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CHAIRPERSON: Thank you. Advocate Mphaga, good morning.

ADV MPHAGA: Thank you Chairperson. We, on behalf of all the legal teams we need to apologise for having (indistinct),
5 we realise that it was (indistinct) to accommodate you in respect of the applications before yourselves and (indistinct).
Chair, we have considered the applications that are before you which have been submitted by Mr Young. It is quite apparent that Mr Young complains about the order that was granted on
10 the 4th of February and amongst others he complained about the question that he was not given the *audi alteram partem*, and we realise also the challenge that may arise also in respect of the applications being argued in his absence or the absence of the legal representative which means that indirectly
15 he may be denied the right of reply from the argument which he may raise.

When we considered all these issues Chairperson we are of the view that it might be (indistinct) that the representatives of the Commission and the other affected
20 parties meet with Mr Young and discuss all the matters that have been placed before the Commission, but we understand that the main issues is the fact that the order that was granted is still on effect and also that it requires him to provide the documents by today 16h00, so we are of the view that if the
25 applications are still down and the order that was granted is,

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the effect thereof is suspended until there is a meeting between all parties with Mr Young, discuss all matters relating to the applications in terms of Rule 35(1), 35(8) and the order itself, then we would be able to make some progress and I hope
5 that the other parties will support the view that I'm raising and as a result if we postpone the matter today pending the meeting between the ...

We are looking at meeting with him on Wednesday if at all possible and we may then, based on the outcome of that
10 meeting be able to give more direction in respect of that Mr Chairperson. Thank you Chairperson.

CHAIRPERSON: Advocate Mphaga, before I allow other legal representatives to deal with this issue I'll tell you what my concerns are, we should have dealt with the evidence of Mr
15 Nortjé last year November which we did not because you wanted to accommodate Dr Young. It's now almost four months down the line, we are still having the same problem, the lifespan of this Commission is left only with nine months, we're left only with nine months, for how long are we going to try and
20 accommodate Dr Young before we can call Mr Nortjé?

Maybe we (indistinct) for the past four, five months we've been busy with this exercise of trying to accommodate them, to accommodate Dr Young and personally, talking for myself I'm not prepared to let this, the evidence of Mr Nortjé
25 not be led for a much longer period that is necessary. We need

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to deal with the evidence of Mr Nortjé so that we can deal with the evidence of the remaining witnesses.

If we are going to spend another four or five months talking to Dr Young before we can call Mr Nortjé we'll never
5 finish our work, that is my difficulty and that is why last week I was prepared to hear the application and from there determine a certain timeframe and that is my difficulty unless you know we can be assured that we are not going to spend another two, three weeks before we hear Mr Nortjé's evidence (indistinct)
10 some of the suggestions, otherwise maybe one might just be forced just to stick to the rules.

One, if you remember last year we did issue some directive in which directive we clearly state under what conditions a witness can ask for further documentation. Dr
15 Young hasn't followed that procedure. We've bent backwards in order to accommodate him, that has cost us another three, four months before we can hear the evidence of Mr Nortjé. At this rate we might go another four, five months before Mr Nortjé's evidence is led, and as I said our lifespan, we remain
20 only with about eight months now. Maybe before you respond to that let me hear what the other evidence leaders, what other legal representatives have got to say.

ADV SOLOMON: Morning Chair, Commissioner Musi. We support the proposal of our learned friend Advocate Mphaga,
25 but we also, with respect align ourselves with the comments

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that you have made Chair concerning Dr Young, the question is trying to find a balance between the interests of Dr Young, the interests of this Commission, Mr Nortjé and it's not always easy to find that balance.

5 We do, however, support the notion that the evidence leaders, Dr Young and the interested legal representatives of ARMSCOR and DoD make an attempt this week. It has already been tentatively arranged through Advocate Mdumbi that a meeting take place either tomorrow or
10 Wednesday with Dr Young in Cape Town. His main complaint seems to be that it would take him an inordinate amount of time to comply with the order that was granted.

 I know there is also reference to the fact that it was in his absence but my understanding of the application, his
15 main application to have the order set aside that was granted last week is the enormous task that he would be engaged in, in trying to comply with the order. I think if we do meet with Dr Young and try and convey to him that we are after all talking about his own discovery affidavit, I mean he has indicated
20 under oath that the document scheduled in the annexure to his discovery affidavit are documents that he requires to cross-examine amongst others Frits Nortjé, so it is a bit anomalous that he says on the one hand initially he wanted to cross-examine Mr Nortjé, on the other, and he says: "These are the
25 documents that I require to be produced before the Commission

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for that purpose” and then when he is asked to produce those documents says: “It will take me ...”, I haven’t added up all the various periods but it seems in excess of a year to do so and which leads one to the remarks you addressed to my learned
5 friend concerning the expiry date of this Commission in eight or nine months’ time.

I do though believe that we are going to start this week with Mr Barry De Beer to deal with the DIP evidence and I suppose the meeting with Dr Young can continue in tandem with
10 the evidence, we have to just try and make an arrangement so that our team is split so that someone is able to attend to the meeting with Dr Young, and if some sensible agreed bundle can be eventually collated and placed before the Commission it will obviously facilitate the evidence of Mr Nortjé and perhaps Dr
15 Young will reconsider his withdrawal of his application to cross-examine Mr Nortjé, we’ve no desire to stymie Dr Young’s desire to cross-examine Mr Nortjé, we’re quite prepared for Dr Young to cross-examine him. Again I come back to my opening remarks, it’s a question of balancing the various interests and
20 trying to find the correct balance and fortunately I don’t have to make that decision, you and Commissioner Musi do as to what the correct balance is but we agreed that the order that was granted, the effect of that order should be suspended until this meeting takes place.

25 If no sensible arrangement can be made we will

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have to then hear these various applications of Dr Young, I know he's not here, I'm not sure if he envisaged that they wouldn't be dealt with today or would be dealt with in his absence once again but perhaps that also something we can
5 discuss with him and his legal representatives if he has legal representatives.

So, in essence the approach of ARMSCOR is to support the meeting, we also do not want to have a situation where Mr Nortjé's evidence is just indefinitely delayed, we
10 agree that he should give his evidence sooner rather than later but if we can in some way accommodate the logistic concerns that have been raised by Dr Young I think we should try and do it. We don't know if Dr Young is serious about wanting to cross-examine Mr Nortjé or just to place obstacles in the way
15 of the Commission, one doesn't know, but I think we must take him at his word, give him every opportunity to produce the documents he requires for cross-examination, Mr Nortjé, and to again invite him to cross-examine Mr Nortjé if he still has that desire. Thank you Chair, Commissioner Musi.

20 ADV CANE: Thank you Commissioner Musi, Commissioner Seriti. The instructions we hold from the Department of Defence are to use all reasonable endeavours to come to a practical and fair accommodation of Dr Young in order to enable him to come to this Commission and address
25 his questions pertaining to the combat suite of the Corvette's

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to Admiral Kamerman, and I address the Commission only in relation to Admiral Kamerman's position and not Mr Nortjé's position. The overriding objective is to ensure that this Commission has the benefit of a proper ventilation of the
5 issues pertaining to the combat suite of the Corvette's.

With the Commission's leave therefore and through the Commission we intend to address the compromised proposal to Dr Young, the purpose thereof will be to ensure that the logistical difficulties that Dr Young has raised are
10 accommodated insofar as we reasonably can accommodate him. To that end we have in mind Commissioners that the legal team may be able to arrange with Dr Young an exchange of documents to create a bundle ahead of Admiral Kamerman's evidence so that neither witnesses are taken by surprise during
15 this hearing and both have a fair opportunity to prepare.

In conclusion it's the Department of Defence's wish to ensure (indistinct) of issues, that the meeting proposed by the evidence leaders does take place. We hope that such meeting will be successful in reaching the objective to which
20 I've just referred and we hold the instructions to ensure that Dr Young is not presented with insurmountable logistical difficulties that would prevent him from participating fully in this process.

We hold the instruction to ensure a fair and full
25 hearing and we would with your leave request that the various

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legal teams including the evidence leaders would be given the opportunity as suggested to pursue that objective during the course of this week. Thank you for the opportunity.

CHAIRPERSON: Okay.

5 **NOTE: Caucus.**

CHAIRPERSON: Advocate Mphaga tell me, if at all assuming we agree to the suggestion, the meeting that you are proposing will take place sometime during the course of this week and if it does take place during the course of this week
10 how long thereafter do you think will the evidence leaders need in order to prepare Mr Nortjé?

ADV MPHAGA: Chair, maybe Mr Lebala who is responsible can explain that. We had thought that we'd still work within the period in which Mr Nortjé has been, there's a set down, the
15 date of the set down, if possible.

CHAIRPERSON: Okay. I see Advocate Lebala is behind you, can he perhaps maybe try and deal with that question? Assuming this week you hand up meeting with Dr Young and you resolve issues that need to be resolved. From that time
20 how long do you think you will still need in order to make sure that Mr Nortjé presents his evidence before the Commission?

ADV LEBALA: Chairperson Commissioner Musi, (indistinct), we have propositions that we would like to make to Dr Young and if he agrees to them we approximate three
25 weeks, and this is informed by what we believe would facilitate

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the resolution of this documentation impasse. In actual fact as colleagues were addressing the Commission Advocate Mdumbi nodded in my direction asking me whether am I going to say something with regard to the real issues before the Commission and probably if we contextualise them in the context in which we would be dealing with them you would also appreciate why we talk of three weeks.

Commissioners, bear in mind that there is a valid order which this Commission has made ordering Dr Young to discover, it's a valid point. Our team doesn't want that order to be set aside, equally the right of Dr Young to cross-examine Mr Nortjé would assist this Commission to establish facts in our view, it will assist this Commission to enquire into ..., it will assist this Commission to make findings and eventually make (indistinct).

These two high prices Commissioners, we can't ignore them, the real price that we would like to see is the testimony of Mr Frits Nortjé being given speedily without any delay and we are confident that our meeting with Dr Young would facilitate a solution in that direction. The second string in our bow with this approach is we may agree on a common bundle with Dr Young and we may encourage him successfully to make him realise about his entrenched right to cross-examine Mr Nortjé if he wants to.

Now our trip to Cape Town or our meeting with Dr

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Young is not only to salvage the processes of this Commission which are very valid and we repeat and reiterate that this order that this Commission is given is a valid point. How we can cultivate a sense of accrediting this order is to assist Dr Young to exercise his right to cross-examine. Now it would be unfortunate Commissioners if Dr Young were to say that he cannot cross-examine because of the processes of this Commission, we are of the view that this Commission hasn't done anything to halt or remove that entrenched right of Dr Young to cross-examine, our team, myself and Advocate Ngobese are of the view that we would like to remind you, take advantage of this right in line with our persuading him to realise that we cannot waste time, we can't concentrate on irrelevant consideration, we can't look at documentation which is not applicable in as far as Mr Nortjé and Mr Kamerman are concerned.

Now Chair, Commissioner Musi, I think the trip to Cape Town or our meeting with Dr Young would guide this process ahead and then that three weeks could probably be the right answer that we are giving.

CHAIRPERSON: You know, I was caucusing with Judge Musi, he also said to me about three weeks but then I still believe three weeks is too long a period. We have already lost a lot of time, if we are not careful we will not be in a position to finalise or to carry out our mandate before the expiry of the

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last day of this Commission. If we are not careful I think we are running that risk and that is why I'm a bit jittery about your three weeks. Even last week you spoke about three weeks, even today still, three weeks. I think three weeks is too long a period but instead what I'm going to do is that firstly I would want to hear again from various legal teams on the 17th of this month whether there is any progress or not, so that if at all there's no progress then we can try and devise other plans on how we go forward and for that reason I'm going to grant the following order.

Firstly, the order compelling Dr Young to discover the documents by today is suspended until the 17th of March 2014. Two, his two applications wherein he intends compelling the Commission and various other legal entities to discover documents within certain timeframes are also postponed until the 17th of March 2014 and I hope that you know we will get some feedback before the end of this week from the Advocate Mdumbi who I suspect will accompany the various legal teams because I'm quite anxious that we should get, we should hear the evidence of Mr Nortjé so that we can proceed with the evidence of other witnesses.

I don't think, to be honest with you, I don't think that the legitimacy or lack thereof, of this Commission, will depend on one person, it would be unfortunate if at all they are unable to finalise the mandate or carry out the mandate of this

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Commission by the expiry date of the lifespan of this Commission because we had delayed with almost three or four weeks trying to persuade one person to be on board, I think it would be unfortunate.

5 COMMISSIONER MUSI: I just want to add for my part that I think what we are doing, we are trying to bend over backwards in order to accommodate Dr Young, he has proposed that he can withdraw his application to cross-examine the witness and we don't think it will be wise that he should be allowed to do
10 that because if you allow that then it could be very easy for us to say well he has withdrawn his application to cross-examine, therefore everything else falls off and therefore we call Nortjé next week, we could do that but I don't think it would be wise to do that and I agree with the sentiments expressed by the
15 legal representatives here that we should try to accommodate him and keep him on board and it's therefore important that he should be given the opportunity to cross-examine the witness. I don't want to be sitting and reading newspapers saying that we have made it impossible for a witness to cross-examine
20 people because of X, Y, Z reasons, I don't want that type of perception, so I agree that we really are bending backwards in order to accommodate him and I hope that the meeting that the legal representatives will have with him will bear fruit so that he can come on board and come and cross-examine the
25 witness, but really I think you should impress upon him, and I

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think the chairman has said that sufficiently, time is of the essence, we have delayed a great deal about this matter and it's time that we move on and I think it should be impressed upon you that time is not on our side, and you know as far as
5 the request for documents is concerned I think the Commission has laid down a procedure and let me remind people what it is, we said that a witness wishes to access documents that he needs for purposes of his evidence, the evidence that the witness is to lead before the Commission must submit a full
10 statement to the evidence leaders and the evidence leaders will be in a position to, based on the statement, to assess which documents that are in the possession of the Commission would be necessary for the purposes of the testimony of this witness.

You don't ask for witness for the sake of asking for
15 documents, I mean you don't ask for documents for the sake of it, you ask for documents because you need these documents either to cross-examine and that they must really be necessary to enable you to cross-examine or you need these documents in order to be able to prepare your evidence. You can't ask for
20 documents beyond all that and the request I have seen here, some of the requests are really unreasonable, you are asking for all documents that the department has got, it doesn't make sense to me, it doesn't show you know genuinity [sic], it doesn't impress me as being genuine when you ask for
25 documents in that fashion. I think these things must be

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impressed on the witnesses and I think when you deal, when you meet with Dr Young take up also the issue of the testimony of Mr Kamerman so that it can also be sorted out. We shouldn't come back with the matter relating to Mr Nortjé
5 resolved only to find that we now have to confront another problem relating to Mr Kamerman. I think deal with them at once. Thank you.

CHAIRPERSON: Thank you. Then the question of Dr Young will be dealt with on the 17th of March. Now I see we were
10 supposed to deal with the evidence of Mr De Beer today, Advocate Sibeko sitting there at the back, can he tell us what is the position?

ADV SIBEKO: Thank you Chair and Dr Musi. The preparations regarding the evidence of Mr De Beer is almost
15 complete. During the course of consultation yesterday the statement that he had prepared and submitted to the Commission had to be amended which resulted in the Commission ..., the documents that are in the Commission's possession not being the same as those that are with the
20 witness and the evidence leaders. The consultation yesterday resulted in certain amendments therefore having to be effected to the statement, there also have been additions to the bundle of documents that have been prepared and furnished to the Commission, I believe it was on Friday or Saturday and that
25 also has resulted in some element of inconsistency between the

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documents that we have on this side of the bench and those that you have Chair with Commissioner Musi, so we are in the process of finalising the amendments and resolving the issue of the bundles which we hope to have ready by tomorrow morning to enable us to start with the testimony of Mr De Beer.

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CHAIRPERSON: So, we will start with Mr De Beer tomorrow morning?

ADV SIBEKO: That is correct Chair.

CHAIRPERSON: Thank you. Then in that case we will adjourn until tomorrow morning at 10h00.

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(COMMISSION ADJOURNS)