

## In the Arms Procurement Commission of Enquiry

In the matter between :

**Richard Michael Moberly Young**

Applicant

and :

**Arms Procurement Commission**

Commission (APC)

and :

**Armsscor**

Third Party

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### Application to Set Aside Order to Produce Documents and Records under Rule 35(7)

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#### Preamble

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. Previously on 2013-10-17 I made a written application to the Arms Procurement Commission (APC) to cross-examine one Frits Nortjé (Nortjé) holding the designated position of Armsscor Programme Manager Project Sitron (APMS), one of the legs of the SDPs and of the APC's investigations.
3. On 2014-01-25 I received a letter (annexed as Annexure A) from the Secretariat of the Commission instructing me to :

“make discovery on oath to the inquiry within a time-frame directed by the Chairperson of **documents which he/she intends to use in the inquiry**. Further to clause 32 of the Directives of the said Directives, you are hereby called upon to make discovery on oath within seven (7) days of receipt hereof of all documents which you **intend to use in the cross-examination of Mr Frits Nortje**. [my bold emphasis]

4. On 2014-01-27 I replied to the APC and in particular I noted the requirement that I produce this Discovery Affidavit within seven days of its letter.
5. I advised that this was simply impossible for the reasons that I am in full-time employ running my company, secondly I run a small farm effectively myself , thirdly I am in the middle of complex building operations and fourthly I had visitors from Japan the following Monday in Cape Town and had to prepare for their visit as well as make my way to Cape Town for the meeting.
6. Nevertheless I completed my Discovery Affidavit and its Discovery Schedule by 2014-02-12 and submitted a signed, but not commissioned Discovery Affidavit the same day.
7. It needs to be said that this Discovery Schedule identifies 1 061 individual documents comprising of over 15 000 pages which are relevant and which I may use in the cross-examination of Mr Frits Nortje.
8. Several manyears of work have gone into creating a generic discovery schedule and I have personally contributed a further several manmonths of work during the last four months and several manweeks of work during the last four weeks.
9. In addition to the 1 061 individual documents identified by the Discovery Schedule, are a further four line items, these being in respect of three PAIA applications to the DoD/Armcor, Office of the Auditor-General and Office of the Public Protector respectively. Many of these documents were received very much later than my legal actions in the 2003 period and have simply never been transformed into a form suitable for producing a discovery schedule. The documents were received in paper form and only some of these were extracted from the bulk bundles of documents received and only some of them were scanned into electronic format.
10. I included these documents because a Rule 35 Discovery Affidavit requires the deponent thereto to attest to the fact that he has no other documents **related** to the matter.
11. The last item in my Discovery Schedule covers the evidence documents relevant to my damages claim against DoD, Armcor and ADS.
12. On 2014-02-19 I sent a commissioned version of my Discovery Affidavit to the APC and the next day couriered a commissioned version of my Discovery Affidavit as well as the Discovery Schedule to the APC.
13. In the meantime on 2014-02-11 the APC's Leader of Legal Research Advocate Fanyana Mdumbe sent me an email advising me that the APC's evidence leaders assigned to lead the evidence of Mr Nortje requested a meeting with me.
14. On the same day I acceded to having that meeting and advised that I would be available in Cape Town the following week from the Tuesday to the Friday.

15. On 2014-02-12 Advocate Fanyana Advocate Fanyana Mdumbe sent me an email advising me that the APC intended inviting Armscor and DOD legal representatives to attend this meeting. He added that he hoped that this would be acceptable to me.
16. Again on the same day I acceded to having that meeting under certain controlled conditions.
17. Late on the afternoon of Friday 2014-02-14 Advocate Fanyana Advocate Fanyana Mdumbe telephoned me advising me that he would confirm the meeting by the end of the day.
18. On the Monday 2014-02-17, as I had advised that I would, I made my way to Cape Town expecting to hold the meeting between the Tuesday and the Friday.
19. On the Wednesday 2014-02-19 Advocate Fanyana Mdumbe sent me an email advising me that the meeting was cancelled.
20. In the meantime on 2014-02-17 I received an email from Advocate Fanyana Mdumbe advising me that "attached hereto please find a letter (annexed as Annexure D) from the Department of Defence legal representatives for your attention".
21. As it transpires this letter is not from the Department of Defence's legal representatives, but from Armscor's legal representatives.
22. Be that as it may, this letter request just 23 of the specific documents, but all of the generic documents making up the last four line items of my Discovery Schedule.
23. I immediately proceeded to prepare the 23 specific documents for photocopy as required in terms of Rule 35 and Armscor's legal representative's letter dated 2014-02-17.
24. This required several hours of work extracting these documents individually from the document repository. These documents also make up a total of 1 290 pages and under Rule 35 it is the norm for the requesting party to tender the costs of preparing for and making the copies.
25. Then on Friday 2014-02-21 Advocate Fanyana Mdumbe sent me an email asking whether the documents could be provided in electronic format, rather than paper copies. I immediately responded that this could be done, but that documents would also need to be scanned before they could be burnt onto a CD.
26. By Sunday 2014-02-23 I had all the 23 specific documents ready in electronic format with identifiable filename ready to either burn to a CD or possible send by email attachments (although some of these are quite large).

## **APC's Order of 2014-02-24**

27. Yet on Monday 2014-02-24 at 09:30 CAT Armscor submitted a formal application to the APC which served to move the Commission to compel me to produce all the documentation which forms part of my Discovery Schedule to my Discovery Affidavit that I deposed to on "Friday the 20th or Thursday the ..., Friday the 21st or Thursday the 20<sup>th</sup>" (sic). My Discovery Affidavit was actually deposed to on Tuesday 2014-02-18 (annexed as Annexure E).
28. It is noteworthy that counsel for Armscor makes much of the "facts" that my originally submitted version of my Discovery Affidavit was unsigned, whereas in fact it was signed (annexed as Annexure G) and sent to the APC's Advocate Fanyana Mdumbe under cover of my email of the same date (annexed as Annexure H). and that it was deposed to on "Friday the 21st or Thursday the 20<sup>th</sup>" whereas it was in fact deposed to on Tuesday the 18<sup>th</sup>. Now it may be that not much turns on these particular falsehoods, but what is relevant is that Armscor could issue its letter requesting copies of discovered documents on Monday the 17<sup>th</sup>.
29. What is further relevant is the continuity of the serious falsehoods and half-truths propagated by counsel for Armscor in its motion for the order to compel.
30. I hereby state for the record that these falsehoods as well as the unfairness surrounding Armscor's application and its securing of the Order of 2014-02-24 have led to my very severe prejudice.
31. In this respect and although I have twice requested it from the APC in writing, Armscor Application has not been furnished to me. But in any case it can be considered as an annexure to my application.
32. What I have had access to is the transcripts of the APC's hearings on Monday 2014-02-24. Therein lies an astonishing litany of falsehoods, and gigantic leaps of logic which underpin its application and has given rise to the Order.
33. Of particular significance is that counsel for Armscor avers that :
  - 33.1 "a period of five days for this purpose would be sufficient" [i.e. for production of over 8 000 document consisting of over 45 000 pages];
  - 33.2 "he doesn't need to physically make copies of these documents which he says will take him a long time";
  - 33.3 [he has] "no doubt in my own mind that he already has these documents in electronic format because that seems to be suggested in newspaper interviews et cetera, that he has a virtual library or press room of these documents."
34. These are monstrous averments made without any basis of truth, or research, or logic or care.

35. They are simply false.
36. It is true that some of the documents have been scanned into electronic format. But that does not imply that all of them have been.
37. But far more importantly it does not mean that the electronic documents are simply extractable from the manner in which they have been stored, which is exclusively for my own use, without any effort or time. To the contrary, each document relevant to this matter needs to be extracted individually. This could be either from the repository or from the original source, whether this be paper or electronic. The extraction of each document for production in either paper or electronic form requires an individual effort which requires both effort and time.
38. Applying the requirements of the Order in respect of labelling, paginated, referencing requires further both effort and time.
39. Applying the requirements of the Order in respect of Secret and Top Secret documents requires even further both effort and time.
40. It is also false, indeed puerile and certainly disingenuous that electric scanning requires no effort and cost while photocopying does so. The only difference is that photocopying requires paper and ink which a scanner does not. But a scanner requires other consumables, considerable ongoing maintenance and exactly the same amount of human effort to produce the electronic copies.
41. Even the bulk high-speed scanning of the documents in Items 1 062 to 1 065 would take longer than the five days provided by the Order. But practically, the actual scanning task would take several times longer than that. If it were done in accordance with the order it would take several manmonths.
42. From the transcripts of the APC hearings of that day, this was clearly done with the prior knowledge of the APC, but without my forewarning or any knowledge thereof.
43. This in my view contradicts two fundamental principles of law in not holding both parties equally and fairly before the law, as well as the *audi alteram partem* (hear the other side too) rule.
44. This in itself should cause the Order dated 2014-02-24 obtained by Armscor to be set aside.

### **Estimate of the Effort to Comply with the Order**

45. I know from my own direct and recent experience and dedicated efforts that the task required for preparing for electronic production of the requested 23 documents of 1 290 pages of Items 1 to 1 061 of the Discovery Schedule took me some 11 manhours.

46. The Order dated 2014-02-24 obtained by Armscor now calls for production of the balance of 1 038 documents of some 14 430 pages of Items 1 to 1 061 of the Discovery Schedule.
47. With the advantage of experience I will probably be able to take some 10 minutes per document to prepare for electronic production the 1 038 documents making up the balance of Items 1 062 to 1 064 in the form so ordered by the Order of 2014-02-24, this amounting to some 173 manhours or 4½ manweeks. However I cannot apply myself exclusively to this task and so it will take some 9 calendar weeks.
48. I have described above the magnitude of the task regarding scanning the some 32 000 pages of Items 1 062 to 1 065 of the Discovery Schedule. These probably amount to some 5 000 to 7 000 individual documents, probably 5 000 documents for Items 1 062 to 1 064 and 2 000 documents for Item 1 065.
49. Similarly it will take some 10 minutes per document to prepare for electronic production the estimated 5 000 documents making up Items 1 062 to 1 064, this amounting to some 833 manhours or 21 manweeks. However I cannot apply myself exclusively to this task and so it will take some 42 calendar weeks.
50. Similarly it will take some 10 minutes per document to prepare for electronic production the estimated 2 000 documents making up Item 1 065, this amounting to some 333 manhours or 8½ manweeks. However I cannot apply myself exclusively to this task and so it will take some 17 calendar weeks.
51. Thus the entire task to prepare for electronic production the some 8 000 documents of Items 1 to 1 065 in the form so ordered by the Order of 2014-02-24 amounts to some 33 manweeks over some 67 calendar weeks.
52. This is entirely reasonable when it is considered that the Discovery Schedule of Items 1 to 1 061 took over an estimated 6 manyears to produce (four persons over the period 2003 to 2007 plus a further manyear by me over the period 2003 to 2014).
53. I aver that there is no provision in Rule 35 of the Uniform Rules of the High Court for me to make copies in electronic format, clearly labelled, paginated, referenced against the Discovery Schedule in the Discovery Affidavit.
54. There is no provision in Rule 35 for me to produce these documents on an external hard drive or similar electronic storage device.
55. Conversely, Rule 35(6) requires the requesting party to inspect the discovered documents or tape recordings at some convenient place as notified by the other party and that the requesting party may take copies or transcriptions thereof.
56. Armscor's and the DoD's legal representatives and the APC evidences leaders were afforded at their instances the opportunity to so inspect the discovered documents at my offices in Cape Town and subsequently failed to do so.

57. In my view I have fully complied with Rule 35(2) and Rule 35(6) of the Uniform Rules of the High Court.
58. Rule 35(6) also stipulates that :
- “A party's failure to produce any such document or tape recording for inspection shall preclude him from using it at the trial, save where the court on good cause shown allows otherwise.”
59. While I admit that I cannot produce all some 8 000 documents in the time period stipulated by the Order, I aver that it is not that I refuse to do so. I however need the time and resources to do so.
60. I have nevertheless shown that I can produce the 23 specific documents requested in writing by the requesting party and presumably in terms of Rule 35.
61. Regarding encryption of and providing passwords for the Secret and Top Secret documents, this will mean that I have to extract, review and attend to each and every PDF document individually.
62. Accordingly it is simply impossible for me to comply with the Order in five working days.
63. I reasonably estimate on the basis of my own recent and directly relevant experience and effort, as well as simple arithmetic, that for me to comply with the Order will take some 33 manweeks applied over some 67 calendar weeks.

#### **APC's Hearings Transcript of 2014-02-05**

64. In the APC's hearings transcript of 2014-02-05 (the relevant extract attached as Annexure B) records the following :
- “Chairperson: Secondly from my understanding Dr Young, if he has not discovered any document he will not be allowed to use that document to cross-examine Mr Nortjé.”
- “Chairperson: I don't think that is very complicated, he must discover in order to be in a position to use that document to cross-examine Mr Nortjé.”
- “Chairperson: If Dr Young hasn't discovered he will not be allowed to use any of those documents in order to cross-examine Mr Nortjé.”
- “Chairperson: I think Advocate Ndumbi (sic), you have heard what I said and I think you must write a letter to Dr Young and advise him about my remarks that Mr Nortjé will testify on the date that we have arranged, two, Dr Young will not be allowed to use any document to cross-examine Mr Nortjé if he has not discovered that document.”

65. Consequently of the APC's ruling on 2014-02-06 on 2014-02-06 the APC's Leader of Legal Research Advocate Fanyana Mdumbe sent me a letter (attached as Annexure C) advising me that :

"The Commission therefore calls you to discover within seven days, failing which you will not be allowed to use any document in cross examination which you haven't discovered."

#### **Use of Documents in Cross-Examination of APC Witness**

66. Accordingly I advise that I shall not use the documents not produced in terms of my Discovery Affidavit in my cross-examination of APC witness Mr Frits Nortje.

#### **Withdrawal of Application to Cross-Examine APC Witness**

67. Additionally and consequent to the very severe prejudice to caused me regarding both my own discovery as well as the failure to discover by the other parties as I have requested on numerous occasions, I advise that I cannot properly prepare cross-examination of APC witness Mr Frits Nortje and accordingly withdraw my application to do so.

#### **Application to Set Aside APC's Order**

68. Accordingly I request that this application be heard as the APC's first order of business scheduled for Monday 2014-03-03 or as soon as possible thereafter.

#### **Prayer**

69. Consequently and as it is no longer applicable under the circumstances, I apply that the APC's Order of 2014-02-24 be set aside for all the reasons set about herein above.



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Richard Michael Moberly Young

2014-02-27



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Dear Sir

**Re: DISCOVERY OF DOCUMENTS TO BE USED IN THE ARMS PROCUREMENT  
COMMISSION'S HEARINGS**

The Arms Procurement Commission acknowledges receipt of your numerous requests for documents to be used by yourself for purposes of cross examination of Mr Frits Nortjé. The Commission is making all efforts to obtain the documents from the relevant departments and will avail the same to you on receipt thereof, possibly within the next few weeks.

Clause 32 of the Directives issued by the Chairperson of the Commission into the inquiry of the allegations of fraud, corruption, impropriety or irregularity of the Strategic Defence Procurement Package, provides that the Commission may at any stage call upon any person to make discovery

Commissioners: LW Seriti JA (Chairperson); HTM Musi JP  
Head of Secretariat : P.N Lufhondo



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on oath to the inquiry within a time-frame directed by the Chairperson of documents which he/she intends to use in the inquiry. Further to clause 32 of the Directives of the said Directives, you are hereby called upon to make discovery on oath within seven (7) days of receipt hereof of all documents which you intend to use in the cross-examination of Mr Frits Nortjé.

Since you have indicated in your emails that you intend to cross-examine R. Adm (JG) Johnny Kamerman, and also in view of the Commission's decision to call you to testify as a witness in the Commission's hearings, you are further called upon to compile separate lists and to discover on oath the documents which you intend to use in your evidence in chief at the Commission's hearings and in your cross-examination of R. Adm (JG) Kamerman. You are requested to submit these additional lists and documents at your earliest convenience. The separation of the lists is merely to facilitate the process of discovery and is not meant to place any less emphasis on any of the documents required for discovery.

The Commission would be much obliged if it could receive your prompt response hereto so as to expedite matters.

Yours sincerely

**MS P.N. LUPHONDO**

**SECRETARY: ARMS PROCUREMENT COMMISSION**

Date: 2014/01/25

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CHAIRPERSON: Thank you. Then in that case I suppose you have had the first consultation with the minister, with the former minister?

ADV SKINNER: Chair, we had an initial consultation with him in about June, July last year before the problem arose about legal representation for all the ministers, and until that was resolved we could not unfortunately continue, so we had a preliminary discussion with him but that's as far as the matter had advanced.

CHAIRPERSON: Yes, I'm asking that because I just wanted to get a feel of more or less how long do you think he'll be in the witness box, and then two; this person who is going to deal with the contracts, how long do you think that person is going to be in the box?

ADV SKINNER: Mr Chairman, answering the second part first, I don't believe that the person called on the contracts will be very long because that evidence is really formal in nature simply to prove that these are the relevant pages of the contracts. As regards the former minister the issue of his evidence that is relevant to the offset programme is fairly limited and I anticipate that that would probably be comfortably dealt with in the course of a day, if not less than a day but his legal team have indicated to us that they anticipate there may be several parties who wish to cross-examine him and his legal team have suggested that we should probably work on the basis

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of three days.

CHAIRPERSON: I'll tell you why I was asking those questions, then in that case I think we might want to bring forward the evidence of Mr Nortjé, probably call Mr Nortjé also  
5 that week, remember according to our timetable Mr Nortjé was supposed to come on the 24<sup>th</sup>, so in order to try and avoid wasting some few days during the course of that week because of the days that we are going to lose now I would suggest that maybe Advocate Ndumbi should try and talk to DoD and  
10 ARMSCOR and all evidence leaders who are going to deal with the evidence of Mr Nortjé and obviously Dr Young who said that he might want to cross-examine Mr Nortjé, so that we deal with the evidence of Mr Nortjé during the week of the 17<sup>th</sup>. That might help us to, you know to recoup some few days that we  
15 would have lost.

ADV SKINNER: Yes, as the Chair pleases. There are some practical problems that I know Advocate Solomon has raised with Advocate Ndumbi but we will certainly see if those can be resolved.

20 CHAIRPERSON: Advocate Solomon.

ADV SOLOMON: Thank you Chair, Commissioner Musi. Advocate Ndumbi did over the short adjournment discuss the question of moving Mr Nortjé's evidence forward. I did explain to him, and I think it's prudent to put on record there remains  
25 two difficulties to potentially having him available to give

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evidence on the 17<sup>th</sup> or thereabouts, 17<sup>th</sup> or 20<sup>th</sup>. The one is the question of the declassification of documents. You will recall that was an issue the last time we proposed to call Mr Nortjé and we couldn't for amongst other reasons that difficulty. That hasn't yet been resolved. We have from ARMSCOR's side submitted the requests for declassification of documentation requested by Mr Young or Dr Young, as well as other documentation that is necessary to form part of his evidence bundle, we are still awaiting a response from DoD, there has been some correspondence exchanged but as at the present time they haven't attended to it and I was suggesting to Advocate Ndumbi that he put the necessary pressure upon DoD to make sure that that declassification process is expedited so that there are no further delays in that regard.

So I have explained to him it's out of my control, I've left it to my attorneys and representatives of the DoD, their legal representatives and through the Secretariat to have that process completed so that Mr Nortjé can refer comfortably to documents and we're mindful of what you said Chair in regard to declassification of documents. That's the one problem that still remains, which is perhaps not insurmountable.

The other problem is the question of getting Dr Young to discuss, you may or may not be aware that the Secretariat has formally requested Dr Young to make formal

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discovery of the documents he intends to use in the cross-examination of Mr Nortjé. I haven't, I saw the formal request in terms of the regulations, I haven't seen the response from Dr Young or his legal representative but I was advised during the short adjournment by Advocate Ndumbi that he's requested a period of a month in which to produce these documents. Now we frankly don't find that acceptable at all because it's clear from correspondence that we've seen that was exchanged between the Secretariat and Dr Young in regard to documents that Dr Young wants ARMSCOR to produce, that he obviously has these documents in his possession because he's able to describe them very accurately and then only someone who had the documents who was aware of the document dated and all the other relevant details would be able to do so, so he knows what he needs to produce, he knows which documents he wants to rely upon and we find this period of four weeks totally unsatisfactory.

The problem is I can't really for the smooth running of his evidence allow Mr Nortjé to go in without having seen Dr Young's documents, then Dr Young when he's finished his evidence wants to cross-examine him and produces a whole lot of documents that Mr Nortjé hasn't seen will then require a stand down, also prejudicial if he's given his evidence and he hasn't been given and seen the documents that Dr Young wishes to rely upon. So that is a practical difficulty, I'm not

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sure how we are going to overcome that. My learned junior Chair and Commissioner Musi has given me a note, ... Oh, also my learned junior points out that we have written to the counter parties, the suppliers or obligors in relation to the overarching agreement that have been concluded between them, to give consent to producing those, as I understand it we haven't yet had a response from them, so that process is still unfolding and then the, I'm also told that Dr Young submitted a further request for documents from Mr Nortjé which we were only given some three weeks after the request was made and he's, Mr Nortjé is busy attending to that. I've seen correspondence yesterday where he is saying he is busy trying to access these documents, so that really is the position of Mr Nortjé.

CHAIRPERSON: Thanks a lot. From where I'm standing I think the date that Mr Nortjé must testify he will testify, whether Dr Young is ready or not Mr Nortjé must testify, otherwise we will not proceed with this inquiry. Secondly from my understanding Dr Young, if he has not discovered any document he will not be allowed to use that document to cross-examine Mr Nortjé. I don't think that is very complicated, he must discover in order to be in a position to use that document to cross-examine Mr Nortjé. Mr Nortjé was supposed to have testified in November, we are now four months down the line and I don't think I'm going to allow a situation where we are

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going to delay further testimony of Mr Nortjé. Mr Nortjé will testify on the date on which he is supposed to and that is on the 24<sup>th</sup> (indistinct) from that day he will testify. If Dr Young hasn't discovered he will not be allowed to use any of those documents in order to cross-examine Mr Nortjé. I think Advocate Ndumbi, you have heard what I said and I think you must write a letter to Dr Young and advise him about my remarks that Mr Nortjé will testify on the date that we have arranged, two, Dr Young will not be allowed to use any document to cross-examine Mr Nortjé if he has not discovered that document. Advocate Skinner, do you want to add something?

ADV SKINNER: Nothing further, thank you Mr Chairman.

CHAIRPERSON: Thank you, then in that case we will adjourn until the 17<sup>th</sup>. Thank you.

**(COMMISSION ADJOURNS)**





## **ARMS PROCUREMENT COMMISSION**

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For attention: Dr Young

BY EMAIL: rmyoung@ccii.co.za

Dear Dr Young

Your email of 27 January 2014 is hereby acknowledged.

1. The Commission has sent letters to state departments and entities that are the lawful custodians of the documents you have requested calling them to locate and declassify these documents. In addition, in respect of your request for transcripts of interviews conducted in terms of section 28 of the National Prosecution Authority Act 32 of 1998, the Commission has, as required by section 30 of that Act, also requested the National Prosecuting Authority to grant permission to it to disclose the evidence. The Commission is still awaiting responses are still awaited.
2. The Commission explored the possibility of bringing Mr Nortje's evidence forward to the week commencing on 17 February 2014. However, after representations by Armscor's legal team, it reverted to its earlier schedule to call Nortje to appear before it on 24 February 2014. to give evidence. Armscor stated, inter alia, that it would be reluctant to allow Mr Nortje to give testimony before it has had sight of and considered your discovery affidavit and documents you intend using to cross-examine him.
3. The Commission appreciates that you have a busy schedule and that you are still awaiting the documents you have requested. As stated above, Mr Nortje will commence giving evidence on 24 February 2014 and therefore calls upon you to discover documents you intend using in the cross-examination of Mr Nortje so that all parties may prepare adequately. Whilst it may be desirable to produce a discovery affidavit in respect of R Adm Kamerman's cross-examination, the Commission

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*Commissioners: LW Seriti JA (Chairperson); HTM Musi JP*

Head of Secretariat: P.N Lumphondo

urges you to prioritise the discovery of documents you intend using to cross-examine Mr Nortje. Whilst the Commission would like to accommodate all parties as far as reasonable possible, the Commission is of the view that the period of seven days is reasonable, taking into account that it appears from your application to cross-examine Mr Nortje that you have reasonable knowledge of the documents you intend to use. The Commission therefore calls you to discover within seven days, failing which you will not be allowed to use any document in cross examination which you haven't discovered.

4. The Commission will be much obliged if you could attend to this matter urgently.

Yours faithfully

Adv Fanyana Mdumbe  
Arms Procurement Commission  
Date: 06 February 2014

(transmitted electronically and thus unsigned)

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*Commissioners: LW Seriti JA (Chairperson); HTM Musi JP*

Head of Secretariat: P.N Luphondo

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Your Reference: Adv F Mdumbe  
Date: 17 February 2014

**BY E-MAIL**

**The Arms Procurement Commission**  
Attention Adv F Mdumbe  
[fmdumbe@armscomm.org.za](mailto:fmdumbe@armscomm.org.za)

Dear Sirs,

**THE ARMS PROCUREMENT COMMISSION – DEPARTMENT OF DEFENCE**

1. We refer to your e-mail of 14 February 2014 to which was attached a copy of Dr Young's unsigned discovery affidavit and to our letters to you of earlier today.
2. We request copies of the following documents discovered by Dr Young:
  - 2.1 Item no 765: Transcript of Interview (extract) by Public Protector with J Naidoo: 13/06/2001;
  - 2.2 Item no 770: Transcript of interview by IDSEO with J.E.G Kamerman (15/06/2001);
  - 2.3 Item no 771: Transcript of interview by IDSEO with F. Nortje (19/06/2001);
  - 2.4 Item no 773: Transcript of interview by IDSEO with L.R. Mathieson (20/06/2001);
  - 2.5 Item no 774: Transcript of interview by IDSEO with S.H. Thomo (21/06/2001);
  - 2.6 Item no 775: Transcript of interview by IDSEO with K.P. Hanafey (21/06/2001);
  - 2.7 Item no 776: Transcript of interview by IDSEO with A.N. Howell (23/06/2001);
  - 2.8 Item no 777: Transcript of interview by IDSEO with Capt. A.S. Claydon-Fink (25/06/2001);
  - 2.9 Item no 778: Transcript of interview with IDSEO with I.K. Egan –Fowler (29/06/2001);
  - 2.10 Item no 779: Transcript of interview by IDSEO with H.N. Marais (29/06/2001);
  - 2.11 Item no 780: Transcript of interview by IDSEO with J.C. Visser (29/06/2001);

**Bowman Gilfillan Inc.** Reg. No. 1998/021409/21 Attorneys Notaries Conveyancers

**Directors** JH Schlosberg (Chairman) | AG Anderson | DP Anderson | J Banoobhai | AM Barnes-Webb | TL Beira | ARL Bertrand | F Bhayat | LM Botha | CM Bouwer | JWD Brand | IL Brink | REW Burman | RM Carr | PM Carter | LA Chater | JJ Coetzer | RA Cohen | A Colegrave | A Collins | CN Cunningham | GH Damant | RA Davey | MEC Davids | D de Klerk | ID Dhladhla | TC Dini | CR Douglas | HD Duffey | BR du Plessis | QR du Plessis | L Dyer | JE Esterhuizen | S Esterhuyse | K Fazel | L Fleiser | LR Fontana | KA Fulton | BJ Garven | DJ Gera | LHM Gerstle | D Gewer | AA Gordon | TJ Gordon-Grant | K Goss | A Hale | AS Harris | P Hart-Davies | PA Hirsch | T Jithoo | JR Kaapu | AJ Keep | G Kekesi | CP Kennedy | FJ Khoza | U Kondile | JG Kruger | JP Kruger | R Labuschagne | HY Laher | T Laubscher | RA Legh | DA Lotter | PM Maduna | N Maharaj | M Makola | A McAllister | JM McKinnell | MB McLaren | JY Meijer | PH Modi | KG Modise | SNI Mokose | RPM Morson | HL Mtanga | LL Mthembu | E Mudely | AV Munro-Smith | UEBU Naumann | HB Ngcobo | L Oberholzer | MAJ Oppenheim | P Pillay | JD Prain | MA Purchase | LV Raphulu | CL Reidy | ND Rissik | MS Rusa | GI Rushton | JW Sahli | MY Sass | CG Schafer | DE Serchuk | LC Shawe | RZ Shein | CEC Smith | CD Stein | PW Stelling | R Straughan | BGM Strydom | V Subban | CFN Todd | CE Tucker | CL van Heerden | RJ van Voore | NC van Zuylen | MG Vermaak | L Verster | SHE Voigt | DS Webb | DCJ Wessels | PE Whelan | CI Whitley | HJ Wilsenach | SG Wilson | DD Yuill | H Zondo-Kabini | MS Zungu | D Zussa Consultants V Mogg | FA van Hoogstraten **Special Counsel** MW Adcock | CL Valkin

**Chief Executive Officer** LA Kruger **Chief Financial Officer** GJ Karolus **Chief Operating Officer** RJ Smith

Cape Town | Dar es Salaam | Gaborone | Johannesburg | Kampala | Nairobi

**BG Bowman Gilfillan**  
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- 2.12 Item no 814: Transcripts re: "Public Phase of the Joint Investigation into Strategic Defence Packages for the Procurement Arms for the South African Defence Force (Volume 10)" (27/08/2001);
- 2.13 Item no 816: Transcripts re: "Public Phase of the Joint Investigation into Strategic Defence Packages for the Procurement Arms for the South African Defence Force (Volume 11)" (28/08/2001);
- 2.14 Item no 819: Transcripts re: "Public Phase of the Joint Investigation into Strategic Defence Packages for the Procurement Arms for the South African Defence Force (Volume 12)" (29/08/2001);
- 2.15 Item no 820: Transcripts re: "Public Phase of the Joint Investigation into Strategic Defence Packages for the Procurement Arms for the South African Defence Force (Volume 13)"(30/08/2001);
- 2.16 Item no 821: Transcripts re: "Public Phase of the Joint Investigation into Strategic Defence Packages for the Procurement Arms for the South African Defence Force (Volume 14)"(30/08/2001);
- 2.17 Item no 847: Fax from Shepstone & Wylie Attorneys (S. Dwyer) to Public Protector (Adv. C.H. Fourie) re "Public Protector's Enquiry: Armaments Procurement Contracts" with submissions on behalf of the GFC attached"(10/09/2001);
- 2.18 Item no 861: Transcript of interview by IDSEAO with S. Schaik [Shaik] (03/10/2001);
- 2.19 Item no 911: Fax from CCII Systems (M. Abreu) to the Office of the State Attorney (C. Dreyer) re: "Statements Attributed to Rear Admiral (JG) J.E.G. Kamerman (07/05/2002);
- 2.20 Item no 912: Fax from CCII Systems (M. Abreu) to the Office of the State Attorney (C. Dreyer) re: "Statements Attributed to Rear Admiral (JG) J.E.G. Kamerman (21/05/2001);
- 2.21 Item no 913: Letter from CCII Systems (M. Abreu) to the Office of the State Attorney (C. Dreyer) re: "Statements Attributed to Rear Admiral (JG) J.E.G. Kamerman; (05/06/2001);
- 2.22 998 Item no 250: KPMG Report entitled "The State versus Schabir Shaile and others : Forensic investigation Report on our factual findings" (dated 22/08/2004);
- 2.23 Item no 1000: Letters from R.M Young to the SAN (RAdm J.E.G Kamerman) re: "Alleged Breach of Project Society"(23/08/2004);
- 2.24 Item no 1062: Documents from Joint PAIA Application to DoD/Armscor (various dates);

- 2.25      Item no 1063: Documents from PAIA Application to Office of the Auditor-General (various dates);
- 2.26      Item no 1064: Documents from PAIA Application to Office of the Public Protector (various dates);
- 2.27      And Item no 1065: Documents from Litigation against to DoD/Armscor/ADS (various dates).
3.      In the limited time available we have not been able to consider the discovery schedules in detail, and therefore reserve the right to request copies of additional documents.
4.      If it is more convenient for Dr Young, we can arrange for the documents to be collected or received by an attorney in our Cape Town office.

Yours faithfully



Bowman Gilfillan Inc  
per: PM Carter / L Zikalala

## In the Arms Procurement Commission of Enquiry

In the matter between :

**Richard Michael Moberly Young**

and :

**Arms Procurement Commission**

---

**Discovery Affidavit  
for  
Cross-Examination of Witnesses**

---

I, the undersigned,

**Richard Michael Moberly Young**

do hereby make oath and say that :

1. I am appearing before the Arms Procurement Commission of Enquiry (APC) in my own name and I am duly authorised to depose to this affidavit.
2. The facts hereinafter stated are within my own knowledge and are true and correct.
3. I have in my possession, custody or control the documents set forth in the First Part and the Second Part of the schedule annexed hereto relating to the cross-examination of APC Witnesses.
4. To the best of my knowledge and belief, I do not now have nor ever have had in my possession, custody or control, nor has any other person on my behalf had any documents or copies or extracts from any documents relevant to the matter, other than the documents set forth in the First and Second Parts of the schedule annexed hereto.





5. I object to the production of the documents set forth in the Second Part of the schedule annexed hereto, on the grounds that they are privileged.

Richard Michael Moberly Young



Commissioner of Oaths

I certify that the above signature is the true signature of the Deponent and that he has acknowledged to me that he knows and understands the contents of this Affidavit, which Affidavit was signed and sworn to before me in my presence at Bredasdorp on this 18<sup>th</sup> day of February 2014 in accordance with the requirements of Government Notice No. R1258 dated the 21st July 1972 as amended by Government Notices No. R1648 dated the 19th August 1977 and No. R1428 dated the 11th July 1980.

**First Schedule**

**Part II**

1. Correspondence between attorney and client in regard to the contemplation of and during the continuance of this matter and related litigation.
3. Counsel's briefs and instructions to Counsel brought into existence prior to, in contemplation of and during the continuance of this matter and related litigation.
3. Statements of witnesses, inter-office memoranda, reports, documents and file notes brought into existence prior to, in contemplation of and during the continuance of this matter and related litigation which are by their nature privileged.

Handwritten signature and initials in blue ink, located in the bottom right corner of the page. The signature is a cursive-style name, and the initials below it are also in cursive.



**IN THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF FRAUD,  
CORRUPTION, IMPROPRIETY OR IRREGULARITY IN THE STRATEGIC  
DEFENCE PROCUREMENT PACKAGES  
(REPUBLIC OF SOUTH AFRICA)**

In the matter between:-

ARMAMENTS CORPORATION OF SOUTH AFRICA SOC LIMITED

APPLICANT

and

DR RICHARD MICHAEL MOBERLY YOUNG

THIRD PARTY

---

**ORDER TO DISCOVER IN TERMS OF RULE 35 (7)**

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HAVING HEARD Counsel for the Applicant and having read the Application to Compel Discovery in terms of Rule 35 (7)-

**IT IS HEREBY ORDERED THAT:**

1. The Third Party produces all the documents listed in the schedule to his discovery affidavit dated 19 February 2014 no later than 16:00 on Monday, 3 March 2014, in the following manner:
  - 1.1 the documents are to be in electronic file format; preferably in PDF file format;
  - 1.2 the documents are to be clearly labelled, paginated and referenced against the schedule in his discovery affidavit;
  - 1.3 the documents are to be produced on a external hard drive or similar electronic storage device; and
  - 1.4 documents which are classified as Secret or Top Secret are to be password protected and the password to be provided separately.

2. The Secretariat of the Commission is ordered to make a copy of the documents produced in terms of the first order available to the Applicant within 24 hours of receipt of the same.

BY THE COMMISSION



---

CHAIRPERSON MR JUSTICE LEGOABE WILLIE SERITI

**In the Arms Procurement Commission of Enquiry**

In the matter between :

**Richard Michael Moberly Young**

and :

**Arms Procurement Commission**

---

**Discovery Affidavit  
for  
Cross-Examination of Witnesses**

---

I, the undersigned,

**Richard Michael Moberly Young**

do hereby make oath and say that :

1. I am appearing before the Arms Procurement Commission of Enquiry (APC) in my own name and I am duly authorised to depose to this affidavit.
2. The facts hereinafter stated are within my own knowledge and are true and correct.
3. I have in my possession, custody or control the documents set forth in the First Part and the Second Part of the schedule annexed hereto relating to the cross-examination of APC Witnesses.
4. To the best of my knowledge and belief, I do not now have nor ever have had in my possession, custody or control, nor has any other person on my behalf had any documents or copies or extracts from any documents relevant to the matter, other than the documents set forth in the First and Second Parts of the schedule annexed hereto.

5. I object to the production of the documents set forth in the Second Part of the schedule annexed hereto, on the grounds that they are privileged.



Richard Michael Moberly Young

Commissioner of Oaths

I certify that the above signature is the true signature of the Deponent and that he has acknowledged to me that he knows and understands the contents of this Affidavit, which Affidavit was signed and sworn to before me in my presence at \_\_\_\_\_ day of February 2014 in accordance with the requirements of Government Notice No. R1258 dated the 21st July 1972 as amended by Government Notices No. R1648 dated the 19th August 1977 and No. R1428 dated the 11th July 1980.

**Fanyana Mdumbe, 18:38 2014-02-12, Cross-Examination of Witnesses : Discovery Affidavit**

---

To: Fanyana Mdumbe <fmdumbe@armscomm.org.za>  
 From: Richard Young <rmyoung@ccii.co.za>  
 Subject: Cross-Examination of Witnesses : Discovery Affidavit  
 Cc: The Chairperson <admin@armscomm.org.za>, Barry Skinner SC <barrs@law.co.za>, Simmy Lebala SC <simmyleb@law.co.za>, Carol Sibiya <carolsibiya@law.co.za>  
 Bcc: Eduard Fagan <fagan@law.co.za>  
 Attached: D:\AAA\_RMY\_Data-03\Arms Deal Commission\Discovery Schedule\APC\_DA-01-00.pdf;

2014-02-12

**Without Prejudice | Confidential | Legally Privileged**

The Head of Legal Research  
 Arms Procurement Commission of Enquiry  
 Council Chambers  
 Cnr Lilian Ngoyi and Madiba Streets  
 Pretoria  
 Tshwane Metropolitan Municipality  
 0002  
 Gauteng

T : 012 358 3999  
 C : 078 095 9452  
 E : Fanyana Mdumbe <fmdumbe@armscomm.org.za>

Dear Adv Mdumbe

As agreed please find attached my uncommissioned Discovery Affidavit to the APC regarding my cross-examination of its witnesses.

Also as agreed the commissioned affidavit will be commissioned next week when I am in Cape Town and the original thereof handed to the APC representatives and a scanned copy sent to you as an email attachment.

Yours sincerely

Richard Young

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CCII Systems (Pty) Ltd [C<sup>2</sup>P Systems]  
 Street Address : Unit 3 Mews II, Rosmead Centre, 67 Rosmead Avenue, 7708 Kenilworth, Cape Town, South Africa  
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 Facsimile : (+27) (0)21 683 5435  
 URL : <http://www.ccii.co.za/>  
 Email : Richard Young <rmyoung@ccii.co.za>  
 US DoD CAGE Code : SL140  
 NATO CAGE Code: VC096

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