Judicial Commission of Inquiry into State Capture Report: Part III

Vol. 2: BOSASA

Report of the Judicial Commission of Inquiry into State Capture: Part III: Vol. 2

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

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Judicial Commission

of

Inquiry into Allegations

of

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

Report: Part 3

Vol 2: BOSASA

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

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Department of Home Affairs

The Lindela contract

730. Lindela is a detention and repatriation facility for undocumented migrants owned and managed by Bosasa Properties (Pty) Ltd[1149] under the authority of the DHA.[1150] The initial tender for the management of Lindela was awarded to another subsidiary of Bosasa, Leading Prospect Trading 111 (Pty) Ltd.[1151]

731. Mr Wakeford testified that the initial contract for the management of Lindela was for a period of ten years from 1 October 2005 to 1 October 2015.[1152]

732. Mr Vorster testified that Bosasa was paid per person detained at Lindela and he was instructed by Mr Watson to improve the Lindela figures so that *"we could pay Riekele Construction for all the work that was done"*.[1153] The facility had enough beds for 5,000 migrants, but in approximately 2004 Bosasa was able to raise the number of occupants to 7,000. This was to be achieved by purchasing two buses and six trucks that were built to look like large versions of those used by the SAPS to transport prisoners between the police cells and court. Bosasa then provided the police with two private security teams (one overseeing the West Rand of Johannesburg and one overseeing the Pretoria area and East Rand) to assist with transporting people to Lindela.[1154]

[1149] A subsidiary of Bosasa.

[1150] Transcript, day 41, p 103; Mr Agrizzi's Initial Affidavit, p 89 at para 44.1.

[1151] Transcript, day 41, p 103; Mr Agrizzi's Initial Affidavit, p 89 at para 44.1.

[1152] Transcript, day 390, 96.

[1153] Transcript, day 43, p 126.

[1154] Transcript, day 43, pp 127 and 128.

733. When Mr Vorster started at Bosasa, they were paid R28.00 per person per day at Lindela. By the time he left Lindela in 2006, it had increased to R45.00 per person per day. The number of occupants at the facility increased over the festive season because migrants could not be deported using Transnet trains over this period.[1155]

734. Given that Mr Vorster headed up the facility, he was able to comment that Bosasa "was doing very well from Home Affairs". The DHA paid their invoices by cheque during this time. In 2006, the DHA's annual budget for Lindela was depleted within six months. This necessitated an additional R120m being allocated to the DHA by the Minister of Finance.[1156]

735. Mr Vorster testified that when Mr Arthur Fraser became Director-General for Home Affairs, he was under pressure to explain why the DHA budget was utilised in a short space of time. Mr Fraser therefore issued an instruction that Bosasa would not be permitted to transport people from the SAPS or assist the SAPS in their special operations to "catch" illegal immigrants. Thereafter, Mr Vorster used police reservists to drive the Bosasa vehicles to bring people into the facility. Mr Fraser stopped this practice and by 2007, the occupant count at Lindela was approximately 50% less.[1157]

736. Mr Vorster described Mr Watson as being upset by the decrease in the number of occupants and Mr Vorster was subsequently transferred to Bosasa technical division. He stayed in this position for a year before he was transferred by Mr Agrizzi to take up the role of Head of Procurement, Logistics and Vehicles in July 2008.[1158]

[1155] Transcript, day 43, p 129.

[1156] Transcript, day 43, p 130.

[1157] Transcript, day 43, p 131.

[1158] Transcript, day 43, p 132.

The review of the Lindela contract

737. Under the leadership of Minister Nosiviwe Mapisa-Nqakula, the contract for the management of Lindela came under review at the instance of the DHA.[1159] Mr Wakeford described this review as occurring in 2007 and as part of a turnaround strategy which involved large-scale restructuring of the DHA.[1160] The purpose of the review was to reduce costs at Lindela given that the DHA had since the early 2000's been paying a fixed minimum fee (calculated on the basis of there being 3,500 occupants) irrespective of the number of occupants. Given that Lindela was only accommodating 1,000 people, the Minister considered the fixed fee to amount to wastage.[1161]

738. A consulting firm known as Fever Tree Consulting (the local partner of AT Kearney)[1162] was engaged to conduct the review to determine the scope of the turnaround project and identify a comprehensive set of transformation projects for the DHA, including reviewing and renegotiating existing contracts.[1163] In turn, this firm, according to Mr Agrizzi, subcontracted the fee review discussion and negotiations to Mr Aneel Radhakrishna ("**Mr Radhakrishna**") from Akhile Management and Consulting (Pty) Ltd ("**Akhile**"). According to Mr Agrizzi, Mr Radhakrishna was appointed because Mr

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1159 Mr Agrizzi's Initial Affidavit, p 89 at para 44.2 read with transcript – day 41, p 104.

1160 Transcript, day 390, p 96.

1161 Transcript, day 41, p 104.

1162 Mr Wakeford explained that AT Kearney "were highly regarded due to their previous success within the public sector in South Africa namely at the South African Revenue Service...and internationally through successful execution of Home Affairs related projects in the USA, Belgium and Netherlands." – Transcript, day 390, p 98.

1163 See evidence of Mr Wakeford, transcript, day 390, p 97.

Watson and Mr Wakeford decided that they could work with him.[1164] This was the first time Mr Agrizzi met Mr Radhakrishna.[1165]

739. According to Mr Agrizzi, an agreement was subsequently reached to reduce the contract price at Lindela by approximately R860,000 per month.[1166]

740. Mr Agrizzi testified that, following the price reduction, the Lindela contract was extended for another five years. Given that the Lindela contract was subject to public scrutiny, the price reduction assisted in that *"it kept everybody quiet"*.[1167]

741. Following this Mr Radhakrishna asserted that an agreement had been reached with Bosasa that he would be paid an amount of R7m by them for facilitating the extension on favourable terms. Mr Agrizzi testified that he was unaware of this arrangement and approached Mr Watson. Mr Watson was unwilling to pay the R7m, but was willing to pay Mr Radhakrishna a monthly amount of R75 000 for which Mr Radhakrishna was required to submit an invoice. This he did through an agency with a name along the lines of the Wine Merchant Company. After some time, this payment stopped, before R7m was paid out.[1168]

742. Mr Wakeford responded to this evidenceas follows:

742.1. In 2007 a Department of Home Affairs turnaround project was initiated.

[1164] In the Initial Affidavit, Mr Agrizzi explains that it was decided that Mr Radhakrishna could be "managed" (Mr Agrizzi's Initial Affidavit, p 89 at para 44.3).

[1165] Transcript, day 41, p 103.

[1166] Transcript, day 41, p 105.

[1167] Transcript, day 41, pp 106 and 107.

[1168] Transcript, day 41, pp 105 - 106.

742.2. During the turnaround project, new and improved service level agreements ("SLAs") were negotiated with all key suppliers to the DHA, including SETA, Telkom, XPS (a government entity owned by the SAPO), Mtweze Double Ring, Government Printing Work and Leading Prospects Trading.[1169]

742.3. He was appointed by the Minister of Home Affairs as Ministerial Turnaround Advisor to oversee the turnaround project. Mr Wakeford's appointment as Ministerial Turnaround Advisor was through his close corporation and endured for two years from 2007 to 2009. His appointment ended a month before the general elections in 2009.[1170]

742.4. He made full disclosure to the DHA of his ongoing consultancy services to Bosasa.[1171]

742.5. He did not recommend Fever Tree to the DHA. When he was appointed as an advisor, Fever Tree was already "on risk" having come with strong recommendations from Cabinet. Mr Wakeford did however recommend Mr Radhakrishna's appointment, having worked with him in the past at the Eastern Cape Development Corporation (where Mr Wakeford had been CEO and Mr Radhakrishna had been COO). This was disclosed to Fever Tree and to the Minister who ultimately had to make their own assessment of the candidate. Mr Radhakrishna (who Mr Wakeford described as a man of capability and stature) was a public finance sector expert and contributed to taking the DHA from a disclaimer audit to an unqualified audit.[1172]

1169 Transcript, day 41, p 98.

1170 Transcript, day 390, p 98.

1171 Transcript, day 390, pp 98, 122-124.

1172 Transcript, day 390, pp 124-127, 143.

742.6. He denied attending or participating in a meeting with Mr Agrizzi and Mr Watson concerning the renegotiation of the Lindela contract with the DHA, or with Fever Tree or Mr Radhakrishna.[1173]

742.7. He further denied ever being part of any discussion that Mr Radhakrishna could be managed or where any deal was reached with Mr Radhakrishna to pay him R7 million.[1174] Mr Wakeford argued that plain logic made it unlikely that a consultant would be rewarded with R7m if his efforts cost Bosasa R325,706,422, being the amount that Mr Wakeford calculated to have been saved by the DHA as a result of the renegotiation of the Lindela contract with Bosasa.[1175]

742.8. As a support consultant working with DHA officials, Mr Radhakrishna was only one member of a team responsible for negotiating savings and he had no particular influence.

742.9. Mr Agrizzi was the signatory to all contracts and addenda relating to Lindela. Furthermore, it was Mr Agrizzi who would have met with Mr Radhakrishna to renegotiate the contract.[1176]

742.10. The annual report of the DHA recorded that the renegotiation of the Lindela contract generated a savings for the Department of R7.7m per annum along with further savings of R68 million and potential future savings of R112m.[1177]

[1173] Transcript, day 390, p 99.

[1174] Mr Wakeford application to cross-examine, p 36 at para 114 and 115.

[1175] Transcript, day 390, p 108; Mr Wakeford affidavit dated 5 May 2021, exhibit T33, p 936, para 303.

[1176] Transcript, day 390, pp 99-100.

[1177] Mr Wakeford application to cross-examine, pp 34 to 38 at paras 106 – 122.

The extension of the Lindela contract

743. According to Mr Agrizzi, apart from the renegotiations and price reduction, Mr Radhakrishna facilitated the extension of the contract. The contract with the DHA was consequently extended for a further five years. There was no tender process undertaken nor Treasury approval obtained for the extension of this contract.[1178] Mr Wakeford states that the contract review period was extended from three to five years and not the contract period as alleged by Mr Agrizzi.[1179]

744. Mr Agrizzi testified that more favourable terms were included in the extended contract. He testified that Mr Wakeford explained these terms to Mr Agrizzi which included making it more feasible for contract price increases.[1180] The annual gross value of the contract to Bosasa was R93,600,000.[1181] Mr Wakeford denies discussing the benefits of an extended contract with Mr Agrizzi.[1182]

745. Mr Agrizzi testified that Mr Radhakrishna later approached him, upset that he had not received his payment as yet. Mr Radhakrishna informed Mr Agrizzi that a deal had been reached between Mr Watson, Mr Wakeford and himself pursuant to which he expected payment of R7m for facilitating the renegotiation and extension of the contract.[1183]

746. Mr Agrizzi was concerned about paying Mr Radhakrishna this amount but Mr Watson informed him that he could be paid on a monthly basis.[1184] Pursuant to this, Mr

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1178 Transcript, day 41, p 105.

1179 Mr Wakeford application to cross-examine, exhibit T33, p 39 at para 123.

1180 Transcript, day 41, p 107.

1181 Transcript, day 41, p 106; Mr Agrizzi's Initial Affidavit, p 90 at para 44.4.

1182 Mr Wakeford application to cross-examine, p 39 at para 126.

1183 Transcript, day 41, p 105.

1184 Transcript, day 41, p 106.

Radhakrishna submitted invoices through a friend's agency known as Wine Merchant Company, or a name along those lines, for payment of R75,000 on a monthly basis. These payments were effected by Mr Bonifacio.[1185]

747. According to Mr Agrizzi, he stopped the payments to Mr Radhakrishna in and around 2015 given that (i) Bosasa was under scrutiny from the banks; and (ii) the company could not afford the monthly payments due to cash flow issues. Mr Agrizzi told Mr Radhakrishna that he would be assisted with an alternative until *"things came right"*. Bosasa assisted Mr Radhakrishna with rebranding Akhile.[1186]

748. Reverting to Mr Wakeford's version of events, he testified that there were two addenda to the original Lindela contract concluded in 2005, although he was not part of the negotiations. These addenda, known as the "Second and Third Addendums" were concluded on 18 February 2008 and 13 March 2009, respectively.[1187]

749. During his testimony Mr Wakeford highlighted what he considered to be the salient points of the addenda in order to demonstrate that the contractual terms of the addenda were for the benefit of the DHA and not Bosasa.

750. In respect of the Second Addendum,[1188] these terms were follows:

750.1. the DHA would receive a monthly saving of R640,939.23.

750.2. the minimum monthly threshold of 3,250 persons which the DHA was liable for within the original contract was reduced to 2,500 persons.

1185 Transcript, day 41, p 108; Mr Agrizzi's Initial Affidavit, p 90 at para 44.8.

1186 Transcript, day 41, p 108.

1187 Exhibit T33, p 926 at para 272.

1188 Exhibit T33, Annexure EA 275, p 1214.

750.3. variable costs for food would only be applicable when the number of immigrants held at the facility exceeded the minimum threshold of 2,500 persons.

750.4. the annual adjustments to pricing would be based on the prevailing consumer price index (although this condition was already present in the original contract).[1189]

751. Mr Wakeford considered the following to be the salient points of the Third Addendum:[1190]

751.1. the parties undertook to meet by April 2015 before the expiration of the original contract in October 2015 to discuss the extension of the contract beyond the initial period, i.e. October 2005 to October 2015.

751.2. the DHA would, in its sole discretion, be entitled to extend the initial period until 31 October 2018.

751.3. if extended by the DHA, the contract would continue on the same terms and conditions as the current agreement; however, the monthly charge payable by the DHA would be reduced by the capital cost of the facility of R1,804,620 per month.

751.4. a reduction in the monthly amortisation cost of the facility payable by the DHA of R240,000.

[1189] Transcript, day 390, p 100.

[1190] Exhibit T33, Annexure EA 278, pp 1217.

751.5. if the occupancy of the facility was below 50% of the minimum threshold for any 36-month period, the DHA would be able to reduce the variable cost component of the monthly charge.

751.6. the DHA were given a consumer price index holiday of six months (which ended up being five years because Bosasa failed to implement this clause).

751.7. Bosasa would provide additional medical services at no additional cost to the DHA.

751.8. Bosasa would spend an additional R5m in upgrading facilities and would provide the DHA with remote access facilities.

751.9. the DHA would have an option, during the full length of the contract, to purchase the Lindela facility at a price determined by a registered independent valuer.

751.10. the DHA would have a right of first refusal on any offer to purchase the facility by a third party.[1191]

752. Mr Wakeford pointed out that the "extension" referred to in the contract, was (i) only to be determined by the DHA, six years after the signing of the Third Addendum; (ii) a decision to be made six years after Mr Wakeford and Mr Radhakrishna were no longer connected to the DHA in any way, and (iii) no extension was eventually awarded to Bosasa in 2015 anyway.[1192]

[1191] Transcript, day 390, pp 100-102.

[1192] Transcript, day 390, p 103.

753. Mr Wakeford testified that Mr Agrizzi "attempted to repurpose the demands [he] himself made on the DHA" by stating that he would only consider reducing the monthly invoice to the DHA on condition that the original contract be extended for five years.[1193] At this time, the recommendation was that the DHA should only consider a three year potential renewal subject to performance. Ultimately, Mr Agrizzi was not afforded the extension he demanded.[1194]

754. Mr Wakeford referred to the report of the accounting officer[1195] in the 2008 annual financial statements which stipulated that negotiations around the Lindela contract resulted in direct savings of R7.7m per annum to the DHA.[1196] This was based on the annualised savings of R7.69m as a result of the R640,939.23 monthly saving provided. This would create future cost savings of R68m on the remainder of the Lindela contract, as detailed in the Annual Report of DHA for 2007/2008. In addition to the cost of the contract decreasing immediately, if the contract was extended at the sole discretion of the DHA, the cost would be further reduced by an additional R1.8m per month, producing additional potential future cost savings of R112m.[1197]

755. Mr Wakeford testified that the Commission's investigators had subsequently reviewed actual billings by Bosasa to the DHA and confirmed the following:[1198]

755.1. Before the renegotiations commenced Bosasa invoiced the DHA 3,250 persons x 30.4 days x R79.90 per person= R7 894 120 monthly.

[1193] Exhibit T33, Annexure EA 295 at p 1234.

[1194] Transcript, day 390, p 103.

[1195] Mr Mavuso Msimang, who Mr Wakeford described as a "man of great calibre" – transcript, day 390, p 104.

[1196] Exhibit T33, Annexure EA 302, p 1241.

[1197] Exhibit T33, Annexure EA 286, p 1225.

[1198] Transcript, day 390, pp 104-106, 225.

755.2. After renegotiation of the two addenda concluded in February 2009, Bosasa invoiced the DHA: 2,500 persons x 30.4 days x R99.41 per person = R7,560,130 monthly.

755.3. This amount remained the same for the following 62 months until March 2014. This means that no annual CPIX increases were implemented over this five-year period.

756. Mr Wakeford stated that the above confirmed that the price paid by the DHA after the two addenda, was R333,990 less than the DHA paid before the renegotiation and there was a clear benefit for the DHA and not Bosasa. He also pointed out that the increase in price per person from R79.90 to R99.41 per day was brought about as a result of the annual CPIX adjustments due in terms of the contract before renegotiation, and had nothing to do with the addenda. If this is considered, Mr Wakeford stated that the true price before renegotiation for comparative purposes is: 3,250 persons x 30.4 days x R99.41 per person= R9,821,780 monthly, taking into account the lowering of the minimum headcount.

757. Mr Wakeford stated that, in reality the price after renegotiations represented an immediate decrease in billing of R2,261,578 monthly, R27,138,936 annually. Bosasa did not increase this price by CPIX for the following five years (despite being contractually entitled to do so).[1199]

758. Mr Wakeford tabulated the "actual" prices billed by Bosasa and compared them to what would have been billed by Bosasa had the renegotiation of the original contract not transpired. This exercise was for the period 2009 to 2015 when the contract

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[1199] Transcript, day 390, p 106. Exhibit T33, pp 932-933.

expired and Mr Wakeford claimed it demonstrated that the true financial saving by the DHA over this period amounted to R325,706,422.[1200]

759. Mr Wakeford furthermore referred to extracts from the annual financial statements of Leading Prospect Trading which showed a consistent decrease in profits year-on-year until 2012 and 2013 when it began making losses. Mr Wakeford contended that this was indicative of the profitability (or otherwise) of the Lindela contract as Leading Prospect Trading was a single purpose entity exclusively for the operation of the contract.[1201]

760. Mr Wakeford asserted that on these grounds Mr Agrizzi's evidence regarding the extension of the Lindela contract were false.

761. Disputing this, Mr Agrizzi testified that to assist the lower occupancy at Lindela, there was a large rise in "repatriation costs for transport which way exceeded the savings mentioned by Mr Wakeford". Further, he said that "while the occupancy averages were halved with the so-called savings, the fixed fee per inmate remained the same".[1202]

762. Mr Agrizzi stated that the turnover billing pre- the negotiation was approximately R7,894,120.00 with a profit margin of 35% on average yielding between R2,600,000 to R2,900,000 a month. Post the negotiation, the turnover dropped to R7,560,130 but because of reduced occupancy levels and reduced costs related to the operation thereof, the profit margin increased to between 55% and 61 %, yielding "a net-profit contribution on average between R4,100,000 to R4,300,000 per month".

[1200] Exhibit T33, pp 934-935.

[1201] Transcript, day 390, pp 108-109. Exhibit T33, Annexure EA 308, p 1247.

[1202] Exhibit T33, p 768 at para 26.

763. Mr Agrizzi stated that, in order to disguise the actual profits from the directors and the DHA, Mr Watson created ingenious ways to dilute the profits by raising intercompany charges from non-performing entities and, therefore, profits in high-value contracts like Lindela were diluted. These included fictitious costs relating to security (which was provided by employees on the payroll), rentals (charged by Bosasa Properties), management fees and software.[1203]

764. Insofar as Mr Radhakrishna was concerned, Mr Wakeford stated that Mr Radhakrishna was only one member of a team of people responsible for negotiating savings at the DHA. All statutory powers remained vested in the accounting authority, namely, the Director-General and his subordinates. Mr Wakeford testified that Mr Agrizzi approached Mr Radhakrishna in October 2009 to enquire if Akhile could provide business advisory services in the negotiation of the terms of Kgwerano Phakisa's fleet management contracts with the Eastern Cape Government. A proposal was sent to Mr Agrizzi on 8 October 2009 detailing the work to be performed.[1204] Mr Agrizzi requested Mr Wakeford's input on this proposal.

765. Mr Wakeford submitted that, as an independent business consultant, Mr Radhakrishna enjoyed "professional agility" and was therefore able to consult to Bosasa. Mr Wakeford pointed out that Mr Agrizzi's argument that Mr Radhakrishna deliberately hid his invoicing of Bosasa by doing so in the name of Distinctive Choice Wines was "counter-intuitive" as Akhile invoiced Bosasa directly in its own name in November 2009 and the invoices from Distinctive Choice Wines were only issued in July 2011.[1205]

[1203] Exhibit T33, p 769 at para 26.

[1204] Transcript, day 390, p 112. Exhibit T33, Annexure EA 312, p 1251.

[1205] Transcript, day 390, pp 113 and 215.

Mr Radhakrishna's evidence

766. Mr Radhakrishna joined Akhile in 2007. He is its CEO. Akhile was appointed by a firm called FeverTree which was engaged by the DHA for services regarding the DHA's turnaround project. Akhile's provided FeverTree with consulting services on various projects including SITA, Telkom, SAPO, XPS/SkyNet Courier Company, Nthwese/Double Ring, Government Printing Works and Lindela. Double Ring and Lindela had existing contracts in place with the DHA at the time, which required renegotiation.[1206]

767. The purpose of the renegotiation was to create a mutually beneficial solution to the contractor and the DHA. The primary focus was for the DHA to receive cost savings and increased service delivery. Mr Radhakrishna pointed out that renegotiation of existing contracts did not require a tender process nor did it require any National Treasury involvement or approval.[1207]

768. Mr Radhakrishna referred to the Lindela negotiations FeverTree report of 4 December 2007[1208] which reflected that Bosasa had offered cost reductions on the Lindela contract on the condition that the DHA extended the contract by five years, whereas FeverTree recommended that no extension beyond three years be considered. Mr Radhakrishna confirmed that, ultimately, Bosasa conceded to the cost reductions without accepting any extension of the initial period of the contract.

769. Mr Radhakrishna confirmed that the negotiations pertaining to the Lindela contract were held with Mr Agrizzi and culminated in the conclusion of the second and third addenda to the initial Lindela contract of 2005. Both the addenda were signed by Mr

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1206 Exhibit T33, p 717.

1207 Exhibit T33, p 717 at par 6.

1208 Exhibit T33, annexure "KWR210", p 566.

Agrizzi as the authorised signatory of the service provider, being Leading Prospect Trading (Pty) Ltd, on 18 February 2008 and 13 March 2009 respectively. Mr Radhakrishna stated that none of the terms of the addenda were beneficial to Bosasa – all the terms of the addenda were to the benefit of the DHA.[1209]

770. Mr Radhakrishna stated that Mr Wakefield's detailed exposition of the addenda in his evidence accurately recorded that they were solely to the financial benefit of the DHA and that he confirmed all the representations made by Mr Wakeford as they related to the Lindela contract renegotiations.[1210]

771. Mr Radhakrishna stated that the result of the second addendum was that the minimum occupancy at the facility was reduced from 3,250 persons to 2,500 while certain costs which otherwise would have been the responsibility of the DHA were reduced, thereby creating a saving of R640,939.23 per month.[1211]

772. Mr Radhakrishna stated that the result of the third addendum was to afford the DHA an option and right of first refusal on the sale of the facility; an option to extend the contract for three years in its sole discretion; a monthly amortisation cost fee would decrease by R420,000 and additional costs would be borne by Lindela, including, amongst others, the cost of providing medical care facilities and the cost of registration and administration systems. He pointed out that these provisions were clearly to the benefit of the DHA and not Bosasa.[1212]

773. Mr Radhakrishna addressed Mr Agrizzi's evidence that, when the purported R7 million that was supposed to be received by Mr Radhakrishna from Bosasa for renegotiating

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[1209] Exhibit T33, p 718.

[1210] Exhibit T33, p 722.

[1211] Exhibit T33, p 723.

[1212] Exhibit T33, p 723.

the extension of the Lindela contract was not forthcoming, Mr Watson agreed to pay him monthly. He pointed out that Mr Agrizzi's oral evidence on this issue was contradictory: initially Mr Agrizzi said that he approached Mr Watson believing that Mr Radhakrishna should not be entitled to any payment, and that Mr Watson told him that Mr Radhakrishna should not be paid R7m, but should instead be paid on a monthly basis. He said that subsequently, Mr Agrizzi said that he in fact proposed to Mr Watson that Mr Radhakrishna be paid monthly.[1213]

774. Mr Radhakrishna explained that the use of bank account of Distinctive Choice Wines to receive payments for Bosasa was because he did not wish to involve his Akhile co-directors in fees received for work performed in his personal capacity for Bosasa in 2011.[1214] He stated that that there is no logical basis for the contention he sought to disguise that the payments were from Bosasa, given that Akhile had already received consulting fees from Bosasa in November 2009, 18 months before Distinctive Choice Wines ever received any payments from it. Further, Akhile still received funds from Bosasa in August 2011, subsequent to Distinctive Choice Wines receiving fees in July 2011.[1215]

775. Mr Radhakrishna stated that the fees received by Akhile and himself personally through Distinctive Choice Wines were not related to the renegotiation of the Lindela contract, but were for various engagements for consulting work performed relating to introducing Bosasa to opportunities in the oil and gas industry, consulting work on e-learning projects for the Gauteng Department of Education and introducing Bosasa to opportunities in e-health.[1216]

[1213] Exhibit T33, pp 724-725.

[1214] Exhibit T33, pp 725-727.

[1215] Exhibit T33, p 726 and 727.

[1216] Exhibit T33, p 728.

776. Mr Radhakrishna referred to an averment in Mr Agrizzi's replying affidavit to Mr Wakeford that, prior to the renegotiation process, the pricing structure was approximately R8,900,000 per month and the average occupancy exceeded 3200 persons per day. After the renegotiations, the occupancy decreased to approximately 1000 people per day, yet the monthly amount payable reduced by only a nominal amount to R7,500,000. Mr Radhakrishna responded as follows:

776.1. He pointed out that prior to the renegotiations, the occupancy was in fact 1153 and 1524 in 2006 and 2007 respectively, not 3200 (i.e. Bosasa were already reaping a benefit from low occupancy under the initial contract, which he and Wakeford had nothing to do with);

776.2. In fact, the occupancy levels increased to 1745 in 2008, subsequent to the conclusion of the Second Addendum in February 2008;

776.3. He pointed out that the occupancy levels at Lindela only exceeded 3,000 persons per day in 2003 and 2004;

776.4. The minimum occupancy level of 3,250 people was already stipulated in the original contract of October 2005 before either Mr Wakeford or Mr Radhakrishna were employed in any capacity within the DHA.

776.5. Mr Radhakrishna stated that it was in any event a requirement of the DHA that the Lindela facility would be able to accommodate 4,000 people regardless of what the actual occupancy was.

776.6. He pointed out that 93% of the costs of the facility were in any event fixed costs, not dependent on occupancy levels.[1217]

777. Mr Radhakrishna stated that the ultimate savings to the DHA would have been R2,169,693.50 per month or R134,520,997 over the 62 month period.[1218] The calculation he said correctly takes into account the following:

777.1. There were certain costs that had previously been the responsibility of the DHA before the renegotiations which were no longer its responsibility subsequent to the negotiations. This included the costs of bedding and linen, building depreciation, toiletries, kitchen amortisation, finance charges and admin fees. By the time of the renegotiation in December 2017, these amounts would be estimated to be R640,939.23 a month after allowing for an annual inflation of 6% per annum over the two year period. Had these costs not been foregone, this would have amounted to an additional cost the DHA would have had to pay.

777.2. Mr Radhakrishna stated the fact that the monthly invoice did not increase by more at this stage, was a result of the fact that all other costs would have had to be adjusted for CPIX. This included personnel costs which alone represented 23.9% of the total costs and which generally increased each year by a minimum of inflation.[1219]

778. Mr Radhakrishna pointed out that the third addendum, signed in March 2009, included a provision in paragraph 4.5 that if the Department chose to extend the existing contract for an additional three years the monthly invoice would reduce by the capital

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[1217] Exhibit T33, p 730.

[1218] Exhibit T33, p 731.

[1219] Exhibit T33, p 732.

cost of R1,804,620 per month. This represented a substantial benefit to the DHA. Whether or not the DHA chose to capitalise on this opportunity was beyond Mr Radhakrishna's powers as he was no longer involved with the DHA at that stage, and had not been for some six years.[1220]

779. Mr Radhakrishna summarised his assertions as follows:

779.1. accusations made by Mr Agrizzi against him pertaining to the renegotiations were untrue;

779.2 the extension of the Lindela Contract to which Mr Agrizzi referred;

779.3. The only remuneration Mr Radhakrishna received from the Bosasa Group was in his capacity as an independent consultant;

779.4. At no stage was there ever a conflict of interest on Mr Radhakrishna's part. He was never an employee of the State or any government department and all services were rendered through his company Akhile and on a contractual basis through the intervention of FeverTree;

779.5. Mr Agrizzi requested a meeting with Mr Radhakrishna in 2017 where he requested Akhile to be involved in certain projects within his (Mr Agrizzi's) new entity Crearis that he had formed to compete against Bosasa. After consideration, Mr Radhakrishna declined this request.

[1220] Exhibit T33, p 734.

779.6. Mr Agrizzi sought to use the Commission to serve a personal agenda he had against his former employer for retrenching him and against Mr Radhakrishna for rejecting his advances.[1221]

Department of Education

780. According to Mr Agrizzi, Mr Mathenjwa employed a technician called Bheki Gina whose sister worked at the Department of Education and had numerous contacts within the Provincial Education Department in the Northern Cape.[1222]

781. A contract was issued without a tender for the provision of CCTV and access control for the offices of the Department of Education for an estimated R10.5m. Mr Agrizzi explained that they tried to keep him (Mr Agrizzi) out of the loop on this tender, because he was just about to resign for the first time.[1223]

782. Mr Mathenjwa approached Mr Agrizzi at one stage and mentioned that he had established a relationship with Mr Gina's sister who could procure additional business via the Department of Education and other departments in the Kimberley region. This discussion with Mr Agrizzi was precipitated by a concern Mr Agrizzi had with Mr Gina's performance in the company. At that stage, Mr Mathenjwa requested Bosasa to provide a bribe. Mr Agrizzi reminded Mr Mathenjwa the protocols required and that he should be dealing with Mr Watson in terms of the formal arrangements.[1224]

783. When asked whether he was aware of any bribe money that was actually paid, Mr Agrizzi testified that there was an amount of R1.25m that was paid out to the sister of

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[1221] Exhibit T33, p 738.

[1222] Transcript, day 76, p 106.

[1223] Transcript, day 76, p 107.

[1224] Transcript, day 76, p 108.

Mr Gina. Mr Mathenjwa managed the project and he handled the bribery. Mr Agrizzi was aware of this because Mr Mathenjwa showed him the costings and because they had made provision for the R1.25m. In other words, the bribe money was included in the contract price.[1225]

784. Mr Mathenjwa denied that he employed a technician called Mr Bheki Gina or that he approached Mr Agrizzi about soliciting work from the Department of Education in the Northern Cape. He stated that Mr Gina was highly recommended by Sondolo IT's coordinator of the Southern Region and was appointed to work in the Northern Cape.[1226] Mr Mathenjwa further stated that Mr Gina did not have a sister who worked at the Department of Education and that he was not aware of any contract with an organ of state which was awarded to Sondolo IT (or Global Technology Solutions) without a proper procurement process.[1227] He denies that there was no tender process for the work undertaken by Sondolo IT for the Department of Education, Northern Cape and further denies that he informed Mr Agrizzi that the contract was awarded without following a procurement process because of an "emergency". Mr Mathenjwa stated that he had no knowledge of payments being approved for Mr Gina's sister or that he managed any project in the Department of Education.[1228]

785. Mr Agrizzi testified that he was excluded from the new contract in the Northern Cape but he knew about it because flights were arranged for Sunworx personnel, another company of which Sondolo IT owned 51%. The company dealt in solar panel

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[1225] Transcript, day 76, p 109.

[1226] Mr Mathenjwa's affidavit, para 33.3, p 17.

[1227] Mr Mathenjwa's affidavit, paras 33.4 and 33.5, pp 17-18.

[1228] Mr Mathenjwa's affidavit, para 33.8, p 18.

installation. The deal was done for the Department of Education and, because Mr Agrizzi was excluded from it, he was unable to vouch for it with further information.

786. Mr Mathenjwa denies being involved in any discussion and does not have knowledge of Mr Agrizzi being excluded from any discussion on the extension of the contracts.[1229]

USAASSA school tablet and connectivity project

787. Mr Agrizzi testified that a few years previously he had been involved with Sunward Park High School in implementing an e-learning facility where iPads were provided to learners. Mr Agrizzi was then approached by Mr Fezikile Mzazi ("**Mr Mzazi**") who was a director at Sondolo IT. Mr Mzazi mentioned to Mr Agrizzi that he had contacts within the Universal Service and Access Agency of South Africa ("**USAASSA**"), which is an SOE established under the Electronic Communications Act to provide digital education and which had been given the contract to provide iPads for schools in Gauteng. Mr Agrizzi described this as being a major contract.[1230]

788. An initial, informal and underhand agreement was concluded between Mr Mzazi and the procurement personnel to ensure that lucrative portions of the tender would be allocated to Sondolo IT. This was done for an initial illegal sum of R500,000 which was paid in cash. Mr Agrizzi was present in the vault when this cash was handed over to him. This tender was subsequently cancelled or it did not perform because USAASSA had been awarded a total of ten schools with maintenance contractors running and they just continued paying the contract. The initial transaction was concluded by Mr Mzazi, with Mr Watson's input. Mr Agrizzi's involvement was limited to making sure that the operational management was taking place.[1231] The tender *"did*

[1229] Mr Mathenjwa's affidavit, para 33.9, p 19.

[1230] Transcript, day 76, p 115.

[1231] Transcript, day 76, p 113.

not perform but because we had been awarded I think it was a total of 10 schools the maintenance contract just continued running and they just continued paying the contract." Mr Agrizzi explained that he believed USAASSA was an implementation agent similar to the IDT.[1232]

789. Pursuant to the contract being awarded, a meeting was arranged by Mr Watson with the accounting officer at USAASSA whose name Mr Agrizzi could not recall. This meeting was held at the Pigalle in Sandton. During this meeting, the accounting officer was categorically told that he would be looked after financially. The purpose of the meeting was to discuss the extension of the existing contracts and other opportunities. The accounting officer accepted the offer to work together. Mr Agrizzi did not know what had transpired with this contract since then.[1233]

Department of Transport

790. Mr Agrizzi's dealings with the fleet management aspect of Bosasa and its associates was recorded as being limited in Mr Agrizzi's Supplementary Affidavit. At that stage, Bosasa employed the services of Mr Vicus Luyt and Mr Alan Chapman to deal with the fleet management and to establish the necessary call centres. Mr Watson *"utilised the employees of a Transnet related company known as HSA to establish a fleet management subsidiary called Kgwerano".*[1234]

791. Kgwerano, Mr Agrizzi was informed, was originally a joint venture between Mr Itu Moraba, Mr Brian Gwebu and Wesbank, a subsidiary of FNB. Kgwerano Financial Services provided fleet management for the senior management service to

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[1232] Transcript, day 76, p 114.

[1233] Transcript, day 76, p 115.

[1234] Mr Agrizzi's Supplementary Affidavit, p 41 at para 108.

government on an RT62 Contract and managed 15,000 vehicles for government.[1235] These vehicles were to be driven by senior government officials.

792. Eventually Mr Watson decided to buy Mr Moraba and Mr Gwebu's shares in respect of which he paid R20m. The payment for the shares was initially reflected as a loan in the Bosasa financial statements as Mr Watson did not want to incur tax charges.[1236]

793. Mr Agrizzi was told by Mr Leshabane that the contract awarded to Kgwerano had been pre-arranged and was unlawful. At that stage, Leshabane was not involved in Kgwerano and had a major issue with it. Leshabane told Mr Agrizzi that they were paying a certain "Mlungise" at the Department of Transport a substantial amount of money for this contract. The amounts were collected for Gwebu from Mr Watson's vault in cash.[1237]

794. Mr Agrizzi testified that Messrs Gwebu, Moraba, Chapman and Luyt were responsible for Kgwerano and he took no responsibility or accountability for it whatsoever.[1238]

795. At a later stage, a new joint venture called Phavisworld was concluded between Avis and Bosasa.[1239] Phavisworld was a service for vehicle car hire for dignitaries in Cape Town.[1240] Phavisworld was awarded another fleet services tender to provide rental services via Avis dealerships to Ministerial and government persons.[1241] Mr Agrizzi became involved in the process when he noticed that this joint venture was not working out and Mr Watson had instructed him to go and see Mr Clive Els of Avis to

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1235 Transcript, day 76, p 65.

1236 Mr Agrizzi's Supplementary Affidavit, p 41 at para 111.

1237 Transcript, day 76, p 67; Mr Agrizzi's Supplementary Affidavit, p 42 at para 112.

1238 Transcript, day 76, p 68.

1239 Mr Agrizzi's Supplementary Affidavit, p 42 at para 113.

1240 Transcript, day 76, p 68.

1241 Transcript, day 76, p 68; Mr Agrizzi's Supplementary Affidavit, p 42 at para 114.

request that Bosasa be released from the joint venture.[1242] When Alan Chapman had left the employ of the joint venture as did Mr Gwebu and Mr Moraba, Mr Agrizzi was seconded with Mr Leshabane to enter into discussion with Clive Els. At a later stage, payment was made by Avis in the amount of R23.5m for Bosasa's shares in the joint venture. Mr Agrizzi's Supplementary Affidavit records that included in this amount was an amount to be paid to Mr Seopela and Mr Leshabane who in turn were to pay officials at the Department of Transport to secure an extension of the fleet management contract. The value of Bosasa's shares in the joint venture was less than R23.5m, but this amount was negotiated by Avis on condition that the contract be extended.[1243] The contract was subsequently extended.[1244]

796. Coming to Mr Vorster's evidence in relation to Kgwerano, he testified that in July 2011 he was called to a meeting with Mr Agrizzi and Mr Watson and told to fix the problem with the Kgwerano contract as they were running at a loss of R2m a month.[1245] Mr Vorster was therefore appointed Head of Operations of Kgwerano Financial Services and was responsible for "everything" including dealing with clients, overseeing the operations in every province and having the call centre managers report into him. He stated that he was able to turn the company around within three months and, by the time he left around the beginning of November 2017, the loan account that Bosasa had with Kgwerano was nearly R19m.[1246] Mr Agrizzi's evidence does not, however, make reference to Mr Vorster being responsible for Kgwerano.

1242 Transcript, day 76, p 69; Mr Agrizzi's Supplementary Affidavit, p 42 at para 115.

1243 Mr Agrizzi's Supplementary Affidavit, p 42 at para 117.

1244 Transcript, day 76, p 72.

1245 Transcript, day 43, p 137.

1246 Transcript, day 43, p 138.

Department of Social Services in the North West Province

797. Mr Agrizzi had the opportunity to give further evidence about the relationship between Bosasa and the North West Province.[1247] He recalled two women, "Kgasi" and "Chidi" to whom he had been introduced. Upon gaining access to his archived emails, he was able to identify one of them. In this regard, Mr Agrizzi explained that Chidi appears to be a Ms Matshadisa Cordelia Mogale ("Ms Mogale"), a former head at the Department of Social Development in the North West. Mr Agrizzi's supplementary affidavit refers to Kgasi as a former Chief Director at the Department of Social Development in the North West. Mr Agrizzi explained that both these individuals were government officials in the North West in Mahikeng and it was Mr Diamini who introduced Mr Agrizzi to them. Mr Agrizzi said that at a later stage Ms Mogale sent her CV to Mr Agrizzi when she was leaving the North West Department because things were 'hotting up' in an investigation against her.[1248]

798. In an affidavit filed in response to a Regulation 10(6) directive, Mr Diamini confirmed that Matshidiso Kgasi ("Ms Kgasi") was a former Chief Director of the Department of Social Development and Ms Mogale was a former Head of the Department of Social Development in the North West Province.[1249] Mr Diamini denied ever introducing Mr Agrizzi to Ms Kgasi.[1250]

799. Mr Diamini admitted that he introduced Mr Agrizzi to Ms Mogale after a contract had been awarded to Bosasa's Youth Development Centres of which Mr Diamini was a national trainer and was later promoted to the position of director of professional

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[1247] Transcript, day 75,p 93.

[1248] Transcript, day 75, p 93.

[1249] Mr Diamini's affidavit, para 11, p 3.

[1250] Mr Diamini's affidavit, para 12, p 3.

services and operations.[1251] Mr Dlamini stated that he introduced Mr Agrizzi to Ms Mogale in the ordinary course of business of the Youth Development Centres. He further stated that Mr Agrizzi had requested a copy of Ms Mogale's curriculum vitae because she was an advocate and Mr Agrizzi believed that he could employ her based on her qualifications. Mr Dlamini requested that Ms Mogale forward her curriculum vitae to him and he, in turn, sent it to Mr Agrizzi. Mr Dlamini denied that there was anything untoward in his reasons or intentions when introducing Ms Mogale to Mr Agrizzi.[1252]

800. According to Mr Agrizzi, he met Kgasi and Ms Mogale.[1253] They discussed the need to provide software to raise funding for electioneering purposes. Mr Agrizzi referred to this as being a laundering type of system. This was a fictitious arrangement to provide software where software items of no value were either in the possession of the North West Province or were transferred to the North West Province.[1254] For this arrangement, the North West Province would pay Bosasa R4.5m.[1255] Another meeting was to discuss the fencing at one of the facilities and a security system.

801. Mr Agrizzi explained that, when a contract was awarded for the North West, Bosasa's fee was calculated as being inclusive of all services. However, they would sometimes receive messages that more money was needed for electioneering and Mr Dlamini would then raise an invoice for software. This was recorded as a once-off cost so that government was not burdened with a month-to-month cost. It was a simple way of

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[1251] Mr Dlamini's affidavit, paras 5, 6, 13, pp 2-3.

[1252] Mr Dlamini's affidavit, paras 14-16, pp 4-5.

[1253] Transcript, day 75, p 93.

[1254] Transcript, day 75, p 94.

[1255] Transcript, day 75, p 94.

raising money because nobody could prove that the software was not delivered given that the software was already at the facility and working.[1256]

802. In response, Mr Dlamini stated that Mr Agrizzi was not telling the truth.[1257] He denied any wrongdoing in relation to the contract that had been awarded to Bosasa's Youth Development Centres. He stated that the Department of Social Development had purchased software and owned it.[1258] Mr Diamini stated that, if there was any inflation of invoices or drawing of cash for purposes of bribery, he was never aware thereof and was not involved. According to Mr Dlamini, he was not authorised to engage in any financial negotiations but that Mr Agrizzi alone was authorised to negotiate, sign or authorise the costing in respect of any tenders. Mr Dlamini stated that Mr Agrizzi was responsible for the inflated invoices or the bribing of officials.[1259] Mr Dlamini denied ever taking any cash to or from anyone.[1260]

Department of Health, Mpumalanga Province

803. In November 2016 Mr Agrizzi was informed by Mr Gumede (chairperson of the Bosasa Group at the time) that he had been successful in negotiating a contract for hospitals in Mpumalanga.[1261]

804. At that stage Mr Gumede wanted to arrange payment for the co-ordinator or the person who had worked on the contract for the Department of Health as he had promised a success fee to this person. Mr Agrizzi was annoyed to hear this because

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[1256] Transcript, day 75, p 95.

[1257] Mr Dlamini's affidavit, para 13, p 4.

[1258] Mr Dlamini's affidavit, para 22, p 5.

[1259] Mr Dlamini's affidavit, para 19-21, p 5.

[1260] Mr Dlamini's affidavit, para 23, p 5.

[1261] Transcript, day 76, p 125.

he had just returned to Bosasa under the promise that things were going to change. He, therefore, voiced his opinion to Mr Watson and said that this should not be entertained. Mr Agrizzi stated that his relationship with Mr Gumede had been good up to that stage. However, their relationship began breaking down. Mr Gumede then raised his discontent with Mr Agrizzi to Mr Watson.[1262]

805. Mr Agrizzi testified that he was led to believe that an amount was in fact paid to the person and that it was requested that Bosasa attend to the servicing of his vehicle, which Mr Watson approved. Mr Agrizzi stated that he refused to sign the invoice for the servicing of the vehicle and told Mr Vorster to take it either to Mr Watson or Mr Gumede. Mr Agrizzi thought that the repairs to the vehicle were considerable.[1263]

806. The person referred to in Mr Agrizzi's testimony appears to be a Mr Netshishivhe who was referred to in Mr Vorster's evidence. Mr Vorster stated that in May 2016 he was approached by Mr Gumede with an instruction to assist with fixing Mr Netshishivhe's Isuzu bakkie. His understanding was that Mr Netshishivhe sat in the security cluster of the Mpumalanga province and had influence over the contracts with the hospitals. The final quote for the repairs was R29,239.79. This cost was booked against one of the Bosasa vehicles.[1264]

807. Mr Agrizzi testified that Mr Watson signed this contract and this was one of the exceptions to his rule not to put his signature on anything. Mr Agrizzi believed this was done because he was testing Mr Watson's and the Bosasa directors' patience (seemingly by refusing to sign the document himself).[1265]

[1262] Transcript, day 76, p 125.

[1263] Transcript, day 76, p 126.

[1264] Transcript, day 43, p 159.

[1265] Transcript, day 76, p 127.

Randfo nte in Local Municipality

808. Mr Agrizzi testified that incidents of corruption also occurred at a municipal level. This was prevalent at the Randfontein Local Municipality where, at times, tenders were not even issued.[1266] Instead, the Municipality ordered using emergency type provisions instead of tender processes despite the fact that the value of these contracts were in excess of R10m.[1267]

809. Mr Agrizzi testified that there were numerous irregularities that occurred within the Randfontein Municipality. For some time, Mr Agrizzi avoided doing any business with the municipalities despite the fact that they had been offered security contracts. Directors of Bosasa had meetings with municipal managers which Mr Agrizzi refused to attend. He also refused to put in tenders or he would overprice tenders so that Bosasa had no chance of getting them anyway because he felt it was wrong on the people in the municipal area to put them under such contracts.[1268] Of the most recent activity was the installation by Bosasa of security fencing and CCTV access control at municipal buildings. No tender process was followed.

810. In March 2016 an employee of Sondolo IT, Mr Riaan Van Der Merwe approached Mr Agrizzi to arrange a meeting between the local CEO of Dahua and Mr Andile Ramaphosa. Dahua is a company from China that is a provider of video surveillance products and services that grew exceptionally fast but Mr Agrizzi refused to utilise their products because he believed the products to be inferior.[1269]

1266 In 2016, Randfontein Local Municipality was merged with the Westonaria Local Municipality into Rand West City Local Municipality, see https://www.randwestcity.gov.za/mc.html.

1267 Transcript, day 76, p 116.

1268 Transcript, day 76, p 116.

1269 Transcript, day 76, p 116.

811. Mr Andile Ramaphosa, in his affidavit filed in response to a rule 3(3) notice, denies having knowledge of the meeting referred to above, that he was ever contacted by Mr Agrizzi in relation to such meeting or ever having attended such meeting.[1270]

812. At the stage of the discussion with Mr Riaan van der Merwe, Mr Agrizzi had asked for his resignation to be made official and he had written a letter to Mr Biebuyck stating the format in which he had wanted this communication to be addressed to all staff at a board meeting and staff meetings. However, Bosasa refused to do so and the staff were only notified of Mr Agrizzi leaving in August 2017.

813. Even though Mr Agrizzi responded in the affirmative to the meeting request, he did not attend the meeting allegedly held between Dahua and Mr Andile Ramaphosa. He indicated that an email is available to substantiate this.[1271]

814. The agreement with the municipal person who was involved in this arrangement, was that a proportionate amount of cash be paid to himself in respect of the provision of the systems, as well as a Dahua system being installed at his personal residence at no charge. Mr Agrizzi notes in his supplementary affidavit that evidence of this installation can be seen at the property situated at Randfontein. Even though this incident happened after Mr Agrizzi's departure, he was well aware of the plan for this prior to him leaving the Bosasa Group.[1272] Mr Agrizzi testified that one of the whistleblowers had told him about this incident as well and that they may give testimony at the Commission.[1273]

1270 Mr Andile Ramaphosa's affidavit, p 4 at para 10.

1271 Transcript, day 76, p 118; Mr Agrizzi's Supplementary Affidavit, p 56 at para 187.

1272 Transcript, day 76, p 118.

1273 Transcript, day 76, p 118.

815. Mr Agrizzi visited the site and the residence of the person in question and can confirm that the Dahua system had been installed at the residence in Randfontein. The address has been supplied to the Commission's investigators.[1274]

Why was Bosasa still receiving State contracts?

818. I indicated that he had wondered for some time why Bosasa continued to receive government contracts and tenders despite all the allegations against it in the media.[1275] Mr Agrizzi explained that that was because of the power that the Watsons had. He referred to incidents that spoke of this power:

816.1. Mr Jack Shilubane who was vocal about Bosasa receiving contracts for the DCS and questioned why they were the only company receiving such contracts. He was "*eradicated*" and taken out of the DCS.

816.2. Mr Petersen was transferred when he complained.

816.3. A lady whose name Mr Agrizzi could not recall was moved out of the DCS when she failed to renew a Bosasa contract.[1276]

817. Mr Agrizzi confirmed that he had testified about a reasonably well-organised network of well-placed, well-connected and powerful people whose loyalty was secured with financial incentives and bribes. Through this network, they were able to promote and protect the private interests of Bosasa by irregular procurement and practices to extract money from the State.[1277]

[1274] Transcript, day 76, p 119; Mr Agrizzi's Supplementary Affidavit, p 56 at para 189.

[1275] Transcript, day 75, p 88 and 89.

[1276] Transcript, day 75, p 89.

[1277] Transcript, day 75, p 90 and 91.

818. Mr Agrizzi testified that he knew about *"large donations given to the top six at one stage of 10/12 million rand cheques that were taken there ... the other people see that that company is very proliferate (sic), don't touch it, don't mess with it, it's working don't touch it because if you touch it you might lose your job, that's what it ultimately comes down to and you might lose your power base and that's what it really was."*[1278]

819. Mr Agrizzi was asked to provide further information on his statement made that an amount of R12m was paid to the top six of the ANC. Mr Agrizzi responded that he had asked the investigation team to pull the bank accounts for Bosasa so as to see the exact amount which may have been R8m, R10m or R12m. A delegation from Bosasa was due to present this cheque to the top six. This delegation comprised Mr Watson and Mr Seopela and, if Mr Agrizzi was not mistaken, Mr Maroba as well as or two other directors, either Mr Leshabane or Mr Gumede.[1279]

820. Mr Agrizzi recalled that this cheque was not a cash cheque. It was *"directed to the ANC"* and recalls this cheque being for a substantial amount and having had to ensure that the funds were in place so that the cheque would clear. In lieu of this they received t-shirts and some blankets.[1280] This occurred in and around 2004 / 2005 or 2006.[1281]

821. Mr Agrizzi clarified that, when he referred to payments to the top six, he was not meaning payments to the individuals, but rather to the organisation, namely the ANC. Mr Agrizzi accepted that his reference to the top six may not have been accurate in so far as it may have been interpreted as meaning the individuals.[1282]

1278 Transcript, day 75, p 91.

1279 Transcript, day 76, p 133.

1280 Transcript, day 76, p 133.

1281 Transcript, day 76, p 134.

1282 Transcript, day 76, p 134.

822. The evidence surrounding the SIU investigation into Bosasa's business dealings is addressed below.

The SIU investigation and report

823. In this section, the evidence regarding the events surrounding the investigation instituted by the SIU into the allegations of an irregular relationship between Bosasa and DCS officials, as well as the irregular award of DCS tenders to Bosasa is summarised. The following topics are canvassed –

823.1. introductory aspects;

823.2. the kitchens/catering tenders and contracts;

823.3. the access control tender;

823.4. the fencing contract;

823.5. the television contract;

823.6. hampering of the SIU investigation and destruction of evidence;

823.7. procurement processes;

823.8. limitations of the SIU investigation;

823.9. Mr Mti and Mr Gillingham's relationships with Bosasa;

823.10. implementation of the SIU Report's recommendations;

823.11. attempts to discredit the SIU investigation;

823.12. Bosasa directors' response to the SIU investigation;

823.13. the leak of the SIU Report to Bosasa; and

823.14. the criminal charges brought against certain individuals.

Introduction

824. In 2006, the Public Service Commission ("**PSC**") and the Office of the Auditor General ("**OAG**") referred specific allegations relating to contracts awarded to Bosasa to the SIU for investigation.[1283] Some of the more serious allegations listed in the executive summary to the SIU Report are:

> "(1) An irregular relationship existed between Bosasa or members of the Bosasa Group of companies and two DCS officials, namely, the former Commissioner of Correctional Services, Mr L Mti (Commissioner Mti) and the DCS Chief Financial Officer (CFO) Mr P Gillingham.
>
> (2) Commissioner Mti and Gillingham may have unduly received benefits as a result of the award of some of the contracts awarded by DCS to Bosasa and its affiliates.
>
> (3) Two tenders, namely, the kitchens tender and the access control tender, were irregularly extended.
>
> (4) Bosasa and its affiliates were responsible for drafting the bid specifications for these tenders."[1284]

825. The SIU's investigation was authorised by a Presidential Proclamation gazetted on 28 November 2007. Reference is made in the executive summary of the SIU Report to the surfacing of various allegations in the media relating to the allegedly irregular awarding of contracts by the DCS to Bosasa Operations and its affiliated companies.[1285] Mr Oellermann described the role of the SIU as being to identify and

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[1283] Mr Agrizzi's Initial Affidavit, Annexure J, p 279.

[1284] Transcript, day 38, p 185; Mr Agrizzi's Initial Affidavit, Annexure J, p 279.

[1285] Transcript, day 38, p 184.

investigate maladministration, public monies that are lost, and to recover those monies. He explained that there is a big civil element to the SIU investigations, with the primary focus to ensure that maladministration is reversed, and remedies are implemented. Many of the remedies are civil actions, such as setting aside of contracts, recovery of losses and damages.[1286]

826. The SIU's investigation:

826.1. only dealt with the contracts between the DCS and Bosasa or Bosasa-related companies; and

826.2. dealt only with four contracts –

826.2.1. the kitchens contracts (referred to in Mr Agrizzi's evidence as the catering contracts);

826.2.2. the access control contract;

826.2.3. the televisions or CCTV contract; and

826.2.4. the fencing contract.[1287]

827. the evidence leader indicated that the purpose of leading and taking Mr Agrizzi through the evidence in relation to the SIU Report was:

> "[A]gain to see what in the report this witness knows from his own knowledge and also to understand what evidence the SIU investigation produced. We have that evidence in a series of affidavits and it will be impossible for this Commission to call each and every witness, but those affidavits will be placed before you in their proper form and will be summarized and presented to you, but in short the evidence that this witness has given

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[1286] Transcript, day 77, p 92.

[1287] Transcript, day 38, pp 184-185.

and will give appears at least to some extent to be corroborated by the outcome of the investigations of the SIU and the detail will follow."[1288]

828. Mr Agrizzi testified that the SIU Report contained information that he was previously aware of and read into the record the information listed in paragraph 33.1 of his Initial Affidavit, namely:

> "(1) Furniture bought for Gillingham and Mti.
>
> (2) Architectural fees.
>
> (3) Certain holiday trips paid for.
>
> (4) Certain cash deposits.
>
> (5) Certain vehicles purchased.
>
> (6) Certain sponsorships for children's varsity fees and/or tuition.
>
> (7) Provision of Forex for travel allowance.
>
> (8) Certain repairs and maintenance on houses.
>
> (9) Construction of houses.
>
> (10) Purchasing of imported kitchens.
>
> (11) A retirement village concession for Gillingham's father.
>
> (12) Numerous other favours such as rugby season tickets, computers, printers, and even a matric dance dress for Megan Gillingham [Mr Gillingham's daughter].
>
> (13) Trading-in of certain vehicles where the person could not obtain a lucrative settlement. These were bought by individuals and subsidised by Bosasa."[1289]

829. Mr Agrizzi testified that he did not give any evidence or information to the SIU investigators and confirmed that the information in the SIU Report must have come from sources other than him.[1290]

[1288] Transcript, day 38, p 186.

[1289] Transcript, day 38, pp 179-180.

[1290] Transcript, day 38, p 180.

830. Mr Agrizzi further testified that he and Mr Watson had discussed the Report and that Mr Watson blamed everybody else – Mr Taverner and Mr Mansell – and blamed Mr Perry for not taking precautionary measures. Mr Watson also told Mr Agrizzi that "everything is under control and that they had to stick to him [Mr Watson] otherwise the future is very bleak".[1291]

831. Mr Agrizzi confirmed that the SIU Report only deals with the four contracts but that there are many other contracts tainted with the type of evidence that Mr Agrizzi had given.[1292] Mr Oellermann testified that the SIU, during the course of its investigations, came across indications of wrongdoing other than those defined in the Proclamation. The indications of wrongdoing were significant and involved Bosasa and other government departments, including the DHA and ACSA.[1293] A request to the President to extend the scope of the Proclamation to include these issues was not made.[1294] Mr Oellermann testified that if the Proclamation had dealt comprehensively with all possible wrongdoing at the hands of Bosasa in relation to the DCS, the investigation would have included all tenders that had been awarded to Bosasa.[1295]

The kitchens / catering contracts

832. The evidence leader took Mr Agrizzi to the executive summary of the SIU Report where the findings in respect of the kitchens tender HK2/2004 are set out and Mr Agrizzi confirmed that he had given evidence of what he referred to as the catering contracts and that the evidence is the same, relating to the same tender referred to

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1291 Transcript, day 38, p 181.

1292 Transcript, day 38, p 185.

1293 Transcript, day 77, p 13.

1294 Transcript, day 77, p 34.

1295 Transcript, day 77, p 34.

as the kitchens tender.[1296] Mr Oellermann confirmed the findings as a correct reflection of his investigation and the findings of his investigation.[1297] Mr Agrizzi also confirmed that he recognised number HK2/2004 as one of the contracts about which he had testified and which, according to the SIU Report, was awarded to Bosasa on 20 July 2004.[1298]

833. The evidence leader read a section of the executive summary into the record on evidence that Mr Agrizzi had not given but that may be given later:

> "The evidence gathered by the SIU, shows that there were clear deviations from the National Treasury Supply Chain Management: A Guide for Accounting Officers, more particularly, in that the end user departments were not included in the bid process. There was also no proper financial planning for this tender in that there was no feasibility study nor needs analysis conducted.
>
> The evidence clearly shows that Gillingham outside the course of his normal duties played an integral role from the outset in the procurement process and was irregularly instrumental in developing the tender specifications."[1299]

834. Mr Agrizzi confirmed that Mr Gillingham played a role on the various Bid Committees or otherwise in the procurement process relevant to the kitchens/catering tender.[1300] The exchange between the evidence leader and Mr Agrizzi was as follows:

> "EVIDENCE LEADER: So, we know that you paid the money. We know why you say you paid the money. According to your evidence of course still to be tested and we know that according to the SIU investigation as confirmed by you the recipient of that money played an integral role in the procurement process.
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> MR AGRIZZI: That is correct.

[1296] Transcript, day 38, p 187.

[1297] Transcript, day 77, p 93.

[1298] Transcript, day 38, p 187.

[1299] Transcript, day 38, pp 187-188; annexure J, p 280.

[1300] Transcript, day 38, p 188.

EVIDENCE LEADER: And as described here was irregularly instrumental in developing the tender specifications. You have given that evidence.

MR AGRIZZI: Yes.

EVIDENCE LEADER: And that appears to be confirmed now by the SIU investigation."[1301]

835. The SIU Report then states:

> "During the course of a search and seizure operation conducted at Gillingham's residence a document containing the bid evaluation criteria and guidelines for evaluating the Kitchens Tender was found in the form of electronic data."[1302]

836. Mr Agrizzi confirmed that the exchange of information between himself, Mr Gillingham and Mr Mansell took place between electronic devices.[1303]

837. The SIU Report also provides:

> "Mr J Malan, the SIU cyber forensic expert determined that this document originated from the computer of Mr Agrizzi, Bosasa's chief executive officer/managing director."[1304]

838. Mr Agrizzi confirmed that he believed that Mr J Malan referred to in the SIU Report to be the same Mr Malan that he had referred to in his evidence.[1305] Mr Agrizzi testified that documents of the nature described in the SIU Report would have been sent to him by Mr Gillingham.[1306] He further testified that the document containing the bid evaluation criteria and guidelines for evaluating the kitchens tender was compiled by

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1301 Transcript, day 38, p 188.

1302 Transcript, day 38, pp 188-189; Mr Agrizzi's Initial Affidavit, Annexure J, p 280.

1303 Transcript, day 38, p 189.

1304 Transcript, day 38, p 189; Mr Agrzzi's Initial Affidavit, Annexure J, p 280.

1305 Transcript, day 38, p 189.

1306 Transcript, day 39, p 5.

Mr Mansell, sent to Mr Agrizzi and thereafter sent from Mr Agrizzi's computer to Mr Gillingham.[1307]

839. Mr Agrizzi was unable to confirm or to deny whether the document was last saved on 28 June 2004, as stated in the SIU Report, as he was no longer in possession of his computer. Mr Agrizzi handed his computer back to Bosasa in March 2017 when he was asked to leave.[1308] The SIU Report provided that 28 June 2004 was when the DCS commenced with its screening of the bids received in respect of the kitchens tender, which Mr Agrizzi accepted as correct.[1309]

840. Mr Agrizzi confirmed the two concerns stated in the SIU Report that (i) Bosasa and Mr Agrizzi were in possession of the document at the time when Bosasa's tender was submitted for the kitchen's tender, and (ii) Bosasa was a party to the drafting of the evaluation criteria and guidelines for evaluating the tender.[1310] He also confirmed that this had placed Bosasa in an unduly advantageous position.[1311] Mr Oellermann testified that he investigated and found that Bosasa irregularly participated in drafting the specifications for the tender, providing a clear advantage to Bosasa.[1312]

841. Mr Agrizzi testified that he had not provided any evidence to the SIU investigation and thus the evidence that Mr Gillingham and Mr Mti received financial benefits from Bosasa after the award of the kitchens tender must have been received from another source.[1313] He confirmed that the SIU Report is correct that there was no lawful basis

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[1307] Transcript, day 39, p 6.

[1308] Transcript, day 39, p 7.

[1309] Transcript, day 39, p 7.

[1310] Transcript, day 39, pp 9-10.

[1311] Transcript, day 39, p 10.

[1312] Transcript, day 77, p 94.

[1313] Transcript, day 39, p 11.

for the benefits being "made" to Mr Gillingham and Mr Mti, and further that Mr Mansell and Dr Smith , Bosasa employees, were instrumental in effecting these benefits.[1314] Although Mr Agrizzi did not know at the time that the benefits were being "made", he confirmed in testimony that those benefits were linked to the award of the kitchens tender.[1315] Mr Oellermann confirmed in his evidence that these findings are what he investigated and found and that he was satisfied that he had sufficient information to make such findings.[1316] Mr Agrizzi confirmed that the kitchens contract was extended by Mr Mti on 17 May 2005.[1317]

842. Mr Agrizzi confirmed the scope of the kitchens contract, as described in the SIU Report, as:

> "[T]he providing of full catering services, including full maintenance of kitchen equipment, cleaning and training of DCS staff and inmates, at correctional centres in seven management areas. These areas were Pretoria, Johannesburg, Durban Westville, Krugersdorp, Pollsmoor, Modderbee and St. Albans. The bid was advertised on 21 May 2004, and it required the rendering of services over a3-year period (1 August 2004 to 31 July 2007), at a cost of approximately R239 427 694 per annum."[1318]

843. Mr Agrizzi testified that the first year of the contract was approximately R270m actual expenditure, with the second in the region of R320m and the third was nearly R450m due to the deliberate modelling around the price of the special and normal meals.[1319]

844. In respect of the evidence gathered by the SIU and stated in its Report regarding the engagement with Bosasa prior to the publication of the tender, Mr Agrizzi testified:

1314 Transcript, day 39, p 11.

1315 Transcript, day 39, p 12.

1316 Transcript, day 77, pp 94-95.

1317 Transcript, day 39, p 12.

1318 Transcript, day 39, pp 50-5 1; Mr Agrizzi's Initial Affidavit, Annexure J, p 313.

1319 Transcript, day 39, p 52.

844.1. the meeting at Supersport Park in Centurion took place in November 2004 and was between a Bosasa delegation a DCS delegation;

844.2. Mr Mti, Mr Gillingham, Mr Engelbrecht and others attended from the DCS;

844.3. Mr Dikhane, Mr Gumede, Mr Leshabane, Jackie Leyds, Thandi Makoko, Jon Donnay and various people from maintenance attended from Bosasa;

844.4. it was the same meeting Mr Agrizzi had testified to previously that Mr Watson had not attended but gave Mr Agrizzi positive feedback he had received from Mr Mti;

844.5. that the purpose of the presentation, Bosasa was to showcase the camera systems that it was currently using in the correctional centre facilities as a prelude to what Bosasa could do for the DCS in terms of the access control and the Sondolo IT contract; and

844.6. the meeting took place before the awarding of the Sondolo IT television contract and the access control CCTV contract (and that the SIU Report is incorrect where it provides that the meeting took place before the advertising of the kitchens tender and before it was made known within the DCS that it would be outsourcing catering services, the full maintenance of kitchen equipment and the training of staff and inmates).[1320]

845. Mr Agrizzi was not aware of the Executive Management Committee meeting that took place in the Magaliesburg prior to May 2004 where Mr Gillingham did a presentation regarding the outsourcing of catering services and only became aware of it after

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[1320] Transcript, day 39, pp 53-57; Mr Agrizzi's Initial Affidavit, Annexure J, p 313.

reading about it in the SIU Report.[1321] At the time of the presentation, Mr Gillingham was the Regional Commissioner: North West, Mpumalanga and Limpopo and was appointed as the project leader for the tender for the outsourcing of catering services.[1322] Mr Agrizzi testified that he believed this to be correct.

846. The tender timelines were short, providing for one month from date of advertisement to the closing date.[1323] Mr Agrizzi testified that he knew Mr Mapasa, the DCS's Director of Procurement who provided information about the tender specifications to the SIU, and confirmed that no needs analysis or feasibility study was conducted prior to the initiation of the tender process.[1324]

847. Mr Agrizzi was unable to confirm if the kitchens contract should have originated in the DCS's Directorate: Development and Care as stated in the SIU Report.[1325] Mr Agrizzi only became aware of the exclusion of the DCS's Development and Care and Health Services Directorates in the tender process after the SIU Report was released.[1326]

848. Mr Agrizzi testified that he knew Mr Pretorius who was in procurement at the DCS and who had been requested by Mr Gillingham to peruse a two page document that Mr Gillingham had prepared regarding specifications for the tender.[1327] Mr Agrizzi confirmed that Mr Gillingham was developing specifications for the tender, which

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1321 Transcript, day 39, p 58.

1322 Transcript, day 39, p 58; Mr Agrizzi's Initial Affidavit, Annexure J, p 314.

1323 Transcript, day 39, p 59; Mr Agrizzi's Initial Affidavit, Annexure J, p 314.

1324 Transcript, day 39, p 59.

1325 Transcript, day 39, p 60.

1326 Transcript, day 39, p 60.

1327 Transcript, day 39, p 61, Mr Agrizzi's Initial Affidavit, Annexure J, p 316.

involved specialised aspects that would have required input and/or assistance from a nutritionist, dietician.[1328]

849. The SIU Report confirmed Mr Agrizzi's previous testimony insofar as he had testified that the specifications were drafted to ensure that it was virtually unattainable for anybody to be awarded the contract due to the need to comply with minimum requirements, such as the need to have accredited security personnel with proven track records with ISO compliance and similar specifications unrelated to catering.[1329] The requirement of a mobile kitchen was another example and would take another entity at least eight weeks of planning and three months of construction. At one stage, according to Mr Agrizzi, the DCS had to push another entity through to ensure that there were two bidders.[1330] Mr Agrizzi confirmed what the SIU had established from a whistleblower witness i.e. that Mr Agrizzi had requested the SIU witness to require the development of a solution for the installation of security equipment in correctional centre kitchens, to be added to the tender specifications to ensure that Bosasa enjoyed an advantage over the other bidders.[1331]

850. Mr Agrizzi testified that Mr Gillingham managed the entire tender process.[1332] Mr Agrizzi was aware of the complaint laid by Royal Sechaba (Pty) Ltd after the award of the tender, questioning the basis upon which the tender had been awarded to Bosasa.[1333]

1328 Transcript, day 39, p 62.

1329 Transcript, day 39, p 63.

1330 Transcript, day 39, p 64.

1331 Transcript, day 39, p 65.

1332 Transcript, day 39, p 66.

1333 Transcript, day 39, p 67.

851. Mr Agrizzi chose not to comment on the fact that Mr Gillingham had been promoted by Mr Mti, as Acting CFO, a position where he had oversight of the procurement division of the DCS, despite a recommendation by senior officials that Mr Gillingham be disciplined.[1334] The promotion was shortly before the kitchens tender was awarded to Bosasa.[1335] Mr Agrizzi's basis for not commenting was that he was of the view that it related to an internal issue between Mr Gillingham, his wife and his girlfriend and did not relate to state capture.[1336] It was alleged that Mr Gillingham had an affair with his secretary, submitted fraudulent subsistence and travel claims and had intimidated certain staff members.[1337]

852. The SIU Report states that its cyber forensic expert, Mr Malan, recovered a document entitled "Checklist.doc" from the images seized at Mr Gillingham's residence. The document contains bid evaluation criteria and guidelines for evaluating the kitchens tender.[1338] Mr Malan established that the document was created on 28 June 2004 and saved on the same date by Mr Agrizzi, who confirmed it to be correct.[1339]

853. The SIU investigation established that an email address – kobus@bfn.co.za – was linked to Mr Gillingham.[1340] Mr Agrizzi testified that he was unaware of that fact *"when it started"* and that he was *"just told to send documents to that address"*.[1341] The SIU established that the email address belonged to Bosasa, and was paid for monthly by

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1334 Transcript, day 39, p 68.

1335 Annexure J, p 319.

1336 Transcript, day 39, pp 67-68.

1337 Annexure J, p 319.

1338 Transcript, day 39, p 69, Mr Agrizzi's Initial Affidavit, Annexure J, p 320.

1339 Transcript, day 39, p 69, Mr Agrizzi's Initial Affidavit, Annexure J, p 320.

1340 Annexure J, p 320.

1341 Transcript, day 39, p 70.

Bosasa between August 2004 and March 2005.[1342] Mr Agrizzi testified that this made sense to him.

854. Email logs obtained by the SIU show two emails sent by Mr Gillingham to Mr Agrizzi on 26 April 2004 with the subject "Tender Evaluation Criteria – Danny Mansell" and "Reviewed Documents". These documents were sent approximately one month before the kitchens tender was advertised.[1343] Mr Agrizzi could recall that there were emails but was unable to recall the specific time or what the specific email said but confirmed that there was an exchange of emails containing information relevant to the tender before the tender was advertised.[1344]

855. After reading the SIU Report, Mr Agrizzi questioned Mr Watson and Mr Mansell about the fact that the SIU found a business card for Consilium Business Consultants reflecting that Mr Gillingham was a consultant and which contained the email address kobus@bfn.co.za. Mr Agrizzi was informed that Mr Watson and Mr Mansell had wanted Mr Gillingham to attend a meeting with them under the guise of Consilium, concerning a contract for bulletproof vests that the DCS was working on.[1345] Mr Agrizzi testified that this was confirmed by Dr Smith and Mr Gillingham.[1346]

856. Mr Agrizzi testified that, after a proposal from Bosasa to this effect, Mr Gillingham told Bosasa to do a formal request for the extension of the kitchens tender contract to include seven satellite correctional centres. Mr Mansell informed Mr Agrizzi of this.[1347]

1342 Transcript, day 39, p 70; Mr Agrizzi's Initial Affidavit, Annexure J, p 320.

1343 Mr Agrizzi's Initial Affidavit, Annexure J, p 321.

1344 Transcript, day 39, p 71.

1345 Transcript, day 39, p 72.

1346 Transcript, day 39, p 72.

1347 Transcript, day 39, p 77.

There was no tender process for the extension.[1348] Mr Agrizzi further testified that there was a delay in the tender process which resulted in an extension of the kitchens tender (due to expire on 31 July 2007) first by a year and then by a further six months. The extension also allowed for a 30% increase in price.[1349] The extensions were done without a tender process and without Treasury approval.[1350]

857. The SIU Report records that a new kitchens contract HK14/2008 was awarded to Bosasa on 6 January 2009, for a period of three years without a needs analysis or feasibility study being conducted.[1351] Mr Agrizzi confirmed these facts and that Bosasa won the tender.[1352] Mr Agrizzi testified that, in his experience generally, a six month extension of a contract is a fair extension that would not require an invitation to bid but that anything over six months should be put out to tender.[1353]

858. Royal Sechaba (Pty) Ltd (previously Sechaba Catering Services) had been disqualified under the new contract and brought legal proceedings to have the tender process reviewed and set aside.[1354] Mr Agrizzi testified that judgment was handed down approximately 18 months later and the Court found that the tender awarded to Bosasa was corrupt and *"would have to be removed, that the tender be cancelled."*[1355] This is not entirely correct. If regard is had to the reported judgment, the Court dismissed the review application to set aside the entire tender process because of the passage of time - by the time the review application was heard, two thirds of the

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1348 Transcript, day 39, p 78.

1349 Transcript, day 39, p 78.

1350 Transcript, day 39, p 78.

1351 Transcript, day 39, pp 78-79; Mr Agrizzi's Initial Affidavit, Annexure J, p 321.

1352 Transcript, day 39, p 79.

1353 Transcript, day 39, pp 79-80.

1354 Transcript, day 39, p 81; Mr Agrizzi's Initial Affidavit, Annexure J, pp 321-322.

1355 Transcript, day 39, pp 81-82.

Transcript, day 39, p 81; Mr Agrizzi's Initial Affidavit, Annexure J, pp 321-322.

contract had already run its course. However, the Court awarded the applicant the costs of the application in view of the manner in which the process was handled and the *"perception of bias, if not actual bias"* arising from the gifts showered by Bosasa on Departmental officials.[1356]

859. The scope of the two kitchens tender contracts was exactly the same. The difference between the two was that the second contract included the satellite units and equipment did not have to be provided. Mr Agrizzi testified that it was the perfect opportunity to make the DCS totally reliant on Bosasa, as Bosasa had scrapped the DCS's equipment and put their own in. This had the result that no other entity could be awarded the contract because of the volume of equipment that would be required and the timing of getting the equipment into the facility itself.[1357] Any new entity would need at least between R60 and R80m to buy equipment alone.[1358]

860. Mr Agrizzi confirmed the findings of the SIU, namely that:

860.1. there were clear deviations from supply chain management prescripts;

860.2. Mr Gillingham played an integral role in the procurement process from the outset;

860.3. Bosasa irregularly participated in drafting specifications for the tender;

860.4. documents were shared between Mr Agrizzi and others from Bosasa and Mr Gillingham in relation to the evaluation criteria and guidelines;

[1356] Royal Sechaba (Pty) Ltd v Minister of Correctional Services 2013 JDR 2229 (GP).

[1357] Transcript, day 39, p 82.

[1358] Transcript, day 39, p 82.

860.5. Mr Gillingham received financial benefits from Bosasa after the award of the kitchens tender; and

860.6. the kitchens contract was extended on the recommendation of Mr Gillingham and authorised by Mr Mti.[1359]

The access control tender

861. Mr Agrizzi confirmed that reference HK2/2005 was a reference to the access control tender in respect of which he had already given evidence, and which was awarded to Sondolo IT on 11 April 2005.[1360] According to the SIU Report, the evidence showed that Mr Gillingham, outside of his normal duties, played an integral role from the outside in the procurement process and was irregularly instrumental in developing the tender specifications.[1361] Mr Agrizzi testified that Mr Gillingham assisted by Mr Mansell, drew up the final specifications that formed part of the bid document and that he was involved with designing a system that was then put together and formed part of the final document.[1362] Mr Agrizzi was aware, when monies were paid to Mr Gillingham by Bosasa, that Mr Gillingham was influential in respect of the decision to award the contract.[1363]

862. Mr Agrizzi confirmed that he did not give information to the SIU and that reference in the SIU Report to a witness is reference to someone internal to Bosasa that gave

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[1359] Transcript, day 39, pp 83-84; Mr Agrizzi's Initial Affidavit, Annexure J, pp 322-323.

[1360] Transcript, day 39, p 13.

[1361] Transcript, day 39, p 13; Mr Agrizzi's Initial Affidavit, Annexure J, p 281.

[1362] Transcript, day 39, p 14.

[1363] Transcript, day 39, p 14.

evidence to the SIU.[1364] Mr Agrizzi testified that the SIU Report's accuracy was perfect where it recorded:

> "On the evidence of the witness, Mr Agrizzi requested him to prepare specifications in line with the technology Bosasa was employing in the kitchens contract. According to him, the specifications prepared by him were drafted in such a manner that the security aspects afforded Sondolo a clear advantage over the other bidders. The witness subsequently identified a number of similarities between the specifications prepared by him and those in the advertisement for this tender."[1365]

863. Mr Oellermann testified that the SIU's findings in respect of the access control tender were made based on the evidence discovered and analysed in the course of the investigation.[1366] Mr Oellermann was referred to a comment in the SIU Report that the SIU did not conduct as comprehensive a financial investigation into benefits Commissioner Mti may have received from Bosasa, as it had done in respect of Gillingham. He explained that this was because of scope limitations on their investigation, the fact that Bosasa brought interdict proceedings against the SIU to stop the investigation and *"that was also during the period when we reached the agreement that we would not continue with the investigation into those officials"*.[1367]

864. Mr Agrizzi did not know whether a document entitled "cctv bid.doc", which contained specifications for the access control tender, was retrieved from the Bosasa and DCS systems. The SIU Report provides that version 2 of the document was found on the Bosasa system whilst version 4 was emailed by Mr Gillingham from an email address belonging to Bosasa to Mr S Mlombile (Acting Deputy Chief Commissioner:

[1364] Transcript, day 39, p 14.

[1365] Transcript, day 39, p 15; Mr Agrizzi's Initial Affidavit, Annexure J, p 282.

[1366] Transcript, day 77, p 97.

[1367] Transcript, day 77, pp 97-98.

Corrections) of the DCS. Mr Agrizzi testified that he had no knowledge of this and had never met Mr Mlombile.[1368]

865. The SIU Report states that given the fact that the evidence disclosed that there was a close connection between Mr Gillingham and Bosasa, the probabilities point to the fact that Mr Gillingham must have been aware of Bosasa's irregular participation in drafting the specifications.[1369] Mr Agrizzi testified that he was instrumental in preparing specifications, which he sent to two email addresses that had been provided to him. He could not recall whether he sent it directly to Mr Gillingham or via one of the email addresses.[1370]

866. Mr Agrizzi confirmed that the Department of Public Works had previously been engaged by the DCS to assist in drafting specifications for tenders involving technical detail, but had been excluded from the procurement process for the access control tender.[1371] The SIU investigation found that the reduction in the bid submission period from 30 to 21 days was without any justifiable cause and, given the technical nature of the tender and Bosasa's participation in the drafting of the specifications, that the shortened period allowed Sondolo IT to enjoy an unfair advantage over the other bidders.

867. In this regard, Mr Agrizzi testified:

> "Chair, the information that we gathered was because we had been working there. So we understood the pitfalls what needed to be done. We had a good team working there. The provision of a security system. We knew exactly what to design. So we had the upper hand. There was absolutely no ways given the fact that they had reduced

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1368 Transcript, day 39, p 15; Mr Agrizzi's Initial Affidavit, Annexure J, p 282.

1369 Transcript, day 39, p 16; Mr Agrizzi's Initial Affidavit, Annexure J, p 282.

1370 Transcript, day 39, pp 16-17.

1371 Transcript, day 39, p 17. The SIU Report states that Gillingham and Mti had excluded the Department of Public Works from the tender, Mr Agrizzi's Initial Affidavit, Annexure J, p 282.

> the tender submission date from 30 days to 21 that anybody could compete with us."[1372]

868. Mr Agrizzi confirmed that despite it being a requirement that bidders should have five years' experience, Sondolo IT was only registered seven days before the closing of the bids, but was still awarded the tender.[1373] He testified that he became aware of the fact that Mr Mti had received benefits from Bosasa a few months before the access tender was granted to Sondolo IT when he received the SIU Report. He confronted some senior management in Bosasa who confirmed it to be true.[1374] Mr Agrizzi also confirmed that the access control tender was extended by Mr Mti on 4 August 2005.[1375]

869. Mr Agrizzi confirmed that the access control tender had a contract value of R236,997,385.31 and that the time for the tender was reduced to 21 days.[1376] In response to a question from the evidence leader on the level of technical complexity involved in compiling a response to this bid, Mr Agrizzi said:

> "Chair, the technical requirements would mean that you would actually have to go out and understand the Correctional Services environment, it also means that you would have to design a system and ensure, because it is an integrated system and it had various levels of control and it was a distributed network, not only over a local facility, but nationally, on a national grid, would require a lot of work.
>
> You would need to set up a network and this was one of the very first VPN networks set up in the country in conjunction with Telkom which alone would take you in the region of about six to eight months to get it going. So the complexity was intense here, although the system itself was very simple and easy to use and effective. It was a complex system to plan and to actually implement."[1377]

1372 Transcript, day 39, p 18.

1373 Transcript, day 39, p 19.

1374 Transcript, day 39, p 20.

1375 Transcript, day 39, p 20; Mr Agrizzi's Initial Affidavit, Annexure J, p 283.

1376 Transcript, day 39, pp 84-85.

1377 Transcript, day 39, p 85.

870. Mr Agrizzi testified that it was virtually impossible to do in 21 days.[1378] Mr Agrizzi confirmed the findings of the SIU investigation that Mr Gillingham supported the recommendations regarding the security fences but suggested that the DCS follow its own procurement process. In this regard, Mr Agrizzi testified that he was aware that a document was sent to the Department of Public Works to indicate that DCS would be continuing on their own terms and would be following the PFMA method and do procurement themselves.[1379] Consistent with Mr Agrizzi's evidence, the SIU Report stated that Mr Mti recommended that the DCS follow its own process so as not to experience delays from the Department of Public Works.[1380]

871. The SIU investigation found that concerns had been raised in the DCS regarding the origins of the document that contained specifications for security equipment and the inadequacy of the bid conditions and specifications.[1381] Mr Gillingham had explained that the email address – kobus@bfn.co.za – was his residential email address from which he forwarded the document to his official DCS email address.[1382] Mr Agrizzi confirmed that the flow of documentation regarding the bid specification was from Bosasa (Mr Mansell and/or Mr Agrizzi) to the email address created at the instance of Bosasa received by Mr Gillingham and then forwarded on from there to Mr Gillingham himself.[1383] Although Mr Agrizzi did not know at the time that the email address was paid for by Bosasa and was Mr Gillingham's email, he confirmed that he

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1378 Transcript, day 39, p 85.

1379 Transcript, day 39, p 86; Mr Agrizzi's Initial Affidavit, Annexure J, p 327.

1380 Transcript, day 39, p 86; Mr Agrizzi's Initial Affidavit, Annexure J, p 327.

1381 Mr Agrizzi's Initial Affidavit, Annexure J, p 328.

1382 Transcript, day 39, pp 87-88; Mr Agrizzi's Initial Affidavit, Annexure J, p 327.

1383 Transcript, day 39, p 87.

had sent a number of emails to that address, as was established by the SIU's investigation.[1384]

872. Mr Agrizzi confirmed as correct the SIU Report which read:

> "The witness referred to previously, advised in December 2004, he was given a document by Mr Agrizzi that contained specifications for security measures at prisons. Mr Agrizzi informed him that the document was made for a tender, which the DCS was going to advertise in the near future. Mr Agrizzi instructed him to ensure that the specifications were up to date with modern technology and to align them with the technology Bosasa was employing in the kitchens contract."[1385]

873. Mr Agrizzi testified that as far as he can recall, the tender had not been advertised at that stage.[1386] The SIU Report made similar findings in respect of the access control tender as it had with the other tenders, namely that Mr Gillingham and Mr Mti had received benefits, that Bosasa had been involved prior to the bid being advertised and that there had been an irregular extension of the contract.[1387]

874. Consistent with Mr Agrizzi's evidence, the SIU investigation found that the fact that the bid submission period was reduced to 21 days without apparent cause and that no site visits were allowed, provided Sondolo IT with an unfair advantage over the other bidders.[1388] Since Sondolo IT enjoyed access to the correctional centre environment, because of Bosasa's kitchens contract, the fact that no site visits were allowed gave it a significant advantage over its competitors.[1389]

[1384] Transcript, day 39, p 87.

[1385] Transcript, day 39, p 87; Mr Agrizzi's Initial Affidavit, Annexure J, p 329.

[1386] Transcript, day 39, p 88.

[1387] Transcript, day 39, p 88; Mr Agrizzi's Initial Affidavit, Annexure J, p 334.

[1388] Transcript, day 39, p 88; Mr Agrizzi's Initial Affidavit, Annexure J, p 335.

[1389] Transcript, day 39, p 90; Mr Agrizzi's Initial Affidavit, Annexure J, 335.

The fencing contract

875. The reference in the SIU Report to the fencing tender HK24/2005 is the same contract to which Mr Agrizzi had testified to, was published on 14 October 2005 with the closing date in November 2005, and was awarded on 29 November 2005 to Phezulu Fencing, an affiliated company within Bosasa.[1390] Mr Agrizzi confirmed, as concluded in the SIU Report, that Mr Gillingham played an integral role in the procurement process and was irregularly instrumental in developing the tender specifications.[1391] Mr Oellermann confirmed all the findings made in respect of the fencing tender.[1392]

876. The SIU Report provides that there was a heavy weighting in the evaluation criteria in favour of the integration of the fences with the computer software, which Sondolo IT introduced through the access control tender.[1393] Mr Agrizzi testified that it was the plan from the beginning to capture the DCS by putting a system in and making every other tender reliant on that system so that Bosasa controlled it.[1394] Competing bidders would have to spend R20 to 30m to have access to the system, which would increase their pricing. The system could be purchased elsewhere but they would not have access to the system on site.[1395]

877. Mr Agrizzi confirmed the following conclusions in the SIU Report:

[1390] Transcript, day 39, p 21; Mr Agrizzi's Initial Affidavit, Annexure J, p 284.

[1391] Transcript, day 39, pp 21-22.

[1392] Transcript, day 77, pp 98-100.

[1393] Transcript, day 39, p 22; Mr Agrizzi's Initial Affidavit, Annexure J, p 284.

[1394] Transcript, day 39, p 22.

[1395] Transcript, day 39, p 23.

877.1. substantial payments (well over R100m) were made to Phezulu Fencing at the outset of the contract without adequate performance;[1396]

877.2. a large percentage was payable on delivery of the raw materials to the contract sites;[1397]

877.3. the structure of the contract resulted in the DCS making very large payments to Phezulu Fencing at a very early stage of the contract, shortly before the end of the financial year, as a form of fiscal dumping;[1398]

877.4. although the bid conditions stipulated that the fences be erected by 17 March 2006, which was confirmed at the compulsory briefing session, and the fact that two bidders submitted project plans that complied with this deadline, Phezulu Fencing submitted two plans in terms of which they undertook to deliver raw materials to the site by 17 March 2006 but would install the fences at a much later date.[1399]

878. Mr Agrizzi was aware that Mr Gillingham was a part of the Bid Evaluation Committee for the tender but only became aware of the fact that he scored the two service providers who were able to comply with the deadline nought out of six for time, but scored Phezulu Fencing six out of six, when he had seen the SIU Report.[1400] Mr Agrizzi confirmed that Mr Gillingham received financial benefits for the award of the tender,

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1396 Transcript, day 39, p 23.

1397 Transcript, day 39, p 24.

1398 Transcript, day 39, pp 24-25.

1399 Transcript, day 39, p 25.

1400 Transcript, day 39, pp 25-26.

without lawful cause and that Mr Mansell and Dr Smith were instrumental in getting the benefits to Mr Gillingham.[1401]

879. Again Mr Agrizzi confirmed that it was impossible to conclude the bid in a one-month period.[1402] At the time, Mr Agrizzi was not aware that Mr Gillingham had initiated the tender, as indicated in the SIU Report.[1403] Also consistent with Mr Agrizzi's evidence was the finding by the SIU that Mr Gillingham and Mr Mti ensured that the DCS made use of its own procurement processes and not those of the Department of Public Works.[1404]

880. A witness interviewed by the SIU, a Mr Venter,[1405] had indicated to the SIU that he had completed the request to invite bids form on 11 October 2005 but had deliberately refrained from completing the estimated expenditure section as his directorate did not have the budget for the project. The R180m allocated for the project came from the savings on the compensation of employees' budget.[1406] Mr Agrizzi was not aware of this but testified that he knew Mr Venter, who at one stage was the Head of Security at the DCS and was the "client" responsible for the fencing contract.[1407] When requested by the SIU to explain how the distances of the fences as reflected in an extract from the bid document was determined, Mr Venter explained that due to time constraints, he had requested the Heads of Centres to appoint officials to measure the distances by foot.[1408] In response, Mr Agrizzi confirmed his previous evidence of

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1401 Transcript, day 39, pp 25-26.

1402 Transcript, day 39, p 91.

1403 Transcript, day 39, pp 91-92; Mr Agrizzi's Initial Affidavit, Annexure J, p 338.

1404 Transcript, day 39, pp 91- 92; Mr Agrizzi's Initial Affidavit, Annexure J, p 338.

1405 Not Petrus Venter.

1406 Transcript, day 39, p 92; Mr Agrizzi's Initial Affidavit, Annexure J, p 339.

1407 Transcript, day 39, p 92.

1408 Transcript, day 39, p 93; Mr Agrizzi's Initial Affidavit, Annexure J, p 339.

Bosasa employees that had attended at site and measured with a theodolite, even before the tender was advertised, and for the purposes of the fencing tender.[1409] Mr Agrizzi testified that while he was not aware of the instruction to measure the distance by foot, he was of the view that it was ideal because it would confuse everybody because they would obviously make mistakes.[1410]

881. The SIU Report states that the fencing tender was later amended by subsequent variation orders, amounting to approximately R100m, for additional work including the removal of trees and substations, construction of guard houses, blasting and installation of generators.[1411] Mr Agrizzi testified that he was vehemently opposed to the R100m and gave an instruction to stop putting in variation orders. Mr Agrizzi confirmed that it was in excess of R94m (that had been paid to Phezulu Fencing by May 2009) in respect of variation orders that was simply unnecessary and that it had become out of hand.[1412]

882. Mr Agrizzi confirmed that he was aware, at the time, that a prescript under the Construction Industry Development Board ("**CIDB**") for the provision of fencing services was required. Although he did not know the detail, he was aware that to put up a fence of the calibre and price range, a clearance code was required which was issued by the CIDB to be able to tender.[1413] Mr Agrizzi confirmed that, at the time of the tender, Phezulu Fencing had a 7 grading and did not have the required 9 grading.[1414] Mr Agrizzi further confirmed that Phezulu had received 90% of the contract

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[1409] Transcript, day 39, p 93.

[1410] Transcript, day 39, p 94.

[1411] Transcript, day 39, p 94; Mr Agrizzi's Initial Affidavit, Annexure J, p 340.

[1412] Transcript, day 39, p 94; Mr Agrizzi's Initial Affidavit, Annexure J, p 340.

[1413] Transcript, day 39, pp 95-96.

[1414] Transcript, day 39, p 96; Mr Agrizzi's Initial Affidavit, Annexure J, p 342.

value, amounting to approximately R392m, before the end of the financial year in March 2006 and before any fences had been erected.[1415]

883. Mr Agrizzi's previous evidence in relation to the weighting of the evaluation criteria in favour of the integration of the fences with the computer software system which Bosasa and Sondolo IT had already introduced into the DCS, as a factor that would significantly favour Phezulu Fencing in its bid, was confirmed in the SIU Report.[1416]

The television contract

884. Mr Agrizzi confirmed that the reference in the SIU Report to the television tender, HK25/2005, is the same tender about which he gave evidence and which contract was awarded to Sondolo IT on 3 March 2006.[1417] Again, Mr Gillingham was found to have, outside of the course of his normal duties, played an integral role in the procurement process and was irregularly instrumental in the developing of the tender specifications.[1418] Mr Oellermann confirmed all the findings made in respect of the television tender.[1419]

885. Mr Agrizzi confirmed that:

885.1. Sondolo IT's first invoice for payment was submitted on 13 March 2006, three days after the contract had been signed and 10 days after the contract was awarded. The invoice was for R106m and was paid on 23 March 2006, again a case of fiscal dumping.[1420] Mr Agrizzi testified that the motivation for the early

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[1415] Transcript, day 39, pp 96-97.

[1416] Transcript, day 39, p 99.

[1417] Transcript, day 39, p 27; Mr Agrizzi's Initial Affidavit, Annexure J, p 286.

[1418] Transcript, day 39, p 28.

[1419] Transcript, day 77, p 101.

[1420] Transcript, day 39, p 28.

payment was that it was for imported products that needed to be paid upfront and that only approximately R27m was required upfront.[1421]

885.2. Mr Gillingham received financial benefits after the award of this tender and the previous tenders.[1422]

886. The technical committee had met and confirmed that none of the bidders had qualified, as they were required to meet a 70% technical threshold, and that Sondolo IT had received the highest mark of 67.5%.[1423] After the technical committee's evaluation scores were handed to Mr Gillingham, Sondolo IT scored 80.38% and none of the other bidders scored more than 64%.[1424] Mr Agrizzi testified that Mr Gillingham must have scored the other bidders zero and scored Sondolo IT full marks.[1425] Mr Agrizzi confirmed that 90% of the bid price was to be paid on delivery of the materials, with 10% paid after completion and installation.[1426]

887. Mr Oellermann testified that he had been advised of fiscal dumping by National Treasury during the course of the investigation as where a department that had underspent during the course of the year, used that money on large projects very close to the end of the financial year to circumvent the unspent money going back to the fiscus.[1427]

1421 Transcript, day 39, p 29.

1422 Transcript, day 39, pp 28-29.

1423 Transcript, day 39, p 101; Mr Agrizzi's Initial Affidavit, Annexure J, p 896.

1424 Transcript, day 39, pp 102-103.

1425 Transcript, day 39, p 104.

1426 Transcript, day 39, p 104.

1427 Transcript, day 77, p 105.

Hampering the SIU investigation and destruction of evidence

888. The SIU Report, under its terms of reference, also dealt with the conduct of officials and employees at the DCS aimed at influencing or hampering any investigation, the destruction of evidence, and the intimidation of officials and employees of the DCS and members of the public. These matters were broader than Mr Agrizzi's scope of evidence.[1428]

Procurement processes

889. The SIU Report focused on the procurement processes related to the kitchens, access control, fencing and television tenders. Mr Agrizzi testified that there were other tenders, including a tender for x-ray scanners, which was cancelled and so nothing arose from the investigation other than a report that an irregular process was followed.[1429] The SIU Report also only dealt with the relationship between Bosasa and its affiliated companies and the DCS, it did not deal with other institutions to which Bosasa had access, such as ACSA and the SAPO.[1430]

890. Mr Agrizzi testified that he only became aware that the DCS had reprioritised funds for the 2005/2006 financial year, using section 43 of the PFMA, to transfer R769m from the compensation of employees' programme to the machinery and equipment programme under capital assets (to pay for the large projects) when he had received a copy of the SIU Report.[1431] Mr Oellermann testified that due to the amounts involved with the Bosasa tenders, the DCS took money allocated to one particular program

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1428 Transcript, day 39, pp 30-31; Mr Agrizzi's Initial Affidavit, Annexure J, p 290.

1429 Transcript, day 39, p 31.

1430 Transcript, day 39, p 32.

1431 Transcript, day 39, p 33; Mr Agrizzi's Initial Affidavit, Annexure J, p 303.

and moved it to other programs to ensure that there were sufficient funds available at all times for all the tenders to be awarded to Bosasa.[1432]

891. Mr Agrizzi confirmed that he was aware that the provision of monies to officials involved in supply chain management procedures at the DCS, apart from being in breach of Treasury Regulations, was highly irregular and unlawful.[1433] Although Treasury Regulations provide that pre-payment for goods or services must be avoided unless required by the contractual arrangement with the supplier, Mr Agrizzi testified that the contract and bid document with Bosasa did not provide for a pre-payment. Instead, they were advised to submit their pricing with a payment plan which showed a draw down, which is how they managed to secure the pre-payments done.[1434]

892. Any modification to or extension of a contract by an accounting officer, where authorised, has to comply with the provisions of section 217 of the Constitution. Mr Agrizzi testified that he was aware of instances where the authority to extend did exist and instances where it did not exist.[1435] Mr Agrizzi also confirmed that he remembered that Mr Mti, on 8 March 2004, opted for the DCS to procure goods and services in terms of the PFMA rather than through the State Tender Board.[1436]

Limitations of the SIU investigation

893. The SIU Report provides, in relation to its investigation, that:

> "The report is based on the review and analysis of documentary and electronic evidence, interviews conducted and affidavits obtained by the SIU. The investigation, however, was constrained by litigation as explained hereunder.

[1432] Transcript, day 77, p 104.

[1433] Transcript, day 39, p 34.

[1434] Transcript, day 39, p 35.

[1435] Transcript, day 39, p 35.

[1436] Transcript, day 39, p 39, Mr Agrizzi's Initial Affidavit, Annexure J, p 304.

> Bosasa had sought by way of application proceedings in the North Gauteng Division of the High Court of South Africa, to interdict the SIU from investigating the full scope of Bosasa's activities regarding the awarding of the four tenders to it by the DCS. As a result of the application, the SIU gave an undertaking not to interrogate material witnesses pending the finalisation of action proceedings for a final order. The SIU has accordingly not interrogated various Bosasa officials, its auditors and other witnesses, who could impart material information regarding issues relating to the investigation. The investigation has accordingly not been as intensive as the SIU would have wanted, and accordingly, any lacunae that exist in the investigation, will be addressed upon the resolution of the litigation between the SIU and Bosasa."[1437]

894. Mr Agrizzi testified that Bosasa brought an application to interdict the SIU investigation into the company and its activities, in the North Gauteng High Court under case number 11068/2009.[1438] Mr Oelermann testified that these proceedings significantly limited the scope of the investigation. An agreement was reached with Bosasa where the SIU committed to not continue with its investigation and interview or take affidavits from material witnesses whilst the interdict proceedings were ongoing.[1439] The agreement included senior executives at Bosasa and their related companies.[1440] According to Mr Oellermann, the agreement was reached to allow the SIU to continue its investigation pending the final outcome of the application brought by Bosasa.[1441] Mr Oellermann testified that the undertaking by the SIU was made by his principals on the advice of counsel based on the multifaceted challenge brought by Bosasa and in order for the SIU to be able to at least continue with the investigation at the time.[1442] Despite the fact that the investigation, as represented by the Report, could be said to be incomplete insofar as the material witnesses impacted by the agreement were concerned, it did not mean that there were no persons who could be charged.[1443] Mr Oellermann testified that part of the motivation to enter into the agreement was based

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[1437] Transcript, day 39, pp 36-37; Mr Agrizzi's Initial Affidavit, Annexure J, p 308.

[1438] Transcript, day 75, p 92; Mr Agrizzi's Supplementary Affidavit, p 16 at para 16.

[1439] Transcript, day 77, p 24.

[1440] Transcript, day 77 p 25.

[1441] Transcript, day 77, p 26.

[1442] Transcript, day 77, pp 28-30.

[1443] Transcript, day 77, pp 30-31.

on the fact that the SIU had already uncovered evidence of criminality to be handed over to the NPA and the SAPS for further investigation.[1444]

895. Mr Agrizzi further testified that he was never interviewed by the SIU, was aware of the legal proceedings as he handled all the legal issues in Bosasa with various attorneys, and that the undertaking not to interrogate material witnesses lasted from months into years.[1445]

898. In respect of the retrieval and analysis of electronic data obtained from Bosasa and Mr Gillingham, the SIU Report provides:

896.1. the SIU served notices on Bosasa requesting that Bosasa provide the SIU with access to its servers so that the SIU could obtain electronic copies of relevant data relating to the investigation and Bosasa offered to assist the SIU with its investigation;

896.2. the SIU and Bosasa reached an agreement in terms of which the SIU would be granted access to Bosasa servers and laptops so that mirror images could be made of them;

896.3. the imaging was initially scheduled to take place in the first week of December 2008, but at the request of Bosasa this process was postponed until the second week of December 2008;

896.4. from 8 to 16 December 2008, the SIU made mirror images of the data on the Bosasa file server environment, domain controller system, email server,

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[1444] Transcript, day 77, pp 31-32.

[1445] Transcript, day 39, p 37.

financial system server as well as of the personal laptops of Mr Agrizzi, Mr van Tonder and Mr Vorster;

896.5. during the imaging process, the SIU was denied access to one server. After the intervention of Adv J Wells, the SIU's legal advisor, access was eventually granted, and the server was imaged.[1446]

897. Mr Agrizzi confirmed the content of the SIU Report in relation to the retrieval and analysis of electronic data and clarified that there was nothing untoward about the denial of access to the one server, which was because the server's serial number was erroneous and not properly added but was later sorted out.[1447] According to Mr Oellermann, whilst the SIU was imaging the servers Mr Malan approached him and said that he had identified another server that Bosasa had not disclosed and he wanted access to it, which was refused. It was only after the intervention of Adv Wells, who contacted Mr Agrizzi, that access was granted.[1448]

898. The SIU Report provides that Mr Malan analysed the data obtained from Bosasa using keyword searches and during his initial analysis identified that a data deletion utility known as 'Eraser' had been used to delete a significant amount of data on the servers. Mr Agrizzi confirmed this to be true and testified that this was a separate incident from the server crash that had been orchestrated, and involved putting a virus onto the server to clean up any documents that might incriminate Bosasa.[1449] Mr Agrizzi confirmed that the exercise was undertaken in the first week of December 2008, when Bosasa sought to postpone the SIU's process of imaging.[1450] Mr Agrizzi further

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[1446] Transcript, day 39, pp 40-41; Mr Agrizzi's Initial Affidavit, Annexure J, p 309.

[1447] Transcript, day 39, p 41.

[1448] Transcript, day 77, p 80.

[1449] Transcript, day 39, p 42.

[1450] Transcript, day 39, pp 42-43; Mr Agrizzi's Initial Affidavit, Annexure J, pp 309-310.

confirmed that the evidence he had given relating to the true reason for the one week delay in giving access to the SIU, was to allow Bosasa an opportunity to give effect to an instruction that they had received to delete documentation to ensure that *"all their tracks were covered up"*.[1451] This despite senior counsel having specifically advised them not to do so.[1452]

899. The SIU Report also references a deletion that took place on 24 July 2008, where 32,769 documents were overwritten and then deleted on domain server ADS01. Mr Agrizzi recalled the incident and that Mr Watson had called in an IT specialist to do so but was not aware of what was actually deleted other than knowing that it had reference to DCS, Mr Gillingham and anything to do with what the newspaper had reported on the corruption that the SIU investigated.[1453]

900. That the December 2008 delay agreed to with the SIU, was used for experts to delete data and categories of documents, is confirmed by the SIU Report.[1454] The SIU Report provides that on 6 December 2008, 116 folders were overwritten and deleted; 468 folders were overwritten and deleted on 4 December 2008; and on 6 December 2008, 7,130 documents were overwritten and deleted.[1455] Mr Oellermann confirmed that these deletions took place over the period of the delay requested by Bosasa and that if no postponement had been granted, the SIU would have had copies of all of those

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[1451] Transcript, day 39, p 43.

[1452] Transcript, day 39, p 25.

[1453] Transcript, day 39, p 44.

[1454] Transcript, day 39, p 45.

[1455] Transcript, day 39, p 46.

documents.[1456] According to Mr Oellermann, the SIU did not confront Bosasa about the deletion of files during the week's extension that they had requested.[1457]

901. Notwithstanding Bosasa's attempts to overwrite and delete folders, the SIU's experts still managed to obtain some information from the servers, which accords with Mr Agrizzi's earlier testimony that the SIU's experts were smarter than Bosasa's experts.[1458] Mr Oellermann testified that Mr Malan was able to recover a large amount of the deleted files but that he could not say if it was all of the data.[1459] Mr Agrizzi confirmed that he was aware that the same exercise conducted in respect of Bosasa's servers was used in relation to Mr Gillingham's computer and other electronic data storage facilities.[1460] Mr Oellermann testified that he recalled that the 'Eraser' utility was also used on Mr Gillingham's systems as stated in Mr Malan's report.[1461] From Mr Agrizzi's experience, memory and knowledge, he testified that files containing data relevant to the activities of Bosasa about which he had given evidence, had been tampered with or destroyed and that he found Mr Malan's report to be very accurate.[1462]

Mr Mti and Mr Gillingham's relationships with Bosasa

902. The SIU Report records the outcome of its investigation in respect of Mr Mti's relationship with Bosasa. Mr Agrizzi did not give any information to the SIU investigation in relation to that relationship.[1463] Mr Agrizzi's testimony that Bosasa had

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1456 Transcript, day 77, pp 81-83.

1457 Transcript, day 77, pp 86-87.

1458 Transcript, day 39, p 47.

1459 Transcript, day 77, p 83.

1460 Transcript, day 39, p 47; Mr Agrizzi's Initial Affidavit, Annexure J, p 310.

1461 Transcript, day 77, p 85.

1462 Transcript, day 39, p 48.

1463 Transcript, day 39, p 48.

assisted Mti with the registration of a company Lianorah Investments, is confirmed by the SIU Report which links Lianorah Investments and Bosasa and further confirms that, at the time of Lianorah Investment's incorporation, Mr Mti was the National Commissioner of the DCS.[1464] Mr Oellermann confirmed in evidence that the information in the SIU Report in respect of Lianorah Investments is the result of his investigation and is an accurate reflection of the information he received and investigated.[1465] Mr Agrizzi found out about Lianorah Investments after it had been registered and after the news reports, but was able to confirm that it had happened.[1466] Mr Agrizzi did not provide any information in this regard to the media. Lianorah Investments was deregistered on 20 April 2007. Mr Venter testified that when D'Arcy-Herrman was still Bester Viljoen Inc, Mr Perry instructed Bester Viljoen Inc to register the company. According to Mr Venter, it was only when Mr Basson inspected the share registers that they realised that the entity belonged to Mr Mti.[1467]

903. The BIU Report lists several non-monetary valuable benefits received by Mr Gillingham and Mr Mti, including a list of vehicles. Mr Agrizzi testified that he did not know about a Volkswagen Golf 5 2005 model and a Mercedes Benz E Class 2004 model, purchased by Mr Gillingham, and only found out about them when he was in Paris and read the SIU Report.[1468] Until that time, the purchase of the vehicles, according to Mr Agrizzi, had been kept from everyone and was handled between Dr Smith and Mr Mansell.[1469] Mr Agrizzi was also not aware, at the time, of a silver

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1464 Transcript, day 39, pp 48-49; Mr Atrizzi's Initial Affidavit, Annexure J, p 312.

1465 Transcript, day 77, p 107.

1466 Transcript, day 39, p 49.

1467 Transcript, day 73, p 157. Exhibit T10, pp 14-15.

1468 Transcript, day 39, pp 105-107.

1469 Transcript, day 39, pp 107 -108.

Volkswagen Polo 2006 model.[1470] The vehicle was registered in the name of Ryan Albert Gillingham, Gillingham's youngest son.[1471]

904. Mr Agrizzi was aware of the purchase of the white Volkswagen Polo 2006 model, as he was present when it was purchased, and confirmed that it was paid for by Bosasa.[1472] Mr Agrizzi was also aware of the purchase of a Mercedes Benz E Class 320 2007 model for Mr Gillingham and indirectly paid for by Bosasa.[1473] The R180,000 that was paid by Bosasa (through Mr Bonifacio from Mr Agrizzi's account as a loan, and for which Mr Agrizzi received a bonus) was, according to Mr Agrizzi, probably the balance of the payment of the vehicle.[1474]

905. In respect of the various cash and cheque deposits referred to in the SIU Report, Mr Agrizzi testified that he had not been aware of the payments until 2006/2007, that the payments were handled by Mr Mansell, Mr Watson and Dr Smith and were kept *"very hush hush"*, and that they were separate from the monthly payments Mr Agrizzi had testified to that Bosasa was paying Mr Gillingham.[1475]

906. The deposit referenced as kitchen deposit in the SIU Report, according to Mr Agrizzi, were three sets of cash payments of R20,000 from Mr Mansell for the design and installation of an imported kitchen for Mr Gillingham, who wrote out a cheque on 23 August to Sterlings Livings, a kitchen manufacturing company.[1476] In respect of a payment made on 5 August 2005, Mr Agrizzi testified that Grande Four was one of

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1470 Transcript, day 39, p 108.

1471 Transcript, day 39, pp 108-109.

1472 Transcript, day 39, p 109; Mr Agrizzi's Initial Affidavit, Annexure J, p 903.

1473 Transcript, day 39, p 109; Mr Agrizzi's Initial Affidavit, Annexure J, p 904.

1474 Transcript, day 39, pp 109-110.

1475 Transcript, day 39, p 111; Mr Agrizzi's Initial Affidavit, Annexure J, p 906.

1476 Transcript, day 39, pp 111-112.

the companies that Mr Watson insisted on registering, used at arms-length by Mr Mansell, who would write out cheques and reclaim them via a dummy invoice to Bosasa.[1477] Mr Agrizzi was not aware of the travel benefits or the rugby season tickets specified in the SIU Report.[1478]

907. In respect of the property Erf 106 Midstream, Mr Agrizzi testified that:

907.1. he was not aware of the property at that time but understands that it is the property where Mr Gillingham currently resides;

907.2. the architectural plans were drawn up by the same architect that Bosasa used at the time, and that from the SIU Report, it is evident that on 10 June R41,000 was paid by Bosasa;

907.3. he had been to the property and had to make repairs to the property;

907.4. Riekele built the house and Bosasa used Riekele. Mr Agrizzi was unable to say whether Riekele did R30m worth of work at Bosasa;

907.5. a kitchen was installed in the house from Sterlings Living;

907.6. the Grande Four account would be the best place to look; and

907.7. one of the reasons why they searched for the files the Saturday that they destroyed files, was to get the information from Grande Four.[1479]

[1477] Transcript, day 39, p 112.

[1478] Transcript, day 39, pp 112-113.

[1479] Transcript, day 39, pp 113-115.

908. Mr Agrizzi found out about the Protea Retirement Home after the fact and understood that it was used by Mr Gillingham's father.[1480] Mr Agrizzi testified that he was unaware of the vacant property Erf 971 Midstream and only became aware of the purchase later, where Grande Four paid an amount of R392,000, with the presumption that Mr Gillingham paid the balance.[1481]

909. The SIU Report refers to documents seized during the search that explain certain benefits received by Mr Gillingham. Mr Agrizzi testified that he can confirm that these documents were the loan agreements that were drawn up to cover up the fact that monies had gone through the banks and certain people to Mr Gillingham. The loan agreements were back-dated to try and cover up and are the reason why Mr Gillingham declared his loans to Mr Mti.[1482] The loan agreements were created to give an appearance of legitimacy to the transactions.[1483]

910. Mr Agrizzi testified that the R350,000 referred to was paid to Grande Four as part-payment for a property for Mr Gillingham's son, Paddy Gillingham. It is reflected as a payback purporting to show that loans were being paid back, but in actual fact was disbursed for vacant property that Mr Gillingham's son had bought.[1484]

911. In conclusion on Mr Gillingham, the SIU Report provides:

> "Given that the Bosasa Group of Companies were awarded large contracts estimated in excess of R1.5 billion and that Gillingham played an integral role in all these contracts, the benefits acquired by Gillingham and his family, within the period these

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[1480] Transcript, day 39, p 115.

[1481] Transcript, day 39, p 116.

[1482] Transcript, day 39, pp 116-117.

[1483] Transcript, day 39, p 117.

[1484] Transcript, day 39, p 118; Mr Agrizzi's Initial Affidavit, Annexure J, p 912.

> contracts were awarded signifies the existence of an improper and corrupt relationship between Gillingham and the Bosasa Group of Companies."[1485]

912. Mr Agrizzi confirmed the conclusion reached by the SIU and further testified that he is sure that the estimated value of the contracts exceeds the R1.5 billion referred to and may be double that amount.[1486] The value of R1.5 billion referred to in the SIU Report is based on the value of benefits received and referred to in the Report.[1487]

913. The SIU Report states that the architect who compiled plans for Mr Mti's house confirmed that she was requested to do so for a house to be built in Savannah Hills for Mr Mti.[1488] The SIU established, as was testified to by Mr Agrizzi, that Autumn Storm Investments 119 (Pty) Ltd is reflected as the owner of the house in the title deed.[1489] The SIU also established that Autumn Storm Investments belonged to Mr Hoeksma and that between 2004 and 2007, Bosasa paid R30m to Mr Hoeksma's company Riekele.[1490] The architect refers to further payments being made in respect of the plans in the SIU Report. Although at the time Mr Agrizzi did not have any knowledge of that, he later, when instructed to do the clean-up operation, verified the payments.[1491] Mr Agrizzi confirmed that he had seen reference to a transaction in the records of Bosasa for the purchase of a vehicle for Mr Mti, which was done by a colleague but that he could not comment on it as he did not have the details.[1492]

914. The SIU Report concludes:

1485 Transcript, day 39, p 119; Mr Agrizzi's Initial Affidavit, Annexure J, p 912.

1486 Transcript, day 39, p 120,

1487 Transcript, day 39, p 121.

1488 Transcript, day 39, p 122; Mr Agrizzi's Initial Affidavit, Annexure J, p 913. Mr Vorster also testified about being aware of a house being built for Mr Mti in Savannah Hills (Transcript, day 43, p 123).

1489 Transcript, day 39, pp 122-123.

1490 Transcript, day 39, p 123.

1491 Transcript, day 39, p 124.

1492 Transcript, day 39, pp 124-125.

> "The SIU is satisfied that the normal procurement process was not followed by the DCS in the four tenders discussed in this report for the reasons advanced. Given the fact that Gillingham and Commissioner Mti improperly received benefits from Bosasa, the fact that there was a close working relationship between Gillingham and Commissioner Mti leads the SIU to conclude that there was an improper and corrupt relationship between Gillingham, Commissioner Mti and the Bosasa Group of Companies. In as much as there was an improper and corrupt relationship between Gillingham and Bosasa the SIU is satisfied that the entire procurement process in each of the tenders was undermined to the extent that Bosasa and its affiliates were unduly and unfairly advantaged as against their competitors for and in respect of the various tenders. On the evidence before it, the SIU is accordingly satisfied that the improper and corrupt relationship between Gillingham, Commissioner Mti and the Bosasa Group of Companies has seriously undermined the procurement process and exposed the DCS to civil suits by competitors who were unfairly treated."[1493]

Implementation of the SIU Report's recommendations

915. Mr Oellermann testified that, to the best of his knowledge, and apart from the disciplinary proceedings instituted against Mr Gillingham, he was not aware of any recommendations that were implemented by the DCS subsequent to the Report being issued.[1494] Other than the communication with the DCS related to the disciplinary proceedings of Mr Gillingham, the DCS did not respond to the SIU after receipt of the Report.[1495] Mr Oellermann did not know whether there was further actioning of the Report after he left the SIU in 2012, but confirmed that there was no action taken in the three years from issuing the Report until he left in 2012. Mr Oellermann testified that he had been advised that the contracts between Bosasa and the DCS continued, and were extended, notwithstanding the submission of the SIU Report to the DCS.[1496]

916. The SIU, as a result of the findings in the Report, convened a meeting with the NPA and handed over a copy of the Report and its annexures.[1497] Mr Oellermann clarified

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[1493] Transcript, day 39, pp 125-126; Mr Agrizzi's Initial Affidavit, Annexure J, p 914.

[1494] Transcript, day 77, p 12.

[1495] Transcript, day 77, p 91.

[1496] Transcript, day 77, pp 12-13.

[1497] Transcript, day 77, p 22.

that the role of the SIU is to investigate a matter in terms of the relevant Proclamation, and to hand over evidence of criminality to the relevant prosecuting authority.[1498] At subsequent meetings with the NPA, the SIU gave a number of presentations where they set out the evidence and how they had gathered it and reached their conclusions. The SIU also handed over all the evidence that they had in their possession to the NPA.[1499] Mr Oellermann explained this to be the process following the handover of a report from the SIU to the NPA. He said that if the NPA was satisfied that a crime had been committed that needs to be investigated or prosecuted, the SIU would embark on the process of handing over all of the evidence and providing the NPA with everything that they need for a criminal docket to be registered for the criminal prosecution to continue.[1500] Mr Oellermann testified that although they had regular meetings with the NPA initially, concerns were raised by the NPA who indicated that they needed to discuss the concerns internally. A few more presentations were conducted after that, but by the time Mr Oellermann left the SIU in October 2012, a case had not been registered and there was not much momentum on the investigation.[1501] Mr Oellermann described it as unique that the matter has taken ten years to be prosecuted.[1502] He was unable to understand any rational basis for a delay in prosecution in light of the quality of evidence and nature of the findings made in the investigation.[1503]

[1498] Transcript, day 77, pp 22-23. See section 4(1)(d) and 4(2) of the SIU Act, 1996.

[1499] Transcript, day 77, p 24.

[1500] Transcript, day 77, p 88.

[1501] Transcript, day 77, p 89.

[1502] Transcript, day 77, p 89.

[1503] Transcript, day 77, p 101.

Attempts to discredit the SIU investigation

917. Mr Oellermann described an incident where he was approached by a Captain from the Crime Intelligence Services in Gauteng, during the course of his investigation into Bosasa.[1504] The Captain, whose name Mr Oellermann could not recall, wanted to see him specifically. He advised Mr Oellermann that he had been informed by a source in Bosasa that they had a list of the investigators that were conducting the investigation and that they knew their identities. He told Mr Oellermann that they were trying to acquire more personal information about them and that there was going to be an attempt to discredit the investigation team and Mr Oellermann personally. According to the Captain, they were trying to obtain Mr Oellermann's bank details so that they could make an anonymous deposit to discredit him and to taint the investigation, and to have Mr Oellermann removed from the investigation. Mr Oellermann reported these allegations to his principals but testified that nothing much happened, and that no anonymous money was deposited into his account.[1505] Mr Oellermann indicated that employees of the SIU signed a waiver allowing the SIU access to their bank accounts and other personal information for consistent profiling to determine whether there was anything suspicious.[1506]

918. Mr Oellermann explained that due to the sensitivity of the investigation, they would report once or twice a week to their principals and would immediately relay any information they considered important. They had to report regularly to ensure that they were operating within the agreement that had been reached to avoid any further legal challenge.[1507]

[1504] Transcript, day 77, p 87.

[1505] Transcript, day 77, p 87.

[1506] Transcript, day 77, p 87.

[1507] Transcript, day 77, p 88.

Bosasa directors' response to the SIU investigation

919. At the time of the negative exposure of Bosasa in the press surrounding the SIU investigation, Mr Agrizzi and his colleagues would discuss the matter as they walked into the Bosasa office park so that nobody could tape the conversation.[1508]

920. At the time, Mr Agrizzi confronted Mr Watson in the boardroom threatening to resign after he had been informed that Mr Watson had received advice that Mr Agrizzi should take the fall on behalf of the company in the SIU investigation.[1509] This entailed admitting to "*absolutely everything*" which included that he had corrupted Mr Mti and Mr Gillingham.[1510]

921. Mr Agrizzi explained that he went to the company's legal representative and was told to essentially "*shut up and just toe the line otherwise you going to implicate everybody*". Mr Agrizzi considered this to be an awakening moment for him.[1511] This testimony appears inconsistent with Mr Agrizzi's Initial Affidavit which provides at page 94 at paragraph 49.3 that the attorney, Mr Biebuyck, agreed with Mr Agrizzi's concerns about Mr Watson's suggestion that he take the fall for Bosasa. Later that evening , Mr Watson attempted to call Mr Agrizzi numerous times to apologise. Mr

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1508 Transcript, day 41, p 120.

1509 At this stage of Mr Agrizzi's testimony, it was pointed out to him that his recollection of issues discussed with Mr Watson in the boardroom do not correlate with what is said in his written statement. In response, Mr Agrizzi indicated he was feeling lightheaded and asked for the air conditioning to be reduced. The evidence leader indicated at that stage that Mr Agrizzi suffers from diabetes and at times this may affect his blood sugar. While no excuses were made on Mr Agrizzi's behalf, the evidence leader indicated that he was not sure if it was a good idea for Mr Agrizzi to tough it out as he had requested. I indicated to Mr Agrizzi that he could ask for a break whenever required. (Transcript, day 41, p 122). Later in his testimony, Mr Agrizzi confirmed paragraph 49.3 of his written statement that the attorney agreed with his concern about Mr Watson's suggestion that he take the fall for Bosasa.

1510 Transcript, day 41, p 124.

1511 Transcript, day 41, p 125.

Agrizzi accepted his apology.[1512] Mr Watson insisted that Mr Agrizzi and Mr van Tonder join him on holiday which they did.[1513]

922. Mr Watson told Mr Agrizzi and Mr van Tonder that they should remain inseparable because if they broke up the team everything will come out.[1514] Mr Agrizzi was concerned that Mr Watson did not have total control politically as he had indicated.

923. As to the effect the circumstances of the investigation was having on Mr Agrizzi, he explained that he had watched the company grow from 430 people to 6,500 people and he had concerns about what was going to happen to the employees and their families. At the time he began believing that there was no hope and he would be left to the wolves.[1515]

924. The Bosasa directors were of the view that they needed to keep fighting the SIU case, fighting the NPA and fighting the Hawks. Mr Agrizzi recalls their attorney Mr Biebuyck telling him that the matter would never get to trial because the NPA is useless and they would never be able to prosecute.[1516]

925. Mr Agrizzi explained that he had received instructions to place an aggregate of R40m in attorneys' trust accounts to defend Bosasa although he was told categorically that that might not be enough. At that stage, he realised that he did not have the resources to fight the process by himself. It was for that reason he considered it a real risk to leave Mr Watson.[1517]

[1512] Transcript, day 41, p 123.

[1513] Transcript, day 41, p 120.

[1514] Transcript, day 41, p 126.

[1515] Transcript, day 41, p 127.

[1516] Transcript, day 41, p 127.

[1517] Transcript, day 41, p 128.

Leak of the SIU Report to Bosasa

926. Around the middle of 2009, Mr Agrizzi was sent a copy of the SIU Report by Mr Biebuyck while he was in Paris on holiday with Mr van Tonder and Mr Watson.[1518] Mr van Tonder confirmed that he was in Paris with Mr Watson and Mr Agrizzi when the SIU Report was released.[1519] Mr van Tonder recalled Mr Watson boasting that his name did not appear in the report. He believed this was because Mr Watson did not sign any documents that might incriminate him.[1520]

927. Mr Oellermann testified that the only authorised recipients of the Report were the Minister and Acting National Commissioner of the DCS, the Head of the SIU, the SIU Programme Manager and the SIU archive. He confirmed that, if the Report came into the hands of Bosasa at any stage, it would have been entirely unlawful.[1521] Mr Oellermann did not know how the Report came to be in the possession of Mr Agrizzi or to members of the public but confirmed that the SIU did not distribute the Report to any other entity or individual.[1522] Mr Oellermann testified further that, within a day or two after the Report had been delivered to the DCS, he received a telephone call from a journalist who indicated that he had a source within Bosasa which had informed him that the SIU Report was at Bosasa and was being discussed by the executives of Bosasa.[1523]

928. Mr Oellermann testified that the measures taken by the SIU to ensure that it would be difficult for the Report to be provided to an unauthorised person included:

1518 Transcript, day 38, p 179.

1519 Transcript, day 43, p 5.

1520 Transcript, day 43, pp 79 and 80.

1521 Transcript, day 77, pp 17-18.

1522 Transcript, day 77, p 18.

1523 Transcript, day 77, p 19.

928.1. separating the entire investigation team from the rest of the SIU in a separate part of the building;

928.2. not allowing the team to discuss the matter with any colleagues at the SIU;

928.3. laying down that the investigations team reported directly to their principals, the Head and Deputy Head of the Unit;

928.4. sharing of information was restricted, including the printing of the Reports;

928.5. a hard copy of the Report was delivered to the office of the DCS in Pretoria and no electronic copies were provided;

928.6. meetings were held with the recipients of the Report in the weeks leading up to the issuing of the Report where the SIU emphasised the importance of making sure that the Report is kept secret, because of the sensitivity of the matter and the various legal challenges being faced from Bosasa.[1524]

929. Mr Watson asked Mr Agrizzi to arrange a meeting to discuss the SIU Report with Mr Biebuyck and a meeting was subsequently convened.[1525] The meeting with Mr Biebuyck resulted in people being given certain responsibilities in the contemplated prosecution of Bosasa.

929.1. Mr van Tonder's responsibility was to handle the banks, the financing and cashflow of the business to make sure there were sufficient funds to fight the matter.

[1524] Transcript, day 77, pp 20-21.

[1525] Transcript, day 41, p 128.

929.2. Mr Agrizzi's responsibility was to handle all legal aspects in conjunction with Mr Biebuyck.

929.3. Mr Watson's responsibility was to handle the politics of what was happening.[1526]

The SIU Report and criminal charges brought against certain individuals

930. Mr Oellermann confirmed that Mr Mti, Mr Gillingham, Mr Agrizzi, Mr van Tonder and certain companies known to be part of the Bosasa Group were named as accused persons in a charge sheet served in 2019.[1527] In response to a question from the evidence leader, noting that other Bosasa officials were absent from the list of accused persons, whether other officials other than Mr Agrizzi and van Tonder were mentioned in the SIU Report such as Mr Watson, Mr Oellermann responded that Mr Watson was not mentioned in the SIU Report because the SIU never had an opportunity to interview him.[1528] Mr Oellermann said that Mr Watson was one of the persons that the SIU was precluded from interviewing pursuant to the litigation brought by Bosasa.[1529] According to Mr Oellermann, at the time of the issuing of the Report, the SIU had wanted to investigate the matter further and did not have enough evidence to put Mr Watson's name in the Report. Although the SIU had received information that Mr Watson was aware of what was going on at all times and in fact was at the forefront of the irregularities that had been identified, the SIU never had an opportunity to test the allegations with Mr Watson.[1530] The persons that were

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1526 Transcript, day 41, p 128. Also indicated in Mr Agrizzi's Initial Affidavit at page 95 at para 49.8, Mr Agrizzi indicated that he played an active role in manipulating information to stymie the SIU investigations.

1527 Transcript, day 77, p 34. Exhibit S11, annexure CO3, p 213.

1528 Transcript, day 77, p 35.

1529 Transcript, day 77, p 35.

1530 Transcript, day 77, p 36.

interviewed told the SIU that Mr Watson never signed anything, never sent an email, always kept his nose clean and did not even use the computer that was in his office – the SIU felt that the evidence needed to be investigated further before they could approach Mr Watson.[1531]

931. Mr Oellermann testified that the charges brought against Mr Agrizzi and others in February 2019 following the evidence of Mr Agrizzi at the Commission, substantially relate to the SIU Report and that in the main the charge sheet is based on the SIU Report.[1532] Mr Oellermann based his view on his knowledge of the contents of the SIU Report, the facts that were investigated and the evidence obtained during the investigation.[1533] Mr Oellermann highlighted two exceptions in the charge sheet, which in his view, were not dealt with in the SIU Report, namely:

931.1. charges relating to payments and gratification to Mr Mti (accused number 1) for flight tickets, car rental services, accommodation and cash payments over the period May 2004 to July 2015; and

931.2. charges for money laundering and the payment of R62,796 for travel expenses relating to a trip to Europe undertaken by Mr Gillingham (accused number 2) and Ms Teresa Gillingham.[1534]

932. In relation to the delay in bringing charges based on the SIU Report, Mr Oellermann testified that there would have been certain procedural issues that would need to be dealt with for the evidence in the SIU Report to be admissible in terms of the Criminal Procedure Act, 1977 and certain further investigations to be done, but that he found

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[1531] Transcript, day 77, p 37.

[1532] Transcript, day 77, p 39.

[1533] Transcript, day 77, p 40.

[1534] Transcript, day 77, p 40.

the delay of ten years incomprehensible and had never encountered a criminal investigation of this nature that would take that long.[1535]

933. Having summarised the evidence relating to the SIU investigation, it is now appropriate to deal with the evidence on Bosasa's interactions with key officials within the NPA.

[1535] Transcript, day 77, p 43.

The National Prosecuting Authority - Nomgcobo Jiba and Lawrence Mrwebi

934. In this section of the summary, the evidence alleging that Bosasa paid certain individuals within the NPA to assist it by providing information related to the ongoing investigations into and possible prosecution of Bosasa and related entities is addressed. The following topics are canvassed –

934.1. payments to NPA officials;

934.2. the leak of NPA documents to Bosasa; and

934.3. further attempts to interfere with the SIU investigation and prosecution.

935. Around 2009/2010, Mr Agrizzi accompanied Mr Watson to a meeting with Mr Mti at his house in Savannah Hills where they had an informal discussion about the SIU investigation into Bosasa and potential criminal charges. They discussed what had been reported in the media and what was happening in the NPA.[1536] These meetings generally took place once a month.

Payments to NPA officials

936. Mr Agrizzi testified that at the meeting, Mr Mti was aware of the Hawks and the NPA's investigation and suggested that Bosasa need to pay certain individuals within the NPA so that they could assist Bosasa. The assistance was in the provision of information as well as to interfere with the investigation.[1537] Mr Mti also had documentation that had been provided to him after he had met with various people.[1538]

[1536] Transcript, day 40, p 38.

[1537] Transcript, day 40, pp 56-57.

[1538] Transcript, day 40, p 39.

Mr Agrizzi further testified that it was made clear by Mr Mti and Mr Watson that packages needed to be made up for certain people on an urgent basis.[1539] The names that were mentioned at the meeting were Adv Jiba, Adv Lawrence Mrwebi and Jackie Lepinka, Mr Mti's previous secretary who, at the time, was working for Adv Jiba and Adv Mrwebi. Adv Jiba and Adv Mrwebi were handling the investigation at the NPA.[1540] Mr Agrizzi testified that he was told by Mr Watson to prepare money for those three persons and that the amounts were discussed between Mr Mti and Mr Watson at the meeting after Mr Agrizzi had walked out of the room.[1541]

937. Mr Mr Mti informed Mr Watson and Mr Agrizzi that he met weekly with the persons whom he gave code names so that they would not be compromised. Adv Jiba was referred to by Mr Mti as "Snake" because she was very alert and was always poised to strike, ready to be on the offensive and was like poison – potent and strong.[1542] Ms Lepinka was referred to as "Jay". Mrwebi was referred to as "Snail" because Mr Mti said he was slow and very lethargic, and that he would not get anything done.[1543] Mr Agrizzi said that Mr Mti said that he met with Adv Jiba and Ms Lepinka who, he said, provided him with detailed information about the status of the investigation and the prosecution. Mr Mti would mention to Mr Agrizzi and Mr Watson that the ladies were *"with me"*, as a reference to Adv Jiba and Ms Lepinka's co-operation.[1544] According to Mr Agrizzi, Mr Mti said that Adv Mrwebi did not attend these meetings. The updates provided by them, according to Mr Agrizzi, were very accurate because they would receive two sets of updates and the update from Mr Mti was always accurate. Mr

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1539 Transcript, day 40, p 39.

1540 Transcript, day 40, p 39.

1541 Transcript, day 40, p 40.

1542 Transcript, day 40, pp 43-44.

1543 Transcript, day 40, p 44. Note that elsewhere in his evidence, Mr Agrizzi testified that Adv Mrwebi was referred to as "Jay", although he immediately acknowledged that he had made a mistake. Transcript, day 75, p 144.

1544 Transcript, day 40, pp 44-45.

Agrizzi testified that in return, according to Mr Mti, these three officials would get the cash on a monthly basis. Of course, Mr Agrizzi had no personal knowledge that these three NPA officials received the money that was given to Mr Mti every month to pass on to them.[1545]

938. According to Mr Agrizzi, the arrangement started in around 2010. Adv Jiba would be allocated R100,000 per month, Ms Lepinka would be allocated R20,000 per month and Adv Mrwebi would be allocated R10,000 per month.[1546] When Mr Agrizzi asked why Adv Mrwebi received less than Ms Lepinka, he was informed that Ms Lepinka was far more active and far more important than Adv Mrwebi and that he was calm and happy if he received his R10,000 and would not interfere in anything.[1547]

939. Mr Agrizzi testified that the deliveries to Mr Mti of the money meant for Adv Jiba, Adv Mrwebi and Ms Lepinka only started after the meeting with Mr Mti, himself and Mr Watson. Mr Agrizzi knew about every single delivery that took place in relation to the money for Adv Jiba, Adv Mrwebi and Ms Lepinka because he did some of the deliveries to Mr Mti. The last of the deliveries that Mr Agrizzi was involved with was in December 2016 when Mr Agrizzi refused to do the delivery on 19 December 2016. He then fell ill and was hospitalised. When he was discharged from hospital, Mr Watson came to fetch the delivery from him.[1548] Mr Agrizzi was not present when the deliveries were made to the three persons in the NPA. The fact that the amounts were paid to them on a monthly basis was based on information received from Mti.[1549] Mr

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1545 Transcript, day 40, p 45.

1546 Transcript, day 40, p 45.

1547 Transcript, day 40, p 46.

1548 Transcript, day 40, p 46.

1549 Transcript, day 40, p 47.

Agrizzi also based this conclusion on the fact that Mr Mti provided them with documents that he had received from the persons in the NPA.[1550]

940. Adv Jiba disputed the evidence against her. She denied that she ever met with Mr Mti as alleged or at all. In 2009/2010, according to Adv Jiba, she was a Deputy Director of Public Prosecutions and was based in the commercial crimes offices in Pretoria and had nothing to do with the Bosasa cases. Adv Jiba, in her affidavit filed in terms of rule 3(4), denies receiving cash in the amount of R100,000 monthly, or any amount at whatever frequency, in return for updates or the status of the investigation.[1551] Adv Jiba denied having received any money from Mr Mti, or at all.[1552] Mr Agrizzi's affidavit in response to Adv Jiba alleges that Mr Mti informed him that the staff from Bosasa handling the VIP transport were transporting Adv Jiba in a Toyota Fortuner, until Adv Jiba informed Mr Mti that she preferred a Mercedes Benz. As a result of the request and Adv Jiba's assistance in her position as acting NDPP, Mr Agrizzi alleges that Bosasa purchased a black E200 Mercedes Benz sedan that was dedicated only for Adv Jiba's use by the Bosasa security.[1553]

941. Mr Agrizzi testified that Mr Gillingham was extremely anxious about these arrangements. He expressed concern about the NPA *"processes"*. Mr Agrizzi requested that Mr Watson speak to him. Mr Watson did so and explained to Mr Gillingham that he had personally spoken to everybody, that he was with Mr Mti when he spoke to Mr Gillingham and that the NPA was under control and everything was sorted out.[1554] Mr Agrizzi further testified that there was a discussion between Mr Mti

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[1550] Transcript, day 40, pp 47-48.

[1551] Adv Jiba's affidavit (SEQ 3/2019) para 20, p 7.

[1552] Adv Jiba's affidavit (SEQ 3/2019) para 22, p 8.

[1553] Mr Agrizzi's affidavit in response to Adv Jiba (SEQ 3/2019) para 5, p 25.

[1554] Transcript, day 40, pp 47-48.

and Mr Gillingham in his presence where Mr Mti advised Mr Gillingham not to be concerned, that he had it all under control and that he was dealing with Adv Jiba, Ms Lepinka and Adv Mrwebi.[1555]

942. Approximately a week after the meeting with Mr Mti, Mr Agrizzi was instructed by Mr Watson to take the cash earmarked for Mr Mti as well as cash to be delivered to a number of other officials, which was to be done on a monthly basis. Mr Watson instructed Mr Agrizzi to take extra cash for the persons in the NPA as well.[1556] Mr Watson explained to Mr Agrizzi that he had packed the grey security bags in a large plastic haversack, including R100,000 for Adv Jiba (marked Snake), R10,000 for Adv Mrwebi (marked Snail), and R20,000 for Ms Lepinka (marked Jay).[1557] Mr Agrizzi testified that there were six bags in the haversack:[1558]

942.1. A bag of R100,000 for Mr Jolingane, acting National Commissioner for the DCS who was referred to as "Middledrift" because she came from that area in the Eastern Cape.

942.2. A bag of R100,000 for Grace Molatedi, an Area Commissioner for the DCS in the Free State, who had assisted in expanding two contracts – one in Groenpunt and the other where there had been a fire at a facility and Bosasa had taken over and put in a mobile kitchen.

942.3. A bag of R65,000 for Mr Mti as his standard monthly amount.

[1555] Transcript, day 40, p 51.

[1556] Transcript, day 40, p 53.

[1557] Transcript, day 40, p 51, p 53.

[1558] Transcript, day 40, pp 53-56.

943. According to Mr Agrizzi, Mr Mti liaised with the persons in the NPA to obtain information and to provide Bosasa with such information, which would be verbal and written, including copies of secret documents, minutes of meetings and various other information sources.[1559] The information was given to Mr Watson and then to Mr Agrizzi, or at times Mr Agrizzi would be with Mr Watson and the documents would be handed to them.[1560]

944. Adv Jiba lodged an application for leave to cross-examine Mr Agrizzi. On 22 June 2021, Adv Jiba resolved not to persist with her application and her request to give evidence before the Commission on the basis that Mr Agrizzi had no personal knowledge of her having received any money.[1561] Adv Jiba's version, insofar as it is presented in her affidavit accompanying the application for leave to cross-examine Mr Agrizzi and to give evidence before the Commission is set out above.

945. In Adv Jiba's affidavit filed in terms of rule 3(4), she also dealt with the allegations connecting her to Ms Lepinka. Adv Jiba statesd that it was not correct that she had worked together with Ms Lepinka in handling the case or in the manner suggested by Mr Agrizzi at all. According to Adv Jiba, Ms Lepinka had always been in the office of the NDPP *"as far back as the time of Adv Vusi Pikoli, Adv Mpshe, Adv Simelane"*, including during the time of when she was Acting NDPP from December 2011. From June 2011, she had had as personal assistants, first, Ms Matsi and then Ms Maloya, not Ms Lepinka. She said that Ms Lepinka was later transferred to the National Prosecution Service ("**NPS**"), which division Adv Jiba headed before she was moved

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[1559] Transcript, day 40, p 57.

[1560] Transcript, day 40, p 58.

[1561] Transcript, day 414, pp 42-48.

to the Legal Affairs Division. According to Adv Jiba, she never "handled" the Bosasa investigation or any investigation in relation to its related companies.[1562]

946. In response to a Regulation 10(6) directive, Ms Jacobeth Lepinka (referred to in evidence as Jackie Lepinka), filed an affidavit in which she admitted that she was Mr Mti's secretary when he was the National Commissioner of the DCS (from September 2001 until November 2006) but denied[1563] -

946.1. that she received and/or expected to receive any money from Bosasa, Mr Watson, Mr Agrizzi, Mr Mti and/or their agents for any purpose;

946.2. having been at any stage of her employment with the NPA, a secretary of Adv Jiba or Adv Mrwebi; and

946.3. having handed or caused to be handed any documents and/or information from the NPA to any unauthorised person at any period during her employment with the NPA.

947. Ms Lepinka recorded that Mr Agrizzi's evidence implicating her amounted to hearsay evidence, and that, based on legal advice she obtained,[1564] she had no legal obligation to answer.

948. An affidavit in terms of rule 3(4), dated 16 March 2019, was filed with the Commission. The affidavit was in support of an application to cross-examine Mr Agrizzi and purports

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[1562] Adv Jiba's affidavit (SEQ3/2019), paras 18-19,p 7.

[1563] Ms Lepinka's affidavit, paras 6-8, p 2.

[1564] Ms Lepinka's affidavit, para4,p 1.

to be signed by Adv Mrwebi.[1565] The application was dismissed following correspondence from Adv Mrewbi to the Commission in which he stated:

> "Please provide me with a copy of and any accompanying documentation of any formal application made by me on my behalf to cross-examine Agrizzi and advise whom made such an application, when it was made and what was the Commission's response to such application ...".[1566]
>
> "But importantly for me, I have never made any formal application to cross-examine Agrizzi. If such was made on my behalf, please provide the details and supporting ...".[1567]

949. Save to record that the affidavit in support of the application for leave to cross-examine Mr Agrizzi made various denials of Mr Agrizzi's allegations and specifically denied that Adv Mrwebi ever received bribes from Mr Watson or Mr Mti, or persons instructed by Mr Watson or Mr Mti in relation to the Bosasa investigation, it will not be considered or dealt with further for the reasons provided above.

Leak of NPA documents to Bosasa

950. The documents attached to Mr Agrizzi's statement as annexures "Q1" to "Q17" were given to Mr Agrizzi by Mr Mti directly or by Mr Watson who had received them first from Mr Mti.[1568] Mr Mti informed Mr Agrizzi that he had received the documents from Adv Jiba or when he attended meetings with the persons from the NPA.[1569] Mr Agrizzi testified that he had kept the documents at a storage facility away from his residence that he had hired especially to store these documents, together with other documents and hard drives, because he had reached a stage where he had wanted to use the documents *"and open it up."*[1570]

1565 Transcript, day 409, pp 45-49.

1566 Transcript, day 409, pp 46-47.

1567 Transcript. day 409, p 48.

1568 Transcript, day 40, p 59.

1569 Transcript, day 40, p 59, p 60.

1570 Transcript, day 40, pp 61-62.

951. Adv Jiba denies having supplied the documents attached to Mr Agrizzi's Initial Affidavit to Mr Mti or to any Bosasa official. According to Adv Jiba, the documents were usually in the possession of relevant investigators, police and prosecutors dealing with the cases. During Adv Jiba's tenure as the acting NDPP, Ms Lepinka was responsible for the co-ordination and receipt of reports in cases on which she would be briefed, including Bosasa. When Adv Jiba was reassigned to NPS (after the appointment of Adv Shaun Abrahams), Ms Lepinka was still in the division.[1571] According to Adv Jiba, she was never involved in any Bosasa investigation, beyond receiving briefings on all matters in the normal course.[1572]

952. Mr Agrizzi's attention was drawn by the evidence leader to an affidavit deposed to by a Mr Hendrick Andries Truter ("**Mr Truter**"). Mr Agrizzi knew him to have worked for the DCS in procurement. Mr Agrizzi knew Mr Truter to be well-versed in how tenders should operate and that he was present when all the tenders were awarded to Bosasa.[1573] Mr Truter's affidavit is attached as annexure Q1 to Mr Agrizzi's Initial Affidavit and deals with the procurement process followed by the DCS in respect of the adjudication of tenders. The affidavit was commissioned at Pretoria on 7 July 2009 by Mr Cornelius Daniel du Toit, the Chief Forensic Investigator of the SIU.[1574].

953. Mr Agrizzi's attention was also drawn to an affidavit deposed to by Mr Willem Hendrick Jacobus Pretorius ("**Mr Pretorius**"). Mr Agrizzi knew him to be a Deputy Director for Tender Administration at the DCS.[1575] The affidavit of Mr Pretorius is attached to Mr Agrizzi's Initial Affidavit as annexure Q2. It deals with matters relevant to procurement

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1571 Adv Jiba's affidavit (SEQ 3/2019) para 25, pp 8-9.

1572 Adv Jiba's affidavit (SEQ 3/2019) para 26,p 9.

1573 Transcript, day 40, p 63.

1574 Transcript, day 40, p 63; annexure Q1, p 381.

1575 Transcript, day 40, p 64.

and with contracts such as the outsourcing of catering services and his activities in that regard.[1576] The subject matter of Mr Pretorius' affidavit is the series of contracts investigated by the SIU. The affidavit was commissioned on 20 July 2009, the Commissioner of Oaths was Mr Johannes Senekal of the SIU.[1577]

954. The documents in Mr Agrizzi's possession were provided to him over a period of time. Those documents attached to his statement do not constitute all of the documents but are those which Mr Agrizzi had in his possession and were provided directly from Mr Mti.[1578]

955. Annexure Q3 to Mr Agrizzi's Initial Affidavit is a memorandum from Adv Glynnis Breytenbach, then Deputy-Director of Public Prosecutions in the Special Commercial Crimes Unit ("**SCCU**"), to Adv Simelane, the NDPP at the time. The memorandum is dated 4 February 2010 and is concerned with the Bosasa investigation and shows that the investigation and prosecution was at that time in the hands of the NPA.[1579] The memorandum is a report from Adv Breytenbach to Adv Simelane concerning the progress of the investigation into Bosasa.[1580] The final paragraph of the memorandum states:

> "An issue that needs to be addressed on an urgent basis is the position of Mr Linda Mti who is one of the main suspects and who currently holds the position of Head of Security 2010 World Cup and the impact that this investigation once it gains momentum and attracts the attention of the media might have. Some guidance in this regard would be greatly appreciated."[1581]

[1576] Transcript, day 40, p 64; Mr Agrizzi's Initial Affidavit, Annexure Q2, p 383.

[1577] Transcript, day 40, pp 64-64; Mr Agrizzi's Initial Affidavit, Annexure Q2, p 387.

[1578] Transcript, day 40, p 65.

[1579] Transcript, day 40, p 65; Mr Agrizzi's Initial Affidavit, Annexure Q3, p 389.

[1580] Transcript, day 40, p 66.

[1581] Transcript, day 40, p 66; Mr Agrizzi's Initial Affidavit, Annexure Q3, p 391.

956. Mr Agrizzi confirmed that this is consistent with what he knew at the time and the fact that Bosasa had provided assistance to Mr Mti in relation to the bid for the security function at the World Cup.[1582]

957. The memorandum also states that the Bosasa matter was received by the SCCU directly from the SIU in late November 2009, which is consistent with evidence given by Mr Oellermann before the Commission.[1583] The memorandum also references a follow up meeting held by the prosecution team, investigating officer and Mr Oellermann to discuss material in the possession of the SIU and not yet supplied to the SCCU.[1584] Mr Oellermann testified that the information contained in the memorandum, including problems with regard to the conduct of further investigations and prosecution, would be invaluable in the hands of potential accused persons as it would provide them with valuable information which they could use to attack the process, the investigation and any subsequent prosecution.[1585]

958. Annexure Q4, attached to Mr Agrizzi's Initial Affidavit, is on the face of it a memorandum that emanates from Adv Simelane, the NDPP, addressed to Adv Breytenbach on the letterhead of the NPA and is dated 8 February 2010.[1586] The evidence leader read certain paragraphs of the memorandum into the record:

> "I have considered your memorandum dated 4 February 2010. Having done so I am concerned about the turn that the case is taking.
>
> All along the matter has been reported on with suggestions that it is close to prosecution, your summary of progress made reveals the opposite. I am therefore concerned that a simple act of obtaining a statement with which to open a docket is proving difficult to do.

1582 Transcript, day 40, p 66.

1583 Transcript, day 77, p 45.

1584 Transcript, day 77, p 45.

1585 Transcript, day 77, p 48.

1586 Transcript, day 40, p 67; Mr Agrizzi's Initial Affidavit, Annexure Q4, p 394.

[...]

It also appears that the NPA staff are unlikely to contribute materially at this stage. I suggest that you advise Senior Superintendent D J Kriel in writing what process to follow to get the investigation going. You and your team of Advocate Grobbelaar and Mr G Nkadimeng must withdraw from the case until I am advised by the police that a docket has been opened and it is specified what assistance is required from the NPA. Accordingly I would appreciate if you and your team can withdraw from this case and dedicate your time and resources to cases where there are dockets to investigate or prosecute. Please confirm the withdrawal by 9 February 2010.

I note the point you make regarding Mr Mti. It is mischievous to say the least. Firstly, there is no police docket or investigation underway. Secondly, and by your own admission, there is still an assessment to be made on the evidentiary value of the information currently available. How therefore you can start speculating and making suggestions regarding any person, is beyond belief, unless of course it is a manifestation of a mindset with predetermined outcomes. My suggestion would be that you follow the advice in the last sentence of paragraph 3 above."[1587]

959. Mr Agrizzi testified that the facts contained in the leaked documents concerning the progress of the investigation, who was involved and how the investigation was progressing were also confirmed to him by Mr Seopela.[1588] Mr Seopela was close to Adv Simelane. Mr Agrizzi confirmed that there were various sources of information that he had and that there was always confirmation of whatever documentation he received and that it would always *"collaborate"* (presumably meaning to corroborate or confirm or coincide with the information contained in the documents).[1589]

960. Mr Oellermann testified that, when people are told to withdraw from an investigation or prosecution, *"everything comes to a halt"*. Mr Oellermann said that in his experience a new team would have to start afresh, to get to grips with a technical or complex

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[1587] Transcript, day 40, pp 67-68; Mr Agrizzi's Initial Affidavit, Annexure Q4, pp 394-395.

[1588] Transcript, day 40, p 69.

[1589] Transcript, day 40, p 69.

matter (and that there were areas in the SIU investigation that were complex) and so momentum is lost and there are further delays in taking the matter forward.[1590]

961. In relation to the part of the memorandum that stated,

> "I would have hoped that by now the SIU itself would provide the required affidavit since it has locus standi to investigate."

Oellermann testified that he did not believe Adv Simelane to be correct and clarified that the SIU cannot open a criminal case on matters that it is investigating. The SIU could open cases where it is the complainant, like internal matters, but in this instance the complainant was the DCS. The affidavit referred to, according to Mr Oellermann, should have been deposed to by a senior person in the DCS. Mr Oellermann confirmed again that the SIU refers evidence of criminal conduct to the NPA.[1591] Mr Oellermann testified that the affidavit he provided with the SIU Report was confirmation of the SIU Report and the referral of evidence of a criminal offence that had been uncovered but was not a complainant's affidavit to initiate a criminal case.[1592]

962. Mr Oellermann further testified that such a document in the possession of a potential accused person would provide them with ammunition to attack the investigation. It would pinpoint exactly where to attack the investigation because they would have insight into the thinking and strategy that was going on within the investigation and prosecution teams.[1593]

1590 Transcript, day 77, p 50.

1591 Transcript, day 77, p 51.

1592 Transcript, day 77, p 52.

1593 Transcript, day 77, p 52.

963. Annexure Q5, attached to Mr Agrizzi's Initial Affidavit, dated 9 March 2010 and titled *"Special Extended Ministerial Meeting"* appears to be the minutes of a meeting chaired by the Minister of Justice at the time, Mr Radebe.[1594] The secretariat refers to Ms J Lepinka and Mr Tlali.[1595] The meeting was attended by Minister Radebe, Minister Mapisa Nqakula, Adv Simelane and the secretariat. Item 3 of the minutes reflect that Adv Simelane presented a report to the Minister regarding *"SIU Report RE: Bosasa Investigation"*.[1596] According to the minutes, Adv Simelane is reported to have said, in summary:

> " - Challenges of the report was outlined i.e. the unconstitutionality of the report in that the evidence as contained in the said report was contaminated. The SIU Report cannot hold any water in any Court and that any presiding officer will not proceed with the report at hand.
>
> - SIU investigation was not in line with the proper administration of justice, "without fear, favour and/or prejudice" incorrect sections out of their mandate was *(sic)* used to find evidence, statements were not done according to the prescripts.
>
> - Political vendetta/agenda identified.
>
> - Manipulation of the public identified in that report was discussed in Parliament prior to same being handed over to relevant Exec Authority; media coverage over the report prior to having heard or confirmed any criminality in the mentioned senior officials of DCS; not guilty until proven guilty approach as enshrined in the Constitution was totally ignored.
>
> - A concern on credibility of certain individuals and/or the effected organisation is a serious concern and might cost the NPA much with possible litigations.
>
> - A predetermined element was identified as well as the race of both investigators (SAPS) (SIU) and prosecutors (NPA)
>
> - Close monitoring is important to ensure fair trial and investigation if any."[1597]

964. Mr Agrizzi testified that, prior to Bosasa receiving the assistance of Adv Simelane in helping them shut the investigation down, it was very tense in early 2010 because

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[1594] Transcript, day 40, p 69; Mr Agrizzi's Initial Affidavit, Annexure Q5, p 397.

[1595] Transcript, day 40, p 70.

[1596] Transcript, day 40, p 70; annexure Q4, p 398.

[1597] Transcript, day 40, pp 70-71, Mr Agrizzi's Initial Affidavit, Annexure Q5, p 398.

they had wanted to close down the investigation and because there were contracts to be renewed. Bosasa would receive reports, in writing or verbally, every week to every second week. The reports that they received were consistent with the documents that they were given.[1598]

965. In response to the various challenges to a successful prosecution raised in the minutes, Mr Oellermann testified that:

965.1. He was not aware of the unconstitutionality of the Report, as the evidence was gathered in terms of the Special Investigating Unit Act and that the investigation was conducted within the parameters of the Proclamation and the Act. Mr Oellermann confirmed that even if there had been irregularities, the Constitution does not prevent the leading of evidence provided certain groundwork is laid for the admission of that evidence.[1599]

965.2. It seemed to him that a judgment had been made on the admissibility of evidence at an early stage of the investigation without it actually going through a credible process where it can be properly evaluated.[1600]

965.3. He did not believe it to be a fair comment that the Report cannot hold water in any court and that any presiding officer will not proceed with the Report.[1601]

965.4. He did not believe it to be true that the SIU investigation was not in line with the proper administration of justice without fear, favour or prejudice as the investigating team reported to their principals, were given a mandate to

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[1598] Transcript, day 40, pp 70-71, Mr Agrizzi's Initial Affidavit, Annexure Q5, p 398.

[1599] Transcript, day 77, p 55.

[1600] Transcript, day 77, p 55.

[1601] Transcript, day 77, p 55.

investigate, did so and obtained evidence legally in terms of the Act. Mr Oellermann did not believe that they acted outside of the Act[1602] or the parameters of the Proclamation. Mr Oellermann denied being on a witch hunt and said, *"it would have been within my power to implement a witch hunt in any case at that stage."*[1603] He confirmed that the team took advice from counsel on a number of matters and acted in accordance with such advice.

965.5. Mr Oellermann did not understand what was being referred to in the minutes that incorrect sections of the mandate were used to find evidence as, in his view, the Act and Proclamation were clear and they acted within those boundaries. He further testified that all the affidavits that were obtained were done in accordance with how one would do so legally. Mr Oellermann was not aware of any political vendetta or agenda.[1604]

965.6. Mr Oellermann further testified that he was present when Adv Willie Hofmeyr presented the Report to the Portfolio Committee and that he believed the presentation was made towards the end of 2009, prior to the Report being sent to the NPA and the DCS. Mr Oellermann was of the view that the media coverage of the Report had no impact on the investigation.[1605] Mr Oellermann testified that the investigative team was a diversity of race and gender.[1606]

1602 Special Investigating Units and Special Tribunals Act No. 74 of 1996.

1603 Transcript, day 77, pp 55-56.

1604 Transcript, day 77, p 57.

1605 Transcript, day 77, p 58.

1606 Transcript, day 77 p 59.

965.7. Mr Oellermann confirmed that he is not aware of the unconstitutionality of the Report nor any political vendetta or any of the other issues raised which would prevent a successful prosecution.[1607]

966. Annexure Q6, on the letterhead of the SCCU dated 17 November 2010, appears to be addressed to the NDPP Adv Simelane and authored by Adv M C de Kock, with the subject matter *"the Bosasa matter"*.[1608] The purpose of the report is stated to be to apprise the NDPP of the status *quo* of the SIU Report on Bosasa, with a detailed analysis that follows.

967. The report states that the SIU received information from various and sometimes unreliable sources and made use of the information without verifying facts. It contends that the SIU Report was drafted in a *"careless and almost casual fashion"* and that the lack of accuracy and precision with the drafting of the SIU Report will give ample opportunity to those seeking fault. It contends further that the bid box in respect of the kitchen tender HK2/2004 was opened one week earlier than the scheduled date. If this information is correct, the report alleges that the Bosasa bid was only received after officials had opened the bid box, which may be a serious irregularity and it would have been expected to be mentioned in the SIU Report.[1609] The report concludes by stating that the lack of accuracy and precision will give ample opportunity to those seeking to fault it. It states that *"the purpose of the SIU investigation may have influenced and informed the product that they produced"* and that it would not stand up to scrutiny in a criminal court.[1610]

1607 Transcript, day 77, p 60.

1608 Transcript, day 40, pp 72-73, Mr Agrizzi's Initial Affidavit, Annexure Q6, p 401.

1609 Transcript, day 40, pp 72;Mr Agrizzi's Initial Affidavit, Annexure Q6, p 403.

1610 Transcript, day 40, pp 73; Mr Agrizzi's Initial Affidavit, Annexure Q6, pp 403-404.

967.1. Mr Agrizzi testified that the Bosasa bid was received before the bid closed and that he was of the view that *"they are adding too much spice there"*. Mr Agrizzi clarified that the bid boxes are normally 50cm by 50cm, and that he could recall for that specific tender Bosasa had 27 lever arch files that could never be placed in the bid box.[1611]

967.2. Mr Oellermann testified that he did not believe it to be correct that the SIU received information from unreliable sources and made use of such information. He explained that through the investigation process evidence and information is evaluated as a matter of course, which is what took place.[1612] According to Mr Oellermann, the report placed the SIU Report in a bad light and would be harmful to the prosecution's case and invaluable to a person being investigated as it would show them the current situation of the investigation, the prosecution and where the likely successful challenge to the prosecution would be.[1613] Mr Oellermann was of the view that any person who leaked the report to Bosasa must have known that it would harm the prosecution. He also stated that he did not agree with the comments in the report made by Adv de Kock.

967.3. Mr Oellermann disagreed that the SIU Report was drafted in a careless fashion with a lack of accuracy and precision. He explained that there may have been further investigation to follow but that the purpose of the SIU Report was not to hand over a court-ready criminal case docket for charges to be immediately drawn and prosecution to be initiated. Instead, the SIU Report was to identify the areas where evidence of criminal offences had been

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1611 Transcript, day 40, pp 73; Mr Agrizzi's Initial Affidavit, Annexure Q6, pp 403-404.

1612 Transcript, day 77, p 61.

1613 Transcript, day 77, p 62.

uncovered and to link the individuals identified as part of the criminal offence and then for the investigation and prosecution to take its course.[1614]

967.4. Mr Oellermann agreed that the person who handed the report to Bosasa would presumably have known expressly that the mere handing over of the report would undermine the prosecution and thus unlawfully assisted the accused persons.[1615]

968. An information note marked "secret" and dated 17 October 2011 is attached as annexure Q7 to Mr Agrizzi's Initial Affidavit. The note is addressed to the commander of the anti-corruption task team the Directorate for Priority Crime Investigations (the "**DPCI**" or "**the Hawks**"), and is headed *"Progress of Investigation: Bosasa Investigation: PC 5: Pretoria Central CAS 1556/02/2010"*.[1616] The note names witnesses that have been consulted and refers to draft statements being prepared for signature and further states from whom statements were intended to be obtained. Mr Agrizzi confirmed that as a result of the receipt of the note, he knew who was being consulted, who would testify and from whom statements were going to be taken.[1617]

968.1. Included in the list of persons from whom statements were to be obtained were Mr Maako (DCS Contract Management), Mr Ngubo (DCS Bid Adjudication Committee), and Ms Sishuba (DCS Bid Adjudication Committee). Mr Agrizzi testified that all three persons were being paid by Bosasa at the time, but later

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[1614] Transcript, day 77, p 63.

[1615] Transcript, day 77, p 63.

[1616] Transcript, day 40, p 77, Mr Agrizzi's Initial Affidavit, Annexure Q7, p 406.

[1617] Transcript, day 40, p 78, Mr Agrizzi's Initial Affidavit, Annexure Q7, pp 406-407.

accepted that he had wrongly named Ms Sishuba in this regard and recorded his withdrawal and apology in open proceedings of the Commission.[1618]

968.2. Paragraph 5 of the note contained details of meetings that had been attended in relation to the prosecution. Mr Agrizzi testified that they were provided with the detail of the contents of those meetings and said *"[w]hatever we requested we would get. There was no issue."*[1619]

968.3. Mr Agrizzi testified that he knew Mr J Shilubane, who was responsible for IT and left the DCS in 2014/2015, and from whom a statement had been obtained as reflected in the note.[1620]

968.4. Mr Agrizzi confirmed that he was also provided with information on meetings held at the executive level, as indicated in the note.[1621]

968.5. On the fact that the note had not been signed by those who appeared to have authored it, Mr Agrizzi testified that at times they would receive unsigned documents first and then receive the signed documents later and, at other times, they would only receive unsigned documents.[1622]

968.6. In relation to the second *"secret"* information note Mr Agrizzi testified that at the time it was given to Bosasa, they were aware of the names of the 39 people from whom statements had been obtained. Included in the list was Mrs K M Mabena (DCS Bid Evaluation Committee), who was receiving monthly

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1618 Transcript, day 40, p 78; p 80; Mr Agrizzi's Initial Affidavit, Annexure Q7, p 414 paragraph 4. The withdrawal and apology followed Ms Sishuba's application for leave to cross-examine Mr Agrizzi in this regard.

1619 Transcript, day 40, p 78; p 80; Mr Agrizzi's Initial Affidavit, Annexure Q7, p 407.

1620 Transcript, day 40, p 82.

1621 Transcript, day 40, p 82, Mr Agrizzi's Initial Affidavit, Annexure Q7, pp 408-409.

1622 Transcript, day 40, p 83.

payments from Bosasa and who was responsible for development and care, which oversaw the catering contract for the DCS.[1623]

968.7. The note also contained information from bank statements that had been obtained in terms of section 205 of the Criminal Procedure Act, including bank accounts belonging to Mr Mti and a mortgage loan account in the name of Autumn Storm Investments.

968.8. Mr Agrizzi testified that the information was extremely useful to Bosasa because they could interview and manipulate the witnesses with cash payments to change their statements.[1624] The note contained further information on witnesses that had been consulted and whose draft statements were being prepared, as well as plans in relation to further statements to be obtained.

969. Mr Agrizzi also received an unsigned memorandum authored by Adv de Kock of the SCCU dated 28 October 2011 and marked confidential. The memorandum is attached as annexure Q8 to Mr Agrizzi's Initial Affidavit. The content of the memorandum examines the validity of a subpoena *duces tecum* that was served on the SIU during February 2011 by the Mail & Guardian newspaper.[1625] The conclusion reached in the memorandum is that *"there are various levels of argument that could be advanced in support of the view that the subpoena amounts to an abuse of the process of court."*[1626]

970. Mr Agrizzi explained that the memorandum was provided to Bosasa to use as a mechanism in defending its case. Mr Agrizzi testified that although the memorandum

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[1623] Transcript, day 40, pp 83-84, Mr Agrizzi's Initial Affidavit, Annexure Q7, pp 411-412.

[1624] Transcript, day 40, p 85.

[1625] Transcript, day 40, p 86, annexure Q8, p 418.

[1626] Transcript, day 40, pp 87-88, annexure Q8, p 443.

was authored by Adv de Kock, she was beyond reproach and, to his knowledge, was not involved in any interference with the investigation and/or prosecution.[1627] The memorandum deals with similar cases to Bosasa and not with Bosasa specifically.[1628]

971. Mr Agrizzi sought to explain how the document came to be in Bosasa's possession and its intended purpose as follows:

971.1. After meeting with, and obtaining documents from Mr Mti, Mr Watson and Mr Agrizzi would ask Mr Mti what he wanted them to do next. After each meeting, Mr Watson instructed Mr Agrizzi to meet with Bosasa's attorney and, if necessary, senior counsel, to tell them exactly what had transpired and to provide them with copies of the documents.[1629] The legal representatives would then give advice to Bosasa.

971.2. It was determined that there was nobody better to ask for advice on how to close down the case than the investigating officer or prosecutor handling the case. So, it was decided that they would request information on how to close down the case, from the prosecutors, but without them knowing that this was the intention. And so, they were asked to provide information on a similar case and to detail what the risks are so that Bosasa could use this information for its own benefit.[1630]

971.3. The document was thus requested via Mr Mti to Ms Jolingana, who Mr Agrizzi assumed contacted Adv de Kock who provided the document.[1631] The

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[1627] Transcript, day 40, p 89.

[1628] Transcript, day 40, p 91.

[1629] Transcript, day 40, p 89.

[1630] Transcript, day 40, p 89.

[1631] Transcript, day 40, p 88. Note that this may be intended to be a reference to Adv Jiba instead of Mr Jolingana.

document was then provided to Mr Mti by Adv Jiba, Adv Mrwebi or Ms Lepinka who provided it to Bosasa.[1632] The document was then passed to Bosasa's legal representatives to be dealt with.[1633]

972. Adv de Kock testified that the memorandum attached as annexure Q8 to Mr Agrizzi's Initial Affidavit is the same document attached to her affidavit as MDK1.[1634] Adv de Kock confirmed that she authored the memorandum following a request from Investigating Officer, Colonel Danie Kriel in October 2011.[1635] Col Danie Kriel, the Bosasa investigator, asked Adv de Kock to study documents and give her opinion on a subpoena *duces tecum* dated February 2011. Adv de Kock did so and issued an opinion on 28 October 2011.[1636]

973. Adv de Kock's opinion concluded:

> "(7) The "integrity of the judicial process" is of high importance. If documents are made available before any criminal trial is finalised, the disclosure itself may create a huge risk of prejudice to the administration of justice. Courts will interpret the Act with fairness to all. (Compare *Brummer* (supra) paragraphs [46] and [47]).
>
> (8) I am of the view that there are various levels of argument that could be advanced in support of the view that the subpoena amounts to an abuse of the process of court."[1637]

974. Adv de Kock testified that she had no idea how the memorandum found its way into Mr Agrizzi's possession.[1638]

1632 Transcript, day 40, p 91.

1633 Transcript, day 40, p 92.

1634 Transcript, day 78, p 120. Adv de Kock indicated that one page was missing from annexure Q8 to Mr Agrizzi's Initial Affidavit between AA435-AA436.

1635 Transcript, day 78, p 122.

1636 Transcript, day 78, p 122.

1637 Transcript, day 78, p 123.

1638 Transcript, day 78, p 124.

975. Mr Oellermann confirmed, with reference to the memorandum where it is stated,

> "The Eversheds letter ... alleged that a copy of the SIU report was furnished to Bosasa Operations Ltd by Mr Gillingham's attorneys. Neither Mr Gillingham nor his attorneys could legally receive disclosure of the report unless they received the prior written consent of the head of the SIU. It is my respectful submission that Bosasa Operations is in possession of an unauthorised copy of the SIU report. The mere fact that they (may have) received a copy of the report from an attorney does not in any way legalise their possession of the document. The SIU report clearly prohibits the unauthorised distribution and/or possession thereof. The confidentiality clause inserted in the report clearly states that disclosure of the contents amounts to a criminal offence."

that, to his knowledge, the leak would not have occurred ordinarily speaking from persons who worked with him under his jurisdiction.[1639]

976. An opinion authored by Advocates de Kock and van Rensburg on 1 November 2012 regarding legal issues concerning subpoenas issued in terms of section 205 of the Criminal Procedure Act, is attached to Mr Agrizzi's Initial Affidavit as annexure Q9. Mr Agrizzi received it as part of the series of documents through the irregular arrangements at the NPA.[1640]

977. From the investigation into Bosasa, certain subpoenas were issued and Bosasa had an interest in avoiding the execution of those subpoenas.[1641] Whilst Bosasa was considering what to do in relation to certain subpoenas that had been issued, they were provided with the opinion authored by Adv de Kock regarding the legality of the very subpoenas which Bosasa had an interest in challenging.[1642] The opinion, in conclusion, found that a letter forwarded to Adv Mrwebi was an irregular attempt to

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1639 Transcript, day 77, p 67.

1640 Transcript, day 40, p 92; Mr Agrizzi's Initial Affidavit, Annexure Q9, p 445.

1641 Transcript, day 40, p 95.

1642 Transcript, day 40, pp 95-96.

review the issuing of subpoenas, avoid the required court appearances by the witnesses and mislead the NPA as to the true facts concerning the legal process.[1643]

978. After the release of the SIU Report, subpoenas were issued to Mark and Sharon Taverner amongst others. Mr Agrizzi testified that three subpoenas, in particular, came to mind, those issued to Brian Blake, and Mark and Sharon Taverner.[1644] Mr Agrizzi further testified that it was standard practice to make sure that there were delays in the witnesses appearing in court.[1645]

979. Mr Agrizzi was instructed to meet with Mark and Sharon Taverner and to take steps to delay their appearance as much as possible[1646] Mr Agrizzi testified that he was also instructed to attend every single meeting with them and Mr Biebuyck and make sure that Mr Biebuyck was the attorney of record for them, or whoever Mr Biebuyck agreed to if he did not do it himself. Mr Agrizzi had to ensure that Bosasa was not compromised and insisted that he saw their statements before they were submitted. The Taverners eventually appeared in compliance with the subpoenas after about 18 months.[1647] Mr Agrizzi testified that the responses to the questions put to the Taverners were not necessarily the whole truth.[1648]

980. Mr Agrizzi was also in possession of a letter from Advocates Mokgatlhe, de Kock and van Rensburg addressed to Adv Mrwebi under the letterhead of the SCCU dated 2 November 2012 and about subpoenas issued to Mark and Sharon Taverner.[1649] The

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1643 Transcript, day 40, p 93; Mr Agrizzi's Initial Affidavit, Annexure Q9, p 469.

1644 Transcript, day 40, p 94.

1645 Transcript, day 40, p 95.

1646 Transcript, day 38, p 181.

1647 Transcript, day 38, p 182.

1648 Transcript, day 38, p 183.

1649 Transcript, day 40, p 97; Mr Agrizzi's Initial Affidavit, Annexure Q10, p 471.

letter provides information on the status and the legality of the subpoenas from the SCCU.[1650]

981. Adv de Kock confirmed that:

981.1. Adv Mrwebi sent an email to Adv Marshall Mokgatlhe on 1 November 2012, titled *"section 205 subpoena"* requesting an urgent status report on the Bosasa matter. The report was to set out the charges, possible suspects, the evidence against such suspects, and anticipated difficulties in the matter, with comment on the representations made by Eversheds on behalf of Mark and Sharon Taverner (attached to the email).[1651]

981.2. Adv Mokgatlhe is the Regional Head of the SCCU in Pretoria and was acting in that position in 2012. Adv de Kock would report to AdvMokgatlhe, who in turn reported to Adv Mrwebi. Adv Mokgatlhe requested Adv de Kock to respond to Adv Mrwebi's email.[1652]

981.3. She prepared a covering memorandum signed by Adv Mokgatlhe, dated 2 November 2012, in response to Adv Mrwebi's email. The written response setting out the legal position and views of Advocates de Kock and Janse van Rensburg to the representations made on behalf of the Taverners was attached as annexure A.[1653]

981.4. The covering memorandum dated 2 November 2012 and annexure A are identical documents to those attached to Mr Agrizzi's Initial Affidavit as

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[1650] Transcript, day 40, pp 96-97.

[1651] Transcript, day 78, pp 124-125 . (Exhibit S12, annexure MDK2, p 57).

[1652] Transcript, day 78, p 125, p 126. (Exhibit S12, annexure MDK2, p 57).

[1653] Transcript, day 78, pp 127-128. (Exhibit S12, annexure MDK2, pp 62-63, 67-93).

annexures Q9 and Q10, and in Mr Agrizzi's possession.[1654] The version of annexure A that Adv de Kock had sent was free from any symbols or marks and so Adv de Kock testified, someone else must have added the handwritten vertical lines found in the right margin of annexure Q9 to Mr Agrizzi's Initial Affidavit.[1655]

982. Also provided to Mr Agrizzi by Mr Mti from the NPA was an email authored by Ms Lepinka and sent on 22 November 2012, who was the Manager: Executive Support to the ANDPP. Adv Jiba was the acting NDPP at the time.[1656] It is apparent from the preceding email train that Adv Jiba sought a status report on various cases, including the Bosasa case.[1657]

983. Mr Agrizzi testified that he received the document personally in Mr Watson's presence at Mr Mti's house and was told categorically that they could not just isolate and close down the Bosasa case, as it would raise too many concerns and so it had to be done as part of five other cases.[1658]

984. Ms Lepinka sent the email to Silas Ramaiti and Adv Mrwebi with the subject line *"SCCU status on the following cases"*. Relevant parts of the email read as follows:

> "Reports submitted to the ANDPP were not in line with what she requested. The ANDPP is requesting progress reports for the below mentioned cases ... Bosasa ....
>
> The said reports should outline the following: current status; available evidence; where the said case is currently; and if not on the court roll by when it will be enrolled.
>
> Detailed feedback/reports on these cases should be submitted to this office on or before the 28 November 2012. Upon receipt of the said reports a meeting will be scheduled between the ANDPP and the prosecutors responsible for the prosecution

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1654 Transcript, day 78, pp 129-131.

1655 Transcript, day 78, pp 139-14 0; Mr Agrizzi's Initial Affidavit, Annexure Q10, p 461, 465.

1656 Transcript, day 40, p 98; Mr Agrizzi's Initial Affidavit, annexure Q11, p 474.

1657 Transcript, day 40, p 98.

1658 Transcript, day 40, p 98.

> of the said cases to come and brief the ANDPP accordingly. In terms of the Bosasa case, please be advised that this matter needs to be finalised ASAP as the matter has been investigated for many years and from the submitted reports it is clear that there is no evidence and or prospect of a successful prosecution. This had been confirmed by both Lt Gen Dramat and Adv De Kock the lead prosecutor.
>
> The ANDPP has indicated further that no resource will be allocated to any case for longer duration. You are therefore requested to ensure that prosecutors focus on cases where there is sufficient evidence as this is fruitless and wasteful expenditure."[1659]

985. On 20 November 2012, Ms Palesa Matsi sent an email indicating the acting NDPP would like to discuss certain matters, including Bosasa, with the addressee's principals on 22 November 2010.[1660] Mr Agrizzi did not know who Ms Matsi was.[1661]

986. Mr Agrizzi was also in possession of a document addressed to Adv M Mokgatlhe, the acting Regional Head of the SCCU from Adv de Kock dated 26 November 2012 regarding progress on the Bosasa investigation.[1662] The report is made four days after the email of Ms Lepinka in which email it was indicated that there is no evidence or prospect of a successful prosecution in relation to Bosasa. Adv de Kock's view, at that stage, was:

986.1. The police investigation clearly indicates criminal behaviour on the part of Mr Gillingham, Mr Mansell, Mr Hoeksma and others.[1663]

986.2. The investigation is not yet completed, and a charge sheet has not been drafted. Almost 200 statements had been obtained since the start of the investigation, which will take another six months to complete. It is difficult to

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[1659] Transcript, day 40, pp 100-101; Mr Agrizzi's Initial Affidavit, Annexure Q11, p 474.

[1660] Transcript, day 40, p 102; Mr Agrizzi's Initial Affidavit, Annexure Q11, p 476.

[1661] She is referred to in Adv Jiba's affidavit, referred to earlier, as a PA that worked for her at one point in time.

[1662] Transcript, day 40, p 102; Mr Agrizzi's Initial Affidavit, Annexure Q12, p 478.

[1663] Transcript, day 40, p 103; Mr Agrizzi's Initial Affidavit, Annexure Q12, p 478.

speculate on the anticipated date of enrolment, but it would definitely be impossible to enrol the matter prior to 14 February 2013.[1664]

986.3. A summary of the nature and quality of the current and still to be obtained evidence could not be provided except to say that it was not anticipated that it would be challenged on any known grounds.[1665]

987. Mr Agrizzi confirmed that he received information on or after 26 November 2012 that the investigation and contemplated prosecution was still on the table.[1666] According to Mr Oellermann, a further six months to finalise the investigation is a realistic estimate given his knowledge of the matter and the fact that over 200 statements had already been obtained.[1667]

988. Adv de Kock testified that around 2012 she was regularly requested to report on the Bosasa matter.[1668] In respect of a progress report dated 26 November 2012, Adv de Kock testified that:

988.1. The progress report provides that they had informed the special director that the representations made by Eversheds, on behalf of the Taverners, amounted to an irregular attempt to review the issuing of the subpoenas, avoid the required court appearance by the witnesses and mislead the NPA as to the true facts concerning the legal process. The special director (Adv Mrwebi) informed Mr Biebuyck that the application to the magistrate for the issuance of the subpoena was well considered and that the activities related to a lawful

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1664 Transcript, day 40, pp 103-104; Mr Agrizzi's Initial Affidavit, Annexure Q12, p 479.

1665 Transcript, day 40, p 104; Mr Agrizzi's Initial Affidavit, Annexure Q12, p 480.

1666 Transcript, day 40, p 104.

1667 Transcript, day 77, p 68.

1668 Transcript, day 78, p 131.

investigative process. The special director declined to withdraw the subpoenas stating that such behaviour would amount to an unlawful review of the decision of the issuing magistrate.[1669]

988.2. The progress report further stated that Adv de Kock was not, at that time, in a position to specify the proposed charges against the suspects. That the investigation was still in progress and that it was not anticipated that it would be challenged on any known grounds.[1670]

988.3. The progress report attached as annexure Q12 to Mr Agrizzi's Initial Affidavit is the same document prepared by Adv de Kock in November 2012. Adv de Kock did not know how the document came to be in Mr Agrizzi's possession.[1671]

989. On 30 April 2013, a further progress report is provided on the Bosasa investigation. Again, Mr Agrizzi obtains a copy of the report. It is addressed to Adv Mrwebi and authored by Advocates de Kock and van Rensburg.[1672] The following is apparent from the report:

989.1. A draft charge sheet is being prepared in respect of Mr Gillingham for charges involving corruption, money laundering and fraud and that the authors are of the opinion that it would be possible to enrol the matter during the second half of 2013.[1673]

[1669] Transcript, day 78, p 137; (Exhibit S12, Annexure MDK2, p 65).

[1670] Transcript, day 78, p 138.

[1671] Transcript, day 78, p141.

[1672] Transcript, day 40, p 104; Mr Agrizzi's Initial Affidavit, Annexure Q13, p 482.

[1673] Transcript, day 40, pp 104-105; Mr Agrizzi's Initial Affidavit, Annexure Q13, p 482-483.

989.2. It is anticipated that evidence of the corrupt relationship between Mr Gillingham and the various individuals within the Bosasa Group, including Mr Mansell, Mr Agrizzi, Mr Bonifacio, Mr van Tonder and Mr Vorster will be sufficient to prosecute the individuals for money laundering and corruption.[1674]

989.3. Should the police investigation point to a corrupt relationship and the criminal involvement of Mr Mti and the four tenders mentioned in the Gillingham charge sheet, he will also be prosecuted.[1675]

990. Mr Agrizzi confirmed that as at 30 April 2013, the position was that at least one prosecution could occur during 2013 or shortly thereafter and that such knowledge came to his attention despite the earlier contradictory reports.[1676] Despite the fact that Mr Agrizzi had been provided with a copy of Mr Gillingham's draft charge sheet dated 30 April 2013, Mr Agrizzi testified that Mr Gillingham was never charged.[1677] Mr Agrizzi confirmed that there are a number of alleged acts in the charge sheet of which he had given direct evidence before the Commission.[1678]

991. Mr Oellermann testified that the information contained in the progress report would be valuable to a potential accused as it would provide insight into the tracking and progress of the investigation, what is still outstanding and where there might be shortfalls in the investigation and prosecution.[1679]

1674 Transcript, day 40, p 105; Mr Agrizzi's Initial Affidavit, Annexure Q13, p 483.

1675 Transcript, day 40, pp 105-106 ; Mr Agrizzi's Initial Affidavit, Annexure Q13, p 483.

1676 Transcript, day 40, p 106.

1677 Transcript, day 40, p 106; Mr Agrizzi's Initial Affidavit, Annexure Q14, p 486.

1678 Transcript, day 40, p 106; Mr Agrizzi's Initial Affidavit, Annexure Q14, p 486.

1679 Transcript, day 77, p 69.

992. Adv de Kock testified that the progress report on the Bosasa investigation, dated 30 April 2013, was prepared by her and that the content is the same as annexure Q13 attached to Mr Agrizzi's Initial Affidavit.[1680] She explained that she had prepared the report and sent it to the personal assistant to Adv Mokgatlhe, Ms Moja, who transferred the content onto a new letterhead and corrected the formatting.[1681] In relation to the progress report, Adv de Kock testified that:

992.1. She had been requested to provide more information and *"a detailed report"* in respect of the Bosasa investigation.[1682] In response to this request, Adv de Kock attached an extract from a draft charge sheet with highlighted dates and events, to the progress report.[1683]

992.2. The progress report of 30 April 2013, together with the extract of the charge sheet and document marked *"preamble"* found its way into the possession of Mr Agrizzi.[1684] Although the content of the documents is exactly the same, the extract of the draft charge sheet and the document marked *"preamble"* are two separate documents attached to Mr Agrizzi's Initial Affidavit whilst they are in one document attached to Adv de Kock's affidavit. Adv de Kock testified that she accepts that the documents attached to Mr Agrizzi's Initial Affidavit are in the correct sequence with the correct date, because generally she would draft a charge sheet with the preamble as the first part followed by the charge sheet.[1685]

1680 Transcript, day 78, p 141. S12, pp 6-7

1681 Transcript, day 78, p 142. This evidence was in explanation of the fact that two versions of the same progress report were attached to Adv de Kock's statement, see Exhibit S12, annexure MDK3 pp 94-101.

1682 Transcript, day 78, p 146.

1683 Exhibit S12, p 9; annexure MDK3, pp 102-116.

1684 Transcript, day 78, p 147.

1685 Transcript, day 78, pp 154-156.

992.3. Adv de Kock explained that the process at the SCCU, under a principle of *"prosecuted guided investigations"*, is that an ongoing investigation would be guided by a prosecutor who would also prepare a draft charge sheet and would continue to work on the draft as the investigation progressed so that the charge sheet and investigation would be completed at the same time.[1686] The information typed in red in the extract from the draft charge sheet was used by Adv de Kock to indicate that it was not yet final and to draw her attention to those parts of the document.

992.4. Adv de Kock did not know how the documents came to be in Mr Agrizzi's possession.[1687]

993. Mr Agrizzi was also provided with a document dated 8 August 2013 titled *"Proposed Racketeering Memorandum – confidential document"* which document consisted of the draft memorandum, a provisional draft racketeering charge sheet, and a provisional draft list of racketeering activities.[1688] Mr Agrizzi testified that he was provided with the document by Mr Mti in mid-August 2013 and that:

993.1. the document discusses racketeering and related charges that were contemplated;

993.2. through the document Mr Agrizzi and Mr Watson had been informed of the identification of the individuals and entities who would be the subject matter of the racketeering charges;

[1686] Transcript, day 78, p 148.

[1687] Transcript, day 78, p157.

[1688] Transcript, day 40, p 107; Mr Agrizzi's Initial Affidavit, Annexure Q15, p 502.

993.3. they were so informed before the memorandum had been completed;

993.4. through the document Mr Agrizzi and Mr Watson were made aware that charges were being contemplated in relation to racketeering in terms of the Prevention of Organised Crime Act before the charges were brought; and

993.5. the document was intended for the attention of Advocates Jiba, Mrwebi and Mosing.[1689]

994. Adv de Kock testified that she had sent an email on 8 August 2013 to Adv Mokgatlhe with the title *"Confidential Email: Bosasa, Gillingham, Mti and Others Racketeering Documents"*. Three MS word documents were attached to the email, namely *"Proposed Racketeering Memorandum, Bosasa and Others, 8 August 2013.doc"*; *"Provisional Draft Charge Sheet Bosasa Racketeering.doc"* and *"Provisional List of 149 Racketeering Activities POC and L Mti.doc"*.[1690] Adv de Kock testified further that:

994.1. She indicated in her email to Adv Mokgatlhe that she had raised concerns about the security of the attached documents; anticipated that the list of racketeering activities may double should the Bosasa and associated activities be added; and that the investigation was still in progress and that potentially critical information must still be added to the documents.[1691]

994.2. At some time prior to sending the email, her investigating officer (Colonel Kriel) informed her that documents prepared by the SCCU, such as progress reports, were being leaked. She held a meeting with Colonel Kriel and Brigadier Simon to confront them about who was leaking documents. Adv de

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[1689] Transcript, day 40, pp 107-108, 110; Mr Agrizzi's Initial Affidavit, annexure Q15, p 502.

[1690] Transcript, day 78, pp 159-160. Exhibit S12, annexure MDK4, p 117.

[1691] Transcript, day 78, pp 160-161.

Kock testified that they denied leaking the documents and said they did not know who was doing so.[1692] From 2010, Adv de Kock's team consisted of Colonel Kriel, Brigadier Simon (who was retired and brought in to assist Colonel Kriel), and Lieutenant Colonel Smit. Colonel Kriel later retired and Brigadier Simon's contract was not renewed.

994.3. Adv de Kock explained that the NPA investigation started from the SIU Report, which was used as background and to provide direction to the NPA's investigation.[1693] The NPA undertook its own investigations (i) because the SIU Report was prepared for the SIU's own purpose, related more to civil proceedings, and (ii) where there were gaps that had to be met in order to ensure the criminal standard would be met. Adv de Kock further testified that it was not unusual for the NPA to conduct its own investigation when another body had undertaken an investigation and prepared a report.[1694]

994.4. Adv de Kock explained that the number *"017514"* printed at the top of the email she had addressed to Adv Mokgatlhe was a part of a numbering system that she had implemented after she had been removed from the Bosasa matter in February 2016. At that time, she prepared an index and numbered her working papers to be handed over to the next prosecuting team. Adv de Kock testified that document security and access to the documents were a priority to her because she had heard that Bosasa had destroyed servers during the time of the SIU investigation. As such, she would not work on the original documents and generally worked on scanned documents or photocopies of scanned documents. The number *"017514"* meant that the document was document

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[1692] Transcript, day 78, p 162.

[1693] Transcript, day 78,p 164.

[1694] Transcript, day 78, p 166.

number 17,514 (of approximately 22,000 pages, with another 40 or so filed that had not been numbered). Adv de Kock testified that, after seeing Mr Agrizzi's documents, she recovered this specific email to show that the three attachments to Mr Agrizzi's Initial Affidavit actually comprised a single set of documents.[1695]

994.5. Adv de Kock confirmed that she was the author of the three documents attached to her email, and that those same, identical documents were in Mr Agrizzi's possession.[1696]

994.5.1. The first attachment, titled *"Proposed Memorandum"*, was identical to the document attached to Mr Agrizzi's Initial Affidavit which appeared to be a photocopy of Adv de Kock's document.[1697] The purpose of the report was to refer the evidence gathered by the SIU, which points to the commission of an offence by Bosasa and its affiliates, to the Acting NDPP (who was Jiba at the time and who Adv de Kock believed would have been the final recipient of the document).[1698]

994.5.2. The second attachment was a provisional draft charge sheet dated 8 August 2013 that listed 27 persons and entities as accused that were intended to be charged. They were: Patrick O' Connel Gillingham; Linda Maurice Mti; Angelo Agrizzi; William Daniel Mansell; Riaan Rekel Hoeksma; Jurgen George Smith; Gavin Joseph Watson; Carlos Yao de Costa; M Bonifacio; Andries Johannes J van Tonder; Frans Hendrick

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1695 Transcript, day 78, pp 167-168. The documents are attached as annexure Q15 to Mr Agrizzi's Initial Statement.

1696 Transcript, day 78, p 168, p 185.

1697 Transcript, day 78, pp 174-175.

1698 Transcript, day 78, pp 175-177.

Steyn Vorster; Bosasa Operations (Pty) Ltd; Sondolo IT (Pty) Ltd; Bezulu Fencing (Pty) Ltd; Concilium Property CC; Concilium Business Consultants (Pty) Ltd; Concilium Management Services (Pty) Ltd; Autumn Storm Investments 119 (Pty) Ltd; Riekele Construction BK; RRH Property development (Pty) Ltd; Hoeksma Broers BK; Labonke Trading CC; Rand Bricks (Pty) Ltd; Rappi Trade 273 (Pty) Ltd; Diragga Trust; Hoeksma Family Trust; Grande Four Property Trust; and WD Mansell t/a Grande Four Ranches. The charge sheet was provisional and was subject to further amendments.[1699]

994.5.3. The third attachment was also identical to the document attached to Mr Agrizzi's Initial Affidavit, with the exception of a text block appearing under paragraph 106 – which went over onto the next page in the document attached to Adv de Kock's affidavit.[1700]

995. Adv de Kock confirmed that every document dealt with in her affidavit was identical to the documents presented by Mr Agrizzi to the Commission, which she established by finding those documents she had prepared and sent to Adv Mokgatlhe and others, on her computer.[1701] Adv de Kock was unable to say how the documents came to be in Mr Agrizzi's possession. She confirmed that paragraphs 47 to 60 of her affidavit deal with authentication and identification marks in relation to the three documents attached to her email.[1702] Adv de Kock further confirmed that paragraphs 65 to 68 of

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[1699] Transcript, day 78, pp 177-178.

[1700] Transcript, day 78, pp 181-184. Exhibit S12, annexure MDK4, pp 164-165. Compare to annexure Q15, p 547.

[1701] Transcript, day 78, p 185.

[1702] Transcript, day 78, p 187. S12, pp

her affidavit deal with the authentication and identification of the other documents referred to in her affidavit.[1703]

996. According to Adv de Kock, the documents were all confidential NPA documents which she had marked as confidential as an extra precaution with the intention to warn any person in possession of the documents that they are confidential NPA documents and that the minimum information security provisions were applicable.[1704] She confirmed that any person within the NPA would have been aware that to provide the documents to a suspect or a person affected by the investigation would be wrong.[1705] Adv de Kock testified that the leakage of the documents, in her knowledge and experience, was not random. She further testified that the possession of the documents by an implicated person would harm the investigation.[1706] Although Adv de Kock had previously been told that documents were being leaked, the first time that she saw that particular documents had in fact been leaked was when she was shown the documents by the personnel from the Commission. She confirmed that it would have been unlawful for any person outside of the NPA to be in possession of the documents and that she had not given permission to anyone to share her documents with any person outside of the NPA.[1707] According to Adv de Kock, she was criticised at the time for being paranoid about her documents and the docket and about people having access to her documents, and people had the attitude that she was *"sort of crazy"* in this regard.[1708] She further testified that the same attitude seemed to remain at the NPA at the time of her testimony – that she is too concerned about document

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[1703] Transcript, day 78, p 188.

[1704] Transcript, day 78, p 189.

[1705] Transcript, day 78, pp 189-190.

[1706] Transcript, day 78, p 190.

[1707] Transcript, day 78, p 191.

[1708] Transcript, day 78, p 194.

security.[1709] Adv de Kock was of the view that the risk was much higher in commercial matters which is the reason why she does not work with original documents in commercial matters, because of the risk of them going missing. After she became aware that some of the documents relating to the Bosasa matter were being leaked, Adv de Kock took greater precautionary measures in the security and confidentiality of the dockets.[1710]

Further attempts to interfere with the NPA investigation and prosecution

997. Mr Agrizzi testified that he attended a meeting with Mr Mti, at his house, in the course of 2013 at which they again discussed what had happened at Mr Mti's meeting with Adv Jiba and Ms Lepinka.[1711] During the discussion, Mr Mti wrote instructions down for Mr Agrizzi to take to the legal representatives to provide them with a guideline on drafting of a letter as a basis to challenge the legality of the SIU investigation.[1712] The attorneys (Mr Biebuyck) were to draft a letter requesting that the case be closed and that no prosecutions are instituted. Mr Mti's written instructions are attached to Mr Agrizzi's Initial Affidavit as annexure Q16.

998. Mr Agrizzi testified further that the instructions from Mr Mti, following his meeting with Adv Jiba and Ms Lepinka, were:

998.1. First, that the legality of the SIU Report in its entirety had to be challenged because the manner in which the evidence was obtained was tainted, i.e. "fruit of a poisoned tree".[1713] This referred to the process followed by the SIU to get

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[1709] Transcript, day 78, p 193.

[1710] Transcript, day 78, 194.

[1711] Transcript, day 40, p 113.

[1712] Transcript, day 40, p 114.

[1713] Transcript, day 40, p 114.

the information and also to the fact that the SIU Report should have been sent to the President before it was made public, which never happened.[1714]

998.2. Second, to raise the fact that the fundamental rights of the company and of the individuals in the company had been encroached upon, which was highlighted as the most important argument to be used.[1715]

998.3. Third was the period of time that had lapsed from the initial investigation to the prosecution.[1716]

998.4. The fourth matter to be raised was the legal basis for the ongoing persecution and harassment, that the matter had been delayed and had put a lot of pressure on people.[1717]

998.5. Fifth, they were to raise the relief sought – how the issue should be resolved going forward. The idea was to raise that the NPA's approach and conduct of the process had been unethical as an argument to push for the relief that they sought.[1718]

999. Mr Agrizzi confirmed that, when Bosasa contemplated steps to quash the investigation, it was acting not only in its own interests but also in the interests of Mr Mti and Mr Gillingham.[1719]

[1714] Transcript, day 40, p 117.

[1715] Transcript, day 40, pp 117-118.

[1716] Transcript, day 40, p 118.

[1717] Transcript, day 40, p 118.

[1718] Transcript, day 40, p 118.

[1719] Transcript, day 40, p 121.

1000. Following his meeting with Mr Mti, Mr Agrizzi took the information to the attorneys and a document was drafted by the attorneys that Mr Agrizzi took back to Mr Mti.[1720] The letter was taken to Mr Mti so that he could read and consider it before it was sent to the NPA.[1721] It was also taken to Mr Mti to allow him an opportunity to take it back to Adv Jiba and Ms Lepinka to satisfy themselves that it reflected what they had told him.[1722]

1001. Mr Agrizzi contacted Mr Mti the same evening after he had taken the draft letter to him and Mr Mti informed Mr Agrizzi to attend at his house the following morning. Mr Agrizzi went to Mr Mti's house the following morning and made notes of their conversation.[1723] That note is attached to his Initial Affidavit as annexure Q17.

1002. Mr Agrizzi testified that according to Mr Mti, he (i.e Mr Mti), Adv Jiba and Ms Lepinka were not happy with the draft letter and so Mr Mti read out to Mr Agrizzi points that needed to be addressed.[1724] The points were;

1002.1. Bosasa was to draft representations to the NPA addressed to Adv Jiba;

1002.2. the legality of the SIU Report was to be challenged;

1002.3. how Bosasa was to deal with the allegations made by the sources, and what the source of the allegations was (the argument being that, in the criminal case, there was no statement by a complainant – who at that time was the Acting Commissioner Jenny Schreiner);

1720 Transcript, day 40, p 122.

1721 Transcript, day 40, p 123.

1722 Transcript, day 40, p 123.

1723 Transcript, day 40, pp 125 -126 ; Mr Agrizzi's Initial Afi, Annexure Q17, p 559.

1724 Transcript, day 40, p 127.

1002.4. the fourth point had to do with the Public Service Commission, although Mr Agrizzi was unable to recall the detail, the Auditor General and the fact that the SIU went to Parliament and did not first report to the President as it was required to do;

1002.5. a big deal was to be made of the impact on families, lost business and that it was a political issue; and

1002.6. the smaller issues that were to be made mention of in the letter included the persecution by the media; lost business opportunities; no fairness due to the length of the process; that international opportunities had been lost; the quality of service provided and the fact that if there were illegalities, the contracts would not have been awarded to Bosasa time and again; as well as mention of the Watson family and history and why government is fighting the fight of losing bidders.[1725]

1003. Mr Agrizzi testified that he was told categorically that the advice emanated from the meeting that Mr Mti had with Adv Jiba after he had shown her the letter drafted by Bosasa's attorneys.[1726] At the time, the monthly payments to Adv Jiba, Ms Lepinka and Adv Mrwebi were still being made.[1727]

1004. On 8 May 2015 Mr Watson and Mr Agrizzi went to meet with Mr Mti at his house following a story in the media about Adv Jiba either being suspended or compromised, Mr Agrizzi could not recall the details. Mr Watson emphasised at the meeting that Mr Mti and Adv Jiba were compromised and that Bosasa was at risk. Mr Agrizzi testified

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[1725] Transcript, day 40, pp 127-129.

[1726] Transcript, day 40, p 129.

[1727] Transcript, day 40, p 130.

that Mr Watson proposed how the matter should be handled and said that he was going to see Mr Zuma.[1728] Mr Watson then conducted a role-play and showed Mr Agrizzi and Mr Mti what he was going to say and how he was going to approach the former President.[1729] Mr Agrizzi recorded the conversation.[1730]

1005. The two topics discussed during the meeting were the contemplated prosecution of Bosasa and the involvement of various parties in that prosecution and the so-called rogue unit and the SARS.[1731] Mr Agrizzi testified that the conversation went as follows:

1005.1. Mr Watson indicated that Adv Jiba would try to get the docket and that Mr Dramat would not release the docket because Adv Jiba wanted to issue a *nolle prosequi*. Mr Watson then indicated that Adv Jiba took Adv de Kock off the case. (Mr Agrizzi testified that Mr Watson had secured this information from another source, other than Mr Mti and Adv Jiba).[1732]

1005.2. Mr Watson also indicated that later Adv de Kock was brought back onto the case by Adv Breytenbach. (Mr Agrizzi explained that Mr Watson had a theory that Adv Breytenbach wanted Adv de Kock on the case because Adv Breytenbach could control her and because Adv de Kock could successfully prosecute Bosasa).[1733]

1728 Transcript, day 40, p 130.

1729 Transcript, day 40, p 131.

1730 Transcript, day 40, p 134; annexure R, p 560.

1731 Transcript, day 40, p 136.

1732 Transcript, day 40, p 137.

1733 Transcript, day 40, p 138.

1005.3. Mr Watson then said that he did not want to implicate Mr Hofmeyr because Adv Breytenbach and Mr Hofmeyr still talked.[1734]

1005.4. In Mr Watson's role play, he told Mr Zuma that he had a problem and did not have much time left and needed to sort this problem out. That he needed to get Adv Jiba on board or Ntlemeza, or a lady from KwaZulu-Natal.[1735]

1005.5. Mr Watson then spoke to Mr Agrizzi and Mr Mti and explained that this was an Adv Breytenbach issue, that all Adv Breytenbach wanted to do was to discredit Bosasa so that, when agreements with the DCS or overdraft facilities come up, these issues were raised in the press. (Mr Agrizzi testified that Mr Watson was convinced that it was all being caused by Adv Breytenbach and the likes of the "Stellenbosch Grouping" to try to bring down Bosasa and the Watsons).[1736]

1005.6. Mr Watson, back in the role play, said, *"now Mr President, we need to get this thing closed down."* Mr Watson said that they needed the right people in the right place and that Ntlemeza was the right guy doing what he could and that they needed the right person at the NPA, either Chauke or Adv Jiba or the woman down in Natal.[1737]

1005.7. Mr Watson said that now that Adv Jiba and Adv Mrwebi have been "buggered up", the President was going to protect them by putting the right person in there and that he did not have much time left (Mr Agrizzi testified that the reference to not having much time left was a reference by Mr Watson to the

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[1734] Transcript, day 40, p 138.

[1735] Transcript, day 40, p 139.

[1736] Transcript, day 40, pp 139 -140.

[1737] Transcript, day 40, pp 140-141.

fact that the former President did not have much time left in politics or as President).[1738]

1006. Mr Agrizzi testified that Mr Watson had the type of relationship with Mr Zuma that he could tell him what to do and that he would visit Mr Zuma quite regularly.[1739] Mr Agrizzi further testified that Mr Watson had certain people moved around government, that he was influential and that Mr Petersen was moved by Mr Sibeko, as arranged by Mr Seopela.[1740] This is based on claims that Mr Watson made.

1007. The next issue to arise from the evidence pertains to the destruction of evidence by Bosasa officials.

[1738] Transcript, day 40, p 142.

[1739] Transcript, day 40, p 132.

[1740] Transcript, day 40, pp 147 -149.

Destruction of evidence

1008. In this section of the summary, the evidence relating to Bosasa's attempts to destroy evidence which could implicate it, its employees and stakeholders in unlawful activities is highlighted. The following topics are canvassed –

1008.1. documentation relevant to Blake's Travel;

1008.2. the 2007 server "crash";

1008.3. the destruction of evidence before the SIU raid; and

1008.4. the deletion of files due to the SIU investigation.

1009. Mr Agrizzi testified that Mr Watson instructed Mr Agrizzi and Mr van Tonder to fetch all the computers and invoicing books from Blakes Travel and to destroy them. This was confirmed by Mr van Tonder who elaborated that the incriminating documents were those pertaining to the "VIP account".[1741] Mr van Tonder explained that destroying this information was necessary given that the SIU had received information that Bosasa had paid for the travel of government officials.[1742]

1010. Mr Agrizzi and Mr van Tonder testified that the documents and computers were handed to them and they took these items to Luipaardsvlei hostel for destruction.[1743] Luipaardsvlei was an old mine hostel across the road from the Bosasa head office.[1744] Mr Agrizzi and Mr van Tonder confirmed that a tractor was used to dig a hole in which

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[1741] Transcript, day 43, p 52.

[1742] Transcript, day 43, pp 52-54.

[1743] Transcript, day 38, pp 149-152; day 43, p 54.

[1744] Transcript, day 43, p 54; Mr van Tonder's Affidavit, p15 at para 73 and 74.

they threw the documents and computers. Thereafter, fuel was poured into the hole and the content was set alight before the hole was covered and a concrete block placed over it.[1745] In Mr Agrizzi's evidence, however, he indicated that Ryno Rhoode, who was responsible for gardening, maintenance and oversight, was tasked to collect petrol and the hole was covered using a tractor operated by Gert van der Bank.[1746] This was confirmed in an affidavit deposed to by Mr Christiaan Gerhardus Johannes van der Bank dated 14 March 2019. Mr van der Bank stated that Mr Agrizzi's evidence was true and correct and that Mr Agrizzi had instructed him to close a hole with burned papers and computers inside, at Luipaardsvlei, with a CAT 428 TLB. Mr van der Bank confirmed that he closed the hole with soil.[1747]

1011. Mr Agrizzi recalled destroying about three computers that were being used, which were replaced by Bosasa.[1748]

1012. Mr Agrizzi explained that Blake's Travel cooperated with them because it received R1.7m to R2.2m a month worth of business from Bosasa.[1749] He testified that Blake's Travel knew that they were going to destroy the computers and also issued them with blank invoice books to be replicated and filed for auditing purposes.[1750]

1013. In his affidavit filed at the Commission and in his oral evidence, Mr Blake disputed that Mr Agrizzi and Mr van Tonder took computers from Blake's Travel, buried them and later replaced them. He stated in his affidavit that he did not recall this happening and that the computers were only attended to by Blake's Travel service providers, GDS

1745 Transcript, day 43, p 54.

1746 Transcript, day 38, pp 151 and 152.

1747 Transcript, day 3874, pp 151 and 152117-118. Mr van der Bank's affidavit was admitted into evidence, marked as Exhibit S10.

1748 Transcript, day 38, p 150.

1749 Transcript, day 38, p 150.

1750 Transcript, day 38, p 150, p 151.

Systems, Galileo and Amadeus. Mr Blake stated that, after he had watched Mr Agrizzi and Mr van Tonder's tostimony at the Commission, he realised that he had to give further information and contacted the authorities to arrange for the police to image Blake's Travel computors, which was attended to on 4 February 2019.[1751] Mr Blake testified that it was not possible for Mr Aggrizi and Mr van Tonder to have taken the computers belonging to Blako's Travel becauso they are still in possession of all of the evidence on the computors and it would have requirod that the computers bo reprogrammed, as a travel agent's computer has to have a certain IP address.[1752] When questioned on the possibility that certain computers may have been taken but that this did not necessarily mean that all information had been lost, Mr Blake testified that none of his staff recall getting now computers and that it was highly unlikely.[1753]

1014. Mr van Tondor testified that the travel coordinator rewrote the invoicos with different information which did not reflect the actual travel that had taken place.[1754] This confirmed Mr Agrizzi's evidence that a Bosasa employee was instructed by Mr Watson to rewrite every single travel invoice in Bosasa's records replacing, for example, Mr Mti's name with that of Mr Agrizzi or of another person.[1755] That invoice would then be attached and given back to Blake's Travel with the other copy retained in their accounts folder.[1756] The new invoices would be used as a basis to counter the fact that a journalist had obtained copies of documents from Blake's Travel that

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[1751] Blake's affidavit (Exhibit T18, paras 50-55, p 21).

[1752] Transcript, day 240, p 223.

[1753] Transcript, day 240, p 224.

[1754] Transcript, day 43, p 54; Mr van Tonder's Affidavit, p 15 at para 74.

[1755] Transcript, day 38, pp 154-155.

[1756] Transcript, day 38, p 155.

showed that Bosasa used Blake's Travel to facilitate travel arrangements of government officials and others.[1757]

1015. Mr Agrizzi testified that, after the destruction of the original documents, VIP travel was booked under the account of JJ Venter, which would be reconciled monthly and given to Dr Smith who would reimburse Mr Agrizzi for actual travel used for other individuals.[1758]

1016. Subsequent to the destruction of the evidence, Mr Blake was subpoenaed to testify in a matter instituted in the Pretoria High Court by the SIU relating to information, records, documentation and hard drives that the SIU wanted in relation to dealings with the Bosasa Group of companies.[1759] Mr Agrizzi testified that there were various postponements of the subpoena as numerous excuses were given. A meeting then took place at Mr Blake's attorney's office in Randfontein with Mr Biebuyck and Mr Agrizzi, where they tried to intimate to Mr Blake's attorney that he had to postpone and play for time with the SIU.[1760] Mr Blake's attorney was not happy and told Mr Biebuyck that he was playing with fire because he was interfering with witnesses.[1761] Mr Agrizzi testified that he did not know whether Mr Blake ever testified or if they were successful in their endeavour to prevent the subpoena being carried out.[1762]

1017. The following exchange took place in response to a question I asked about what Mr Agrizzi's understanding was of what Mr Biebuyck's role was at the meeting:

1757 Transcript, day 38, p 156. It was noted during Mr Agrizzi's testimony that the copy of annexure M appeared to be incomplete and should have contained pictures of invoices.

1758 Transcript, day 38, p 153.

1759 Transcript, day 38, p 158.

1760 Transcript, day 38, p 158.

1761 Transcript, day 38, p 158.

1762 Transcript, day 38, pp 158-159.

"MR AGRIZZI: No the role that was played and you must remember, Chair, as I mentioned right in the beginning of my testimony if an instruction was given to you and you did not follow it out there was a dustbin with your name on it.

CHAIRPERSON: Yes, but this was – was this not an independent attorney?

MR AGRIZZI: It does not matter. The instruction would be do not use him anymore. And who was his biggest client? It was us.

...

CHAIRPERSON: So are you saying to me that from what you knew in terms of his role and the interactions between himself, that is now the attorney and yourselves and Mr Watson with him, all of them, he knew that his role was to prevent Mr Blake telling the truth?

MR AGRIZZI: It was to stymie the investigation. That was his role. He went out there to stymie the investigation and there is a second occurrence with different people as well, Chair, so it is not just one isolated occurrence, but the fact is and this is what I try to get across right in the beginning, that even I cannot say a Judge, I do not want to take that chance, but even the dear Pope would probably be corrupted if they had to deal with the situation."[1763]

1018. Mr Agrizzi testified that Mr Biebuyck stymied the appearance for close to two years.[1764]

1019. In response to the evidence leader's statement that Mr Agrizzi's understanding of the meeting could be his own perspective and that the facts of the meeting were really Mr Biebuyck making legitimate enquiries of the attorney of Blake's Travel, Mr Agrizzi indicated that Blake's Travels' attorney was quite annoyed but that he would leave it up to the investigators to do the investigation and make their own conclusion thereafter.[1765]

1020. Mr Blake testified that he was subpoenaed in 2014 to provide documents and related information to the Hawks for an investigation that they were conducting into three

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[1763] Transcript, day 38, pp 159-160.

[1764] Transcript, day 38, p 161.

[1765] Transcript, day 38, p 162.

specific clients of Blake's Travel (including Mr Mti and Mr Gillingham).[1766] He said that he cooperated with the investigation, deposed to an affidavit and was ready to testify when *"the case just disappeared"*.[1767]

1021. After Mr Aggrizi's testimony at the Commission, Mr Blake contacted the Hawks and was advised that the original cloning of Blake Travel's server had been stolen or had disappeared. Mr Blake testified that he was advised by Colonel Smit that it was impossible for the evidence to disappear and that the evidence was locked up.[1768] In February 2020, an official from the Hawks took a further copy of Mr Blake's computer.[1769]

2007 server "crash"

1022. Mr Agrizzi testified that Mr Watson, after receiving information in respect of the SIU's investigation, instructed an IT specialist and employee of Bosasa to fake a server crash and destroy files. The instruction was given by Mr Watson in Mr Agrizzi's presence to destroy any files that could implicate the company, before the investigators could gather evidence.[1770] Prior to the destruction of the files, a disaster log was created on the server and Mr Agrizzi circulated a memo in this regard. In addition, the information was preserved on two or three hard drives before its destruction.[1771]

1766 Transcript, day 240, p 194, p 200.

1767 Transcript, day 240, p 198.

1768 Transcript, day 240, p 199.

1769 Transcript, day 240, p 198.

1770 Transcript, day 38, p 163.

1771 Transcript, day 38, pp 163-164.

1023. The Commission's evidence leader referred to a document headed 'Bosasa IT Disaster Log 8 November 2007' and enquired whether Mr Agrizzi could indicate where in the document they would be able to find the list of contents, namely the scope of the disaster, the disaster classification and the recovery strategy. Mr Agrizzi was unable to answer the question and was also unable to assist in respect of the meaning of the content of the document.[1772]

1024. When he returned to testify later, Mr Agrizzi was able to provide more information on the server crash.

1024.1. In respect of the evidence Mr Agrizzi gave of the system or server crash and whether Mr Agrizzi had a screenshot of the communication sent to Bosasa employees, Mr Agrizzi explained that he had given his assistance in terms of handing over his laptops and iPads to the Commission's investigators. He still did not have a screenshot but managed to get a report from John Wilkinson, a data recovery and digital forensic specialist dated 18 February 2011 which shows that there was a crash and information was lost on the server itself. A copy of this report was annexed to Mr Agrizzi's supplementary affidavit as Annexure EE.[1773]

1024.2. The circumstances giving rise to the production of Mr Wilkinson's report was a meeting that Mr Agrizzi had with Adv Laurence Hodes SC. *"Then we had to go downstairs with Watson and he (seemingly a reference to Watson) said that you must destroy the evidence and all that type of thing."*. Emanating from that meeting, they needed to prepare a report on the server crash.[1774] The

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[1772] Transcript, day 38, p 165. Annexure N, pp 356-357 (the content was that Datacentrix (Pty) Ltd was unable to perform a data recovery due to two hard drives having failed simultaneously).

[1773] Mr Agrizzi's Supplementary Affidavit, Annexure EE, pp 62-77.

[1774] Transcript, day 75, p 12.

report records that the 'My Document' user files volume of the file server failed on Thursday, 8 November 2007 around 20h00. This was reference to the crash. The report goes on to say an attempt was made to recover data from backup tapes. This operation proved to be unsuccessful due to backup procedures having failed for a period of time as a result of the volume being too full to run successful backups. The success rate of the recovery was estimated around 30%.[1775]

1024.3. When asked to confirm whether, from his own knowledge, Mr Agrizzi was able to confirm that there was a file server failure or crash and that this resulted in approximately 70% of the data on the servers being lost, Mr Agrizzi said he could attest to the fact that *"the crash was, in other words, manipulated".* He testified that it did happen, but the Commission had been provided with hard drives of the data before it was lost.[1776]

1024.4. Mr Agrizzi explained that an instruction was issued that the crash should occur and, notwithstanding this instruction, steps were taken by Mr Agrizzi and others to preserve data. Mr Agrizzi instructed Mr van Tonder to backup and double up on the server and to keep it safe in the event that they needed the information going forward.[1777] This occurred in 2007.

1024.5. I enquired from Mr Agrizzi whether he envisaged that there would come a time in the future that he might need the information for present purposes or purposes connected with the parting of ways between him and Mr Watson. Mr Agrizzi responded by saying that sometimes you know that you are not

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[1775] Transcript, day 75, p 13.

[1776] Transcript, day 75,p 14.

[1777] Transcript, day 75, p 14.

supposed to be deleting information, but you get a little voice that tells you to take a step back a bit. He testified that Mr van Tonder also told him that they should make a copy. He explained that a little voice told him to make the copy of the server just like the video recording of the cash in the vault.[1778]

1024.6. Mr Agrizzi pointed out that 70% of the data was data regarding the tenders of the DCS.[1779]

1024.7. Mr Agrizzi confirmed that a disaster was declared, and all heads of department were informed during a meeting held in the data section at 09h00 on 9 November 2007. Concerns were raised and possible recovery mechanisms were discussed as recorded in the final paragraph under the heading 'Background to the Report'. Mr Agrizzi explained that he authored a document to notify everybody and put a contingency plan and risk aversion plan in place. He could not get hold of the document because, he testified, that some of the witnesses had been assaulted and frog-marched from Bosasa's premises and that it was very difficult to get.[1780]

1024.8. Mr Agrizzi was thereafter referred to page 77 of his Supplementary Affidavit which refers to an email from Kobus Smith (a supplier to the company from Datacentrix) to Johan Fourie who was a senior IT co-ordinator at Bosasa.[1781] The email records that they could not perform data recovery on the RAID due to two hard drives having failed simultaneously. The email goes on to state that, according to the data recovery specialist, it is impossible to rebuild the

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[1778] Transcript, day 75,p 15.

[1779] Transcript, day 75,p 16.

[1780] Transcript, day 75,p 16.

[1781] Transcript, day 75, p 16.

RAID if two drives fail. Mr Agrizzi confirmed this to be the position to the knowledge of Bosasa and its employees.[1782]

Destruction of evidence before the SIU raid

1025. Mr Agrizzi testified that Mr Watson contacted him on a Sunday afternoon while he was away entertaining American guests at a hotel, to instruct him to return to Johannesburg as Mr Watson had received information from Mr Seopela that someone was going to raid the Bosasa office the following day. Mr Agrizzi could not recall whether it was the Hawks or the Scorpions but recalled that Mr Watson instructed him to meet at the office. Mr Agrizzi had to leave the American guests, arrange transport for their return on the Tuesday and drove back to the office.[1783] Mr van Tonder testified that, around the time of the SIU investigation, Mr Watson called him early on a Sunday morning to meet him at the Bosasa office. Mr Watson also called Mr Agrizzi who was at the Madikwe Game Reserve at the time. The purpose of this meeting was to *"clean up all possible evidence"* that might incriminate Mr Watson and Bosasa in unlawful activities given that Mr Watson had been informed that the offices would be raided the next day.[1784]

1026. Mr Agrizzi testified that, when he arrived at the office, Mr Watson and Mr van Tonder were already there. Mr van Tonder and Mr Agrizzi were instructed to go through all the offices and to look for any incriminating evidence relating to the sale of shares agreement in respect of Phezulu Fencing as well as the agreement between Mr Watson and Mr Mti for the payment of money in return for an undertaking from him to

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[1782] Transcript, day 75,p 17.

[1783] Transcript, day 38, p 166.

[1784] Transcript, day 43, p 74; Mr van Tonder's Affidavit, p 17 at para 88-90.

favour Bosasa in relation to the awarding of tenders. Mr Seopela had informed Mr Watson that the SIU was looking for this information.[1785]

1027. Mr van Tonder testified that Mr Watson instructed them to go through all the safes, employee's drawers, etc., to ensure that any possible sources of incriminating evidence were removed and destroyed. Evidence considered to be incriminating included documents relating to all tenders, business dealings with government entities and travel invoices.[1786] Mr van Tonder recalled that he and Mr Agrizzi searched for the incriminating evidence and Mr Watson personally went through documents in his walk-in vault. These documents included tender related documents as well as CD storage discs.[1787] They later met at Mr Watson's house and Mr van Tonder testified that Mr Watson handed Lindi Gouws a metal box with money.[1788]

1028. Mr Agrizzi testified that he knew that the agreement between Mr Watson and Mr Mti existed because he had seen it and had made a photocopy of it, but that he no longer had the photocopy.[1789] According to Mr Agrizzi, the agreement was a three-page document and was very specific. Mr Agrizzi and Mr van Tonder were instructed by Mr Watson to look for these specific documents, which they found and removed.[1790] Mr Agrizzi testified that the agreement was signed by Mr Watson and Mr Perry as a witness but that he was unable to recall if the agreement had been signed by Mr Mti.[1791]

[1785] Transcript, day 38, p 167.

[1786] Transcript, day 43, p 75.

[1787] Transcript, day 43, p 75.

[1788] Transcript, day 43, p 75.

[1789] Transcript, day 38, pp 167-168.

[1790] Transcript, day 38, p 168.

[1791] Transcript, day 38, pp 169-172.

1029. Mr Agrizzi testified that after they had removed the documents, they packed them into the boot of his car and took them to be stored on a farm.[1792] Following further media reports on the SIU investigation, Mr van Tonder approached Mr Agrizzi and informed him that Mr Watson had instructed them to go and destroy the documents.[1793] Mr Agrizzi testified that he phoned Mr Watson who confirmed the instruction and requested that they do not destroy the agreement signed by Mr Watson and Mr Mti. When Mr van Tonder and Mr Agrizzi took the agreement to Mr Watson, he was visibly relieved, shredded the document by hand, placed it in a Ziplock bag with water and then flushed it down the toilet.[1794]

1030. According to Mr van Tonder, the information collected during the search of the offices was taken to a farm near Mooinooi in the North West province where it was stored in safes installed by Bosasa. The information was kept there for approximately two years. Thereafter, Mr van Tonder and Mr Agrizzi collected the documents and CDs and took them to Buffelspoort Dam where they were burnt.[1795] Mr van Tonder testified that there was one document that was not destroyed. Although he did not understand the relevance of this document, Mr Agrizzi explained to him that it was an agreement between Mr Watson and Mr Mti. Mr van Tonder confirmed that this document was subsequently handed over to Mr Watson who tore it up and flushed it down the toilet.[1796]

1031. Mr Agrizzi testified that the raid did not take place and that Bosasa reached an agreement with the SIU that they could attend at Bosasa and copy the servers.[1797]

[1792] Transcript, day 38, p 172.

[1793] Transcript, day 38, p 173.

[1794] Transcript, day 38, p 173.

[1795] Transcript, day 43, p 76.

[1796] Transcript, day 43, p 78.

[1797] Transcript, day 38, p 174.

The deletion of files due to the SIU investigation

1032. Mr van Tonder testified that towards the end of 2008 and around the time of the SIU investigation, he met with Mr Watson and a sophomore engineer at Bosasa, Matthew Lee-Son and Bosasa's lawyers. After this meeting, he was instructed to make sure all "data documents" on the servers and selected employees' desktops and laptops were deleted. He was instructed to focus on the tenders awarded to Bosasa by the DCS during the period 2004 to 2007.[1798]

1033. Mr van Tonder complied with the instruction and was assisted by Matthew Lee-Son, Allan Lee-Son and William Brander. Mr van Tonder later signed a statement (on instruction from Mr Agrizzi) to the effect that the files were deleted in the course of routine maintenance. Mr van Tonder considered this non-essential data but confirmed that data related to tender specifications for the DCS catering contract. This was the first time Mr van Tonder signed a statement after routine maintenance work.[1799]

1034. Mr van Tonder copied data on the DCS catering contract onto external hard drives and a CD. Matthew Lee-Son kept the hard drives but returned them to Mr van Tonder in 2011. Mr van Tonder later handed over the hard drives and CD to Mr Agrizzi.[1800]

1035. Mr Agrizzi testified that around January 2009, a meeting was arranged between the representatives of the SIU and Bosasa because of the rumours that the SIU was investigating Bosasa.[1801] Bosasa sent a communication to the SIU indicating that it had heard via the media that it is being investigated and would like further information

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1798 Transcript, day 44, p 126.

1799 Transcript, day 44, pp 129 to 133.

1800 Transcript, day 44, p 140.

1801 Transcript, day 38, p 175.

regarding the investigation so that it could tender its assistance.[1802] Mr Oellermann testified that Bosasa had contacted the SIU and said that they had information that the SIU were going to conduct a search and seizure of their premises. Bosasa approached the SIU through their lawyers, after which they met and arranged for the SIU to get access to their servers to digitally and forensically image.[1803] According to Mr Oellermann, whilst it was the SIU's intention to conduct such an operation, it had not yet been determined where and how it was going to be done.[1804]

1036. Mr Agrizzi, Mr van Tonder, Mr Vorster, Mr Biebuyck and Adv Laurence Hodes attended the meeting with various persons from the SIU including Zuid Jacobs and Mr Oellermann.[1805] At that meeting, a date was arranged for the investigation and for the mirroring of laptops by the SIU.[1806]

1037. Mr Agrizzi testified that the arrangement for the SIU to attend at Bosasa was postponed on instruction of Mr Watson to allow enough time for the IT specialist to remove potentially damaging information.[1807] A letter was sent to the SIU requesting a postponement on the basis that Bosasa was busy with month and year-end and could not have the servers checked at that stage.[1808] Mr Oellermann testified that Bosasa requested an extension of time at the meeting because someone had to attend a funeral and they had to prepare.[1809] After the meeting, the agreement was formalised

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[1802] Transcript, day 38, p 176.

[1803] Transcript, day 77, p 71.

[1804] Transcript, day 77, p 78.

[1805] Transcript, day 38, p 175.

[1806] Transcript, day 38, p 177.

[1807] Transcript, day 38, p 177.

[1808] Transcript, day 38, p 176.

[1809] Transcript, day 77, p 79.

by the SIU issuing a section 5(2)(b) notice to Bosasa.[1810] The SIU did eventually make mirror images of hard drives and laptops at Bosasa.[1811]

1038. According to Mr Oellermann, it was unusual for subjects of a search and seizure to have forewarning of the operation and also to persuade those who are going to conduct the operation to hold off for a time so that they can prepare.[1812] The danger is that it gives them an opportunity to sanitise the server and be selective as to what can be imaged, so that records pertinent to the investigation would be destroyed and lost.[1813] Mr Oellermann testified that it was quite peculiar and raised the concern that Bosasa seemed to have an inside track into the investigation at times, that they would almost know what the SIU were planning and would try to obstruct it. Mr Oellermann said that throughout the investigation, there were regular incidents that occurred where it seemed that Bosasa had a very good idea or knowledge of the investigation's progress and where the SIU was with the investigation.[1814] This is the reason, according to Mr Oellermann, why the Head of the Unit decided to separate the Bosasa investigation team and provide them with a dedicated server outside of the SIU environment where they conducted the investigation from.[1815] Mr Oellermann testified that he raised his suspicions, but that the decision was taken to proceed in that manner after a discussion and after being advised by the cyber forensic expert that if Bosasa did destroy files it would be likely that he would find that they had done so.[1816]

1810 Transcript, day 77, p 78.

1811 Transcript, day 38, p 177.

1812 Transcript, day 77, pp 71-72.

1813 Transcript, day 77, p 72.

1814 Transcript, day 77, p 86.

1815 Transcript, day 77, p 74.

1816 Transcript, day 77, pp 74-75.

1039. Mr Oellermann testified that Bosasa had indicated that they had dedicated people in charge of their IT and because of security reasons, only certain people had access and these people were not available. As the SIU did not know the environment they were going into, it was difficult for them to comment on how access was to be given. In Mr Oellermann's experience when executing a search warrant, the cyber expert would be taken with them to shut down the system upon arrival and then image the devices or servers. The service of internal IT would not be required.[1817] For this very reason, an expert is brought to do the imaging independently from any interference from the entity whose electronic data is being imaged. Because notice is normally not given, the search must be able to be conducted without cooperation.[1818] Mr Oellermann agreed that it would have been expected of the SIU to refuse the postponement of the imaging as they were able to do what they needed to do. The problem, according to Mr Oellermann, was that as soon as Bosasa approached them and said that they knew that the SIU wanted to undertake a search and seizure and invited them to do so, the "cat was out of the bag" and they had lost the element of surprise, so it was immaterial whether it was delayed by a few days as Bosasa would have had ample opportunity to sanitise the servers before approaching the SIU.[1819]

1040. Mr Agrizzi further testified that Bosasa had two servers (for redundancy purposes) with one server as the main server. The other server was linked to the main server.[1820] Mr Agrizzi testified that he understood that when something is done on one server, you can monitor it on the other server, that it is a mirror image.[1821] According to Mr Agrizzi, Mr Watson personally arranged with William Brander and Max Leeson (whom

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1817 Transcript, day 77, p 75.

1818 Transcript, day 77, p 76.

1819 Transcript, day 77, pp 76-77.

1820 Transcript, day 38, p 177; Mr Agrizzi's Supplementary Affidavit p68 para 32.5.

1821 Transcript, day 38, p 178.

he had a relationship with through his nephew and whom he trusted) to monitor what the representatives of the SIU were looking at and were doing, using the second server.[1822] Whilst Mr Malan and other representatives of the SIU were copying the data on the main server, their activity was being monitored on the connected server by William Brandon and Max Leeson.[1823] Mr Agrizzi testified that they were also tasked to ensure that they removed information which might damage or implicate Bosasa prior to the mirror image being made.[1824]

1041. Mr Oellermann testified that Mr Malan is a cyber-forensic expert appointed by the SIU to assist with the imaging and obtaining of digital forensic evidence from Bosasa which was going to be crucial for the investigation.[1825] When the SIU team arrived at Bosasa, Mr Oellermann testified that they were met by Mr Agrizzi who took them to the server room. Mr Malan then prepared to image the servers, which was done over the period of a few nights because of the size of the servers. On the second night, Mr Malan informed Mr Oellermann that he could see that there were a number of files that were missing and that he suspected may have been deleted. When Mr Malan began the analysis of the information, Mr Oellermann testified that Mr Malan reported to him that he had identified a particular software known as 'Eraser' which had been employed on the servers, and that he had identified over 40,000 files that had been intentionally destroyed or deleted from the server.[1826]

1042. Mr van Tonder testified that after the SIU Report was released, Mr Watson instructed him to attend to the concerns raised by the banks and auditors, and to be vigilant of

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[1822] Transcript, day 38, p 178.

[1823] Transcript, day 38, p 178.

[1824] Transcript, day 38, p 178.

[1825] Transcript, day 77, p 70.

[1826] Transcript, day 77, p 72.

any potential incriminating documents, including invoices. Potentially incriminating invoices included those for building of houses for Mr Mti and Mr Gillingham and were to be brought to Mr Watson.[1827]

Destruction of further evidence

1043. Mr Agrizzi was asked to comment on the concern that at the time of the liquidation and when documents were returned to the liquidators at the Bosasa offices, documents were being destroyed. Mr Agrizzi confirmed that he had reported this to the liquidators and investigators.[1828] Mr Agrizzi testified that documents pertaining to the Bosasa supply chain management had been removed and destroyed and various other documents were being destroyed as well, but he had attempted to give all the information to the investigators.[1829]

1044. The next theme emerging from the evidence is addressed in the section below, namely the role of members of the National Executive, public officials and functionaries of organs of state in Bosasa's business dealings.

[1827] Transcript, day 43, p 5; Mr van Tonder's Affidavit, p 7 at para 33.

[1828] Transcript, day 75, p 189.

[1829] Transcript, day 75, p 189.

The role of members of the National Executive, public officials and functionaries of Organs of State

1045. In this section of the summary, the evidence regarding Bosasa's "Special Projects Team" and the assistance and benefits provided to members of the National Executive, public officials and functionaries of organs of state is introduced. The following topics are canvassed –

1045.1. the Special Projects Team;

1045.2. Nomvula Mokonyane;

1045.3. Duduzile Myeni;

1045.4. Former President Jacob Zuma;

1045.5. Cedric Frolick;

1045.6. Gwede Mantashe;

1045.7. Thabang Makwetla; and

1045.8. the election "war room" provided for the ANC at the Bosasa office park.