



TURKS AND CAICOS ISLANDS

CHAPTER 21

COMMISSIONS OF INQUIRY ORDINANCE

Revised Edition
showing the law as at 15 May 1998

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This edition contains a consolidation of the following laws—

COMMISSIONS OF INQUIRY ORDINANCE

Ordinance 7 of 1986 ... in force 26 July 1986 (L.N. 18/1986)

No Subsidiary Legislation has been made under this Ordinance

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CHAPTER 21

COMMISSIONS OF INQUIRY ORDINANCE

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CHAPTER 21

COMMISSIONS OF INQUIRY ORDINANCE

(Ordinance 7 of 1986)

AN ORDINANCE TO MAKE FRESH PROVISION WITH RESPECT TO COMMISSIONS OF INQUIRY; AND FOR MATTERS CONNECTED WITH THAT PURPOSE.

[26 July 1986]

Commencement

1. This Ordinance may be cited as the Commissions of Inquiry Ordinance.

Short title

2. (1) The Governor may appoint one or more Commissioners (hereinafter referred to as a Commission) to inquire into the conduct and management of any public body, the conduct of any public officer or into any matter whatsoever which is, in his opinion, of public importance.

Appointment of Commission

(2) When appointing a Commission under subsection (1) the Governor may—

- (a) nominate a Chairman if two or more Commissioners are appointed, and confer on such Chairman a second or casting vote for use where the Commission shall, in any case, be equally divided on any question arising during the proceedings;
- (b) fix the quorum at meetings of the Commission if two or more Commissioners are appointed;
- (c) appoint a secretary to the Commission, assistant secretaries and other staff;
- (d) appoint a legal adviser to the Commission;
- (e) appoint additional Commissioners or persons in substitution for Commissioners who may die, resign, refuse to act, or become incapable of acting.

(3) Where a new Commissioner has been appointed under subsection (2), it shall not be necessary for any evidence which may have been taken before a Commission prior to such appointment to be retaken.

(4) The appointment of a Commission shall be published in the *Gazette*.

Directions to
Commission

3. The Governor may specify the subject of the inquiry and may direct—

- (a) when and where the inquiry is to be held, to whom and by what time a report on the inquiry is to be rendered, and may from time to time enlarge the time within which such inquiry is to be held and such report rendered;
- (b) without prejudice to the powers of a Commission to receive and consider such other evidence as it may think fit, what material should be received and considered by the Commission;
- (c) what matters should be outside the terms of reference of a Commission;
- (d) that the evidence of certain persons or classes of persons be taken, either orally or in writing, and that certain documents or classes of documents be inspected by a Commission;
- (e) without prejudice to the powers conferred upon a Commission by paragraph (h) of section 4(1) that the holding of the inquiry or parts thereof be *in camera*;
- (f) that the Commissioners take the oath or affirmation in the form set out in the Schedule.

Powers of
Commission

4. (1) A Commission may, for the purposes of complying with the directions under section 3 and for conducting the inquiry generally—

- (a) receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible as evidence in civil or criminal proceedings;
- (b) determine the manner in which such material shall be received and what persons or class of persons shall be permitted or required to give evidence;
- (c) require any person who wishes to give evidence before the Commission to submit a summary in writing of the evidence proposed to be given;
- (d) summon any person, in the form set out in the Schedule, to attend to give evidence or to produce any article or document;
- (e) administer oaths and affirmations;

- (f) examine on oath, affirmation or otherwise any person attending before the Commission and require such person to answer all questions put by or with the consent of the Commission and produce any article or document in his possession or under his control;
 - (g) award any person attending before the Commission such sum as in the opinion of the Commission represents the loss to that person occasioned by the time spent in such attendance;
 - (h) subject to subsection (4), hold *in camera*, or exclude any person (including any person implicated or concerned in the inquiry and his legal representatives) from the whole or any part of the inquiry;
 - (i) prohibit the publication to, or disclosure by, any person attending before the Commission of all or part of the material received by the Commission;
 - (j) determine the procedure to be followed at the inquiry and the form of any summons, warrant, or other document made or issued by the Commission;
 - (k) where the Commission has been appointed to inquire into the conduct or management of a public body or any other body of persons, corporate or unincorporate, then subject to subsection (6), appoint, on such terms as to remuneration as the Governor may approve, one or more inspectors—
 - (i) to inspect all the books and documents of or relating to the affairs of such body; and
 - (ii) if the Commission is satisfied that such body has, or has had, an association with any other public body or body of persons, corporate or unincorporate, which is or may be relevant to the subject of the Commission's inquiry, to inspect all the books and documents of or relating to the affairs of such other body,and to report thereon to the Commission in such manner and within such period or further period as the Commission may direct; and
 - (l) exercise such other powers as may be necessary for the purposes of the inquiry.
- (2) where a Commission considers that the search of the property of any person or the entry and inspection of the premises

of any person is reasonably required for the purpose of enabling the Commission to comply with directions under section 3 and for conducting the inquiry generally, and if so required, for a purpose falling within section 73(2)(a)(i) of the Constitution, the Commission may issue a warrant authorising any person named in the warrant, with or without the assistance of police officers, to search that property or to enter and inspect those premises.

(3) The contents of any document submitted to a Commission, not being of a scurrilous or offensive nature, shall be considered by the Commission notwithstanding that the person submitting such document is, in addition, permitted or required to give evidence.

(4) An Attorney entitled to appear by virtue of the provisions of section 7—

(a) may only be excluded from such part of an inquiry as is held *in camera*; and

(b) shall not in any event be so excluded while his client is giving evidence.

(5) Without prejudice to the powers conferred on a Commission by paragraph (k) of subsection (1), where the Commission consists of one Commissioner he may, subject to subsection (6), inspect the books and documents referred to in that paragraph and in so doing he or they shall, for the purposes of this Ordinance, be deemed to have been duly appointed an inspector or inspectors, as the case may be, under that paragraph.

(6) The power to appoint an inspector or inspectors under subsection (1), and the powers conferred by subsection (5), shall not be exercised by a Commission or Commissioner without the consent of the Governor and in giving such consent the Governor may limit the power of inspection to inspection only of the books and documents referred to in sub-paragraph (i) of paragraph (k) of subsection (1) or, where consent is given in relation to the inspection of books and documents referred to in subparagraph (ii) of that paragraph, may limit the power of inspection to inspection only of the books and documents of or relating to the affairs of a particular public body or other body of persons, corporate or unincorporate.

5. (1) Where it is certified to the Magistrate by a Commission that any person has refused or failed, without reasonable excuse—

(a) to produce any article or document in his possession or under his control on being required to do so by a summons issued under section 4(1)(d);

Power of
Magistrate to
order seizure of
any article or
document for the
purposes of an
inquiry

- (b) to produce to an inspector appointed under section 4(1)(k) any book or document required by the inspector for the purpose of any inspection authorised to be carried out under the paragraph,

the Magistrate shall order that article, document or book to be seized and shall, by warrant under his hand, authorise a police officer to enter any premises for the purpose of executing that order.

(2) Where a Commission is satisfied—

- (a) that there may be in any premises any article, book or document likely to be of evidential value for the purposes of the inquiry; and
- (b) that it is not reasonably practicable to require that article, book or document to be produced by a summons issued under section 4(1)(d) or that there are reasonable grounds for suspecting that any person is about to make away with that article, book or document,

and the Commission certifies to the Magistrate that it is so satisfied, the Magistrate shall order that article, book or document to be seized and shall, by warrant under his hand, authorise a police officer to enter any premises for the purpose of executing that order.

6. Without derogating from the generality of the power conferred under section 4(1)(j), a Commission may—

Conduct of
inquiry

- (a) order the manner in which any person shall give his oral evidence and may specify that this shall be by way of cross-examination without examination-in-chief; and
- (b) determine who may address the Commission, on what matters and in what order.

7. (1) Any person whose conduct is the subject of an inquiry, or who is implicated or concerned in the subject matter of the inquiry, shall, subject to the provisions of section 4, be entitled to be represented by an Attorney at the inquiry.

Rights to
representation

(2) For the purpose of subsection (1), a Commission shall determine whether the conduct of any person is the subject of the inquiry or whether a person is in any way implicated or concerned in the subject matter of the inquiry.

(3) The Governor, any Government department and any public officer shall, notwithstanding the provisions of subsections (1) and (2), but subject to the provisions of section 4, be entitled

to be represented at the inquiry by the Attorney General, any other public officer holding a legal appointment or an Attorney who may—

- (a) address a Commission on any matter on which he is so instructed by the Attorney General; and
- (b) produce evidence in such form as a Commission may permit on any matter.

(4) A Commission may appoint a public officer holding a legal appointment and nominated by the Attorney General or an Attorney to act as counsel for the Commission.

Use of evidence
in civil and
criminal
proceedings

8. Evidence given by any person before a Commission shall not be admissible against him in any civil or criminal proceedings by or against him, except where he is charged with perjury or is proceeded against under section 10 or 11.

Production of
documents, and
evidence, to
Commission's
inspectors

9. (1) It shall be the duty of all officers and agents of a public body or other body of persons to produce to an inspector appointed under section 4(1)(k) to inspect its books and documents, all books and documents in their custody or power of or relating to such body's affairs or the affairs of any other body of persons the books and documents of which the inspector is appointed under that paragraph to inspect, and otherwise to give to the inspector all assistance that they are reasonably able to give.

(2) In this section, any reference to officers or to agents of a public body or other body of persons shall include past, as well as present, officers or agents, as the case may be; and "agents" shall include the bankers and Attorneys of such body and any person employed by such body as auditor, whether or not such person is an officer of such body.

Contempts to be
offences

10. (1) Any person who—

- (a) fails without reasonable excuse to attend at the time and place specified in a summons under section 4;
- (b) refuses to take an oath or make an affirmation on being required to do so under section 4;
- (c) refuses to answer any question put by or with the consent of a Commission or to produce any article or document in his possession or under his control on being required to do so under section 4;

- (d) being an officer or agent of a public body or other body of persons within the meaning of section 9—
 - (i) after the appointment of a Commission, and with intent to avoid or prevent production, destroys, suppresses, defaces or makes away with any book or document that it would be his duty to produce to an inspector in the event of an inspector being appointed under section 4(1)(k);
 - (ii) refuses, without lawful authority or reasonable excuse to produce any such book or document to an inspector so appointed; or
 - (iii) refuses, without lawful authority or reasonable excuse, to answer any question put to him by an inspector so appointed with respect to the affairs of such body or any other body the books and documents which the inspector has been appointed to inspect;
- (e) wilfully interrupts the proceedings of a Commission or otherwise misbehaves during any hearing of the Commission,

shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of twelve months or to both.

(2) Any person who—

- (a) wilfully hinders or deters any person from attending, giving evidence or producing any article or document;
- (b) wilfully obstructs or hinders any police officer or other person acting under the authority of a warrant issued under subsection (2) of section 4 or section 5;
- (c) threatens, insults or causes any loss to be suffered by any person who has attended before a Commission, on account of such attendance;
- (d) threatens, insults or causes any loss to be suffered by any Commissioner at any time on account of the performance of his duties as a Commissioner;
- (e) publishes or otherwise discloses any material which a Commission had prohibited him from publishing or disclosing;

(f) publishes or otherwise discloses any material received by a Commission *in camera*,

shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for one year or to both.

(3) It shall be a good defence in the case of a prosecution under paragraph (e) of subsection (2) for the person charged to prove to the satisfaction of the court that he did not know nor had any reason for knowing that the material published or disclosed had been received by a Commission *in camera*.

Contempts dealt
with by
Commission

11. (1) A Commission may deal summarily as a contempt with any offence specified in section 10 which is committed in its presence, and may impose the sentence of a fine prescribed by that section.

(2) Any sentence of a fine imposed under section (1) may be remitted where the Commission is of the opinion that the contempt has been purged.

(3) Any person aggrieved by a judgment or sentence of a Commission in the exercise of the powers conferred by subsection (1) may appeal to the Supreme Court in the same manner as if it were a judgment or sentence of the Magistrate in respect of which an appeal lies under section 171 of the Magistrate's Court Ordinance, in accordance with rules made by the Chief Justice or, pending the making of such rules, in accordance with such directions as the Chief Justice may give in any particular case

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Commission to
have powers of
judge

12. For the purpose of enforcing the payment of a fine imposed by it, a Commission shall have the powers of the Supreme Court; and in the exercise of such power and for the purpose of issuing warrants, summoning persons and the exercise of other like powers, the Chairman may do all necessary acts in the name of the Commission.

Inquiry to be a
judicial
proceeding

13. (1) Every inquiry held under this Ordinance shall be deemed to be a judicial proceeding.

(2) Any conduct at an inquiry which would constitute a contempt of the Supreme Court if it were committed towards the Supreme Court shall be a contempt of a Commission and may be dealt with and punished by the Supreme Court as a contempt of the Supreme Court.

Protection of
Commission and
witnesses

14. (1) No Commissioner shall be liable to any suit or other proceeding for any act or thing done by him *bona fide* as such a Commissioner.

(2) Nothing in this section shall be deemed to limit the power of the Supreme Court to make an order of *mandamus*,

certiorari or *prohibition* in relation to proceedings before a Commission.

(3) All evidence given before a Commission shall be absolutely privileged, and no witness giving such evidence shall be liable to any suit or other civil proceedings in respect thereof.

(4) A public officer holding a legal appointment and an Attorney appearing before a Commission, whether as counsel for the Commission or otherwise under or by virtue of section 7, shall be entitled to the same immunities as if he were appearing for a party in proceedings before the Supreme Court.

15. Police officers and officers of the Supreme Court shall assist any Commission conducting an inquiry under this Ordinance for such purposes as the Commission may require and may do all such things as are necessary for the purpose of rendering such assistance.

Police and
officers of the
Supreme Court
to assist
Commission

16. The cost of any inquiry conducted under this Ordinance including any sums awarded under section 4(1)(g) shall be a charge on the Consolidated Fund.

Cost of inquiry

17. Subject to section 10(2)(d) no person shall be liable to any civil or criminal proceedings by reason of his publishing a true account of any evidence taken in public before a Commission or of any report of a Commission published by the authority of the Governor.

Protection of
person
publishing true
account

SCHEDULE

(Sections 3 and 4)

FORMS OF OATH AND AFFIRMATION AND OF WITNESS SUMMONS

Form of oath or affirmation to be taken by a Commissioner

I , swear by Almighty God (solemnly promise and declare) that I will diligently inquire into the matters prescribed in the instrument appointing this Commission and will truly and faithfully execute the powers and trusts vested in me by the Commissions of Inquiry Ordinance according to the best of my knowledge and judgment.

Summons to a witness

To A.B. [Name of person summoned and his address].

You are hereby summoned to appear before the Commission appointed by His Excellency the Governor to inquire [state subject matter of inquiry] at [place] upon the day of at o'clock in the noon and to give evidence respecting such inquiry, and you are required to bring with you [specify documents, etc]

Given under the hand of, Commissioner, this day of 19/20 Signature

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