

Commission OF Inquiry

Frequently Asked Questions (FAQ) Updated August 2016

1. Why was the Commission of Inquiry formed?

The Commission was formed by Premier the Honourable Michael Dunkley JP MP to inquire into issues raised by the Auditor General in her Report on the Consolidated Fund of the Government of Bermuda for the Financial Years ending 31 March 2010, 2011 and 2012.

The Auditor General advised that many of her observations “point to a general failure to follow the rules (Financial Instructions) established by Government for the safeguarding of public assets.”

Per the Commission’s Terms of Reference, we are seeking to answer the following questions:

- Was the Auditor General correct that there was a general failure to follow the rules (Financial Instructions)?
- If so, how did this failure to follow Financial Instructions occur and why was the situation allowed to continue?
- What can be done to ensure that Financial Instructions are followed in the future?
- Is this failure to follow Financial Instructions ongoing?

Our investigation may also lead us to examine the circumstances of activity before or after the period cited by the Auditor General in her report.

2. How were the Commission’s members chosen?

The Premier has noted that he wanted a Commission that represented extensive experience in legal, governance and business matters. More about the backgrounds of each Commissioner can be in the Members section of the Commission’s website at www.inquirybermuda.com.

3. What is the Commission's timeframe for submitting a final report and recommendations?

At the outset of its deliberations, the Commission was working with a 20-week timeframe. However, it became apparent that more time would be needed to allow potential witnesses to secure legal representation, if they wanted to do so, and to work with their counsel to prepare their witness statements.

As a result, the Commission has requested that its time frame be extended until the end of the calendar year.

4. How was the law firm of Conyers Dill & Pearman chosen as the Commission's Counsel and why wasn't there a tendering process in this regard?

The firm of Conyers Dill & Pearman (CD&P) was recommended to Chairman Sir Anthony Evans by the Attorney General's Chambers as one that could be relied upon to meet the Commission's needs thoroughly and with the required expertise.

Following a meeting between Sir Anthony and the firm's principals, the Commission retained CD&P on terms that include a discounted fee structure.

The Cabinet Office has advised that as an independent entity under the Commissions of Inquiry Act 1935, the Commission is entitled to retain counsel without the requirement to account for the expenditure as if the Commission were part of Government, or to comply with Financial Instructions.

5. What is the budget for the Commission of Inquiry?

The original budget allocated by the Bermuda Government to the Commission was \$480,000.00. However, because of the additional time requested for the Commission's investigation, this figure is expected to increase based on the longer timeframe.

6. If I have information that's relevant to the Commission's investigation, what should I do?

Please contact the Clerk to the Commission at commission@inquirybermuda.com, or by telephone at [1 441 294-0415](tel:14412940415) or [+1 441 294-0416](tel:+14412940416), or in person at the Commission's Office, Second Floor, The Swan Building, 26 Victoria Street, Hamilton HM 12, as soon as you can.

Arrangements can be made for you to provide information in confidence, initially at least, and for you to have access to legal advice.

7. Will anyone be prosecuted as a result of the Commission's investigation?

The Commission does not have the authority to initiate prosecution. Members will outline their findings and recommendations in a final report and it will refer any matters they think appropriate to the Bermuda Police Service to determine whether criminal proceedings are warranted and to initiate them.

8. How can members of the community participate in the hearings?

Any member of the public may attend the Commission's hearings. However, anyone who feels they have information relevant to the Commission's investigation must provide information in advance. Our next hearing begins on Wednesday, September 28, 2016 at 10:00am. The deadline for submitting information or providing a witness statement for this hearing is 14 days before, or Wednesday, September 14, 2016.

9. Is this a political 'witch hunt' as has been alleged by some members of the Bermuda community?

No. At the outset, we affirmed our commitment to a fair, objective and non-partisan process. This Commission is driven solely by the desire to identify if Financial Instructions have been followed by those bound to follow them and, if not, to recommend measures to prevent such behaviour from occurring again.

For this reason, we are investigating expenditures and processes that have taken place before and after the years cited in the Auditor General's Report. As a result, our inquiry addresses activity under different elected officials and transcends party politics.

10. Where will the Inquiry be held?

Hearings will take place in St. Theresa's Cathedral Hall, entering from Laffan Street.

11. Why was St. Theresa's Cathedral Hall chosen as the venue and why do you begin proceedings at 10:00am? How is the working man or woman expected to attend hearings held during the workday?

It was surprisingly difficult to secure a venue that was centrally located, available, could accommodate the expected number of attendees, had parking in the vicinity and would be seen as 'neutral ground'. After numerous approaches to a wide variety of venues, some of which declined our request to rent their facility, we found St. Theresa's, which met all of these requirements.

A start time of 10:00 a.m. during the workweek is admittedly not convenient for those with work commitments. However, it does enable witnesses with children in school or other family commitments to fulfill those obligations first before attending the Hearings, and reduces the impact rush hour traffic might have on those attending the Hearings. Holding Hearings on the weekend was never considered a reasonable option, given the intrusion it represented on families.

12. What parking is available at the site of the Hearing?

There is no parking for cars or bikes available at St. Theresa's Cathedral Hall. It is suggested that persons wishing to attend the Hearing park at Bull's Head Car Park.

13. How can I find out when the Hearings are taking place?

We will publish information regularly on the Commission's website at www.inquirybermuda.com.

14. What are the rules surrounding public attendance?

Hearings will be open to the public, on a first come basis. There are a small number of seats available in the Hearing room and these will be allocated on a first come basis.

15. Is the Commission on a summer break now that the next hearings have been scheduled for Wednesday, September 28?

No. The Commission of Inquiry offices will remain open as usual during normal working hours. The Commissioners and their counsel will be preparing for the

hearings in September. This involves the retrieval and collection of necessary and required documentation; the identification of potential witnesses, and sharing with those witnesses the areas in which we think they may be of assistance to our inquiry, and any questions that arise as a result; and making arrangements where possible to meet with those potential witnesses for the purposes of ascertaining in advance of the hearings what assistance they will be able to provide.

16. Will everyone who is contacted or makes any submission to the Commission be required to be a witness at the hearing in September?

Not necessarily. The Commission will decide who will and who will not be required to give evidence once it is in a position to know and better assess what assistance each person can provide.

17. What will witnesses be required to do or say at the hearings?

Witnesses before a Commission of Inquiry are required to give evidence either on oath or by way of affirmation. The legislation under which this Commission of Inquiry was established also provides that witnesses may be compelled to attend and answers questions should they choose not to attend voluntarily. However, that same legislation also provides that "no person giving evidence before the Commission shall be compellable to criminate himself" and, as well, all witnesses are entitled to the same rights and privileges they would be accorded were they giving evidence in the Supreme Court of Bermuda.

18. Will any of the hearings be in camera (i.e. in private)?

The Commission has yet to make any decision on this. The Terms of Reference and the governing legislation permits in camera sessions. However, the Commission is unlikely to make any decisions on what part or parts of its hearings will be held in camera until it knows what a witness wishes to say and why she or he wishes to give his or her evidence in private.

19. Will the Commission uncover what has become of the so-called 'missing \$800-million'?

The Commissioners believe this is a reference to a comment made by a past Auditor General in one of his annual reports on the Accounts of the Government of Bermuda. It was the Report for the Financial Year April 1, 2007 to March 31, 2008 issued in February 2009. The comment was, and we quote from page 12 of that Report:

"Based on the last financial statements audited for entities [Government and Government-controlled] that are in arrears with their financial reporting, the total expenditures for which Government had not been accountable to the House for accounting years to March 2008 totals almost \$890 million (March 2007 - \$485 million). \$187 million of this increase is attributable to the Bermuda Hospitals Board which faced a couple of unique circumstances this year (see Section 4.3.4)."

While strictly speaking, this particular matter and comment is outside the Commission's Terms of Reference, the issue of late and inadequate financial reporting is within the Commission's Terms of Reference. The Terms of Reference include consideration of "the adequacy of current safeguards and the system of financial accountability for the Government of Bermuda."

If anyone has any information or believes they can be of assistance to the Commission in that way, they should contact the Commission. Any and all assistance is welcome.

20. Who designed the Commission's website and how much did it cost?

The website was designed by Bermudian designer and web developer Sebastian Matcham of Subtropik. The cost was \$2,000. Administration and maintenance of the site is done on a volunteer basis.