OPINION PIECE

# FRONTING: THE UGLY LONG SHADOW OVER SA's CONSTITUTIONAL IMPERATIVE

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## INTRODUCTION

There are disturbing signs pointing to an egregious and nefarious practice developing unnoticed in South Africa on the economic front.

It is a criminal practice. Those in large and dominant private sector companies who indulge in it appear to do so with reckless abandon. Why wouldn't they? They seem to be aided and abetted by people in state institutions whom one would expect to appreciate the constitutional imperative of economic transformation as **decreed** by the South African Constitution in section 9(2) and section 217(2).

What the reward is for those in state institutions who engage in the economic and criminal subversion of the Constitution only a targeted criminal investigation can reveal. But economic crimes against black people in South Africa tend to evoke outrage for a week (if at all) and then people (including black people themselves) move on, without encouragement from anyone.

The state, in all its forms, seems either impotent or disinterested in these economic crimes committed against black people in South Africa. It seems caught up still in the "reconciliation" warp, refusing to address emotional and political blackmail (where black people who point out racial exploitation are accused of "playing the race card") at the expense of the economic redress that the Constitution demands for black people.

**"Fronting"** (defined below) is principally a race issue in South Africa. Uncomfortable though the implications and impact of the race question may be to some, race being a central factor is a truth from which there is no escape. It has to be confronted and dealt with decisively, not avoided in the hope that it will go away. The Constitutional Court, no less, appreciated this in ***Bato Star***[1] when it said:

> **"But transformation is a process. There are profound difficulties that will be confronted in giving effect to the constitutional commitment of achieving**

[1] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004 (4) SA 490 (CC)

**equality. We must not underestimate them. The measures that bring about transformation will inevitably affect some members of the society adversely, particularly those coming from the previously advantaged communities. It may well be that other considerations may have to yield in favour of achieving the goal we fashioned for ourselves in the Constitution. What is required, though, is that the process of transformation must be carried out in accordance with the Constitution. As was recognised in *Bel Porto School Governing Body and Others v Premier, Western Cape, and Another*:**

> **'The difficulties confronting us as a nation in giving effect to these commitments are profound and must not be underestimated. The process of transformation must be carried out in accordance with the provisions of the Constitution and its Bill of Rights. Yet, in order to achieve the goals set in the Constitution, what has to be done in the process of transformation will at times inevitably weigh more heavily on some members of the community than others.'"[2]**

**"Fronting"** is also a criminal enterprise not only because it is fraudulent but also because it is an affront to the human dignity of black people whom the South African Constitution has targeted for an especial economic advancement and protection. The Constitutional Court has at least twice - in 1995 and in 2018 - identified the human dignity of black people as requiring an especial protection. So, why is fronting not prosecuted as the criminal offence that it is?

**LEGAL BASIS FOR CRIMINAL INVESTIGATION**

The Broad-Based Black Economic Empowerment Act, 53 of 2003 (the B-BBEE Act) defines a *"fronting practice"* as

> **"a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of this Act or the implementation of any of the provisions of this Act, including but not limited to practices in connection with a B-BBEE initiative –**
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> **(a) in terms of which black persons who are appointed to an enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise;**
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> **(b) in terms of which the economic benefits received as a result of the broad-based black economic empowerment status of an enterprise do not flow to black people in the ratio specified in the relevant legal documentation;**
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> **(c) involving the conclusion of a legal relationship with a black person for the purpose of that enterprise achieving a certain level of broad-based black economic empowerment compliance without granting that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person; or**

[2] At para [76]

**(d) involving the conclusion of an agreement with another enterprise in order to achieve or enhance broad-based black economic empowerment status in circumstances in which-**

**(i) there are significant limitations, whether implicit or explicit, on the identity of suppliers, service providers, clients or customers;**

**(ii) the maintenance of business operations is reasonably considered to be improbable, having regard to the resources available;**

**(iii) the terms and conditions were not negotiated at arm's length and on a fair and reasonable basis"**

In *Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality* [2014] 2 All SA 493 (SCA) the Supreme Court of Appeal described **fronting** as a

> **"fraud on those who are meant to be the beneficiaries of legislative measures put in place to enhance the objective of economic empowerment of historically disadvantaged people"**[3].

The court then concluded that the high court had erred – having found that the contract there in issue was unlawful – in allowing the continuation of a contract that had been secured by fronting. It ordered that the contract be set aside and an invitation for tenders be issued for the completion of the rest of the work.

Engaging in **"fronting practice"** constitutes a criminal offence[4] and is on conviction punishable, in the case of a natural person, by up to 10 years imprisonment and, in the case of a juristic person, by a fine of up to 10% of its annual turnover[5], taking into account the value of the transaction which was derived from, or sought to be derived from, the commission of the offence in question[6].

In addition, section 13P of the B-BBEE Act says:

> **"(1) Any person convicted of an offence in terms of this Act may not, for a period of 10 years from the date of conviction, contract or transact any business with any organ of state or public entity and must for that purpose be entered into the register of tender defaulters which the National Treasury may maintain for that purpose.**
> **(2) Where the convicted person is not a natural person, the court may in its discretion restrict the order contemplated in subsection (1) to only those members, directors or shareholders who contravened the provisions of this Act."**

In practice I have come across at least two discernible manifestations of **fronting** over these past 10 or so years. They are by no means the only forms of fronting out there.

The one manifestation is where the dominant (white) company submits a tender bid in

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[3] At para 26. Cited with approval in *Swifambo Rail Leasing (Pty) Limited v Passenger Rail Agency of South Africa* (1030/2017) [2018] ZASCA 167 (30 November 2018) at para [29]

[4] s 13O(1)(d)

[5] s 13O(3)(a)

[6] s 13O(4)

partnership (or consortium or joint venture) with a black firm (often a level 1 black women company), or subcontracts a black firm and then, after the contract has been awarded, purports to "terminate" the black firm's mandate on the specious basis that its **interpretation** of the scope of work has changed. The argument is often that the initial **interpretation** of scope of work was not correct, and that on the correct **interpretation** the services of the black firm are no longer needed. This is aggravated when done with the connivance of officials of the state institution that called for bids.

The second manifestation of fronting is even more egregious. It takes the form of the dominant (white) firm subcontracting a black firm not only for its level 1 BEE rating but also for its contacts and expertise in the local and regional market. A foreign firm (typically white and European or American) would also be subcontracted together with the black firm but bringing a different skill. After the contract has been awarded, the dominant (white) firm would then unilaterally amend a draft subcontracting agreement (not yet signed by the parties) and insist that the black firm sign it or face termination of its mandate. The amended subcontracting agreement would typically require that the black firm be supervised by and report to the other subcontractor (the foreign firm) and not directly to the dominant (white) main bidder.

On either example, this constitutes an exclusion of the black firm from participating in the project for which it had tendered jointly with, or as a subcontractor to, the dominant (white) firm and undermines or frustrates the achievement of the objectives of the B-BBEE Act. Specifically, a black person, in the form of the black firm, who will have been appointed in partnership with the white firm to execute an enterprise, will have been excluded from substantially participating in the core activities of that enterprise notwithstanding the black firm being identified in the bid documents as being part of the **"core execution team"** responsible for the performance of core functions in the delivery of the project.

The objectives of the B-BBEE Act are to facilitate broad-based black economic empowerment by, among other things:

- promoting economic transformation in order to enable meaningful participation of black people in the economy;

- increasing the extent to which black people (especially women) own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training; and

- increasing effective economic participation of black owned and managed enterprises, including small, medium and micro enterprises and co-operatives and enhancing their access to financial and non-financial support.

By excluding the black firm from execution of the tender along the lines of the proposal that was made and accepted by the state institution – whether that exclusion resulted from the white dominant firm's unilateral *"change of scope interpretation"* (or such change was made by the white firm in concert with the state institution) – that exclusion has the effect of frustrating or undermining the achievement of these objectives.

The arrangement between the white firm and the state institution (to the extent that they conspired to exclude the black firm) constitutes a **"fronting practice"** as defined in paragraph (a) of the definition.

The fact is that the economic benefits received by the white firm as a result of the broad-based black economic empowerment status of the partnership with the black firm for purposes of the tender will not have flown to the black firm in the ratio specified in the tender documents (or response to the RFP) and would constitute a **"fronting practice"** – within the meaning of

paragraph (b) of the definition – by the white firm (to the extent that it unilaterally excluded the black firm) or by the white firm and the state institution (to the extent that they conspired to exclude the black firm from such economic benefits.

The fact that the white firm concluded a partnership (or subcontracting) agreement with the black level 1 B-BBEE contributor so that the partnership achieves a certain level of broad-based black economic empowerment compliance, but excluded the black firm from the economic benefits that would reasonably be expected to be associated with the status or position held by the black firm, constitutes a **"fronting practice"** within the meaning of paragraph (c) of the definition.

In the circumstances, the conduct of the white firm, and/or the arrangement between the white firm and the state institution that called for the tender, by which the black firm was excluded from executing the tender and from its economic benefits constitutes a **"fronting practice"** either by the white firm or the state institution or both.

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## REMEDIES

There are remedies in law for this criminal practice. Possible remedies include (1) a declaratory order to declare that the practice is unlawful and unconstitutional; (2) an interdict to stop implementation of the contract pending the outcome of the review application; (3) a review application to set aside the contract for being unlawful and unconstitutional; (4) complaint to the BEE Commission; (5) complaint to the Public Protector against the state institution for maladministration of state resources in an unconstitutional manner.

Let us touch on 3 of these remedies: Interdict, Review and Complaint to the BEE Commission.

### ***Interdict***

An interdict – if sought as an interim intervention until a court has decided the lawfulness of the contract in which **fronting** is alleged – has four requirements:

- *Prima facie* right even if open to some doubt
- Balance of convenience
- Reasonable apprehension of irreparable harm
- Absence of other satisfactory remedy

*Prima facie right*

*Prima facie* means "on the face of it". It is now established law in South Africa that the proper approach in establishing whether or not a ***prima facie*** right exists in the context of an interim interdict application is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should on these facts obtain final relief.[7]

On the two manifestations of **"fronting"** explained above, the black firm and black people working there have a ***prima facie*** right – which is rooted firmly in the Constitution and the B-BBEE Act – not to be discouraged or inhibited from substantially participating in the core activities of an enterprise to which they are party, and not to be deprived of the economic benefits received as a result of the broad-based black economic empowerment status of an enterprise in the ratio specified in the relevant legal documentation.

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[7] *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189; *Simon NO v Air Operations of Europe AB and Others* 1999 (1) SA 217 (SCA) at 228G-H

By excluding the black firm in the manner described, the white firm and the state institution will have unlawfully and unconstitutionally undermined and frustrated the constitutional project of black economic empowerment.

*Balance of Convenience*

This requirement recognises that there are at least two competing interests, inextricably linked to the harm likely to be suffered by the unsuccessful party. On the one hand, there is the right of the black firm to preferential procurement as **decreed** by the Constitution and given effect to by the B-BBEE Act, and the right of the black people who work there to equality (s 9), freedom of trade (s 22) and human dignity (s 10) and not being exposed to **fronting**.

On the other hand, there is the right of the white firm and the state institution to freedom of association (s 18) and freedom of trade (22).

Unless the black firm can show that the white firm's conduct, and/or the state institution's insouciance or supine attitude in the face of it, constitutes and unjustifiable infringement of its right to freedom of trade and its black people's right to equality and human dignity, the balance of convenience cannot favour the granting of interim relief.

All these rights are entrenched in the Constitution. But the right of the white firm and the state institution to freedom of association and trade must, in the scheme of the Constitution, be subject to the equality and preferential procurement provisions of the Constitution. This is so not only because the white firm's and the state institution's freedom of trade is itself regulated, in the context of this case, by the B-BBEE which outlaws **fronting**, and their right to freedom of association cannot lawfully trump the equality provisions of the Constitution, but also because the Constitutional Court has recognised the right to human dignity – especially of black people – as a right that requires an especial protection given the history of this country.

In this regard, the Constitutional Court has said the following recently in ***Dladla and Others v City of Johannesburg and Another*** **2018 (2) SA 327 (CC)**:

> **"[127] What makes matters worse is the fact that the applicants are not only a group of poor people but are part of those who were denied dignity under the apartheid order. In *Makwanyane* O'Regan J said about the right to dignity enshrined in s 10 of the Constitution:**
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> > **'Respect for the dignity of all human beings is particularly important in South Africa. For apartheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished. The new Constitution rejects this past and affirms the equal worth of all South Africans. Thus recognition and protection of human dignity is the touchstone of the new political order and is fundamental to the new Constitution.'"**

The conduct of the white firm in the manifestation of **fronting** described above, and the state institution's supine attitude in the face of it, is particularly egregious because it is a flagrant abuse of the very legislative intervention that was meant to address and root out the abuse of the past under apartheid. This should tip the scales in favour of the interim interdict being granted.

*Apprehension of Irreparable Harm*

The harm that is visited upon the black firm (and black people in general) if this **fronting**

exercise is not brought to a halt, is palpable as **fronting** would become commonplace and ultimately be accepted as the norm. That would be an unacceptable betrayal of the constitutional project of rooting out the vestiges of apartheid that still confronts black people, especially black women in business.

The harm is real. It translates not only in economic harm which would breed obsequiousness in some black people (including professionals) who would consider it easier and convenient to just **"go along to get along"**, thereby betraying the constitutional project, but also in the loss of human dignity to black people (women especially) forever, despite there being legislative interventions in place to guard against that very eventuality.

For that reason, the black firm and black people in general would suffer **irreparable harm** if interim relief were not granted.

This is one of the most crucial requirements for interim relief. Interim relief is not targeted at harm that has already taken place. It is targeted at harm that is anticipated or ongoing.[8]

*Absence of Alternative and Satisfactory Remedy*

The question that may arise under this heading is whether lodging a complaint with the B-BBEE Commissioner or a review constitutes such relief. It could be argued that neither of these remedies would be effective and satisfactory because by the time either the investigation by the Commissioner is done – which may itself be subjected to review – or the review application is determined in due course – which may be subjected to appeal – the project will have been completed without the black firm and it will have lost its opportunity to vindicate its constitutional rights.

*The Court's Discretion*

If the Court should find that the requirements for an interim interdict have been established, then all these considerations (which are not exhaustive) support the exercise of the Court's discretion in favour of granting the interdict.

If the requirements for an interdict have not been established, then the exercise of discretion does not arise because a Court has no discretion to grant an interdict if the requirements therefor have not been established.[9]

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***Review***

The **review application** can be brought both under the Promotion of Administrative Justice Act, 3 of 2000 (PAJA) as against the state institution and, in the alternative, under the principle of legality as against both the state institution and the white firm.

The grounds of review could be the following:

- Neither the state institution nor the white firm was authorised, either by the bid documents (including the subcontracting agreement) or by any legislative prescript, unilaterally and without the participation of the applicant (the aggrieved black firm), to *"change the scope interpretation"* or to *"change the scope of work"* (as the case may be) of the proposal to which the applicant was party after award of the contract: section 6(2)(a)(i) of PAJA.

[8] *Tshwane City v Afriforum and Another* 2016 (6) SA 279 (CC) at para [55]

[9] LTC Harms: Interdicts, LAWSA, vol 11 (1st re-issue) page 294, para 321

- The state institution was biased or reasonably suspected of bias in favour of working with the white firm to the exclusion of the applicant: section 6(2)(a)(iii) of PAJA.

- The state institution's and/or the white firm's exclusion of the applicant from the project was procedurally unfair: section 6(2)(c) of PAJA.

- To the extent that the state institution may believe that it had the right, either on its own or in concert with the white firm, to exclude the applicant from the execution of the tender, the decision or conduct was materially influenced by an error of law: section 6(2)(d) of PAJA.

- The decision was taken by the white firm and/or the state institution for a reason not authorised by the empowering provisions: section 6(2)(e)(i) of PAJA.

- The decision was taken by the white firm and/or the state institution for an ulterior purpose or motive, the motive being, among others, to favour the white firm without the burden of an empowerment partner: section 6(2)(e)(ii) of PAJA.

- The decision was taken by the white firm and/or the state institution because irrelevant considerations were taken into account or relevant considerations were not considered such as the constitutional imperative in section 9(2) and section 217(3) [read together with section 217(2)] of the Constitution to which the B-BBEE Act gives effect: section 6(2)(e)(iii) of PAJA.

- The decision was taken by the white firm and/or the state institution because of the unauthorised or unwarranted dictates of another person or body whether it be dictates of the white firm to the state institution or the state institution to the white firm: section 6(2)(e)(iv) of PAJA.

- The decision was taken by the white firm and/or the state institution in bad faith because the scope of work remained the same, and so change of scope interpretation did not warrant exclusion of the applicant black firm from performing its part of the proposal: section 6(2)(e)(v) of PAJA.

- The decision was taken by the white firm and/or the state institution arbitrarily or capriciously because the scope of work had not changed: section 6(2)(e)(vi) of PAJA.

- The decision or conduct itself (1) contravenes the B-BBEE Act and the Constitution, and is not authorised by any empowering provision (section 6(2)(f)(i) of PAJA) and (2) is not rationally connected to the purpose for which it was taken (because change of scope interpretation does not change the actual scope of work and therefore cannot reasonably entail the exclusion of a core member of the executing team – section 6(2)(f)(ii)(aa) of PAJA), the purpose of the empowering provision (as set out in the objects provision of the B-BBEE Act – section 6(2)(f)(ii)(bb) of PAJA), the information before the white firm and/or the state institution (section 6(2)(f)(ii)(cc) of PAJA), or the reasons given for it by the white firm and the state institution (section 6(2)(f)(ii)(dd) of PAJA).

- Assuming that the white firm and/or the state institution had the power to change scope interpretation, the exercise of that power was so unreasonable that no reasonable person could have so exercised the power or performed the function: section 6(2)(h) of PAJA.

- The decision or conduct is otherwise unconstitutional or unlawful as it undermines and frustrates the achievement of the objects of the B-BBEE Act which aims to give effect to section 9(2) and section 217(3) [read together with section 217(2)] of the Constitution: section 6(2)(i) of PAJA.

Under the **principle of legality**, the grounds of review could include the following:

- The decision and/or conduct is unconstitutional as it frustrates the achievement of the objects of the B-BBEE Act which was enacted specifically to give effect to section 9(2) and section 217(3) [read together with section 217(2)] of the Constitution.

- The decision and/or conduct impinges upon the human dignity of black professionals who work at the applicant firm in that it relegates them and the firm – an experienced and respected firm with widely recognised expertise in the fields in relation to which the white firm contracted it – to mere fodder for white-dominated firms to win public enterprise contracts. The Constitutional Court has singled out human dignity of black people as one entrenched right that deserves an especial protection.

- The decision and/or conduct is irrational and unlawful.

A challenge that may arise is that the state institution and/or the white firm may refuse to provide documents and information that relate to their decisions and conduct. The Promotion of Access to Information Act (PAIA) provides for a means of securing documents and information. But that process tends to be cumbersome. Among other things, (1) information must be sought within 90 days of the decision to which it relates, (2) the person or institution from which such information is sought has 30 days within which to provide it, and (3) that information must be sought before any litigation (whether interdict or review or damages claim or other) has been instituted.

That makes things tricky if the applicant's intention is to bring an urgent interdict to stop implementation of the contract pending review or other remedy. Making matters worse is that the respondent may drag the process on by claiming privilege and/or confidentiality of the information (even if it is not so) and that can be the subject of protracted litigation on its own before the applicant even gets to the merits of the interdict and/or review.

There may be another option. In terms of Rule 53(1)(b) of the Uniform Rules of the High Court, the state institution and the white firm would be required by the applicant (the aggrieved black firm) to dispatch to the Registrar of the High Court the record of their decision to exclude the applicant both from the execution of the tender and from the economic benefits thereof, together with such reasons as they are by law required to give or desire to make. This process also takes a while but provides the advantage of a punitive costs order in favour of the applicant if the Court were to find that the record of documents provided by the respondent is incomplete, or that the respondent has been unduly recalcitrant or obstructive in its conduct of the litigation.

*Complaint to the B-BBEE Commission*

In the alternative to a review application, or in parallel to it, the black firm could refer the matter to the B-BBEE Commission (the Commission).

Section 13B(1) of the B-BBEE Act establishes the Commission. Section 13F(1)(d) confers upon the Commission the power

> **"to investigate, either of its own initiative or in response to complaints**

**received, any matter concerning broad-based black economic empowerment"**

Such power includes investigating whether any B-BBEE initiative involves a **"fronting practice"**.[10] But the complaint must be in a prescribed form and must be substantiated by evidence justifying an investigation.[11]

In its investigation, the Commission has the power to determine the format of the procedures to be followed, including:

- the holding of a formal hearing;[12]
- instituting proceedings in a court to restrain any breach of the B-BBEE Act, including any fronting practice, or to obtain appropriate remedial relief;[13]
- if the Commission is of the view that any matter it has investigated may involve the commission of a criminal offence in terms of the B-BBEE Act or any other law, it **must** refer the matter to the National Prosecuting Authority or an appropriate division of the South African Police Service;[14]
- publishing any finding or recommendation it has made in respect of any investigation which it had conducted in such manner as it may deem fit[15] provided that it gives 30 court days' notice of any finding that may reveal confidential information to a party that claimed confidentiality of the information[16];
- at any time during an investigation, issuing a summons to any person who is believed to be able to furnish any information on the subject of the investigation or to have possession or control of any book, document or other object that has a bearing on that subject of the investigation to appear before the Commission to be questioned at a time and place specified in the summons and/or to deliver or produce to the Commission any book, document or other object referred to in the summons at a time and place specified in the summons,[17] except such documents or information as the Commission has satisfied itself are of a confidential nature[18].

So, another recourse that is open is to lodge a complaint with the Commission. Matters that the complainant may wish to consider, however, include the following:

- The Commission comprises political appointees. The Commissioner, who plays the role of Chief Executive, is appointed by the Minister of Trade and Industry for a renewable term of five years.[19] His remuneration is determined by the Minister of Trade and Industry in consultation with the Minister of Finance.[20]
- The Deputy-Commissioner is appointed by the Commissioner in consultation with the Minister of Trade and Industry also for a renewable five year term.[21]

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10 s 13J(3)
11 s 13F(2)
12 s 13J(2)
13 s 13J(4)
14 s 13J(5)
15 s 13J(7)(a)
16 s 13L(6). That party will then have 14 court days to challenge the revelation of that confidential information [s 13L(7)]
17 s 13K(1)
18 s 13L. The party who claims confidentiality must justify the claim and has a right (in terms of s 13L(4)) to challenge the Commission's contrary finding in court within 60 days of the Commission's ruling or such longer period as the Commission may allow in its discretion and upon good cause shown.
19 s 13C(1) & (2)
20 s 13C(4)
21 s 13D(1)

- It is financed by Parliament and audited by the Auditor-General.[22]

Although a complainant may withdraw its complaint, the Commissioner is not obliged to stop his investigation and may continue the investigation nonetheless if it is justifiable to do so.[23]

## CONCLUSION

**"Fronting"** is an attack on the Constitution. It is the ultimate economic crime and must be treated as such by each and every South African who holds the Constitution dear. The one effective way of combating **fronting** is to expose it in the courts and make it an unattractive business or economic proposition for those who commit this crime and those who facilitate it.

It could be argued that some perpetrators engage in **fronting** because they do not appreciate the seriousness of the offence. Some may even suggest that one of the orders that could be sought from a court may be an order that offenders undergo diversity or sensitivity training. Some have argued that dealing only with legal factors and ignoring human factors that lead to these practices is where we lose the plot. Until we get people to understand why it is wrong and stop objectifying others, the argument goes, they will keep on finding new loopholes.

This argument ignores the old adage that ignorance of the law is no excuse. In my experience the people who subvert the Constitution by way of **fronting** in the manner described above tend to think very carefully about what they are doing and operate in order deliberately to defraud. So, the soft touch of diversity or sensitivity training would, some may argue, be an inappropriate copout that encourages rather than discourages this most serious economic and criminal offence against the Constitution.

But others may argue, not without some merit, that an order – in addition to a criminal sanction involving suspension from state contracts for up to 10 years – that the perpetrator attend diversity and/or sensitivity training for a reasonable period (perhaps for the duration of suspension) might smooth some insensitivity wrinkles.

Whatever the remedy, I think time is now for us all to take this crime of fronting more seriously than now seems to be the case.

It is an old principle of law that the legislature is presumed not to intend passing superfluous legislation. As matters now stand, it seems to me that the B-BBEE Act is rendered superfluous by its neglect by prosecuting authorities. If these matters are reported but not prosecuted, then the state will be failing in its constitutional obligation towards citizens, especially black people. It is up to us all to ensure it does not.

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[22] s 13E

[23] Regulation 16(4)