

INQUIRY INTO THE REQUIREMENT OF THE FORMER COMMISSIONER OF POLICE

Witness Examination Protocol

Publication of affidavits and witness statements

1. Affidavits (and exhibits to affidavits) will be uploaded to the Inquiry's website as follows:
 - a. In the case of witnesses who give oral evidence to the Inquiry at the main Inquiry hearing, the witness' affidavit will be uploaded after the witness gives evidence, usually within two working days.
 - b. In the case of witnesses who do not give oral evidence to the Inquiry, the witness' affidavit will be uploaded shortly after the conclusion of the main Inquiry hearing.
2. Parts of an affidavit which are not relevant to the List of Issues will not be admitted in evidence, and accordingly will be redacted before the affidavit is uploaded to the Inquiry website. Witness statements will also be subject to redactions determined in accordance with the procedure in the Inquiry's Protocol for Receipt and Handling of Documents, Redaction and Records Management.

Witness examination

3. Sworn affidavits will stand as a witness's evidence in chief but CTI may ask questions to highlight critical parts of their evidence.
4. Witness examination will follow two different procedures, dependent on whether a witness is categorised as a "restricted" or "unrestricted".

Restricted witnesses

5. The procedure for **restricted** witnesses will fall within what *Beer on Public Inquiries* describes as a "hybrid model", along the following lines:
 - a. Questioning of a witness will be conducted principally by Counsel to the Inquiry ("CTI").
 - b. The Commissioner recognises that effective participation by a Core Participant ("CP"), and protection of their interests and reputation, and indeed public confidence in the Inquiry, may justify – and even require – that he permit some of the representatives of some CPs to question some of the witnesses on

identified topics, issues or questions. If any CP would like to have any topics, issues or questions put to a witness or to question a witness themselves, those questions should be put forward in writing to CTI **14 days** before the witness is due to give evidence (according to the Main Inquiry Hearing Timetable to be published in advance of the Main Inquiry Hearing). Questions should be submitted via email to Ms Hope Williams, Junior CTI, copying Mr Julian Santos and also, the Lead Solicitor to the Inquiry at Leadsolicitor@retcom.gi

- c. The Inquiry Team will consider any request to ask questions in the context of that CP's role in the Inquiry, bearing in mind the basis on which CP status was granted to them. If there is a factual dispute or credibility issue between the witness and the CP making such a request, that will be a strong starting point for a request (or subsequent application) to question the witness to be granted.
- d. CTI will then indicate:
 - i. whether he intends to pursue to the topic, issue or question with the witness;
 - ii. that counsel for the CP may pursue the topic, issue or question with the witness; or
 - iii. that the topic, issue or question cannot be pursued, subject to applying to the Commissioner for permission to do so.

If a CP disagrees with CTI's indication, it will be open to them to apply (in writing) to the Commissioner for permission to question the witness as proposed. This application must be made in writing to the Commissioner (via the Solicitor to the Inquiry) no later than 7 days before the witness is due to give evidence.

- e. Circumstances may arise where the requisite 14 or 7 days' notice is not possible, for example where oral evidence is given either by the witness in question or a different witness which gives rise to a need to question on a particular issue. In such limited circumstances urgent requests to CTI or applications to the Commissioner for permission to question a witness can be made (in writing or orally). It is emphasised that such requests or applications

will only be granted in those limited circumstances. Requests in writing should be submitted via email to Ms Hope Williams, Junior CTI, copying Mr Julian Santos and the Lead Solicitor to the Inquiry at Leadsolicitor@retcom.gi.

- f. Any permitted questioning:
 - i. may be subject to time limits by the Commissioner, which will be set while taking into consideration the overarching priority of fairness to parties who are or may be the subject of criticism, and who must be afforded the opportunity to participate fully in the process;
 - ii. must be confined to the topics, issues or questions identified in the permission;
 - iii. must remain focused on the identified List of Issues; and
 - iv. must not prejudice any pending criminal investigation or trial.

Unrestricted witnesses

- 6. The procedure for **unrestricted** witnesses will follow what *Beer* describes as a “traditional model”, along the following lines (subject to the Commissioner’s absolute discretion):
 - a. CTI will question the witness to highlight or challenge such points as he may deem appropriate.
 - b. Although generally ‘cross-examination’ does not take place in an Inquiry context, the Commissioner recognises that it might be desirable that unrestricted witnesses be questioned by persons other than CTI, for example in circumstances where a witness seriously impugns the evidence of a CP. Accordingly, after CTI has examined the witness, the witness will then be questioned by counsel for other CPs who are unrestricted witnesses but such cross-examination should not cover topics already fully covered by the examination by CTI. The witness will first of all be questioned by counsel most appropriate to do so, as determined in advance by the Commissioner. It will usually be unnecessary for all CPs who are unrestricted witnesses to examine each unrestricted witness.

- c. If other CPs (i.e. those who are not unrestricted witnesses) wish to question a restricted witness, they should follow the procedure set out above in 5(b) to (e).
 - d. The witness will be 'examined' by their own counsel (or counsel most closely representing their interest),
 - e. Finally CTI may ask any additional questions if necessary.
7. At this juncture, the Commissioner has categorised the following individuals as unrestricted witnesses (who are not necessarily listed in the order in which they will give evidence)
- a. Former Commissioner Ian McGrail;
 - b. The Hon Fabian Picardo KC MP, Chief Minister;
 - c. Nicholas Pyle OBE, former Deputy Governor and Acting Governor;
 - d. Michael Llamas CMG KC, Attorney General;
 - e. Dr Joseph Britto;
 - f. Former Superintendent Paul Richardson;
 - g. Christian Rocca KC.

16 August 2023