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Zondo commission – Gordhan grilled in longest Zondo cross-exam to date

Former South African Revenue Service (Sars) commissioner Tom Moyane not only pre-empted the pursuit of several officials linked to the 'rogue unit', but he knew what he was doing in 2015 when he laid a criminal complaint against them in relation to the unit.

This is the assertion of public enterprises minister Pravin Gordhan, who was cross-examined by Moyane's legal counsel Advocate Dali Mpofu before the commission of inquiry into state capture on Monday. Mpofu challenged Gordhan on the notion that the minister testified to in November 2018, that Moyane was pursuing an agenda of state capture in his actions, and that the commission should therefore investigate this.

In giving his ruling on Moyane's application to cross examine Gordhan in April last year, commission chairperson Deputy Chief Justice Raymond Zondo set terms of reference that would probe Moyane's motivation in laying the complaint, which at the time was thought to include Gordhan. The minister conceded on Monday that through the findings of a commission investigation, he was prepared to withdraw his long-standing contention that Moyane included him in the complaint, owing to a combative relationship the two shared since Moyane's appointment to office in September 2014.

Gordhan himself had held the Sars commissioner position until former president Jacob Zuma appointed him to his first cabinet post as finance minister in 2009. He was succeeded by Oupa Magashula, who resigned in 2013 amid a corruption scandal.

"If one looks at the sequence of events, on 16 May 2015 is when Mr Moyane signs the complaint lodged at the Brooklyn police station. On 1 September 2015 is dated the report/opinion of the two advocates, but it must have been commissioned before 1 September 2015," said Gordhan.

He was responding to a question posed by Zondo whether, in his view, Moyane lodged the complaint while aware of the legal status of the unit in question, with the intent to pursue an agenda outside his mandate, or that he may have been unaware of its status.

"Even if he thought he was right in May 2015, he had a sound legal opinion before him, which said the unit is legal," added Gordhan.

The issue of the lawfulness of the unit, first exposed by the *Sunday Times* in late 2014, was traversed for some time on Monday. Mpofu argued that its very formation, during Gordhan's tenure at Sars, was not a legally sound one, and consequential reports on the matter by Advocate Muzi Sikhakhane and Judge Frank Kroon have found the same.

In defence of the unit, Gordhan explained that it was on his motivation in 2007 that then finance minister Trevor Manuel instructed his then deputy Jabu Moleketi to look into its feasibility and proposed funding request. At the time, the strategy was for Sars and the country's intelligence function, then called the National Intelligence Agency (NIA) to cooperate in pursuit of illicit activities

in the smuggling of cigarettes and abalone, among other goods. It was to be housed under the NIA as it was expected to employ intelligence efforts to carry out its mandate.

But after Moleketi's sign off, the NIA lost interest and Sars took it over. At this point Mpfu argued that this is where the unit lost its lawfulness, given that Sars did not have intelligence capacity or mandate. Gordhan, however, argued that although the scope of the unit's work was to remain the same, it was re-imaged to fall within the Sars mandate.

"The real interest is why was there so much fake news around this unit, why were these taken to the *Sunday Times* at various instances? Why is there repeated emphasis on the rogue element, when this has been dispelled?" Gordhan said.

Mpfu further challenged him on the Sikhakhane and Kroon reports and that to date, neither has been set aside, though the former was the subject of litigation in the North Gauteng High Court. But Gordhan attacked Sikhakhane's flawed findings, saying it found on a matter that was not in its terms of reference. What Sikhakhane was mandated to investigate, said Gordhan, was the nature of the relationship between Moyane's predecessor Magashula and convicted drug dealer Timmy Marimuthu.

If the *Sunday Times* had had evidence relating to the unit, the paper would not have peddled fake news. "They would have known, chairperson, that the Sikhakhane report was faulty in the sense that there was an original mandate to look into the question of the relationship as exposed in the *Sunday Times* between one Sars official [Magashula] and an outside person."

Zondo announced that a date would be set for the continuation of the cross-examination, which took over six hours, the longest granted to an implicated person to date.

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