

**In the Arms Procurement Commission of Enquiry**

In the matter between :

**Richard Michael Moberly Young**

Applicant

and :

**Arms Procurement Commission [APC]**

Commission

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**Submission**

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I Richard Michael Moberly Young state as follows :

1. I am an adult male citizen of the Republic of South Africa and a registered engineer by profession.
2. I have previously been summonsed by the Arms Procurement Commission (the commission) to appear as a witness before it on 25 March 2013. That did not occur as the APC changed its order of witnesses.
3. Thereafter I was summonsed by the APC to appear as a witness before it on 21 July 2014. However, that also did not occur as the commission was not yet complete with preparing my Witness Statement and Evidence Bundles that at that stage my evidence leaders had insisted and undertaken to do themselves, as well as that I was suffering from a serious eye problem and had just had a major eye operation (a corneal transplant), both of which substantially affected my ability to prepare myself to give evidence. (refer Annexure RMY01)

4. The proceedings around my non-appearance on 21 July 2014 caused my allocated evidence leaders, Advocates Barry Skinner SC and Carol Sibiya, to resign their participation in the commission and cease being my evidence leaders forthwith. Their resignation letter was published on the Mail & Guardian website on 2014-08-11 within its article entitled ***Resignations take arms deal probe from mess to 'farce'***. (refer Annexure RMY02 and Annexure RMY03)
5. On 5 November 2014 I was advised by email by Advocate Mdumbe that I had been allocated new evidence leaders being Advocates Tshepo Sibeko SC and Mahlape Sello. (refer Annexure RMY06)
6. In the same email from Advocate Mdumbe he furnished me with a copy of the commission's summons to appear before it on 2 February 2015.
7. I need to point out that the date for this appearance was unilaterally set by the commission and without any consultation with me whether it was convenient or indeed possible considering that new evidence leaders were only being assigned to me on that same day and I had not yet been furnished with the first draft of my witness statement being prepared by the commission. This is contrary to a number of prior communications with the commission where it was advised that mutually convenient dates would be sought to both prepare and give my evidence. Indeed the commission's letter to my then attorneys of record dated 20 August 2014 stated as follows :

"A fresh summons will be issued after consultation with your client, your goodselves and the evidence leaders assigned to lead his evidence and suitable dates arranged." (refer Annexure RMY04 and Annexure RMY05)

Suffice to say that there were no such consultations with me, nor with my then attorneys of record, nor to my knowledge with my new evidence leaders. Additionally, the date set by the commission was not only not suitable, it would be entirely impossible if my new evidence leaders were only to be assigned and the first draft of my witness statement furnished to me nearly three months later.

8. On 15 November 2015 Advocate Mdumbe furnished me by email with the draft statement prepared by Advocates Skinner and Sibiya after their fourth and final consultation with me on 18 July 2014. The relevant filename is **1st draft dr young 27 Aug (1).docx**, however the file creation date is 2014-11-02 08:36. This in effect means that it took over three months to produce this draft and nearly four months for it to be furnished to me. This is despite me requesting the recorded notes of the consultation on multiple occasions during that time (refer Annexure RMY07).
9. I was therefore most surprised and taken aback when I received and reviewed this completely new version of draft witness statement drafted by Advocate Sibiya. She had clearly taken a particulars of claim from my related damages action and used that as a basis for this new version. This was clear because it was replete with the terms *plaintiff* and *defendant* which are plainly wrong in the context and contained a multitude of omissions from my own draft versions (as provided to the commission as it required for my own cross-examination of other witnesses), along with spelling, punctuation, grammatical and wordprocessing errors.
10. In any case, it took me the best part of 50 manhours over a period of two weeks to merge the two versions and correct the errors, at least most of them.
11. I met with Advocates Sibeko and Sello for the first time between 19 and 21 November 2014 for three days. There for the first time they advised me that they did not want to prepare my witness statement and that I had to do this myself while they would assist me in both preparing it, checking it and cross-referencing it to the relevant documents in my discovery schedule making up the evidence bundles.
12. My mid-December I realised the impossibility of properly finalising my witness statement and evidence bundles in time for the summonsed appearance date of 2 February 2015. Accordingly, I wrote an email to Advocates Mdumbe, Sibeko and Sello advising them that we needed to discuss matters with a view to future planning and conduct regarding my giving evidence before the commission. The first and

only substantive response I had to that was on 12 January 2015 where Advocate Mdumbe requested that I indicate which dates would be convenient to me for further consultation with Advocates Sibeko and Sello. I need to point out that by this stage it was exactly three weeks until my scheduled appearance. (refer Annexure RMY08)

13. I responded the same day and agreed to meet Advocates Sibeko and Sello the next week for three days. By the time we completed those consultations it was then one working week until my scheduled appearance.

14. On 20 January 2015 I advised Advocate Mdumbe as follows :

"Additionally I think that we are at a point of common cause that there is no possibility whatsoever of my witness statement and evidence bundles being anywhere close to being finalise[d] for some time and consequently that the date of 2015-02-02 for my appearance before the APC has to be postponed.

I will discuss this matter with Advocates Tshepo Sibeko SC and Mahlape Sello during our meetings this week and we will try to get a idea of when my witness statement and evidence bundles m[a]y be finalised." (refer Annexure RMY09)

15. Since then I have discussed this with Advocates Sibeko and Sello during our meetings the week before last. They are in agreement that my witness statement and evidence bundles are indeed not ready and will not be for some time.

16. They undertook to bring this matter before the commission as soon as possible after their return to Gauteng after our meetings.

17. I understood that this happened this last Thursday morning and that there was consequently acceptance by the commission of this position and that my evidence should be stood down until my witness statement and evidence bundles are finalised.

18. At our meetings in middle January I stated my position that I thought that I should commence with my evidence on the first working Monday of April as that would allow both me and them to reasonably prepare my witness statement and evidence bundles as well as give the commission enough time to furnish to me the documents that I have requested of it, as well as start on a Monday and thereby provide the opportunity of completing my evidence in one contiguous working week. Their response was that April was possibly too late as at this time the tenure of the commission is only until the end of April 2015.
19. As a via media we agreed that the first working Monday of March should be viable and mutually acceptable, albeit that we would have less time to properly prepare my witness statement and evidence bundles. The first working Monday of March is 2 March 2015. However, Advocate Sibeko has a commitment in the Constitutional Court starting that day and suggested Wednesday 4 March 2015. I was unhappy with that as it only gives three days in that week and I do not think that will be sufficient to complete my evidence and it will be greatly inconvenient for me and costly to the commission to have to return home in the Cape for the weekend and to return to Pretoria on the Sunday. This would indicate that commencing Monday 9 March 2015 would be a mutually convenient and appropriate date.
20. I tried to telephone Advocate Sello on Wednesday afternoon to ascertain the status of these arrangements, but was unable to contact her. She did contact me the next day and advised me that the principle of standing down my evidence to a later date was accepted by the commission.
21. However Advocate Mdumbe phoned me later that day to advise me that the commission required me to appear in person before it on the morning of Monday 2 February 2015 in accordance with its summons in order to formalise the new and agreed arrangements. I responded that it would be of substantial inconvenience for me to do this and that I was prepared to make a formal written submission to the commission in this regard.

22. As we could not agree on this, Advocate Mdumbe advised me that he would contact Advocate Sello and discuss the matter with her after which she would discuss the matter again with me that day. She did indeed contact me early that evening and we discussed more-or-less the same things that Advocate Mdumbe and I had done. Unfortunately we could not agree on the matter and I also told her that due to the shortness of notice that I been given, I had no opportunity to getting any legal advice in this regard. We therefore agreed that she would revert to me the next day to resume the discussions.
23. As matters transpired those were the last discussions I had on the matter with either Advocate Mdumbe or my evidence leaders.
24. I have nevertheless given this matter great consideration in the past three days and remain undecided as to the most appropriate course of action under the circumstances.
25. It is common cause with my evidence leaders and Advocate Mdumbe that my evidence before the commission simply cannot commence without a finalised witness statement and evidence bundles. It is also substantially inconvenient for me to go the Pretoria merely to state this in person; it will be very costly to the commission to get me there and very costly of my irreplaceable time which I really need to be applying to completing my witness statement. In this regard it will take to all intents and purposes two full days for me to get to Cape Town, fly to Johannesburg on Sunday afternoon, get to Pretoria, stay there overnight, make a short appearance on the Monday morning and return to Cape Town (let alone return to my home).
26. On the other hand there is a summons for my appearance to give evidence on Monday 2 February 2015.
27. Additionally, with this only being brought to my attention on Thursday afternoon and evening, there was simply no proper opportunity for me to arrange a legal representation to appear on my behalf.
28. However, all of this became moot when there was no further communication with me by the commission after Thursday evening

and, as importantly, as of Sunday evening no arrangements had been made by the commission for my travel and subsistence to Gauteng and Pretoria. This is uncontroversially a responsibility of the commission, one that we have traversed before in July 2014. (refer Annexure RMY02)

29. Accordingly I tender this explanation for not appearing in person before the commission on the morning of Monday 2 February 2015 and request the commission's condonation thereof.
30. All things be equal I also tender my undertaking to appear to give evidence to the commission at an appropriate date that is mutually convenient.
31. In this respect it is my considered view that the following are reasonable conditions therefore :
  - 31.1 that I will complete to be best of my ability and within the available time an acceptable witness statement to support my oral evidence and furnish it to the commission;
  - 31.2 that I will furnish copies to the commission of all documents of which I am aware and that I have in my possession which I use to support my oral evidence;
  - 31.3 that my allocated evidence leaders fully assist me in providing timely relevant feedback on the drafts of my witness statement that I provide to them from time to time in the interim;
  - 31.4 that the preparation of the companion evidence bundles remains the responsibility of the commission;
  - 31.5 the commission provides me with copies of the evidence documents that I have requested of it, or provides reasonable explanations as to why this is impossible in certain instances;

31.6 that the commission ensures that there are visual aids such as large screens and projectors present in the venue for my evidence (refer Annexure RMY01); and

31.7 that my evidence is given commencing on the Monday of a five day hearing week.

## **Annexures**

Annexures RMY01 to RMY09 are attached in date order.



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Richard Michael Moberly Young

2015-02-01

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