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Zondo final report – Bosasa: Frolick, Smith failed in their oversight role

Cedrick Frolick and Vincent Smith acted out of line with their oath of office when they helped an embattled Bosasa resolve its negative publicity issues so that it could retain its irregular contracts with the state. The recommendation of the state capture commission is that the two face investigation of corruption for their conduct, which contravenes their constitutional responsibilities.

Frolick is Parliament's house chair of portfolio committees, while Smith chaired the portfolio committee on correctional services for a number of years (2009-2014) at a time when Bosasa held contracts with the national Department of Correctional Services (DCS). Both defended their relationships with the late former Bosasa CEO Gavin Watson, following the testimony of Watson's right-hand man and the company's former COO, Angelo Agrizzi, in 2019. They also denied Agrizzi's allegations that they received cash bribes and other favours in return for helping to keep Bosasa out of Parliament's sights when media reports about its alleged corrupt activities surfaced.

According to Frolick, he and Watson had a long-standing friendship dating back to the 1980s, that extended even to the latter's brothers. His involvement in the Bosasa matter started when Smith had just become committee chair and had an adverse attitude towards the company stemming from a Special Investigating Unit (SIU) investigation into its affairs at DCS. Frolick wanted to "smooth things out" between Watson and Smith, who at the time displayed great animosity towards Bosasa as a contractor to the department over which his committee had oversight.

But commission chairperson Acting Chief Justice Raymond Zondo believes that Frolick's intervention in the matter was motivated by the returns he would gain from changing the course of the committee's attitude towards Bosasa. This gratuity, according to Agrizzi, came in the form of cash and Bosasa paying for travels and accommodation for Frolick on a number of occasions.

Zondo notes in his latest report: "It is clear ... that Mr Frolick sought to assist Bosasa resolve its impasse with Mr Smith and thereby improve its relations with a parliamentary oversight body that was concerning itself with allegations of irregularities in the award of contracts to Bosasa."

Frolick must have known, being the house chair of committees, that Parliament has considerable powers to expose corruption and malfeasance in public administration and its relations with the private sector, and this could result in contracts being cancelled if such malfeasance is found, he added.

"Given his admitted longstanding friendship with the Watsons, there is a reasonable basis to believe that Mr Frolick would shield them from allegations of wrongdoing and a foundation for Mr Watson to seek to persuade him to act corruptly in Bosasa's interests.

"Mr Frolick testified that he assisted Mr Watson in smoothing things out with Mr Smith because he had a general interest in assisting the public resolve complaints with government officials. This explanation is expedient given Mr Frolick's longstanding relationship with the Watsons and that there are no other examples of Mr Frolick assisting general members of the public resolve disputes with members of portfolio committees."

Taking all this into account, Zondo added, there are at least reasonable grounds for suspecting that Frolick's conduct in assisting Bosasa ... was in return for payments corruptly made to him in contravention of section 3 and 7 of the Prevention and Combating of Corrupt Activities Act (Precca).

"Section 7 of Precca deals with offences in respect of corrupt activities relating to members of the legislative authority as described in section 43 of the Constitution. With reference to [the commission's term of reference] TOR7, the matter is referred to the relevant investigative authorities on the basis that there is reasonable prospect that further investigation will uncover a *prima facie* case of corruption in terms of sections 3 and 7 of Precca."

In the case of Smith, his defence in testimony was that while he did receive "help" from Watson and Agrizzi, it was after his term as committee chair had ended, and there was no conflict.

Smith denied Agrizzi's allegations that he received regular cash payments that started out at around R45 000 per month and increased to R100 000 on his demand, in return for obstructing investigations from Parliament. The SIU had made its way to Parliament after he became committee chairperson in 2009, so there was awareness of Bosasa's conduct. He told the commission that he held an adverse attitude towards the company and would not be swayed. This changed, however, after the intervention by Frolick, says Zondo.

"Mr Smith denied ever being a recipient of cash payments from Bosasa. Mr Agrizzi testified that initially Mr Smith as a member of the portfolio committee would receive R45 000 monthly in exchange for keeping quiet and helping to manage the negative press concerning Bosasa, so as to ensure that it would not prevent Bosasa from receiving further business from the state."

Smith did concede that Bosasa paid for a security equipment installation at his Johannesburg home in 2014, following a break-in, and that he received money towards his daughter's university fees via a loan from Agrizzi. Zondo argues that Smith's assertion that he sought several quotes for the security work and did not ask for it as a favour from Bosasa is insufficient as defence against evidence that it was a favour for his influence as an ordinary committee member after he stepped down from the chairpersonship.

"Mr Smith acknowledged that relationships of corruption can endure beyond an official's term of office. He accepted the position that a company engaged in corrupt activities could be involved in making corrupt payments to persons after they had left their position in Parliament, on the basis of what they had done for the company at the time when they were able to do things to benefit the company."

Zondo further pointed out an inconsistency in Smith's accounts regarding the security installation. He had denied in a public statement in 2018 that Bosasa had paid for the installation.

"Mr Smith's dishonesty in the public statement undermines his assertion that he gave no quid pro quo in return – why deny the benefit if it was not tainted with corruptly having given something in return? It also undermines his assertion that he had canvassed quotations and had always intended to pay for the installation. If it was so, why not point this out in the public statement?"

Smith is currently on trial facing corruption charges relating to the Bosasa matter.

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