

# **Commission of Inquiry Initial Procedural Statement, 13<sup>th</sup> June 2016**

## **Introduction**

The Special Report of the Auditor General on the Consolidated Fund of the Government of Bermuda for the Financial Years March 31st 2010, 2011, and 2012 (“the Report”) was published in December 2014 and submitted to Parliament in accordance with section 101(3) of the Bermuda Constitution Order 1968 and section 10 of the Audit Act 1990. The Auditor General who submitted the Report, Heather Jacobs Matthews, made Observations and Recommendations in relation to the Audits and these were set out in Section 3 of the Report.

## **Terms of Reference**

The Commission of Inquiry (“the Commission”) was established under the Commissions of Inquiry Act, 1935 (“the Act”) by the Premier, the Honourable Michael Dunkley JP, MP on February 24, 2016. The Terms of Reference require the Commission to inquire into any potential violation of law or regulations with regard to any matters arising under Section 3 of the Report (“Section 3”) and any other matters which the Commission considers relevant thereto. The Terms of Reference and the Report are available at the Commission of Inquiry’s website: [www.inquirybermuda.com](http://www.inquirybermuda.com)

In relation to each issue, the Commission will –

- (1) identify relevant transactions;
- (2) investigate those transactions in order to establish whether they were carried out in accordance with relevant rules and regulations, and to identify the persons who carried them out;
- (3) examine those persons in order to establish their reasons for acting as they did; and
- (4) examine the senior personnel who are accountable for those transactions, whether as Ministers or as Civil Servants.

## **The Commission**

The Chairman of the Commission is Sir Anthony Evans, a retired Court of Appeal Judge of the Courts of England and Wales and Bermuda. The other Commission members are Kumi Bradshaw, Fiona Luck and John Barritt. (Brief biographical details are to be found on the Commission's website at [www.inquirybermuda.com](http://www.inquirybermuda.com))

## **The Commission Team**

The Commission is supported by two staff who serve as Clerks to the Commission. Counsel to the Commission are attorneys from the law firm of Conyers Dill and Pearman.

## **Contact Details**

The Commission has established an office in the Swan Building on Victoria Street, Hamilton.  
Mailing address:

Commission of Inquiry  
2nd Floor,  
Swan Building  
26 Victoria Street  
Hamilton HM12

Telephone: 294-0415 or 294-0416

Confidential hotline: 294-0414.

Email: [commission@inquirybermuda.com](mailto:commission@inquirybermuda.com).

See [Contacts Page](#) on the Commission of Inquiry's website <http://www.inquirybermuda.com>

## **The Commission's Approach**

The Commission intends to carry out its task with thoroughness and fairness. The Commission intends to adopt flexible, even-handed and open procedures which will enable it expeditiously and economically to establish the facts and to make recommendations.

The Commission is an inquisitorial and not an adversarial process. It will gather in the relevant documents, obtain witness statements and decide from whom oral evidence should be heard. The Commission will not treat those from whom it obtains any such material or from whom it obtains witness statements or hears evidence as parties in an adversarial contest or trial.

## **The Commission's Powers**

The Commission hopes and expects to receive co-operation from all government entities, persons or organisations with relevant material or evidence. Additionally, the Commission has vested in it powers to compel persons or organisations to provide it with information, documentation and evidence.

Although the Commission hopes that it will not be necessary to do so, the Commission will not hesitate to use the powers which have been conferred upon it should it decide that such use is required for the effective discharge of its duties of fairness, thoroughness and impartiality.

## **Documentation**

The Commission has received some relevant documentation and has sent out a number of requests to government entities, persons and organisations for further documentation.

Consideration of the documents which the Commission has received may show that further documents need to be requested.

## **Proposed Course of Action**

What follows is intended to give an indication of how the Commission proposes to proceed. Following its First Hearing, the Commission will issue further guidelines as appropriate in a Procedures Document.

## **Representation**

The Commission recognizes the right under section 12 of the Act of any person whose conduct is the subject of inquiry, or who is in any way implicated in the matters under inquiry, to be represented by counsel at the whole inquiry, and it will consider applications for leave to be so represented by any other person who considers it desirable that he should be so represented. In addition, the Commission will consider any other request for leave to be represented at the whole or any stage of the inquiry, and it expressly reserves the right to determine the extent of such rights in any such case.

## **Invitation**

Anyone who holds or knows of documents which he or she thinks may assist the Commission in its work, or wishes to provide written submissions or observations, is requested to contact the Commission Office in order that arrangements may be made for their supply to the Commission.

## **Documentary Analysis**

Once the documentary material has been gathered in, it will be analysed by the Commission and the Commission Team.

## **Witness Statements**

On the basis of that analysis, a decision will be made as to those persons from whom a witness statement will be required.

## **Further Statements**

It may be necessary to revert to some witnesses for further evidence or for clarification of their evidence in the light of other evidence or material received by the Commission.

Subject to questions of confidentiality, as summarised below, it is the Commission's present view that copies of all witness statements or further statements provided to the Commission will, in due course, be made available to witnesses. It is likely that the provision of Witness Statements or Further Statements will be subject to a suitable confidentiality undertaking.

### **The Commission Bundle**

When the Commission has gathered in all the documentation relevant to its work, a Bundle will be prepared for use in the preparation for and during the Witness Hearing.

It is the Commission's present intention that a copy of the Commission Bundle when prepared will be available to witnesses.

It is likely that the provision of the Commission Bundle will be subject to a suitable confidentiality undertaking.

From time to time, it may prove necessary to add to the Commission Bundle. The Commission will make arrangements for the copying and distribution of additional material.

### **Confidentiality**

This public inquiry will be conducted in an open and transparent manner.

The Commission will assume that information, documents and statements provided to it may be distributed and referred to at the Commission's public hearings.

However, should the private address, telephone number or other contact details of any individual appear in any document or statement provided to Commission, those details will be deleted prior to distribution and no reference to these details will be made in the course of the Witness Hearing or in any material made public by the Commission.

Where a person or organisation considers that any other personal details or information or any part of a document or statement should not be disclosed to other witnesses or made public, the Counsel to the Commission should be informed without delay. Reasons for the objection taken should be provided in writing. The Commission will consider all such representations and make decisions, either on the basis of the representations or, as necessary, following an oral hearing.

### **Subsequent Criminal or Disciplinary Proceedings**

The Commission has been giving consideration to these questions in the light of the serious matters which the Commission is required to investigate. The issue which arises is whether it would assist the Commission's search for truth if witnesses had been granted some, albeit limited, forms of immunity in respect of their evidence and information, documents and witness statements provided to the Commission by them. The Commission has considered, first, whether it would be right to ask the Attorney General/Director of Public Prosecutions for an undertaking that all witnesses would be immune from prosecution on the basis of their own evidence and information, documents and witness statements provided to the Commission by them and, secondly, whether it should seek undertakings from relevant public bodies in relation to witnesses' immunity from disciplinary action on the basis of their own evidence and information, documents and witness statements provided to the Commission by them.

The Commission has reached no conclusive view on either of these matters and proposes to defer any decision until further investigation of the documentary material has been undertaken.

### **The Witness Hearing**

As soon as it is possible to do so, the Commission will announce the date of its Witness Hearing and the details of the venue in which that Hearing will take place.

The Commission will provide a list of those witnesses which it proposes to call to give oral evidence at the Witness Hearing.

At this stage, it is not possible to make detailed statements as to the conduct of the Witness Hearing. However, the following points indicate the Commission's present views.

At the beginning of the Witness Hearing, there will be an Opening Statement by Counsel to the Commission.

It is the Commission's expectation that all questioning of witnesses at the Witness Hearing will usually be undertaken by Counsel to the Commission, on the Commission's behalf. There will be no general right to examine or cross-examine witnesses, but in individual cases the Commission may be prepared to allow further questioning by parties or their representatives.

The Commission expects that the Witness Hearing will take place in public. If, in exceptional circumstances, a decision is taken to hold any part of the Witness Hearing other than in public or to take any other measure designed to protect the identities of witnesses or others, that decision will only be made following consideration and determination by the Commission and usually following application. The Commission would usually expect to give its reasons for any such decision in public.

It is intended that a transcription service will be used for the Witness Hearing.

### **Media and Website**

Representatives of the media will, of course, be welcome at all of the Commission's hearings. The Commission Clerks will make arrangements to accommodate the media's attendance and to facilitate full and proper reporting of the Commission's proceedings.

In addition, the Commission will make full use of its website, so as to put evidence considered by it and the transcripts of its hearings when available into the public domain.

### **First Hearing**

The Commission's First Hearing will commence on Monday, 27th June 2016 at St Theresa's Cathedral Hall.

Any person who wishes to raise any matter relevant to the Commission's work or its proposed procedures, as summarised above, should do so in writing. In particular, the Commission would welcome submissions on the following matters:

- Any applications for representation
- Any observations on the question of subsequent criminal or disciplinary proceedings

All such written submissions or observations should be addressed to the Commission and received by no later than 4pm on Wednesday, 22nd June 2016.

At the First Hearing, the Chairman will make a short Statement, introducing himself and the other Commission members and setting out the Commission's intentions as to the future conduct of the Commission. Counsel to the Commission will also make a statement.

### **After the First Hearing**

As soon as is practicable after the First Hearing, the Commission will issue its Procedures Document and give its decision in writing on any other procedural matter which is required at that stage.

If, in an exceptional case, the Commission decides that further oral argument on any matter is required, it will make arrangements for a further procedural hearing.

### **Commission of Inquiry**

Sir Anthony Evans Chairman

Kumi Bradshaw

Fiona Luck

John Barritt.

13<sup>th</sup> June 2016