵⁶ Transcript, day 73, p 16.

⁵⁷ Transcript, day 73, p 18.

⁵⁸ Transcript, day 74, p 112.

⁵⁹ Transcript, day 73, p 20.

⁶⁰ Transcript, day 73, p 15.

⁶¹ Transcript, day 73, p 17.

⁶² Transcript, day 73, pp 18-20.

77. Mr Venter testified before the Commission on 26 and 27 March 2019 and deposed to two affidavits. The first affidavit was dated and signed by Mr Venter on 18 December 2017 at Mossel Bay and was submitted to the Commission as an attachment to Mr Agrizzi's Initial Affidavit ("**Mr Venter's First Affidavit**").⁶³ The second affidavit was deposed to by Mr Venter on 19 March 2019 at Parkview ("**Mr Venter's Second Affidavit**").⁶⁴
78. Mr Venter's evidence before the Commission related to the circumstances under which his first affidavit was drafted and signed (as well as clarification and elaboration of certain aspects of it) and his involvement with Bosasa including:
- 78.1. Mr Venter's completion of tax returns on behalf of former officials of the DCS;
- 78.2. the payment of cash to Mr Patrick Gillingham ("**Mr Gillingham**");⁶⁵ and
- 78.3. the use of entities for the payment of monies to other specified entities and individuals on the instruction of Mr Watson, Mr Agrizzi and Mr van Tonder.⁶⁶
79. Mr Venter, with minor corrections made, confirmed the correctness of his second affidavit. He recorded that his first affidavit was not prepared by him freely and voluntarily and that he signed it under duress. He testified that although various portions of his first statement were edited or added to by Mr Agrizzi, the majority of the occurrences and detail described therein is factually correct.⁶⁷ Venter confirmed

⁶³ Attached to Mr Agrizzi's Initial Affidavit as Exhibit S8.

⁶⁴ Exhibit T10.

⁶⁵ Mr Gillingham was the former CFO of the DCS.

⁶⁶ Transcript, day 73, p 7. Exhibit T10.

⁶⁷ Transcript, day 73, p 11, p 13.

that the evidence he gave and that contained in his second affidavit were given without any promise of a reward or an incentive.⁶⁸

Mr Clinton Oellermann

80. Mr Clinton Oellermann ("**Mr Oellermann**") was a project manager employed by the SIU over the period 2005 to 2012.⁶⁹ Mr Oellermann testified before the Commission on 1 April 2019 and deposed to an affidavit in support of his evidence on 21 March 2019.⁷⁰

81. **Mr Oellermann** was the lead investigator in the investigations conducted by the SIU in relation to allegations made concerning Bosasa and the DCS.⁷¹ The investigation related to allegations of serious malpractices or maladministration, fraud and corruption and was undertaken in terms of Proclamation 66 dated 8 August 2002, Proclamation R59 dated 19 November 2004 and extended by Proclamation R44 dated 28 November 2007.⁷² The investigation related to four tenders with the DCS, commonly referred to the Kitchens Tender, the Access Control Tender, the Fencing Tender and the Television Tender.⁷³ **Mr Oellermann** was the lead investigator of a team of investigators at the SIU, who reported to the Head and Deputy Head of the

⁶⁸ Transcript, day 73, p 14.

⁶⁹ Transcript, day 77, p 4

⁷⁰ Exhibit S11. Transcript, day 77, p 5.

⁷¹ Transcript, day 77, pp 7-8.

⁷² Exhibit S11, p 1. The Proclamation relevant to the four tenders involving the relationship between Bosasa and the DCS is the 2007 Proclamation, transcript, day 77, p 10.

⁷³ Transcript, day 77, p 8.

SIU.⁷⁴ The SIU commenced its investigation in November 2007 until it issued a report in 2009 (“**SIU Report**”).⁷⁵

82. The SIU Report was submitted to the DCS in mid to late 2009.⁷⁶ Mr Oellermann provided an affidavit he deposed to on 24 February 2010 in which he confirmed that the nature and the content of the evidence contained in the SIU Report is a true reflection of the evidence procured.⁷⁷ Mr Oellermann also provided the Commission with a copy of his answering affidavit in legal proceedings brought by Bosasa against the SIU in an attempt to prevent it from proceeding with its investigation.⁷⁸ A copy of the charge sheet from the Regional Division of North Gauteng, held in Pretoria was also attached to Mr Oellermann’s affidavit, relating to charges brought against members of Bosasa and its affiliate companies and members of the DCS.⁷⁹
83. Mr Oellermann confirmed that the SIU Report that was attached to the Initial Affidavit of Mr Agrizzi is the same report which he compiled and submitted to the DCS.⁸⁰
84. Oellermann’s evidence before the Commission related to the SIU investigation and SIU Report as well as how certain documents from the National Prosecuting Authority (“**NPA**”), in Mr Agrizzi’s possession, relate to the SIU investigation. Mr Oellermann

⁷⁴ Transcript, day 77, p 9.

⁷⁵ Transcript, day 77, p 11.

⁷⁶ Transcript, day 77, p 11.

⁷⁷ Exhibit S11, p 2; annexure CO1, p 15. Transcript, day 77, p 5.

⁷⁸ Exhibit S11, p 4; annexure CO2, p 115. Transcript, day 77, p 6.

⁷⁹ Exhibit S11, p 5; annexure CO3, p 213. Transcript, day 77, pp 6-7.

⁸⁰ Exhibit S11, p 2(Mr Agrizzi). Transcript, day 77, p 9, p 15. Mr Oellermann clarified that the page indicating the list of persons to whom the SIU Report was distributed was not included in the copy of the SIU Report attached to Mr Agrizzi’s Initial Affidavit, as well as pages 49 to 75 of the SIU Report.

was of the view that the documents were leaked to Mr Agrizzi unlawfully and that some of the documents would be invaluable to a potential accused.⁸¹

Adv Marijke de Kock

85. Adv Marijke Christene de Kock ("**Adv de Kock**") is a Senior Deputy Director of Public Prosecutions employed at the NPA. Adv de Kock joined the NPA in December 1986 and held various positions from prosecutor to Senior State Advocate, Deputy Director of Public Prosecutions to her current position of Senior Deputy Director of Public Prosecutions.⁸²

86. Adv de Kock testified before the Commission on 2 April 2019. She also deposed to an affidavit in support of her evidence before the Commission dated 1 April 2019.⁸³

87. In early 2010, de Kock was assigned as the prosecutor on the Bosasa matter after Adv Glynnis Breytenbach ("**Adv Breytenbach**") had been withdrawn from the matter by Adv Menzi Simelane.⁸⁴ She remained the prosecutor until she was removed from the case on 29 February 2016.⁸⁵ The charges being investigated against Bosasa were fraud and corruption and offences under the Prevention of Organised Crime Act.

88. Adv de Kock's evidence before the Commission dealt with the identification of documents that Mr Agrizzi placed before the Commission during his testimony.⁸⁶ Mr

⁸¹ Transcript, day 77, pp 69 and 70.

⁸² Transcript, day 78, p 111, p 115.

⁸³ Exhibit S12.

⁸⁴ Transcript, day 78, p 116.

⁸⁵ Transcript, day 78, p 116.

⁸⁶ Exhibit S12, p 2.

Agrizzi provided various documents to the Commission that he claimed to be official NPA documents which came into his possession illegally.⁸⁷

Ms Nomvula Mokonyane

89. Ms Mokonyane has held various positions in public office. From 22 November 2018 to 25 May 2019, she served as the Minister of Environmental Affairs. Prior to this role, she was Minister of Communications from 27 February 2018 and Minister of Water and Sanitation from 26 May 2014 to 26 February 2018. She was also a member of the Gauteng Provincial Legislature⁸⁸ and served as the Premier of the Gauteng Province from 6 May 2009 until 20 May 2014.⁸⁹
90. In her statement dated 25 September 2019,⁹⁰ Ms Mokonyane stated that she was, at that time, serving as a permanent official of the ANC as the Political Head of National and Membership Organising. In addition, she serves as a member of the National Working Committee and National Executive Committee of the ANC.
91. Ms Mokonyane appeared before the Commission in response to a Directive issued in terms of Regulation 10(6). She testified on 20 July and 3 September 2020.
92. At the commencement of her evidence, Ms Mokonyane placed on record that she considered the evidence against her to be "extremely defamatory", "full of contradictions" and to "smack of hatred". She considered Mr Agrizzi's evidence (and

⁸⁷ Exhibit S12, p 2.

⁸⁸ Transcript, day 235, pp 28 and 29. See also independent research from <https://www.gov.za/about-government/contact-directory/environmental-affairs-ministry/nomvula-paula-mokonyane-ms>.

⁸⁹ <https://www.pa.org.za/person/mokonyane-nomvula>.

⁹⁰ Exhibit T20.

that of witnesses corroborating him) to demonstrate naivety and ignorance on how the ANC functions.⁹¹

Ms Sandra Thomas

93. Ms Sandra Thomas (“**Ms Thomas**”) is Ms Mokonyane’s personal assistant. Her evidence related to the evidence given by Mr Agrizzi, Mr le Roux and Ms Pieters regarding allegations of a close relationship between Bosasa, Mr Watson and Ms Mokonyane.
94. Ms Thomas began working directly for Ms Mokonyane in 1999. At the time, she was the administrative secretary at what she described as the Department of Safety. She then went with Ms Mokonyane to the Department of Housing, to the Office of the Premier and later to the Ministry of Water Affairs. Currently, Ms Thomas is working at Luthuli House – the ANC’s headquarters.⁹²
95. Ms Thomas confirmed that she was virtually part of the Mokonyane family and dealt with issues outside her official duties, for example, assisting Ms Mokonyane’s children and husband. This required her to attend at Ms Mokonyane’s private residence from time to time.⁹³
96. She was represented by the same firm of attorneys as Ms Mokonyane, although she stated that she intended to pay for her legal representation.⁹⁴

⁹¹ Transcript, day 235, pp 25 and 26.

⁹² Transcript, day 258, p 16.

⁹³ Transcript, day 258, p 21.

⁹⁴ Transcript, day 258, pp 15 and 16.

97. Ms Thomas testified before the Commission on 31 August 2020. She also deposed to an affidavit in support of her evidence before the Commission dated 30 August 2020.⁹⁵

Ms Gina Pieters

98. Ms Gina Pieters ("**Ms Pieters**") worked at Bosasa from April 2001 until April 2019 and was Mr Agrizzi's personal assistant from May 2004 until February 2017.⁹⁶ Ms Pieters' evidence related to her involvement in arranging gift hampers for Ms Mokonyane and Ms Thomas.
99. Ms Pieters testified before the Commission on 2 September 2020. She also deposed to an affidavit dated 11 August 2020 upon which her evidence before the Commission was based.⁹⁷

Ms Bongiwe Dube

100. Ms Bongiwe Dube ("**Ms Dube**") commenced employment at Bosasa in 2013. At the time of her dismissal in April 2018, she was employed in the position of unit leader – a role she assumed from Katherine Matabata in late 2016. Ms Dube's duties/responsibilities in this role included running the diner and kitchen at the Bosasa head office for purposes of catering for staff, training events and, from time to time, fundraising events.⁹⁸

⁹⁵ Exhibit T27.1.

⁹⁶ Exhibit T29, p 1, transcript, day 259, p 9.

⁹⁷ Exhibit T29.

⁹⁸ Transcript, day 254, p 18.

101. Ms Dube was dismissed for what she believed to be trumped up allegations given that she was recruited by Mr Agrizzi. She stated in her affidavit that employees close to Mr Agrizzi were rooted out the company.

Mr Charl Jacques Le Roux

102. Mr Chari le Roux was employed as an apprentice electrician at SAN Electrical from mid-2014 until 2019. Mr Chari le Roux's evidence related to the maintenance and repair work he carried out at various premises, on instruction from Mr Van Biljon the owner of SAN Electrical.

103. Mr Chari le Roux testified before the Commission on 6 July 2020. He also deposed to an affidavit dated 17 March 2020.⁹⁹

Mr Cedric Frolick

104. Mr Cedric Frolick ("**Mr Frolick**") is a Member of Parliament. At the time of his appearance at the Commission, he had served in Parliament for 20 years.

105. Mr Frolick testified before the Commission on 25 August 2020. He also deposed to an affidavit dated 29 April 2019.¹⁰⁰

Mr Vincent George Smith

106. Mr Vincent George Smith ("**Mr Smith**") was an ANC Member of Parliament between the years 1999 and 2019. Mr Smith was the Chairperson for the Portfolio Committee

⁹⁹ Exhibit T25.

¹⁰⁰ In the transcript, it is referred to as Exhibit 17.4.

on Correctional Services from 1999 to 2014.¹⁰¹ Mr Smith's evidence was in response to the evidence of Mr Agrizzi, Mr le Roux, and Mr Blake, and the allegations that Bosasa had paid for Mr Smith's daughter's overseas university studies; that Mr Smith had received monthly payments from Bosasa; and that security upgrades were installed at Mr Smith's residence, also alleged to have been paid for by Bosasa.

107. Mr Smith testified before the Commission on 4 September 2020. He also deposed to an affidavit dated 3 August 2020 upon which his evidence before the Commission was based.¹⁰²

Minister Samson Gwede Mantashe

108. Since May 2019, Mr Samson Gwede Mantashe ("**Mr Mantashe**") has held the position of Minister of Mineral Resources and Energy. This follows an expansion of the ministry of Mineral Resources to include Energy. In February 2018, Mr Mantashe was appointed Minister of Mineral Resources.¹⁰³
109. From 1994 to 1998, Mr Mantashe served as the Assistant General Secretary of the National Union of Mineworkers ("**NUM**") and, later, General Secretary of the NUM.
110. In 2006, after leaving the NUM, he was appointed as the Executive Manager: Strategic Initiatives at the Development Bank of Southern Africa. Mr Mantashe was elected Chairman of the South African Communist Party in 2007. In December 2007, Mantashe was elected as the Secretary General of the ANC.

¹⁰¹ Transcript, day 261, p 23.

¹⁰² Mr Vincent Smith's affidavit, exhibit T30.

¹⁰³ <https://www.gov.za/about-government/contact-directory/mineral-resources-ministry/gwede-mantashe-mr>

111. In 2007, Mr Mantashe was elected as the Secretary-General of the ANC, a position he held until December 2017 when he was elected National Chairperson of the ANC.¹⁰⁴
112. Mr Mantashe testified before the Commission on 19 March 2021 in relation to Bosasa. He also deposed to affidavits dated 8 March 2019 and 18 June 2019, both in relation to Bosasa.¹⁰⁵

Deputy Minister Thabang Phathakge Makwetla

113. Mr Thabang Makwetla ("**Mr Makwetla**") was appointed Deputy Minister of Defence and Military Veterans on 30 May 2019. He was the Deputy Minister of Justice and Correctional Services from 26 May 2014 to 25 May 2019.
114. In 2002 he was elected to the ANC's Provincial Executive Committee ("PEC") in the Mpumalanga province and as a chairperson of the ANC in Mpumalanga since 2005.
115. Mr Makwetla testified before the Commission on 19 March and 5 July 2021. He also deposed to an affidavit dated 21 July 2020.

President Matamela Cyril Ramaphosa

116. President Ramaphosa was elected as Deputy President of the ANC in December 2012 in Mangaung, Free State Province. He became Deputy President of the Republic of South Africa in May 2014. In December 2017 he was elected President

¹⁰⁴ <https://www.anc1912.org.za/gwede-mantashe>

¹⁰⁵ SEQ 6/2019, pp 15-21 and pp 40-43.

of the ANC. He assumed office as President of the Republic of South Africa on 15 February 2018.

117. President Ramaphosa testified before the Commission in his capacity as President of the ANC on 28 April 2021. He also deposed to an affidavit in this capacity on 22 April 2021.¹⁰⁶ At the time of the release of the Commission's Report he was still serving as President of the ANC and President of the Republic.

Mr Mbulelo Babalo Gingcana

118. Mr Mbulelo Babalo Gingcana ("**Mr Gingcana**") was formerly a supply chain senior manager employed by the South African Civil Aviation Authority ("**SACAA**"). He was seconded to Passenger Rail Agency of South Africa ("**PRASA**") from around October 2015 until October 2016 in the position as acting chief procurement officer.

119. Mr Gingcana testified before the Commission on 24 June 2021 and deposed to two affidavits dated 22 February 2019 and 24 June 2019 respectively.

Mr Kevin Wakeford

120. Mr Wakeford was a former consultant to the Bosasa Group.
121. He testified before the Commission on 6 May 2021 and deposed to three affidavits in support of his application to cross-examine Mr Agrizzi (founding and replying affidavit) as well as additional affidavit dated 5 May 2021.¹⁰⁷

¹⁰⁶ Exhibit BBB1.

¹⁰⁷ Exhibit T33, pp 850-1252.

Mr Frederick Hendrick Coetzee

122. Mr Frederick Hendrick Coetzee (“Mr Coetzee”) is the owner of the Victorian Guest House at which Ms Mokonyane’s 40th birthday celebration was held.
123. Mr Coetzee testified in the Commission on 25 August 2020 and deposed to an affidavit dated 22 July 2020.¹⁰⁸

Dr William Khotso De Wee

124. Dr William Khotso De Wee (“Dr De Wee”) was the Chief Operations Officer (COO) of the DOJ&CD from 1 April 2005 until 30 June 2015, during the period when Sondolo IT was appointed to supply and maintain security equipment at courts. Dr De Wee served as the first Secretary of the Commission in 2018 but took special leave in early 2019 when certain allegations implicating him in possible irregularities emerged from the evidence of Mr Agrizzi.
125. Dr De Wee testified at the Commission on 30 July 2021 and deposed to an affidavit dated 11 February 2019.¹⁰⁹

Alderman Brian Douglas Blake

126. Alderman Brian Douglas Blake (“Mr Blake” or “Alderman Blake”) is the managing director and 50% shareholder of Blake's Travel Agency (Pty) Ltd. Alderman Blake testified on the relationship between Bosasa and Blake's Travel.

¹⁰⁸ Exhibit T26.

¹⁰⁹ Exhibit T35.

127. Alderman Blake testified at the Commission on 29 July 2020 and deposed to an affidavit dated 28 November 2019.¹¹⁰

Applications in terms of rule 3.4 and responses to regulation 10.6 directives

128. Several individuals implicated in the evidence presented by the witnesses referred to above submitted applications in terms of Rule 3.4 of the Commission's Rules to give evidence and/or to cross-examine a witness. These individuals are:

128.1. Mr Kevin Wakeford;

128.2. Adv Nomgcobo Jiba;

128.3. Adv Lawrence Mrwebi;

128.4. Ms Jabulile Elizabeth Sithuba;

128.5. Mr Mbulelo Gingcana;

128.6. Mr Gwede Mantashe;

128.7. Mr Gerhard Van der Bank;

128.8. Mr William Khotso De Wee; and

128.9. Mr Cedric Frolick.

¹¹⁰ Exhibit T18.

129. In addition, certain individuals implicated in the evidence presented by the witnesses referred to above have responded to directives issued in terms of Regulation 10(6).

These individuals are:

129.1. Mr Desmond Nair;

129.2. Ms Nomvula Mokonyane;

129.3. Mr Vincent Smith;

129.4. Mr Mfanaguthi Syvion Dlamini;

129.5. Mr Saram Smangaliso Trevor Mathenjwa; and

129.6. Ms Jacobeth Lepinka

130. In response to the rule 3(4) application by Ms Jabulile Elizabeth Sishuba, Mr Agrizzi conceded that he had mistakenly testified that she had received illicit payments, withdrew the allegation and tendered his apology in open proceedings of the Commission. That concluded the matter as far as that application was concerned.¹¹¹

131. The key areas of the evidence disputed by the rule 3.4 applicants and those who responded to regulation 10(6) directives, are highlighted in the summary.

132. In addition, Andile Ramaphosa filed a sworn statement with the Commission in response to a rule 3.3 notice. He too has not given oral evidence.

¹¹¹ Transcript, day 223, pp 2-5.

133. The substantive issues emanating from the evidence of the witnesses is addressed below.

PART F: SUMMARY OF THE BOSASA EVIDENCE

134. In this section of the Report, the evidence presented to the Commission regarding the activities and business dealings of the Bosasa Group of Companies is summarised. This includes the evidence pertaining to its tender practices and contractual relations with government departments and SOEs; its efforts to gain influence with officials, managers and employees within those departments and SOEs; and the various role players within and outside Bosasa that were part of these endeavours.
135. The summary, of necessity, pertains extensively to the evidence given by the main witness on this aspect of the Commission's work, namely, Mr Agrizzi. However, the evidence of all the other witnesses who testified is also included in the summary.
136. The key areas of evidence that are disputed by the rule 3.4 applicants and/or affidavits filed by persons under regulation 10(6) are identified, notwithstanding that they may not have given oral evidence before the Commission.
137. In certain instances, independent research by way of internet searches was necessary to contextualise the evidence properly. This independent research and the source of the information is identified in the summary and is not of a controversial nature.
138. The summary is structured under 'themes' or 'focus areas' in an effort to contextualise the evidence and facilitate its analysis. These are as follows:
- 138.1. an overview of the Bosasa Group of Companies;
 - 138.2. money laundering, cash generation and the alleged payment of bribes;

- 138.3. the awarding of contracts and tenders to Bosasa;
 - 138.4. the SIU investigation and report;
 - 138.5. the National Prosecuting Authority;
 - 138.6. destruction of evidence;
 - 138.7. the role of members of the national executive, public officials and functionaries of organs of state;
 - 138.8. the role of consultants, former employees and related entities;
 - 138.9. the Sea-Ark venture and its outcome;
 - 138.10. Mr Agrizzi's resignation and subsequent developments;
 - 138.11. threats against Mr Agrizzi;
 - 138.12. Mr Agrizzi's efforts to cooperate;
 - 138.13. impediments to further investigation and acts of intimidation.
139. The summary of the evidence is sourced from, and brings together, the oral testimony of the witnesses that testified before the Commission, their sworn affidavits and the documentary and other physical evidence attached to those affidavits or adduced in evidence as exhibits. It is detailed and seeks to provide as complete an account of the evidence presented as possible.

140. The summary does not reflect, and should not be read as, reflecting any findings. The analysis of the evidence is dealt with separately under part G. That is where findings are made.

141. The summary starts with an overview of the Bosasa Group of Companies.

Overview of the Bosasa Group of Companies

142. The evidence revealed an extensive network of companies associated with the business dealings of the Bosasa Group. In this section, an overview of the Bosasa Group, its management structure, Mr Watson's political connections and key employees who feature in the evidence is provided. The following is canvassed –

142.1. the group structure;

142.2. Bosasa's leadership structure;

142.3. key Bosasa employees;

142.4. the pact of silence; and

142.5. the Bosasa Group and broad-based black economic empowerment.

Group structure

143. Mr Agrizzi explained the Bosasa Group structure.¹¹²

¹¹² An organogram of the group as at Mr Agrizzi's date of termination of employment is attached as Annexure E2 to Mr Agrizzi's Initial Affidavit, p 250. Note that Mr Agrizzi stated that he could not verify the accuracy of the information in the organogram given that he did not compile it. However, he considered it to be a "good overview" – see Mr Agrizzi's Initial Affidavit, p13 at para 7.2.

144. The business began as Meritum Hostels (Pty) Ltd.¹¹³ The company's name was then changed to Dyambu Operations (Pty) Ltd ("**Dyambu Operations**"), which later changed to Bosasa Operations (Pty) Ltd. The shareholders of Dyambu Operations were Mr Watson, Mr Danny Mansell ("**Mr Mansell**") and Dyambu Holdings (Pty) Ltd ("**Dyambu Holdings**"). Dyambu Holdings held 10% of the shares.¹¹⁴
145. Other company name changes within the Group had also taken place.¹¹⁵ The decision to change the company's name from Dyambu Operations was because of some negativity regarding Dyambu Operations. The new contracts obtained around the time of the rebranding of the company were with the Libanon Gold Mine, Kloof Gold Mine, some smaller operational mines, Sasol and others. The head office moved to the former Goldfields security head office at 1 Windsor Road, Luipaardsvlei, near Krugersdorp.¹¹⁶
146. The relationship between Mr Watson and Mr Mansell degenerated. Mr Mansell sold his shares in Dyambu Operations to Mr Watson. The shares so acquired were then divided up and held by various smaller entities.¹¹⁷
147. Mr Agrizzi attached an organogram illustrating the shareholding of the Bosasa Group at the time that he left the organisation. A simplified version of the organogram is included as Diagram 1.¹¹⁸

¹¹³ Meritum Hostels' shareholders were Dr Jurgen Smith and Fanie van Zijl.

¹¹⁴ Mr van Tonder's Affidavit, p 3 at para 18.

¹¹⁵ Transcript, day 34, p 75; Mr Agrizzi's Initial Affidavit, p 248.

¹¹⁶ Transcript, day 34, p 83.

¹¹⁷ Transcript, day 34, p 84.

¹¹⁸ Annexure E1 to Mr Agrizzi's Initial Affidavit, p 248. Note that Mr Agrizzi stated that he could not verify the veracity of the information in the organogram given that he did not compile it. However, he considered it to be a "good overview" – see Mr Agrizzi's Initial Affidavit, p 13 at para 7.2.

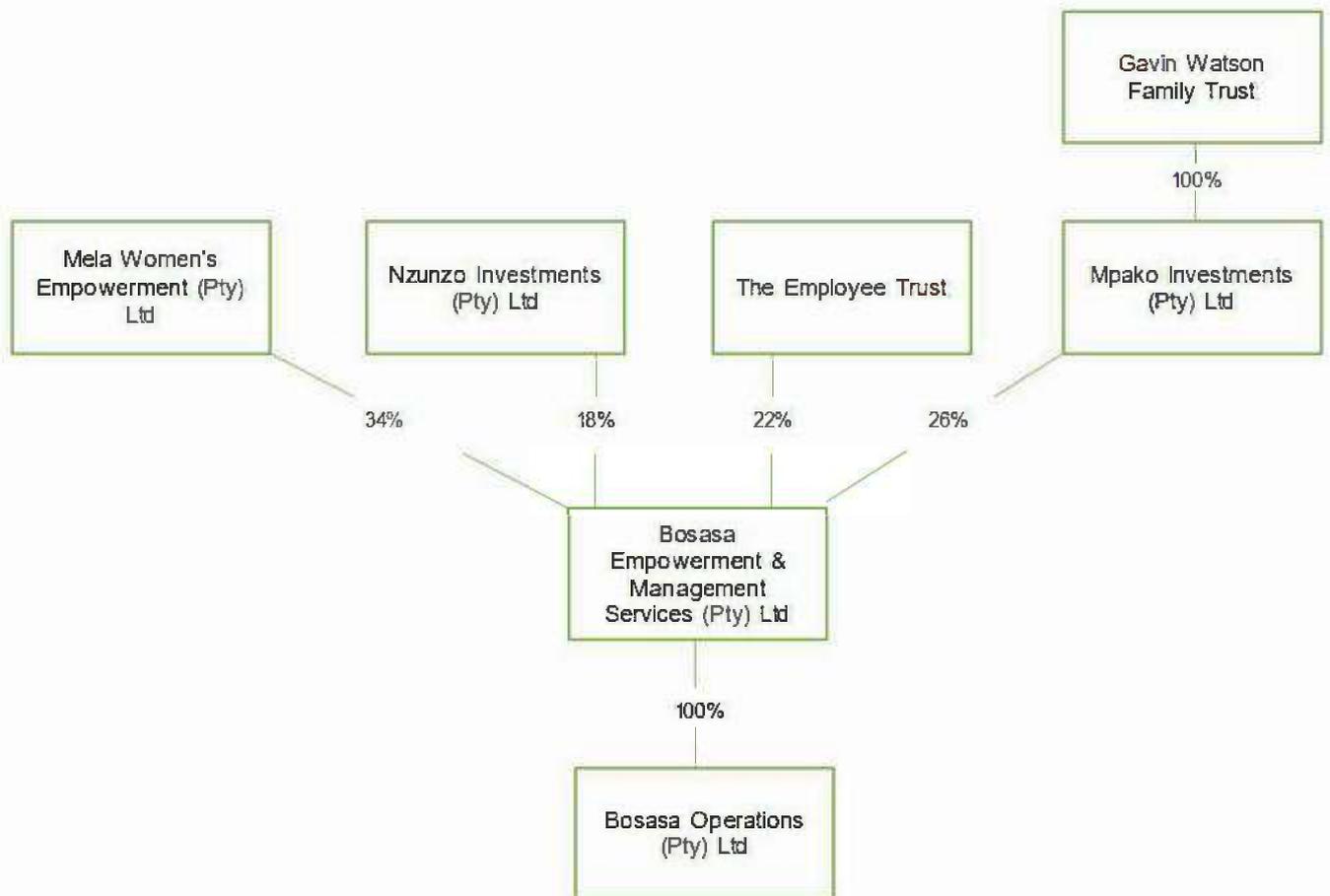


Diagram 1

Bosasa's leadership structure

Mr Watson's involvement in the day-to-day business

148. Mr Agrizzi described Mr Watson as a charismatic leader with a lot of influence over his employees. He testified about the prayer meetings that were held every morning at Bosasa, led by Mr Watson. Between 12 and 15 people would attend. As Mr Watson's right-hand man, he too was required to attend the prayer meetings. The meetings would take place between 06h30 and 08h00. On occasion all night prayer meetings were held.¹¹⁹
149. Mr van Tonder confirmed that these prayer meetings occurred and testified that they commenced at Dyambu Operations in and around 2000. These meetings continued at the company throughout his employment. Mr van Tonder believed these meetings were a way for Mr Watson to evaluate employees' loyalty to him.¹²⁰
150. Mr Agrizzi also testified that Mr Watson was not actively involved in the day-to-day management and running of Bosasa initially. The position changed during 1999, when he became more actively involved in the running of the company.¹²¹
151. Mr Agrizzi described Mr Watson as the pinnacle of the Bosasa business. He commented that government contracts came to Bosasa because "*Watson was Bosasa*". In this regard, Mr Agrizzi explained that Mr Watson built up connections with various politicians in the ANC and decision-makers relating to the award of tenders, which Bosasa sought to secure. Mr Watson was often referred to as the 'godfather of

¹¹⁹ Transcript, day 34, p 52.

¹²⁰ Transcript, day 42, p 129; Mr van Tonder's Affidavit, p 4 at para 23.

¹²¹ Transcript, day 34, p 82.

Bosasa' because everything went through him and he made all of the ultimate decisions.¹²²

152. Mr Agrizzi recounted some of the occasions where he was personally present when Mr Watson was involved in corrupt activities with various members of the ANC and government departments. He recalled Mr Watson making it clear to him that the connections that were made were to ensure the constant flow of tenders and business that would benefit Bosasa.¹²³ Mr Watson decided who, why and what amounts were to be paid and controlled the cash. Mr Watson made decisions which ultimately benefitted Bosasa, himself and his family.¹²⁴

153. Mr Agrizzi testified that:

[E]very single dealing in the company in terms of corrupt activities including payments for tenders, gratuities absolutely everything were done verbally and you were told to get on and do it and it was approved by [Watson]. ... He would not write anything down. He never had a secretary. He always went around jokingly saying: I do not have a secretary. I do not have email You had to do all the work and sign everything and he would walk away scot-free".¹²⁵

154. Mr Agrizzi clarified that he was not suggesting that other directors were not or he himself was not involved in corrupt activities, but he was seeking to demonstrate that everything happened with Mr Watson's involvement.¹²⁶

¹²² Transcript, day 76, p 77.

¹²³ Transcript, day 76, p 77.

¹²⁴ Transcript, day 76, p 77.

¹²⁵ Transcript, day 75, pp 182-183.

¹²⁶ Transcript, day 75, p 183.

The role of the Bosasa Directors and the Watson brothers

155. Mr Agrizzi testified that during his first interview with Mr Mansell at the time of the commencement of his employment, he was told that Mr Mansell and Mr Watson each held 50% of the shares in Dyambu Operations.¹²⁷ He was also introduced to Vivi Masino who apparently was a director of the company.¹²⁸

156. Other directors included:¹²⁹

156.1. Thabane Mngomezulu, a former shop steward from the NUM who was instrumental in marketing the business to the mines;

156.2. Wellington Ntshanka (deceased);

156.3. Themba Snyman (deceased);

156.4. Lindie Gouws;

156.5. Johannes "Joe" Gumede ("**Mr Gumede**"); and

156.6. Ishmael Mncwaba (now Dikani).¹³⁰

Mr Watson

157. Mr Agrizzi alleges that at all material times Mr Watson acted in concert with his fellow directors, ensuring that catering and other contracts in the mining industry; youth

¹²⁷ Transcript, day 75, p 23.

¹²⁸ Transcript, day 75, p 23. Note, however, that Vivi Masino is not listed as a director in Mr Agrizzi's Supplementary Affidavit, p 4 at para 6.1.

¹²⁹ Transcript, day 75, p 23.

¹³⁰ Transcript, day 75, p 23; Mr Agrizzi's Supplementary Affidavit, p 4, at para 6.1.

centres; Lindela; the DCS; DoJ&CD; the Airports Company South Africa ("**ACSA**"); the South African Post Office ("**SAPO**"); the Department of Transport; the Department of Health as well as other departments were awarded to the Bosasa Group of Companies. In return for this, persons within government and provincial departments received payments and gratifications.¹³¹

158. Mr Watson also ensured, through his close relationships with relevant persons within government and provincial departments, that large pre-payments of up to hundreds of millions of rand were made to Bosasa without any physical work or equipment yet having been delivered.¹³²

159. Mr Agrizzi recalled that he himself was aware of the corrupt activities of the persons in authority who were benefitting Bosasa and attended various meetings in the company of Mr Watson and other members of the directorate where payments were made in cash. Further, on diverse occasions, Mr Agrizzi delivered cash payments to these persons upon Mr Watson's instructions.¹³³ By way of example, Mr Agrizzi testified to at least two occasions in relation to contracts awarded to Phezulu Fencing (Pty) Ltd ("**Phezulu Fencing**") and Sondolo IT (Pty) Ltd ("**Sondolo IT**") subsidiaries of Bosasa, as well as a youth centre, where prepayments were made on the contracts.¹³⁴

160. Mr Watson and Mr Valence Watson ("**Mr Valence Watson**"), Mr Watson's brother, conducted several meetings with Mr van Tonder, Mr Agrizzi and, on occasion, with

¹³¹ Mr Agrizzi's Supplementary Affidavit, p 44 at para 123.

¹³² Mr Agrizzi's Supplementary Affidavit, p 44 at para 123.

¹³³ Mr Agrizzi's Supplementary Affidavit, p 44 at para 123.

¹³⁴ Transcript, day 76, p 79. Mr Agrizzi's Supplementary Affidavit, p 44 at para 123.

others such as Mr Wakeford and Mr Ronnie Watson ("**Mr Ronnie Watson**"), another of the **Watson** brothers.¹³⁵

161. These meetings took place at various locations over the period 2009/10 to 2011. Mr Agrizzi recalled a meeting at the Michelangelo Hotel in Sandton which was around the time Pastor Bennie Hinn was having a conference in South Africa and the other occasion was when Mr Morgan Freeman was in the country and he was staying at the Michelangelo.¹³⁶ In his affidavit filed in terms of rule 3.4, Mr Wakeford denies being present at any such meeting.¹³⁷ Mr Agrizzi recalls being told at these meetings that *"if you do not stick to this story we are telling you now we'll sort you out and it concerned me, that's why I stuck"*.¹³⁸
162. Mr Agrizzi described meetings that took place on the weekend at Tasha's Restaurant at the Morningside Shopping Centre as well as meetings at Mr Valence Watson's home in Morningside. On occasion, Mr Wakeford would be there as he was the strategist of the Watsons.¹³⁹ Mr Wakeford admits attending dinners and lunches from time to time in Sandton and Morningside but denies ever being exposed to the information testified to by Mr Agrizzi or that he ever assisted the Watson family or their interests as a strategist.¹⁴⁰ On occasions, Sesinyi Seopela ("**Mr Seopela**"), a consultant and advisor to Mr Watson, would also attend these meetings and they

¹³⁵ Transcript, day 76, p 90.

¹³⁶ Transcript, day 76, p 91.

¹³⁷ Mr Wakeford application to cross-examine, p 210 at para 17.

¹³⁸ Transcript, day 76, p 91.

¹³⁹ Transcript, day 76, p 91.

¹⁴⁰ Mr Wakeford application to cross-examine, p 210 at para 16 and 19.

would discuss gym health programs and Mr Watson would buy him health supplements.¹⁴¹

163. Mr Agrizzi testified that Mr van Tonder, Mr Vorster and himself had been warned by Mr Watson that, pursuant to his meeting with Mr Zuma and Mr Gumede's meeting with the Hawks, he had seen a photo of the dockets, that his name "*is not on there*" and he emphasised that they had better "*toe the line*" or else they would be on their own.¹⁴²

164. Mr Agrizzi testified to a pact being formed in Bosasa with the roles defined by Mr Watson. Mr Watson would handle anything political and the others were not to get involved with it. He would work with Mr Seopela and Mr Linda Mti ("**Mr Mti**") because Seopela was very influential in the NPA and the Hawks. Mr van Tonder was responsible for the finances and any involvement or any dealings with the banks. In this regard, for example, Mr Watson had insisted that they go and see First National Bank ("**FNB**") who were the bankers. Mr van Tonder was required to take Mr Wakeford with him when queries had been raised about the financials of the company, to play as if it was some form of a political attack on a BEE company. Mr Agrizzi referred to Mr Wakeford as being a master of doing that. Mr Agrizzi described Mr Wakeford as being very intelligent and able to secure the confidence of the banks.¹⁴³ Mr Wakeford disputes any impropriety on his part. Mr Agrizzi, on the other hand, was responsible for dealing with the legal aspects. At that stage, Sonja Jonker was Bosasa's attorney and she was best suited to handling legal issues. However, Mr Watson wanted Mr Agrizzi to deal with Brian Biebuyck ("**Mr Biebuyck**") directly and handle all legal

¹⁴¹ Transcript, day 76, p 91.

¹⁴² Transcript, day 76, p 92.

¹⁴³ Transcript, day 76, p 92.

aspects with him. In addition, Mr Agrizzi's responsibilities included making sure Mr Gillingham did not jump ship and ensuring that Mr Mansell was kept happy overseas.

165. Mr Agrizzi reiterated that on a few occasions, Mr Watson would say that his signature was nowhere to be found. During the morning prayer meetings, Mr Watson would say that, if they were arrested, they would 'be like Paul and Silas, praising the Lord in prison'. This angered Mr van Tonder immensely and he refused to attend the prayer meetings.¹⁴⁴ Mr Agrizzi explained that the reference to Paul and Silas was the fact that Paul and Silas were in prison together and they started singing and praising the Lord until their chains fell off and the walls fell down and the doors of the prison opened.¹⁴⁵
166. Mr Agrizzi was asked to comment on how Mr Watson handled the situation of not having an office or a secretary when he was at Bosasa. Mr Agrizzi explained that Mr Watson did not like paper and that he was taught by some ANC stalwart to remember everything. Mr Watson would sit in Mr Agrizzi's office and the only paper he would have was the newspaper and he would meet people in either Mr Agrizzi's offices or the boardrooms and take them out to lunch.¹⁴⁶
167. When asked whether Mr Watson spent a considerable time at the office, Mr Agrizzi explained that he spent some time at the premises but from about 11 o'clock he would go about his meetings. In this regard he spent much of his time walking around and going to sit in people's offices in the executive wing at Bosasa, where access was controlled.¹⁴⁷

¹⁴⁴ Transcript, day 76, p 93.

¹⁴⁵ Transcript, day 76, p 94. The story of Paul and Silas can be found in the Bible, Book of Acts chapter 16:16-40.

¹⁴⁶ Transcript, day 76, p 94.

¹⁴⁷ Transcript, day 76, p 95.

Papa Leshabane

168. Papa Leshabane (“**Mr Leshabane**”) had various roles in the Bosasa Group. These included roles as:

168.1. a main board member as well as a director of associate and subsidiary companies;

168.2. a spokesperson for media related queries and responsibility for political issues;

168.3. a human resources director;

168.4. the head of Kgwerano Financial Services (Pty) Ltd (“**Kgwerano Financial Services**”) and the person responsible for the Lindela contract; and

168.5. the person responsible for marketing.

169. According to Mr Agrizzi, Mr Leshabane could manipulate certain situations. He would convene parties and arrange events such as the Jazz Festival where people and government officials were entertained lavishly. Bosasa funded all the expenses. At one stage, Mr Agrizzi recalled informing him that the company was battling and did not have any money for these events. Leshabane and other directors became annoyed with him.¹⁴⁸

170. Mr Agrizzi recalled one event that caused a “*major problem*” related to an afterparty following the State of the Nation address at a restaurant called Cubana in Cape Town. This particular Cubana was owned by a director-general by the name of Chauke.

¹⁴⁸ Transcript, day 76, p 97.

Bosasa paid for this event at Cubana which cost hundreds of thousands of rands. Mr Leshabane would go directly to Mr Watson for approval and Mr Agrizzi would simply receive the bill.¹⁴⁹

171. Mr Leshabane, Mr Seopela and Mr Watson paid an amount of R300,000 in cash monthly to people employed in the Department of Transport related to the contract for the Senior Management Service (“SMS”) fleet of government vehicles. This was taken over by them from Brian Gwebu after the national contract was awarded to Kgwerano Financial Services. Mr Agrizzi stated in his Supplementary Affidavit that Mr Leshabane was fully aware of, and participated in, the corrupt activities at Bosasa.¹⁵⁰
172. When asked whether there was any contract that Bosasa was awarded for which they did not pay bribes, Mr Agrizzi responded that there was none.¹⁵¹
173. Mr Agrizzi confirmed that Mr Watson, Mr Leshabane and Mr Gumede were the three most senior persons within Bosasa.¹⁵²

Johannes “Joe” Gumede

174. Mr Gumede was the Chairperson of Bosasa. In addition, he was also instrumental in the following functions:
- 174.1. human resources;
- 174.2. all security aspects of the company including security at the head office;

¹⁴⁹ Transcript, day 76, p 97.

¹⁵⁰ Mr Agrizzi’s Supplementary Affidavit, p 50 at para 155.

¹⁵¹ Transcript, day 76, p 98.

¹⁵² Transcript, day 76, p 99.

- 174.3. managing the ACSA contract as well as various other portfolios where he “fronted” for Mr Watson. These included Beta Fence (Pty) Ltd, Bosasa Group Holdings and the Employees Trust.¹⁵³
175. Mr Agrizzi’s Supplementary Affidavit records that Mr Gumede was very selective with whom he shared his network of government officials. Mr Gumede’s influence would be used to make decisions that benefitted Bosasa as well as the ability to gain information. An example cited by Mr Agrizzi was where Mr Gumede had direct access to the Bosasa dockets and the discussions he had regarding the closure of the matter with Mr Watson. Mr Agrizzi stated that Mr Gumede was fully aware of and participated in the corrupt activities at Bosasa.¹⁵⁴
176. Mr Agrizzi explained that Mr Gumede had contacts in the Hawks and the police whereas Mr Leshabane knew politicians very well. Mr Seopela on the other hand was not employed by Bosasa but was the liaison person with politicians.¹⁵⁵
177. When Mr Agrizzi was arrested shortly after he gave his evidence in January 2019, Mr Watson, Mr Leshabane and Mr Gumede were not arrested. This was despite Mr Agrizzi’s view that these three persons were integrally involved in unlawful activities of Bosasa and there being evidence to demonstrate this.¹⁵⁶ Mr Agrizzi stated that he had heard rumours of why they had not been arrested but did not wish to comment on that.¹⁵⁷

¹⁵³ Transcript, day 76, p 105; Mr Agrizzi’s Supplementary Affidavit, p 52 at para 165.2

¹⁵⁴ Mr Agrizzi’s Supplementary Affidavit, p 53 at para 167.

¹⁵⁵ Transcript, day 76, p 99.

¹⁵⁶ Transcript, day 76, p 100.

¹⁵⁷ Transcript, day 76, p 100.

The Watsons' political connections

178. Mr Agrizzi testified that the Watsons would threaten him with their relationships with politicians. Examples of how the Watsons ensured that Mr Agrizzi knew that they were connected to powerful people included the following:

178.1. Mr Agrizzi was told that Mr Valence Watson's children were very close to Mr Zuma's children.¹⁵⁸

178.2. Mr Ronnie Watson, who was in intelligence at one point in time, told Mr Agrizzi that he had counter-intelligence on him.¹⁵⁹

178.3. Mr Agrizzi's Supplementary Affidavit referred to other politicians mentioned by Mr Watson as being closely connected to the family, namely Ayanda Dlodlo and the Sisulu's who were part of the Vulisango group managed by Mr Valence Watson. Mr Agrizzi attended meetings at the Vulisango offices in Rivonia and was introduced to such people.¹⁶⁰

Bosasa employees

Mr Agrizzi

179. Before joining Bosasa, Mr Agrizzi was employed in various companies in the catering industry which served the mining industry.

¹⁵⁸ Transcript, day 75, p 82; Mr Agrizzi's Supplementary Affidavit, p 14 at para 15.5.

¹⁵⁹ Transcript, day 75, p 83.

¹⁶⁰ Mr Agrizzi's Supplementary Affidavit, p 14 at para 15.6.

180. He testified that when working at a company known as Molope Foods he learnt about a company called Dyambu Operations and a person called Gavin Watson connected to that company. Dyambu Operations sought to replace Molope Foods as a catering contractor at a hostel called Scott Hostel.¹⁶¹
181. Feeling that he needed a new challenge, during the first half of 1999 Mr Agrizzi made contact with Dyambu Operations and this resulted in a meeting with Mansell. At the meeting Mr Agrizzi pointed out to Mr Mansell some of the flaws that Dyambu Operations had in their tender submissions for mine hostels, an area in which Mr Agrizzi had substantial experience, and suggested improvements. He intimated to Mr Mansell that he could improve Dyambu Operation's tendering capabilities.¹⁶²
182. This initial interview was followed by an invitation to meet with Mr Watson, which then took place.¹⁶³ Mr Watson offered him the position of marketing coordinator at the same salary that Molope Foods paid him, with employment to commence the next day. Before leaving, he was given a company jacket and tie and Mr Watson said that he was now employed by Dyambu Operations.¹⁶⁴ He was also told by Mr Watson that he would receive a company car and was taken to meet others in the organisation.¹⁶⁵

¹⁶¹ Transcript, day 34, pp 32 to 34.

¹⁶² Transcript, day 34, pp 35 to 36.

¹⁶³ Mr Agrizzi testified that his approach to Dyambu Operations took place in the first half of 1999. However he then contradictorily testifies that this meeting with Mr Watson took place on Thursday 7 May 1998. See Mr Agrizzi's Initial Affidavit, p 5 para 6.14, transcript, day 34, p 36. There was no Thursday 7 May 1999, so the 1998 date seems correct. It therefore appears more likely that Mr Agrizzi's employment with Dyambu Operations started in 1998.

¹⁶⁴ Transcript, day 34, p 36.

¹⁶⁵ Transcript, day 34, p 37.

183. When Mr Agrizzi asked Mr Watson why he was employed so rapidly without Mr Watson checking his credentials, Mr Watson responded that Mr Agrizzi had apparently already been vetted by Mr David Sadie, the human resources manager.¹⁶⁶
184. At the time, as part of his employment with Molope Foods, Mr Agrizzi was preparing a proposal for a contract with Goldfields Limited in respect of their gold mine, to provide catering services. The signing of the contract was due to take place at 13h00 on the following Monday. Mr Agrizzi informed Mr Watson of this. The NUM was to be a party to the contract. Mr Agrizzi testified that there was a tendency for trade unions to be involved in the selection and appointment of caterers.¹⁶⁷
185. Mr Watson asked Mr Agrizzi to meet with the mine's human resources manager and the trade union representative of NUM. Mr Watson was apparently anxious to secure this contract because there were three gold mines in the area and securing the contract with one would likely lead to contracts with the others.¹⁶⁸
186. In the meantime, Mr Agrizzi decided to take up the offer of employment with Dyambu Operations, particularly when a new car was immediately delivered as part of his remuneration package.¹⁶⁹ On the same afternoon he tendered his resignation with Molope Foods. He commenced employment with Dyambu Operations on 10 May 1999.¹⁷⁰ His first task was to accompany Dr Jurgen Smith ("Dr Smith") to Leeudoring mine where he convinced them not to sign the agreement with Molope Foods.¹⁷¹

¹⁶⁶ Transcript, day 34, p 38.

¹⁶⁷ Transcript, day 34, p 38.

¹⁶⁸ Transcript, day 34, p 41.

¹⁶⁹ Transcript, day 34, p 42.

¹⁷⁰ Transcript, day 34, p 43.

¹⁷¹ Transcript, day 34, p 44.

187. Mr Agrizzi testified that he had a close relationship with Mr Watson from the start. Mr Agrizzi often accompanied Mr Watson, who would bounce integral decisions regarding the company off him, clearly trusting his knowledge and ability. Mr Agrizzi attributed this to having a good reputation in the industry before joining Dyambu Operations.¹⁷²
188. Mr Watson informed Mr Agrizzi that “he helps the comrades” and that people were being paid to support Dyambu Operation's tenders. Later on, he was present when some of this money was handed over to certain individuals. The first person that he mentioned in this regard was Mr Jackson Mafeka, the leader of the NUM for the Kloof division of Goldfields. Dyambu Operation's also maintained Mr Mafeka's vehicle at their workshop.¹⁷³
189. Meetings in this regard would take place at the Bosasa office at 10 Miller Street, Roodepoort. The money that was handed over at these meetings was always wrapped in a bag. The common practice was to put money into the “grey type security bank bag”.¹⁷⁴
190. In relation to the money handed over to Mr Mafeka, Mr Agrizzi confirmed that he saw not only the bag in which it was handed over, but the cash as well.¹⁷⁵
191. In October or November 1999 Dyambu Operations was awarded the catering contracts for the Kloof and Libanon mines.¹⁷⁶

¹⁷² Transcript, day 34, p 45.

¹⁷³ Transcript, day 34, p 47.

¹⁷⁴ Transcript, day 34, p 48.

¹⁷⁵ Transcript, day 34, pp 48 and 49.

¹⁷⁶ Transcript, day 34, p 49.

192. As time passed, Mr Agrizzi rapidly became more integrally involved in the operations of Dyambu. This included a human resources function. He was also central to publicising the new brand, Bosasa, doing presentations, distributing booklets and costing models into proposals. Later, he became responsible for "the complete operation". Mr Agrizzi also became integrally involved in the management and submission of all tenders.¹⁷⁷

193. By the time he left the Bosasa Group Mr Agrizzi was the COO of Bosasa.

Remuneration

194. Mr Agrizzi had an arrangement with Bosasa in terms of which his salary was nominally split between himself and his wife even though she was not employed at Bosasa. In documents submitted to SARS, however, their position was presented on the basis that she was a fellow employee at Bosasa and that the portion ascribed to her was indeed her income. This, Mr Agrizzi acknowledged, was a misrepresentation of the position. He said that he did so on the advice of Dr Smith.¹⁷⁸

195. In addition to his salary, Mr Agrizzi received cash bonuses, cash payments and holidays along with other gifts from Mr Watson. He was allowed to purchase clothing as a gift. These were not declared, at least at that stage, in his tax returns.¹⁷⁹

196. The income split with his wife was not on a 50/50 basis but instead the arrangement represented her as earning a greater portion of the income. A list of the various cash

¹⁷⁷ Transcript, day 34, p 50.

¹⁷⁸ Transcript, day 34, pp 59-63.

¹⁷⁹ Transcript, day 34, p 63.

payments and other benefits was provided by way of an annexure to Mr Agrizzi's affidavit.¹⁸⁰

197. In Mr Agrizzi's Initial Affidavit, there is a table suggesting that in the 2017 tax year, he received R27,391,651 by way of "earnings paid by Bosasa" and R22,000,000 by way of an estimate of "additional benefits and value".¹⁸¹ This was in terms of two agreements concluded with him. The first was an agreement concluded following his resignation in 2016, entered into in order to persuade him to return to the company. This was replaced by a consultancy agreement. He went on to clarify that these amounts were due to him but were not paid in full.¹⁸²

198. By this time, and in fact from 2004, the practice of paying his wife part of his income had ceased. Mr Agrizzi's salary, however, remained split between two entities, Bosasa on the one hand, and Consilium Business Consultants (Pty) Ltd ("**Consilium**") on the other hand.¹⁸³

199. During the first few years of his employment, Bosasa's work included catering services, full facilities management of mining hostels, the operation of Lindela and youth development facilities or centres, services provided to the Department of Social Services and small security contracts. The youth development centres take youths awaiting trial and Bosasa, as contractor, would get paid to house, accommodate, feed and train the children.¹⁸⁴

¹⁸⁰ Mr Agrizzi's Initial Affidavit, pp 10-11.

¹⁸¹ Mr Agrizzi's Initial Affidavit, p 12.

¹⁸² Transcript, day 34, pp 57 and 66.

¹⁸³ Transcript, day 34, p 63.

¹⁸⁴ Transcript, day 34, p 86.

Positions held and level of authority exercised by Mr Agrizzi at Bosasa

200. By the time he exited the organisation, Mr Agrizzi held the position of COO which was sometimes referred to as Group Chief Operations Officer.¹⁸⁵ Mr Agrizzi pointed out (somewhat contradictorily) that the SIU Report did not make mention of the fact that he had very little influence in Bosasa's business.
201. In this regard, Mr Agrizzi explained that he was never registered as a director of the company. Therefore, although he was theoretically an office bearer, he was not a registered director, nor was he at any stage a shareholder in the Bosasa Group of Companies. This is despite the fact that the SIU Report alludes to Mr Agrizzi being the CEO and a shareholder as well.¹⁸⁶
202. In addition, Mr Agrizzi reported to the board of directors and to Mr Watson, who was the CEO and a shareholder of the company.
203. Mr Agrizzi's normal duties included making operational decisions within constraints. He stated that he wanted to get away from the myth that he ran the company because he never did; nor did he have any aspirations to do so. It was his responsibility as Group COO to consult with every divisional director before he could take a decision.¹⁸⁷ Mr Wakeford offered a contrary view on the Bosasa leadership structure, stating that Mr Agrizzi had established himself as the *de facto* CEO of Bosasa by approximately 2008.¹⁸⁸

¹⁸⁵ Transcript, day 75, p 173.

¹⁸⁶ Transcript, day 75, p 174.

¹⁸⁷ Transcript, day 75, p 174.

¹⁸⁸ Mr Wakeford application to cross-examine, p 28 at para 80.

204. Mr Agrizzi further testified that he did not have access to any bank accounts in the company or the financial software packages used. In this regard, if reference is made to the Great Plains Software (i.e. accounting and enterprise resource planning system), he would simply be able to query an invoice and receive the information off the Great Plains system from the accountants.¹⁸⁹
205. Further, Mr Agrizzi had no access to financial records. He stated that the directors themselves did not have access to financial records of the company, nor did they have access to the bank account.¹⁹⁰
206. Mr Agrizzi testified that the only person who had access to the bank accounts was the financial accountant. In the case of access to the financial statements, it was Mr van Tonder, Carlos Bonifacio ("**Mr Bonifacio**"), chief accountant, and Tony Perry ("**Mr Perry**"), company secretary, who had access.¹⁹¹ Therefore, if Mr Agrizzi wanted information on issues such as profit and loss of the company, he would need to get this information directly from accounts via a request to Mr Watson.¹⁹²
207. Mr Agrizzi further explained that the payment regimes and protocols within the company in respect of non-cash payments required numerous signatures. This is elaborated upon below.¹⁹³
208. Mr Agrizzi testified that it was important to note that he was never allowed to attend a meeting, even with normal clients, or negotiations, alone. The only exception to this was meetings with Mr Gillingham, Mr Radhakrishna (discussed in paragraph 738

¹⁸⁹ Transcript, day 75, p 175.

¹⁹⁰ Transcript, day 75, p 175.

¹⁹¹ Transcript, day 75, p 175.

¹⁹² Transcript, day 75, p 175.

¹⁹³ See para 345.

below) and Mr Watson.¹⁹⁴ Mr Agrizzi explained that this was the position that had applied since commencing his employment with Bosasa. Mr Watson always required two people to attend a meeting except if it was a sensitive meeting, such as with Mr Gillingham. Mr Agrizzi explained that, because of this arrangement, there was no possibility that he could bribe somebody on a frolic of his own.¹⁹⁵ Mr Agrizzi explained that he never denied being involved in the schemes of bribery but was merely trying to explain that the mastermind behind it was not himself. He therefore suggested that other people be investigated.¹⁹⁶

209. Mr Agrizzi explained that, if he had met Mr Gillingham alone, he would have to give a full report to Mr Watson and answer questions on what had transpired during the meeting.¹⁹⁷

210. Mr Agrizzi described the environment at Bosasa as being very controlling and everybody had to comply with the rules.¹⁹⁸

211. In addition, Mr Agrizzi testified that he was by resolution authorised to sign audited statements, cheques, EFT's and payment requests. However, in practice he was not allowed to do this on his own and required at least a second signature from a director or Mr Watson himself. That being said, Mr Watson did not sign anything even though he may have approved the decision.¹⁹⁹

¹⁹⁴ Transcript, day 75, p 176.

¹⁹⁵ Transcript, day 75, p 176 and p 177.

¹⁹⁶ Transcript, day 75, p 177.

¹⁹⁷ Transcript, day 75, p 177.

¹⁹⁸ Transcript, day 75, p 177.

¹⁹⁹ Transcript, day 75, p 178.

212. Mr Agrizzi testified that he was not allowed or permitted to hire or fire staff or make any commitments to them without a director's express permission to do so as well as the approval of the human resources department.²⁰⁰
213. Mr Agrizzi also testified that he could not appoint suppliers on his own. He could only offer advice and act as a support structure to heads of divisions. Therefore, while Mr Agrizzi managed the divisions budgets and the bottom lines in terms of the profit, and made sure the divisions delivered operationally, he could not dictate to them who they should employ or which supplier they should use.²⁰¹
214. Mr Agrizzi explained in his Supplementary Affidavit that any legal matters relating to the company and its subsidiaries were dealt with strictly on instruction only by Mr Watson and his chosen legal team. Mr Agrizzi explained that he tried to utilise two or three different firms of attorneys but ultimately Mr Watson would make a decision and that was based on who would be loyal to the Watson family and for how long. Mr Agrizzi indicated that Mr Biebuyck was a personal friend of Mr Gavin Watson who had been involved with the Watsons for many years. In addition, an attorney known as Graham Richards in Port Elizabeth was used.²⁰²
215. Mr Agrizzi testified that he was instructed to provide support services to directors, who would approach him with requests that were to be made. He would then approach Mr Watson for approval. In this regard, Mr Agrizzi acted as an intermediary.²⁰³
216. Mr Wakeford described Mr Agrizzi's testimony on the payment regime and his level of authority at Bosasa as being "verifiably false". He described Mr Agrizzi as "de facto

²⁰⁰ Transcript, day 75, p 178.

²⁰¹ Transcript, day 75, p 180.

²⁰² Transcript, day 75, p 182.

²⁰³ Transcript, day 75, p 183.

CEO"²⁰⁴ and as "captain of the ship",²⁰⁵ He referred to Bosasa company resolutions dated 1 February 2006 and 14 April 2016. In effect these allowed any from a list of 8 or more persons, including Mr Agrizzi, Mr Watson, Mr van Tonder and others, -

216.1. "to sign any documents and do all things as may affect and/or bind the company and/or any of its subsidiary companies in any matter whatsoever";

216.2. "to open bank accounts, and deal with financial institutions in any matter regarding finance and to sign cheques for and on behalf of the company, its subsidiaries and associates, provided that two of the foregoing shall always sign such documents/cheques".²⁰⁶

217. Mr Wakeford pointed out that, in effect, this meant that Mr Agrizzi could approve any transaction if it was counter-signed by Mr van Tonder. Mr Wakeford described Mr van Tonder as "someone who [Mr Agrizzi] worked very closely with and who left and joined him at Crearis²⁰⁷ as far as I understand",²⁰⁸

218. Mr Wakeford testified that it was through this authority that Mr Agrizzi and Mr van Tonder were collectively able to siphon substantial amounts of funds out of Bosasa. To substantiate this claim, Mr Wakeford referred to Sinkoprop No. 8 CC in which Mr Agrizzi and Mr van Tonder were the sole members.²⁰⁹ Through this close corporation, Mr Agrizzi and Mr van Tonder would send fictitious invoices (for example Exhibit T33,

²⁰⁴ Transcript, day 390, p102.

²⁰⁵ Transcript, day 390, p 187.

²⁰⁶ Exhibit T33, Annexure EA200 and EA202, pp 1143-1147.

²⁰⁷ A competing company or group said to have been established by Mr Agrizzi.

²⁰⁸ Transcript, day 390, p 67. This was also the version of Mr Venter in his affidavit of 11 November 2018 which states that Mr Agrizzi and Mr van Tonder had full control of the company and nobody questioned it (Exhibit T33, p 1320).

²⁰⁹ Exhibit T33, Annexure EA205 and EA205, pp 1148-1149.

Annexure EA207) to Bosasa and then authorise them for payment in their capacities as COO and CFO of the group.²¹⁰ Mr Wakeford referred to Mr Venter's affidavit which confirmed Mr Venter's participation in this scheme.²¹¹

219. Mr Wakeford stated that it was because of schemes such as the above that Bosasa liquidators served Mr Agrizzi and Mr van Tonder with letters of demand for R91m and R21m respectively;²¹² and, in addition, that criminal charges were brought against Mr Agrizzi, Mr van Tonder and Mr Venter in November 2019 for theft, fraud and money laundering.²¹³

Employment of Mr Agrizzi's family

220. Mr Agrizzi was referred to the evidence of Mr Venter that a Mr Reicher was employed by Consilium and that he was related to Mr Agrizzi. Mr Agrizzi confirmed this and explained that Mr Reicher was employed by Mr Watson. Mr Reicher was interviewed by Mr Watson because they required someone with an engineering background to provide technical procurement support to subsidiary companies.²¹⁴
221. Mr Agrizzi went further to explain that there were family members of his employed at Bosasa. This included Charles Macbeth who was in charge of security and who was interviewed by Mr Watson and placed onto Consilium's payroll by Dr Smith to run the security operations for ACSA. He was employed because of his knowledge in the

²¹⁰ Transcript, day 390, pp 68-69. Exhibit T33, p 1150.

²¹¹ Mr Venter confirmed his participation in this scheme – see Mr Venter's affidavit attached in Exhibit T33, pp 1319-1321 at paras 8-11. See transcript, day 390, p 69.

²¹² See the site <https://www.news24.com/news24/southafricaninvestigationsthebigbosasacorruptionbill-liquidators-see-r91-m-20200607>) referred to in Mr Wakeford's affidavit at Exhibit T33, p 895 at para 179.

²¹³ Transcript, day 390, p 70. Mr Wakeford claimed that Colonel Lazarus who opposed Mr Agrizzi's bail application stated that Mr Agrizzi's wife moved millions of rands offshore and into cryptocurrency. Mr Agrizzi's counsel however interjected and stated that this was done with Reserve Bank approval.

²¹⁴ Transcript, day 75, p 179.

property field and was utilised to manage and oversee the regional offices in various areas.²¹⁵ In addition, there was Shane Petersen who was “*somehow*” related to Mr Agrizzi. Mr Agrizzi stated that Mr Petersen resigned in 2016. Mr Petersen was responsible for putting business intelligence into the company in terms of IT solutions that he had developed and was able to provide Mr Agrizzi with one entry point on an iPad to see the performance of the company.²¹⁶

222. Mr Agrizzi pointed out that where relations of his were employed at Bosasa, they did not report directly to him. In this regard, Mr Reicher reported to Mr Trevor Mncaba and Mr Charles Macbeth reported to Mr Gumede. Mr Agrizzi explained that Mr Watson advocated employing family members at the company.²¹⁷

Awareness of wrongdoing

223. Mr Agrizzi stated that it was important to note that he does not wish to absolve himself of any guilt. In this regard, Mr Agrizzi said that, although he may not have known all the details, he was aware that Mr Watson and the directors had political connections and that they were being awarded tenders as a result. He was also aware that bribes were being paid to the relevant persons. He described these as gratuities, saying “*it is gratification. You give me this. I will give you that.*” Mr Agrizzi explained that his role during the period 2002 to 2004 was limited to drafting the specifications for the DCS tenders. He became aware of corrupt activities when the matters were ventilated in the media in 2006 and when he saw the contents of the SIU Report in 2009, although he conceded that he had knowledge of corrupt activities before 2006, albeit not in

²¹⁵ Transcript, day 75, p 179.

²¹⁶ Transcript, day 75, p 179.

²¹⁷ Transcript, day 75, p 180.

detail.²¹⁸ He personally became involved in these transactions after the departure of Mr Mansell.²¹⁹

224. A media report that appeared in Die Burger on 31 March 2006 opened up the Sondolo IT link with Lianorah Investments.²²⁰ Mr Agrizzi described this article as opening his eyes up to the fact that there was "*something funny*".²²¹

225. Mr Agrizzi testified that he had asked the investigators of the Commission to call certain people who were present when the agreements were concluded. He further stated that he had done his utmost to assist the Commission and the Hawks and that he is not looking for any clemency. He stated that the SIU Report does not cover everything. Mr Agrizzi explained that he was in a constant battle to persuade further whistleblowers within Bosasa to approach the Commission.²²² Mr Agrizzi further explained when it came to light that he was unpacking details of his corrupt activities, an attempt was made to liquidate the company quickly by way of voluntary liquidation.²²³

²¹⁸ Transcript, day 75, p 185.

²¹⁹ Transcript, day 75, p 185; copy of the national media report is attached as Annexure JJ to the Supplementary Affidavit, p 115.

²²⁰ Attached as annexure JJ to Mr Agrizzi's Supplementary Affidavit. See examples of media articles independently researched <https://www.iol.co.za/news/politics/balfour-defends-controversial-prison-tender-320734> and <https://www.news24.com/News24/Scandal-rocks-prison-services-20061115>

²²¹ Transcript, day 75, p 186.

²²² Transcript, day 75, p 187.

²²³ Transcript, day 75, p 188.

Andries van Tonder

Commencement of employment

226. According to Mr van Tonder, he joined Meritum Hostels in 1995 as a temporary employee in the position of financial clerk. Meritum Hostels eventually became known as Bosasa Operations.
227. Mr van Tonder was interviewed for his role at Meritum Hostels by Dr Smith and was informed that the shareholders of the company were Dr Smith and Fanie van Zijl ("Mr van Zijl"). Mr van Tonder became a permanent employee in 1996.²²⁴
228. During 1998, Mr van Zijl informed some head office staff that more people would be involved in the company. These people included a group of women from Dyambu Holdings which included Hilda Ndude ("Ms Ndude").²²⁵ Mr van Tonder was later introduced to Mr Watson and Mr Mansell, the managing director of Dyambu Operations. He was informed that they were the new shareholders of Meritum Hostels and would be responsible for running the company.²²⁶
229. Meritum Hostels name was subsequently changed to Dyambu Operations. The shareholders of Dyambu Operations were Mr Watson, Mr Mansell, and Dyambu Holdings. Dyambu Holdings held 10% of the shares.²²⁷
230. Mr Mansell acted as managing director of the company and Mr Perry was engaged as a consultant. Mr Perry was introduced to Mr van Tonder as a qualified accountant

²²⁴ Transcript, day 42, p 124; Mr van Tonder's Affidavit, p 2 at para 12.

²²⁵ Transcript, day 42, p 124; Mr van Tonder's Affidavit, p 3 at para 15.

²²⁶ Transcript, day 42, p 125.

²²⁷ Mr van Tonder's Affidavit, p 3 at para 18.

who assisted and advised in various financial, accounting, company structure, and company secretarial functions.²²⁸

231. In August 2000, Ndude entered into a written agreement with Mr Watson which confirmed their verbal agreement that Mr Watson or his nominee acquire Dyambu Holding's 10% interest. The purchase consideration for this transaction was as follows:

231.1. R1m was to be paid on signature of the agreement;

231.2. thereafter, R83,333 would be paid monthly for 48 months, subject to Dyambu Holdings assuming transfer of certain leases and vehicle lease agreements into its name; and

231.3. an amount of R500,000 was to be paid on 31 October 2000.²²⁹

232. In subsequent years, the shareholding in Dyambu Operations changed considerably.²³⁰

Mr van Tonder's relationship with Mr Watson

233. For the most part of his career at Bosasa, Mr van Tonder had a very good relationship with Mr Watson. Mr Watson took Mr van Tonder along to various business meetings including those in which new business ventures were explored.²³¹

²²⁸ Mr van Tonder's Affidavit, p 3 at para 17.

²²⁹ Annexure AT1 to Mr van Tonder's Affidavit.

²³⁰ Transcript, day 42, p 126.

²³¹ Transcript, day 42, p 127.

234. Mr van Tonder's relationship with Mr Watson deteriorated after the conclusion of an investigation by SARS. He described it as being for the reason that Mr Watson *"did not need me anymore to win the case or to argue the case with SARS"* and it was as if he had reached his *"expiry date with the company and [that he] would just go the same route as some of the other employees who also did...unlawful matters for Gavin Watson"*.²³²
235. By the beginning of 2017, Mr van Tonder's relationship with Mr Watson had deteriorated to the extent that he was prevented from fulfilling his functions as CFO of Bosasa. In this regard, Mr van Tonder had no access to financial information and he was not allowed to interact with the banks or company auditors. Instead, Mr van Tonder was instructed to be involved in the building of a copper rod manufacturing plant on a full-time basis.²³³ It was not clear what was expected of Mr van Tonder in this role and he considered Mr Watson to be setting him up for failure.²³⁴ There was no communication in clear terms that Mr van Tonder was no longer the CFO of Bosasa nor were there any board meetings to this effect.
236. Insofar as Mr Watson's relationship with other employees was concerned, Mr van Tonder testified that Mr Watson would publicly embarrass, belittle and threaten to fire employees with whom he had issues.²³⁵
237. Mr van Tonder was fearful of Mr Watson given his connections with *"very powerful people right up to the highest level of government"*. He recalled how Mr Watson *"got rid"* of people that participated in his unlawful and corrupt activities after they had

²³² Transcript, day 42, p 130.

²³³ Transcript, day 42, p 131; Mr van Tonder's Affidavit, p 5 at para 26.

²³⁴ Transcript, day 42, p 131; Mr van Tonder's Affidavit, p 5 at para 26.

²³⁵ Transcript, day 42, p 132.

served their purpose such as Mr Mansell, Mr Perry, Mr Agrizzi, and even Dr Smith. This stressful working environment contributed to Mr van Tonder realising that he was expendable and had reached his useful lifespan in the organisation.²³⁶

238. Mr van Tonder confirmed that his name was mentioned in the SIU Report and the uncertainty of the pending investigation was of concern to him despite the fact that Mr Watson assured him that his contacts within government had the matter under control.²³⁷

Termination of Mr. van Tonder's employment

239. On 3 November 2017, and around the time photographs of Mr Zuma's birthday party had been leaked to the media, Mr Venter informed Mr van Tonder that he was "suspect number one". Mr van Tonder interpreted this as Mr Watson suspecting him of leaking the photographs. This was the moment that Mr van Tonder decided he had had enough. He thereafter went on special leave and entered into a separation agreement with Bosasa on 2 May 2018.²³⁸

Frans Vorster

240. According to Mr Vorster, prior to his role as regional head of the Central Division at African Global Operations, he was the head of security, having joined Dyambu Operations on 1 October 1996.²³⁹ Mr Vorster's employment with Bosasa terminated on 1 September 2017.²⁴⁰

²³⁶ Transcript, day 42, p 133; Mr van Tonder's Affidavit, p 5 at para 28.

²³⁷ Transcript, day 42, p 134.

²³⁸ Transcript, day 42, p 135.

²³⁹ Mr Vorster's statement, p 1 at para 7.

²⁴⁰ Transcript, day 43, p 98.

241. Mr Vorster's father was an employee of Meritum Hostels and dealt with Mr Gillingham at the DCS when the company was tendering for the contract with Lindela. Mr Vorster's father had met Mr Gillingham previously when working on a facility for juveniles. Mr Vorster's father continued to work for Meritum Hostels, which became Dyambu Operations and later Bosasa until his death in October 2001.²⁴¹

Richard le Roux

242. At the time of his evidence, le Roux was employed by GTS in the capacity of Regional Technical Coordinator. GTS was formerly known as Sondolo IT – a subsidiary of Bosasa.²⁴² His wife and two sons were also employed by GTS.²⁴³

243. Mr le Roux commenced his employment with Sondolo IT in 2002. In 2006, he left the company in order to explore opportunities overseas. He recommenced employment with the company in 2008 following a request to do so by Mr Agrizzi.²⁴⁴ Upon resuming his duties as a Regional Technical Coordinator, Mr le Roux reported to Trevor Mathenjwa ("**Mr Mathenjwa**") – a director of Bosasa.²⁴⁵

244. Mr le Roux and his family resided at company-owned premises since 2012 at the request of Mr Watson. This living arrangement enabled Mr le Roux to attend to the wildlife living at the company office park. From 2013/2014, he attended to the opening and closing of the office park on instruction from the Bosasa directorate.²⁴⁶

²⁴¹ Transcript, day 43, pp 98 and 99.

²⁴² Transcript, day 44, p 4.

²⁴³ Transcript, day 44, pp 8 and 9.

²⁴⁴ Transcript, day 44, p 6.

²⁴⁵ Transcript, day 44, p 7.

²⁴⁶ Transcript, day 44, pp 8 to 10.

Leon van Tonder

245. During his time at Bosasa, Mr Leon van Tonder occupied various roles including Head of the IT department (1999 to 2005), IT Operations Coordinator with Sondolo IT (2006 to 2008), Technical Support Manager for Bosasa IT (2008 to 2011) and IT Programme Manager for ON-IT-1 (2011 to 2017), a company within the Bosasa Group.²⁴⁷

Tony Perry

246. Mr Perry joined Bosasa in about 2007. Mr Perry and Mr Watson had worked together previously. Mr Perry was responsible for documenting the various deals concluded by Mr Watson and writing up contracts. In addition, he told Mr Agrizzi that he had to attest to certain things on behalf of Mr Watson in court cases.²⁴⁸

247. Mr Agrizzi specifically recalled, and had kept a copy of, but later lost, a transaction that Mr Perry did with Mr Mti and Mr Watson. This transaction included an agreement for a *per diem* cost that was allocated and agreed upon between Mr Watson and Mr Mti that would be paid as commission. The signatories to this agreement were Mr Watson, Mr Mti and Mr Perry.²⁴⁹ This agreement could not be located.

248. Mr Agrizzi testified that it was important for the Commission to note that Mr Perry was closely associated with the Watson family and he did "*administration type of things, rebuilding the company, creating a structure to handle the BEE issues and setting up new entities*".²⁵⁰

²⁴⁷ Mr Leon van Tonder's affidavit, pp 1 and 2.

²⁴⁸ Transcript, day 76, p 50; Mr Agrizzi's Supplementary Affidavit, p 37 at para 81.

²⁴⁹ Transcript, day 76, p 50.

²⁵⁰ Transcript, day 76, p 50.

249. In 2004, Mr Perry and Mr Watson met in the boardroom close to the bathroom that Mr Agrizzi used at the Bosasa offices. Due to the dry walling, Mr Agrizzi could hear the conversation while in the lavatory. During this time, Mr Agrizzi overheard Mr Watson say to Mr Perry *"just register it, don't argue with me, Richmond wants it and it must be done"*. Mr Agrizzi explained that this related to Lianorah Investment Trust which had to be registered by Mr Perry as he was instructed to do so for Mr Mti.²⁵¹
250. When Mr Watson requested that Mr Agrizzi find the agreement that had gone missing, Mr Agrizzi realised that Mr Watson was concerned the agreement reflected him as a signatory.²⁵²

The pact of silence

251. In 2010 after his return from vacation, Mr Agrizzi was requested to attend a meeting with the Watson brothers at the Michelangelo Hotel in Sandton. At the time, Bosasa was the subject-matter of significant negative press given that the SIU investigation had been presented in Parliament.²⁵³
252. The meeting was attended by Mr Agrizzi, Mr van Tonder, Mr Valence Watson and Mr Watson. Mr Agrizzi could not recall whether Mr Ronnie Watson or Daniel John "Cheeky" Watson (**Mr Daniel Watson**), third brother of Mr Watson, were present.²⁵⁴ Mr van Tonder also recalled in his testimony a meeting between Mr Watson, Mr

²⁵¹ Transcript, day 76, p 51; Mr Agrizzi's Supplementary Affidavit, p 38 at para 91.

²⁵² Transcript, day 76, p 52; Mr Agrizzi's Supplementary Affidavit, p 39 at para 93.

²⁵³ Transcript, day 41, p 118; Mr Agrizzi's Initial Affidavit, p 93 at para 48.

²⁵⁴ Transcript, day 41, p 119.

Ronnie Watson, Mr Valence Watson, Mr Agrizzi and himself when the SIU investigation commenced.²⁵⁵

253. The purpose of the meeting was to make it clear to Mr Agrizzi and Mr van Tonder that the Watsons expected there to be a pact between them as they were *"brothers now and you try break loose and there is going to be problems"*.²⁵⁶ Mr van Tonder confirmed that it was agreed during the meeting that a pact would be formed and everyone should agree not to speak to anyone about the wrongdoings in respect of which they were implicated, in the SIU Report. He also recalled that Mr Watson assured them that he had everything under control given his access to the Hawks and the NPA.²⁵⁷
254. Notwithstanding the negative press surrounding Bosasa, Mr Agrizzi explained that there was a continuous flow of high-powered politicians attending the Bosasa office park who were taken on tours. He recalled spending a good part of a few months just doing tours nearly every day with politicians visiting the facilities.²⁵⁸

The Bosasa Group of Companies and BBBEE

255. Mr Agrizzi acknowledged that Bosasa was guilty of not truly having broad-based black economic empowerment ("**BBBEE**") in its companies. He described the Bosasa Group as having a complex network of subsidiaries and entities that made it virtually impossible to identify the true BBBEE status of a company, although Mr Agrizzi was clear this was not only endemic to Bosasa.²⁵⁹

²⁵⁵ Transcript, day 43, p 4.

²⁵⁶ Transcript, day 41, p 119.

²⁵⁷ Transcript, day 43, p 4.

²⁵⁸ Transcript, day 41, p 120.

²⁵⁹ Transcript, day 41, p 117.

256. Mr Agrizzi testified that he would manufacture credentials by putting somebody in place, giving them shares and full autonomy and having an agreement on the side which provided that they did not really own the shares until such time as they were paid for. He considered this to be an elaborate fronting exercise which worsened over time.²⁶⁰
257. As to the complex network of corporate and other entities, Mr Agrizzi indicated that he would be prepared to assist further in an investigation in that respect.²⁶¹
258. The true BBBEE status of the Bosasa Group of Companies was not represented in tender documents presented by Bosasa to various government departments.²⁶²
259. Having provided the overview of the Bosasa Group, management structures and key employees, we turn to the issue of money laundering, mechanisms of cash generation employed by Bosasa and the payment of bribes to public officials and employees of SOEs.

Money laundering, cash generation and the payment of bribes

260. In this section of the summary, the evidence on the following topics is outlined –

260.1. mechanisms to generate cash for the payment of bribes;

260.2. Mr Watson's vaults and safes;

260.3. Mr Agrizzi's role and cash payments;

²⁶⁰ Transcript, day 41, p 117.

²⁶¹ Transcript, day 41, p 117.

²⁶² Transcript, day 41, p 117.

- 260.4. Mr Agrizzi's black book;
- 260.5. payments of bribes and gratuities; and
- 260.6. attorneys trust accounts.

Mechanisms to generate cash

261. Both Mr Agrizzi²⁶³ and Mr van Tonder testified that Mr Watson required a substantial amount of cash every month which necessitated establishing mechanisms for generating cash. They stated that the purpose of this cash generation was to use the money for bribery.²⁶⁴ The various methods used to generate cash are set out below.

False invoices

262. Mr van Tonder testified that, initially, the required cash was generated by means of drawing the cash from Bosasa's bank account by creating fraudulent documentation to attach to a cheque requisition from the accounts department. The motivation provided for these cash cheques was that Bosasa was contracting with SMMEs that did not have bank accounts and required cash payment. This method became problematic as Mr Watson required larger amounts of cash.²⁶⁵

263. In addition to this method, Mr van Tonder explained that fake invoices for non-existent labour brokers would be generated. Another method involved using copies of Metropolitan funeral pay out documents as source documents for cash cheques.²⁶⁶ Mr Agrizzi testified that, when a Bosasa employee died, Bosasa would advance the

²⁶³ Mr Agrizzi's Initial Affidavit pp 25 to 35 at paras 13 –20.

²⁶⁴ Transcript, day 43, p 47.

²⁶⁵ Transcript, day 43, p 24; Mr van Tonder's Affidavit, p 11 at para 53.

²⁶⁶ Transcript, day 43, p 24; Mr van Tonder's Affidavit, p 11 at para 53.

payment that was to be forthcoming from the Metropolitan Death Benefit Fund. In doing so, they would also reflect a cash donation by the company in an equivalent amount, although the latter donation would not be paid to the employee but instead would be used for purposes of generating cash for bribery. Bosasa at one point had some 6,000 employees. So, it was a fairly regular event that an employee would pass away.²⁶⁷

264. Mr Agrizzi explained that Bonifacio was an astute accountant and between him and Jacques van Zyl ("**Mr van Zyl**"), also an accountant at Bosasa, they identified liquidated companies and used the names of these companies as suppliers to Bosasa.²⁶⁸ He elaborated that the fake invoice might take the form of the regeneration of a prior valid invoice for goods or services actually delivered. An example was a company called Kgwetlo Events CC ("**Kgwetlo Events**") which belonged to Mr and Mrs Brian Gwebu, former employees of Bosasa, who had an events company that hired out equipment for events.²⁶⁹ Kgwetlo Events' "products" were recorded on the books so as not to raise flags with the auditors. False invoices were thereafter drawn and cash cheques produced. These cheques were then cashed by Bosasa. If the auditors questioned the cash cheques, they were told that these companies were BBBEE and needed cash cheques.²⁷⁰ Mr Agrizzi testified that Mr and Mrs Gwebu were unaware of the false invoices. Mr Agrizzi explained that, when he found out about this practice, he stopped it because he considered it too risky to have the account ladies collect up to R700,000 in cash from the bank. Not only was he concerned about their

²⁶⁷ Transcript, day 36 pp 38-41; Mr Agrizzi's Initial Affidavit, pp 26-27 at para 13.7.

²⁶⁸ Transcript, day 75, p 28.

²⁶⁹ His evidence is not clear in this regard, but it appears that one or both of Mr and Mrs Gwebu may have passed away. Transcript, day 36 pp 25-27; Mr Agrizzi's Initial Affidavit, p 25 at para 13.2.

²⁷⁰ Transcript, day 75, p 29.

physical safety, but also because the practice would make them stick out like "sore thumbs".²⁷¹

Invoices for goods or services which were never received

265. The scheme to generate cash to bribe individuals also involved service providers supplying false invoices to Bosasa for goods and services that were never delivered or rendered. Bosasa paid the service providers, who repaid Bosasa in cash and deducted a percentage for their own account, with the cash being delivered directly to Mr Watson. Mr Agrizzi testified that this scheme existed before and after 2009.²⁷²

266. Mr Agrizzi testified that he started working closely with Mr van Tonder in 2009 who indicated that this had been the practice to generate cash for some time and also explained how cash was generated through various other sources as well, such as Belfast Toyota and the creation of dummy invoices for companies that did not exist.²⁷³

267. In this regard, Mr van Tonder testified that a share in Belfast Toyota was acquired as it had a fuel station and kiosk that generated cash from sales. Mr Agrizzi explained that Bosasa purchased the company that owned the fuel station. It went by the name of F&R Phakisa Operations (Pty) Ltd ("**F&R Phakisa**").²⁷⁴ F&R Phakisa would falsely invoice Bosasa for fuel corresponding with the amount of cash taken by Bosasa. The "fuel" would be paid for by EFT and then cash in the equivalent amount would be

²⁷¹ Transcript, day 75, p 30.

²⁷² Transcript, day 40, p 151.

²⁷³ Transcript, day 40, p 152.

²⁷⁴ Transcript, day 36, pp 43-45; Mr Agrizzi's Initial Affidavit, p 28 at para 13.12.

transported to Bosasa's head office daily. Thus Bosasa would pay for fuel not received but received cash in return.²⁷⁵

268. Mr Agrizzi further testified as to various methods of disguising the money flows necessary to pay the cash bribes. These included the following:

268.1. A cash cheque would be issued and at the same time a fictitious invoice would be created to justify the cash transaction. The fictitious invoice would be created in the name of a company that was nearing liquidation or in liquidation. Mr Agrizzi was not sure whether the company would know this but thought that they would have.²⁷⁶

268.2. Mr Watson would instruct that companies be created specifically for purposes of issuing fake invoices which would be liquidated at a later stage.²⁷⁷

268.3. Bosasa arranged through Mr Riaan Hoeksma ("**Mr Hoeksma**") of Riekele Konstruksie CC ("**Riekele**") that a cash flush company, Jumbo Liquor Wholesalers of Randfontein, would invoice Bosasa for alcohol and instead of alcohol being delivered, cash would be delivered by Mr Hoeksma for the equivalent amount of the invoice, with Mr Hoeksma receiving a commission of between 5% and 7.5%. The invoice from Jumbo Liquor Wholesalers would be settled by way of an EFT payment by Bosasa. It was either Mr van Zyl or Mr van Tonder who would make the arrangements in this regard with Mr Hoeksma. Mr Agrizzi could not remember which. The invoice would be put

²⁷⁵ Transcript, day 43, p 26; Mr van Tonder's Affidavit, p 11 at para 55; day 36, pp 43-45; Mr Agrizzi's Initial Affidavit, p 28 at para 13.12.

²⁷⁶ Transcript, day 36 p 25; Mr Agrizzi's Initial Affidavit p 25 at para 13.1.

²⁷⁷ Transcript, day 36 p 29 to 30; Mr Agrizzi's Initial Affidavit, p 26 at para 30.4.

through as tax deductible operational expenses.²⁷⁸ Mr van Tonder confirmed this evidence and stated that Mr van Zyl and members of the accounts department would attend to the administrative side of the transaction and he would collect the cash from Mr Hoeksma's offices in Randfontein.²⁷⁹

268.4. The next method appeared to operate in the following manner. A government department, such as a youth centre, would order a software programme from Bosasa, for example, which Bosasa had available at no expense to itself or which, seemingly, the government institution may already have. The payment by the government department in respect of the invoice would then be split between Bosasa and the government official arranging the transaction. The money paid to the government official would then be used for electioneering purposes by the ruling party. Mr Agrizzi was party to such a transaction involving the MEC for Social Development in the North West Province. The person from Bosasa that would facilitate these transactions was Syvion Dlamini ("**Mr Dlamini**"), director of the Bosasa youth development centres.²⁸⁰ Mr Agrizzi estimated that, as far as he could recall, the value of this particular transaction was R3.4m of which R1.8m was paid out to the official involved.

269. Mr Agrizzi also testified about the high profit margins of the company and how these helped to disguise the illegality and to make it difficult for any forensic auditor to pick up the illegality. This included ensuring a consistent expenditure pattern through the year. Additional expenditure around Christmas time would be justified by what he

²⁷⁸ Transcript, day 36 pp 31-37; Mr Agrizzi's Initial Affidavit, p 26 at paras 13.5 to 13.6.

²⁷⁹ Transcript, day 43, p 27; Mr van Tonder's Affidavit, p 12 at para 57.

²⁸⁰ Transcript, day 36, pp 46-57; Mr Agrizzi's Initial Affidavit, pp 29 to 30 at paras 13.14 to 13.16.

described as "public holiday costs" such as the payment of overtime and arranging "braais, braai packs and that type of thing for employees."²⁸¹

270. Mr Agrizzi testified that the person responsible for generating the fake invoices was Mr Bonifacio.²⁸² He at one point decided to cooperate as a whistleblower and corresponded with Mr Agrizzi, including the preparation of a draft affidavit, but was then dissuaded when he confessed his intentions to Mr Watson.²⁸³

271. Some of the companies and firms²⁸⁴ that provided cash to Bosasa using the false invoicing method are set out below:

271.1. Mr van Tonder testified that he was instructed to utilise AA Wholesalers CC ("**AA Wholesalers**") in order to collect additional cash.²⁸⁵ Bosasa would be invoiced by AA Wholesalers for goods that were not delivered amongst other genuine deliveries and transactions.²⁸⁶ Where goods were not delivered, cash would be provided.

271.2. Riekele Construction which worked in tandem with the liquor store. Hoeksma would fetch the money for Bosasa from the liquor store and would receive a percentage as payment in return.²⁸⁷

²⁸¹ Transcript, day 36, pp 58 to 61; Mr Agrizzi's Initial Affidavit, p 29 at paras 13.17 to 13.18.

²⁸² Transcript, day 36, pp 27-28; Mr Agrizzi's Initial Affidavit, p 26 at para 13.3.

²⁸³ The correspondence exchanged and the draft affidavit have been made available to the Commission.

²⁸⁴ The entity registration numbers for these companies are recorded at Mr Agrizzi's Supplementary Affidavit, p 6 at para 8.1.

²⁸⁵ Transcript, day 75, p 28.

²⁸⁶ Transcript, day 43, p 25; Mr van Tonder's Affidavit, p 11 at para 56.

²⁸⁷ Transcript, day 75, p 28.

- 271.3. Jumbo Liquor Wholesalers in Randfontein which were purported sales within Bosasa because the company had bars and canteens.
- 271.4. Equal Trade 4 (Pty) Ltd and Equal Food Traders (Pty) Ltd and various derivatives of these names.²⁸⁸
- 271.5. Lamocest (Pty) Ltd ("**Lamocest**") which, according to Mr Agrizzi was "*not [used] for cash predominantly but for filtering, let us call it racketeering*".²⁸⁹
272. Mr Agrizzi recalled three occasions where the auditors told them they would not get a clean audit due to discrepancies. The system of creating fraudulent invoices and drawing up cash cheques started to become a problem. The banks apparently started querying why there were such large amounts "*going in cash cheques*". This was reported by the auditors, Maseng Viljoen (formerly Bester Viljoen and later D'Arcy-Herrman). Mr Agrizzi said "*We also had to deal with [it], if I recall correctly, at IRBA as well.*"²⁹⁰

Cash sales at the Lindela Repatriation Facility

273. Another method of raising cash testified to by Mr Agrizzi related to Bosasa's contract to administer Lindela. Bosasa ran the canteen there as well as a telephone facility. These were the sole sources at the facility where detainees could purchase goods and make telephone calls. The detainees paid cash for the goods and the telephone

²⁸⁸ Transcript, day 75, p 27.

²⁸⁹ Transcript, day 75, p 27.

²⁹⁰ Transcript, day 75, p 29. IRBA is the Independent Regulatory Board for Auditors. This is probably the result of the application of section 45 of the Auditing Profession Act No. 26 of 2005, which requires auditors who have reason to believe that a reportable irregularity has taken place in an entity, to file a written report with IRBA. A reportable irregularity is defined in section 1 of that Act as an unlawful act or omission by management that causes material financial loss, is fraudulent or amounts to theft, or represents a material breach of a fiduciary duty.

service. A portion of the cash estimated at 10% to 15% was declared as revenue and the remainder transferred to the vaults at Bosasa headquarters. The total cash takings were estimated at between R300,000 and R400,000 per month.²⁹¹

274. This cash generation method took place in the early 2000's before the cash requirements became greater with the DCS and other contracts.²⁹²

275. A similar system operated in respect of the cash bars and canteens at the mine hostels that were administered by Bosasa. There was a special cash in transit team that would collect the cash from these facilities and bring it to "Gavin's vault". Mr van Tonder confirmed cash would be collected from the canteen at Lindela as well as canteens and bars run by Bosasa at mine hostels.²⁹³

276. This practice dwindled in either 2002 / 2003 or 2003/ 2004 when Bosasa sold off the mining contracts to Mr Lacon-Allin of Equality Foods.²⁹⁴

Payment to ghost employees

277. Another cash generation scheme testified to by Mr Agrizzi involved the creation of ghost workers. Bosasa had various sites where construction was under way. In order to generate cash, fictitious lists of casual employees were created by Riekefe.²⁹⁵ Mr Agrizzi mentioned a halfway house being developed for awaiting-trial children, Luipaardsvlei, a reintegration facility and 2 North Hostel.²⁹⁶

²⁹¹ Transcript, day 36, p 62.

²⁹² Transcript, day 36, pp 61 to 62; Mr Agrizzi's Initial Affidavit, p 31 at para 14.

²⁹³ Transcript, day 43, p 25; Mr van Tonder's Affidavit, p 11 at para 54.

²⁹⁴ Transcript, day 36 pp 62 to 64; Mr Agrizzi's Initial Affidavit, pp 30 to 31 at para 15.

²⁹⁵ Transcript, day 75 p 30.

²⁹⁶ Transcript, day 36, p 64.

278. Mr van Tonder and others were instructed to draw up fake payroll sheets on Excel reflecting ghost workers who would be paid wages in cash. Cheques were then drawn for the value of the casual wages under the guise of payment of wages.²⁹⁷
279. Mr Agrizzi believed that it was easy to identify the wages to "ghost employees" because payments to employees were normally paid by EFT and these supposed casual workers are not reflected on the payment system. Further, there were no employment agreements for these workers.²⁹⁸
280. Cash cheques would then be drawn on the local bank and Bosasa staff would collect the cash themselves. Mr Agrizzi accompanied them on one occasion. The amount then drawn was made up of three cheques which totalled R720,000. The cash was then packed in a bag and they left Key West FNB and drove to the Bosasa office. This was a weekly occurrence.²⁹⁹
281. Mr Agrizzi had concerns regarding the safety of the ladies that drew the R700,000 - R800,000 from the bank.³⁰⁰
282. This practice was stopped when the Unemployment Insurance Fund ("UIF") started to require UIF contributions to be paid also in respect of casual labour. This took place in 2003.³⁰¹ The duration of the payments could be identified from the Maseng Viljoen report.³⁰²

²⁹⁷ Transcript, day 75, p 30; Mr Agrizzi's Supplementary Affidavit, p 6 at para 9.1.

²⁹⁸ Transcript, day 75, p 30.

²⁹⁹ Transcript, day 36, pp 64 to 65; Mr Agrizzi's Initial Affidavit pp 31-32 at para 16.

³⁰⁰ Transcript, day 75, p 32.

³⁰¹ Transcript, day 36, p 66 to 70; day 75, p 31. Mr Agrizzi's Initial Affidavit p 33 at para 17.

³⁰² Transcript, day 75, p 32. Mr Agrizzi's evidence as to the time when this took place was to some extent contradictory in that he testified that the practice followed the sale of the mining contracts in 2002/2003 or 2003/2004 but then gave a date of termination of the ghost worker scheme as 2003. Mr Agrizzi pointed out that it was 15-16 years ago that this had taken place so he could not remember exactly the timing of events.

Equal Trade and false invoices

283. Mr Agrizzi, Mr van Tonder and Mr Lawrence testified on the arrangement of procuring cash from Equal Trade.
284. Mr Lawrence testified that in 2012, Mr Lacon-Allin told him to take the cash generated from Equal Trade's alcohol business to Bosasa instead of the banks given the bank charges applied for cash deposits. The cash given to Bosasa was then paid back to Equal Trade by EFT. Mr Lawrence was aware that commission was payable for the cash handling but was not aware of the amount charged by Bosasa.³⁰³
285. Mr Lawrence explained that the cash handling arrangements worked as follows:
- 285.1. Once he had sufficient funds, he was required to contact an individual from Bosasa (whose name he could not recall) and meet him at the Bosasa Head Office to hand over the cash. This amount was never less than R100,000 and went up to R1m.³⁰⁴
- 285.2. Mr Lawrence kept no record of the cash taken to Bosasa but was "quite sure" that a record was kept by Mr Lacon-Allin and Bosasa.³⁰⁵
- 285.3. Mr Lawrence could not recall how long this practice lasted but he "would say months". After some time, Mr Lacon-Allin informed him that the arrangement was coming to an end.³⁰⁶

³⁰³ Transcript, day 46, pp 24 and 25.

³⁰⁴ Transcript, day 46, pp 26 and 27.

³⁰⁵ Transcript, day 46, p 29.

³⁰⁶ Transcript, day 46, p 30. For example, see the exchange between the Chairperson and Mr Lawrence, transcript, day 46, pp 41 and 42.

286. Mr Lawrence described having suspicions that the money delivered to Bosasa was to assist it in underhanded activities, given the rumour in the industry that Bosasa bribed officials.³⁰⁷
287. After some time, Mr Lawrence began video recording delivery of the cash to Bosasa because (i) he felt that the arrangement was wrong; and (ii) he wanted to protect himself.³⁰⁸ Still shots from the video recordings were included as annexures to Lawrence's affidavit and he provided the following commentary on these stills:
- 287.1. Annexure A is a photograph of bundles of cash delivered to Bosasa. The three visible counter notes on the cash marked the amount of money in the bundle and possibly where the money was received from.³⁰⁹
- 287.2. Annexure B is a close-up of a counter note which depicts a date of 5 March with the year obscured. Mr Lawrence estimated this delivery to have occurred in 2013.³¹⁰
- 287.3. Annexure C is a photograph of one of the boxes in which Mr Lawrence received cash which was closed. Annexure D is the same box depicted in Annexure C.³¹¹
- 287.4. Annexures E, F, Hand J are photographs of the same box revealing bundles of R100 bank notes.³¹²

³⁰⁷ Transcript, day 46, p 31.

³⁰⁸ Transcript, day 46, p 32.

³⁰⁹ Mr Lawrence's affidavit, p 10; transcript, day 46, p 33.

³¹⁰ Mr Lawrence's affidavit, p 11; transcript, day 46, p 34.

³¹¹ Mr Lawrence's affidavit, pp 12 and 13; transcript, day 46, p 34.

³¹² Mr Lawrence's affidavit, pp 14 to 18, transcript, day 46, pp 35 and 36.

- 287.5. Annexure K is a photograph depicting two boxes of cash for delivery to Bosasa.³¹³
- 287.6. Annexures L, M and N are photographs of more cash received but in plastic bags.³¹⁴
288. The transcript of the video made reference to “900 alright boetie”. Mr Lawrence recalled that this may have been a reference to there being R900,000 in cash delivered to Bosasa.³¹⁵
289. Mr Lawrence's video recording was played before the Commission. He described the incident depicted in the video as occurring at the Bosasa Head Office and visible in the recording is Mr Lawrence's security assistant and the individual at Bosasa who received the boxes or bags of cash from Mr Lawrence.³¹⁶ Several still images were taken from this video clip and are described as follows:
- 289.1. A Volkswagen vehicle with registration number BC27VV GP which was the vehicle driven by the Bosasa employee that received the money from Mr Lawrence.³¹⁷
- 289.2. Mr Lawrence's associate (Jason) who accompanied him for cash deliveries.³¹⁸

³¹³ Mr Lawrence's affidavit, p 19; transcript, day 46, p 36.

³¹⁴ Mr Lawrence's affidavit, pp 21 to 22; transcript, day 46, p 36.

³¹⁵ Mr Lawrence's affidavit, p 59; transcript, day 46, p 48.

³¹⁶ Transcript, day 46, pp 40 to 42.

³¹⁷ Mr Lawrence's affidavit, p 60; transcript, day 46, p 44.

³¹⁸ Mr Lawrence's affidavit, p 61; transcript, day 46, p 45.

- 289.3. Mr Lawrence's mobile phone used to record the video.³¹⁹
- 289.4. Mr Lawrence's associate receiving the bag back from the Bosasa employee after he had taken the cash.³²⁰
- 289.5. The Bosasa employee who received the cash from Mr Lawrence and his associate.³²¹
290. The box depicted on page 80 of Mr Lawrence's affidavit had "Equal Trade" written on it.³²²
291. In relation to the amounts that Mr Lawrence would have delivered to Bosasa, Mr Agrizzi recalled one specific delivery of R900,000 and a further R1m the following week. Larger amounts of R2.8m and R3m would be collected by Mr van Tonder from a petrol station at Lanseria. Mr Agrizzi explained that payments made by Bosasa to Equal Trade would demonstrate exactly how much cash had been delivered.³²³
292. After the period during which Mr Lawrence was involved in making deliveries to Bosasa, Mr Lawrence received an email from the Bosasa employee he dealt with in the cash deliveries and who was depicted in the video. Mr Lawrence read the email a few weeks later and it appeared that the email was sent to him in error. The email was intended for Mr Lacon-Allin. The email included a spreadsheet of purchase orders for 33 DCS facilities. These purchase orders from Bosasa were addressed to Equal Trade to supply it with non-vatable foodstuff and were attached to Mr Lawrence's

³¹⁹ Mr Lawrence's affidavit, p 62; transcript, day 46, p 45.

³²⁰ Mr Lawrence's affidavit, pp 63 to 68; transcript, day 46, p 45.

³²¹ Mr Lawrence's affidavit, pp 69 to 73; transcript, day 46, p 46.

³²² Transcript, day 46, p 52.

³²³ Transcript, day 75, p 22.

affidavit.³²⁴ Mr Lawrence confronted Mr Lacon-Allin about this and was informed this scheme was a different means of cash generation for Bosasa.³²⁵

293. Further information on this new scheme for cash generation was provided by Mr Agrizzi and Mr van Tonder as follows:

293.1. Mr Agrizzi explained that the practice commenced when concerns developed around the cash-raising mechanism through Jumbo Liquors. The large amounts of cash coming via Jumbo “were becoming somewhat suspicious” to the accounting staff as they were invoiced for liquor which was never consumed.³²⁶ At this stage, Mr van Zyl approached Mr Agrizzi about changing the methodology. The new methodology proposed and adopted was a system where Equal Trade (a supplier of chicken to the various Bosasa-administered facilities) would invoice Bosasa for various foodstuffs that were zero rated for VAT purposes. Bosasa would pay the invoice by way of an EFT. However, instead of delivering any of the goods reflected in the invoice, cash would be delivered by Equal Trade to Bosasa. This would then be used for the payments described earlier.³²⁷ Mr van Tonder stated that this was the most substantial method of cash generation. Initially, Mr van Zyl was responsible for ordering and collecting cash from Equal Trade. However Mr Watson instructed that this function be handed over to van Tonder around July 2016.³²⁸

293.2. The advantage for Equal Trade participating in this scheme would be that cash obtained from sources which included horse racing, cross border liquor sales,

³²⁴ Mr Lawrence's affidavit, pp 23 to 56.

³²⁵ Transcript, day 46, p 58.

³²⁶ Transcript, day 36, p 70.

³²⁷ Transcript, day 36, p 71.

³²⁸ Transcript, day 43, p 28; Mr van Tonder's Affidavit, p 12 at para 58.

Tattersalls for horse racing and the cigarette trade would not have to be banked and *“they could then move the EFT into company”*.³²⁹ It was not that clearly indicated in the evidence what this meant but presumably it would have the consequence that cash income generated illegally or dubiously could be replaced with an EFT in respect of an ostensibly legitimate supply of goods.

293.3. Mr Agrizzi testified that he was reluctant to become involved in this as he was by then *“getting a bit fed up of all of this”*. However, he was instructed by Mr Watson to remunerate the accounting staff that were involved in the manipulation. Mr Agrizzi implemented this and paid each of them R10,000 a month. The persons involved were Mr van Zyl, Carien Daubert,³³⁰ Rieka Hundermark and the chief accountant, Mr Bonifacio.³³¹

293.4. Because the accounting system, known as “Great Plains” would need to be manipulated to bring about the fictitious invoicing, Mr Watson also instructed Mr Agrizzi to make a monthly payment to Gavin Hundermark of R20,000 per month.³³²

294. The process of obtaining cash from Equal Trade was outlined by Mr van Tonder as follows:

294.1. Mr Lacon-Allin would send Mr van Tonder a WhatsApp message on a Monday morning requesting order requirements for the week.³³³ If cash was required, Mr van Tonder would respond indicating that a certain amount of chicken was

³²⁹ Transcript, day 36, p 77.

³³⁰ Incorrectly spelt as Karin Dobert at this point in the transcript.

³³¹ Transcript, day 36, p 71.

³³² Transcript, day 36, p 72.

³³³ See Annexure AT3 of Mr van Tonder’s Affidavit.

required. "Chicken" was used as a code for the cash to be delivered and one ton of chicken represented R1m. Therefore, 1,550 tons represented R1,550,000.³³⁴

294.2. Mr van Tonder would advise Mr van Zyl of the amount requested so that he could make internal arrangements to generate documentation and make payment to Equal Trade. Carien Daubert would then prepare an "order sheet" with non-vatable food items on it, to be ordered for the kitchens in various management areas. The items were non-vatable in order to avoid SARS raising VAT queries. These were not genuine orders but were nevertheless accounted for as expenses in Bosasa's books and deducted as operational expenses for purposes of tax returns.³³⁵

294.3. Mr van Tonder would email the order sheets to Equal Trade using the Gmail address johnforest@gmail.com. This address was not created by Mr van Tonder. Proof of payment (which included a 12% commission for Mr Lacon-Allin/Equal Trade) would also be emailed so that the cash delivery could be arranged.³³⁶

294.4. Once the cash was ready, Mr van Tonder collected it from a filling station near Lanseria Airport. This aligns with the version given by Mr Agrizzi. Mr van Tonder would then take the cash to the Bosasa head office and lock it in a safe situated in the walk-in vault in the company secretary's office.³³⁷

³³⁴ Transcript, day 43, pp 29-31.

³³⁵ Transcript, day 43, pp 32 to 35; Mr van Tonder's Affidavit, p 12 at para 60.

³³⁶ Transcript, day 43, pp 32 and 34.

³³⁷ Transcript, day 43, p 32.

- 294.5. Equal Trade would send Bosasa invoices which were generated based on the order sheets sent to it.³³⁸
- 294.6. Payments were always done prior to invoicing which was contrary to day-to-day operations of other suppliers in the Bosasa group who would be paid on 60 days. Further, items and invoices did not follow the normal channels in that unit leaders and storemen did not see these invoices nor were invoices marked with a "goods received" stamp.³³⁹
295. Mr van Tonder testified that amounts from R4m to R6m were collected from Equal Trade a month.³⁴⁰
296. Mr Agrizzi confirmed that the *modus operandi* in this regard was more or less the same as the one used with Jumbo Liquors. Mr Agrizzi tendered his cooperation in the further investigation of these transactions.³⁴¹

AA Wholesalers

297. Mr Agrizzi attested to a further method of raising cash for the illegal payments and explained that Mr Venter "understood the difficulties with trying to deal with the cash requirements in the company".³⁴²
298. Mr Agrizzi testified that Mr Venter had a client, AA Wholesalers, with whom he had dealings in Lenasia. Mr Venter arranged an initial meeting with the owner of the business involving himself and Mr van Tonder. AA Wholesalers is a wholesaler and

³³⁸ Transcript, day 43, p 34.

³³⁹ Transcript, day 43, p 35; Mr van Tonder's Affidavit, p 13 at para 64.

³⁴⁰ Transcript, day 43, p 47.

³⁴¹ Transcript, day 36, pp 75 to 79; Mr Agrizzi's Initial Affidavit p 18 at para 18.1 to p 34 at para 19.5.

³⁴² Mr Agrizzi's Initial Affidavit, p 34 at para 20.1.

retailer of various consumer goods. Later, a second meeting took place between Mr Venter, Mr van Tonder, Mr Watson and Mr Agrizzi at AA Wholesalers' facility in Lenasia. Bosasa considered acquiring the business but decided against this "*because there was a major culture difference between the two*". However, it was decided that Bosasa would work with AA Wholesalers. The scheme was developed whereby AA Wholesalers would heavily over-invoice for a legitimate order of goods from the business. An EFT payment would be made by Bosasa in respect of the full amount of the invoice and the difference between the small amount of goods actually delivered and the full invoice would be delivered to Bosasa in cash.³⁴³

299. Mr Venter testified that he knew the owner of AA Wholesalers, Mr Amod, from the time that he was employed at SARS and that they had become friends. Mr Venter introduced Mr Amod to Mr van Tonder,³⁴⁴ when Mr van Tonder wanted to purchase goods for his mother's house. Mr van Tonder, according to Mr Venter, was impressed with Mr Amod's business and wanted to show Mr Agrizzi and Mr Watson. Mr Venter testified that he accompanied Mr Agrizzi, Mr van Tonder and Mr Watson to AA Wholesalers. At the meeting, Mr Watson, Mr Agrizzi and Mr van Tonder expressed an interest in purchasing the company from Mr Amod (which did not take place) and asked about how much cash was generated in the business.³⁴⁵ Mr Venter testified that he was not involved in any of the cash schemes in relation to which Mr van Tonder gave evidence that he had been informed of the scheme to obtain cash through AA Wholesalers and Equal Trade by Mr van Tonder. However, he said that it was not part of his functions.³⁴⁶

³⁴³ Transcript, day 36, pp 80 to 82; Mr Agrizzi's Initial Affidavit p 34 at para 20.1.

³⁴⁴ He testified that this took place "*about five years ago*".

³⁴⁵ Transcript, day 74, pp 105-106.

³⁴⁶ Transcript, day 74, p 105. Exhibit T10, p 22.

Mr Watson's vaults and safes

300. Mr Agrizzi, Mr van Tonder and Mr le Roux testified about cash stored at the Bosasa premises in a walk-in vault and safes.

301. Mr Agrizzi's evidence in this regard is set out below:

301.1. Money was kept in a walk-in vault behind the boardroom known as "Gavin's safe". There were also a number of other walk-in vaults, about eight in total.³⁴⁷

301.2. The minimum amount of cash in the vault was R2m, and the maximum amount was approximately R6.5m. Mr Agrizzi calculated the maximum amount with reference to the capacity of the safes.³⁴⁸

301.3. The maximum amount would exceed R6.5m over the November / December period due to bonuses that would be paid to directors of the company.³⁴⁹ Bonuses of around R200,000 to R300,000 would be paid in cash as a "tax duck".³⁵⁰ Mr Agrizzi's Supplementary Affidavit further states that the amount in the safes in December 2014, 2015 and 2016 exceeded R6.5m because extra payments were made to various beneficiaries in the form of cash, gifts and gratification.

³⁴⁷ Transcript, day 34, p 125.

³⁴⁸ Transcript, day 75, p 17; Mr Agrizzi's Supplementary Affidavit, p 3 at para 4.

³⁴⁹ Transcript, day 75, p 18.

³⁵⁰ Transcript, day 75, p 19.

301.4. An initial weekly delivery of between R2.6m and R3m was received for storage in the safes. Mr Agrizzi explained that he became concerned and changed the amounts for weekly delivery to between R900,000 and R1.2m.³⁵¹

301.5. The amount received for storage in the safes was dependent on the amount requested by Mr Watson. On a Monday morning, Mr Watson would inform Mr van Tonder of the amount required. Mr van Tonder would thereafter call Lacon-Allin of Equal Trade and request an order of "1.5 tons of chicken".³⁵² Mr Agrizzi explained:

"So what would happen is on a Monday Gregg Lacon-Allin would send a message what is the order of chicken for today. So we would then say well we need to check with Gavin, and we would check with Gavin and then let him know what the order would be. But on average it was weekly that will be filled up, sometimes more frequently (sic). Sometimes we would change it and we would take a bulk order of between 5 and 6 or sometimes over Christmas period it would even be more."³⁵³

301.6. Upon receipt of the cash delivery, the cash would be taken to the company secretary's vault for a reconciliation process to be undertaken. Mr Agrizzi would check the amount, and Mr van Tonder would double-check the cash and they would then reconcile the amount counted. The amount would normally be recorded on a piece of paper. When Mr Watson was available, the cash would be transported to the main vault. Mr Watson would sometimes also count the money.³⁵⁴

301.7. People from the board or management of Bosasa would come to ask for money to be paid out as bribes. Seemingly they were sometimes referred to

³⁵¹ Transcript, day 75, pp 19 and 20.

³⁵² Transcript, day 75, p 20.

³⁵³ Transcript, day 35, p 67.

³⁵⁴ Transcript, day 75, p 20.

directly as bribes and on occasions through the use of euphemistic words, ostensibly referring to something else, but where the purpose was well known and understood, including by Mr Watson. For example, people would say *"I need to buy some rulers and some pens to donate to someone"*.³⁵⁵

301.8. In response to further questioning, Mr Agrizzi said that some bonuses were also paid with this money, referring to bonuses paid to employees, but generally, it was used to pay bribes.³⁵⁶ The reference here to bonus payments appears, when contrasted with bribes, to suggest that the bonus payments were legitimate bonus payments. However, testimony given by Mr Agrizzi at a later stage suggests that these too were illegitimate payments aimed at retaining employee loyalty despite knowledge of the unlawful activities or buying their silence.³⁵⁷

302. Mr le Roux testified that he was aware of four vaults at the Bosasa offices located as follows: (i) in the secretary's office; (ii) near the petty cash office; (iii) in Mr Watson's office; (iv) in the bid office occupied by Mr van Zyl.³⁵⁸

303. Mr van Tonder testified that, when Mr Watson took delivery of cash from him, a basic reconciliation was conducted to ensure that the cash received was the amount that should have been delivered according to the payment made to Mr Lacon-Allin/Equal Trade. Mr Agrizzi would also look at the payment advice. If there was a shortfall in cash received, this would be recovered from Equal Trade at a later stage.³⁵⁹

³⁵⁵ Transcript, day 34, p 126.

³⁵⁶ Transcript, day 34, pp 124-128; Mr Agrizzi's Initial Affidavit, p 22 at para 12.1.

³⁵⁷ Transcript, day 35, p 43.

³⁵⁸ Transcript, day 44, p 11.

³⁵⁹ Transcript, day 43, p 43.

304. Mr van Tonder testified that some of the staff involved in the administrative process of arranging the cash would receive a monthly bonus.³⁶⁰ He received cash from Mr Watson in addition to his normal salary from approximately 2005 to November 2017. This cash bonus reached an amount of R20,000 per month in around 2013/2014. Mr Watson can be seen handing Mr van Tonder one of these cash bonus payments in the video.³⁶¹ Mr van Tonder understood this payment was given to him to keep quiet. This understanding was based on the fact that Mr Watson had informed him that all individuals that received money from him were compromised.³⁶² In addition to the cash bonuses, van Tonder also enjoyed benefits such as overseas holidays, tyre fitments for his car and maintenance to his house.³⁶³

305. A video of the vault was handed in as evidence, along with a transcript of the soundtrack on the video.³⁶⁴ Mr van Tonder filmed this video on 28 March 2017 on request from Mr Agrizzi who had been informed that Mr Watson intended to place blame on them for Bosasa's illegal activities.³⁶⁵ Mr van Tonder explained that the video was taken using a cell phone placed in his shirt pocket. A razor blade was used to prop up the phone so that the camera could be exposed.³⁶⁶

306. Mr Agrizzi's evidence and descriptions as the video was played were as follows:

306.1. A safe inside the vault of the company secretary's office was pointed out on the video.

³⁶⁰ Transcript, day 43, p 47.

³⁶¹ See from para 305 below.

³⁶² Transcript, day 43, pp 48 to 50.

³⁶³ Transcript, day 43, p 50.

³⁶⁴ Transcript, day 35; Mr Agrizzi's Initial Affidavit, Annexures S3 and S4 respectively.

³⁶⁵ Transcript, day 42, p 122; day 35, p 11.

³⁶⁶ Transcript, day 42, p 122; day 35, p 12.

- 306.2. Writing on the safe was pointed out, which Mr Agrizzi explained was *“to do with legal privilege, because we were concerned that we would be raided”*. The writing said that Hogan Lovells and Biebuyck would have to be contacted to get access to the safe.³⁶⁷
- 306.3. Mr Agrizzi however said that he put the sticker with the writing on the safe himself because he had documents in the safe relating to information given by Mr Watson regarding the SIU and NPA investigation, which he sought to protect by placing them there. These were documents that had been acquired unlawfully.³⁶⁸
- 306.4. The next point at which the video was stopped showed Mr van Tonder opening up the “bottom safe” and taking out a box of cash.³⁶⁹ Mr van Tonder testified that when he collected the cash required, he would return to the Bosasa offices and lock it in the walk-in vault in the company secretary’s office because Mr Watson was not normally available to receive the cash. Mr Watson would then call Mr van Tonder when he required the cash and instruct Mr van Tonder to bring it to his personal vault. Mr van Tonder would carry the cash in a cardboard box to Mr Watson’s vault, as seen in the video.³⁷⁰
- 306.5. The video showed shelving inside the vault.
- 306.6. The company secretary, Natasha Olivier, is also depicted in the video.³⁷¹

³⁶⁷ Transcript, day 35, p 9.

³⁶⁸ Seemingly this scene is 48 seconds into the video, but this is not entirely clear. Transcript, day 35, p 9.

³⁶⁹ Transcript, day 35, p 10.

³⁷⁰ Transcript, day 43, pp 37, 38 and 45; Mr van Tonder’s Affidavit, p 13 at para 66.

³⁷¹ Again, referenced at 48 seconds into the video.

- 306.7. The video then depicts the box being taken by Mr van Tonder from the vault at the company secretary's office to the vault behind the main boardroom which is described as Mr Watson's vault.³⁷²
- 306.8. Mr Watson's vault is built behind the main boardroom in the Consilium office and the only persons with access were Dr Smith, Caroline Grammar (who did wages for Consilium) and Mr Watson.³⁷³
- 306.9. Mr Agrizzi testified that all the vaults were hidden behind false walls or doors.³⁷⁴
- 306.10. The door to Mr Watson's vault had the same sign regarding legal privilege on it.³⁷⁵
- 306.11. In what appeared to be Mr Watson's vault there was an olive-green object which Mr Agrizzi testified was in fact a "drop safe" – it has "a picture in it which opens up".³⁷⁶
- 306.12. At the bottom of the screen at this point Mr Agrizzi describes "next to the photostat paper ... with the yellow strip and a blue strip across it, those are the security bags" (which he had testified about the previous day).³⁷⁷

³⁷² Seemingly at around 1'22" into the video.

³⁷³ Transcript, day 35, p 13.

³⁷⁴ Transcript, day 35, p 14.

³⁷⁵ This evidence is at 1'46" into the video. Transcript, day 35, p 15.

³⁷⁶ This seemingly at a point just beyond 1'46" into the video. Mr van Tonder described the vault as having three safes, which included a drop safe (Transcript, day 43, pp 39 and 40).

³⁷⁷ Transcript, day 35, p 16.

- 306.13. Mr Agrizzi stated that *"the use of those bags is to pack cash to pay people with bribes"*.³⁷⁸
- 306.14. At this point Mr Agrizzi testified that the money was used only for bribes not for legitimate payments.³⁷⁹
- 306.15. The video was stopped at a point which depicted a man seated on the left-hand side of the vault where there is a table and chair. This was identified as being Mr Watson and *"behind him is his safe"*.³⁸⁰ This is inside the vault.³⁸¹
- 306.16. Mr Agrizzi testified that the desk was used primarily for counting cash.³⁸²
- 306.17. The video then depicted another person, identified by Mr Agrizzi as Mr Gumede, also seated at the desk in the second chair.³⁸³
- 306.18. Behind Mr Gumede are *"very confidential files"*. These would have included both lawful and unlawful documents.
- 306.19. Visible on the desk was money in a bag together with a pen and *"a paper or a list"*.
- 306.20. Mr Agrizzi testified that visible in the video at this point was money in a bag, saying that there were R100 notes in it, having regard to their colour. The bag was a transparent bag, and not a bag as described earlier in his testimony,

³⁷⁸ Transcript, day 35, p 16.

³⁷⁹ Transcript, day 35, p 16.

³⁸⁰ This at around 1'50" into the video.

³⁸¹ Transcript, day 35, p 17.

³⁸² Transcript, day 35, p 18.

³⁸³ At 1'50" into the video. Transcript, day 35, p 19.

because this was seemingly the bag in which the money was received by Bosasa. *“Those notes come in packed, I think it is R1 million in one big bag, which is wrapped by the people that collect the cash and that type of thing.”*³⁸⁴

306.21. The person visible in the video shortly after this is Mr Leshabane, spokesman for, and director of, Bosasa's Kgwerano Fleet Management who *“provide vehicles to government on the SMS scheme”*. Mr Leshabane also sits on the Bosasa main board. Mr Agrizzi clarified later that Kgwerano had a contract with the Department of Transport valued at R14m to R15m per month to provide maintenance of government vehicles.³⁸⁵

306.22. On the video, Mr Leshabane was speaking on his cell phone, but in his other hand were two full bags of cash. Mr Agrizzi testified that this cash was used for bribery. He knew there was money in the bags because he knew the system. The bags were those identified on the safe and referred to earlier. *“The case was on the table and ... it is being carried out. There is nothing else that you carry out in a bag like that.”*³⁸⁶

306.23. Mr Agrizzi described a system where there would be delivery of the cash to Bosasa. It would be unpacked and reconciled and placed in a safe. Then there will be notification from one of the directors that they were coming to collect the cash. The cash would then be counted with the person packing the bag who would then go and deliver it.³⁸⁷

³⁸⁴ Transcript, day 35, p 21.

³⁸⁵ Transcript, day 35, p 24.

³⁸⁶ Transcript, day 35, p 26.

³⁸⁷ All this apparently at 157' into the video. Transcript, day 35, p 26.

- 306.24. He testified that he had never throughout his 19 years with Dyambu Operations and then Bosasa seen anything other than cash being carried in the bags in question. The bags were bought for this purpose.³⁸⁸
- 306.25. Later the video again showed the drop safe referred to with the aperture in it. On top were the bags spoken of. It was used, said Mr Agrizzi, to drop money into the safe if Mr Watson was not there. He also pointed out *"one of my black books ... with a yellow kind of goldish lining"* on the bottom shelf in one of the two safes visible on the screen at that point.³⁸⁹
- 306.26. Mr Watson was the only person with keys for the safes. The company secretary had the keys for the vault. Mr Watson would take money from the drop safe and pack it into the other safes *"when he was around"*. The origin of the money being deposited into the drop safe is dealt with in Mr Agrizzi's evidence but he pointed out at this point that whilst initially the money would be drawn from banks *"but then it just got too much... and it would come from cross border, it would come from, I believe from Zimbabwe from sales from someone else and some would come from betting houses"*.³⁹⁰
- 306.27. The video goes on to show Mr Watson³⁹¹ carrying what Mr Agrizzi went on to explain was R100,000 in cash. He could tell from the elastic bands visible what the amount was. *"A pile would contain R10,000 and we would pack, as a rule, five together with one elastic band around it."*³⁹²

³⁸⁸ Transcript, day 35, p 27.

³⁸⁹ At 2'04" into the video. Transcript, day 35, p 28.

³⁹⁰ Transcript, day 35, p 31.

³⁹¹ At 2'05" into the video.

³⁹² Transcript, day 35, p 32.

306.28. At this point, there were four people in the "room"³⁹³ being van Mr Tonder, Mr Gumede, Mr Watson and Mr Leshabane. Mr Agrizzi testified:

"There was a list which I was responsible [for] at the time. There was also a list that Gavin Watson was responsible for. He would do mostly the senior staff, where he would give them bonuses in cash every month and there were some that I would do, and Watson obviously drew cash, but the main, the bigger cash amounts would all be done by Watson."³⁹⁴

306.29. Mr Leshabane leaves the vault with two bags. Mr Agrizzi confirmed that each of the four persons in the room knew exactly what the money was being used for.³⁹⁵

306.30. Reference was made to the transcript of the video at this point and Mr Agrizzi testified that this was Mr Gumede asking for an extra R10,000.³⁹⁶

306.31. Mr Agrizzi testified that he knew it was Mr Gumede's voice because they had a very close relationship and had been on holidays together.³⁹⁷

307. Mr van Tonder confirmed that Mr Watson, Mr Gumede, Mr Leshabane and himself were in the video.³⁹⁸

308. Mr Agrizzi went on to clarify his earlier evidence that the grey bags were used only for paying bribes. He pointed out that there were certain staff members of Bosasa that

³⁹³ Presumably referring to the vault.

³⁹⁴ Transcript, day 35, p 33 and 34; 2'05" into the video.

³⁹⁵ Transcript, day 35, p 34.

³⁹⁶ Transcript, day 35, p 35. 2'16" into the video. The transcript reads:

"Jo Gumede ... [indistinct]. After the ... [indistinct] I [indistinct] report. R10,000. Okay, I want to do the... [indistinct] after the glass room by the ... [indistinct]. You are looking after the ... [indistinct]. There's two ... [indistinct]. So I want you to install a ... [indistinct]. They only should come in now from the ... [indistinct] police station in case something happens. So just wait for me. It is just for secure ... [indistinct]. So I'm just." (sic).

³⁹⁷ Transcript, day 35, p 35.

³⁹⁸ Transcript, day 42, pp 122 and 123; Mr van Tonder's Affidavit, p13 at para 65.

were also paid in order to “*keep quiet about the cash*”. They would receive R10,000 or R20,000 each. This money would also be put in the grey bags. It was however also for an unlawful purpose, effectively also bribes.³⁹⁹

309. Mr Agrizzi testified that the amounts paid in cash to inside staff would not have been legitimate bonuses because those would have been paid through the usual payroll system. The cash used for bribery had to be acquired at a 15 % premium.⁴⁰⁰

310. During a break in the proceedings, Mr Agrizzi listened to the soundtrack at the point where the transcript reflects Mr Gumede speaking. He was able to hear more than the transcriber had done:

“Basically what was said is ‘I need R10,000 to buy two remotes for ACSA because they have got cargo gates and he wants panic buttons, the remotes for panic buttons that will ring into the police control room.’⁴⁰¹

311. I enquired whether this could be code language and Mr Agrizzi indicated that it could very well be. The normal process for procuring equipment of that kind would be that it would be done by an operational person, not the chairman of the company. The normal procedure would involve preparation of a motivation for Mr Agrizzi, attaching a purchase order and three quotations. Mr Agrizzi would use a specific person to go out and see what the need was and to put in “*the proper system, especially if you are talking about cargo gates at the airport. I mean that is a serious place, and if you remember we had a raid at one of the cargo gates. He would follow proper processes to do it.*”⁴⁰²

³⁹⁹ Transcript, day 35, p 43.

⁴⁰⁰ Transcript, day 35, p 45.

⁴⁰¹ Transcript, day 35, p 49.

⁴⁰² Transcript, day 35, p 50.

312. He also pointed out that the cost of a pair of remotes with batteries and a receiver would be in the region of R700 in total. Nor would it be normal for the chairman of the company to request cash from Mr Watson to buy remotes. He could not explain why, given that all four persons in the room knew what the money was being used for, Mr Gumede would have used a motivation like this.⁴⁰³

313. Next, the video was played at a point where counting of money is taking place by Mr van Tonder. The relevant part of the transcript reads:

ANDRIES VAN TONDER I'm gonna check. Two, four.

GAVIN WATSON Is it right.

ANDRIES VAN TONDER Two. We got one, two, three, four, five, six, seven, eight, nine ... [intervenes]

GAVIN WATSON Nine.

ANDRIES VAN TONDER Nine, ten ... [intervenes]

GAVIN WATSON Ten.

ANDRIES VAN TONDER Fifty. Let me just check. One, two, three, four, five. Nee man. Ok.

GAVIN WATSON ... [indistinct] bloody Monopoly money.

ANDRIES VAN TONDER Jissem. All right.

GAVIN WATSON It must be a million.

ANDRIES VAN TONDER One, two, three, four.

GAVIN WATSON Four multiply one, two, three, four, five million. Is that right?

ANDRIES VAN TONDER Twee, vier, ses, agt, tien. They still haven't given me that 6000 extra. But I will follow up here today.

GAVIN WATSON One, two, three, four, five, six, seven, eight, nine, ten brother. One million exactly.

ANDRIES VAN TONDER All right. Ok. I'll just. Now we just get 6000 that they still owe us.

⁴⁰³ Transcript, day 35, p 50.

GAVIN WATSON Now here's your stuff Andries.

ANDRIES VAN TONDER Thank: you ... [indistinct]

GAVIN WATSON Ok. And they still ... [indistinct]

ANDRIES VAN TONDER And then Patrick's ... [intervenes]

GAVIN WATSON Ja and then Patrick. How much is Patrick's.

ANDRIES VAN TONDER One ten wasn't it.

GAVIN WATSON Ok. What's gonna happen here? Brian Biebuyck and Angeio.

ANDRIES VAN TONDER Ja.

GAVIN WATSON Will handle Patrick Independently ok?

ANDRIES VAN TONDER Ok.

GAVIN WATSON But you'll go pay him every month ok.

ANDRIES VAN TONDER Ok.

GAVIN WATSON Ok. So if you can pay him every month. We change the ... [indistinct] agreed and ... [indistinct] Brian will handle him every month then you can pay him every month.

ANDRIES VAN TONDER Ja.

GAVIN WATSON Ok. How much is it Andries?

ANDRIES VAN TONDER One ten I think.

GAVIN WATSON One ten. I just want ... [indistinct] quickly do the... [indistinct].

ANDRIES VAN TONDER Ja. Because Patrick phoned me. That's why.

GAVIN WATSON Ok.

ANDRIES VAN TONDER All right then

GAVIN WATSON Just open your office. I'll be with you now.

ANDRIES VAN TONDER All right. Ja. Peet is here.

GAVIN WATSON Is it?

ANDRIES VAN TONDER Ja.

GAVIN WATSON Ok.⁴⁰⁴

314. In relation to this part of the transcript, Mr Agrizzi explained that Mr van Tonder was a nervous type of person. He would have known that what he was doing was wrong and he was making mistakes in the counting process.⁴⁰⁵
315. Mr Agrizzi was asked about Mr Watson's reference to "monopoly money". He said "*it was a frequent reference by Watson because it was – cash was nothing in the company. It was just money. It was paper.*" He explained further that Mr Watson used it in two contexts –
- 315.1. He would say "*it is just monopoly money so we can get the monopoly*". In this sense, it was a reference to Bosasa's wish to monopolise state contracts.
- 315.2. The other phrase was monopoly money "*because it is just playing money. You are playing with people.*"⁴⁰⁶
316. With reference to the counting, he said that each pack counted represented R100,000. This explains why Mr Watson is quoted as saying "*one, two, three, four, five, six, seven, eight, nine, ten brother One million exactly.*"
317. Mr Agrizzi explained further that money was also kept in other vaults of the eight vaults⁴⁰⁷ at Bosasa. However, when Mr Agrizzi took over responsibility, he used only two of the vaults as a safety measure. The company secretary's vault was called "the oven". Mr Agrizzi testified "*Mr Seopela gave it a very nice name. He said it was the oven and the bread must cool down. In other words the bread must get cold and then it will be moved out into the shop to distribute.*"⁴⁰⁸

⁴⁰⁵ Transcript, day 35, p 55.

⁴⁰⁶ Transcript, day 35, p 56.

⁴⁰⁷ Note that earlier reference is made to 4 vaults.

⁴⁰⁸ Transcript, day 35, p 62.

318. Mr Agrizzi explained the reference to *"notwithstanding we just get R6,000 that they still owe us"* in the transcript as follows:

"So what would have to happen would be somebody would have to meet up with the supplier of the cash on the side of the road, normally it was at Lanseria, there is a petrol station there. They would meet up and the box of money would be transferred from a nondescript car into say, for instance in this case, Andries' car. There was no time to count it on the side of the road. So what would happen is it would then be delivered to the office where it would be counted in the secretary's vault. From the secretary's vault, if you have a look at those, previously you saw those boxes in the vault, those are file holders but we would count in there. We would pack them and stack them in there, count it and then re-pack it into the box, duct tape over the box, then write the amount. Then you will be able to verify. Then the person who delivered would be phoned and said listen you were R6,000 short on your previous delivery and they will be expected to fix it the following delivery."⁴⁰⁹

319. He testified that the person delivering the money would be an outsider and the person who used to receive it was Mr van Tonder. Occasionally Mr Agrizzi would also do this.⁴¹⁰
320. Mr Agrizzi also pointed out a yellow strip which is apparently a double seal that you put on the security bags, which are about the size of an A4 piece of paper.
321. Mr Agrizzi again referred to a part of the video depicting Mr Watson sitting at the desk referred to with piles of money on the desk. Mr Agrizzi testified that he could see that it amounted to R900,000.⁴¹¹
322. Mr Agrizzi was taken to the part of the transcript where it says *"now, here is your stuff, Andries"*. He said that "stuff" referred to money. In this context it was a reference to

⁴⁰⁹ Transcript, day 35, p 64.

⁴¹⁰ Transcript, day 35, p 65.

⁴¹¹ Transcript, day 35, p 66.

money that would be paid to Mr van Tonder and also to himself *"because it kind of buys loyalty. You feel important. You caught up in a cult."* (sic).⁴¹²

323. Then followed the following exchange:

<u>"CHAIRPERSON:</u>	And because you knew all these criminal activities.
<u>MR ANGELO AGRIZZI:</u>	That is right, that is right.
<u>ADV PAUL PRETORIUS SC:</u>	And you are now complicit.
<u>MR ANGELO AGRIZZI:</u>	Ja." ⁴¹³

324. Mr Agrizzi went on to explain and confirm that *"bribery is a trap, because you raise your standard of living when you get it and that is the whole monopoly idea of this monopoly money is that you raise your standard of living."* And that the advantage of paying bribes on a monthly basis over once-off bribes was that for as long as it continued *"you control them 100%".* This could come into play when a contract was being considered for extension or renewal.⁴¹⁴

325. Mr Agrizzi testified further that every one of the contracts in which Bosasa was involved was tainted with bribes and corruption. He would not say they were all awarded because of corruption, but, once they were awarded, corruption crept in *"because somebody would have to be looked after"*. He went on to testify that corruption featured in both seeking the award of new contracts and in seeking the extension of contracts, save perhaps for one or two exceptions.⁴¹⁵

⁴¹² Transcript, day 35, p 69.

⁴¹³ Transcript, day 35, p 69.

⁴¹⁴ Transcript, day 35, p 70.

⁴¹⁵ Transcript, day 35, p 73.

326. The focus then moved to the parts of the transcript of the video dealing with "Patrick". Mr Agrizzi explained that there were "two Patricks". The one was Patrick Littler who was an operational leader within Bosasa and the other was Mr Gillingham. Mr Agrizzi was involved in paying money to Mr Gillingham.⁴¹⁶ In this instance, Mr Agrizzi testified, "Patrick" was a reference to Mr Gillingham. This was confirmed by Mr van Tonder who explained that he was given instructions in the past to take a delivery of cash to Mr Gillingham in a grey, plastic security bag. Deliveries of this nature occurred at a shopping mall near Lanseria airport.⁴¹⁷

327. The reference to the amount of "one ten", was a reference to R110,000. The reference to Brian Biebuyck and Angelo is a reference to the attorney Biebuyck and Mr Agrizzi. Mr Agrizzi explained the transcript that follows after the reference to him and Mr Biebuyck in the following way:

"Brian Biebuyck and myself would have to go and do handover. I had objected. Once more, I had been put under an agreement which said I would be paid x every month, but I have to handle Patrick Gillingham as one of them. And I helped him with his divorce and everything and so with his kids and that, so I would have to handle him, but then Andries would pay him... But I had said I do not want to be part of this anymore. I was already outside the company... and I basically said I do not want anything to do, but I agree that I would have one last meeting with him and Brian Biebuyck would then handle him going forward. So we arranged a meeting where I attended with Brian Biebuyck and I said that is it. I am not dealing with you anymore."⁴¹⁸

328. This was a reference to the fact that, as Mr Agrizzi later explained, the video was taken by Mr van Tonder after Mr Agrizzi had already left Bosasa.

329. Mr Agrizzi explained the difference between handling and paying. Handling meant doing certain things for the person being paid whenever he might need help other

⁴¹⁶ Transcript, day 35, p 71.

⁴¹⁷ Transcript, day 43, p 41.

⁴¹⁸ Transcript, day 35, p 78.

than cash and ensuring that the person did not *"become like I did, a loose cannon in the opinion of Watson"*.⁴¹⁹

330. Mr Agrizzi went on to explain that the same person would do both the managing and the paying (subject to what he said later about intermediaries) but in Mr Gillingham's case it was a unique situation which was very sensitive. For that reason, Mr Biebuyck was co-opted into handling him and Mr van Tonder was co-opted into paying him.⁴²⁰

331. Before the handover in regard to Mr Gillingham, Mr Agrizzi was responsible for both handling and paying him, although he explained that an intermediary would usually be involved in actually effecting the payment to the beneficiary. Mr Agrizzi confirmed that Gillingham used to receive *"a full 110,000 that was packaged specifically for Patrick Gillingham"*. The other Patrick, Patrick Littler, received the money for the unions at Kloof, Libanon and Leeudoring and he used to get the money for the hostel manager that used to be paid as well.⁴²¹

332. As pointed out above, Mr Agrizzi explained that the video was taken in 2017 when he was no longer employed at Bosasa. He had not been involved in any of the payments after the termination of his employment. He obtained the video as a form of protection and also with the intention of publicising it.⁴²²

Mr Agrizzi's role and cash payments

333. Mr Agrizzi testified that from 2009 he was tasked specifically with the handling of cash – getting the cash, taking and delivering the cash, handling the cash and counting it.

⁴¹⁹ Transcript, day 35, p 78.

⁴²⁰ Transcript, day 35, p 78.

⁴²¹ Transcript, day 35, p 80.

⁴²² Transcript, day 35, p 81.

out for bribery and corruption.⁴²³ Prior to this time, Mr Agrizzi would be tasked to go “*arrange and to do things*” as requested.⁴²⁴

334. Mr Watson stated that it would be more convenient to handle the cash for the payment of junior officials at the DCS if a safe was installed in Mr van Zyl's office, and a certain amount of money allocated to that safe, which was attended to.⁴²⁵ Mr Watson, Mr Gumede, Mr Leshabane and Mr Dikani made payments on a monthly basis from shortly after Mr Mti's resignation in 2007 until approximately the end of December 2016 to the following DCS officials:

334.1. Josiah Maako, Contracts Manager (R15,000);

334.2. Maria Mabena, Catering and Development and Care (R10,000);

334.3. Shishi Matabella, Commissioner for Development and Care (R10,000);

334.4. Mkabela, Commissioner (R10,000);

334.5. Dikeledi Tshabalala, Head of Procurement (R15,000);

334.6. Zach Modise, Regional Commissioner (R20,000); and

334.7. Mollet Ngubo, Finance (R15,000).⁴²⁶

335. Mr Agrizzi testified that he would make up the bundles to be handed over to these persons and was informed by the board of directors who the payments were going to

⁴²³ Transcript, day 39, p 127; p 129.

⁴²⁴ Transcript, day 39, p 127.

⁴²⁵ Transcript, day 39, p 128.

⁴²⁶ Transcript, day 40, p 4.

and where the payments were going.⁴²⁷ The payments were made because Mr Mti had resigned from DCS and Mr Gillingham was no longer the CFO at DCS and thus could not make decisions, and so these persons were identified to look after the Bosasa's contracts with DCS.⁴²⁸ The payments were given to the directors who would hand them out to the various people.⁴²⁹

336. Mr Agrizzi's evidence regarding the system that was implemented for the handling of cash included the following:

336.1. Mr Watson and Mr Agrizzi would on a monthly basis sit with the directorate,⁴³⁰ who would indicate who needed to be looked after, i.e. get "financial contributions";

336.2. Mr Watson and Mr Agrizzi would debate and discuss it afterwards;

336.3. the total would be transferred to Mr van Zyl's safe;

336.4. Mr Agrizzi would then receive instructions from Mr Watson and the directors and senior management of what needed to be paid out;

336.5. Mr Agrizzi would then compile a list of who needed to be paid and what amount and would go through it with Mr Watson for final approval;

336.6. once Mr Agrizzi had received the final approval, he would encode the list (he would rewrite it and would make up codes);

⁴²⁷ Transcript, day 39, p 130.

⁴²⁸ Transcript, day 39, p 131.

⁴²⁹ Transcript, day 39, p 132.

⁴³⁰ i.e. the board of directors.

- 336.7. Mr Agrizzi would then send the list by hand or email or by text message, the cash would be packed per code into the grey sealable bags and the code would be written on the bag;
- 336.8. Mr Agrizzi would then give the bags to the relevant senior management staff who would take the money out and deliver it to the relevant people;
- 336.9. annexures P1 to P4 to Mr Agrizzi's Initial Affidavit would reflect the actual list of the cash only amounts (the lists ordinarily would have been shredded but had been found in Mr Agrizzi's briefcase that he had not used for some time).⁴³¹
337. Initially Mr Agrizzi would not prepare the cash and would only prepare the codes and the list and would hand it to Mr van Zyl who would pack the cash from his safe.⁴³² When the cash was handed to a director with a code, the director would know who the money was for because they would have been told the codes by Mr Agrizzi.⁴³³
338. In an email from Mr Agrizzi to Mr van Zyl dated 1 July 2011 at 09:04am, Mr Agrizzi indicated that Mr van Zyl had to "*start arranging the monthly book at least 550 loaves for now*". Mr Agrizzi testified that one loaf of bread was R100,000. For example, 550 loaves would be R55m.⁴³⁴ At a later stage reference to "loaves" was changed to "chicken".⁴³⁵

⁴³¹ Transcript, day 39, pp 134-135.

⁴³² Transcript, day 39, p 136.

⁴³³ Transcript, day 39, p 136.

⁴³⁴ Transcript, day 75, p 161.

⁴³⁵ Transcript, day 75, p 160.

339. In a further email on 1 July 2011 from Mr van Zyl to Mr Agrizzi, Mr van Zyl indicated that there was no money to provide.⁴³⁶ Mr Agrizzi clarified that the email from Mr van Zyl to him on 1 July 2011 at 08:37am was an actual problem that was being referred to and did not pertain to any bribery.⁴³⁷ Mr Agrizzi explained that the pressure to obtain the "loaves" or the money was because it was the first of the month and the people who received bribes had payments to make.⁴³⁸
340. Mr Agrizzi referred to an email from Mr van Zyl to him dated 25 February 2011 in respect of which Mr van Zyl referred to a need to discuss the "bread roll" requirements.⁴³⁹ Mr Agrizzi indicated that "bread rolls" also meant money.⁴⁴⁰
341. Mr Agrizzi was referred to an email from Mr van Zyl to him on 4 February 2011 referring to the DoJ&CD.⁴⁴¹ Mr Agrizzi explained that the "management fee" was a code as well. This transaction was for the placing of access control and CCTV systems in DCS centres and courts around the country. The agreement was for 2.5% of the total amount paid. Therefore, if the DoJ&CD paid an amount of R100m, then Bosasa would immediately get reimbursed the money and the money would go to Mr Seopela who would get 2.5% of the R100m as bribe money in cash.⁴⁴²
342. Mr Agrizzi indicated that pages 103 and 104 of his Supplementary Affidavit dated 26 March 2019 contained more biometric codes and he explained that, when he was

⁴³⁶ Transcript, day 75, p 162.

⁴³⁷ Transcript, day 75, p 162.

⁴³⁸ Transcript, day 75, pp 164-165.

⁴³⁹ Mr Agrizzi's Supplementary Affidavit, p 100.

⁴⁴⁰ Transcript, day 75, pp 164-165.

⁴⁴¹ Mr Agrizzi's Supplementary Affidavit, p 101.

⁴⁴² Transcript, day 75, p 166.

unable to do so, he would send Mr van Zyl an email who would prepare the codes and the packets to be delivered.⁴⁴³

343. Mr Agrizzi referred to an email from March 2012 where requests were made for codes for ACSA.⁴⁴⁴ Mr Agrizzi indicated that, if he was not in office and received a request for payments to be made, he would then send a quick email to Mr van Zyl to use certain codes for payment. Mr Van Zyl would then respond to say that the code is ready for collection and that he had notified Gumede.⁴⁴⁵
344. Mr Agrizzi was then referred to an email and attachment from van Zyl to Big Boss Auto, Reuben P and Mr Agrizzi on 14 December 2010 and the attachment was proof of payment of an amount of R46 ,853 from Bosasa Operations (Pty) Ltd to a recipient called Big Boss Auto pertaining to 'inv00002 audi s3'.⁴⁴⁶ Mr Agrizzi explained that this payment was for Reuben Pillay, one of the security managers at ACSA and related to a car service payment paid by Bosasa for his Audi A3. This payment would have been authorised by Mr Gumede.⁴⁴⁷ Mr Agrizzi explained that, if one obtained the reference for the payment from the Great Plains computer software program and looked in the creditors file, this invoice would appear.⁴⁴⁸
345. A payment at Bosasa could not be paid with just one signatory and it required at least four or five signatories to authorise an EFT transfer. The purchase order for a payment of this nature would be created and two signatures from the originator would be

⁴⁴³ Transcript, day 75, p 167.

⁴⁴⁴ Mr Agrizzi's Supplementary Affidavit, p 106.

⁴⁴⁵ Transcript, day 75, p 168.

⁴⁴⁶ Mr Agrizzi's Supplementary Affidavit, pp 108 -109.

⁴⁴⁷ Transcript, day 75, p 169.

⁴⁴⁸ Transcript, day 75, p 170.

required. In addition, either Mr Agrizzi, Mr van Tonder or Mr Bonifacio's signature was required. It would also require a director's signature before payment could be made.⁴⁴⁹

346. Mr Agrizzi's Supplementary Affidavit deposed to on 26 March 2019 includes an email from van Zyl to Mr Agrizzi and Makoko on 4 April 2011 with the subject line "CSI, Funeral Rustenberg North West".⁴⁵⁰ Mr Agrizzi explained that this is an example of where he would receive a request for a payment and he would prepare an email to Mr van Zyl⁴⁵¹ requesting that Mr van Zyl draw R100,000 and forward it to Ms Makoko for the funeral. The beneficiary of this amount would be Ms Makoko and Mr Agrizzi would not know the ultimate person who was being buried.⁴⁵²

347. An email from Mr van Zyl to Mr Agrizzi on 13 February 2012 with the subject matter "Request for donation" recorded that Ms Makoko had requested a R5,000 donation for Zukiswa Jamela who co-ordinated the ladies of the OR Tambo District for visits to the children and their families at the Umtata Facility. Mr Agrizzi explained that certain directors took chances and would go to somebody else to try and receive funds. However, these requests had to go through Mr Agrizzi because he would need to obtain Mr Watson's approval.⁴⁵³ Mr Agrizzi noted that, if he was not mistaken, Mr Zukiswa Jamela referred to in this email was the same Mr Zukie that introduced Mr Zuma to Mr Watson.⁴⁵⁴

⁴⁴⁹ Transcript, day 75, p 171.

⁴⁵⁰ Mr Agrizzi's Supplementary Affidavit page 110.

⁴⁵¹ As appears on the bottom of page 110 and on page 111 of his Supplementary Affidavit.

⁴⁵² Transcript, day 75, p 172.

⁴⁵³ Transcript, day 75, p 172.

⁴⁵⁴ Transcript, day 75, p 172. It appears that he is referring to Madonga.

348. Mr Agrizzi was referred to an email⁴⁵⁵ from himself to Mr van Zyl, copying Mr Gumede and Mr Bonifacio, on 4 March 2011 in terms of which Mr Agrizzi requested that he arrange 30 loaves for Mr Gumede. Mr Agrizzi explained that this related to obtaining R30,000 for Mr Gumede to collect as bribe money.⁴⁵⁶
349. In 2013 Mr Gumede saw lists and cash in Mr van Zyl's safe, reported it to Mr Watson and questioned Mr van Zyl's loyalty in Mr Agrizzi's presence.⁴⁵⁷ Mr Watson instructed that the cash duties be taken over by Mr Agrizzi. Mr Van Zyl would still provide assistance in creating false invoices.⁴⁵⁸ Mr Agrizzi testified that he refused to handle the cash alone, would always ensure that there were two people present and would usually handle it with Mr van Tonder, or Mr van Zyl in van Tonder's absence.⁴⁵⁹ It was around the same time that Mr Agrizzi introduced his system of keeping records in his black book.⁴⁶⁰ There were a few black books that were kept.⁴⁶¹ Prior to the use of the black book system, records were kept on loose pages.
350. Mr Agrizzi estimated the total amount paid in bribes by Bosasa on a monthly basis to be in the region of between R4m and R6m.⁴⁶² Mr Agrizzi would deliver cash to people who would then distribute it further, including Ishmael (director of Bosasa); Mr Dlamini (director of Bosasa); Mr Gumede (Chairman of Bosasa); Mr Seopela (consultant); Mr Mti; Thandi Makoko (director of Bosasa); and Mr Leshabane.⁴⁶³

⁴⁵⁵ Mr Agrizzi's Supplementary Affidavit page 113.

⁴⁵⁶ Transcript, day 75, p 173.

⁴⁵⁷ Transcript, day 41, p 25.

⁴⁵⁸ Transcript, day 41, p 25.

⁴⁵⁹ Transcript, day 41, p 26.

⁴⁶⁰ Transcript, day 41, p 26; annexure T1 to T56, pp 580-690.

⁴⁶¹ Transcript, day 41, p 27.

⁴⁶² Transcript, day 41, p 29.

⁴⁶³ Transcript, day 41, p 30.

351. Mr Agrizzi identified annexure P1 to his affidavit as a list that he compiled and provided to Mr van Zyl for cash to be compiled for deliveries between 20 and 25 April 2016.⁴⁶⁴
352. Mr Agrizzi testified that he had compiled and packaged the bribery money on 25 February 2016 and that annexure P2 to his affidavit reflects, at the top, the letters "MMM", which stood for Mollet Ngubo, and the amount was for R50,000. The lack of correlation of the code with the initials was explained on the basis that "we always called him triple M". After the letters and amount, Mr Agrizzi wrote "IMN", which stood for Ishmael Mncwaba, the director responsible for the payment.⁴⁶⁵ The code, as testified by Mr Agrizzi, would consist of three features – the first would be the initials of the ultimate recipient, the second would be the figure that represented the amount that the person would be paid and the third would be the initials of the director or intermediary who would take the money to the ultimate recipient.⁴⁶⁶ Mr Agrizzi further testified that the code would change frequently in that he would have various permutations for each person who would be an ultimate beneficiary and would switch between using them, such as nicknames and/or their surname.⁴⁶⁷
353. The figure that appeared in Mr Agrizzi's statement next to Mollet Ngubo was R15,000 and the figure in annexure P2 was R50,000. Mr Agrizzi explained that the amount had grown from R15,000 in 2007 when Mr Mti resigned, to R50,000 in 2016.⁴⁶⁸
354. Mr Agrizzi referred to the second code under number 1 listed as "MMB 30 IMN" as referring to Maria Mabena for R30,000.⁴⁶⁹ Mr Agrizzi also referred to the third code

⁴⁶⁴ Transcript, day 40, p 2; annexure P1, p 359.

⁴⁶⁵ Transcript, day 40, pp 6-7.

⁴⁶⁶ Transcript, day 40, p 7.

⁴⁶⁷ Transcript, day 40, pp 7-9.

⁴⁶⁸ Transcript, day 40, p 10.

⁴⁶⁹ Transcript, day 40, pp 10-11; annexure P2, p 361.

under number 1 as "MKB 20 IMN" as referring to Mr Mkabela, the fourth code "SSS 20 IMN" as referring to Shishi Matabela, and the first code next to the number 9 "PLS 71 CCV" as a reference to Mr Leshabane who was given a total amount of R71,000 to pay Zach Modise, journalists and people from Lindela.⁴⁷⁰ The eighth code under number one "JM 15" was a reference to Josiah Maako.⁴⁷¹ Dikeledi Tshabalala had left the DCS in 2016 and thus did not appear on the list.⁴⁷²

355. The rationale for the use of the code was that, if Mr Watson or Mr Leshabane were ever questioned on the meaning of the code, they would be able to say that they did not know and that it was just a number.⁴⁷³ It was arbitrary and was utilised so that nobody could be implicated and unless you knew the code you would not be able to work it out.⁴⁷⁴
356. Mr Agrizzi wrote some of the codes and the full names of persons in his black book, which was locked in Mr Watson's safe for Mr Watson to check if he wanted to reconcile the cash.⁴⁷⁵
357. Mr Agrizzi testified that the handwritten note on annexure P2 "CCV 1686 DCT" was the handwriting of Mr van Zyl and was confirmation of the amount that he had packed. Those amounts that were not packed by Mr van Zyl were not double ticked.⁴⁷⁶

⁴⁷⁰ Transcript, day 40, pp 11-15.

⁴⁷¹ Transcript, day 40, p 22; annexure P2, p 361.

⁴⁷² Transcript, day 40, p 22; p 28. Mr Agrizzi confirmed that the names listed at paragraph 34.3 of his initial Affidavit also appear in annexures P3 and P4, day 40, p 33.

⁴⁷³ Transcript, day 40, p 16.

⁴⁷⁴ Transcript, day 40, p 16.

⁴⁷⁵ Transcript, day 40, pp 16-17.

⁴⁷⁶ Transcript, day 40, pp 19-20; annexure P2, p 361.

358. Once Mr Agrizzi had compiled the lists, he would give them to Mr van Zyl who would prepare and pack the cash. Mr Van Zyl would then give it back to Mr Agrizzi with the total amount of cash that he had packed written on the bottom of the page. Mr Agrizzi would then contact the relevant director and inform him that it was ready to be picked up in the company secretary's safe. As the packages were collected, Mr Agrizzi would mark that they had received and taken them.⁴⁷⁷ The code was only known to Mr Agrizzi and to the person who would deliver the package, because Mr Agrizzi would inform the person delivering that it was for a particular person.⁴⁷⁸
359. Mr Agrizzi testified that around 2009/2010 he would deliver payments on a monthly basis to Seopela to be handed over to officials, including senior officials, from the DCS.⁴⁷⁹ This would be in addition to the monthly payments managed by Mr Agrizzi as described above.⁴⁸⁰
360. Mr Gillingham resigned in November 2010 after he had been suspended for approximately two years. He resigned the day before his disciplinary hearing for charges that had been brought against him based on the SIU Report.⁴⁸¹ Mr Oellermann was involved in the preparation for the disciplinary proceedings which, he testified, did not proceed as Mr Gillingham resigned on the morning the hearing was scheduled to commence. His resignation was accepted by the DCS.⁴⁸² Bosasa assisted him to secure the services of a firm of attorneys. Mr Agrizzi testified that, after Mr Gillingham had resigned, he approached Bosasa for financial assistance and Mr

⁴⁷⁷ Transcript, day 40, p 30.

⁴⁷⁸ Transcript, day 40, pp 30-31.

⁴⁷⁹ Transcript, day 40, p 35.

⁴⁸⁰ Transcript, day 40, p 35.

⁴⁸¹ Transcript, day 40, p 36.

⁴⁸² Transcript, day 77, pp 91-92.

Watson agreed to pay him an amount of R110,000 per month.⁴⁸³ Previously he had received an amount of R47,000 per month. Mr Gillingham was still being paid the R110,000 per month at the time when Mr Agrizzi left Bosasa. The arrangement, according to Mr Agrizzi, was that the senior members who were involved in arranging the catering contracts would be paid by Bosasa for as long as the contracts were in place.⁴⁸⁴

361. Mr Agrizzi was approached by Mr Leshabane who requested that he be provided with a monthly amount of R71,000. Within the R71,000, R11,000 was specifically for informants that he had and R30,000 was for the payment of journalists.⁴⁸⁵ Mr Agrizzi recorded this information in his black book.⁴⁸⁶ In the black book, Mr Agrizzi made an entry "Papa – Journo's R30,000-00".⁴⁸⁷ The payment for the journalists was suggested by Mr Leshabane, following negative reporting on Bosasa. Mr Leshabane indicated that he had friends who had the ability to swing the viewpoint on Bosasa and also to write positive stories on Bosasa.⁴⁸⁸ It was also utilised to get information from the media if there were to be negative stories published so that they could counteract it.⁴⁸⁹ These payments had already started in 2012. The journalists mentioned were Mr Ntuli, working for the Times or the Star newspaper, Pinky Khoabane and someone referred to as Bongs.⁴⁹⁰ Mr Agrizzi was unable to confirm if the journalists received the money given to Mr Leshabane.⁴⁹¹

⁴⁸³ Transcript, day 40, pp 36-37.

⁴⁸⁴ Transcript, day 40, p 37.

⁴⁸⁵ Transcript, day 41, p 7.

⁴⁸⁶ Transcript, day 41, p 8; annexure T11, p 600.

⁴⁸⁷ Annexure T11, p 600.

⁴⁸⁸ Transcript, day 41, p 9.

⁴⁸⁹ Transcript, day 41, p 9.

⁴⁹⁰ Transcript, day 41, p 10.

⁴⁹¹ Transcript, day 41, p 11.

362. Bosasa also employed media consultants, Ms Benedicta Dube and Mr Stephen Laufer to counter the negative publicity and to discredit the journalists that were writing these articles.⁴⁹² There was a campaign to discredit the journalists, including Mr Basson and Ms Carien du Plessis, following an in-depth report that was produced.⁴⁹³
363. Mr Agrizzi testified that journalists and any person who would come up against Bosasa would be threatened, that there was endless money in the vault and that it would be used. He testified that burner phones⁴⁹⁴ would be purchased and issued to “the person like Benedicta Dube or to somebody else” who would be given a journalist’s number and would call them all hours of the night and day and threaten them, or constantly harass them.⁴⁹⁵ Mr Agrizzi recalled being called by Ms Ferial Haffajee regarding attacks on Mr Basson.⁴⁹⁶

Mr Agrizzi’s black book

364. At one point (he could not remember precisely when) Mr Agrizzi was tasked with managing and trying to keep a record of what cash was going in and out of the safes for *inter alia* bribes or gratuities. He was unable to record the date when he had been tasked with this responsibility. On occasion, the Bosasa directorate or management representative asking for money would be accompanied by an outside person,

⁴⁹² Transcript, day 41, pp 11-12.

⁴⁹³ Transcript, day 41, p 12. This aligns with Mr Basson’s testimony of the intimidation he endured, which is set out from para 1661 below.

⁴⁹⁴ Mr Agrizzi described a burner phone as a phone that had been RICAed and can be destroyed and that is not properly registered in terms of the legislation.

⁴⁹⁵ Transcript, day 41, p 13.

⁴⁹⁶ Transcript, day 41, p 13.

presumably the potential beneficiary of the bribe. On other occasions, outside parties approached Bosasa for bribes. All of this was done quite openly in the organisation.⁴⁹⁷

365. To this end, Mr Agrizzi kept a record in "a little black book" in which he recorded the amounts sought and communicated the amounts to Mr Watson. The director or manager seeking the payment would have to provide a short motivation either on a piece of paper or by SMS. Persons who received payments regularly would be paid by Mr Agrizzi without reference to Mr Watson, but if a new name came up or a new amount came up, he would have to get approval from Mr Watson.⁴⁹⁸

366. Initially, Mr Agrizzi delegated the packaging of the cash to Mr van Zyl, although at a later stage he had to withdraw this function from him.⁴⁹⁹

367. Mr Agrizzi would provide a code for the payments. He gave the example of Elford Mayixele. The code for his payment would be "ELF30PLC". "ELF" would denote Elford Mayixele. The 30 denoted "R30,000" and the PLC would denote "Patrick Littler Catering".⁵⁰⁰

368. The code allocated to a payment would be written on the security bag. Mr Agrizzi gave out the codes and the bags would be returned to him with those specific codes written on the top of the bag. Patrick Littler from catering at Bosasa was the person delivering the bribe to Mr Mayixele.⁵⁰¹

⁴⁹⁷ Transcript, day 34, pp 129 and 130.

⁴⁹⁸ Transcript, day 34, p 132.

⁴⁹⁹ Transcript, day 34, p 133.

⁵⁰⁰ Transcript, day 34, p 134.

⁵⁰¹ Transcript, day 34, p 135.

369. Sometimes there would be a *"middle – a person in-between"* who would get a cut from the payment. In terms of the record-keeping Mr Agrizzi would initially use a loose piece of paper and write the amounts using the codes referred to. When he found that he was losing the loose pieces of paper he started using A6 books. These came to be known as "the black book" or the "little black book".⁵⁰²
370. The code system was later changed when *"people started to realise"*.
371. Mr Agrizzi was taken to a "little black book". These were kept by him and he confirmed that they reflected his handwriting (see annexures T1 to T10 to the Initial Affidavit). These showed both receipt and payment of moneys. The evidence at this point focussed on the receipts which reflected –
- 371.1. A page reflecting receipts of R3.2m on 18 February 2016, R2.8m on 25 February 2016, totalling R6m that was then in the safe(s). On the right hand side was a list of persons to whom payments were made.⁵⁰³
- 371.2. R5.4m (noted simply as "5,4") which was delivered to GW, being Mr Watson, checked by Lindsay, being Ms Lindsay Watson and delivered by AVT being van Tonder.⁵⁰⁴
- 371.3. A balance of R2,185,000 is reflected at the bottom of the page after one set of payments.
- 371.4. The following page in the little black book (although featuring on the same page on the copy of the annexure attached to Mr Agrizzi's Initial Affidavit, and

⁵⁰² Transcript, day 34, p 137.

⁵⁰³ Transcript, day 36, pp 3 to 4; Annexure T3 p 584.

⁵⁰⁴ Transcript, day 36, p 5; Annexure S1 p 586.

with a page in between apparently missing) reflects payments made to "Patrick Gilling" in the amount of R180,000 and "Vincent Smith R100,000".⁵⁰⁵

- 371.5. The following page also bears the heading January 2015 (although the date is not entirely clear, it may be January 2016) and reflects "received GLA for Gavin" and immediately below that an amount of R5,480,000. GLA refers to Gregg Lacon-Allin.
- 371.6. Below the reference to R5,480,000 is a note "recon – AVT". Below that appears expense and then three amounts totalling R5,487,500-00 which is then divided into three amounts opposite the word "expense". Mr Agrizzi explained that these were not in fact expenses but rather reflected his split of the cash between the different safes. Mr Agrizzi said that the additional amount reflected in the balance at the bottom of the page of R7,500 Mr Agrizzi represented what was already in the safe before the receipt.
- 371.7. At this point several pages were skipped and reference was then made to a page headed "Feb recon"⁵⁰⁶ which reflects receipt of an amount of R6,000,000, a payment to petty cash of R107,000 followed by four payments, the last of which is marked "4 (R110,000-00 (P.G.))" which was confirmed by Mr Agrizzi as referring to Patrick Gillingham.
- 371.8. The next page was the second of two pages, the first page missing, which reflects checking done by three people, AVT (Mr van Tonder), AA (Mr Agrizzi) and JVZ (Jacques van Zyi). Below their names appears the name "Ishmail". Mr Agrizzi testified that Ishmail refers to Ishmail Mncwabe who later changed

⁵⁰⁵ Annexure T4, p 586.

⁵⁰⁶ Annexure T11, p 600

his name to Dikani. The names then listed below Ishmail reflect persons to whom Mr Dikani was required to distribute the funds.⁵⁰⁷ The total payments are reflected as R437,500-00.

372. In Annexure HH to Mr Agrizzi's Supplementary Affidavit,⁵⁰⁸ he sought to set out in a table, or spreadsheet as he described it, the names of the people that were referred to in the codes, providing the names of both the person to receive the bribe and the name of the person delivering it to them.

373. In this regard, he testified that he used shorthand to note names. For example, if a package was given to Mr Paul Pretorius, the abbreviation of that would be 'APP', but Mr Agrizzi might change the entry to 'PAP' in his black book.⁵⁰⁹ He indicated that the figure in the middle on the codes on each entry indicate the amounts paid.⁵¹⁰ He also explained that there was no principle that was followed in creating the code.⁵¹¹

374. For purposes of the record it should indicate that Mr Agrizzi's spreadsheet at Annexure HH includes the recipients on the right-hand column. When explaining the codes, Mr Agrizzi did not necessarily call out the whole code and the complete list appears from the Annexure.⁵¹²

375. Relating to the entries in Annexure HH, Mr Agrizzi made the following comments:

375.1. For purposes of payment to the Limpopo MEC, he did not know the names of the MEC's that received the payment and Ms Thandi Makoko would be able

⁵⁰⁷ Annexure T12, p 602; Transcript, day 36, p 11.

⁵⁰⁸ Mr Agrizzi's Supplementary Affidavit, pp 85 to 91.

⁵⁰⁹ Transcript, day 75, p 131.

⁵¹⁰ Transcript, day 75, p 137.

⁵¹¹ Transcript, day 75, p 137.

⁵¹² Transcript, day 75, p 145.

to testify to this.⁵¹³ Mr Agrizzi was asked to confirm whether, at the time, he knew who the money was being distributed to and in others that the person receiving the money was associated with a certain entity. He confirmed this and that he would have to ask the question who the money was ultimately going to. He further explained that, given the time lapse, he would not be able to determine or establish who at these centres was receiving the money but at the time he could have established the actual names of the recipients.⁵¹⁴ In this regard, he noted that in his earlier black books he would write out the names of the person receiving the money but was later told not to do so and to use codes. He indicated that the video played at the Commission revealed that one of his books was still there and that it should have the full names of the people receiving the money.⁵¹⁵

375.2. "RMT" was code for Mr Mti⁵¹⁶; "SNK" which related to 'Snake' which was the code for Adv Nomgcobo Jiba ("**Adv Jiba**")⁵¹⁷ and "SNL" related to 'Snail' was the code for Adv Lawrence Mrwebi ("**Adv Mrwebi**").⁵¹⁸

375.3. Relating to the entries on page 88 of the Annexure, the codes with 'JGM' related to Mr Gumede collecting the amounts for ACSA.⁵¹⁹

375.4. "SST100" related to Mr Jolingane which pertained to the extension to a catering contract for the DCS. Mr Jolingane was one of the commissioners at

⁵¹³ Transcript, day 75, p 133.

⁵¹⁴ Transcript, day 75, p 134.

⁵¹⁵ Transcript, day 75, p 134.

⁵¹⁶ Former National Commissioner of the DCS. Transcript, day 75, p 136.

⁵¹⁷ Former Deputy National Director of Public Prosecutions.

⁵¹⁸ Former Special Director of Public Prosecutions. Transcript, day 75, p 136.

⁵¹⁹ Transcript, day 75, p 137.

the DCS. He was involved in the extension of the contract.⁵²⁰ Mr Agrizzi explained that the money would be given to Mr Mti who in turn would give it to the other person. A similar situation related to Grace Molatedi when they had to motivate her to outsource Groenpunt Prison.⁵²¹

375.5. Mr Agrizzi noted an error when recording 'SST100SNL' and indicated that 'SNK' should replace 'SNL'.⁵²² So it should read 'SST100SNK' for 'Snake'.⁵²³

376. When asked why there was a discrepancy in the codes used on the previous page for the same people reflected on page 88, Mr Agrizzi indicated that the codes changed when Mr Gumede and himself realised that Mr van Zyl who was used to packing money was able to decipher the standard codes.⁵²⁴ Mr Agrizzi went further to state that when one saw a particular code for a particular person, one should not think the code would always be next to that name.⁵²⁵ In other words, different codes were used for the same person because he tried to vary it to avoid it becoming a trail. Mr Agrizzi explained that he was the only one that was required to decipher the codes and in his own mind he knew why a particular code was assigned to a particular person.⁵²⁶

377. Mr Agrizzi tried to explain page 88 of Annexure HH. However, he accepted that there were errors in some of his codes. He said:

"AGRIZZI: Then for instance 'JAY' was for Mrwebi, there I mixed up the two as well, it's always 20 for Lepinka and 10 for Mrwebi then GMT100SLE that was Grace Molathedi.

⁵²⁰ Transcript, day 75, p 140.

⁵²¹ Transcript, day 75, p 140.

⁵²² Transcript, day 75, p 141.

⁵²³ Transcript, day 75, p 142.

⁵²⁴ Transcript, day 75, p 142.

⁵²⁵ Transcript, day 75, p 143.

⁵²⁶ Transcript, day 75, p 143.

- PRETORIUS: Sorry just before you go on, the code for Mrwebi had also changed.
- AGRIZZI: Yes I made a mistake, I presume I made a mistake.
- PRETORIUS: Alright. Well as it may implicate people how did you make the mistake? Is it still your evidence that Mrwebi received an amount of R10,000?
- AGRIZZI: Ja, maybe what I should have done is attached the actual papers here and I need to get those papers and for tomorrow morning I can attach the originals and put them with these, and I will see how I made the mistakes."⁵²⁷

378. Mr Agrizzi referred to an email dated 9 May 2012 sent by him to Mr van Zyl⁵²⁸ at 02:20pm, which bears the subject line "Codes Biometrics" and lists six codes of the kind under discussion. The reason why he referred to the subject line of this email as being 'Codes Biometrics' is that he was taught by Mr Watson that, if the SIU came and conducted a search for codes or the like, they would think the document pertained to the biometric system in place at the offices. Mr Agrizzi indicated that he could not remember all the codes but 'ISM' would be Mr Gillingham.

379. Mr Agrizzi had no discretion to pay these monies or determine the amount of the payment. This was for Mr Watson to do. However, Mr Watson would, on occasion, seek his opinion in relation to payments in the sense of whether a particular person should receive a payment. The most important criterion in this regard was that the person be supportive of Bosasa, and, in particular, that they would ensure that a tender would be awarded to Bosasa.⁵²⁹

⁵²⁷ Transcript, day 75, p 145.

⁵²⁸ Mr Agrizzi's Supplementary Affidavit, p 95.

⁵²⁹ Transcript, day 34, p 137.

380. When asked what sort of amounts were involved, Mr Agrizzi, said that between R4million and R6million was being paid per month. He said that this amount was a drop in the ocean compared to Bosasa's turnover.⁵³⁰
381. Sometimes funds would be removed by people in his absence and these went unrecorded.
382. Mr Agrizzi was asked what the lowest and highest payment amounts may have been that he might have been aware of. He said the "lowest amount was about R5,000 and that would go to an employee as a monthly bonus." The highest amount to an individual would be "about R1m, sometimes much more" per month.⁵³¹
383. Mr Agrizzi clarified that, where persons were provided with "gifts" other than cash payments, these would not be given monthly *"but that would happen quite often, I would say every two – three months"*.
384. He clarified that the amounts of R4m to R6m per month were the amounts that were being paid at the time that he left Bosasa.⁵³²

Payments of bribes and gratuities

385. Mr Agrizzi was asked to estimate the number of people on the "payroll" (referring to recipients of illegal payments) of Bosasa. He said that the 40 names and the pages

⁵³⁰ Transcript, day 34, p 140.

⁵³¹ Transcript, day 34, p 142.

⁵³² Transcript, day 34, p 140.

represented about 50% of the recipients, so that the total number of recipients would have been in the region of 80. These were the people receiving monthly payments.⁵³³

386. Later, Mr Agrizzi recalled counting a list of 38 government employees and officials who received bribes on a regular basis.⁵³⁴

387. The process for determining the amount to be paid as a bribe was as follows:

387.1. A director of the company would identify a person that needed to be influenced.

387.2. The director would thereafter approach Mr Agrizzi and provide him with an estimate of the proposed bribe.

387.3. Mr Agrizzi would interrogate the amount proposed and they would conduct an analysis for Mr Watson for a decision to be made. Mr Agrizzi was not liked because he tended to reduce the proposed bribe amount.

387.4. Mr Agrizzi explained that he had no power or authority to determine whether to pay someone. Mr Watson ultimately made the decision who would receive bribes.⁵³⁵ In determining the bribe to be paid, Mr Watson did not necessarily accept Mr Agrizzi's recommendation, although he relied on Mr Agrizzi reducing expectations on the amount to be received.⁵³⁶ Often, Mr Agrizzi would not get feedback on the amount determined.⁵³⁷

⁵³³ Transcript, day 36, pp 12-13.

⁵³⁴ Transcript, day 75, p 24.

⁵³⁵ Transcript, day 75, p 24.

⁵³⁶ Transcript, day 75, p 25.

⁵³⁷ Transcript, day 75, p 25.

388. As to whether there was a complete record of money going out as bribes (e.g. in his "black books") or whether there must have been other amounts which Mr Agrizzi could not account for, Mr Agrizzi explained that he knew exactly the amount that he signed off on and how much money he packed into bags. However, there was always an amount of approximately R2m left over in the vault. He could not attest to what happened to that money. He did not know whether it was used by Mr Watson, but Mr Watson was the only person who had keys to the actual safes.⁵³⁸ Mr Agrizzi testified that he found it hard to believe that this money would be for anything other than bribes because no one could use R2m in a month.⁵³⁹
389. Mr Agrizzi went on to describe how Mr Watson would deal with deliveries to very high-profile officials himself. This was particularly so over the festive season in the month of December. At one point, Mr Agrizzi asked him to keep more detailed records of these payments, but Mr Watson ignored him. When he again raised this with Mr Watson, he made it clear that he did not like paper and that was why he did not sign anything. Mr Agrizzi repeated that Mr Watson would openly boast about the fact that he did not have a secretary, did not write anything down and never signed anything and only had a briefcase and a car as his office.⁵⁴⁰
390. Mr Agrizzi went on to testify about approaches he would receive from outside persons wanting favours.⁵⁴¹ The people approaching him would say that Mr Watson had referred them to him and would ask, for example, for the hiring of a car, paying for a flight, booking a child into a hotel and the like. Mr Agrizzi would always phone Mr Watson to confirm before paying for these favours. He was asked whether Mr Watson knew of the extent of the payments that were going out which were not recorded. Mr

⁵³⁸ Transcript, day 75, p 26.

⁵³⁹ Transcript, day 75, p 26.

⁵⁴⁰ Mr Agrizzi's Initial Affidavit, Annexure S1, pp 23-24 at para 12.7 ; transcript, day 36, p 17.

⁵⁴¹ Transcript, day 36, pp 17-18; Mr Agrizzi's Initial Affidavit, Annexure S1, pp 24-25 at para 12.8-12.12.

Agrizzi thought not and described an incident where he found R70,000 in a refuse bag which seemingly was about to be thrown away. He gave further examples of the favours people would receive. There were two categories of vehicle repairs that were provided. Some were provided on site in a Bosasa workshop while others would be invoiced to Kgwerano, the fleet management company referred to earlier. Where they were invoiced, they were accounted for as operational or marketing expenses. One of the recipients of this favour was Mr Reuben Pillay of ACSA. This favour would have been authorised by Gumede who was in charge of security.⁵⁴²

Blake's Travel

391. Blake's Travel was the travel agent used by Bosasa to book travel and accommodation. Outside the Bosasa business, government officials benefited from travel and accommodation arranged by Blake's Travel and paid for by Bosasa.⁵⁴³ For example, Mr Agrizzi testified that flights, travel and accommodation would be booked by him on the Bosasa "VIP account" with Blakes Travel for Mr Mti, his wife and family.⁵⁴⁴

392. Brian Blake, Managing Director and 50% shareholder of Blake's Travel, deposed to an affidavit dated 28 November 2019 ("**Mr Blake's affidavit**"). Mr Blake also testified at the Commission on 29 July 2020. His evidence was in line with his affidavit. The affidavit is referred to further below where it provides corroboration of oral evidence received by the Commission. For present purposes, we **highlight** the following aspects of Mr Blake's evidence in the affidavit:

⁵⁴² Transcript, day 36, p 22.

⁵⁴³ Transcript, day 43, p 51. The existence of a Bosasa Operations VIP account is confirmed by Mr Blake in his affidavit filed at the Commission (T18, para 11, p 2).

⁵⁴⁴ Transcript, day 38, p 149.

- 392.1. Mr Blake confirms a number of bookings made by Bosasa on behalf of various individuals, including Mr Gillingham, Mr Mti, Mr Kalleho Mokonyane, Mr Mohamed Moorad, Ms Dudu Myeni, Mr Trevor Fourie, Ms B Smith, Mr Vusi Mbasela, B Njenje, Mr Joel Mbatha, Mr Peter Daluxolo, Mr Phumlani Seyema, Mr Jacobus Du Toit, FC Bopape (who requested a change of the guest name whilst at the accommodation in the records of the establishment, to Jayde Orren), S Xulu, Mr Watson, Mr Seopela, Mr Dlamini, Mr Mansell, Mr van Tonder, and Mr Agrizzi.⁵⁴⁵ Mr Blake also provided the Commission with copies of invoices, collated into a consolidated spreadsheet attached as "BB" to his affidavit. The invoices supporting the information are also attached to the affidavit, as annexure BB4 to BB108.⁵⁴⁶ The spreadsheet contained a summary of the clients to whom Blake's Travel provided services through Bosasa. Mr Blake testified that there could be further clients who had not been identified.⁵⁴⁷
- 392.2. Mr Blake confirms the process followed in respect of travel arrangements utilising various accounts that Bosasa had with Blake's Travel and payments made by Bosasa to Blake's Travel.
- 392.3. The main account with Blake's Travel was in the name of Bosasa Operations (Pty) Ltd.⁵⁴⁸
- 392.4. The second account was initially in the name of Bosasa Operations VIP.

⁵⁴⁵ Mr Blake's affidavit (T18, paras 29-30, pp 16-17).

⁵⁴⁶ Mr Blake's affidavit, (T18, paras 20-23, p 9), transcript, day 240, p 217.

⁵⁴⁷ Transcript, day 240, p 209.

⁵⁴⁸ Transcript, day 240, p 202.

- 392.5. During 2005 Mr Blake was requested to close the Bosasa VIP account and to open a personal account in the name of Mr A Agrizzi.⁵⁴⁹
- 392.6. During 2009, Mr Agrizzi requested that the Mr A Agrizzi account be closed and a new account opened under the name of Mr C Venter.
- 392.7. During 2012, Mr Agrizzi requested that the Mr C Venter account be closed and a new account under the name of Mr JJ Venter be opened.⁵⁵⁰ Mr Blake described the JJ Venter account as the bookings that were "kept hush-hush", the bookings that were not on the Bosasa account and were paid for by Mr Agrizzi.⁵⁵¹
- 392.8. Bosasa used the Bosasa Operations account for their day-to-day business travel arrangements and the account was settled by Bosasa Operations by way of an electronic funds transfer or occasionally by cheque.⁵⁵²
- 392.9. The Bosasa VIP account and those that replaced it were utilised for Bosasa directors' travel arrangements, travel and accommodation of "non-directors of Bosasa, including government officials and/or private citizens that [Mr Blake] understood Bosasa considered to be VIP's, and Mr Agrizzi and his family as well as bookings for private travel by other Bosasa employees".⁵⁵³
- 392.10. The Bosasa VIP account and those that replaced it were dealt with as follows:

⁵⁴⁹ Transcript, day 240, p 202.

⁵⁵⁰ Mr Blake's affidavit (T18, para 11, p 2), transcript, day 240, p 203.

⁵⁵¹ Transcript, day 240, p 235.

⁵⁵² Mr Blake's affidavit (T18, para 12, p 3)

⁵⁵³ Mr Blake's affidavit (T18, para 13, p 3).

- 392.10.1. a request would be made to Mr Blake by telephone, predominantly coming from Mr Agrizzi;
- 392.10.2. he was provided with the relevant traveller's details and required to make the reservations which Mr Blake generally attended to personally;
- 392.10.3. having made the reservations, Mr Blake would send confirmation to Mr Agrizzi.⁵⁵⁴
- 392.11. After 2009, the invoices were always hand delivered by Mr Blake, normally to Mr Agrizzi or Dr Smith and that he would collect cash from Mr Agrizzi as payment, normally at the Bosasa offices or, on occasion, at Mr Agrizzi's residence.⁵⁵⁵
- 392.12. *"Where reference is made to the account being settled by 'JJ Venter', [Mr Blake understood] this to refer to Agrizzi's father-in-law. The payments, however, were made by Agrizzi and his wife."*⁵⁵⁶
- 392.13. Mr Blake testified that Mr Agrizzi also made personal bookings on the 'JJ Venter' account and that approximately R1.2m of the R4m (reflected on annexure BB) was in relation to persons who were not related to Mr Agrizzi.⁵⁵⁷

⁵⁵⁴ Mr Blake's affidavit (T18, para 16, pp 3 -4).

⁵⁵⁵ Mr Blake's affidavit (T18, paras 16-18, pp 3 – 9).

⁵⁵⁶ Mr Blake's affidavit (T18, para 19.2, p 9).

⁵⁵⁷ Transcript, day 240, p 222.

Attorneys' trust accounts

393. Mr van Tonder testified that he was aware of substantial funds transferred from Bosasa into attorneys' trust accounts. He was told by Mr Watson that this was done to mitigate against the risk of Bosasa running out of funds in the event of the NPA freezing its bank accounts pursuant to the SIU investigation.⁵⁵⁸
394. Mr van Tonder explained that from time to time Bosasa needed cash for cash flow purposes. A request would be made to withdraw funds in the attorney's trust account. In this regard, he referred by way of example to an email from Mr Agrizzi to Mr Biebuyck on 27 June 2016 (with Mr van Tonder and Mr Bonifacio in copy) in which Mr Agrizzi requested that R25m be transferred from the trust account to Bosasa Operations. According to the email, the funds would be replaced as soon as payments were received from the DoJ&CD "that is currently R84 million outstanding."⁵⁵⁹
395. The evidence on the various contracts and tenders awarded to Bosasa by SOEs and government departments is dealt with below.

⁵⁵⁸ Transcript, day 43, p 81.

⁵⁵⁹ Transcript, day 43, p 81.

The awarding of contracts and tenders to Bosasa

396. In this section, the evidence on the contracts awarded to Bosasa by various SOEs and government departments as well as key Bosasa employees' interactions with public officials during Bosasa's efforts to source such contracts is summarised. The following topics are canvassed –

- 396.1. an overview of contracts awarded to Bosasa during Mr Agrizzi's employment;
- 396.2. Bosasa's early contracts, including those with Sasol, the South African Post Office and the Airports Company of South Africa;
- 396.3. tenders and contracts involving the Department of Correctional Services;
- 396.4. tenders and contracts involving the Department of Justice and Constitutional Development;
- 396.5. tenders and contracts involving the Department of Home Affairs;
- 396.6. tenders and contracts involving the Departments of Education;
- 396.7. fleet management contracts involving the Department of Transport;
- 396.8. a contract involving the Department of Health in the Mpumalanga Provincial Government;
- 396.9. contracts at municipal level;
- 396.10. why Bosasa continued to receive state contracts.

Overview of the contracts awarded to Bosasa during Mr Agrizzi's employment

397. Between 1999 to 2002 Bosasa received contracts relating to: (i) Kloof Gold Mine; (ii) Libanon Gold Mine; (iii) Sasol; (iv) Randfontein Gold Mines; (v) Hartebeesfontein Gold Mines; (vi) Harmony Gold Mine in the Free State; (vii) Goedehoop Colliery; and (viii) Horizon Youth Centre in the Western Cape.⁵⁶⁰
398. During 2001 to 2004, Bosasa received (i) a contract to guard various post offices which also encompassed pension pay-outs; and (ii) a contract from ACSA for guarding a car park at OR Tambo International Airport ("**ORTIA**").⁵⁶¹
399. During the period 2004 to 2007, Bosasa received contracts from the DCS. These contracts included: (i) a training contract run by Dr Smith and Mark Taverner ("**Mr Taverner**");⁵⁶² (ii) a catering contract at seven management areas; (iii) the Sondolo IT access contract and CCTV contract; (iv) the Sondolo IT television network system contract for every cell in every correctional centre; and (v) the Phezulu fencing contract.⁵⁶³ Most of these contracts had provisions for their extension or variation or a maintenance component attached to them.⁵⁶⁴ These contracts were discussed in more detail by Mr Agrizzi and his evidence is summarised below.
400. In addition to the contracts for the DCS during the period 2004 to 2007, Bosasa received contracts for various youth centres in the North West.⁵⁶⁵

⁵⁶⁰ Transcript, day 75, p 33; Mr Agrizzi's Supplementary Affidavit, p 7 at para 10.1.

⁵⁶¹ Transcript, day 75, p 33; Mr Agrizzi's Supplementary Affidavit, p 7 at para 10.2.

⁵⁶² Mr Agrizzi did not know of this contract.

⁵⁶³ Transcript, day 75, p 33; Mr Agrizzi's Supplementary Affidavit, p 8 at para 10.3.

⁵⁶⁴ Transcript, day 75, p 34.

⁵⁶⁵ Transcript, day 75, p 34.

401. During the period 2007 to 2010 Bosasa performed the first guarding contract for the DoJ&CD. This related to the guarding of *"all the rural areas ... for them"*. During this period, Bosasa also had contracts for various Limpopo youth centres through the Department of Social Development.⁵⁶⁶
402. In the period 2011 to 2016 Bosasa had contracts with the Clanwilliam and Namaqua youth centres; a contract with the DoJ&CD for the provision of access control, fencing and CCTV facilities to 101 courts nationally. This was an integrated system managed by the Independent Development Trust ("**IDT**"). Three liaison people from the department sat in on all meetings. Mr Agrizzi only attended a few of these meetings.⁵⁶⁷
403. In the period 2011 to 2016 the contracts with the ACSA were extended to include all airports in South Africa, with the exception of the airports in Polokwane and Lanseria.⁵⁶⁸
404. In addition, there were contracts with the DHA pertaining to Lindela.⁵⁶⁹ The contracts with the DHA pertaining to Lindela were not included in Mr Agrizzi's supplementary affidavit because they were pre-existing and merely renegotiated at a later stage.⁵⁷⁰
405. Mr Agrizzi provided an estimate of the various contract values between 2000 and 2016 (but as at November 2016) in his Supplementary Affidavit. This includes, in tabular form, information on the contract/company name, nature of the services provided in terms of the contract, the annual value or contract value and the estimated

⁵⁶⁶ Transcript, day 75, p 35.

⁵⁶⁷ Transcript, day 75, p 36.

⁵⁶⁸ Transcript, day 75, p 36.

⁵⁶⁹ Transcript, day 75, p 37.

⁵⁷⁰ Transcript, day 75, p 37.

annual bribes paid in cash.⁵⁷¹ The values listed in Mr Agrizzi's supplementary affidavit did not include the value of houses built, fixtures and fittings as well as furnishings, motor vehicles purchased and travel expenses incurred, here referring to these items as bribes rather than as items delivered as part of the tender.⁵⁷²

406. Mr Agrizzi pointed out that he did not have access to his records and the variance between the estimate and actual contract values is likely to be within R1 to R2m.⁵⁷³ The actual values regarding the turnover per annum in respect of these contracts can be obtained from the company's financials.⁵⁷⁴

407. The aggregate value of contracts awarded to the Bosasa companies by various public entities and departments between 2000 and 2016 was at least R2,371,500,000. Approximately R75,700,000 was paid out in bribes.⁵⁷⁵

408. Bosasa Operations had the following contracts:⁵⁷⁶

408.1. A catering contract with Sibanye Mines with a contract value of R71m. The estimated annual bribes paid in cash was approximately R3m.

408.2. A catering contract for the DCS with a contract value of R580m. The estimated annual bribes paid in cash was approximately R15m.

⁵⁷¹ Mr Agrizzi's Supplementary Affidavit, p 9 at para 12.

⁵⁷² Mr Agrizzi's Supplementary Affidavit, p 9 at para 11.3; Transcript, day 75, pp38 to 39.

⁵⁷³ Transcript, day 75, p 38; Mr Agrizzi's Supplementary Affidavit, p 8 at para 11.1.

⁵⁷⁴ Mr Agrizzi's Supplementary Affidavit, p 9 at para 11.2

⁵⁷⁵ Mr Agrizzi's Supplementary Affidavit, p 10 at para 12 and 13.

⁵⁷⁶ Transcript, day 75, p 39.

409. Sondolo IT had the following contracts:⁵⁷⁷
- 409.1. A contract with the DoJ&CD for security systems in the value of R700m. The estimated annual bribes paid in cash was approximately R16.5m.
- 409.2. A contract with the DCS for access control and CCTV with a contract value of R241m. Approximately R4.2m was paid out in bribes and gratuities.
- 409.3. A contract with the DCS for television systems with a value of R300m. Approximately R5m in gratuities was paid annually.
- 409.4. Mr Agrizzi was also aware of a contract with PRASA for access control but did not know the contract value. He received information that bribes had been paid but was waiting for reliable, tested information to provide to the Commission's investigators.⁵⁷⁸
410. Kgwerano had a fleet contract with the Department of Transport in the value of R122m. Approximately R3.6 m was paid annually in bribes.⁵⁷⁹
411. Phezulu Fencing had a contract with the DCS to fence various facilities in the value of R800m. Approximately R10m in gratuities was paid per year.⁵⁸⁰
412. Bosasa had a contract with the North West Youth Centre for "youth services" in the value of R32m. Approximately R4.5m was paid out in bribes a year. It held a further

⁵⁷⁷ Transcript, day 75, p 39.

⁵⁷⁸ Transcript, day 75, p 41.

⁵⁷⁹ Mr Agrizzi's Supplementary Affidavit, p 9 at para 12.

⁵⁸⁰ Transcript, day 75, p 39.

contract with the Mogale Youth Centre in the value of R14m. R2.3m in bribes was paid out a year.⁵⁸¹

413. The North West Youth Development Centre also had pre-opening expenses for software in the amount of R4.5m. Mr Agrizzi explained that one of the directors, Mr Dlamini, said money was needed for the elections and that an HOD or MEC wanted R2.2m. The centre informed them that they could charge an inflated amount for software in the value of R4.5m. The company would make R2.3m and the official would receive R2.2m.⁵⁸²

414. The Bosasa Security contract with ACSA for physical guarding security services was valued at R32m. Approximately R2.2m in bribes was paid out a year.⁵⁸³

415. In relation to a contract by Sondolo IT for access control to Eskom, Mr Agrizzi testified that he had been reliably told that there was "*something there*". Mr Agrizzi, however, indicated that he was attempting to source further information on this.⁵⁸⁴

416. In relation to a contract for access control at the DHA, Mr Agrizzi testified that the contract was for approximately R85m with bribes paid close to the value of R7.2m.⁵⁸⁵

417. In addition, Mr Agrizzi testified that Sondolo IT had an access control contract with PRASA and he had been told by whistleblowers that there were bribes paid. He was, however, waiting for more reliable information so that he could test this claim.⁵⁸⁶

⁵⁸¹ Transcript, day 75, p 39.

⁵⁸² Transcript, day 75, p 40.

⁵⁸³ Transcript, day 75, p 39.

⁵⁸⁴ Transcript, day 75, p 41.

⁵⁸⁵ Transcript, day 75, p 41; Mr Agrizzi's Supplementary Affidavit, p 10 at para 13.

⁵⁸⁶ Transcript, day 75, p 41.

418. The value of the continuing contracts for Bosasa is in the region of R90m.⁵⁸⁷ Mr Agrizzi estimates the annual bribes paid in cash for these contracts to be at least R9.4m.⁵⁸⁸
419. I enquired from Mr Agrizzi whether, if Bosasa knew they were going to be paying bribes for the duration of the contracts, it would inflate the contract prices. Mr Agrizzi explained that the contracts were run at between 35% and 40% gross profit. Bribes were always factored in at around 2.5% or Mr Agrizzi was told they would need to pay X amount out and he would factor that into the contract prices.⁵⁸⁹
420. When asked how the bribes were ultimately accounted for in the company's books in relation to tax, Mr Agrizzi explained that they were not accounted for.⁵⁹⁰ Mr Agrizzi explained that these amounts were taken into consumption and they became costs of sales and, therefore, Bosasa paid less tax on them.⁵⁹¹
421. Mr Agrizzi was asked whether, apart from the bribes, the State was receiving value for money from Bosasa. Mr Agrizzi responded that it was not a one answer scenario. The State was receiving money in relation to some contracts but not others. For example, it was not receiving value for money in relation to the Lindela contracts, but it was for purposes of the youth centres.⁵⁹²
422. Mr Agrizzi estimated that the contract with ACSA was worth about R180m per annum around 2001 or 2002. Initially, the contract was only for ORTIA but the second contract was for airports nationally and would have been worth substantially more.

⁵⁸⁷ Transcript, day 75, p 42.

⁵⁸⁸ Mr Agrizzi's Supplementary Affidavit, p 10 at para 13.

⁵⁸⁹ Transcript, day 75, p 42.

⁵⁹⁰ Transcript, day 75, p 42.

⁵⁹¹ Transcript, day 75, p 43.

⁵⁹² Transcript, day 75, p 43.

423. In relation to SAPO, Mr Agrizzi estimated the value of the contract to have been at R180m per annum.

Bosasa's early contracts

424. Mr Agrizzi testified that from 2001, the company grew rapidly with new contracts coming in. This included a number of additional mines owned by other mining houses. There was also a security contract with the SAPO which evolved to include pension pay out points.⁵⁹³

Sasol and Simon Mofekeng

425. Mr Agrizzi testified about an instance where someone at Sasol informed them of flaws in a tender submitted by Dyambu Operations to Sasol for catering services, after the closure date. Mr Agrizzi was asked to meet with an official or employee of Sasol. He sought and was afforded an opportunity to amend the bid even though the closure date had passed. The procurement official he met was annoyed because they had been instructed from a higher authority to allow the change.⁵⁹⁴

426. Mr Agrizzi also testified about a meeting with Mr Simon Mofokeng ("**Mr Mofokeng**") of the Chemical Energy Paper Printing Wood & Allied Workers Union ("**CEPPWAWU**"). He accompanied Mr Watson to the meeting with Mr Mofokeng. Mr Watson explained the purpose of the meeting as being "*to put pressure on the union, to create a work stoppage so that management was forced into submission in giving a tender.*" That is what then transpired. At the meeting, Mr Mofokeng provided Mr Watson and Mr Agrizzi the pricing that the other companies had submitted to enable them to tailor their price accordingly. Mr Agrizzi understood that this was entirely

⁵⁹³ Transcript, day 34, p 87.

⁵⁹⁴ Transcript, day 100, p 91.

improper. Mr Mofokeng apparently had this information because he *“had a phenomenal network at Sasol”* as head of CEPPWAWU. Mr Agrizzi testified further that Bosasa employed Mr Mofokeng’s wife, Maureen, to head up a newly established training department.⁵⁹⁵

427. Subsequent to the amendment of the bid, it was successful. After the award, Mr Agrizzi was instructed by Mr Watson to arrange for braai packs, cold drinks and various grocery items and the like to be delivered to Mr Mofokeng. The person who gave effect to this was Mr Sydney Mantata (**“Mr Mantata”**).⁵⁹⁶ Mr Agrizzi explained that each operation had a unit leader. Mr Mantata was the relevant unit leader in this instance. He had worked with Mr Agrizzi at Molohe Foods. He was instructed to provide these items to Mr Mofokeng on a monthly basis. The purchase order for the items would be brought to Mr Agrizzi who would sign it off and Mr Mantata would then make the purchases and deliver the goods to Mr Mofokeng whenever he wanted it. He did as instructed. The following exchange took place in Mr Agrizzi’s evidence at this point:

“ADV PAUL PRETORIUS SC:	By ‘sign it off’ what do you mean?
MR ANGELO AGRIZZI:	I would sign the order, chair, I would approve it. ... I would approve it and with the approval he goes and gets it.
ADV PAUL PRETORIUS SC:	Right so your approval will be permission to continue to execute the order?
MR ANGELO AGRIZZI:	It would be permission to pay a bribe, yes chair.
ADV PAUL PRETORIUS SC:	Right and how was this allocated in the books of the company Dyambu/Bosasa?
MR ANGELO AGRIZZI:	With those types of amounts it would just be absorbed as operational marketing expenses.” ⁵⁹⁷

⁵⁹⁵ Transcript, day 34, pp 92 and 93.

⁵⁹⁶ Transcript, day 34, p 97.

⁵⁹⁷ Transcript, day 34, p 99.

428. In response to further questioning, Mr Agrizzi testified that the deliveries would normally take place monthly. This practice continued until Bosasa sold that contract and even beyond that point. From time to time they would get a call from Mr Mofokeng thanking them. The value involved was between R12,000 and R15,000 per order.⁵⁹⁸
429. Mr Mofokeng apparently complained to Mr Watson “incessantly” asking for extra kilograms of meat and the like. A few times, Mr Watson complained that deliveries had not been effected to Mr Mofokeng. At this time the Sasol contract was managed by Mr Daniel van Tonder and Mr Johan Viljoen. They too were aware of the arrangement with Mr Mofokeng.⁵⁹⁹
430. Bosasa held the Sasol contract from 1999 until about 2002 when the contract was sold off. Mr Agrizzi received a call from Mr Lacon-Allin of Equality Foods who in turn indicated that he had a call from Mr Mofokeng demanding his benefits and Mr Lacon-Allin wanted to know whether this was standard practice. Mr Agrizzi explained that it was, even though it was not right.⁶⁰⁰

South African Post Office

431. Mr Agrizzi then turned to a tender to provide security for the SAPO. Mr Watson informed Mr Agrizzi that he (Mr Watson) “was paying [Siviwe Mapisa, head of security at SAPO,] and [Maanda Manyatshe, the CEO] for the SAPO contract and looking after them”.⁶⁰¹

⁵⁹⁸ Transcript, day 34, p 99.

⁵⁹⁹ Transcript, day 34, p 100.

⁶⁰⁰ Transcript, day 34, p 101.

⁶⁰¹ Transcript, day 34, p 103.

432. Siviwe Mapisa ("**Mr Mapisa**") is the twin brother of Minister Mapisa-Nqakula. Mr Agrizzi was told at a meeting in a restaurant that Mr Mapisa held shares in a company called Vulisango on behalf of his sister. Mr Valence Watson was also a shareholder in Vulisango and presumably the majority shareholder because Mr Agrizzi described him as being the owner of the company.⁶⁰² Mr Agrizzi testified that Mr Mapisa depleted his shareholding by being paid out.⁶⁰³ Mr Agrizzi characterised this meeting as being one where *"the Watsons ensured that I realized that they had the most powerful people in the country as their connections and friends. I was told categorically that they believed that they were the most politically connected people in South Africa."*⁶⁰⁴
433. Mr Agrizzi testified that Mr Watson had informed him to start the logistical preparations for the SAPO security contract before the tender was submitted. The contract was awarded and operated for a three-year period with a further extension of two years. At one point, Mr Agrizzi attended a trade show in Dubai focussing on security applications. He was accompanied by Johnson Vovo, director of security at Bosasa, and Mr Gumede who was also a security director. When they had a free day, they purchased various "premium gifts" for Mr Mapisa and Mr Manyatshe, including a Cartier pen, Cartier cufflinks, Mont Blanc pen, Mont Blanc cufflinks and various other gifts including false watches. Upon their return, Mr Watson confirmed to Mr Agrizzi that he gave these gifts to Mr Manyatshe and Mr Mapisa.⁶⁰⁵
434. Mr Ronnie Watson had a game farm in the Eastern Cape and Mr Mapisa used to be taken hunting there.⁶⁰⁶

⁶⁰² Transcript, day 34, p 104.

⁶⁰³ Transcript, day 75, p 83.

⁶⁰⁴ Mr Agrizzi's Supplementary Affidavit, p 15 at para 15.8.

⁶⁰⁵ Transcript, day 34, p 105.

⁶⁰⁶ Transcript, day 34, p 106.

435. Mr Agrizzi pointed out that Mr Watson was aware *"months before that we were being awarded the tender"*.⁶⁰⁷
436. An issue for clarification by Mr Agrizzi was whether, at the time of the contract between SAPO and Bosasa, either Seopela or Fana Hlongwane ("**Mr Hlongwane**") had any direct links or influence with SAPO.
437. Mr Agrizzi explained that Mr Seopela did not have any links with SAPO at that stage. He testified that the only reason he mentioned Mr Hlongwane was because Mr Seopela worked for Mr Hlongwane on the arms deal. Mr Seopela *"was employed by African Global or Consilium, one of the two companies, used to chase up ministerial leads and to make sure that Bosasa and the African Global Group of Companies kept their associations healthy in terms of political and economic wellbeing with the ANC"*.⁶⁰⁸

Airports Company of South Africa

438. The ACSA awarded Bosasa a tender to do the multi-storey carpark protection and guarding services at ORTIA. This was at a time when many cars were being stolen from the airport. The contract was awarded in 2001 and, according to Mr Agrizzi, was a five-year agreement renewable at the end of each five-year term. He understood Bosasa still to have the contract. Mr Agrizzi was responsible for compiling the tender documents. Mr Agrizzi testified that, when drafting the tender bid, he was informed by Mr Watson and Johnson Vovo that Bosasa would be awarded the tender.⁶⁰⁹

⁶⁰⁷ Transcript, day 34, p 107.

⁶⁰⁸ Transcript, day 75, p 11.

⁶⁰⁹ Transcript, day 34, p 110.

439. Mr Watson knew Mr Thele Moema, the head of risk at ACSA. He also knew Mr Siza Thanda, the head of security for ACSA. Mr Agrizzi used to visit ORTIA and often went with Mr Gumede, then a director of Bosasa and subsequently its chairperson. They would take with them grey security bags filled with money and give it to "certain people" at ORTIA.⁶¹⁰
440. Mr Agrizzi was asked to describe the procedure when the bags were filled with money. The bags were given a serial number and had a tamper proof seal. Cash would then be placed in the bags and the bags would then be sent out. Mr Agrizzi's understanding was that the bags were a standard stock item from a security equipment sales company.⁶¹¹
441. Mr Agrizzi testified (somewhat contradictorily) that he was not aware that there was money in the bags although he had himself received a bag with cash in it, with the result that he "knew what was in the bags".⁶¹²
442. Later his suspicion about the money was confirmed when he was given the task of arranging the payments. There were other individuals to whom cash was delivered at ACSA. They are identified in Mr Agrizzi's initial Affidavit as being Reuben Pillay, Joe Serobe and the procurement officer, Mohammed Bashir.⁶¹³
443. These occurrences were a regular event. Payments continued to be made to people at ACSA until Mr Agrizzi left Bosasa. Mr Agrizzi confirmed that the payments were a monthly event. Payments to Messrs Thanda and Moema stopped when they left ACSA. Mr Agrizzi confirmed that he not only packed the money bags but also kept a

⁶¹⁰ Transcript, day 34, p 119.

⁶¹¹ Transcript, day 34, p 115.

⁶¹² Transcript, day 36, p 116.

⁶¹³ Transcript, day 34, p 119.

record in this regard. However, he was not able to recall specifically having himself packed bags for Mr Thanda and Mr Moema. He did remember personally packing and delivering bags for *“the more recent people as alluded to, Bashir and that”*.⁶¹⁴ This is seemingly a reference to Messrs Pillay, Serobe and Bashir. Mr Agrizzi clarified that the payments to Mr Thanda and Mr Moema related to an earlier period commencing in 2001. The payments to Mr Pillay, Mr Serobe and Mr Bashir related to the time period around 2009 or 2010.⁶¹⁵

Department of Correctional Services

The catering / kitchen contract

Mr Agrizzi's introduction to Mr Patrick Gillingham

444. Mr Agrizzi first met Mr Gillingham in mid- to late-2003 at Lindela.⁶¹⁶ He was introduced to Mr Gillingham by Mr Watson.⁶¹⁷ Mr Agrizzi did not know, or, know of, Mr Gillingham before this. When he met him, he gained the impression from his uniform that he had a senior rank. Mr Agrizzi learned at the meeting that he was employed in the DCS.
445. During this introductory meeting, Mr Gillingham had a few requests. Mr Watson also told Mr Agrizzi to get cash from him every month for Mr Gillingham and during that meeting Mr Gillingham mentioned that there were issues with his house that needed to be attended to. Mr Agrizzi had to attend to this immediately.⁶¹⁸

⁶¹⁴ Transcript, day 34, p 121.

⁶¹⁵ Transcript, day 34, p 122.

⁶¹⁶ Transcript, day 37, p 110.

⁶¹⁷ Transcript, day 37, pp 111-112.

⁶¹⁸ Transcript, day 75, p 101.

446. According to Mr Agrizzi, Mr Watson wanted to get rid of the existing catering contracts at the mines and to get involved in catering facilities management and security contracts, government contracts and SOEs.⁶¹⁹ Mr Agrizzi testified that at that time Bosasa had a contract to supply beef to certain correctional services facilities, which contract was being handled by Paul Vorster and, later, Mr Mansell.⁶²⁰
447. In 2004 Bosasa had been awarded a contract to train senior officials of the DCS on compliance with meal intervals and related matters, as required by the Correctional Services Act.⁶²¹ Mr Agrizzi became aware of the contract at an awards evening for the officials who had attended the training.⁶²² The function was coordinated by Dr Smith and Mr Taverner, Mr Watson's brother-in-law and employee of Bosasa.⁶²³
448. At the time, Mr Agrizzi was not aware that Mr Taverner was involved in the furnishing of Mr Mti's and Mr Gillingham's respective houses.⁶²⁴

Initial efforts to secure the catering contract

449. Mr Vorster testified that Mr Watson approached him in 2003 with a request that he get in contact with Mr Gillingham as Mr Watson would love to tender for the catering contracts at the DCS. At this stage, the catering at the DCS was not outsourced. Mr Gillingham was the Provincial Commissioner at the DCS for Mpumalanga, Limpopo and Gauteng and the project leader for the tender.⁶²⁵

⁶¹⁹ Transcript, day 37, p 113.

⁶²⁰ Transcript, day 37, p 112.

⁶²¹ Transcript, day 37, pp 114-115.

⁶²² Transcript, day 37, p 115.

⁶²³ Transcript, day 37, p 116.

⁶²⁴ Transcript, day 37, p 116.

⁶²⁵ Transcript, day 43, pp 99, 100 and 103.

450. Pursuant to this request, Mr Vorster approached Mr Gillingham and, on Mr Watson's instruction, carried on the relationship that his late father had with him. He explained to Mr Gillingham that Bosasa wanted to get involved in the catering sector at the DCS. From there on, Mr Vorster met Mr Gillingham regularly.⁶²⁶
451. Mr Vorster recalled being called to meet Mr Watson at the Bosasa head office. He accompanied Mr Watson into his vault and was given cash. This was before the days where security bags were used and Mr Vorster had to stack the money into A4 envelopes, to make it look like documents being delivered.⁶²⁷
452. Mr Vorster explained that he would later take the cash to Mr Gillingham at a restaurant in Pretoria/Centurion. During this meeting, they discussed the specifications of the kitchens at the DCS and menus. Mr Vorster would then hand the envelope of cash to Mr Gillingham in exchange for information. Mr Vorster would later pass this information on to Mr Mansell who was a "consultant" for Bosasa at the time.⁶²⁸
453. Mr Vorster's meetings with Mr Gillingham occurred on a bi-weekly basis in the beginning. The frequency of the meetings depended on how much information was required. He did not take cash to Mr Gillingham on each occasion and did not know if there was an agreement between Mr Watson and Mr Gillingham. The amounts Mr Watson provided for Mr Gillingham varied but it was mostly around R20,000.⁶²⁹

⁶²⁶ Transcript, day 43, p 100.

⁶²⁷ Transcript, day 43, p 100.

⁶²⁸ Transcript, day 43, pp 100 and 104.

⁶²⁹ Transcript, day 43, p 101.

454. When asked whether his meetings with Mr Gillingham bore any fruit, Mr Vorster responded *“Ja well that led us getting the catering contract that was awarded to us in 2004”* (sic).⁶³⁰
455. Mr Vorster explained that, with the information provided to him, Mr Mansell was able to prepare a presentation and strategy to obtain the catering contract. At the end of 2003, Mr Mansell presented this plan to senior management of the DCS (although Mr Vorster did not attend this meeting). At this stage it was not known that the DCS would be outsourcing the catering services. In early 2004, Mr Gillingham did a presentation regarding the outsourcing of the catering contract which was prepared for him by the Bosasa team.⁶³¹
456. Mr Vorster also testified that Mr Watson had a close relationship with Mr Mti who, at the time, was Commissioner of the DCS. This led to Mr Gillingham being appointed in procurement and later as CFO to drive the processes which Mr Mti would then approve.⁶³²
457. At the beginning of 2004 Mr Watson informed Mr Agrizzi that Bosasa had to attend a tour of prisons around South Africa, together with Mr Gillingham, to evaluate the catering needs and concerns of the DCS in order to create a blueprint for the catering services.⁶³³ This was the second time that Mr Agrizzi met Mr Gillingham.
458. Mr Agrizzi and others were instructed not to wear Bosasa uniform so as not to be identified as Bosasa and that the tour was to be coordinated by Mr Mansell and

⁶³⁰ Transcript, day 43, p 102.

⁶³¹ Transcript, day 43, p 105; Mr Vorster's statement, p 2 at para 11 and 12.

⁶³² Transcript, day 43, p 106.

⁶³³ Transcript, day 37, p 117.

Gillingham.⁶³⁴ Mr Agrizzi, Mr Vorster, Hennie Viljoen, Mr Mansell and Mr Gillingham attended the tour.⁶³⁵ They visited approximately 26 facilities across Johannesburg, Port Elizabeth, Durban, Cape Town and Pretoria.⁶³⁶

459. Mr Agrizzi understood at the time that they were to draw up a blueprint – to identify what the needs were, where the problems were, the costs, what needed to be done and the type of equipment required to improve the services and make them economically viable.⁶³⁷ Bosasa paid for the hotels and flights, as well as for the extra hotel expenses for the Bosasa employees.⁶³⁸ He did not pay any of Mr Gillingham's travel expenses.
460. Mr Agrizzi submitted the report to Mr Watson and Mr Mansell.⁶³⁹ Mr Agrizzi wanted to include catering security systems and requested an employee, Johan Helmut (“Mr Helmut”), to design a solution that they could implement or show to the DCS.⁶⁴⁰ Mr Helmut designed such solution that Mr Agrizzi included in the final report and specification layout.⁶⁴¹
461. Mr Agrizzi testified that after the report had been finalised, he emailed it to the two email addresses that Mr Watson had provided him with – for Mr Mansell and Mr Gillingham.⁶⁴² At the time, Mr Agrizzi believed that Bosasa was acting as a consultant for the DCS, to assist it in determining what was necessary in the facilities. Mr Agrizzi

⁶³⁴ Transcript, day 37, p 117.

⁶³⁵ Transcript, day 37, p 117.

⁶³⁶ Transcript, day 37, p 118.

⁶³⁷ Transcript, day 37, p 117, p 119.

⁶³⁸ Transcript, day 37, p 119.

⁶³⁹ Transcript, day 37, p 120.

⁶⁴⁰ Transcript, day 37, p 120.

⁶⁴¹ Transcript, day 37, p 120.

⁶⁴² Transcript, day 37, p 121.

did not know that the document would become a specifications document that would be used as an invitation to bid.⁶⁴³

462. Mr Agrizzi became aware of the fact that the report was used as a specifications document when the invitation to bid was advertised on 21 May 2004 and he was instructed to respond.⁶⁴⁴ When he confronted Mr Watson, Mr Agrizzi was told that the tender would be awarded to Bosasa, he should keep quiet, keep his head down, do the paperwork and fill in the tender.⁶⁴⁵

Award of the catering contract

463. All bids fell under Mr Agrizzi's supervision. He had a team that compiled the response to the invitation to bid.⁶⁴⁶ Bosasa was awarded the contract on 27 July 2004, initially for a three year period with an annual value of R239,427,694.00.⁶⁴⁷ This was corroborated by Mr Bloem who explained that the contract was for seven large prisons, namely Durban-Westville, Pollsmoor, St Albans, Johannesburg, Pretoria, Modderbee and Krugersdorp.⁶⁴⁸ Mr Agrizzi explained that the costings were manipulated by doubling the price of a special meal (the exact same as a normal meal, but prepared differently) and running the normal and special meals at a 70/30 ratio, instead of the 90/10 ratio.⁶⁴⁹ This resulted in a monthly costing that was on average 35% higher – with the DCS paying closer to R310m instead of the R239m for the first year.⁶⁵⁰

⁶⁴³ Transcript, day 37, p 121.

⁶⁴⁴ Transcript, day 37, p 123.

⁶⁴⁵ Transcript, day 37, p 124.

⁶⁴⁶ Transcript, day 37, p 124.

⁶⁴⁷ Transcript, day 37, p 124.

⁶⁴⁸ Transcript, day 45, p 52.

⁶⁴⁹ Transcript, day 37, p 125.

⁶⁵⁰ Transcript, day 37, p 126.

Extension of the scope of the catering contract

464. On 29 September 2004 Mr Watson instructed Mr Agrizzi to propose to Mr Gillingham that seven satellite correctional centres should be included in the catering tender. This followed discussions between Mr Mansell and Mr Gillingham and approval from Mr Mti. The expansion of the contract was approved and Mr Agrizzi had to provide a price for it.⁶⁵¹ The monthly value of the expansion was R14m.⁶⁵² Mr Agrizzi testified that the scope of the catering contract was extended without authorisation in terms of the original tender or a new tender, and that everyone involved was aware of the fact.⁶⁵³
465. As a result of the extension of the catering contract, all employees received a substantial salary increase that year. Mr Agrizzi's increase was from R234,000 to R406,000, and his house was painted (at an approximate value of R30,000).⁶⁵⁴
466. The contract was due to expire in September 2007 and was extended in July 2007 for a further year. This was corroborated by Mr Bloem.⁶⁵⁵
467. Mr Bloem testified that during a meeting on 26 February 2008 the National Commissioner of the Department of Correctional Services assured the Portfolio Committee that the tender for the catering contract would be advertised before its expiry on 31 July 2008. Despite this assurance, the contract was extended for a further six months⁶⁵⁶ until the finalisation of a new tender process chaired by Sibushini Moodley (CDC: Care and Development), and not Mr Gillingham who had been closely

⁶⁵¹ Transcript, day 37, p 126.

⁶⁵² Transcript, day 37, p 127.

⁶⁵³ Transcript, day 37, p 127.

⁶⁵⁴ Transcript, day 37, pp 127-129.

⁶⁵⁵ Transcript, day 45, p 54.

⁶⁵⁶ Transcript, day 38, p 52.

linked to the extensions of the Bosasa contracts. Mr Bloem believes that Ms Moodley was used to avoid Gillingham having to account.⁶⁵⁷

468. At this stage, Mr Bloem called the DCS to account for these extensions before the Portfolio Committee. A meeting was held on 19 August 2009 in which the catering contract was discussed and the DCS was requested to provide the Portfolio Committee with information relating to the feasibility study for the outsourcing, why and how the seven correctional centres were selected and the role Mr Gillingham had played in this process. The DCS has never provided this information and proceeded to re-award the tender to Bosasa Operations. The Portfolio Committee became aware of this award through the media.⁶⁵⁸

469. Ms Jolingana, then acting head of the bid adjudication committee of the DCS, ensured that the contract was extended.⁶⁵⁹ Mr Agrizzi recalled that at the meeting where the contract was extended for a year, Jenny Schreiner objected to the improper extension of the contract as it should have been put out on tender which had not been done.⁶⁶⁰

470. On 6 January 2009 the DCS awarded Bosasa a new catering contract under contract number HK14/2008.⁶⁶¹ The contract was for three years and the specifications documentation that had been used for the prior catering contract was again used for the second catering contract awarded to Bosasa.⁶⁶²

⁶⁵⁷ Transcript, day 45, p 55; Mr Bloem's affidavit, p 7 at para 8.5.

⁶⁵⁸ Transcript, day 45, pp 57 and 58.

⁶⁵⁹ Transcript, day 38, p 52.

⁶⁶⁰ Transcript, day 38, pp 53-57.

⁶⁶¹ Transcript, day 38, pp 174-175.

⁶⁶² Transcript, day 38, p 175.

The next catering contract

471. Mr Agrizzi testified that in 2013 a further catering contract for the DCS was awarded to Bosasa. The DCS used the same specifications that had been used in the previous contracts. Bosasa submitted a bid and was awarded the contract for a three-year period to the value of more than R420m per annum.⁶⁶³ Mr Agrizzi testified further that the approximate gross profit margin for the contract was 40% with 28% net profit.⁶⁶⁴
472. Mr Agrizzi was introduced to the Treasurer General of the ANC Youth League, Mr Reggie Nkabinde (“**Mr Nkabinde**”), by Mr Watson. Mr Watson asked Mr Agrizzi to see if he could assist Mr Nkabinde, given that Mr Nkabinde was very close to Ms Mokonyane. Mr Agrizzi knew that Mr Nkabinde was politically connected and that he was very close to Mr Tom Moyane⁶⁶⁵ and “*would be able to resolve any issues at Correctional Services*”.⁶⁶⁶ Mr Tom Moyane was the Commissioner of the Department of Correctional Services at the time.
473. In 2016 Mr Agrizzi was called to a meeting at Bosasa during which Mr Watson, Mr Nkabinde, Patrick Monyeki and Sam Sekgota (“**Mr Sekgota**”)⁶⁶⁷ were in attendance. Mr Watson told Mr Agrizzi that he was required to work with Mr Nkabinde and Mr Sekgota if Bosasa was to retain the catering contract with the DCS. Mr Agrizzi was shocked by this, given that he thought Bosasa was “*on top of issues*”. He later realised that Mr Nkabinde had a copy of the tender before it had been issued.⁶⁶⁸

⁶⁶³ Transcript, day 41, p 47.

⁶⁶⁴ Transcript, day 41, p48.

⁶⁶⁵ Former National Commissioner of Correctional Services.

⁶⁶⁶ Transcript, day 41, p 110.

⁶⁶⁷ On occasion, Nkabinde would meet Mr Agrizzi with Mr Sekgota who is described as Mr Nkabinde's associate – Transcript, day 41, p 109.

⁶⁶⁸ Transcript, day 41, p110.

474. After discussing the matter, Mr Watson and Mr Agrizzi approached Mr Sekgota for assistance. Mr Sekgota advised them to pay R5m to his consultancy company to secure a six-month extension of the contract *"which then would give us time to work out a plan of sorts on how to manage this thing"*, referring to the new tender.
475. Given that a six-month extension was equivalent to R150m in fees, Bosasa paid the R5m consultancy fee to Mr Sekgota's company. An invoice was raised by this company and then Bosasa *"raised the second agreement"*. The second agreement with Mr Sekgota was for the renewal of the catering contract. This agreement required a payment of R10m to Mr Sekgota's company. Mr Watson refused to pay that amount, effectively reneging on the agreement with Mr Sekgota. The decision to renege on the agreement followed advice given to Mr Watson from *"people"* that he did not need to pay that kind of money for the agreement.⁶⁶⁹
476. As a consequence, Mr Sekgota *"did not bother getting the renewal for the catering contract"* resulting in Bosasa losing a portion of the contract (approximately 40%) of the catering contract.⁶⁷⁰

The Portfolio Committee's concerns with the catering contract

477. Mr Bloem described the catering contract as *"just a money laundering scheme"*. This is because, despite the fact that the function of taking over the kitchens and preparing food was outsourced to Bosasa, Mr Bloem witnessed inmates preparing the food and saw no labour from Bosasa. He explained that the Portfolio Committee were not given answers as to who supplied food to the prisons given that the DCS had its own farms. Mr Bloem was unequivocal that there was no way the Minister (at the time, Mr Balfour)

⁶⁶⁹ Transcript, day 41, p 113.

⁶⁷⁰ Transcript, day 41, p 112.

would not have known about these concerns as Mr Bloem had raised them personally with him.⁶⁷¹

478. Mr Bloem testified that the only thing Bosasa did was *"to give these inmates a certificate at the end of the year saying that he is trained"*. He therefore did not believe there would be any disruptions to the functioning of the DCS kitchens if Bosasa's contract was cancelled.⁶⁷²

479. I asked Mr Agrizzi whether it was true that the work in so far as this contract was concerned, was done by prisoners. In response Mr Agrizzi said that it was true that prisoners were used to do the cooking of the food. However, he also said that the training and development was also done. Therefore, approximately 60,000 offenders were trained in the food industry with national accredited courses.⁶⁷³ Mr Agrizzi commented that for Mr Bloem to say that the DCS was *"ripped off"* is debatable.⁶⁷⁴

480. Mr Agrizzi was asked whether he had any personal knowledge of the use of prison farms. Efficient running of the farms would enable them to have raw materials direct which would reduce the prison costs. Mr Agrizzi explained that the prisons had farms but the farmers encountered several problems. For example, they would not get seeds on time so they could not plant.

481. There were efficiencies created by bringing in a private company or individuals who knew how to conduct business. For example, the catering costs of Westville Prison was R29.00 per person per day. However, Bosasa charged the department R10.55

⁶⁷¹ Transcript, day 45, pp 45 to 47.

⁶⁷² Transcript, day 45, pp 49 and 50.

⁶⁷³ Transcript, day 75, p 44.

⁶⁷⁴ Transcript, day 75, p 44.

per person per day. He therefore believed that the DCS did get value for money in the contract.⁶⁷⁵

482. Mr Agrizzi had two examples of the quality of produce from the farms of the DCS that illustrated the point he was making. He explained that, due to incorrect feeds, the Waterval pork had 6cm to 10cm of fat on it. He would reject this product. Pollsmoor Prison had what Mr Agrizzi referred to as a "*phenomenal problem*" with vegetables because they just delivered in a truck load that required sifting of sand to find the vegetables. Because Bosasa was compelled to buy from the prison farms, he said that it created a production plant where it used female offenders to prepare the vegetables and pre-cut the vegetables and make jams.⁶⁷⁶

483. Mr Bloem confirmed that attempts were made to intervene in the award of further contracts and extensions to Bosasa but these were ignored. He said that the speaker, Max Sisulu and the chairperson of the caucus, Ms Vytie Mentor, were aware of these problems. Ms Mentor attempted to discuss these issues with Mr Balfour. The Standing Committee on Public Accounts ("**SCOPA**") also raised concerns and Mr Bloem raised these concerns with Mr Balfour directly. It was clear to Mr Bloem that Mr Mti had Mr Balfour's protection.⁶⁷⁷

484. During 2004 and 2009 there were two burglaries at Mr Bloem's office at Parliament during which documents were removed. This included a letter accusing Mr Bloem of attacking Bosasa and promoting white capital and included personal attacks against him and his family.⁶⁷⁸

⁶⁷⁵ Transcript, day 75, p 52.

⁶⁷⁶ Transcript, day 75, p 53.

⁶⁷⁷ Transcript, day 45, pp 61 to 66.

⁶⁷⁸ Transcript, day 45, p 69.

485. Mr Bloem testified that Ms Winnie Ngwenya ("**Ms Ngwenya**"), one of his Committee members, visited him and stated that she was sent by the owners of Bosasa to say that they wished to meet with him. He said that he was not willing to do so. She referred to there being ""inyuku" which is a township slang word for "money". Mr Bloem informed her that he was not interested. Mr Bloem later realised that Ms Ngwenya showed bias towards Bosasa and had no real concern for the DCS.⁶⁷⁹
486. Mr Bloem testified that during the time he was vocal about the Bosasa tenders, he received many calls threatening his life.⁶⁸⁰ He pleaded with the Commission to investigate the death of Vernie Petersen ("**Mr Petersen**") because he opposed corruption and the tenders to Bosasa.⁶⁸¹ He also indicated that Judge Erasmus from the Western Cape High Court raised many concerns regarding the Bosasa contracts in his reports at the Judicial Inspectorate into prisons.⁶⁸² When Mr Bloem testified about Mr Petersen's killing, he visibly had to control his emotions. It was quite clear that he felt strongly that Mr Petersen may have been killed for his anti-corruption stance. As Chairperson I instructed the Head of the Commission's Legal Team to ask the Commission's Investigators to try and find out where the Police were with investigating that killing and report back. At the time of the finalisation of this section of the Report I was informed that a senior investigator in the Commission had made inquiries with SAPS some time back and found that no progress had been made.

⁶⁷⁹ Transcript, day 45, pp 71 to 74.

⁶⁸⁰ Transcript, day 45, p 76.

⁶⁸¹ Former National Commissioner of DCS.

⁶⁸² Transcript, day 45, pp 82 and 83.

The access control contract

487. In November 2004 Bosasa was invited to attend a monthly meeting of the DCS at Supersport Park to present on the implementation of the catering tender and to showcase some of the other services Bosasa could provide.⁶⁸³ Mr Mti, Mr Gillingham, Mr Agrizzi together with a number of Bosasa directors (excluding Mr Watson and Mr Mansell), attended the meeting.⁶⁸⁴
488. According to Mr Agrizzi, Mr Watson indicated that he had received very good feedback from Mr Mti after the meeting and that there was an access control contract in the pipeline.⁶⁸⁵ Mr Watson and Mr Mansell instructed Mr Agrizzi to draft a specifications document for an access control system that would be advertised.⁶⁸⁶ Mr Agrizzi was instructed to draft the specifications in a manner to ensure that the award of the tender to Bosasa would be guaranteed.⁶⁸⁷ This was done by including aspects in the specifications that only Bosasa would be likely to have, such as experience working in a correctional services environment and to be an accredited national key points service provider.⁶⁸⁸
489. Mr Agrizzi testified that the DCS had provided Mr Mansell with an overview of its needs, and Mr Agrizzi had used the Johannesburg Correctional Facility to model and provide a blueprint around it.⁶⁸⁹ Mr Agrizzi produced the specifications and gave it to

⁶⁸³ Transcript, day 37, p 130.

⁶⁸⁴ Transcript, day 37, pp 130-131.

⁶⁸⁵ Transcript, day 37, p 131.

⁶⁸⁶ Transcript, day 37, p 131.

⁶⁸⁷ Transcript, day 37, pp 131-132.

⁶⁸⁸ Transcript, day 37, p 133.

⁶⁸⁹ Transcript, day 37, p 134.

Mr Watson, who instructed him to email it to Mr Mase II and Mr Gillingham at the same email addresses used previously.⁶⁹⁰

490. The DCS issued an invitation to bid, on 4 February 2005, based on the specifications drafted by Mr Agrizzi.⁶⁹¹ Initially, Mr Agrizzi was instructed to bid under Bosasa Security (Pty) Ltd and was later instructed to amend the documents and to respond under a newly established company, Sondolo IT.⁶⁹² Around April 2005 Sondolo IT was awarded the contract.⁶⁹³
491. The contract's initial period was for two years and was later expanded to include a control room contract in terms of which Bosasa was paid to manage control rooms for the DCS at 66 sites.⁶⁹⁴ The value of the expansion was R236,997,385.31.⁶⁹⁵ Mr Agrizzi testified that the contract was inflated from the start. The staffing of those responsible for the running of the system was not included or budgeted for, but was an additional R7.8m per month.⁶⁹⁶
492. Mr Agrizzi testified that, after the award of the contract, he was called into a meeting with Mr Dikane, Mr Gumede and Mr Leshabane (all directors of Bosasa). At the meeting, he was rewarded for all the good work he had done for Bosasa by being told to trade in his Audi A6 for a new Audi A6 with Bosasa covering the shortfall of approximately R174,000.⁶⁹⁷

⁶⁹⁰ Transcript, day 37, pp 134-135.

⁶⁹¹ Transcript, day 37, p 136.

⁶⁹² Transcript, day 37, pp 136-137.

⁶⁹³ Transcript, day 37, p 137.

⁶⁹⁴ Transcript, day 37, p 138.

⁶⁹⁵ Transcript, day 37, p 138.

⁶⁹⁶ Transcript, day 37, p 139.

⁶⁹⁷ Transcript, day 37, p 141.

The fencing contract

493. In June 2005 Mr Watson informed Mr Agrizzi that high security fencing at the DCS was a business opportunity for Bosasa. From the discussion it was evident that Mr Watson was aware that the DCS required a solution.⁶⁹⁸ According to Mr Agrizzi, Bosasa had never previously provided fencing and did not have the internal capacity to do so.⁶⁹⁹
494. An agreement was reached for Mr Watson to acquire 26% of the South African branch of Beta Fence.
495. Mr Agrizzi attended a meeting with Mr Watson, Mr Mansell, Michael Roodenburg (“**Mr Roodenburg**”) the Managing Director of Beta Fence, JP Hobbs (an engineer), and Riaan (Mr Agrizzi could not recall Riaan’s surname). Riaan and Mr Hobbs were from the companies Teq-con and Modutech.⁷⁰⁰ Mr Agrizzi read up on the specifications used for high security applications and learned that the fence is made up of the Bode Mesh from Beta Fence and the taut wire system (which triggers an alarm when touched) from Modutech.⁷⁰¹ It later became clear to Mr Agrizzi that this had been put together by Mr Mansell, Mr Roodenburg, Riaan and Mr Hobbs to capture the fencing business at the DCS.⁷⁰² The arrangement was that there would be cooperation between the various entities (Sondolo IT, Modutech and Beta Fence) with the prospect of supplying security fencing to the DCS.⁷⁰³

⁶⁹⁸ Transcript, day 38, pp 9-10.

⁶⁹⁹ Transcript, day 38, p 9.

⁷⁰⁰ Transcript, day 38, p 11.

⁷⁰¹ Transcript, day 38, pp 10-11.

⁷⁰² Transcript, day 38, p 12.

⁷⁰³ Transcript, day 38, p 13.

496. Due to the controversy about the Bosasa Group at the time – Messrs Watson, Mansell and Perry negotiated with Roodenburg and his wife, Jean, as well as with Gloria Josephs ("**Ms Josephs**") to buy a company owned by the Roodenburgs and Josephs (the majority shareholders) called Phezulu Fencing.⁷⁰⁴ The sale would only go through (i.e. the shareholding would only be transferred) once the contract had been awarded to Phezulu Fencing by the DCS.⁷⁰⁵ The Bosasa Trusts (Bopa and Phafoga) were the buyers.⁷⁰⁶ The management of Phezulu Fencing was immediately taken over by Bosasa.⁷⁰⁷
497. The Roodenburgs and Josephs would transfer their shareholding for a "nominal fee of a few million Rands", and would retain an interest by subcontracting through Gordian (Pty) Ltd.⁷⁰⁸
498. Mr Agrizzi testified that at the same time a supply agreement was entered into between Beta Fence and Phezulu Fencing where Beta Fence would supply all fencing material to Phezulu Fencing at a lower or "base cost".⁷⁰⁹ The fence was patented and sold at a premium price to any other customer, including any potential competitors of Phezulu Fencing.⁷¹⁰ Beta Fence benefited by obtaining the contract and the black economic empowerment obtained through the transfer of the 26% shareholding to the Bosasa Trusts.⁷¹¹ Mr Agrizzi arranged with Beta Fence to pay the dividends in respect of the shareholders into the attorney's trust account of Mr Biebuyck who was

⁷⁰⁴ Transcript, day 38, p 13.

⁷⁰⁵ Transcript, day 38, p 13.

⁷⁰⁶ Transcript, day 38, p 15.

⁷⁰⁷ Transcript, day 38, p 15.

⁷⁰⁸ Transcript, day 38, p 14, p16.

⁷⁰⁹ Transcript, day 38, p 17.

⁷¹⁰ Transcript, day 38, p 17.

⁷¹¹ Transcript, day 38, p 18.

instructed to transfer the money to Bosasa Operations. The dividends were not paid to the two trusts. The rationale for doing so, Mr Agrizzi testified, was because the shareholders reflected on paper were actually not shareholders and so did not get the dividends.⁷¹²

499. At this stage there was no public announcement of such a tender being issued.⁷¹³ According to Mr Agrizzi, the various arrangements were put in place because of a preceding discussion between Bosasa and the DCS (Mr Mti and Mr Gillingham).⁷¹⁴
500. As it was contemplated that the fencing would be provided for all correctional facilities throughout the country, various companies were approached to act as subcontractors to Phezulu Fencing.⁷¹⁵ The companies included Live Wire (Pty) Ltd, Gordian (Pty) Ltd, Mavundla Ironclad (Pty) Ltd, L&J Civils (Pty) Ltd and another company represented by Jaco Pitso⁷¹⁶ (Siyaya Fencing).⁷¹⁷
501. Mr Agrizzi testified that Mr Mansell compiled the specifications document for 47 correctional facilities for fencing, security and taut wire before any tender was issued.⁷¹⁸ Bosasa personnel also had access to the DCS sites in order to survey the sites to assist in the preparation of the specifications and any bid document that would be submitted in the future.⁷¹⁹ According to Mr Agrizzi, Bosasa was advantaged in that it had undertaken all of the work required before the tender was advertised.⁷²⁰ These

⁷¹² Transcript, day 38, pp 86-87.

⁷¹³ Transcript, day 38, p 19.

⁷¹⁴ Transcript, day 38, p 24.

⁷¹⁵ Transcript, day 38, p 22.

⁷¹⁶ Transcript, day 38, p 23.

⁷¹⁷ Transcript, day 38, p 36.

⁷¹⁸ Transcript, day 38, p 25.

⁷¹⁹ Transcript, day 38, p 26.

⁷²⁰ Transcript, day 38, p 27.

surveys took place over a period of two to three months before the tender was advertised.⁷²¹

502. Mr Agrizzi maintained oversight of the team that put the tender together on behalf of Phezulu Fencing, which was done in conjunction with various representatives from the other fencing companies that were to bid separately.⁷²² One evening, Mr Agrizzi came across the representatives of the various fencing companies working on the bid together in a boardroom at the Bosasa offices.⁷²³ When he raised his concerns, he was told not to worry and that it was under control.⁷²⁴ The fencing companies would also put in a separate bid in their own companies' name at a different price so that it would not look obvious that it was only Phezulu Fencing bidding.⁷²⁵

503. The fencing tender was advertised by the DCS on 14 October 2005.⁷²⁶ The contract was awarded to Phezulu Fencing on 29 November 2005.⁷²⁷ The tender allowed for less than six weeks (approximately four weeks) to prepare and submit the documents, which was virtually impossible to do for any competitor in respect of the bid.⁷²⁸ According to Mr Agrizzi, the DCS would have been aware of and appreciated this fact.⁷²⁹

⁷²¹ Transcript, day 38, p 35.

⁷²² Transcript, day 38, p 30.

⁷²³ Transcript, day 38, pp 30-31.

⁷²⁴ Transcript, day 38, p 31.

⁷²⁵ Transcript, day 38, p 33.

⁷²⁶ Transcript, day 38, p 36.

⁷²⁷ Transcript, day 38, p 37.

⁷²⁸ Transcript, day 38, p 37, p 40.

⁷²⁹ Transcript, day 38, p 41.

504. The value of the contract was R486,937,910.⁷³⁰ As with the catering tender, Mr Agrizzi testified that the figures were manipulated in order to grow the tender.⁷³¹ The maintenance contract linked to the fencing that was installed ran for a period of three years, was billed separately and was internally awarded from Phezulu Fencing to Sondolo IT.⁷³² The maintenance contract did not go through a tender process.⁷³³

505. Mr Agrizzi was of the view that Mr Watson and his family were the ultimate beneficiaries of the DCS fencing contract.⁷³⁴

Integrated computerised offender management system and television contract

506. In late 2005 Mr Gillingham informed Mr Agrizzi and Mr Mansell that the DCS was interested in a centrally distributed television management program. Under this system each cell, across the country, would have a television screen that would be able to be programmed so that the head of a prison could decide what would be watched and distributed on the television, to network and create a system where addresses by, for example, the Minister could be streamed nationally.⁷³⁵ The rating of the system was required to be Ingress Protection 65 to ensure that the unit was waterproof and vandal resistant.⁷³⁶

507. Also at this time Mr Mansell and Mr Watson received information in discussions with Mr Gillingham and Mr Mti that the DCS had surplus funds in their budget that they

⁷³⁰ Transcript, day 38, p 41.

⁷³¹ Transcript, day 38, p 41.

⁷³² Transcript, day 38, p 42.

⁷³³ Transcript, day 38, p 42.

⁷³⁴ Transcript, day 38, p 44.

⁷³⁵ Transcript, day 38, p 45.

⁷³⁶ Transcript, day 38, p 46.

needed to use quickly in order to prevent it from going back to National Treasury.⁷³⁷

Mr Agrizzi testified that he learned of this and was instructed to design a system that incorporates an interfaced system to plug in other value adds such as cell phone detection and thermal imaging.⁷³⁸

508. Mr Agrizzi testified that Bosasa was also given the documents necessary to design an integrated computerised offender management system, based on "*all the DCS forms*".⁷³⁹ As far as Mr Agrizzi could recall, Mr Gillingham spent time with some of the people in the Bosasa IT division in the course of the design process. The design (specifications document) was given to Mr Mansell and Mr Gillingham. Mr Agrizzi was then instructed by Mr Watson to have a specifications document drawn up. The document was drafted by Mr Agrizzi and, without their knowing of anything untoward, Elandre Fourie from Pinnacle Micro (Pty) Ltd.⁷⁴⁰

509. The invitation to bid was only advertised on 14 October 2005, after the design process had gone into it.⁷⁴¹ Mr Agrizzi was instructed to respond to the invitation to bid through Sondolo IT.⁷⁴² According to Mr Agrizzi, he was aware that Sondolo IT would be awarded the contract, which award took place on 3 March 2006.⁷⁴³ The initial contract value was R224,364,480.⁷⁴⁴

⁷³⁷ Transcript, day 38, p 46.

⁷³⁸ Transcript, day 38, p 46, p 47.

⁷³⁹ Transcript, day 38, p 48.

⁷⁴⁰ Transcript, day 38, p 48.

⁷⁴¹ Transcript, day 38, p 49.

⁷⁴² Transcript, day 38, p 50.

⁷⁴³ Transcript, day 38, pp 50 -51

⁷⁴⁴ Transcript, day 38, p 51.

510. In 2006 Mr Watson instructed Mr Perry to register a company, Lianorah Investments, on behalf of Mr Mti.⁷⁴⁵
511. Mr Agrizzi testified that the negative publicity concerning Bosasa and its relationship with government departments, including the DCS, started around 2005, predominantly in the Beeld and Die Burger newspapers.⁷⁴⁶ Mr Watson, Mr Mti and Mr Gillingham were mentioned by name in the articles.⁷⁴⁷

Interactions with the various officials of the DCS

Patrick Gillingham

512. As set out above, Mr Gillingham was the CFO of the DCS.
513. Mr Vorster testified that, after the catering contract had been awarded to Bosasa in 2004, Mr Watson instructed him to meet with Mr Gillingham and assist him to acquire a vehicle. Mr Gillingham was looking for a Mercedes Benz E270. At that stage, he was driving a gold Mercedes Benz which he sold to Bosasa for R155,000 despite its trade-in value being between R80,000 and R90,000. The money from Bosasa was deposited into Mr Gillingham's personal bank account. Mr Vorster confirmed that he negotiated this deal.⁷⁴⁸
514. Mr Vorster testified to three other occasions when he assisted Mr Gillingham obtain a vehicle because he was able to negotiate the best deals:

⁷⁴⁵ Transcript, day 38, p 52.

⁷⁴⁶ Transcript, day 39, p 59.

⁷⁴⁷ Transcript, day 38, pp 59-60. See also Annexure K.

⁷⁴⁸ Transcript, day 43, p 106.

- 514.1. In 2005, Mr Watson told Mr Vorster to assist Mr Gillingham who needed a car for his wife. Mr Gillingham indicated that he would love to buy a VW Golf for his wife. Mr Vorster went to the Volkswagen in The Glen and negotiated the deal. Mr Vorster was not involved in the financing of this deal but knew that Dr Smith had deposited money into Mr Gillingham's account so that he could settle the vehicle. In addition, Mr Vorster issued Bosasa with an order for the extras on the vehicle, which it paid.⁷⁴⁹
- 514.2. In April 2006 Mr Watson phoned Mr Vorster and said that Mr Gillingham required a vehicle for his second son. Mr Vorster then went to the Volkswagen dealership in Krugersdorp and negotiated the deal which was paid for by Mr Mansell through his company.⁷⁵⁰
- 514.3. Mr Vorster testified that Mr Watson instructed him that Mr Gillingham required a new Mercedes Benz E320. Mr Vorster ordered the vehicle from Constantia Kloof Motors in his own name because he did not have a new residential address for Mr Gillingham. This aligns with the version of Mr Agrizzi.⁷⁵¹ When the vehicle arrived, Mr Vorster was told that he could only transfer the vehicle to a family member or a partner in business. He stated: *"I was basically forced to go and buy a Shelf CC"* which was Oak Ridge Trading 114 CC to demonstrate that Mr Gillingham and Mr Vorster were partners.⁷⁵²
- 514.4. In addition, R180,000 had to be paid in on this vehicle. Bosasa paid this money and it went through a few bank accounts. The plan was for Mr Agrizzi to loan Mr Vorster his bonus money. To this end, Bosasa paid the money to Mr Agrizzi

⁷⁴⁹ Transcript, day 43, p 108.

⁷⁵⁰ Transcript, day 43, p 108.

⁷⁵¹ Transcript, day 38, p 105.

⁷⁵² Transcript, day 43, p 111.

who transferred it to Mr Bonifacio. Mr Bonifacio transferred it to a woman who worked for him who, in turn, transferred it back to Bosasa. Mr Vorster told Mr Bonifacio to pay the bonus directly into Mr Gillingham's account. Bosasa then paid the money directly into Mr Gillingham's account. Mr Vorster explained that the "zigzag trip" of the money was intended to confuse any person investigating the payments.⁷⁵³ This version differs somewhat from Mr Agrizzi's version that he paid an amount of R150,000 to Mr Bonifacio as a loan, who in turn paid the money to Constantia Kloof Motors.⁷⁵⁴

514.5. Mr Vorster was then subjected to a fake disciplinary hearing at the time the SIU investigated the matter. The purpose of this was to mislead the investigation into payments to Mr Gillingham so that the company was not implicated.⁷⁵⁵

514.6. Mr van Tonder testified that he was present at a meeting where a Bosasa attorney drafted an agreement in terms of which Mr Vorster advanced R180,000 to Mr Gillingham to purchase the vehicle.⁷⁵⁶ The cost of this loan was ultimately carried by Bosasa.⁷⁵⁷ This credit agreement was confirmed by Vorster who attached a copy of it to his statement.⁷⁵⁸ He indicated that the agreement was necessary to conceal the true nature of the transaction given the SIU investigation.⁷⁵⁹

⁷⁵³ Transcript, day 43, pp 114 and 115.

⁷⁵⁴ Transcript, day 38, p 106.

⁷⁵⁵ Transcript, day 43, p 116; Mr Vorster's statement, p 19.

⁷⁵⁶ Transcript, day 43, p 83.

⁷⁵⁷ Transcript, day 43, p 84.

⁷⁵⁸ Mr Vorster's statement, from p FHSV 009.

⁷⁵⁹ Transcript, day 43, p 120; Mr Vorster's statement, p 9.

515. Mr Agrizzi testified that Mr Watson also instructed Mr van Tonder to purchase a new Volkswagen Polo for Mr Gillingham's daughter from the Glen in Alberton.⁷⁶⁰ Mr Vorster confirmed that Mr van Tonder dealt with the purchase of this vehicle.⁷⁶¹ Payment for the vehicles were made from Mr van Tonder's personal accounts via electronic transfers.⁷⁶² In return, a bonus would be paid to Mr van Tonder, via Consilium.⁷⁶³

516. Mr van Tonder corroborated this evidence and elaborated on the financing of the purchase of the car for Mr Gillingham's daughter as follows:

516.1. The purchase of this vehicle was facilitated by Mr van Tonder following an instruction to do so by Mr Watson.⁷⁶⁴ Mr van Tonder informed Mr Agrizzi and Dr Smith about this instruction. He explained that Mr Watson's expectation was that one would *"leave everything as is and immediately attend to what he has instructed you to do"*.⁷⁶⁵

516.2. Mr van Tonder testified that he arranged for a cash cheque to be made out by the accounts department so that cash could be drawn and then deposited in the Volkswagen dealership's bank account. This cash cheque required two signatories. Mr van Tonder signed it and sent it to Dr Smith for signature. Dr Smith later informed him that the vehicle could not be paid for by way of a cash deposit. Dr Smith informed Mr van Tonder that he had discussed the matter with Mr Watson and Mr Watson had instructed him to do as he saw fit.

⁷⁶⁰ Transcript, day 38, p 105.

⁷⁶¹ Transcript, day 43, p 109.

⁷⁶² Transcript, day 38, pp 105-106.

⁷⁶³ Transcript, day 38, p 106.

⁷⁶⁴ Transcript, day 43, p 7.

⁷⁶⁵ Transcript, day 43, p 7.

Dr Smith, therefore, required the following financial arrangement to be implemented:

- 516.2.1. Mr van Tonder was required to sign a personal loan agreement with Dr Smith. In turn, Dr Smith transferred the money from his personal bank account into van Tonder's personal bank account.
- 516.2.2. Mr van Tonder then transferred the funds into the bank account of the Volkswagen dealership in The Glen. The vehicle was, however, registered in Megan Gillingham's name.
- 516.2.3. After one or two months, Bosasa transferred the money plus an amount for tax and interest payable in terms of the loan agreement to Consilium.
- 516.2.4. The money plus interest was then transferred from Consilium to Mr van Tonder's personal bank account. To the best of his knowledge, the tax was deducted and dealt with within Consilium.⁷⁶⁶
- 516.3. The above arrangement was a mechanism to permit Bosasa to pay for the vehicle without it reflecting that it did so.⁷⁶⁷
- 516.4. Mr van Tonder did not retain a copy of the loan agreement referred to above. The original was handed to the legal team that assisted Bosasa during the SIU investigation.⁷⁶⁸

⁷⁶⁶ Transcript, day 43, pp 7 to 9; Mr van Tonder's Affidavit, pp 7 and 8 at para 36.

⁷⁶⁷ Transcript, day 43, p 11.

⁷⁶⁸ Transcript, day 43, p 10.

517. Mr Agrizzi's supplementary affidavit narrates that his interaction with Mr Gillingham was strictly on instruction from both Mr Watson and Mr Mansell and was limited to the occasional email or when Mansell asked Mr Agrizzi to provide feedback to Mr Gillingham. This was between 2004 to 2006.⁷⁶⁹
518. Mr Agrizzi did not initially know about any payments or promises or any arrangements with Mr Gillingham. When Mr Mansell left to go to the United States, Mr Agrizzi was roped in to deal with Mr Gillingham in 2008/2009.⁷⁷⁰
519. When Mr Agrizzi began engaging Mr Gillingham directly, more information started coming out. This included that in 2004 Mr Watson had arranged for the Gillingham and Mansell families to go on holiday to a game reserve. The purpose of this trip was to settle transactions and to make sure that Mr Gillingham was 100% on board. Mr Agrizzi explains in his Supplementary Affidavit that Mr Gillingham had requested that, in return for all the tenders he had arranged for Bosasa and extensions of same, Bosasa to build him a new house as well as other gratifications.⁷⁷¹
520. Mr Agrizzi referred to the video played during the Commission's proceedings where Mr Watson said to Mr van Tonder that Biebuyck would now deal with Mr Gillingham.⁷⁷²
521. It was only when he read the SIU Report that Mr Agrizzi realised the full extent of the corrupt practices between Mr Watson, Mr Bosasa, Mr Mti, Mr Mansell and Mr Gillingham.⁷⁷³ He then confronted Mr Watson.⁷⁷⁴

⁷⁶⁹ Transcript, day 75, p 98; Mr Agrizzi's Supplementary Affidavit, p 19 at par 19.1.

⁷⁷⁰ Transcript, day 75, pp 99 and 104.

⁷⁷¹ Mr Agrizzi's Supplementary Affidavit, p 19 at par 19.3.1.

⁷⁷² Transcript, day 75, p 99.

⁷⁷³ Transcript, day 75, p 98; Mr Agrizzi's Supplementary Affidavit, p 19 at par 19.3.

⁷⁷⁴ Transcript, day 75, p 99.

522. According to Mr Agrizzi, Riekele built Mr Mti's house and was also involved in building a house for Mr Gillingham at Midstream Estate.⁷⁷⁵ Mr Vorster testified that it was "common knowledge" that Mr Hoeksma and Riekele built Gillingham's house as well as Mr Mti's house in Savannah Hills.⁷⁷⁶
523. Mr Agrizzi testified that Riekele had been given a lot of work by Bosasa, including at Lindela and two hostels. Bosasa paid for the costs of the construction of the houses via companies which Mr Mansell had set up to handle these transactions called Grande Four and L&J Civils.⁷⁷⁷ He testified further that false invoices were submitted by Grande Four to Bosasa. Mr Agrizzi said that he specifically recalled Grande Four because he previously had to look for it during a clean-up at Bosasa.⁷⁷⁸ The process of cleaning up the invoices entailed Mr Agrizzi and Mr van Tonder going into the records to find every single invoice that referred to Grande Four or L&J Civils to pull those invoices, change and replace the invoices with some other description.⁷⁷⁹
524. Mr van Tonder explained that the expenses incurred in the building of houses for Mr Mti and Mr Gillingham were accounted for Bosasa's books in the "normal way" as if they were expenses or capital expenses incurred by the company itself (i.e. as legitimate business expenses), given that these expenses coincided with the renovation of company property. Mr van Tonder testified that this was an unlawful reflection of the expenses to SARS.⁷⁸⁰

⁷⁷⁵ Transcript, day 38, p 61.

⁷⁷⁶ Transcript, day 43, p 122.

⁷⁷⁷ Transcript, day 38, p 61.

⁷⁷⁸ Transcript, day 75, p 100; Mr Agrizzi's Supplementary Affidavit, p 20 at par 19.2.2

⁷⁷⁹ Transcript, day 75, p 100.

⁷⁸⁰ Transcript, day 43, p 6.

525. The false invoices were documented in the books and the originals were destroyed when the SIU Report came out.⁷⁸¹ Incriminating evidence was removed and replaced with dummy invoices – invoices were swapped because references could not be removed from the Microsoft System at that stage.⁷⁸² According to Mr Agrizzi, the costs for work being done by Bosasa for government entities were inflated and the monies were used to pay for the building of the houses of Mr Mti and Mr Gillingham.⁷⁸³
526. Mr Agrizzi discovered that Mr Hoeksma used the architect HMZ Architects who also drew up the plans for Mr Mti's house. He noted that Bosasa was billed for the work. Mr Agrizzi referred to this as being a slip up that could not be cleaned up on the system. Mr Hoeksma and Riekele came up with an excuse that they would offer in the event that they were questioned on this.⁷⁸⁴
527. Mr Agrizzi asked Mr Watson why they had to do this and put themselves in this position. Mr Watson responded that, if they did not do it, somebody else would have and somebody else would have got the opportunity.⁷⁸⁵
528. Mr Agrizzi took cash and gave it to Mr Gillingham. He was told exactly what the package of cash was and in a subsequent meeting between Mr Gillingham and Mr Watson and himself, he was told by them that Mr Gillingham was getting at least R47,500 per month on the 25th of every month.⁷⁸⁶ Mr Agrizzi was also informed that Mr Gillingham was entitled to an international holiday once per year. It was reiterated by Mr Mansell that Bosasa would pay for Mr Gillingham's holiday as well and any

⁷⁸¹ Transcript, day 38, pp 61-62.

⁷⁸² Transcript, day 38, p 62.

⁷⁸³ Transcript, day 38, p 63.

⁷⁸⁴ Transcript, day 75, p 101.

⁷⁸⁵ Transcript, day 75, pp 100-101.

⁷⁸⁶ Transcript, day 75, p 102; day 75, p 120; Mr Agrizzi's Supplementary Affidavit, p 24 at par 20.3

special requirements that he may need.⁷⁸⁷ Mr Agrizzi explained he tried to meet with Mr Gillingham only once a month and that his credit card slips should show this. The meetings usually occurred at a coffee shop or restaurant.⁷⁸⁸

529. The content of these meetings was to discuss operational issues that might have come up in the DCS. These issues were about who they should be careful of so that Bosasa knew how to manipulate the situation to deal with them. On one occasion, Mr Gillingham requested that a private investigator be appointed to see what was happening at a meeting held in the Drakensberg. In essence, Mr Agrizzi explained that these meetings would solidify Bosasa's presence at the DCS.⁷⁸⁹

530. Mr Watson instructed Mr Agrizzi to arrange (draft and conclude) fictitious loan agreements between Mr Gillingham and the various Bosasa employees for all the money and benefits that Mr Gillingham had received.⁷⁹⁰ Mr Agrizzi did so.

531. Mr Agrizzi testified that he was also instructed by Mr Watson to prepare a declaration on behalf of Mr Gillingham that the monies and benefits he had received were in fact loans, which declaration was to be backdated and approved by Mr Mti.⁷⁹¹ Mr Gillingham signed the declaration and Mr Agrizzi took the declaration to Mr Mti. They met at the Protea Hotel in Midrand.⁷⁹² Initially, Mti did not want to sign the declaration, but did so after Mr Agrizzi telephoned Mr Watson who spoke to Mr Mti. After the

⁷⁸⁷ Transcript, day 75, p 103.

⁷⁸⁸ Transcript, day 75, p 103.

⁷⁸⁹ Transcript, day 75, p 104.

⁷⁹⁰ Transcript, day 38, p 109.

⁷⁹¹ Transcript, day 38, p 110.

⁷⁹² Transcript, day 38, p 110.

telephone discussion between Mr Watson and Mr Mti, Mr Mti signed and backdated the declaration in the presence of Mr Agrizzi.⁷⁹³

532. Gillingham provided the letterhead of the DCS to Mr Agrizzi, who typed the declaration.⁷⁹⁴ The declaration was attached as annexure L to Mr Agrizzi's Initial Affidavit and –

532.1. was signed by Mr Gillingham and addressed to Mr Mti;

532.2. reads:

"Our personal discussion on this matter refers. Since the document which is designed for the disclosure of the financial status for SMS members does not make provision for the information on personal loans, I wish to bring the following to your attention as discussed. I have entered into personal agreements/arrangements with private individuals for assistance for my house and other personal assets. I wish to place on record that these individuals are not members of this Department, nor are they employed by government. For your information and record purposes."⁷⁹⁵

532.3. was dated 12 April 2006;

532.4. was signed by Mr Gillingham and Mr Mti;

532.5. contained a handwritten note by Mr Mti in the bottom right hand corner that reads:

"Noted. Please ensure that this does not interfere with your job or rather has no conflict of interest to the Department."⁷⁹⁶

⁷⁹³ Transcript, day 38, p 111, pp 114-115.

⁷⁹⁴ Transcript, day 38, p 112.

⁷⁹⁵ Transcript, day 38, pp 112-113; annexure L, p 350.

⁷⁹⁶ Transcript, day 38, p 114; annexure L, p 350.

533. Mr Agrizzi explained that in the video that was played before the Commission in Mr Watson's vault where a conversation took place as to how Mr Gillingham's gratuity or money was to be dealt with, an amount of R110,000 was mentioned.⁷⁹⁷ Mr Agrizzi was asked to explain how this amount was to be reconciled with the R47,500 that he had mentioned earlier in his testimony.⁷⁹⁸
534. The amount of R47,500 was the same amount that Mr Gillingham received on his salary slip. When Mr Gillingham was suspended and he subsequently resigned, this amount was doubled up so that he got approximately R95,000. There was an additional R2,000 added for cell phone costs and there were contributions to medical aid. That is how the amount of R110,000 was determined. This amount was paid over to Mr Gillingham for a period of about four years.⁷⁹⁹
535. Mr Agrizzi was asked to elaborate on his statement that he only understood the full extent of wrongdoing in relation to the DCS in and around 2009. Mr Agrizzi conceded that he had known something was up even prior to the issue of the tender documents and that he knew that cash was going out. Mr Agrizzi said that he did not know how much cash was going out, but thought Mr Gillingham and Mr Watson were good friends and had come a long way, but he also knew that Mr Watson had made sure that he "entrapped" both Mr Mti and Mr Gillingham with cash.⁸⁰⁰ This was before 2009. Mr Agrizzi explained that the problem came in when he found out about the houses because at that stage he realised that he had been excluded from certain things. There were also transactions that went through such as Mr Taverner and his family

⁷⁹⁷ Transcript, day 75, p 104.

⁷⁹⁸ Transcript, day 75, p 105.

⁷⁹⁹ Transcript, day 75, p 105.

⁸⁰⁰ Transcript, day 75, p 107.

businesses buying furniture that Mr Agrizzi did not know about. He only learnt about this information in the SIU Report.⁸⁰¹

536. In 2008 Mr Agrizzi received what he referred to as a frantic call from Mr Gillingham to advise him that he had been raided by the SIU and that they had taken amongst other things his computer and had seen his safe with the cash in it. In addition, the SIU had found a Consilium business card with Mr Gillingham's name on it.⁸⁰² Mr Agrizzi said he was astounded that there was a Consilium business card with Mr Gillingham's name on it and this did not make sense to him. Nevertheless, Mr Agrizzi had to rush through to go to see Mr Gillingham on Mr Watson's instruction to make sure that there was nothing else left. Mr Agrizzi described that it was interesting that, when the SIU raided Mr Gillingham, they did not check the garage that contained boxes which had files and files of "*important stuff*".⁸⁰³

537. Mr Agrizzi described the Consilium business card as making him aware that there was something much deeper going on with Mr Gillingham. Mr Agrizzi confronted Dr Smith who had printed the business cards for Mr Gillingham. Dr Smith informed Mr Agrizzi that he was instructed by Mr Watson to do so because Mr Gillingham was to accompany Mr Watson to see manufacturers and suppliers of goods and Mr Watson wanted people to think that Mr Gillingham was the CFO and had an interest in the business. Mr Agrizzi explained the rationale for this strategy was to strongarm the owner of the business to hand over a 26% stake in their company in return for business at the DCS.

⁸⁰¹ Transcript, day 75, p 107 and 108.

⁸⁰² Transcript, day 75, p 108; Mr Agrizzi's Supplementary Affidavit, p 22 at par 19.12.

⁸⁰³ Transcript, day 75, p 109; day 38, p 108.

538. When Mr Watson went to see Mr Gillingham, he was told that Mr Gillingham had been suspended from his position by the then National Commissioner of DCS, Mr Vernie Petersen.⁸⁰⁴
539. The morning after the raid at Mr Gillingham's house, Mr Watson came to Mr Agrizzi's office to request that he see Mr Mti at his house in Midstream Estate. After that meeting, he went to see Mr Gillingham to make sure⁸⁰⁵ that they calmed him and that there were no mistakes to be made. They later met with Mr Gillingham in the car park of the shopping centre close to his house during which time Mr Watson told Mr Gillingham not to be concerned. Mr Gillingham's biggest concern at that stage was his pension fund as he was not worried about losing his job because he knew he was going to be receiving R110,000 per month from Bosasa. Mr Watson informed Mr Gillingham not to worry about his pension fund as Bosasa would stand in to cover that amount as well. On the way back, Mr Watson asked Mr Agrizzi to determine the value of Mr Gillingham's pension fund and to make a contingency available for such funds. During the meeting, Mr Watson also told Mr Gillingham not to worry about his legal fees as these were being paid for by Bosasa. Mr Watson instructed Mr Agrizzi to utilise an arm's length company to do so.⁸⁰⁶ The purpose of creating this arm's length company was to ensure that the payment of Mr Gillingham's legal fees could not be traced back to Mr Watson.

⁸⁰⁴ Transcript, day 75, p 109.

⁸⁰⁵ Note: Mr Agrizzi referred to Midstream Estate but may have meant Savannah Hills, Gillingham had a house in Midstream Estate and Mti lived in Savannah Hills.

⁸⁰⁶ Transcript, day 75, p 110.

540. Mr Agrizzi testified that Mr Watson had informed him that Mr Gillingham and Mr Mti had been loyal to Bosasa and Mr Agrizzi surmised that there must have been some agreement between them to look after these individuals for the rest of their lives.⁸⁰⁷
541. When asked if Mr Watson had explained how Mr Gillingham and Mr Mti had assisted Bosasa, Mr Agrizzi elaborated that Mr Watson had said that all the tenders and all the business of the DCS came through Mr Mti and Mr Gillingham. This was despite the fact that Mr Mti was the Commissioner and had no right to sign a contract. This is because instructions were given to make it happen. *"[Mr] Mti just made sure he put the right people in place, signed off the applications and that is how it happened"*.⁸⁰⁸
542. When asked what arrangements were made to assist Mr Gillingham in relation to his suspension and its outcome, Mr Agrizzi said that Mr Watson asked to meet Mr Seopela in a building in Johannesburg close to the Court at a firm called BDK Attorneys. Mr Seopela introduced Mr Agrizzi to Mr Ian Small-Smith who had successfully assisted someone else in government to avoid the consequences of a search warrant. Mr Small-Smith was apparently highly rated and he wanted to know what happened with Gillingham. Mr Small-Smith was told to send his invoices through to either Mr van Tonder or Mr Agrizzi to arrange payment.⁸⁰⁹ Mr Agrizzi stated that there was nothing untoward with Mr Small-Smith's engagement, given that he was simply engaged to assist Mr Gillingham with a potential legal suit.

⁸⁰⁷ Transcript, day 75, p 111.

⁸⁰⁸ Transcript, day 75, p 111.

⁸⁰⁹ Transcript, day 75, p 112.

543. Mr Agrizzi conceded that his information that Mr Small-Smith had assisted another government official avoid a search warrant by taking the documents and ensuring they burnt them before the Scorpions got hold of them was unsubstantiated hearsay.⁸¹⁰
544. Mr van Tonder testified that Mr Gillingham's legal fees during the SIU investigation were paid to BDK Attorneys by Bosasa through a close corporation called Sinkoprop CC.
545. Mr Agrizzi testified that Mr Watson reiterated that they needed to use one of the companies he had registered in the name of van Tonder and Mr Agrizzi called Sinkoprop No 8(Pty) Ltd, to cover the costs for Mr Gillingham's legal matter. This appears to be the same entity referred to by Mr van Tonder, although there is something of a discrepancy in how they described the company. Mr Agrizzi testified that he originally understood that the company had a property at the Ruimsig Golf Club. Although Mr Agrizzi initially thought it was very nice of Mr Watson to do so (presumably in transferring the shares in the company to him and Mr van Tonder), he later realised that there was no value in the company, describing the property held by the company as "*a hole in the ground*" and "*a disaster*".⁸¹¹
546. Mr van Tonder testified that Sinkoprop belonged to Mr Watson and it owned property in Ruimsig which was donated to Mr Agrizzi and him as an incentive. Sinkoprop was ultimately liquidated and the property was transferred to another entity known as Spilacraft which belonged to Mr Agrizzi and Mr van Tonder.⁸¹²

⁸¹⁰ Transcript, day 75, p 113.

⁸¹¹ Transcript, day 75, p 113; day 38, p 107.

⁸¹² Transcript, day 43, p 71.

547. Mr Agrizzi explained that Sinkoprop was an intermediary company used to effect payments for legal fees as well as to enable other payments to go through it.⁸¹³
548. In his supplementary affidavit, Mr Agrizzi notes that he was not aware of what payments were made to Mr Gillingham until he was instructed to handle Mr Gillingham. Further, Mr Agrizzi could not attest to what all the benefits were other than what is reflected in the SIU Report.
549. During the course of 2015 there were talks again about the SIU Report and Mr Gillingham complained that he had been short-changed and insisted on being paid a salary *via* a company. Mr Agrizzi suggested that they put him on the Consilium payroll so he could show employment and get UIF payments done. Mr Agrizzi recalls Mr Watson coming to him the next morning and saying that he had met Dr Smith and they did not want to put Mr Gillingham onto the Consilium payroll, but rather they should use an arm's-length company, BEE Foods, which was owned by Mr Taverner.⁸¹⁴
550. Mr Gillingham never worked for BEE Foods but he received a salary and vehicle from it.⁸¹⁵ Mr Agrizzi estimated that the arrangement to pay Mr Gillingham through BEE Foods was made in and around 2015. However, he noted that he was not good with dates and names. However, Mr Agrizzi suggested that the UIF payments made to Gillingham be considered to determine this.⁸¹⁶

⁸¹³ Transcript, day 75, p 114; day 76, p 132.

⁸¹⁴ Transcript, day 75, p 121.

⁸¹⁵ Transcript, day 75, p 122.

⁸¹⁶ Transcript, day 75, p 122.

551. Other benefits to Mr Gillingham included payment of his legal fees during his divorce from Bosasa funds retained in the Hogan Lovells trust account.⁸¹⁷ When a divorce settlement was reached between Gillingham and his wife, Mr Agrizzi was instructed to pay the settlement amount of R2.2m from the Bosasa funds held in this trust account.⁸¹⁸ In his affidavit to the Commission, Mr Blake confirms that various travel and vehicle hire arrangements were booked and paid for by Bosasa for Mr Gillingham and his family. Mr Blake confirms that he did not receive any direct payment from Mr Gillingham or his wife for any of the bookings.⁸¹⁹
552. Mr Agrizzi was referred to the evidence on record about the vehicle purchased for Mr Gillingham's child, Megan Gillingham, and he commented that whenever Mr Watson committed to doing something for someone, he wanted it done immediately. The purchase of Mr Gillingham's daughter's car happened just before Christmas and Mr Agrizzi had to leave everything and meet up with Mr van Tonder at a Volkswagen dealership at the Glen in Alberton where they purchased a Polo for her.⁸²⁰ Mr Agrizzi commented that, if you were doing something for Mr Watson, he would go out of his way to make everything happen for you.⁸²¹
553. In 2016 Mr Gillingham's son, Patrick, was implicated in using funds from his employer, Bakwena. Mr Agrizzi testified that he had to get a top labour lawyer to assist and ultimately there was a payment of R700,000 due to Bakwena. It was explained in Mr Agrizzi's Supplementary Affidavit that he was told to intervene and arrange the payment of this amount. In this regard, Mr Watson instructed him to draft a one-page

⁸¹⁷ Transcript, day 75, p 129; Mr Agrizzi's Supplementary Affidavit, p 24 at para 20.5.

⁸¹⁸ Transcript, day 75, p 129; Mr Agrizzi's Supplementary Affidavit, p 25 at para 20.7.

⁸¹⁹ Mr Blake's affidavit, Exhibit T18, pp 19-20 at paras 42-43.

⁸²⁰ Transcript, day 75, p 129; Mr Agrizzi's Supplementary Affidavit, p 25 at para 20.8.

⁸²¹ Transcript, day 75. p 130.

loan agreement between Mr Gillingham and Mr Agrizzi's erstwhile in-laws so as to keep the transaction at arm's length. This arrangement did not make sense to Mr Agrizzi, given that the payment was effected out of the Bosasa trust fund account held by Mr Biebuyck.⁸²² It was elaborated further in Mr Agrizzi's Supplementary Affidavit that, when he enquired from Mr Watson how the repayments of the funds would occur, Mr Watson merely shrugged it off and said the tax consultant to the group, Mr Venter, would keep a book entry. After Mr Agrizzi's departure, he received a query from the auditors and reminded Mr Venter of the transactions and the fact that Mr Watson was aware of this. Mr Agrizzi indicated that a full explanatory email could be obtained from the server and his email address 'angelo.agrizzi@bosasa.com'.⁸²³

554. During his evidence, Mr Venter requested an opportunity to clarify paragraph 18 of his first affidavit. Mr Venter confirmed that on 27 October 2017 he was at the Bosasa office and was instructed by Mr Watson to collect a parcel from Ms Lindsay Watson to give to Mr Gillingham. Mr Venter clarified that he had a meeting scheduled with Mr Gillingham later that morning at his office to discuss Mr Gillingham's pension pay-out and the tax implications thereof. He said that Mr Watson was aware of the meeting. Lindsay Watson handed Venter a greyish plastic bag. Mr Venter did not see the content of the bag and assumed it was money. Mr Venter was not provided with any detail. He was simply instructed to hand the bag to Mr Gillingham, which he did. Mr Venter confirmed that this was the first and only time he had been asked to deliver such a bag to a person. Mr Venter and Mr Gillingham did not discuss the bag handed over.⁸²⁴

⁸²² Mr Agrizzi's Supplementary Affidavit, p 25 at para 20.9.

⁸²³ Mr Agrizzi's Supplementary Affidavit, p 25 at para 20.10.

⁸²⁴ Transcript, day 74, pp 40-46.

Mr R. Linda Mti

555. The first time Mr Agrizzi saw cash paid directly to Mr Mti was on his first visit to Mr Mti's house in a complex called Savannah Hills. The amount paid to Mr Mti on this occasion was R65,000.⁸²⁵
556. The second occasion occurred when a meeting was held at the 'Cod Father' restaurant off Rivonia Road which Mr Agrizzi was told was where Mr Watson frequently met Mr Mti. Although Mr Agrizzi could not remember the date of this meeting, he recalled Mr Mti still being the National Commissioner and stated that the investigations ought to be able to pick up a date from his telephone records.⁸²⁶ After the meeting at the restaurant, Mr Mti walked to his dark metallic Volkswagen Touareg and opened his boot with the remote. Mr Watson took a briefcase from the boot of his own car, walked to Mr Mti's car, took cash out of his briefcase, placed the cash into a brown satchel with an ostrich print, placed it in Mr Mti's boot and closed the boot of Mr Mti's car. Mr Agrizzi recalled it being a considerable amount of money of approximately R150,000.⁸²⁷
557. There were a few occasions when Mr Watson would call Mr Agrizzi to his vault while he was packing money. He would specifically count amounts for Mr Mti and others and ask Mr Agrizzi to keep it with him until the next morning. The next day, they would both attend at Mr Mti's house in Savannah Hills and wait for him in the study. Up to this point, Mr Agrizzi had no direct contact with Mr Mti and had only assisted Mr Watson, as instructed, with documents or information as required.⁸²⁸

⁸²⁵ Transcript, day 76, p 80.

⁸²⁶ Transcript, day 76, p 81.

⁸²⁷ Transcript, day 76, p 81 and p 82.

⁸²⁸ Transcript, day 38, p 58.

558. Mr Watson informed Mr Agrizzi that Bosasa had paid for Mr Mti's house as well as its furnishings when Mr Agrizzi met Mr Mti for the second time in 2007 when he accompanied Mr Watson to Mr Mti's house in Savannah Hills.⁸²⁹
559. Thereafter, Mr Agrizzi accompanied Mr Watson every month when he would meet Mr Mti, from around the end of 2006 until November 2016, and witnessed the transfers of grey security bags on each occasion – approximately 24/30 times.⁸³⁰ On these occasions, Mr Mti would come down the stairs and Mr Watson would greet Mr Mti with *"I brought your stuff"*. Mr Mti would then take the cash out of the security bag and pack the money in his safe.⁸³¹
560. Mr Mti was an avid golfer and Mr Agrizzi recalled Mr Watson taking Mr Mti to a specialist shop to purchase a range of specialist golf clubs. Mr Agrizzi stated that an easy analysis could be drawn to verify this from the credit card payments of the various credit card accounts held by Mr Watson.⁸³²
561. Mr Agrizzi recalled receiving a telephone call one December from Mr Mti who was in Umhlanga at the time. Mr Mti had gone to the Moreschi shoe shop which sells imported Italian shoes and wanted to buy shoes for himself. Mr Agrizzi called Mr Watson who instructed him to sort it out and R19,000 was paid for two pairs of shoes. Mr Agrizzi paid for these amounts on his Bosasa credit card.⁸³³
562. Riekele was awarded the tender for the accommodation of the National Commissioner. The house had already been built and was registered in a company

⁸²⁹ Transcript, day 38, p 60.

⁸³⁰ Transcript, day 38, p 77.

⁸³¹ Transcript, day 76, p 83.

⁸³² Transcript, day 76, p 84.

⁸³³ Transcript, day 76, p 85.

called Autumn Storm Investments 119 (Pty) Ltd, a company in which Riekele had an interest. Upon being awarded the tender, Riekele moved Mr Mti into the house. A rental agreement was concluded between the Department of Public Works and Autumn Storm Investments.⁸³⁴

563. According to Mr Agrizzi, it was agreed that the rental monies would accumulate and ultimately be available to Mr Mti. This never took place as the release of the SIU Report made it too obvious.⁸³⁵ The house was supposed to have been transferred to Mr Mti, but never was as Mr Hoeksma sold the house.⁸³⁶ Mr Agrizzi testified that he estimated the present day value of the house (January 2019) to be in the region of R16 to R18m.⁸³⁷

564. Bosasa also paid for the furnishings of both houses – Mr Mti and Mr Gillingham – through Mark and Sharon Taverner's company.⁸³⁸

565. Mr le Roux testified that he was instructed by Mr Agrizzi and Mr Watson to attend to the following work at Mr Mti's properties:

565.1. full 21 strand perimeter electric fence and safety lights at the premises in Greenbushes Plot, Eastern Cape; and

⁸³⁴ Transcript, day 38, pp 63-64, pp 64-65. Mr Agrizzi's Initial Affidavit indicates that the rent was paid by the DCS, see para 29.5.4, p 59. Mr Agrizzi's testimony first refers to the Department of Public Works and later to the DCS. All government buildings fall under the Department of Public Works, hence the reference to the Department of Public Works in this regard.

⁸³⁵ Transcript, day 38, p 65.

⁸³⁶ Transcript, day 38, p 65.

⁸³⁷ Transcript, day 38, p 88.

⁸³⁸ Transcript, day 38, p 64.

565.2. full electric fence, perimeter lighting and repairs to the alarm system at the premises in Colchester, Eastern Cape.⁸³⁹

566. Mr le Roux estimated the costs of work at Mr Mti's homes to have been R350,000.⁸⁴⁰ In his further affidavit,⁸⁴¹ Mr le Roux produced invoices for components used in the work done at Mr Mti's homes at his plot in Greenbushes, Port Elizabeth and in Colchester, north-east of Port Elizabeth, to the value of R70,306.19.⁸⁴² Whilst the invoices are made out to "Mr A Agrizzi" as customer, with an address in Krugersdorp, the supplier is based in Port Elizabeth,⁸⁴³ in the field for "order no." appear, variously, "HOUSE" or "plot" or "ELECTRIC FENCE PE". He confirmed that purchases of other items such as lights and electric wiring were made on his (i.e. le Roux's) credit card. Mr le Roux attended to the installation in Port Elizabeth with three other technicians over a minimum of 28 days. The updated estimated cost of this project was R417,980.19 (excluding the miscellaneous purchases on Le Roux's credit card). This comprises equipment, accommodation, labour and vehicle travel.⁸⁴⁴

567. Mr le Roux also attached copies of WhatsApp messages between himself and Mr Mti in January 2017 in terms of which Mr Mti requested assistance with maintenance of the security systems at Greenbushes and Colchester.⁸⁴⁵

⁸³⁹ Transcript, day 44, pp 83 and 84.

⁸⁴⁰ Transcript, day 44, p 85.

⁸⁴¹ Exhibit T21.

⁸⁴² Exhibit T21, Annexure RLR 8.

⁸⁴³ Regal Distributors SA (Pty) Ltd t/a Regal Port Elizabeth, unit 3 Phase 2, Pickering Road, Newton Park, Port Elizabeth.

⁸⁴⁴ Exhibit T21, p 15 - 16.

⁸⁴⁵ Exhibit T21, Annexure RLR 9. The exchange reads:

MTI: When in Pe (sic) next please check Colchester alarm continue to make noise when switching off and Greenbushes switcher got lost and we can't activate. Can bring spare one.

LE ROUX: Hi Sir Angelo is off sick at the moment and will only be back in March please can you speak to Gavin with regards to the faults. Thanks."

568. Mr Vorster testified that in 2005 he was instructed to procure a vehicle for Mr Mti, namely a silver Volkswagen Touareg V8. He negotiated the deal and the vehicle was purchased from Lindsay Saker, Krugersdorp. He was not sure how the financing of the vehicle was dealt with. He, therefore, could only presume that it was paid for by Bosasa. He received a call from the dealership in 2007/2008 informing him that the SIU were asking them questions about Mr Mti's vehicle. Mr Vorster informed the dealership to answer the questions posed to them but not to hand over the file on the vehicle. Mr Vorster collected the file and destroyed it on Mr Watson's instructions. When doing so, he did not look in the file to see what it contained.⁸⁴⁶
569. Mr Mti resigned as National Commissioner of the DCS in November 2006. Mr Agrizzi testified that after his resignation, Mr Mti remained in the house for approximately 18 months and continued to pay rent, knowing he was going to get it back from Mr Hoeksma.⁸⁴⁷ Mr Mti then relocated to another house owned by him close to Savannah Hills, in respect of which Bosasa had paid for certain furniture, repairs and maintenance.⁸⁴⁸ The house at Savannah Hills was not registered in Mr Mti's name as originally planned, nor did Mr Mti receive the rental monies.⁸⁴⁹
570. Mr van Tonder and Mr Agrizzi went to meet Mr Hoeksma and instructed him to transfer the house based on the agreement with Mr Mti and Mr Mansell, after things had quietened down. Mr Hoeksma informed them that he was unable to do so as he had registered a bond over the house and had used the rent to pay the bond.⁸⁵⁰ Mr Agrizzi

MTI: Will do. But when are you going to be in Pe next? Will talk to Gavin was with him yesterday I would have told him. Flying back to Pe now. Please when down come over will advise Gavin. (sic)"

⁸⁴⁶ Transcript, day 43, pp 124 and 125.

⁸⁴⁷ Transcript, day 38, p 66.

⁸⁴⁸ Transcript, day 38, p 66-67.

⁸⁴⁹ Transcript, day 38, pp 89-90.

⁸⁵⁰ Transcript, day 38, p 67.

testified that he and Mr van Tonder, on instruction from Mr Watson, attended a further meeting with Mr Hoeksma. This meeting was to ensure that, if Mr Hoeksma was interviewed during an investigation that might incriminate any of the parties, he would cover up. Mr Agrizzi testified that Mr Hoeksma agreed to do so.⁸⁵¹

571. After Mr Mti resigned from the DCS, Mr Watson and Mr Agrizzi met him at Savannah Hills Estate, as Mr Mti had wanted a proposal to be presented that he could utilise as a presentation on the 2010 World Cup security.⁸⁵²

572. Mr Agrizzi was instructed to prepare a security plan and to assist Mr Mti wherever possible in doing the presentation he would present at a later stage.⁸⁵³ Mr Watson handed a grey security bag to Mr Mti during the course of the meeting, which contained Mr Mti's monthly fee of R65,000.⁸⁵⁴ After the meeting, Mr Watson jokingly said to Mr Agrizzi that Bosasa pays monopoly money but that Mr Mti always delivers on his promises.⁸⁵⁵

573. Mr Watson had also wanted Dr Smith to look at Mr Mti's new employment contract with the 2010 FIFA World Cup Organising Committee. Mr Watson was proud of the matter and a few weeks later Sondolo IT was appointed to attend to an access control and security system at the offices of the Organising Committee.⁸⁵⁶

574. There was no tender for awarding Sondolo IT the contract. Mr Agrizzi explained that Mr Mti was working for Mr Danny Jordaan at that stage.

⁸⁵¹ Transcript, day 38, pp 87-88.

⁸⁵² Transcript, day 38, p 72.

⁸⁵³ Transcript, day 38, p 72.

⁸⁵⁴ Transcript, day 38, p 72.

⁸⁵⁵ Transcript, day 38, p 73.

⁸⁵⁶ Transcript, day 76, p 86.

575. Mr Agrizzi testified that Mr Mti was paid for as long as the contract with Bosasa lasted, even though he had resigned.⁸⁵⁷ Senior officials who had been instrumental, such as Mr Mti and Mr Gillingham, were still looked after by Bosasa while the contracts were still in place.⁸⁵⁸ Mr Mti was still being paid when Mr Agrizzi left Bosasa on 15 December 2016, almost ten years after Mr Mti had resigned.⁸⁵⁹
576. Holidays and travelling costs for Mr Mti and his family were also paid for by Bosasa. An account was opened at Blake's Travel in the name "JJ Venter", Mr Agrizzi's late father-in-law.⁸⁶⁰ The account was used for Mr Mti and other politicians.⁸⁶¹ The studies for two of Mr Mti's children were also paid for by Bosasa.⁸⁶² Mr Agrizzi testified that Bosasa also paid for a security guard to be placed at Mr Mti's house.⁸⁶³
577. In his affidavit filed with the Commission, Mr Blake states that he is reasonably sure that Blake's Travel never received any funds from Mr Gillingham, Mr Mti or their direct family and that he could find no accounting record reflecting any such payment. According to Mr Blake, he initially made reservations for Mr Gillingham and Mr Mti under the Bosasa Operations account, which arrangement was changed at a later stage when reservations would be made using the Bosasa VIP, Mr Agrizzi and Mr Venter accounts. The bookings and travel arrangements of Mr Gillingham and Mr Mti were predominantly paid for in cash by either Mr Agrizzi or his wife.⁸⁶⁴

⁸⁵⁷ Transcript, day 38, p 74.

⁸⁵⁸ Transcript, day 38, p 74.

⁸⁵⁹ Transcript, day 38, p 75.

⁸⁶⁰ Transcript, day 38, pp 78-79. Transcript, day 38, pp 78-79. The existence of an account in the name of JJ Venter is confirmed by Mr Blake in his affidavit filed with the Commission (Exhibit T18, para 11, p 2). See above at paras 391 to 392.

⁸⁶¹ Transcript, day 38, p 79.

⁸⁶² Transcript, day 38, p 79.

⁸⁶³ Transcript, day 38, pp 80-81.

⁸⁶⁴ Mr Blake affidavit (T18, paras 31-41, pp 18-19).

578. Mr Blake's affidavit further provides that the travel and accommodation booked for Mr Mti and his family is too voluminous to include within the body of his affidavit and is, therefore, reflected in a spreadsheet attached to his affidavit, together with supporting invoices. The data in the spreadsheet shows that for the period October 2012 to January 2017 a total amount of R1,234,481.11 was expended on travel and accommodation for Mr Mti. The bookings were made in the surname of "Mti" and individuals travelling or associated with Mr Mti including Mr Mti, TN Ntjana (whom Mr Blake understands to be Mr Mti's wife), S Mti, Vukani Mti, and A Mti.⁸⁶⁵
579. Mr Agrizzi recalled not being able to make payment of Mr Mti's money over December 2016 given that he had been in hospital, and that on 9 January 2017 Mr Watson arrived asking for Mr Mti's cash.⁸⁶⁶
580. Mr Agrizzi testified that he was requested by Mr Gumede to provide him with cash, between R10,000 and R20,000, to enable Mr Gumede to bribe an official at a court to get rid of a drunk driving charge against Mr Mti.⁸⁶⁷ Mr Agrizzi also testified that his brother, Claudio, at Mr Watson's request, paid money to Mr Mti through his business and would submit false invoices for electrical services rendered to Bosasa. Mr Agrizzi's brother was very uncomfortable with this, did one transaction and terminated the arrangement.⁸⁶⁸
581. Mr Watson had also requested Mr Agrizzi to get his son to meet Mr Mti's son, Vukane, so that he could motivate and encourage him as Mr Mti was having problems with

⁸⁶⁵ Mr Blake's affidavit, (T18, paras 44-49, pp 20-21).

⁸⁶⁶ Transcript, day 76, p 40.

⁸⁶⁷ Transcript, day 38, pp 81-82.

⁸⁶⁸ Transcript, day 38, pp 83 and 84; day 76, p 87.

Vukane. Mr Agrizzi testified that he and his son met with Mr Mti and Vukane at a restaurant at Clearwater Mall but that nothing further came of the meeting.⁸⁶⁹

582. Mr Agrizzi's Supplementary Affidavit also refers to the fact that another son of Mr Mti was employed by Mr Gumede at the security division of the company. Mr Agrizzi recalls mentioning to Mr Gumede that it was extremely obvious posting the son of the National Commissioner of DCS at the main entrance to Bosasa offices when they look very similar. The following day, Mr Mti's son was no longer at the gate.⁸⁷⁰

583. Mr Agrizzi stated that Mr Watson was very concerned about keeping Mr Mti and Mr Gillingham content because the SIU Report had come out and everyone was very jittery around that time.⁸⁷¹

584. At a later stage, Mr Agrizzi had to arrange a meeting with Mr Mti and the attorney, Mr Biebuyck, to reassure Mr Mti that the process was under control and that he would be protected. During this meeting with Mr Biebuyck, Mr Mti explained that Ms Jiba of the National Prosecuting Authority had told him to prepare representations as to why prosecution should not take place. Mr Agrizzi handed over documents he had received from the NPA as well as his handwritten notes to Mr Biebuyck who then produced a lengthy document addressed to the then National Director of Public Prosecutions ("**NDPP**") dated 28 September 2010.

585. The representations sent by Mr Biebuyck contained vital information that had been received via Mr Mti from, according to Mr Mti, Adv Jiba and Ms Jackie Lepinka ("**Lepinka**") (who was the secretary of Adv Mrwebi, head of the Specialised

⁸⁶⁹ Transcript, day 38, pp 83-84. See also Mr Agrizzi's Supplementary Affidavit, p 18, paras 18.1-18.5.

⁸⁷⁰ Mr Agrizzi's Supplementary Affidavit, p 18 at paras 18.6 and 18.7.

⁸⁷¹ Transcript, day 76, p 88.

Commercial Crimes Unit). It was on this premise that Mr Biebuyck would constantly remind Mr Agrizzi that there was no purpose in whistleblowing as the matter would never see the day in court.⁸⁷²

586. When asked to comment by way of summary who made the decisions in relation to the assistance given to Mr Gillingham and Mr Mti, Mr Agrizzi stated that Bosasa was owned and run by only one person and he would make the ultimate decisions. In this respect, Mr Agrizzi was referring to Mr Watson and indicated that one could only make a decision if Mr Watson agreed with it. Mr Agrizzi's Supplementary Affidavit was to the effect that the major beneficiary of all the contracts and tenders was Mr Watson and his family.⁸⁷³

587. Mr L van Tonder testified that on numerous occasions from 2008 until he left his employment, he was instructed by Mr Watson to attend to computer repair issues for Mr Gillingham and Mr Mti.⁸⁷⁴

Mr Vincent Smith

588. Mr Agrizzi first met Mr Vincent Smith ("Mr Smith") around 2010/2011 in Parliament.⁸⁷⁵ At the time, Mr Smith was a member of the Portfolio Committee on Correctional Services and was opposed to Bosasa and had been openly vocal about the SIU Report.⁸⁷⁶

⁸⁷² Mr Agrizzi's Supplementary Affidavit, p 47 at para 139.

⁸⁷³ Transcript, day 75, p 130; Mr Agrizzi's Supplementary Affidavit, p 26 at para 20.11

⁸⁷⁴ Transcript, day 44, p 123.

⁸⁷⁵ Transcript, day 37, p 81.

⁸⁷⁶ Transcript, day 37, p 81.

589. In 2011 Mr Watson collected Mr Agrizzi and they drove to a meeting with Mr Smith, Seopela, a gentleman by the name of Mr Magagula, and Ms Ngwenya.⁸⁷⁷ The meeting took place at a hotel on Rivonia Road.⁸⁷⁸ During the meeting it became evident to Mr Agrizzi that the individuals present were members of the Portfolio Committee on Correctional Services.⁸⁷⁹ Mr Agrizzi described this meeting as a turning point in Mr Smith's attitude to Bosasa.⁸⁸⁰
590. In his oral evidence before the Commission, Mr Smith confirmed, based on minutes of meetings of the Portfolio Committee when he was the Chairperson in October 2010 and October 2011, that there had been reports of corruption involving Bosasa and that he was aware of these reports when he met with Mr Agrizzi and Mr Watson. Mr Smith testified that he was comfortable to meet with Bosasa in 2011, after Mr Watson had called him, because he understood at that time what was happening in the Department. Mr Smith was previously not comfortable to meet with Mr Agrizzi, when he had just been appointed as the Chairperson, as detailed below. According to Mr Smith, he met with Bosasa as a stakeholder in the same way that he also met with various other stakeholders.⁸⁸¹ Although he could not recall the detail, Mr Smith testified that normally, following a briefing by a stakeholder, he would ask them to reduce a request to writing or to attend a "formal stakeholder meeting where they were then presented to the Portfolio Committee". It was put to him that there was a record where he reported to the Portfolio Committee that he had met with Bosasa at a hotel in Sandton, seemingly to discuss negative reports about Bosasa. Mr Smith said that, whilst he could not recall the detail and had not seen the report, it would not be strange

⁸⁷⁷ Transcript, day 37, p 83.

⁸⁷⁸ Transcript, day 37, p 83.

⁸⁷⁹ Transcript, day 37, p 86.

⁸⁸⁰ Transcript, day 76, p 42.

⁸⁸¹ Transcript, day 261, p 54.

that, after such meeting, he would have reported to the Portfolio Committee because ultimately that is where decisions would be taken.⁸⁸²

591. In response to a question whether Mr Smith was uncomfortable meeting Bosasa, that was alleged to be corrupt, in a hotel, Mr Smith testified that he had indicated to Mr Watson by phone a day or two before the meeting that he was uncomfortable meeting on his own and that it would be better if he was accompanied by someone else from the Portfolio Committee so that, when they reported back to the committee, it was not an individual view. Mr Smith was of the view that there was nothing untoward with him meeting with a stakeholder as long as he was not on his own. He said that there were no decisions taken at the meeting, and he reported back to the committee.⁸⁸³
592. Mr Smith testified that the meeting took place in Johannesburg because he had a relationship with Mr Watson that preceded his position as a Member of Parliament and that he would, on occasion, meet with Mr Watson in Johannesburg. Mr Smith would travel to his residence in Johannesburg over weekends and it made logistical sense to meet the Bosasa delegation in Johannesburg, as they were based there.⁸⁸⁴ Mr Smith testified that he never discussed the allegations of corruption involving Bosasa with Mr Watson,⁸⁸⁵ despite their longstanding personal relationship, because he had made an undertaking to the Portfolio Committee as Chairperson that the members should not sabotage the work of the SIU investigation and that he was very clear to separate politics from his work as a Member of Parliament at the time.⁸⁸⁶ Responding to a question on the perception that such a meeting would create, Mr Smith said that he had met with Mr Watson from the early 1990's onwards about

⁸⁸² Transcript, day 261, p 55.

⁸⁸³ Transcript, day 261, p 56.

⁸⁸⁴ Transcript, day 261, pp 57-58.

⁸⁸⁵ Transcript, day 261, p 58.

⁸⁸⁶ Transcript, day 261, p 59.

matters related to his constituency; that he met with many stakeholders in various locations; and that the separation of powers did not allow a Member of Parliament to become involved in the day-to-day working of any department and so he could not have influenced the Department, even if he had wanted to. According to Mr Smith, there was never ever anything untoward.⁸⁸⁷

593. According to Mr Agrizzi, it was discussed at the meeting that the Members of Parliament would receive amounts of money in return for keeping quiet, and managing the negative public press on Bosasa to ensure that negative press would not prevent Bosasa from getting new business.⁸⁸⁸ Monthly, Mr Smith would receive an amount of R45,000, Mr Magagula would receive an amount of R30,000, and Ms Ngwenya would receive an amount of R20,000.⁸⁸⁹

594. In an affidavit filed in response to a Directive issued by me under Regulation 10(6), the content of which was confirmed during his oral evidence,⁸⁹⁰ Mr Smith denies facilitating or influencing any unlawful award of any tender for himself, any other person, family or entity. Mr Smith also denied influencing any individual to unduly favour a service provider or prospective service provider to the State, in particular Bosasa.⁸⁹¹ Mr Smith testified that the minutes of the Portfolio Committee meetings negate the narrative that the 2011 meeting with Bosasa was intended to "soften him up", and that the minutes reflect that he was "anti-outsourcing" from 2009 up until 2013, that, whilst he was not anti-Bosasa itself, Bosasa was one of the providers that were outsourced.⁸⁹² In support, Mr Smith referred to parts of the minutes that reflected his attitude

⁸⁸⁷ Transcript, day 261, pp 59-60.

⁸⁸⁸ Transcript, day 37, pp 85 and 87.

⁸⁸⁹ Transcript, day 37, p 87.

⁸⁹⁰ Transcript, day 261, pp 17-18.

⁸⁹¹ Mr Smith's affidavit, para 17, p 7.

⁸⁹² Transcript, day 261, pp 61-62.

regarding outsourcing.⁸⁹³ These references, according to Mr Smith, illustrate that three years after meeting with Bosasa, he was equally harsh on the issue of outsourcing. He said that it did not make sense that Bosasa would have given him money to be soft on them, in circumstances where he remained harshly against outsourcing.⁸⁹⁴ When asked whether Mr Smith was able to show a reference in the minutes where he spoke out against the Department awarding tenders to a corrupt company, Mr Smith said that he would not be able to do so because the Portfolio Committee did not deal with individuals per se, in terms of stakeholders, but would deal with the principle. According to Mr Smith, the Portfolio Committee encouraged the SIU investigation and supported actions taken on the matter of irregular tenders.⁸⁹⁵

595. The Commission's evidence leader referred to the minutes of a Portfolio Committee meeting held on 2 February 2012 where it was noted that the Portfolio Committee had expressed surprise that the reasons provided for an extension of a Bosasa contract were the same reasons advanced for a 2008 extension, and that, in the absence of a credible reason for the extension, the Portfolio Committee was left with no alternative but to believe that the contract was extended because somebody in the ranks of the Department had a vested interest in it being extended. It was put to him that there was no expression by him of dissatisfaction with Bosasa in this regard. In response, he referred to the Portfolio Committee's consistent stance "as a collective" over the years against outsourcing and in support of the SIU.⁸⁹⁶

596. Mr Smith denied ever meeting Ms Ngwenya outside of Parliament and stated that he never had a discussion with Mr Watson regarding the working relationship between

⁸⁹³ Transcript, day 261, pp 66-69.

⁸⁹⁴ Transcript, day 261, p 69.

⁸⁹⁵ Transcript, day 261, p 70.

⁸⁹⁶ Transcript, day 261, pp 71-73.

Bosasa and the DCS. Mr Smith denied ever being a recipient of monthly cash payments from Mr Watson, Bosasa or Mr Agrizzi. He contended that any requests for assistance he may have made to Mr Agrizzi or Mr Watson were never on a *quid pro quo* basis.⁸⁹⁷

597. Mr Smith denied taking part in any discussion that the Portfolio Committee would play a part in ensuring that Bosasa was not precluded from further tenders being awarded to it. He denied that he, or any member of the Portfolio Committee, played a role in the evaluation, adjudication or awarding of tenders, and as such that it defied logic that he would be party to such undertaking.⁸⁹⁸ In Mr Agrizzi's reply to Mr Smith's affidavit, Mr Agrizzi stated that Mr Smith, as Chairman of the Portfolio Committee, could indeed examine and check on all tenders received. Mr Agrizzi attached a copy of messages sent between himself and Mr Watson relating to Mr Watson's interaction with Mr Smith in respect of the DCS' tender and the contract which Bosasa had tendered for. Mr Agrizzi stated that the messages were sent at the end of 2016 and the beginning of January 2017 when he was at home recovering after a spell of illness and hospitalisation. Despite his illness he was working from home. He "had to finish the opening protocols and GANTT charts ... required for the submission to the Department to ensure full compliance with the contractual operational requirements". According to Mr Agrizzi, "at that stage, Bosasa had only received seven of the ten Management Areas".⁸⁹⁹ The messages between Mr Watson and Mr Agrizzi were as follows:⁹⁰⁰

⁸⁹⁷ Mr Smith's affidavit, paras 59-63, 76 pp 23, 26.

⁸⁹⁸ Mr Smith's affidavit, para 62, p 23.

⁸⁹⁹ Mr Agrizzi's affidavit in reply to Mr Smith's affidavit, para 12, pp 333-334. In 2016/2017, Mr Smith was an alternate member on the Portfolio Committee; see Mr Smith's affidavit, para 6, p 3.

⁹⁰⁰ Mr Agrizzi's affidavit in reply to Mr Smith's affidavit, annexure AG1.1, pp 357-360.

WATSON: Vincent Smith just got hold of me. He says lets wait until Tuesday because he is having a meeting tomorrow with ZM and Smallburger. GOD Bless

20.02.

MR AGRIZZI: He called me as well. What he said was to continue the prep meetings drafting documents we will convene on Tuesday at 1400 then review our approach and adjust the three pronged approach But he didn't say should halt it

20.09

Try call you on whatsapp (*sic*)

20.09

WATSON: I agree. It is a three pronged approach, our approach, Vincent's approach and Cedrick's approach. When I said wait it is for the meeting on Tuesday to give us more information how to approach this thing. This is why he is having a meeting with Smallburger to give us more information on what's taken place in DCS.

MR AGRIZZI: Ok understood but by 0830 I need to confirm drafting papers otherwise we miss the deadline I will send you an explanatory...⁹⁰¹

598. In response, Mr Smith testified that he was no longer the Chairperson of the Portfolio Committee in 2016, that he did not understand what Mr Watson and Mr Agrizzi were trying to say and that he was not privy to what they were discussing. Mr Smith confirmed that in 2016 his relationship with Mr Watson and Mr Agrizzi was fine.⁹⁰²

⁹⁰¹ The transmission times are not visible on the copies of the last two messages. It is unclear what date is reflected on the WhatsApp exchange as the date on which it took place. The copy of the first message attached to Mr Agrizzi's affidavit replying to Mr Smith bears a date of 27 August 2016, but is not relevant to the issues in the exchange quoted above and is followed by a time (10.42) which is later than the time reflected at the top of the second page of the annexure where the quoted transcript begins (03.50). The message on the first page, which is from Mr Watson, reads -

"No further payments we need to have a meeting with them before we get too involved and embroiled in their fight with the EFF this is going to be ugly (*sic*). Nomvula is being sucked in as one of the funders which could back fire on us. Tlou has also confirmed this. GOD bless "

⁹⁰² Transcript, day 261, pp 188 – 192.

599. Mr Smith testified that the reference to "ZM" in the messages may have been a reference to Mr Zach Modise, National Commissioner of the Department at the time and that "Smallburger"⁹⁰³ was a reference to a senior manager in the Department. In response to a summary of the import of the messages I put to Mr Smith, Mr Smith accepted that, if true, the messages reflect that Mr Smith was working on something with Mr Agrizzi and Mr Watson but maintained that he knew nothing about it. According to Smith, there was nothing that he was working on with Mr Watson or Mr Agrizzi at that time and did not recall ever meeting with Mr Modise or Mr Smalberger in 2016. Mr Smith also confirmed that it could not have been anything personal or anything outside of the Department of Correctional Services that he was working on with Mr Watson and Mr Agrizzi.⁹⁰⁴
600. Mr Smith said that he had approached Mr Frolick on reading Mr Agrizzi's Initial Affidavit, which references Mr Frolick and asked Mr Frolick what this refers to. According to Mr Smith, Mr Frolick denied any of these things and said that he was not aware of what was being alleged. Mr Smith further testified that he was not party to any planning with Mr Frolick. Smith said that, without elaboration or further context, he did not know what they were talking about.⁹⁰⁵
601. Mr Agrizzi testified that he would make up the packages of cash to be paid and would occasionally make payments when Mr Watson was unavailable.⁹⁰⁶ When Mr Agrizzi made the payments personally, he would either get hold of Seopela or Smith and find out where Mr Magagula and Ms Ngwenya were. Where Mr Magagula or Ms Ngwenya were not available, Mr Agrizzi would hand everything to Smith who would handle the

⁹⁰³ The correct spelling of the name is Smalberger.

⁹⁰⁴ Transcript, day 261, pp 193 – 196.

⁹⁰⁵ Transcript, day 261, pp 196 – 199.

⁹⁰⁶ Transcript, day 37, pp 87-88.

distribution thereof.⁹⁰⁷ Mr Agrizzi testified that sometimes the payments would take place at follow-up meetings.⁹⁰⁸

602. Mr Agrizzi testified that he delivered money to Mr Smith on many occasions, including at Mugg and Bean at Clearwater Mall, a Greek restaurant at Cradlestone Mall, and in Florida.⁹⁰⁹ If Mr Agrizzi met Mr Smith in a restaurant, he would take the cash in a newspaper.⁹¹⁰ During 2015/2016, Mr Smith became uncomfortable with Mr Seopela as a "middle man" and it was agreed that Mr Seopela would be excluded.⁹¹¹

603. Mr Smith denied ever receiving a payment at Clearwater Mall. According to Mr Smith, he met with Mr Watson and Mr Agrizzi at Clearwater Mall on a social basis when in Johannesburg, that the meetings were a continuation of his relationship with Mr Watson and that no exchange of money was ever done at these meetings.⁹¹² Mr Smith stated that he did not know what Mr Agrizzi meant when he said that "we then excluded [Mr] Seopela from all arrangements". Mr Smith contended that he had known Mr Seopela for a long time, and that he had "no reason at all not to trust him, especially in circumstances where [he had] to decide between [Mr Seopela] and a newer acquaintance such as Mr Agrizzi".⁹¹³ Mr Agrizzi's affidavit in response to Mr Smith's affidavit states that Mr Agrizzi has no knowledge of how long Mr Smith had known Mr Seopela but that at a certain stage Mr Watson had a dispute with Mr Seopela. Mr Agrizzi states that Mr Watson did not include Mr Seopela in his further

⁹⁰⁷ Transcript, day 37, p 88.

⁹⁰⁸ Transcript, day 37, p 89.

⁹⁰⁹ Transcript, day 37, pp 88-90.

⁹¹⁰ Transcript, day 37, p 92.

⁹¹¹ Transcript, day 37, p 92.

⁹¹² Mr Smith's affidavit, para 64, p 24.

⁹¹³ Mr Smith's affidavit, paras 69-70, p 25.

dealings with Mr Smith.⁹¹⁴ This may be contradictory to Mr Agrizzi's earlier testimony that it was Mr Smith (rather than Mr Watson) who was uncomfortable with Mr Seopela.

604. Mr Agrizzi testified that Ms Ngwenya lived close to the Bosasa office and would frequently collect her payment there.⁹¹⁵ Mr Agrizzi was present on an occasion when Mr Magagula took delivery of a payment, although Mr Agrizzi did not himself hand the cash to him.⁹¹⁶ Payments to Mr Magagula and Ms Ngwenya were stopped when they ceased to be members of the Portfolio Committee.⁹¹⁷

605. In 2016 payments to Mr Smith were increased at his request to R100,000 per month.⁹¹⁸ These amounts were handed to Mr Smith at various meetings by Mr Watson, at times in Mr Agrizzi's presence.⁹¹⁹ When Mr Watson was not available, Mr Agrizzi would deliver the money to Mr Smith.⁹²⁰

606. According to Mr Agrizzi, at that time, meetings with Mr Smith were held every second week, where Mr Smith would brief Mr Watson and Mr Agrizzi on the activities of the DCS and to enable Mr Smith to intervene where Bosasa had problems with Mr Zach Mr Modise ("**Mr Modise**"), then National Commissioner of DCS.⁹²¹ Mr Smith denied that frequent meetings were held.⁹²² Mr Smith further denied intervening or interfering in any way with Mr Modise's functions, or attempting to unduly influence him. According to Mr Smith, his role as Chairperson and full-time member of the Portfolio

⁹¹⁴ Mr Agrizzi's affidavit in response to Mr Smith's affidavit, para 42, p 345.

⁹¹⁵ Transcript, day 37, p 89, p 91.

⁹¹⁶ Transcript, day 37, p 91.

⁹¹⁷ Transcript, day 37, p 93.

⁹¹⁸ Transcript, day 37, pp 93-94.

⁹¹⁹ Transcript, day 37, p 94.

⁹²⁰ Transcript, day 37, p 95.

⁹²¹ Transcript, day 37, p 95.

⁹²² Mr Smith's affidavit, para 53, p 21.

Committee had come to an end in May 2014 and he was, therefore, unable to exert any influence on Mr Modise who was appointed in 2015, having acted since June 2014.⁹²³

607. Following an incident of crime at Mr Smith's house, Mr Watson offered to install a security and camera system at the house. Mr Agrizzi instructed Mr le Roux and the Special Projects Team employed by Sondolo IT to attend to the installation.⁹²⁴ Mr Agrizzi testified that the payments for such equipment would usually be made in cash, listing the requisition and invoice as a cash sale in Mr Agrizzi's or another's name. A delivery note would go with the goods, which did not display the cost thereof.⁹²⁵ Mr Smith admitted that there was an attempted burglary at his residence in Roodepoort in 2014 and that he "allowed some upgrades to be installed at his residence". Mr Smith stated in his affidavit in response to a Regulation 10(6) directive that the attempted burglary coincided with death threats he had received at the time and that he contacted Mr Watson for some advice, given Mr Watson's businesses' involvement in the security industry. Mr Watson offered to assist him. Subsequent to Mr Smith's discussion with Mr Watson, Mr le Roux contacted Mr Smith and indicated that he was tasked to conduct a security assessment and quotation. Mr Smith arranged with Mr le Roux to come to his residence when he was present. Following the assessment, the upgrades were installed a few weeks later.⁹²⁶ In his oral evidence before the Commission (but not in his affidavit), Mr Smith said that, after the burglary, he had canvassed at least three individuals or organisations for quotations, one of which was Mr Watson's company.⁹²⁷

⁹²³ Mr Smith's affidavit, para 74, pp 25-26.

⁹²⁴ Transcript, day 37, pp 97-99.

⁹²⁵ Transcript, day 37, p 97.

⁹²⁶ Mr Smith's affidavit, para 79, p 27.

⁹²⁷ Transcript, day 261, p 168.

608. In response to a question from the evidence leader about Mr Smith knowing of the allegations of corruption against Mr Watson's company at the time he requested the service and that the issue had been raised at the Portfolio Committee, Mr Smith said that he did not see any risk from a conflict point of view because at that time he was no longer active in the Portfolio Committee, and that the separation of powers in any event did not allow for such influence. In response to a proposition I put to Mr Smith, he did accept that, in theory, a company that was engaged in corrupt activities could be involved in making corrupt payments to persons after those persons had left their position in the department or Parliament, on the basis of what they had done for the company at the time when they were able to do things to benefit the company.⁹²⁸
609. Mr le Roux confirmed that Mr Watson instructed him to undertake what became known as Project Jones for Mr Smith. At the time, Mr Smith was the SCOPA Chairperson. Work was undertaken at Mr Smith's residence in Roodepoort. The work entailed electric fencing, installation of an IP CCTV system and continuous maintenance on the electric fence. The value of the equipment installed was approximately R200,000.⁹²⁹ Mr Smith stated that he allowed Mr le Roux access to his residence but was not involved in deciding who would do the installation, how it would be done and what make of system would be installed. Subsequent to the upgrade, Mr Smith would call either Mr Agrizzi or Mr le Roux when there was a fault with the system.⁹³⁰ Mr Smith disputed the value that Mr le Roux attached to the equipment installed, and attached a quotation reflecting the value of replacement equipment of R23,224.08 to his affidavit.⁹³¹

⁹²⁸ Transcript, day 261, pp 169-172. I gave Mr Agrizzi's evidence in respect of Mr Gillingham as an example.

⁹²⁹ Transcript, day 44, pp 88-90.

⁹³⁰ Mr Smith's affidavit, paras 80-81, p 27.

⁹³¹ Transcript, day 44, pp 88-90. Mr Smith's affidavit, paras 110-111, p 33; annexure VGS18, p 103.

610. Mr le Roux testified further that video footage was published by News24 that showed technicians removing equipment from Mr Smith's premises. The video depicts members of the Special Projects team. Mr Smith contends that from the time of the upgrades, he requested an invoice for the work done from Mr Watson and that despite making the request several times, the invoice was not provided.⁹³² He states that he eventually asked that the Bosasa equipment be removed, which was done sometime between December 2017 and January 2018. Mr Smith confirmed that the equipment was removed by persons instructed by Mr Watson, although he does not know who those persons were. Initially, there was some debate with Mr Smith about whether the cameras were removed as he had alleged – in late 2017, early 2018 – or whether they were removed in October 2018. The evidence leader referred to a screenshot of the video depicting the removal of the equipment from Mr Smith's house, reflecting the date "01 – 10 – 2018".⁹³³ Mr Smith insisted that by 10 January 2018, the equipment had been removed, that he had installed his cameras prior to this time and had proof of payment reflecting same.⁹³⁴ The evidence leader acknowledged that the date on the screenshot may in fact refer to 10 January 2018.⁹³⁵

611. In his further affidavit,⁹³⁶ Mr le Roux attached copies of invoices for components in respect of work undertaken on Mr Smith's premises in the aggregate amount of R49,629.21.⁹³⁷ Again, the invoices are made out to "Mr Agrizzi" with address in Krugersdorp, but the name "richard" appears in the field for "order no."⁹³⁸ In addition,

⁹³² Transcript, day 261, p 169.

⁹³³ Exhibit T30, p 239.

⁹³⁴ Exhibit T30, annexure "VGS19", pp 105 – 108.

⁹³⁵ Transcript, day 261, pp 183 – 186.

⁹³⁶ Exhibit T21.

⁹³⁷ Exhibit T21, Annexure RLR 10.

⁹³⁸ The supplier is "Regal Distributors SA (Pty) Ltd t/a Regal West" with address at 191 Ontdekkers Rd, Horizon Park, Roodepoort".

certain electric fence items were purchased from Complete Security Systems in Muldersdrift. Mr le Roux confirmed that he personally attended to the installation with four technicians over a minimum of 20 days. The estimated cost of the installation was R200,829.21 comprising of equipment, vehicle travel and labour. In addition, le Roux confirmed that maintenance assistance was provided to Mr Smith and produced a WhatsApp message confirming this.⁹³⁹ Mr le Roux also recalled having to purchase new routers for the CCTV system, installing access to the CCTV system on Mr Smith's phone and fixing the electric fence.⁹⁴⁰

612. Mr Smith was referred to in a newspaper article dated 4 September 2018, reporting on Mr Smith's response to the evidence given by Mr Agrizzi that Bosasa had paid for Mr Smith's daughter's tuition fees and that Bosasa had installed CCTV cameras at Mr Smith's home. In response to the allegations, Mr Smith is reported as having stated that he had a loan agreement with Mr Agrizzi, which he used for his daughter's tuition, and as having denied any further assistance financial or otherwise including the installation of the CCTV cameras. According to the article Mr Smith said that the cameras at his home were paid for by himself. I engaged Mr Smith on the article and said that, while the statement about Mr Smith paying for the cameras himself may have been factually correct at the time, Mr Smith's response should be considered in the context that he was responding to specific allegations made by Mr Agrizzi. In that context, I said that I would have expected Mr Smith to admit that Bosasa had, sometime in the past, installed cameras at his home, that he had requested an invoice on various occasions which was not forthcoming and that those cameras had been

⁹³⁹ Exhibit T21, Annexure RLR 12.

⁹⁴⁰ Exhibit T21, pp 18 and 19.

removed and that the cameras at his house had been paid for by Mr Smith. In response, Mr Smith said:⁹⁴¹

"It's very difficult at this point, Chairperson, what you are saying makes sense, let me put it to you that way, that what you are saying makes sense, Chairperson, yes."

613. Payments were also made to Aberystwyth University for Mr Smith's daughter's fees.⁹⁴²

One such payment was made on 14 July 2015 for an amount of R276,667.90, as a cash deposit to an entity called Euro Blitz at FNB Krugersdorp.⁹⁴³ Mr Smith was a director at Euro Blitz.⁹⁴⁴ Mr Smith stated that two loan payments were made through the bank account of Euro Blitz 48 (Pty) Ltd, a company in which Mr Smith is the sole director.⁹⁴⁵ According to Mr Smith, the amounts paid to Euro Blitz were loan amounts that he had discussed and agreed with Mr Agrizzi he would repay when one of his investments matured in 2023. Mr Smith said that he had approached Mr Agrizzi in 2015 to assist him with a loan for the payment of his daughter's fees and that they did not discuss where Mr Agrizzi would source the funds and/or who would pay them to Mr Smith. Mr Smith stated that he had no knowledge of Mr Agrizzi's references to Mr Watson and Mr van Zyl. Mr Smith confirmed that in July 2015 an amount of R267,667.90, and in August 2016 an amount of R395,076.00 were paid into Euro Blitz's account.⁹⁴⁶ Mr Smith testified that he did not request a specific amount but instead had sent the university account to Mr Agrizzi. According to Mr Smith, the audited financial statements reflect that the transactions were raised as a loan in the company.⁹⁴⁷ Mr Smith testified that he did not borrow any money from Bosasa and

⁹⁴¹ Transcript, day 261, pp 172-181.

⁹⁴² Transcript, day 37, p 102. See also Annexure H, p 217.

⁹⁴³ Transcript, day 37, p 101, p102. See also Annexure H, p 272.

⁹⁴⁴ Transcript, day 37, p 105. See also Annexure H, p 274.

⁹⁴⁵ Mr Smith's affidavit, para 83, p 27.

⁹⁴⁶ Mr Smith's affidavit, paras 83-87, pp 27-28.

⁹⁴⁷ Transcript, day 261, p 76.

that he instead borrowed it from Mr Agrizzi. He said that he did so because of his cordial relationship with Mr Agrizzi, which had developed after he had assisted Mr Agrizzi's unemployed son and, later, when Mr Agrizzi referred him to a service provider after his son had developed behavioural problems.⁹⁴⁸

614. Mr Smith was referred to an email sent by him to Mr Agrizzi on 11 May 2015 under the subject line "daughters study 2015 University Aberystwith". The email reads as follows:

"Hi Chief,

This e mails refers to our discussions earlier this year. My daughter has been accepted to study at Aberystwyth University in Wales. She commences in September 2015 and I am in the process of finalising her trip. She leaves towards the end of June to finalise varsity accommodation and other related matters.

I am in the process of sorting out the funding requirements for her and hereby request any assistance in this regard. Funds can be deposited directly with the institution if that is more acceptable and I have thus attached relevant documentation/correspondence."

615. The relevant correspondence from the university is attached to the email. The evidence leader asked Mr Smith why there was no request for a loan made in the email. In response, Mr Smith confirmed that the email is a request for funds but asserted that the reference to the earlier discussion between Mr Smith and Mr Agrizzi was a reference to the discussion on a loan.⁹⁴⁹ When questioned about his testimony that he had requested an exact amount from Mr Agrizzi as a loan, yet in the email indicated that he "*is in the process of sorting out the funding requirements for her and hereby request any assistance in this regard*", Mr Smith said that his reference to the attached statement of account from the university was reference to the official

⁹⁴⁸ Transcript, day 261, pp 74-75. See also pp 181-183 where Mr Smith responds to a question from me on why he approached Mr Agrizzi for the loan instead of Mr Watson.

⁹⁴⁹ Transcript, day 261, p 81.

obligation that he had and that was his understanding of what he was asking for.⁹⁵⁰ Mr Smith confirmed that no written loan agreement was concluded.⁹⁵¹

616. Mr Smith confirmed that the total amount – over R600,000 paid in succession over two years – was a lot of money to ask for from an individual. In response to a question from the evidence leader about whether Mr Smith thought it was inappropriate to borrow money from Mr Agrizzi, employed by a company alleged to have been involved in corruption, Mr Smith said that in 2015 he was no longer the Chairperson of the Correctional Services Portfolio Committee. At the time, Mr Smith was an alternate member of two other committees.⁹⁵²

617. Mr Smith testified that he initially approached Mr Agrizzi regarding payment for the 2015 academic year and, when the obligation became payable (in 2016), he approached Mr Agrizzi about how he was going to repay him. Mr Smith said that he gave Mr Agrizzi a copy of a valuation of the shares that he held as comfort regarding his ability to pay.⁹⁵³ During the lunch break, Mr Smith provided a copy of the valuation of the shares as well as the shareholders agreement to the Commission. The valuation of the shares is, however, dated 2017. When I pointed out that the document is dated 2017 but Mr Smith had testified that he showed the value of the shares to Mr Agrizzi in 2015, Mr Smith said that he did not show Mr Agrizzi a document because he only received the document in 2017. Mr Smith confirmed that, when he asked Mr Agrizzi for a loan in 2015, he could not and did not show the Rand value of the shares allegedly used as security, but could show the quantum of shares he held.⁹⁵⁴

⁹⁵⁰ Transcript, day 261, pp 82-83.

⁹⁵¹ Transcript, day 261, p 83.

⁹⁵² Transcript, day 261, pp 84-86.

⁹⁵³ Transcript, day 261, pp 88-90.

⁹⁵⁴ Transcript, day 261, pp 99-103.

According to Mr Smith, Mr Agrizzi advanced the loan without any written security and without having seen the Rand value of the shares.⁹⁵⁵

618. Mr Smith testified that he requested that the monies be paid into the Euro Blitz account because -

"my dividends would have been paid into that account and they would have been offset against each other. As opposed to the loan being put into my own private account. It was there for audit purposes. So the money went into Euro Blitz and my dividends would be paid to Euro Blitz not to Vincent Smith. And Euro Blitz would then pay the loan."

619. When I queried the use of Euro Blitz for a personal loan, Mr Smith reiterated that it was the most convenient vehicle for audit purposes. He also raised the fact that the company did not have an overdraft facility and that he was the sole shareholder so he could advance a loan from the company. He acknowledged that it might be an around-about way but said that is how he thought about it at the time.⁹⁵⁶ When questioned about whether the company was used as a mechanism to mask that the payment was made to him, Mr Smith testified that as a Member of Parliament he declared his interest in Euro Blitz, which is publicly available. Mr Smith accepted that a person inspecting the books of Bosasa, for example, would see the name of an unknown company and would not have reason to check whether it had been declared in the same way that they would if they saw Mr Smith's name, a prominent person, on the books.⁹⁵⁷ Regarding the first payment of R267,667.60, which was made in cash, I pressed Mr Smith on whether he was not concerned about receiving a large cash amount from a high ranking company which had faced allegations of corruption. Mr

⁹⁵⁵ Transcript, day 261, p 105.

⁹⁵⁶ Transcript, day 261, pp 107-109.

⁹⁵⁷ Transcript, day 261, pp 109-112.

Smith responded that he did not "register it at the time", although "in retrospect ... it should have rung a bell".⁹⁵⁸

620. Regarding the second payment of R395,076.00, Mr Smith accepted that the payment had been made by a law firm, but had only subsequently picked up, to his surprise, that it was reflected as a payment in respect of a "car accident", when there had not been any such accident.⁹⁵⁹

621. Mr Smith was shown an email sent from Mr Agrizzi to Mr Bonifacio and Mr van Tonder on 5 August 2016 with the subject "*Payment – Trust Account*" and the body of the email reads: "*This is for a specific consultant that we cannot do cash*". Below that email was a further email from Mr Agrizzi to attorney Mr Van Wyk, Mr van Tonder and Mr Bonifacio with the same subject, and reads:⁹⁶⁰

"Morning Christo

Could you please effect a payment (settlement) from the trust funds you have currently under the Bosasa Operations (Pty) Ltd account into the following account:

Bank – First National Bank

Branch Code – 251 705

Account Holder – EURO BLITZ 48 (Pty) Ltd

Account number – 62123700 818

Reference – Car Accident Settlement

Effective 5th August 2016"

622. Mr Smith confirmed that the account number was that of his company and that he had provided it to Mr Agrizzi. Mr Smith testified that on reading the email at the time of his

⁹⁵⁸ Transcript, day 261, pp 113-114.

⁹⁵⁹ Transcript, day 261, pp 114-116.

⁹⁶⁰ Transcript, day 261, pp 117-118, Mr Agrizzi's affidavit in response to Mr Smith's affidavit, annexure AG4.

testimony, he agreed with the evidence leader that the reference was used to hide the true purpose of the payment. Mr Smith said that he however had nothing to do with it and that he was not aware of the communication.⁹⁶¹ In response to a question from me as to why Mr Agrizzi did not indicate that the payment was a loan, if Mr Agrizzi knew that the arrangement between him and Mr Smith was for a loan, why he would say that the payment was in settlement of a car accident, Mr Smith testified that he could not speculate as to the reason but that he had presented his company account because it was above board. Mr Smith said that from his side it was a legitimate transaction. When asked to comment on Mr Agrizzi's version that this was corruption and that a possible explanation for the payment reference was so that the transaction looked legitimate because there was no loan agreement, Mr Smith said that the sourcing of the funds may have been a challenge for Mr Agrizzi because Mr Smith did not believe that there was an instruction from Bosasa to pay the money, as his loan was with Mr Agrizzi and not Mr Watson. Mr Smith further testified that had Mr Agrizzi said to him that he did not have the cash but was going to source the cash from the company, Mr Smith would have gone to Mr Watson with whom he had a relationship and asked for the money. Mr Smith said that he was very clear that he did not want to have anything to do with the organisation and that he was dealing with Mr Agrizzi. At the time, Mr Smith said that he was not aware of where the money was sourced from.⁹⁶²

623. Mr Smith was shown the bank account statement for Euro Blitz dated 31 August 2016, reflecting on the second page that on 6 August 2016 an amount was received for 'general credit ... car accident settlement' with no reference to Mr Agrizzi. When asked how Mr Smith linked this payment with Mr Agrizzi, Mr Smith said that he was expecting this kind of money to come from Mr Agrizzi because he knew that there was no other

⁹⁶¹ Transcript, day 261, p 119.

⁹⁶² Transcript, day 261, pp 120 -123.

source that would have paid into that account, unless it was a mistake. When asked whether, on seeing the reference, Mr Smith was not worried that it did not reflect as a loan but as a car accident settlement, Mr Smith said that he did not notice or reflect on it at the time. Mr Smith agreed that any person looking at the statement would not know that the money was from Mr Agrizzi or Bosasa.⁹⁶³

624. When asked what the interest was that was going to be paid on the loan in his discussions with Mr Agrizzi, Mr Smith said that he had been advised not to answer the question as it could potentially incriminate him.⁹⁶⁴ When, previously, he had been asked about the terms of the loan agreement with Mr Agrizzi, Mr Smith had said that it was very simple – he needed to pay school fees immediately and so requested X amount that he would repay, and that the agreement was with Mr Agrizzi.⁹⁶⁵ Mr Smith had also previously been asked on two occasions about the terms of interest and had not answered those questions directly – merely stating on each occasion that there was no written loan agreement.⁹⁶⁶
625. Mr Smith testified that he declared his company, Euro Blitz, in his declaration to Parliament. When asked about whether he declared the loan, Mr Smith's reply was to the effect that he established that he was not required to reflect a "line item" in the Register and the loan could be found if the audited financial statements of the company were called for.⁹⁶⁷
626. When asked about the fact that the loan was to Mr Smith and not to Euro Blitz, Mr Smith said that technically that is correct but that the money went through the

⁹⁶³ Transcript, day 261, pp 124-126.

⁹⁶⁴ Transcript, day 261, pp 126-128.

⁹⁶⁵ Transcript, day 261, p 76. See also p 77 where Mr Smith repeated the terms.

⁹⁶⁶ Transcript, day 261, pp 83, 85.

⁹⁶⁷ Transcript, day 261, pp 130-131.

company and that on the version of the Register he had reflected the company. Mr Smith confirmed that the position, as far as Parliament was concerned, was that there was nothing that Mr Smith had done to disclose to Parliament that he had been given a loan personally and that there was nothing indicating that Mr Agrizzi had given a loan to Euro Blitz.⁹⁶⁸ Mr Smith also confirmed that at the time he was an alternate member of the Portfolio Committee on Correctional Services. Mr Smith described that full-time members were expected to make sure that the business of the committee worked, while an alternate member would participate to, for example, form a quorum, if and when available and required.⁹⁶⁹

627. Mr Smith further testified that the loan from Mr Agrizzi was not uppermost in his mind when making his required disclosures because, possibly from an ignorance point of view, the loan was in the company and the company reflected the transaction. Mr Smith agreed with me, that on his version, he regarded himself as somebody who had received a loan from Mr Agrizzi and would have wanted to disclose the loan, and not by listing Euro Blitz because that was a disclosure of a company in which Mr Smith had an interest, which said nothing about the loan with Mr Agrizzi. Mr Smith also said that he wanted to raise that fact that at the time of the loan, he was no longer the Chair of the Portfolio Committee and had no influence over the Department. Mr Smith said that he would have had no difficulty declaring the loan because he did not see any conflict and that there was no *quid pro quo* type of arrangement.

628. Mr Smith agreed with me that, regardless of whether he was or was not the Chair of the Portfolio Committee, he had an obligation to disclose the loan to Parliament. In response to an invitation from me to comment on the proposition that, if it was a legitimate loan, one would expect that Mr Smith would have disclosed the loan if he

⁹⁶⁸ Transcript, day 261, p 132.

⁹⁶⁹ Transcript, day 261, pp 133-135.

thought that there was no problem with it, Mr Smith said that from his position the transaction was reflected as a loan in the company. Mr Smith acknowledged that he may have been incorrect and that he accepted that the loan was personal but the fact that he had reflected it and that it was audited, showed to him that this was something he had to pay back at some point. He insisted that there was never an intention to hide it or to receive it in return for something else.⁹⁷⁰

629. When I asked him why Mr Agrizzi would continue to say that the money paid to Mr Smith was corrupt and deprive himself of having the money paid back to him, in terms of a loan, Mr Smith said that he did not know what Mr Agrizzi's motivation was. Mr Smith further said that Mr Agrizzi may have done so because he knew that it was not his money but that he did not want to venture into that area or get into that argument.⁹⁷¹

630. The evidence leader sought clarity from Mr Smith regarding an email sent to Mr Smith on 17 November 2017 from Mr Brian Landman, an accountant associated with Waterfall Investment Company, where the date of August 2026 had been crossed out and replaced with a handwritten "23". The date was with reference to when the dividends would be distributed, after all loans had been settled. Mr Smith testified that he did not make the amendment, which could easily be verified with the authors of the email. According to Mr Smith, the input costs were always going to be of a twelve-year duration, from 2011 to 2023. Mr Smith also undertook to source a document that would confirm that the date was meant to reflect August 2023 and to make it available to the Commission.⁹⁷²

⁹⁷⁰ Transcript, day 261, pp 137-141.

⁹⁷¹ Transcript, day 261, pp 142-144.

⁹⁷² Transcript, day 261, pp 146-150.

631. Mr Agrizzi testified that in 2017/2018 Mr Smith approached him for a cash loan which was refused. Mr Smith then offered to sell his shareholding in the Life Waterfall Hospital, which Mr Agrizzi also refused.⁹⁷³ Following media reports, the matter was raised in Parliament and Mr Smith issued a press release stating that Mr Agrizzi had loaned him money.⁹⁷⁴ Mr Smith alleges that he had, separately from the alleged loan in respect of his daughter's university fees, sought a loan from Mr Agrizzi to deal with a cash flow problem, and when negotiating for the loan. He disputed that he had offered to sell his shares in the Life Waterfall Hospital as security for the loan, as alleged by Mr Agrizzi, but had mentioned the shares to show that he would be able to repay the loan.⁹⁷⁵ According to Mr Smith, the shareholder agreement did not allow him to sell his shares without going through his partners.⁹⁷⁶

632. Mr Smith also dealt in his evidence with Mr Agrizzi's allegations regarding Bosasa having provided a vehicle to Mr Smith's daughter.⁹⁷⁷ Mr Smith said that Mr Agrizzi was creating a false impression that his daughter owned a vehicle paid for by Bosasa, which according to Mr Smith, was not true. Mr Smith further stated that his daughter made use of a rented vehicle that Bosasa facilitated and paid for on three occasions. According to Mr Smith, on the first occasion, his daughter had returned home for school holidays and after he had unsuccessfully tried to get a friend of his to avail a small car for that time, he approached either Mr Watson or Mr Agrizzi for assistance with a loan vehicle.⁹⁷⁸ In his testimony, Mr Smith said that he approached Mr Watson, as a friend, for a motor vehicle for his daughter but that, at the time, had no indication

⁹⁷³ Transcript, day 37, p 108, p 110.

⁹⁷⁴ Transcript, day 37, pp 109-110.

⁹⁷⁵ Mr Smith's affidavit, paras 94-96, p 30.

⁹⁷⁶ Transcript, day 261, p 92.

⁹⁷⁷ Transcript, day 75, p 67.

⁹⁷⁸ Smith's affidavit, paras 104-106, p 32.

that it was going to be a rental vehicle. This only became apparent when they went to collect the car. Mr Smith confirmed that he did not declare that he had received this benefit and that he never asked Mr Watson whether he was going to source it from the company.⁹⁷⁹

633. Mr Smith sought to contextualise this as an innocuous favour, the provision of a "little runaround", by his long-standing friend Mr Watson who had always helped him, rather than a benefit that ought to have been declared to Parliament.⁹⁸⁰ In response to this, I questioned Mr Smith about the distinction that Mr Smith had, throughout his evidence, repeatedly emphasised, namely, the distinction between a company and an individual. I mentioned to Mr Smith the evidence heard in the Commission that Mr Watson was, to all intents and purposes, Mr Bosasa, and that Mr Agrizzi was Mr Watson's right-hand man. If the serious allegations of corruption levelled against Bosasa, of which Mr Smith was aware from 2010/2011, were true, the chances were that the top people at Bosasa were involved in corruption as companies act through human beings. In those circumstances one would have expected that Mr Smith would also have been concerned about receiving benefits from Mr Watson. Mr Smith responded that he and everybody distinguished clearly between the company and the individual. His relationship with Mr Watson as a personal friend predated the allegations that came out of the SIU. He went on to say -

"I have a personal friend called Gavin who in the past I would go to and say give us tee-shirts for the ANC, he will do it from the company.

I want to reiterate, Chair, that now we are having this honest and frank discussion, in retrospect the lines were blurred or possibly were blurred. I want to make that upfront, I do not want to fudge that, Chairperson. ... hindsight is always where one learns".⁹⁸¹

⁹⁷⁹ Transcript, day 261, pp 152-153.

⁹⁸⁰ Transcript, day 261, pp 152 -153.

⁹⁸¹ Transcript, day 261, pp 153-156.

634. Mr Smith confirmed that a car was hired by Bosasa for his daughter on three separate occasions; the first for 25 days, the second for 17 days and the third for 30 days at an approximate total cost of R26,000 that Mr Smith did not disclose.⁹⁸² I invited Mr Smith to comment on the fact that Bosasa hiring cars for Mr Smith's daughter and not charging him makes it appear as if Bosasa were looking after Mr Smith, as alleged by Mr Agrizzi. Initially Smith did not want to say anything further but then said -

"if - and we can do the sums, I think it was R26 000 or R22 000. ... Honestly, if they were looking after me in any other way it would be easier to take that money and pay this so that there is no track record about it. ... It was an honest - a run-around for my daughter. ... You gave that to me. If it was anything else, as Mr Agrizzi, they were looking after me, I would have used that looking after, whatever, to do it."⁹⁸³

Mr Vernie Petersen

635. Mr Petersen was appointed as National Commissioner of the DCS mid-2007. Mr Agrizzi testified that he had attempted to communicate with Mr Petersen about possible future ventures but that he would not have anything to do with any of the companies in Bosasa.⁹⁸⁴

636. Around the same time, two meetings were held with Mr Watson, Mr Agrizzi, Mr Khulekani Sithole ("**Mr Sithole**"), former Commissioner of the DCS, and someone by the name of Sbu, who Mr Agrizzi thought was the General Secretary of Police and Prisons Civil Rights Union ("**POPCRU**") at the time.⁹⁸⁵ Mr Agrizzi testified that the purpose of the meetings was to discuss how they could swing Mr Petersen and get a solution where he would start communicating with Bosasa.⁹⁸⁶ It was agreed that Mr

⁹⁸² Transcript, day 261, pp 163-166.

⁹⁸³ Transcript, day 75, p 69 & p 70, day 261, pp 166-168.

⁹⁸⁴ Transcript, day 38, p 91.

⁹⁸⁵ Transcript, day 38, pp 91-92.

⁹⁸⁶ Transcript, day 38, p 92.

Sithole, Sbu and Mr Mnikelwa Nxele ("**Mr Nxele**"), the Regional Commissioner of the DCS in KwaZulu Natal, would be paid R1m per month.⁹⁸⁷ The payment would be in exchange for undue pressure that would be put on the DCS and Mr Petersen, through the associations with POPCRU and the unions, to ensure that the attitude towards Bosasa changed to get Peterson to agree to work with Bosasa.⁹⁸⁸ Mr Agrizzi testified that Mr Petersen's cooperation, as decision maker and accounting officer of the DCS, was required because Bosasa wanted more business and new opportunities.⁹⁸⁹

637. Mr Agrizzi testified that Mr Sithole would get somebody to email an invoice and he would pass it on to accounts, get Mr Watson to approve it and put it through for payment. The invoices were on a company letterhead, called Vleissentraal.⁹⁹⁰ Mr Agrizzi testified that he recalled an issue with the payments at a stage because the recipients were unhappy that the R1m included VAT.⁹⁹¹ Mr Agrizzi also testified that the amount was reduced to R700,000 per month after Sondolo IT lost the contract for the staffing of the control rooms at the DCS.⁹⁹²

638. Mr Agrizzi felt that Bosasa was wasting money as Mr Sithole, Sbu and Mr Nxele were not delivering anything and communicated this to Mr Watson who did not agree with him at the time.⁹⁹³ Mr Agrizzi testified that in 2008 payments to Mr Sithole and Mr Sbu ceased but that Mr Nxele was paid R57,500 per month for his influence in the KwaZulu

⁹⁸⁷ Transcript, day 38, p 93.

⁹⁸⁸ Transcript, day 38, p 95.

⁹⁸⁹ Transcript, day 38, pp 95-96.

⁹⁹⁰ Transcript, day 38, p 93.

⁹⁹¹ Transcript, day 38, p 96.

⁹⁹² Transcript, day 38, p 96, p 97.

⁹⁹³ Transcript, day 38, pp 97-98.

Natal Department of Correctional Services.⁹⁹⁴ Mr Agrizzi further testified that Mr Nxele was extremely unhappy with the amount he was being paid.⁹⁹⁵

639. Mr Agrizzi attended a meeting with Mr Gumede and Mr Nxele at a restaurant at the Intercontinental Hotel at ORTIA. It was the first time that Mr Agrizzi met Mr Nxele, who was in full uniform. Mr Agrizzi testified that, prior to the meeting while Mr Watson was packing the money for Mr Nxele in the vault, he briefed Mr Gumede and Mr Agrizzi on what to say to Mr Nxele.⁹⁹⁶ Mr Agrizzi testified that he explained to Mr Nxele that Bosasa was not in a position to increase the amount agreed upon and that Mr Gumede handed the security bag of money to Mr Nxele. After the lunch, Mr Nxele said that he was unhappy with the money, as it was not the money promised to him and that he would convey his dissatisfaction to Mr Watson.⁹⁹⁷

640. Mr Agrizzi testified that a few weeks later, he was instructed to accompany Mr Mathenjwa, at that stage managing director of Sondoto IT, to the Beverly Hills Hotel in Durban to meet Mr Nxele. This was after constant messages from Mr Nxele regarding his dissatisfaction with the amount he was being paid.⁹⁹⁸ Mr Mathenjwa and Mr Agrizzi met with Mr Nxele for about two hours. Mr Agrizzi explained that Bosasa was not in a position to increase the amounts. Mr Agrizzi testified that Mr Nxele was not happy, said he would deal with it in his own way and left without taking the grey security bag of money (that contained R57,500).⁹⁹⁹ Mr Agrizzi testified that Mr Nxele

⁹⁹⁴ Transcript, day 38, p 99.

⁹⁹⁵ Transcript, day 38, p 100.

⁹⁹⁶ Transcript, day 38, p 100.

⁹⁹⁷ Transcript, day 38, p 101.

⁹⁹⁸ Transcript, day 38, p 102.

⁹⁹⁹ Transcript, day 38, p 103.

called Mr Mathenjwa about ten minutes later and asked if he could come and fetch the bag which he did in Mr Agrizzi's presence.¹⁰⁰⁰

641. In his affidavit filed in response to a 10(6) directive, Mr Mathenjwa denies having any knowledge about any financial arrangements or discussions with Mr Nxele and denies that he was ever involved in paying Mr Nxele money whether in a grey bag or otherwise.¹⁰⁰¹ According to Mr Mathenjwa, he was asked to join Mr Agrizzi in Durban. Mr Agrizzi advised him that there was concern over the use of emerging contractors on the DCS projects in KwaZulu-Natal which needed to be resolved. Although Mr Mathenjwa indicates that he did not have a working relationship with the Department, and it puzzled him why Mr Agrizzi wanted him to be part of the discussion, he nevertheless accompanied Mr Agrizzi as it was his prerogative as the COO to decide who should attend meetings regarding the affairs of the Bosasa Group, from time to time.¹⁰⁰²

642. Mr Mathenjwa stated that he excused himself to go to the washroom before Mr Nxele arrived. When he returned to the table, it was clear that Mr Agrizzi and Mr Nxele had had a disagreement. Mr Mathenjwa stated that he sat some distance from them and that the discussion appeared to come to an abrupt end when Mr Nxele left the hotel.¹⁰⁰³ Mr Mathenjwa denied that Mr Nxele contacted him later to make arrangements for the collection of the grey bag. Mr Agrizzi requested that he call Mr Nxele to see if he would resume discussions with Mr Agrizzi. He did so and there was no immediate answer. Mr Nxele returned Mr Mathenjwa's call a while later and told him not to bring a white

¹⁰⁰⁰ Transcript, day 38, pp 103 -104. Mr Agrizzi's testimony conflicts with his Initial Affidavit where he says at para 29.15 that Mr Nxele contacted Mr Mathenjwa to make arrangements for the collection, but that he did not accompany Mr Mathenjwa and did not attend further meetings with Mr Nxele.

¹⁰⁰¹ Mr Mathenjwa's affidavit, para 32.1.1, p 14.

¹⁰⁰² Mr Mathenjwa's affidavit, para 32.1.2, p 14.

¹⁰⁰³ Mr Mathenjwa's affidavit, para 32.1.4, p 15.

man to KwaZulu-Natal to undermine him and that he would not speak to Mr Agrizzi.¹⁰⁰⁴ Mr Mathenjwa states in his affidavit that he was confused but that Mr Agrizzi advised that he would handle the matter. Mr Mathenjwa says he then left Durban and Mr Agrizzi remained behind. According to Mr Mathenjwa, he had no further dealings with Mr Nxele after that interaction.¹⁰⁰⁵

643. In late 2008 Mr Petersen was moved to the Department of Sports and Recreation and the Director General at Sports and Recreation Ms Xoliswa Sibeko (“Ms Sibeko”) was appointed as the National Commissioner of the DCS.¹⁰⁰⁶ Mr Agrizzi testified that, after Ms Sibeko’s appointment, they were informed that the DCS was going to cancel Sondolo IT’s contract for the staffing of the control rooms, as Ms Sibeko was adamant that she did not want the Bosasa Group involved with the DCS.¹⁰⁰⁷

644. Mr Agrizzi was tasked by Mr Watson to accompany Leshabane to the Intercontinental Hotel at ORTIA to meet with Mr Modise (who at the time was Chief Deputy Commissioner in charge of Correctional Care and Security at the DCS).¹⁰⁰⁸ Mr Agrizzi testified that he explained the benefits of outsourcing to Mr Modise when Mr Leshabane arrived and gave Mr Modise a packet wrapped in newspaper.¹⁰⁰⁹ The packet was a grey plastic bag of cash that Mr Watson and Mr Agrizzi had packed earlier that day and that Mr Agrizzi had handed to Mr Leshabane.¹⁰¹⁰ After the meeting, Mr Agrizzi confirmed with Mr Leshabane that he had given the full amount of cash to Mr Modise, although Mr Agrizzi at the time of testifying was unable to recall the full

¹⁰⁰⁴ Mr Mathenjwa’s affidavit, paras 32.1.5 – 32.1.6, pp 15-16.

¹⁰⁰⁵ Mr Mathenjwa’s affidavit, paras 32.1.7 – 32.1.8, p 16.

¹⁰⁰⁶ Transcript, day 38, p 115.

¹⁰⁰⁷ Transcript, day 38, p 116.

¹⁰⁰⁸ Transcript, day 38, p 116.

¹⁰⁰⁹ Transcript, day 38, p 116.

¹⁰¹⁰ Transcript, day 38, p 117.

amount handed to Mr Modise.¹⁰¹¹ Mr Modise was one of the officials at the time who was receiving monthly payments from Bosasa.¹⁰¹²

Media reports on Bosasa's contracts with the DCS

645. On 30 January 2009 a media article titled "Prisons graft: Here's the proof, minister" was published in the Mail and Guardian, written by journalist Mr Adriaan Basson.¹⁰¹³ It covered the period 2004 to 2006. Mr Agrizzi testified in relation to the article. In the summary that follows, the article is not quoted in full, but rather Mr Agrizzi's evidence in response to it.

646. Mr Agrizzi testified that the article was accurate according to his knowledge.¹⁰¹⁴ The article, in part, read:

"On Sunday the Department of Correctional Services placed expensive advertisements in three national newspapers urging anyone with proof of impropriety in the awarding of prisons contracts to inform South Africa's Law Enforcement Agencies. This week we present the proof. Confidential documents and correspondence leaked to the Mail & Guardian suggest a highly improper relationship between the department and controversial facilities management group Bosasa.

We can reveal that Bosasa which has received nearly R3 billion in contracts from Correctional Services Minister Ngconde Balfour's Department:

- had confidential documents leaked to it by the Department's former Chief Financial Officer and Balfour-confidante, Patrick Gillingham,
- had access to tender documents for major prison projects before they were advertised, and
- spied on senior correctional services officials during a 2006 workshop."¹⁰¹⁵

¹⁰¹¹ Transcript, day 38, pp 117-118.

¹⁰¹² Transcript, day 38, p 119.

¹⁰¹³ Transcript, day 38, p 119; annexure M, p 352.

¹⁰¹⁴ Transcript, day 38, p 120.

¹⁰¹⁵ Transcript, day 38, pp 120-121.

647. Mr Agrizzi was unable to confirm whether the estimate value of contracts of R3 billion received by Bosasa from the DCS is reasonably accurate.¹⁰¹⁶ Mr Agrizzi confirmed that confidential documents were leaked to Bosasa by Mr Gillingham and that Bosasa had access to tender documents for major prison projects before they were advertised.¹⁰¹⁷ Mr Agrizzi clarified that Minister Balfour did not receive anything from Bosasa.¹⁰¹⁸ Mr Agrizzi further confirmed that he supervised an exercise whereby a company was employed to spy on the DCS officials at a workshop in 2006. The company took photographs and socialised with the officials and provided a report. This was on the instruction of Mr Gillingham, to whom the report was ultimately provided.¹⁰¹⁹
648. Mr Agrizzi clarified that the article was not correct insofar as it stated that the SIU had raided the Bosasa offices in December 2008. He clarified that, rather than being raided, it had been arranged that the SIU attend at the Bosasa premises and copy the server file.¹⁰²⁰ Mr Agrizzi confirmed that three weeks after the SIU had attended at Bosasa, Bosasa was re-awarded the catering contract that it had originally been granted in 2004.¹⁰²¹ At that time, Mr Agrizzi said that Mr Gillingham was the head of the Bid Adjudication and Bid Evaluation Committees.¹⁰²² Mr Agrizzi further confirmed that Mr Petersen suspended Mr Gillingham in September 2008 after receiving the

¹⁰¹⁶ Transcript, day 38, p 121.

¹⁰¹⁷ Transcript, day 38, pp 122-123.

¹⁰¹⁸ Transcript, day 38, p 123.

¹⁰¹⁹ Transcript, day 38, pp 124-125.

¹⁰²⁰ Transcript, day 38, p 125.

¹⁰²¹ Transcript, day 38, p 126.

¹⁰²² Transcript, day 38, p 128.

preliminary SIU Report.¹⁰²³ Mr Gillingham was suspended for about a year before he resigned from the DCS.¹⁰²⁴

649. In response to the allegation in the article that "Petersen was later transferred to the Sports Department in what was widely seen as a reprisal for his opposition to Balfour's attempts to extend the 2004 contract", Mr Agrizzi testified:

"I think Balfour was innocent in this. I do not think he tried to extend it. I think what happened was he walked into a meeting if I recall correctly. He was annoyed with Vernie Petersen, because Vernie Petersen had accused him of receiving a vehicle from Bosasa and what happened was and I am sorry. I did not comment on this, because I did not think you would ask, but basically he was annoyed with Vernie Petersen and he said I will show you who is boss. This is apparently what happened, but I can tell you now that there was no evidence even that Balfour had received a vehicle or anything like that and I do not think it was Balfour that pushed him out."¹⁰²⁵

650. Coming back to the time of the original award, Mr Agrizzi confirmed that the tender for running kitchens of correctional centres was outsourced for the first time in 2004, that the tender was officially advertised on 21 May, but that Mr Mansell had, on 1 May, sent Mr Agrizzi papers containing more than 90% of the bid conditions and specifications.¹⁰²⁶ Mr Agrizzi also confirmed that three weeks later, the DCS made available the same document with the same spelling errors to the rest of the catering sector.¹⁰²⁷ Mr Agrizzi previously testified and further confirmed that Bosasa was awarded the contract worth R239m a year for three years and that the DCS extended the contract for another year and expanded it to include more prisons adding R82m

¹⁰²³ Transcript, day 38, p 127.

¹⁰²⁴ Transcript, day 38, p 128.

¹⁰²⁵ Transcript, day 38, pp 126-127.

¹⁰²⁶ Transcript, day 38, p 129.

¹⁰²⁷ Transcript, day 38, pp 129-130.

to the bill.¹⁰²⁸ Mr Agrizzi was not aware that the further extension of the contract was a matter of dispute between Mr Petersen and Minister Balfour.¹⁰²⁹

651. Mr Agrizzi confirmed that Mr Mansell had sent him large parts of a tender document including bid conditions and specifications in relation to a contract for nutritional training for prisons kitchen staff on 12 May and that the tender was advertised on 4 June.¹⁰³⁰

652. Mr Agrizzi confirmed the following allegations in the article to be correct:

“The inclusion of CCTV cameras in the catering tender meant that by 2005 Bosasa had a national control centre to monitor the kitchens. This linked perfectly with its next contract the R237 million tender for access control and CCTV in 66 prisons, it went to newly registered company Sondolo IT which Beeld revealed in 2006 was 40 percent owned by Bosasa Operations.”¹⁰³¹

653. Mr Agrizzi testified that Mr Basson had obtained the information contained in the article from “a couple of people inside” Bosasa but that he had never provided this information to Mr Basson, having been loyal to Bosasa at the time.¹⁰³²

654. In 2006 Bosasa Operations owned 40% shareholding in Sondolo IT. Mr Agrizzi was unable to recall who the other shareholders were because “the shareholding changed like kids eating sweeties. ... This was a mess. One never knew what the shareholding was. It was how [Mr] Watson got up in the morning. So I cannot recall.”¹⁰³³ Mr Agrizzi confirmed that other shareholders of Bondolo IT included former President Thabo

¹⁰²⁸ Transcript, day 38, p 130.

¹⁰²⁹ Transcript, day 38, p 130.

¹⁰³⁰ Transcript, day 38, p 131. Although Mr Agrizzi went on to say “Correct, but I just want to clarify something. I think this refers to the HK2 2004 which was a catering tender.”

¹⁰³¹ Transcript, day 38, p 132; annexure M, p 353.

¹⁰³² Transcript, day 38, pp 133-134.

¹⁰³³ Transcript, day 38, p 135.

Mbeki's political advisor, Mr Titus Mafolo and former Strategic Fuel Fund Chairperson Mr Seth Phalatse.¹⁰³⁴

655. Mr Agrizzi confirmed that on 17 December 2004 Bosasa's IT coordinator Mr Johan Helmand emailed him certain tender specifications that were to appear in the official bid document published on 4 February 2005 and that the contract was awarded to Sondolo IT on 29 April 2005.¹⁰³⁵

656. Mr Agrizzi testified that Mr Gillingham would often send him resource papers and newspaper clippings.¹⁰³⁶ On 29 August, Mr Gillingham sent Mr Agrizzi a copy of questions from the City Press put to the DCS about the Bosasa contracts.¹⁰³⁷

657. Mr Agrizzi confirmed, as he had previously testified, the allegation in the article. The article read in part:

"On December 9 2005 Bosasa landed a R487 million prisons' contract for security fencing through a small Cape Town firm, Phezulu Fencing it had purchased. There is double proof that the company had privileged information long before the tender was advertised."¹⁰³⁸

658. Although Mr Agrizzi had no independent recollection of an email he had allegedly sent to Mr Mansell three months earlier (on 25 September 2005) containing a voluminous document with bid specifications, in which he requested Mr Mansell to "verify and check", he confirmed that "if it is in the document it occurred" and "I would have

¹⁰³⁴ Transcript, day 38, p 135.

¹⁰³⁵ Transcript, day 38, p 136.

¹⁰³⁶ Transcript, day 38, p 136.

¹⁰³⁷ Transcript, day 38, p 137.

¹⁰³⁸ Transcript, day 38, p 137.

*responded to him if he had sent me an email and I would have responded in that manner.*¹⁰³⁹

659. On 3 October 2005 Mr Agrizzi sent a longer version headed "Fence Doc Final" to the chief executives of Bekaert Bastion (later renamed Beta Fence) and SA Fence and Gate, Mr Michael Roodenburg and Mr Geoff Greyling respectively, under the subject line "Fence Doc Final ... Very Confidential ...". According to Mr Basson's article, this email "*contained the full bid conditions and specifications [later] published by the department on October 14 [2005]*".¹⁰⁴⁰ Mr Agrizzi testified that he would have been sent the document by Mr Mansell or one of the team that were working on the actual document itself. Mr Agrizzi said: "*I would have literally sped read it and I would just forward it back to the team*" (i.e. Messrs Roodenburg and Greyling).¹⁰⁴¹ Mr Agrizzi confirmed that he knew Mr Roodenburg and Mr Greyling.¹⁰⁴²

660. Mr Agrizzi confirmed his previous evidence that he had in his possession and transmitted to relevant parties a document containing the full bid conditions and specifications which were later published by the DCS.¹⁰⁴³ It was clarified by Mr Agrizzi that SA Fence and Gate was not the only entity subcontracted to do the fence and that there were others that he had previously mentioned in his evidence.¹⁰⁴⁴

661. The article further alleged:

"This week Greyling categorically denied seeing a copy of the bid document before it was published. He said: It should be recorded that the tender was based on the standard public works/correctional services specification with which we are well acquainted from

¹⁰³⁹ Transcript, day 38, p 138.

¹⁰⁴⁰ Transcript, day 38, p 138; Mr Agrizzi Initial Affidavit Annexure "M", p353.

¹⁰⁴¹ Transcript, day 38, p 139.

¹⁰⁴² Transcript, day 38, p 139.

¹⁰⁴³ Transcript, day 38, pp 139-140.

¹⁰⁴⁴ Transcript, day 38, p 140.

previous bids. The prior possession of the tender document by anyone would therefore be of no specific advantage to such person."¹⁰⁴⁵

662. Mr Agrizzi disputed the correctness of Mr Greyling's assertion. Mr Agrizzi testified that while the standard installation process might be exactly the same as reflected in the tender specifications of Public Works or any other department, the actual mesh mentioned was different. They had made the opening and closing mechanisms different. He said that it was not a normal gate opener; it was an electro-magnetic slider. There were other changes made as well. The paragraph in the article, according to Mr Agrizzi, is not entirely true.¹⁰⁴⁶ Mr Agrizzi was of the view that prior possession of the tender document by anyone would be an advantage to such person.¹⁰⁴⁷

663. Mr Agrizzi was not aware of whether or not Ms Collet Stofberg of Bekaert Bastion (now Beta Fence) had, as Mr Basson's article quoted her as saying, indicated that years before this contract Beta Fence provided technical specifications to the Department of Public Works that were used in this tender.¹⁰⁴⁸ Mr Agrizzi did confirm Mr Basson's article insofar as it suggested (based on comments of an industry insider) that there was a big advantage in knowing the quantities required for the tender weeks before your competitors.¹⁰⁴⁹

664. Mr Basson's article continues:

"On October 10, 2005, Agrizzi sent Gillingham a six page document titled 'Equipment Specifications and Guidelines'. The same section featured in a tender for a

¹⁰⁴⁵ Transcript, day 38, pp 140-141; annexure M, pp 353-354.

¹⁰⁴⁶ Transcript, day 38, p 141.

¹⁰⁴⁷ Transcript, day 38, p 141.

¹⁰⁴⁸ Transcript, day 38, pp 141-142.

¹⁰⁴⁹ Transcript, day 38, p 142.

comprehensive television system comprising 6000 TVs for communal cells, published four days later.¹⁰⁵⁰

On 28 November 2005, Agrizzi emailed Mansell the confidential evaluation sheet the DCS used to adjudicate the television tender which Sondolo IT won on 17 March 2006.¹⁰⁵¹

665. Mr Agrizzi confirmed the correctness of this part of the article. Turning to events in 2006, the article continues:

"[o]n February 9 [2006] Mr Agrizzi sent Gillingham a document headed 'Quote Tender Evaluation Criteria New Waterval', containing comments on bid specifications for a contract for catering services at seven prisons in the Waterval management area, KwaZulu-Natal.¹⁰⁵²

The tender was officially advertised on May 19 [2006]. Seven days earlier Gillingham sent Mr Agrizzi the confidential evaluation sheet for the Waterval tender with a message '*Hi attached please find the reworked evaluation sheet for your comments. You will notice the evaluation sheet for sites visits cannot be published and will not form part of this document. Regards Patrick*'.¹⁰⁵³

666. Mr Agrizzi confirmed the correctness of this extract from the article in all respects. However, he was unable to recall if he provided comments in response to the invitation in Mr Gillingham's email.¹⁰⁵⁴

667. On 15 September 2006 Bosasa Operations was awarded the Waterval catering tender worth R123m over five years.¹⁰⁵⁵ Mr Agrizzi confirmed as correct the following allegation in the article:

"On April 24 2006 Agrizzi sent Gillingham a letter in which an anonymous writer asks the chairperson of Parliament's [Portfolio Committee responsible for] correctional services,

¹⁰⁵⁰ Transcript, day 38, p 142.

¹⁰⁵¹ Transcript, day 38, p 142.

¹⁰⁵² Transcript, day 38, p 142; annexure M, p 354.

¹⁰⁵³ Transcript, day 38, p 143.

¹⁰⁵⁴ Transcript, day 38, p 143.

¹⁰⁵⁵ Transcript, day 38, p 143.

Dennis Bloem, to 'sort out' the attack on the department by 'international capitalists' and 'activist Afrikaner companies'. This week Bloem confirmed receiving such a letter."¹⁰⁵⁶

668. Mr Agrizzi confirmed this. In this regard, Mr Agrizzi testified that every time there was an attack on Bosasa it would be *"blamed on racism, it gets blamed on international espionage. It is all these conspiracy theories"*.¹⁰⁵⁷

669. Mr Agrizzi confirmed that the spying operation referred to in the article is the same spying operation that he had testified about earlier in which he was involved. It was confirmed that on 21 June, Mr Agrizzi sent Mr Gillingham a surveillance report of a prisons department security workshop at a Drakensberg Hotel in June 2006. Mr Agrizzi confirmed what was stated further in the article, namely, that:

"The 25page report makes it clear that the agent was asked to spy on the department's chief deputy commissioner of security, Willem Damons, and his subordinate, Tonie Venter. The report also contains pictures of people and cars at the hotel, as well as inside of the conference room."¹⁰⁵⁸

670. Mr Agrizzi testified that anybody who was negative or problematic would be spied on at the instigation of Mr Watson.¹⁰⁵⁹ The purpose of the spy operation was to try and confirm conspiracy theories that were created within Bosasa to defend/protect the image of Bosasa, as a response to negative publicity about it.¹⁰⁶⁰ In this regard, Mr Agrizzi said:

"I used to have to draw up organograms that were fictitious in nature to try and show the conspiracy of the Afrikaner Broederbond from Stellenbosch and then it was not the Stellenbosch it was another crowd from wherever. It was always conspiracy so I cannot confirm you know that they were true because I never saw them."¹⁰⁶¹

¹⁰⁵⁶ Transcript, day 38, p 143; annexure M, p 354.

¹⁰⁵⁷ Transcript, day 38, p 144.

¹⁰⁵⁸ Transcript, day 38, p 144; annexure M, p 354.

¹⁰⁵⁹ Transcript, day 38, p 145.

¹⁰⁶⁰ Transcript, day 38, pp 145-146.

¹⁰⁶¹ Transcript, day 38, p 145.

671. Mr Agrizzi testified that he vividly recalled an exchange between himself and Mr Gillingham, described in the article, where Mr Agrizzi wrote to Mr Gillingham and indicated that nothing had actually happened. Mr Agrizzi had indicated his discomfort to Mr Gillingham because there was no conspiracy at all. The officials were doing their job and were at a function.¹⁰⁶²
672. The article alleged that Bosasa's lawyer, Mr Biebuyck, advised his client not to answer the Mail & Guardian's questions and warned the Mail & Guardian to publish "at your peril" and said that Bosasa would pursue charges of criminal defamation if the material was printed.¹⁰⁶³ Mr Agrizzi testified that Bosasa had taken steps against Basson but were not successful. They had lodged a complaint with the Press Ombudsman, Joe Thloloe, who sent an email to Ferial Haffajee accidentally copying Mr Agrizzi asking Ferial Haffajee how he should respond to Bosasa's email. Mr Agrizzi testified that Bosasa took the matter to court but nothing really happened.¹⁰⁶⁴

Oversight of the DCS

673. Mr Bloem provided an overview of the oversight role played by Parliamentary Portfolio Committees on Correctional Services.¹⁰⁶⁵
674. With regard to as the composition of the Portfolio Committee at times relevant to Mr Bloem's evidence and its meetings, Mr Bloem testified:
- 674.1. A Portfolio Committee is constituted by members of all the parties represented in Parliament. Members of this committee included Mr Bloem as the

¹⁰⁶² Transcript, day 38, pp 146-147.

¹⁰⁶³ Transcript, day 38, p 147; annexure M, p 354.

¹⁰⁶⁴ Transcript, day 38, pp 147-148.

¹⁰⁶⁵ Transcript, day 45, p 4-32.

Chairperson, Cindy Chikunga (at the time of Mr Bloem's testimony, Deputy Minister of Transport), Cele, Sam Mahote, Winnie Ngwenya, the late Reverend Bishop Tolo, Inkosi Xolo, James Selfe (from the Democratic Alliance), Sybil Seaton (from the Inkata Freedom Party), Mr Cupido (from the African Christian Democratic Party) and Ms Rajbally (from the Minority Front).¹⁰⁶⁶

674.2. During the period 2004 to 2009 the Portfolio Committee and Correctional Services held approximately 137 committee meetings in relation to the DCS as well as 27 oversight visits in various prisons around the country.¹⁰⁶⁷ The purpose of the oversight visits was to interact with officials of the Department, i.e. those responsible for the conditions of the prisons.¹⁰⁶⁸

674.3. There are electronic recordings and handwritten notes of all meetings of the Portfolio Committee.¹⁰⁶⁹

674.4. Mr Bloem considered the multi-party Portfolio Committee as being a central instrument in our parliamentary democracy and commented that the Portfolio Committee was working in the interests of the country and as a single unit despite the varying political affiliations.¹⁰⁷⁰

675. As to the difficulties encountered in the operation of the Portfolio Committee, Mr Bloem testified that the Committee had serious problems with the national leadership of the DCS, i.e. the Commissioner and his top structure. At the time Mr Bloem was the

¹⁰⁶⁶ Transcript, day 45, p 14.

¹⁰⁶⁷ Transcript, day 45, pp 14 and 15.

¹⁰⁶⁸ Transcript, day 45, p 15.

¹⁰⁶⁹ Transcript, day 45, p 16.

¹⁰⁷⁰ Transcript, day 45, pp 16 to 17.

Chairperson of the Portfolio Committee, the Commissioner was Mr Mti, then Mr Petersen, and thereafter Mr Tom Moyane. The Minister of the DCS at the time was Mr Ngconde Balfour.¹⁰⁷¹

676. Mr Bloem described the Portfolio Committee as having had serious problems in respect of accountability from the DCS. In particular, information requested at its meetings was either provided late or was not forthcoming. This made it very difficult for the Portfolio Committee to interrogate the DCS' operations. Mr Bloem considered this conduct to undermine the authority of the Portfolio Committee.¹⁰⁷²

677. Mr Bloem considers there to have been a breakdown of the relationship between the Portfolio Committee and the then executive authority of the DCS, being the Minister of Correctional Services, Mr Ngconde Balfour. For example, when the then Commissioner Mr Petersen, was redeployed to the Department of Sports and Recreation, the Portfolio Committee was not informed, nor were they given reasons for his redeployment. Mr Bloem considered Mr Petersen to have been "*the best national commissioner in the department*" given that he was a "*corruption buster*", he "*hates corruption with all his heart*" and he was a "*straightforward person*". During Mr Petersen's time as the Commissioner, the Portfolio Committee did not have any problems obtaining the information it had requested from the DCS.¹⁰⁷³

678. Mr Bloem described the DCS as being in a state of havoc when Mr Petersen took over from Mr Mti. Mr Moyane later succeeded Mr Petersen as the Commissioner.¹⁰⁷⁴ In relation to the havoc happening in the functioning of the DCS, Mr Bloem testified

¹⁰⁷¹ Transcript, day 45, pp 17 to 19.

¹⁰⁷² Transcript, day 45, pp 19 and 20.

¹⁰⁷³ Transcript, day 45, pp 20 and 21.

¹⁰⁷⁴ Transcript, Day 45, p22.

that there was no control or discipline within the DCS and that *"Bosasa was hampering the functioning of the Department of Correctional Services"*. The staff were unhappy with the state of affairs and convened protest marches.¹⁰⁷⁵

679. Mr Bloem testified that from 2004, the DCS received qualified audit reports. He attributed this to the weak internal financial controls within the DCS which impacted on the supply chain management process. Mr Bloem described it as being a *"free for all that was happening in the department"*.¹⁰⁷⁶ He mentioned, however, that more damning issues would have been uncovered if an investigation was undertaken into the affairs of the DCS under Mr Mti's predecessor, Khulekani Sithole. He described Mr Petersen as only person that tried to bring the DCS in line.¹⁰⁷⁷

680. Mr Bloem testified that despite the Portfolio Committee raising several concerns and objections (including concerns with corruption) with the then Minister as well as during "study group" meetings,¹⁰⁷⁸ these were not addressed. The Minister's response was that the DCS should be left to sort out their own problems and the Portfolio Committee should not interfere in its operations.¹⁰⁷⁹

681. At one stage the Portfolio Committee rejected the budget put forward by the DCS. Following this rejection, Mr Bloem was called to the Chief Whip's office and reprimanded because he was putting the ANC in a bad light. The Chief Whip of the ANC at the time was Mr Mbutelo Goniwe.¹⁰⁸⁰

¹⁰⁷⁵ Transcript, Day 45, pp 22 and 23.

¹⁰⁷⁶ Transcript, day 45, p23.

¹⁰⁷⁷ Transcript, day 45, p 24 and 25.

¹⁰⁷⁸ Mr Bloem explained that there are structures called "study groups" in Parliament which consist of members of different parties. The ANC had its own study group and the Minister was part of this group. During these study groups, the ANC committee members raised issues and invited the Chief Whip of the majority party to the study group meetings. – Transcript, day 45, p 29.

¹⁰⁷⁹ The Minister at the time being Ngconde Balfour. Transcript, day 45, pp 26 to 30.

¹⁰⁸⁰ Transcript, day 45, p 30.

682. Mr Bloem found himself to be in a conflict of interest situation in the sense that he was trying to stop what he referred to as 'the havoc' at the DCS, but at the same time he was told by his party not to take certain steps. When Mr Bloem served as Chairperson of the Portfolio Committee, former President Kgalema Motlanthe ("**Mr Motlanthe**") was Secretary General of the ANC and several party members complained to Mr Motlanthe about Mr Bloem's conduct. Mr Motlanthe however took a firm stand that Mr Bloem's conduct was in line with the function of an oversight committee which was meant to hold the Minister and the DCS to account. Many people labelled Mr Bloem as an opposition in the ANC.¹⁰⁸¹
683. Mr Bloem testified that the SCOPA scrutinises all government departments, their budgets and their records. SCOPA raised questions and concerns about the DCS. However, nothing happened. The Auditor-General also scrutinised the DCS and raised many issues and made recommendations on how to correct these issues. These recommendations, however, were not implemented. Mr Bloem testified that the Portfolio Committee also identified breaches of the PFMA.¹⁰⁸²

The DCS and breaches of the PFMA

684. By way of introduction, Mr Bloem explained that that there were two processes involved in procurement by a government department, i.e. (i) the decision to outsource functions to private sector; and (ii) the procurement of service providers through the issuing of tenders and allocation of contracts.
685. Insofar as the decision to outsource functions is concerned, Mr Bloem confirmed that, ideally, a department would perform its own functions internally. A feasibility study

¹⁰⁸¹ Transcript, day 45, pp 31 and 32.

¹⁰⁸² Transcript, day 45, pp 35 and 36.

would be conducted to determine whether a function should be outsourced and whether the budget allowed for the outsourcing.

686. In his affidavit Mr Bloem stated that the Portfolio Committee voiced its reservations and objections regarding the outsourcing of services within the DCS primarily on the issues of cost-effectiveness and necessity. They considered there to be other urgent priorities requiring attention such as poor salaries of DCS personnel and overcrowded facilities. Notwithstanding this, contracts were awarded to Bosasa and the feasibility studies for outsourcing functions to it were not given to the Portfolio Committee.¹⁰⁸³

687. When asked if, in his general view, money was well-spent within the priorities of the DCS, Mr Bloem stated that the outsourcing was a waste of taxpayers' money.¹⁰⁸⁴

688. Mr Bloem identified four contentious contracts with Bosasa:

688.1. a catering and training contract in July 2004 called "Nutrition";

688.2. a contract with Sondolo IT in April 2005;

688.3. a fencing contract for 47 DCS sites in November 2005; and

688.4. a television distribution contract in March 2006.¹⁰⁸⁵

689. Mr Bloem estimated the value of the contracts awarded to the DCS to be over a R1 billion.¹⁰⁸⁶

¹⁰⁸³ Mr Bloem's affidavit, p 5 at para 8.1; transcript, day 45 at pp 38 and 40.

¹⁰⁸⁴ Transcript, day 45, p 39.

¹⁰⁸⁵ Transcript, day 45, p 41.

¹⁰⁸⁶ Transcript, day 45, p 51.

690. Mr Bloem testified that the Portfolio Committee questioned the rationale for the television distribution contract (worth R224m) and the explanation given to it and the Minister was that it was for the development and training of inmates. He confirmed that, to date, educational programmes have not been rolled out.¹⁰⁸⁷
691. Mr Bloem testified that Mr Petersen's attitude as National Commissioner was to look at ways of stopping outsourcing given that he believed that outsourcing increased the opportunity for corruption.¹⁰⁸⁸ Mr Petersen informed them during a Portfolio Committee meeting that the newly appointed CFO, Ms Nadira Singh, had resigned after a few months because her life was threatened when she uncovered corruption.¹⁰⁸⁹

Department of Justice and Constitutional Development

Contracts awarded to Bosasa and its affiliates

692. Around 2013, Sondolo IT was awarded the contract of secure systems with the DoJ&CD at an approximate value of R601 m to install a security access control system for close on 110 courts nationally.¹⁰⁹⁰ Sondolo IT paid 2.5% of all money received to certain individuals in the DoJ&CD as lobbying fees or bribes.¹⁰⁹¹ The project was managed by the IDT, on behalf of the DoJ&CD.

¹⁰⁸⁷ Transcript, day 45, pp 42 and 43.

¹⁰⁸⁸ Transcript, day 45, p 43.

¹⁰⁸⁹ Transcript, day 45, p 85.

¹⁰⁹⁰ Transcript, day 41, p 31.

¹⁰⁹¹ Transcript, day 41, p 32.

693. The contract awarded for the CCTV and access control was, according to Mr Agrizzi, irregular and was met with resistance from the procurement division of the DoJ&CD as well as the financial division at the DoJ&CD.¹⁰⁹²
694. As the Bosasa COO, Mr Agrizzi was not able to verify the standards that were relied upon and he placed reliance on the feedback given to him by the operational heads of the departments. In this regard, Mr Mathenjwa was responsible for the roll out of the contract.¹⁰⁹³
695. It came to Mr Agrizzi's attention during 2016 that various court managers were dissatisfied with the services rendered and, in many instances, installations were incomplete and substandard. This concerned Mr Agrizzi and he deployed a specialist team to survey and take corrective actions on a national basis to rectify the matter.
696. In his Supplementary Affidavit, Mr Agrizzi stated that he was dismayed at the state of disrepair at the various sites, because Bosasa had been charging the DoJ&CD a monthly maintenance fee. He was aware that certain officials were receiving cash payments to overlook the problems and sign off on the monthly maintenance fee that was charged.¹⁰⁹⁴
697. Mr Agrizzi initiated and instructed a team to repair and replace the faulty equipment at these sites.¹⁰⁹⁵
698. A document was prepared by accountants and presented to Mr Agrizzi as proof that payments had come in and that certain monies were outstanding.¹⁰⁹⁶ The schedule

¹⁰⁹² Transcript, day 76, p 111.

¹⁰⁹³ Transcript, day 76, p 111.

¹⁰⁹⁴ Mr Agrizzi's Supplementary Affidavit, p 54 at para 178.

¹⁰⁹⁵ Mr Agrizzi's Supplementary Affidavit, p 55 at para 179.

¹⁰⁹⁶ Transcript, day 41, p 33; annexure U, p 692.

reflected the year to date receipts as R98,842,025.32. The total receipts for February 2013 were reflected as R15,798,081.19 and the 2.5% paid to individuals in the DoJ&CD, referred to as a management fee, for that month was R394,952.03. The total 2.5% paid to date was R2,026,098.60.¹⁰⁹⁷ The 2.5% was paid over and above other monies that were being paid to officials in the DoJ&CD.¹⁰⁹⁸

699. Mr Agrizzi testified that since 2006 Bosasa had been providing security and guarding services at some of the courts for the DoJ&CD. Mr Agrizzi became aware of the fact that Bosasa was looking after (in the sense of bribing) some of the officials in the DoJ&CD, including the repair of cars, furniture and the payment of cash amounts. Mr Gumede informed Mr Agrizzi that he required R40,000 a month for Ms Mams Nyambuse and R30,000 a month for Mr Thobane.¹⁰⁹⁹ Mr Thobane was the head of security at the DoJ&CD.¹¹⁰⁰ Mr Agrizzi testified that he was present on a few occasions when monies were paid over to Ms Nyambuse and Mr Thobane by Gumede.¹¹⁰¹ One instance with Mr Thobane was at the Sunnyside Park Hotel in Pretoria, and the other incidents were at restaurants and at impromptu meetings.¹¹⁰² Mr Agrizzi testified that Ms Nyambuse and Mr Thobane were the only two officials from the DoJ&CD in respect of whom he has direct evidence of payments being made.¹¹⁰³

¹⁰⁹⁷ Transcript, day 41, p 35; annexure U, p 696.

¹⁰⁹⁸ Transcript, day 41, p 36.

¹⁰⁹⁹ Transcript, day 41, p 37.

¹¹⁰⁰ Transcript, day 41, p 40.

¹¹⁰¹ Transcript, day 41, p 42.

¹¹⁰² TransCRIPT, day 41, p 43.

¹¹⁰³ TransCRIPT, day 41, p 44.

Upgrades to the SALU premises

700. The DoJ&CD rented the SALU premises (it was previously the offices of the Suid Afrikaanse Landbou-Unie) from the Billion Group and security upgrades were done to the premises, for which the Billion Group was liable. No tender process was followed and Sondolo IT was appointed. The Billion Group resisted payment and so arrangements were made with Mr Seopela to facilitate the transaction. Mr Agrizzi testified that he was told by Mr Seopela that he needed to provide R1.9m as a fee for arranging the contract.¹¹⁰⁴ Mr Agrizzi gave the R1.9m to Mr Seopela in cash and testified that he did not know whether Mr Seopela paid the money over to anyone or not.¹¹⁰⁵

Mr Desmond Nair

701. Mr le Roux gave evidence to the effect that he was instructed by Mr Mathenjwa in early 2016 to attend to work at the home of Mr Desmond Nair (“Mr Nair”), the Chief Magistrate, Pretoria Magistrates’ Court. The work entailed the installation of a full electric fence, IP CCTV system and alarm system with beams. This work was signed off by Mr Agrizzi. His initial estimate of the approximate cost of this project was R200,000.¹¹⁰⁶

702. In his further affidavit,¹¹⁰⁷ Mr le Roux said that, after giving his evidence, he was informed by a Sondolo IT employee, Riaan van der Merwe, that he did the design of the security required at Mr Nair’s home and visited Mr Nair’s residence for this purpose with Mr Baijoo on 27 August 2016. Using this information and the description on the

¹¹⁰⁴ Transcript, day 41, pp 45-46.

¹¹⁰⁵ Transcript, day 41, p 46.

¹¹⁰⁶ Transcript, day 44, pp 103 to 106.

¹¹⁰⁷ Exhibit T 21.

Regal Distributors invoices, Mr le Roux was able to find invoices in respect of components in the amount of R66,384.94. Again, the invoices were purportedly made out to "Mr Agrizzi" as customer, with "richard" appearing in the "order no." field.¹¹⁰⁸ He recalled that he also purchased the electric fence from Nemtek in Randburg.¹¹⁰⁹

703. Mr le Roux said that he personally attended the installation with seven other technicians over 14 days. The total approximate value of the equipment, vehicle travel and labour was R252,864.94. This comprises of R66,384.94 for equipment from Regal Distributors; R25,200 for vehicle travel and R161,280 for labour. It excludes the electric fence from Nemtek.¹¹¹⁰

704. Mr le Roux also confirmed having attended to one or two maintenance issues on the fence and CCTV system. He attached a copy of an SMS/Text message exchange with Mr Nair in which Mr le Roux indicated that he would return Mr Nair's call.¹¹¹¹

705. Mr Nair provided an affidavit in response to a regulation 10(6) directive, dated 26 August 2019,¹¹¹² a further affidavit dated 14 July 2020¹¹¹³ responding to Mr le Roux's affidavit of 30 June 2020, and he gave oral evidence. He denied any involvement in state capture, corruption, dishonesty or improper conduct. Mr Nair said he had no discussions with Mr le Roux. He denied speaking to or knowing Mr Agrizzi or Mr Watson or Mr Mathenjwa, although he acknowledged that the latter may have been present at some meetings following a fire at the court.¹¹¹⁴

¹¹⁰⁸ The supplier is the same as is the case in respect of the invoices attributed to the installation for Mr Smith.

¹¹⁰⁹ Exhibit T 21, p 21.

¹¹¹⁰ Exhibit T 21, p 22.

¹¹¹¹ Exhibit T21, Annexure RLR 16.

¹¹¹² Exhibit T23, pp 214-229.

¹¹¹³ Exhibit T23, pp 251-254.

¹¹¹⁴ Transcript, day 421, p183.

706. Mr Nair did not persist in his application for leave to cross-examine Mr le Roux on the basis that his (Mr Nair's) affidavit of 26 August 2019 be admitted into the record as evidence.¹¹¹⁵
707. Mr Nair came to know "Deuts Baijoo," who had been assigned the Pretoria Magistrates' Court as one of his nodes of responsibility as an employee of Sondolo IT under its contract with the DOJ&CD to provide security for the courts. He saw him regularly and found him to be friendly. Sondolo IT was a subsidiary of Bosasa.¹¹¹⁶
708. He explained that during mid-2016 he was busy hearing a murder trial as an Acting Judge in Skukuza. He was away from home a lot of the time for this purpose. He was concerned about his family's security because there were 23 accused and they were out on bail. In particular, he was concerned that he did not have CCTV cameras covering the premises. He, therefore, contacted Mr Baijoo and said that he had an amount of R50,000 available and explained his requirements. He said that Mr Baijoo said that he would have to have a look at Mr Nair's premises. This he did. During his visit, Mr Nair also pointed out that there was an existing electric fence and alarm system that would sometimes malfunction. He asked if Mr Baijoo could also establish what repairs needed to be done in this regard. Mr Nair said that a verbal agreement was concluded. Mr Nair said that Mr Baijoo departed on the understanding that he would "try and ascertain prices". Mr Nair said that Mr Baijoo said that he knew suppliers personally and, for labour, would use "one or two of his boys".¹¹¹⁷

¹¹¹⁵ Transcript, day 421, pp 161-162.

¹¹¹⁶ Mr Nair's affidavit, paras 13-17, pp 9-11.

¹¹¹⁷ Transcript, day 421, pp177-179.

709. Mr Baijoo visited on two further occasions before commencing work, the first accompanied by a white gentleman who Mr Nair did not meet and, on the second, "with a gentleman who I do not remember who he was with."¹¹¹⁸
710. Mr Baijoo started the work on the morning of 4 October 2016, while he (Mr Nair) was away for a funeral, from which he returned on the evening of 5 October 2016. Upon his return he found that the monitor for the cameras had been installed in the garage. Mr Nair objected because he wanted visuals on his monitors and TVs in the house, including the TV upstairs. Installation of the monitor in the garage was in breach of their agreement. Mr Baijoo undertook to look into the problem.¹¹¹⁹
711. In response, Mr Baijoo sent a technician who said there were problems with the wiring, for which he had not been responsible. Seemingly the problem was not addressed by the technician. Mr Nair asserts that he called Mr Baijoo several times after this to come and attend to the problem with the installation, but to no avail.¹¹²⁰ In January 2017 he gave up calling Mr Baijoo because it had become clear that he was reluctant to attend to the problem. He next saw Mr Baijoo about a year later at court but did not engage with him on the matter.¹¹²¹
712. The first time that he heard that Bosasa was involved in the installation was when Mr le Roux testified in the Commission in January 2019. The evidence came as a shock to him because the only person he dealt with was Mr Baijoo.¹¹²²

¹¹¹⁸ Transcript, day 421, pp 179-180.

¹¹¹⁹ Transcript, day 421, pp 181-182.

¹¹²⁰ Transcript, day 421, pp 183-184.

¹¹²¹ Transcript, day 421, p184.

¹¹²² Transcript, day 421, pp 177 – 185.

713. When questioned about Mr Baijoo's assertions (a) that he (Mr Nair) was part of a working group involved with Sondolo IT's work to be carried out in relation to a security upgrade for the Pretoria Magistrates' Court and (b) that he (Mr Nair) had to provide approval for the work before the court manager could provide final approval, he disputed this.¹¹²³
714. Mr Nair asserted that a Chief Magistrate would not have any role to play in the awarding of contracts and tenders. There had been a fire at the court after which the Chief Justice had requested him to play a leadership role in getting the court back to an optimum level of functioning. Only at that point did he have some engagement with some service providers in "Steercom" meetings. Aside from this role, "any decision relating to finance ... is a departmental issue" where the court manager has to give final approval. Of course, the court manager would seek out his opinions on these matters as head of court and Chief Magistrate and report to him. That was as far as it went. Mr Nair testified that by 2011, he had already delegated the function of chairing the Steercom meetings to the senior magistrate and the work to address the fire was completed around 2012, well before his private dealing with Mr Baijoo.¹¹²⁴
715. Mr Nair was questioned about Mr Baijoo's assertion in his affidavit of 24 July 2020 that the issue of security at Mr Nair's residence had been raised and discussed at a meeting attended by himself, Mr Nair and Mr Mathenjwa at the Pretoria Magistrates Court. Mr Mathenjwa had allegedly told Mr Nair that he should leave the matter to him (Mathenjwa) and he would get it sorted out. Mr Mathenjwa had later required Mr le Roux and Mr Baijoo to visit Mr Nair's residence to assess what additional security equipment needed to be installed.¹¹²⁵ Mr Nair described this as "nonsense", saying

¹¹²³ Transcript, day 421, pp 187 – 188; Exhibit T23, p 295, paras 7 – 8.

¹¹²⁴ Transcript, day 421, pp 188 – 193.

¹¹²⁵ Exhibit T23, p 297, paras 18 – 20.

that "this never happened".¹¹²⁶ Since 2013, he had left court operations, since he had started heading up the private law section of the Magistrates Court in addition to his role as Chief Magistrate.¹¹²⁷ He said that he was in possession of two further affidavits by Mr Baijoo which did not mention Mr Mathenjwa and contradicted Mr Baijoo's affidavit of 24 July 2020. These affidavits had been furnished to him by the Magistrates Commission. Nor was there any mention of a meeting as described by Mr Baijoo in that affidavit.¹¹²⁸

716. Mr Nair confirmed that the equipment that had been installed was still at his premises. He said he had never paid for it. He said that he declined to pay on the basis that Mr Baijoo "had the duty to perform first. I was fully within my right to withhold payment until he did what he ought to have done." Further, he insisted that he was unaware of any involvement by Bosasa / Sondolo IT. Mr Nair confirmed that he was aware that Baijoo worked for Sondolo IT but was unaware that Sondolo IT was a subsidiary of Bosasa. While he was aware that Sondolo IT was the DOJ&CD's CCTV provider, he only knew Bosasa to be the service provider in terms of security guards at the court. He said that he had contacted Mr Baijoo because, after their initial engagements in the Steercom meetings following the fire when he first met him, he "saw him two or three times a year. He was a friendly guy. He would come and greet me".¹¹²⁹

717. Mr Nair was referred to that portion of his affidavit where he stated that he did not dispute that Mr Mathenjwa may have attended meetings at his office after the fire at the court in 2010. Mr Nair was also referred to a statement made by Mr Mathenjwa to the Magistrates Commission for purposes of its investigation into the allegations made

¹¹²⁶ Transcript, day 421, p195-196.

¹¹²⁷ Transcript, day 421, pp 195 – 196.

¹¹²⁸ Transcript, day 421, pp 196 –200.

¹¹²⁹ Transcript, day 421, pp 202 –203. See also Transcript, day 421, p 15.

by Mr le Roux (in one of his affidavits in this Commission). There, Mr Mathenjwa stated:

"I attended meetings with officials in the Department of Justice, including from time to time, the Chief Magistrate of Pretoria, Mr Dennis (sic) Nair, to discuss operational matters pertaining to the agreement under which [Sondolo IT] had been contracted by the Department of Justice."¹¹³⁰

718. In response, Mr Nair pointed to his concession that, following the fire at the Magistrates' Court he may have been in a meeting with Mr Mathenjwa. However, he said that he was "unaware" of the meetings as described in paragraph 4 of Mr Mathenjwa's statement to the Magistrates Commission".¹¹³¹

719. He was then referred to paragraph 6 of Mr Mathenjwa's statement to the Magistrates Commission which read:

"Upon the request of Mr Baijoo, I agreed to an evaluation of the existing security system by [Sondolo IT]. Save for agreeing to the aforesaid evaluation, I had no involvement in or knowledge of the installation of a security system at the private home of Mr Nair (whether by [Sondolo IT] or anyone else)."¹¹³²

720. Mr Nair denied these allegations saying that at no point did Mr Baijoo tell him that he had engaged Mr Mathenjwa, or Mr Agrizzi, or Mr Watson, nor did he know these people. The fact that Mr Mathenjwa referred to him as "Dennis" instead of his correct first name, "Desmond", showed that he and Mr Mathenjwa were not acquainted.¹¹³³

721. Mr Mathenjwa denied that he had instructed Mr Agrizzi to do anything with regard to the security installation at Mr Nair's residence. In his affidavit in response to a 10(6)

¹¹³⁰ Exhibit T23, pp 512 – 513, paras 16.1 – 16.3 (para 4 of the statement of the Magistrates Commission).

¹¹³¹ Transcript, day 421, p 24.

¹¹³² Transcript, day 421, p6. 1. The company providing the IT is described in that statement as "GTS". However, in the same statement, Mr Mathenjwa explains that GTS stands for Global Technology Solutions (Pty) Ltd which was previously known as Sondolo IT, which, in turn, was a member of the African Global Operations (Pty) Ltd group of companies. This was previously known as Bosasa.

¹¹³³ Transcript, day 421, pp 24 –25.

directive from the Commission, Mr Mathenjwa repeated and confirmed the contents of his statement to the Magistrate's Commission.¹¹³⁴ Mr Mathenjwa explained that it was common practice for him to report back to Mr Agrizzi as the COO on the outcome of operational meetings he attended and that the meeting at the office of Mr Nair was no different. He gave feedback to Mr Agrizzi and, in doing so, drew attention to the concerns raised by Mr Nair. Mr Agrizzi did not foresee a problem in evaluating the system and would take the matter further.¹¹³⁵ Mr Mathenjwa also denied that Mr le Roux had acted under his instructions.¹¹³⁶

722. Mr Nair was asked whether he understood Mr Bajoo to have his own company. Mr Nair said he did not. Because of Mr Bajoo's function at court, he was aware of his position as an employee of Sondolo IT. However, he engaged him as one might engage a family member who, for example, worked at an air-conditioning company, to install an air conditioner over the weekend in his private capacity.¹¹³⁷

723. Mr Nair was asked whether there was any arrangement insofar as a pre-payment or a deposit was concerned to enable Mr Bajoo to purchase the required equipment. Mr Nair said that there was not. Mr Nair stated that, when Mr Bajoo left him after their initial meetings, he understood that he was still sourcing the equipment. He heard nothing from Mr Bajoo for a while and then, at the last minute, around 1 or 2 October, he heard that he was to start the job the following week. Mr Nair thought that he would trust him to proceed and they would discuss the issue of the price after he had done the job, trusting that he would not exceed the amount of R50,000. Mr Bajoo had indicated that he would be able to source the equipment at cost. When he called to

¹¹³⁴ Mr Mathenjwa's affidavit, para 16.2, pp 7-8.

¹¹³⁵ Mr Mathenjwa's affidavit, para 16.4, p 8.

¹¹³⁶ Mr Mathenjwa's affidavit, para 17, p 9.

¹¹³⁷ Transcript, day 421, pp 25-26.

say that the job would commence the following week, he did not mention the issue of price. The understanding was that he would do the job and be paid later. However, Mr Nair said that, when he came back, he found that it was a "third grade disaster" and not compliant with their agreement.¹¹³⁸

724. Mr Nair took strong issue with the quantification of the value of the benefit alleged to have been received by him through the installation of the security equipment. He did not accept that the invoices relied on for the cost of the equipment necessarily pertained to the equipment installed. He disputed that there were seven technicians involved over a period of 14 days. The serial numbers appear to have been added to the invoices in handwriting after photographs had been taken of the equipment at his home.¹¹³⁹ He had subsequently been able to install a camera system for under R10,000 and accordingly disputed the alleged cost of the equipment at R66,384,94. He said that the job did not take more than 3 ½ days.¹¹⁴⁰

725. Mr Nair conceded that he did not return any of the equipment installed. This was on the understanding that Mr Baijoo would return to rectify the defects, which he did not do. He was asked whether he considered making a reduced payment to Mr Baijoo. He answered that on the basis of the *exceptio non adimpleti contractus*¹¹⁴¹ he had no obligation to perform his part of the bargain unless Mr Baijoo had fulfilled his obligation.¹¹⁴² Mr Nair had installed a parallel system of cameras of his own but had left those installed by Mr Baijoo untouched.¹¹⁴³

¹¹³⁸ Transcript, day 421, pp 26 – 29.

¹¹³⁹ Exhibit T21, pp 21 – 23 paras 100 – 111.

¹¹⁴⁰ Transcript, day 421, pp 30 – 38.

¹¹⁴¹ The *exceptio non adimpleti contractus* means in simple layman's terms the right to withhold performance (eg. payment) where reciprocity exists contractually in terms of the performances by each party

¹¹⁴² Transcript, day 421, pp 39-40.

¹¹⁴³ Transcript, day 421, p41.

726. Mr Nair was questioned about the exchange of "WhatsApp communications" with Mr le Roux.¹¹⁴⁴ The exchange of SMS/text messages reads:

"2. Desmond Mr Nair

Text Message

03Apr2017,11:21

Can I call you later?

Just busy in a meeting

Ok thank you"¹¹⁴⁵

727. A possible explanation for this, he suggested, was that it might have been that he complained to Mr Baijoo and Mr Baijoo asked him to call his technician.¹¹⁴⁶

728. Mr Nair was asked whether he had ever approached the DOJ&CD regarding his security problem. He said that he had done so but had been informed that there was no policy to provide for acting judges or magistrates hearing serious crime cases. In the circumstances it would have taken a year if he had pursued the route of a special motivation. He therefore did it privately.¹¹⁴⁷

729. Finally, Mr Nair drew attention to affidavits deposed to by Mr le Roux in 2017 and 2018, which were attached as annexures to an affidavit of Mr Agrizzi in which Mr le Roux set out the special project beneficiaries and in doing so, made no mention of Mr Nair.¹¹⁴⁸

¹¹⁴⁴ In fact, one can see from the copy of the exchange that they are SMS/text communications.

¹¹⁴⁵ Exhibit T21, p 120.

¹¹⁴⁶ Transcript, day 421, pp 42 – 44.

¹¹⁴⁷ Transcript, day 421, pp 44-46.

¹¹⁴⁸ Transcript, day 421, pp 49-50.