

24 MARCH 2014

PHASE 1

CHAIRPERSON: Good morning everybody. Advocate Mphaga.

ADV MPHAGA: Thanks Chair. Once again our apologies for starting at 10h00, the administration was busy with the compilation of making copies of files. We have the Young Application Volume 1 and 2 before you Commissioners, we have compiled the bundles just to make sure that all relevant applications are there and correspondence which is relevant for the record. As indicated the application is for Dr Young for discovery were postponed previously to this date for consideration, we would want to move firstly that these applications, except of course for the application for requesting documents from the Department of Defence in respect of Kamerman, but the applications in respect of the cross-examination of Mr Nortjé, that these applications be removed because they become academic.

The Commissioners will take note that there was an initial comprehensive application which was brought by Dr Young to cross-examine and that application was withdrawn by Dr Young, the application was granted on the 25th of October 2013 and by email on 31 October 2013 Dr Young advised that he is withdrawing that application. Now a new application was brought on the 3rd of November 2013, it's on page 261 of the first volume and on page 261 if the Commissioners have it you will note that he says there:

24 MARCH 2014

PHASE 1

5 *"I withdraw my application that the APC grant me leave to cross-examine Mr Frits Nortjé, the ARMSCOR Programme Manager for Project Sitron in the SDP's where's such cross-examination is immediately following his evidence in chief or cross-examination by any other party in Phase 1".*

Then he proceeds on paragraph 55 to say that:

10 *"At the same time I replace my application that the APC grant me leave to cross-examine Nortjé with this substantive application to undertake such cross-examination once the following have been fulfilled; ...".*

15 So he gave numerous conditions there. But I think the final withdrawal was on page 467 on 2, 467 paragraph 67 which I will read into the record, it says:

20 *"Additionally and consequent to the very severe prejudice to cost or (indistinct) regarding both my own discovery as well as the (indistinct) discovered by the other parties I have requested on numerous occasions (indistinct) advised that I cannot properly prepare cross-examination of APC witness Mr Frits Nortjé and accordingly withdraw my application to do so".*

25 So Commissioners, to date Mr Nortjé has not brought any further application to be cross-examined although in terms of

24 MARCH 2014

PHASE 1

the recordal that we submitted previously there was an intimation that he may reconsider, but there is, he has never reconsidered at this stage, Mr Nortjé has given his evidence before the Commission, an invitation was made to all persons who wish to cross-examine, none came forward, so we submit therefore that the current applications are for discovery, they are clearly for the purpose of cross-examination and therefore just for the fact that there was no response to the invitation they have become academic.

10 Further Commissioners we wish to say that if Mr Young or Dr Young wishes to cross-examine he may first have to bring an application to recall Mr Nortjé, which application will have its own requirements, it is only then that the applications for discovery can be relevant, we therefore move that then these applications requesting the Commission and ARMSCOR to discover be removed and the only application will therefore be that of Department of Defence and I think the Department of Defence will respond thereto.

CHAIRPERSON: Are you done with the paper?

20 ADV MPHAGA: I'm done Chair.

CHAIRPERSON: Thank you.

ADV CANE: Sorry Chair, (indistinct). My mistake, I apologise. Thank you Chair. Chair and Commissioner Musi I have prepared written heads of argument on behalf of the Department of Defence, the copies thereof were slotted by my

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24 MARCH 2014

PHASE 1

(indistinct) bundle at page 638, I ask that you turn there, it will facilitate the argument. Page 638. Thank you Commissioners. The bundle prepared for the Commission this morning contain all the papers, it was first made available to us this morning
5 which means that with your leave I will give you the page references to the various references in these heads as we traverse them.

Commissioners, I respectfully submit that the issue of the (indistinct) documents are required be furnished in the
10 interest of persons is governed by paragraphs 33 and 34 of the Commission's directives and there I have set them out. For your convenience the reference at which you will find those directives is at page 620 of the prepared bundle. The benefit of turning up page 620, if I may request you to do so is that the
15 director (indistinct) in my argument is preceded by paragraph 32 which the Commissioners may also wish to cast their eye over to get the proper context.

At page 620 paragraph 32 under the heading "Discovery" the Commissioners I know will be aware that the
20 Commission has the power to call on any person to make a discovery on oath to the inquiry within a timeframe directed by the chairperson, I stress the words there "to the inquiry" because this is clearly a provision for the benefit of the Commission that it should be able to gather documents from
25 whomsoever has them that may be relevant for the purposes of

24 MARCH 2014

PHASE 1

its inquiry and that is to be contrasted with the positions catered for in paragraph 33 which deals with the position of an interested person, there my submission is that the person who has an interest and there in my heads I say that:

5 *"The interest is not simply a member of the public who may wish to gather documents for purposes of its own inquiry but a person interested in attaining the (indistinct) expertise or personal knowledge and so may assist the Commission with its inquiry may*
10 *with the approval of the chairperson call upon any person (indistinct) to make discovery of any document relevant to the inquiry. The request must state:*

15 *a. The reasons the interested person believes that the holder of the document possesses the document and the reasons the interested person believes the document is relevant to a matter before the Commission".*

And then in paragraph 34:

20 *"The documents which by law are protected from public disclosure will remain so protected. In the context of the Department of Defence we do draw that to the Commission's attention because the Commission is well aware of the process by which*
25 *documents are being declassified on a document by*

24 MARCH 2014

PHASE 1

document basis when called for by the Commission or the evidence leaders”.

And that is a very relevant consideration against a far broader discovery to a third party.

5 Commissioners I proceed with paragraph 2 of my heads of argument at page 639 of the bundle.

“The applicant seeks discovery of a wide range of unspecified documents pertaining to the acquisition under the SDP’s of the Patrol Corvettes. The applicant makes no attempt to comply with the directives, instead he basis his alleged (indistinct) Rule 35”.

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In the next section of my submissions I wish to distinguish Rule 35 from the current directives and indicate why in my submission Rule 35 is inappropriate to an inquiry of this nature and so I continue with paragraph 3 of the argument.

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“The directives are to be distinguished from a Rule 35 type right to discovery for good reason. Firstly the Rule 35 type right belongs with adversarial proceedings between competing parties when their respective rights are to be determined. An inquiry is entirely different, the hearings are investigative in nature and competing rights are not being determined. Secondly the Commission should not permit other investigations parallel to its own

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24 MARCH 2014

PHASE 1

investigation, there is only one inquiry that this Commission under the law, ...”.

And that, with respect, is your inquiry:

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“If the Commission’s processes are used as a means (indistinct) rather than access to specified documents pertaining to the parties’ interests the Commission’s processes may result in multiple inquiries by way of persons exercising their alleged rights to discovery”.

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If I’m ay give an example to illustrate that point it would be the position then that numerous interested parties may seek discovery from the Department and all be processing their own investigations, allegedly in order to one day assist the Commission in some way as opposed to the Commission controlling documents and the process under its investigation and requiring people with personal interests, personal knowledge and expertise to come and testify here and assist the Commission through the relevant documents.

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The third important feature is that the consequences of a wide range of discovery orders were to be (indistinct). In our case many officials of the department would have to take responsibility for that portion of the documents in relation to which they have personal knowledge, the body of documents would be enormous, the recipients such as the applicant would require months to study the documentation

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24 MARCH 2014

PHASE 1

which would make no sense to afford them access to documents without also granting them the rights to consider them, no doubt the recipients of volumes of documents who refuse to participate in the Commission until their own investigations or the study of those documents were completed, and so in paragraph 4 I submit that:

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“The directors expressly envisage the chairperson remain in control over the access to documents and that his discretion should be exercised to ensure that the Commission’s purposes are best served”.

Commissioners, may I ask you to turn to page 641 of the heads of argument dealing with the requirements of the directives.

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“The directives provide appropriate and fair access to documents in the context of this inquiry. Indeed if they did not a remedy would be a high court ruling and in the absence thereof I respectfully submit that the department is only required to comply with such directive”.

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The points I’m making there Commissioners is that directives are in place unless and until they were reviewed, they do guide the situation and therefore I respectfully submit that every applicant will have to comply with those directives in order to insist or ask the Commission to exercise its discretion contained therein.

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Now the first jurisdictional precondition for access

24 MARCH 2014

PHASE 1

to a document is that a person or the applicant has an interest, and there I do submit it's an interest as defined in paragraph 33 as being an interest in law.

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"It is not sufficient for any member of the public to merely allege that they are interested in the subject matter of the inquiry and thus wish to investigate matters by way of access to documents".

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On the contrary I submit that an applicant is required to state the area of personal knowledge or expertise by way of which he may be able to assist the Commission. In this case we are concerned with an applicant who has not set out his interest by way (indistinct) request of particular documents may be assessed. Commissioners, if I may request you to turn to page 429 of the bundle, and in fact 428, that is the application with which we are concerned and I make these submissions in relation to. (Indistinct) 4208 you will see there is an application by Richard Michael Moberly Young in this Commission and the third party named is ARMSCOR but in fact if I ask you to cast your eye at paragraph 8 on the next page you will see that the order sought is an order (indistinct).

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And paragraph 9 ends with the word: "... served on the Department of Defence". Again in paragraph 7 in the second line at the end of the line you will see that what's sought is discovery of all the documents from record in the DoD (indistinct), so we gather from paragraph 7, 8 and 9 that

24 MARCH 2014

PHASE 1

notwithstanding the heading what is sought are documents from the department and so that word (indistinct) ARMSCOR as the third party should probably be read to mean the Department and we deal with it on that basis that this is in fact (indistinct) Department.

And this two-page application if one so can call it (indistinct) for the request, and you will notice in paragraph 6 and 7 what is the high water mark of the motivation for the request, 6 reads:

10 *“Despite a number of written requests to the APC to be furnished with documents and records held by the Department that I require to prepare for the cross-examination. (Indistinct) many of these have been provided to you, about 2014-02-25”.*

15 And then paragraph 7 he says:

“Accordingly ...”.

And I stress the word “accordingly because it then tells us that that is needed to prepare for cross-examination, is the reason for this formal application in terms of Rule 35(1) of the Uniform Rules of the High Court.

20 *“... to make discovery of all the documents, record in the department’s possession or held under its control and which are relevant to a matter of the acquisitions of the Patrol Corvette under the Department’s Strategic Defence Packages”.*

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24 MARCH 2014

PHASE 1

So there we have the high water mark of the motivation of the request, that the applicant requires documents to prepare for cross-examination and the documents he requires are apparently all the documents relevant to the acquisition of the Patrol Corvettes. In paragraph 7 of my submissions they made the point in paragraph 6 that the applicant did not set out his interest and by interest I mean his area of personal knowledge for expertise by way of which he could assist this Commission. I have assumed at best for the applicant and his interest may be (indistinct) to me his intent to cross-examine Admiral Kamerman.

Even if this assumption which I submit is an incorrect one, but even granting him that interpretation of the directive in his favour it is common cause that the only document specified thus far for the purposes of his cross-examination of Admiral Kamerman and held by the Department had been provided. These were the minutes of the Naval Board meetings and the request, sorry, the provision of the documents in paragraph 18 of the answering affidavit may be found, or the evidence in that regard may be found at page 601 to 602 and I've asked the Commissioners to note that where in brackets I have the referenced answer, paragraph 18 (indistinct) pages 601 to 602.

And then where I have the reference "Reply", that would be the applicant's reply paragraph 61 (indistinct) page

24 MARCH 2014

PHASE 1

541 of these papers. If I may read paragraph 61 to you, you needn't turn it up because it is clear in the folder that I am reading from page 541 at paragraph 61, there the applicant says:

5 *"I confirm that I have received from the DoD the minutes of the Naval Board and reduced Naval Board meetings".*

In paragraph 8 of my submissions I then proceed to make the submission that:

10 *"The applicant has not specified any further documents that he requires from the Department in order to cross-examine either Mr Nortjé or Admiral Kamerman".*

What he does do in his answer is to attempt to describe other
15 specific documents he says he requires and there I would ask you Commissioners to please turn onto page 542 of this bundle. At paragraph 62 to 64 after conceding the department has made available to him the Naval Board minutes which is what he has specified he required, it says:

20 *"However, I state that I am not actually seeking documents from the DoD, I am seeking documents from the APC ...".*

In other words the Commission itself.

25 *"... which it should then get from the originating parties and where I have indicated the identity of*

24 MARCH 2014

PHASE 1

these”.

In that regard the indication of the identity of documents with the Naval Board minutes, and there was no identification of further specified documents originating from the DoD, but he
5 continues at page 63 to expand his request now in reply which as the Commission well knows is impermissible, but nonetheless let us deal with it:

*“One entire category of documents that I seek and which are clearly the most relevant to both the
10 matter in general and my cross-examination of two witnesses specifically are the documents used by the JIT, specifically the NPA’s, (National Prosecuting Authority) IDSPO ...”.*

And there I take it he’s referring to the investigation, the
15 Investigative Directorate of Serious Economic Offences.

“... when interviewing a wide range of witnesses in its STP’s investigation including the two witnesses who I wish to ...”.

Or now possibly wish to:

“... cross-examine”.

Commissioners I make the obvious point that this was not in the two-page application brought, it’s in reply, but more importantly the originator of these documents is identified as being the JIT or the National Prosecuting Authority and there is
25 no allegation that these documents belonging to the NPA are

24 MARCH 2014

PHASE 1

held by the Department and can be made available by the Department other than the vague assertion in paragraph 64 which reads as follows:

5 *“As I am aware most of these are DoD and ARMSCOR documents and I cannot remember receiving any of these”.*

Now that falls far short of the requirements of the directive which would be to state reasons why the applicant believes the particular party is in possession of the specified documents required, it's quite obvious from the context that these documents were held by the JIT, alternatively the National Prosecuting Authority. So, even if this had been made out in the applications (indistinct) statement itself, the context indicates that these documents are not appropriately sought against the department.

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While we're on that point may I draw the Commissioners' attention also to these words at paragraph 63 at the end of the paragraph, he's talking about the cross-examination including the two witnesses and I'll take it to mean Mr Nortjé and Admiral Kamerman:

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“... who I wish to (or now possibly wish to) ...”.

And I indicate to the Commissioners that this applicant is equivocating about whether he does intend to cross-examine at all, even in his own reply which is part (indistinct) clear, in fact the implication is he once wished to but now no longer

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24 MARCH 2014

PHASE 1

wishes to cross-examine Admiral Kamerman and I return to this point later in my submissions. If I may then ask you to return to the heads of argument at paragraph 600, sorry, page 642, and I'm dealing with section pertaining to the Department's tender and undertaking. In paragraph 9 I make the submission that:

5 *"In any event the Department tenders to provide the applicant with any further documents wilfully sought rendering the order presently sought against it*
10 *inappropriate".*

Firstly the department has tendered to make Admiral Kamerman's statement, together with documents upon which he intends to rely available to the applicant as soon as it is in a position to do so, so that the applicant can prepare his cross-examination. And that tender you will find in the answering affidavit at paragraph 20.1, please note the page reference there, it's page 604.

Secondly if the applicant requests further specified documents in order to prepare for his cross-examination of Admiral Kamerman the Department have undertaken to locate, seek that declassification of and produce the relevant documents and that tender or undertaking is at paragraph 20.4 which the Commission will find at pages 604 to 605 of these papers.

25 *"If the Department fails to produce specified*

24 MARCH 2014

PHASE 1

documents timeously and lawfully required by the applicant for the purposes of the cross-examination of Admiral Kamerman, the applicant has these rights. At this stage, however, the applicant have not made out a proper case against the department where (indistinct) the documents, nor has he set out any reasons why the Department's tender and undertaking are inadequate to ensure fairness towards him as a cross-examiner".

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Commissioners, I now wish to deal with the discretion afforded to the chairperson in the directives. In paragraph 11 of my submissions I submit that:

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"The chairperson has a discretion in regard to whether the discovery of any documents is required or permitted. In this regard this Commission is respectfully requested to take into account the following:

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- The applicant deliver the request to cross-examine Admiral Kamerman, however, the applicant then made the subsequent statement which indicated at best and on his own version that he may withdraw that request".

25

And there I ask you to insert the page references for paragraph 17.4 of the answering affidavit at page 600 and in the applicant's reply paragraph 48 which you find at page 440.

24 MARCH 2014

PHASE 1

“The applicant was thus called upon to clarify his intentions as his entire application was based upon his rights to prepare to cross-examine Admiral Kamerman”.

5 The reference is there to the paragraphs by page 601 of the papers and those references are to the answering affidavit signed by Admiral (indistinct) calling upon him to clarify his intentions. At paragraph 12.2 of my submissions I continue that:

10 *“The applicant is equivocating and refuses to make his intentions clear in this regard. He refuses to clarify his current subjective intention”.*

In other words his true intentions presently held, saying his intention is not relevant. Commissioners, I respectfully submit that there is hardly any other fact more relevant to this particular application than whether he presently held the intention to cross-examine Admiral Kamerman.

15 *“Instead he relies on the fact that the written record of the written record which remains my intention to cross-examine Rear Admiral Kamerman until such*
20 *time ...”.*

And he continues to the several preconditions. Now that process of equivocation may be found in the papers at page 541 and 542. I respectfully submit that he trifles with this Commission, avoiding an honest disclosure of his true
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24 MARCH 2014

PHASE 1

intentions unless and until he is forthright and furnish us with unequivocal statement (indistinct) that he does indeed have intent to cross-examine Admiral Kamerman and requires specified documents for that purpose. I submit this present application for discovery (indistinct) and that it should be refused.

That was the first factor to please take into account in exercising your discretion for or against the applicant, the second factor in exercising your discretion is set out in paragraph 13 of the written submissions before you.

“The failure to identify his interest and in particular documents still required is particularly egregious when there is evidence that the applicant already possesses a vast number of the Department’s documents relevant to the Information Management System of the Patrol Corvettes. Such documents were obtained under a prior process and on his own version some 2000 evidentiary documents were obtained in consequence of the damages action against the Department”.

Commissioners, if you would please note that the references may be found on page 461 of the papers and I stress that this is his own version. The Commissioners will be aware that there is a dispute of fact on the papers which cannot be resolved on these papers and so I have only sought to draw

24 MARCH 2014

PHASE 1

what is from the applicant's own version. At page 645 of the written submissions at the end of paragraph 13 there was a reference to the applicant's reply paragraph 67. Please would you note that that appears at page 542.

5 Commissioners, may I ask you to please turn on to page 542 at paragraph 67. I am now reading from the signed reply of the applicant in paragraph 67, he says:

10 *"In this regard firstly and as a result of the DoD's own opposition to my prior application the court orders to produce these documents brought in respect of the reduced record. This reduced record applied only to the Corvette Combat Suite and the Integrated Platform Management System Simulator, part of the Corvette Platform. The reduced record was also limited to a certain time period".*

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I have asked the Commissioners to look at that paragraph because it appears on that version that in the prior application an applicant was awarded access to a certain category of documents and one may only assume, not having the court papers at this stage that the court determined that that was his area of interest, legal interest. Similarly having failed to set out any legal interest to the documents in this application one may only draw a reasonable conclusion that his request is too broad, his request in this application was in relation to access to all the documents in the hearing's possession relevant to the

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24 MARCH 2014

PHASE 1

acquisition of the Patrol Corvette, not merely relevant to the acquisition of one of the subsystems of the Combat Suite of the Patrol Corvette, and so the submission is that the indications are the discovery he seeks in this application is too wide and is not justified by way of reference to an interest in the application.

Commissioners, I then return to my submissions at page 645 paragraph 14, and this is the third aspect I request you take into consideration in exercising your discretion. This submission pertains to the declassification of documents, it is unworkable to require that all documents (indistinct) from the Department be declassified. That would be a recipe for (indistinct). Today the practice of (indistinct) and as and when specified document that originated from the Department are required by the evidence leaders or the Commission, the Department has attended to the (indistinct) declassification and reduction and I respectfully submit that this is an arrangement contemplated by paragraph 34 of the directives that was being directed reading that documents which by law are protected from public disclosure will remain so protected. It should apply in relation to specified documents as and when sought by the applicant, there is thus every reason to require that the applicant specify the particular documents required in accordance with the directives and there is every reason not to grant a wide-ranging discovery order for a vast (indistinct)

24 MARCH 2014

PHASE 1

unspecified documents.

I proceed to the "Conclusion" Commissioners at paragraph 15 of my submissions:

5 *"The applicant makes no attempt to qualify himself or state his area of personal knowledge, identify any particular documents required for his cross-examination pertaining to such interest, to set out reasons why he (indistinct) Department of such documents (indistinct) unequivocally state that he*
10 *doesn't need to cross-examine, unless and until he does so he has not brought himself within the requirements of the directive and he is certainly not entitled to a broad range of discovery under Rule*
15 *35. In addition for the reasons set out above .."*

15 And here I'm referring to paragraphs 12 to 14 where I deal with the discretionary evidence which I submit should weigh with the Commission:

20 *"... I respectfully submit that the Commission should exercise this discretion against the applicant and the client grant the order presently sought".*

Those are my submissions, thank you.

CHAIRPERSON: Thank you. Advocate Solomon, are you inclined to say anything at this stage?

ADV SOLOMON: Morning Chair, Commissioner Musi. No, I
25 have nothing to add at this stage, thank you.

24 MARCH 2014

PHASE 1

NOTE: Caucus.

CHAIRPERSON: Thanks a lot. Firstly we'll want to make the following observation that the application that Mr, that the right to cross-examine Mr Nortjé that was granted to Mr Young has not been utilised as Mr Young has now withdrawn his request to cross-examine Mr Nortjé. Two; after making, after withdrawing his application to, or after declining to exercise his right to cross-examine Mr Nortjé Mr Young then brought three applications against the APC amongst others (indistinct) DoD.

We have looked at the said applications and listened to argument presented before us by counsels and we are of the view that Mr Young has not made a case for any of the orders that he is seeking before this Commission and three; the Commission cannot grant such broadly worded request for access to documentation because if we do that then we will create very serious difficulties amongst others for both the Commission and the DoD and therefore the applications by the Mr Young directed against the APC, DoD and other parties are therefore rejected. Thank you.

ADV CANE: As the Commission pleases.

NOTE: Caucus.

CHAIRPERSON: And lastly of course I think the order that we have just made now implies either the order that we granted against Mr Young last time when we were sitting is revoked.

24 MARCH 2014

PHASE 1

Thank you.

ADV SOLOMON: Thank you Chair.

ADV MPHAGA: Mr Chair, that would be all Chair, it was only, the sitting was only for the applications and we are in
5 your hands in respect of the issue of the postponement itself.

CHAIRPERSON: Advocate Mphaga you are right, we were supposed to deal with the question of postponement but then there is another issue which we need to deal with and that is the issue of National Treasury, when are they coming, are they
10 ready, are we going to be in a position to start on the 1st of April or not?

ADV MPHAGA: Thanks Chair. Yes Chair, we have received the correspondence from Treasury where they indicate that their witness Mr Donaldson is 97% ready, the statement,
15 and we have communicated this morning to establish whether he'd be available to commence on the 1st of April 2014, we have been advised that unfortunately the counsel who is responsible for representing Treasury is not available on the 1st and is only available on the 9th as the scheduling of the
20 Commission, so in that regard they are unavailable for the 1st.

CHAIRPERSON: Advocate Mphaga, it can be a good reason for trying to say that I cannot come to court on such a date because my counsel is not available?

ADV MPHAGA: Yes Chair, (indistinct) just 1% to us is that
25 counsel had a schedule to be here on the 9th in accordance

24 MARCH 2014

PHASE 1

with the programme, so they say that as a result they are requesting an indulgence to only come on the 9th if possible.

CHAIRPERSON: If at all we are going to grant them that indulgence what does that do to our programme, if we are going to sit now and wait for the 9th and only start on the 9th, what does that do to our programme? That is the first thing, the second (indistinct) that I have is for National Treasury saying that we must start on the 9th because their counsel is not available. That to me is totally unacceptable, we cannot fail to start on the 1st of April because their counsel is not available and then secondly in our communication with them if I recall we said to them that these are the days, but these days might change.

Mind you, we agreed that their witnesses will not come on the dates on which they are supposed in terms of the subpoenas because we'll make, we'll have some understanding with them, so I cannot understand why National Treasury now should tell us that their counsel will only be available on the 9th. Just hold there.

NOTE: Caucus.

CHAIRPERSON: Advocate Mphaga, I hope you will be ready with that witness on the 1st of April. If the answer is yes, can we proceed on the 1st of April? If at all there's a need to reissue new subpoenas against National Treasury because they want to renege from the arrangements that were made with

24 MARCH 2014

PHASE 1

them, then we'll reissue the subpoenas.

ADV MPHAGA: Chair, maybe we may adjourn so that we can communicate that with them and find out whether they are amenable to you to start. We are still waiting for the statement
5 to consider it because there were also certain requests made in the correspondence.

CHAIRPERSON: Advocate Mphaga, you say the question of them being amenable. If at all we are going to work on the basis of witnesses being amenable to come on particular days
10 that they (indistinct) we will never continue with this Commission. We had a specific arrangement with National Treasury, they must stick to those arrangements. The fact that their counsel is not available is neither here nor there, they can pick up another counsel, I'm not quite certain why
15 (indistinct) to that particular counsel who is not available. I think what we are going to do , we will adjourn. Just hold on.

NOTE: Caucus.

CHAIRPERSON: I think maybe what we should do, let's adjourn for tea, I see it's already 12h00, and we'll come back
20 after 30 minutes to wrap up the issue of when are we resuming.

ADV MPHAGA: Thanks Chair, we'll appreciate that.

CHAIRPERSON: Thank you.

(Commission adjourns.)

(Commission reopens.)

25 ADV MPHAGA: Thank you Chairperson. Chairperson, after

24 MARCH 2014

PHASE 1

having tried to speak to Treasury it would appear that indeed their counsel is not available on the 1st, we have, however, discussed the matter with the attorneys for Mr Grobler and it appears Mr Grobler will be available on Monday and I would
5 therefore leave it to you Advocate Sibeko and Sello to confirm the availability of Mr Grobler. Thank you Chair.

ADV SELLO: Thank you Chair, Commissioner Musi. I confirm that it's been brought to our attention that we should try to the best of our ability to ensure that Mr Grobler is
10 available to testify on the 1st of April and (indistinct) undertaking (indistinct) and we shall prepare the statement in the fullness of time (indistinct). We would just like to point out that Mr Grobler is not a substantive witness, consequently we believe that in as far as his evidence is concerned we should
15 be able to dispose of that in (indistinct) we anticipate at the latest 14h00 on Tuesday we should have (indistinct) of Mr Grobler. Thank you.

CHAIRPERSON: What about Mr Esterhuyze?

ADV SELLO: Mr Esterhuyze is a far more complex and
20 much, much more substantive witness who will require more time for preparation but the detail of that, if I may hand over to Advocate Sibeko possibly to give the Chair and Commissioner a sense of just how important and substantive this witness is.

ADV SIBEKO: Thank you Chair, Commissioner Musi. Mr
25 Esterhuyze's evidence straddles a very wide range of issues as

24 MARCH 2014

PHASE 1

we have found out during the course of last week that his evidence not only deals with the roles, the role that he played as a co-chairperson of the SOFCOM but he also was a member of the PCD and also took part in some of the upper (indistinct) bodies which then eventually the recommendations that were finally adopted by Cabinet.

Now the team that is going to be ensuring that Mr Grobler is able to give evidence on Monday, it's the very same team that is also working on Mr Eric Esterhuyze's statement, so the, and it would appear also that some members of the team are working also on the Hoffman statement, so it does raise some constraints to the team in trying to get all of these statements ready for next week and it is for that reason that we do not believe that Mr Esterhuyze's statement would be sufficiently prepared and that would enable him to be ready to give evidence immediately after Mr Grobler furnishes his evidence.

So our constraints with regard to capacity of the personnel assisting in the preparation of his statement and we perhaps should point out Chair that Mr Esterhuyze as was pointed out last week, he's no longer in the employ of ARMSCOR, so he is a kind of witness, although he is cooperating he is available as and when arrangements are made with him to avail himself but we will firstly be meeting with him during the course of next week to try and get his

24 MARCH 2014

PHASE 1

statement ready, but as soon as that statement is ready we would be able to deliver him to give evidence, it just may not be next week.

CHAIRPERSON: Okay, (indistinct) preference will be if at least next week we can get two witnesses, it appears as if it's possible that we can get at least Mr Grobler and Mr Hoffman next week. I think that's what we should strive to do, to get at least Mr Grobler and Mr Hoffman for next week, particularly bearing in mind the weight (indistinct) being told that one of them is only going to be in the box for half a day, for that reason we need to prepare the second witness so that next week should have two witnesses. So can we make sure that by Friday a summary of the statement of the witness that you are going to call on the 1st is on our website.

ADV SIBEKO: Indeed Chair we can only comment on the availability of Mr Grobler's statement or summary thereof being posted on Friday, I'm not certain if I'm able to speak on behalf of Mr Hoffman.

CHAIRPERSON: I'm aware of that, but then I'm sure the person who is supposed to do that is also listening. I think our (indistinct) Advocate Mphaga.

ADV MPHAGA: Thank you Chair. We will make our attempts to get Mr Hoffman ready by next week. As indicated we are still trying to locate him to confirm the arrangements.

CHAIRPERSON: Okay, thank you. Then if at all there's no

24 MARCH 2014

PHASE 1

other comments then we'll have to adjourn until the 1st of April
and we'll start at 10h00 as usual. Thank you.

(COMMISSION ADJOURNS)

5