

SULAN J 1
NO.65/2006 2
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R V ANDRE CHAD PARENZEE 4
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MONDAY, 18 DECEMBER 2006 6
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RESUMING 2.20 P.M. 8
WITNESS NOT PRESENT 9
MS MCDONALD: There is a matter that I need to raise 10
before the witness commences their cross-examination. 11
It relates yet again to the provision of materials on 12
which the witnesses rely on. At most recent count we 13
are still awaiting 31 separate articles. These articles 14
are what the witnesses have quoted from and have cited 15
in their power points. I hand up to your Honour a 16
document that sets out what it is. 17
MR BORICK: Would your Honour mind if Ms Trudy 18
Pfeiffer sits next to me while we go through this 19
exercise? 20
HIS HONOUR: If it is going to assist you Mr Borick, 21
yes. 22
MS MCDONALD: Your Honour will see, they are not 23
limited to discrete area, they are littered throughout 24
both presentations, which has made the preparation of 25
this cross-examination extremely difficult, to say the 26

least. We have raised this repeatedly with defence 27
counsel and as recently as Friday we were, firstly, told 28
we had all the materials. When that was challenged we 29
were told maybe there were six or so documents that we 30
didn't have. Then when we actually went through the 31
very time-consuming exercise of cross-referencing 32
everything on the weekends it is actually 31 case 33
articles. 34

To indicate the difficulty that we have had, your 35
Honour might recall when Dr Turner was giving his 36
evidence he referred to notes. In the spirit of being 37
expeditious I agreed to let him continue to refer to 38

those notes as long as I had a chance to look at them. 1
The first I saw those notes was Friday afternoon, that 2
is despite promises they would be photocopied overnight. 3

It is my application that I not commence 4
cross-examination until those articles are provided. If 5
I can get them today I will be ready to go to tomorrow. 6
Again we are put into an impossible situation. I am 7
more concerned, having gone through the articles that we 8
do have, it will be my submission to your Honour that 9
the witnesses have been extremely selective about what 10
they put in that power point presentation, to the extent 11
that on many occasions misrepresented what the articles 12
are about. I receive no comfort in the articles that I 13
do have, thinking we can just rely on the power point. 14

I don't know what else I can do, we have tried to 15
get these materials over and over again. It may mean I 16
will have to have a shorter cross-examination to fit in 17
with the time frame. When they are littered throughout 18
the examination and not on discrete topics, it is very 19
hard to proceed. 20

HIS HONOUR: Mr Borick, what is the position now? 21

MR BORICK: That was all fairly emotional and 22
really - 23

HIS HONOUR: I would just like to know what the 24
position is. 25

MR BORICK: We have been working off a master sheet 26

where we have been marking off - we understood each of 27
the articles that the prosecution require, so there is 28
some that we say they have got and I can't understand at 29
the moment because we only just got this letter that you 30
got this morning. There is a lot of doubling up on this 31
31 figure. For example, on the second page there is - 32
HIS HONOUR: I have only got one page of a list, Mr 33
Borick. 34
MR BORICK: You will see from Dr Turner's 35
presentation there are slides 24, 25, 26 and 27 and 29, 36
39, 40. They all come from the same book which is not 37
available now to us, we just can't get it. That is the 38

position with regard to those. 1

With regard to what is called the 'isolation' 2
presentation, 15 we had crossed off, that is just an 3
example of one we say that they have got. It is a 4
pretty basic sort of document, it is 1983, and it sets 5
out Montagnier's original work. Every one of their 6
experts have got that, it is the starting point to all 7
this, they have got it. 8

HIS HONOUR: Mr Borick, I am just wondering rather 9
than spend time in court, you putting one side of the 10
picture and Ms McDonald putting the other side of the 11
picture, would there be any benefit of me leaving the 12
bench for half an hour or so while you can sit down and 13
try to sort this out? I presume you haven't talked to 14
one another. 15

MR BORICK: I didn't know until this morning that 16
this had happened, so I have been - 17

HIS HONOUR: I don't say that in any critical way. It 18
might just be easier if I were to leave the bench for 19
quarter of an hour, half an hour, while the two of you 20
sat down and, rather than convey the information to me, 21
going to Ms McDonald via me and she has to think about 22
it and answer it, it might be easier if you sat down for 23
a quarter of an hour and had a discussion and this list 24
might then be able to be fined down. Some of the 25
material might be available, some they may have, I don't 26

know. I just don't know, Mr Borick. For me to spend 27
time sitting here while there is a discussion backwards 28
and forwards I don't think is going to be the best use 29
of time. 30

MR BORICK: I completely agree with your Honour and I 31
was going to suggest that anyway because we have our two 32
experts here and Professor McDonald is here. I am 33
hopeful between all of us we can resolve this so we can 34
get on to it. Certainly the list will be refined from 35
the things we haven't got and we will draw them from the 36
presentation. If your Honour would adjourn for 20 37
minutes, half an hour. 38

HIS HONOUR: Ms McDonald, I think that might be a way 1
of trying to deal with this problem. 2

MS MCDONALD: I think it is a good starting point but I 3
don't think that it will produce the answers. As I 4
understand it, there are whole textbooks which can't be 5
located upon which most of Dr Turner's presentation was 6
based. 7

HIS HONOUR: I don't understand how a presentation can 8
be given with a lost source material and that material 9
is not available, it seems to be curious to say the 10
least that someone can't locate that source material or 11
that it is not somewhere. That is not for me to make 12
any comment about other than the comment that I made. 13

MR BORICK: I think what has happened, the 14
presentation has been prepared over, in a sense, 25 15
years. It is material that was available in the 1980s 16
which we just can't put our hands on now. Particularly, 17
there is this one book that seems to cover most of the 18
information in Dr Turner's evidence. Would your Honour 19
adjourn for 20 minutes, half an hour? 20

HIS HONOUR: How long, Ms McDonald, half an hour? 21

MR BORICK: I think half an hour is reasonable. 22

HIS HONOUR: I will come back at 3 o'clock and 23
hopefully you will be able to get on with the 24
cross-examination as best you can. Where there is not 25
material available it is a question of the evidence, in 26

due course, will be a matter for comment and I will have 27
to make a decision. If the material is not available it 28
can't be produced out of thin air. It is a question of 29
what weight one places on the evidence when the source 30
material is not available, but that is another matter, 31
that is another issue. 32

MR BORICK: I agree. 33

ADJOURNED 2.29 P.M. 34

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RESUMING 3.03 P.M. 1

MS MCDONALD: We have at least consolidated our lists 2
and are ad edum. There are 11 articles that my learned 3
friend has possession of and will provide to us. There 4
are 14 that they have never had and will try and locate, 5
and there are three separate publications which we have 6
been told they just can't find. I can indicate to your 7
Honour, one of those is the basis of seven different 8
power point slides in Dr Turner's presentation. 9

In my submission, and I don't make this submission 10
lightly, but the prosecution are really embarrassed and 11
prejudiced by the course this has all taken. I am not 12
in the position to properly examine this afternoon. It 13
may be that my learned friend has to make some decisions 14
about what he's going to do about Dr Turner's evidence 15
if most of it is based on a book that can't be found 16
now. 17

MR BORICK: I was referring to another set of slides 18
and to another book. The book that my friend is 19
actually talking about is the book published in 2005 20
'Constantine, Saville and Elizabeth Dax' in slide 28, 21
the cover of the book is shown and that book is clearly 22
available to all of the prosecution experts and clearly 23
available in the library. I caused that confusion. We 24
might have to get it sent over from Perth because 25
Dr Turner has his own copy. I would find it hard to 26

understand if it wasn't in the library. It is one book, 27
I suppose - just as if you cited a High Court case - you 28
would assume the prosecution would have it and we 29
assumed they would have had this and their experts would 30
be very familiar with it. 31

Quite a lot of the rest of the matters that my 32
friend is referring to we can get as quickly as possible 33
but I find it difficult to accept the submission that my 34
friend is not ready to commence the cross-examination of 35
Eleni Papadopulos because isolation presentation is the 36
central feature of this argument. They were done by 37
Montagnier and they were discussed at length and it was 38

a feature of the evidence presented. We have received 1
from the prosecution this morning some articles which we 2
assume they're going to rely upon; one from a Professor 3
Deusberg, and Professor Deusberg says clearly that HIV's 4
been isolated and the battle lines are drawn between 5
what Mr Deusberg says and looking at what I got this 6
morning. I would have thought that my friend must be 7
well and truly prepared to put to Eleni Papadopulos the 8
prosecution case on the simple issue - isolation - and 9
she has not been prejudiced on that and by tomorrow we 10
should have almost all of the other material - in 11
particular, with regard to the book, they should have 12
that. 13

HIS HONOUR: You say the book is referred to in which 14
slide? 15

MR BORICK: It is referred to in a number of slides - 16
if you go to slide 28. 17

HIS HONOUR: That is Exhibit A8? 18

MR BORICK: It is referred to in 29, 39 and 40. 19

HIS HONOUR: Of Exhibit? 20

MR BORICK: The presentation by Dr Turner, which is 21
Exhibit - 22

HIS HONOUR: Is it A8, Ms McDonald? 23

MS MCDONALD: I think it might be A7. 24

HIS HONOUR: It is A6. 25

MR BORICK: The first slide is the diagnosis of HIV 26

infection using antibody tests. 27

HIS HONOUR: Yes, 'Constantine - testing and quality 28
assurance'; is that what we're talking about? 29

MR BORICK: Yes. You see in para.28 there is a photo 30
of a book there. It is an important book and one that 31
I'm absolutely certain that the prosecution experts - 32
not all of them but the ones that are relevant to this 33
issue - must be aware of them. 34

HIS HONOUR: Ms McDonald, there seems to have been 35
some confusion about the publication from what Mr Borick 36
tells me. Do you know if that book is available to the 37
prosecution? 38

MS MCDONALD: I have no idea at the moment. 1

As I understand it, there are other publications 2
which also are just, as we have been told, not 3
available. We have been told, until my friend got to 4
his feet, that those references were cited from a source 5
that was unavailable. 6

HIS HONOUR: He's now corrected that. 7

MR BORICK: That was entirely my fault. 8

HIS HONOUR: He has corrected the issue. 9

MS MCDONALD: The difficulty is, because of the way the 10
applicant presented his case, the power point slides 11
feed into each other and so that causes a real problem 12
when we're missing so much of the material because, as 13
you might imagine, one cross-examination topic will lead 14
into another and then into another. Quite frankly, if 15
it wasn't for the fact that there's been such an issue 16
about the witnesses coming from Perth, my application at 17
this point in time is the dates this week be vacated, 18
but it isn't because I am aware of the difficulty in 19
getting the witnesses here. I make the application that 20
it be adjourned until tomorrow morning so we can at 21
least read the materials that my friend has and can give 22
us. 23

HIS HONOUR: It is pretty hard to resist that 24
application, Mr Borick, isn't it? Ms McDonald says she 25
hasn't got certain material and hasn't considered it. I 26

don't want to embark now upon an exercise of why or why 27
not and who's responsible and who's not responsible. I 28
am told by counsel at the bar table that they can't 29
cross-examine because they haven't seen the material one 30
way or the other. 31

MR BORICK: What time can we start tomorrow morning? 32

HIS HONOUR: Can we start tomorrow morning? 33

MS MCDONALD: The first question is what time are we 34
going to get some of these articles. If they don't 35
arrive until tomorrow morning it makes life very 36
difficult. 37

MR BORICK: We will do the very best we can so that 38

we're ready to start as soon as possible tomorrow. 1

HIS HONOUR: I'm not starting tomorrow until 2.15 2
anyway, that was always the case, because I have a Full 3
Court appeal listed in the morning. If you recall that 4
was always the position, that I wasn't starting until 5
2.15. I can start at 2 o'clock tomorrow. I don't know 6
how long the appeal will be listed for. 7

What I might do is list this matter not before 11.30 8
on the basis that my associate will be in touch with you 9
if the appeal finishes early and then we can start. 10

MR BORICK: We will be in touch with your associate 11
about that. 12

HIS HONOUR: I will list it not before 11.30 on the 13
basis that I don't expect counsel to be here. If my 14
associate has numbers she can ring you as soon as I am 15
free of the Full Court and we can commence within - how 16
long does it take you to get to court, Mr Borick? 17

MR BORICK: I will be here quickly. 18

HIS HONOUR: We can commence quarter of an hour after 19
my associate has contacted you? 20

MR BORICK: Yes, that will be so. We have all day 21
Wednesday? 22

HIS HONOUR: Yes. And, as I have said, I will sit 23
through to 5.30, I think. You have half a day on 24
Thursday? 25

MR BORICK: That's right, yes. 26

HIS HONOUR: And you have half a day tomorrow. I hope 27
 that is going to be enough. If it is not, we will have 28
 to revisit it. 29

MR BORICK: We will bite into our time. 30

HIS HONOUR: After Thursday I will be adjourning again 31
 then until January. 32

MR BORICK: I am aware of that. 33

HIS HONOUR: Hopefully we can avoid your witnesses 34
 coming back. 35

MS MCDONALD: I would ask for another thing to occur 36
 overnight. If my learned friend is proposing to 37
 withdraw evidence and/or slides, that he make that known 38

to the prosecution before we cross-examine, so we don't 1
waste time working on cross-examining things that aren't 2
going to be in evidence. 3

HIS HONOUR: If there is no material or source, 4
perhaps you can consider your position, Mr Borick. 5

MR BORICK: There will be a couple of things. I 6
wonder if we can work out which are the most urgent 7
things to work on; the isolation issue or the antibody 8
presentation. We certainly want to be ready with the 9
isolation presentation issue tomorrow. I am assuming my 10
friend would start with that. 11

HIS HONOUR: That is Ms Eleopulos. I presume that is 12
where you want to start. 13

MS MCDONALD: I presume Ms Eleopulos would give her 14
evidence first and then Dr Turner give his evidence, 15
which gives a bit of breathing space in terms of the 16
book we're talking about. 17

MR BORICK: We'll take on the isolation presentation 18
as being the most urgent to look at. 19

HIS HONOUR: We will resume tomorrow, not before 11.30 20
here, on the basis that if you don't hear from me in the 21
morning we will start at 2 o'clock. 22

ADJOURNED 3.15 P.M. 23

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