

IN THE ARMS PROCUREMENT COMMISSION

ARMS PROCUREMENT COMMISSION: DR RICHARD YOUNG

Introduction

1. On 17 July 2014, the Commission received a letter from Bernadt Vukic Potash and Getz Attorneys, acting on behalf of Dr Young and CCII (Pty) Ltd setting out reasons why their client would not be in a position to appear before the Commission today. Among the reasons cited therein are the following:

- (a) On 11 July 2014 Dr Young sent an email to the evidence leaders in which he requested details of the arrangements for him to travel to Pretoria on 21 July 2014 to which he received no response.
 - (b) The schedule for the witnesses to be called after 21 July 2014 is entirely unrealistic and it would be impossible for the programme to be completed.
 - (c) The evidence leaders started preparing his evidence two weeks ago due to the change of the order of witnesses.
 - (d) Dr Young has produced 1061 documents, 200 of which he believes would be relevant to his evidence.
 - (e) Dr Young intends cross-examining Mr Frits Nortje and Adm Kamerman before he commences his evidence in chief.
 - (f) his requests for documents from Armscor and Department of Defence which have gone unheeded.
2. The Commission deems it imperative to respond and does so hereunder.

Travel arrangements

3. It is averred in the aforementioned letter that Dr Young inquired from Adv Skinner and Sibiya about travel arrangements and received no response. This inquiry was never brought to the attention of the Commission. On Friday, 11 July 2014, the Commission sent an email to Dr Young advising him that his evidence set down for hearing on the 21st of July 2014 had not been deferred and requesting him to indicate preferred date and time of travel to Pretoria to attend the Commission sitting of 21 July 2014.

4. To this request, Dr Young responded by saying:

“It is the responsibility of the APC as a consequence of issuing summons to make all provisions and arrangements in respect of travel from residence to destination and return as well as subsistence during the relevant period. ...

There is nothing that I have to do in this regard.”

5. The Commission neither directed nor received further queries in this regard from Dr Young. On 17 July 2014 it requested Dr Young’s identity number for the purpose of finalising his travel arrangements which he graciously provided. The Commission finalised his bookings and forwarded his e-ticket, hotel and shuttle vouchers to Dr Young on Friday evening at around 7h00 pm.

Unrealistic schedule and insufficient time allocated to evidence in chief

6. The dates allocated by the Commission to witnesses either for the evidence in chief and/or cross-examination of witnesses are not cast in stone. If the Commission consulted each and every witness and their legal representatives before it finalises its witness schedule, its work would grind to a halt. The ultimate decision in connection with these issues rests with the Chairperson of the Commission. This is implied in paragraph 3 of the Directives issued by the Chairperson of the Arms Procurement Commission which were published in the Government Gazette No 35325 of 9 May 2012 which states:

“The conduct of and the procedure of this inquiry shall be under the control and discretion of the Chairperson.”

Evidence leaders started recently to prepare Dr Young's evidence

7. It will be recalled that Dr Young was among critic witnesses who were earmarked to give evidence in March 2013. Even before a subpoena, which required him to appear before the Commission on 25 March 2013, was served on him, the Commission's evidence leaders *viz*, Adv Skinner SC, Lebala SC, Sibiyi and Ngobese consulted with Dr Young in his offices in Cape Town on 20 and 21 February 2013.

8. Furthermore, in the absence of a formal submission to the Commission by Dr Young and to ensure that the evidence leaders were *au fait* with issues pertaining to Dr Young and CCII, the Commission collated documents, including Dr Young's affidavit and annexures which he submitted to the Constitutional Court in support of Mr Terry Crawford-Browne's application in Case No CCT 103/10; his settlement agreement; CCII best and final offer for the NAV Distribution Subsystem and the Information Management Subsystem for the combat suite; formal complaint to the police by Dr Young dated October 2009; record of the Western Cape High Court matter between Dr Young and Yunis Shaik; record of the High Court in the matter between CCII and the Minister of Defence, Armscor and the African Defence Systems (Case No 217/02; record of the High Court matter between Dr Young and Selby Baqwa (case no 2161/2003; and other miscellaneous documents. The Commission's evidence leaders commenced sifting through these documents which were contained in 10 arch lever files in March and June 2013 by the Commission's evidence leaders.

9. Consultations with Dr Young never stopped. Advocates Skinner SC and Sibiyi met again with Dr Young in Cape Town on 04 and 05 June 2013. At this time they also commenced working on Dr Young's draft statement.

10. Adv Skinner and Sibiyi consulted with Dr Young on 8, 9 and 10 July 2014 and again on 16 to 18 July 2014.

11. A far as I am aware no other witness has been consulted with as extensively as the team has with Dr Young, at a huge cost to the Commission.

Application to cross-examine Mr Nortje and Adm Kamerman and requests for documents

Documents requested and purpose for which they were required

12. Dr Young submitted an application to cross-examine Mr Nortje on 17 October 2013. On 25 October 2013 the Commission informed Dr Young that his application to cross-examine Mr Nortje has been granted and drew his attention to the fact that he would commence giving evidence on 04 November 2013. To prepare he requested to be provided in advance with copies of Mr Nortje's bundle. This request was complied with. On 29 October 2013 Mr Nortje's bundle was delivered at his offices in Cape Town. On 03 November 2013, Dr Young withdrew his application and replaced it with a new "substantive application". He appendix A setting out documents he required, among them the Supply Contract for the Aerospatiale Exocet MM40 Surface to surface Missile concluded between Armscor and EADS in 2000; the umbrella agreement for the Patrol Corvette Combat Suite; transcripts of section 28 interviews.

13. In an email dated 19 November 2013, he submitted further requests for documents. Among the documents he required were the following: transcript of section 28 interview of Mr Shaik; Report of Detexis Diacerto Data Bus and Report on IMS and Detexis Diacerto Data Bus from Frits Nortje to Siphon Thomo. On the heels of this request came another request on 22 November 2013 in which Dr Young requested all documents used in JIT interviews of certain individuals whose names he specified. On 19 January 2014, under cover of an email he requested all reports, memoranda, documentation, Patrol corvette JIT correspondence, Armscor correspondence, DoD correspondence, Siemens correspondence concerning South African cable manufacturing company Bartel Kabel Werke dated between 1997 and 2004.

14. On 10 January 2014, Dr Young submitted a formal application to be furnished with with copies of witness bundles of:

- (a) Capt Jorrie Jordaan;
- (b) Dawie Griesel;
- (c) Byrall Smith; and
- (d) Frits Nortje

15. In the aforesaid application, he mentioned that he stated that he advised the Commission on the 8th of January 2014 that he wished to cross-examine Adm Jonathan Kamerman. He further requested a list of all other documents held by the Commission relevant to the Corvette component of the SDPP.

16. On 24 and 25 of February 2014, Dr Young submitted applications in terms of Rule 35 of the Uniform Rules of the High Court to be furnished with relevant documents. On 27 February 2014, Dr Young withdrew his application to cross-examine Mr Frits Nortje.

Impact on commission processes

17. On 6 November 2013, the Commission stood down the evidence of Mr Nortje to give Adv Lebala the opportunity to consult with Mr Nortje. The Chairperson further issued a directive that all those who intend cross-examining a witness must be ready to proceed immediately after a witness has given evidence.

18. On 5 February 2014, the legal representative of Armscor informed the Commission that they were weary to allow Mr Nortje to take the stand before he had seen documents in the possession of Dr Young nor gone through the documents Dr Young wishes to rely upon. The inordinately amount of time that passed without Mr Nortje having given his testimony was captured by the Chairperson in the following terms.

“Mr Nortje was supposed to have testified in November [2013], we are now four months down the line and I don’t think I’m going to allow a situation where we are going to delay the testimony of Mr Nortje.”

19. On 03 March 2014, the Commission’s evidence leaders requested the Commission to grant them leave to meet with Dr Young to discuss issues pertaining to the evidence of Mr Nortje. To this request the Chairperson responded.

“...we should have dealt with the evidence of Mr Nortje last year November which we did not because you wanted to accommodate Dr Young. It is 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 are left with nine months, for how long are we going to try and accommodate Dr Young before we can call Mr Nortje...If we are going to spend another four or five months talking to Dr Young before we can call Mr Nortje we’ll never finish our work, that is my difficulty.”

20. The Commission suspended the order compelling Dr Young to discover documents by 3 March 2014 and his two applications wherein he intended compelling the Commission and Armscor and Department of Defence to discover documents, until 17 March 2014.

21. Commissioner Musi added:

“I think what we are doing, we are trying to bend 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 that...I agree with the sentiments of the legal representatives that we should try and keep him on board.

Conclusions reached by Commission on 24 March 2014 re access to documents and cross-examination

22. On 24 March 2014, it was pointed out that Dr Young withdrew his application to cross-examine Mr Nortje and that if he wished to cross-examine he would be required to bring an application to recall Mr Nortje, which application would have its own requirements and only then would the applications for discovery become relevant.

23. The Commission ruled as follows:

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

24. Dr Young withdrew his application to cross-examine Mr Nortje. He is yet to submit an application to cross-examine Adm Kamerman. His applications for orders compelling Armscor and Department of Defence to produce documents were dismissed by the Commission.

Concluding remarks

25. Dr Young has participated as a witness at the JIT and he is not a total stranger who has still to amass information regarding specific allegations he has on matters pertaining to the arms procurement. He who alleges must prove (its a simple principle of the law of evidence). However Dr Young persistently seeks information from the Commission as if he has not previously made

allegations, in court papers, print and electronic media. All that is needed from him is to repeat such allegations formally at the inquiry.