

THE COMMISSIONS OF ENQUIRY ACT

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*COMMISSIONS OF ENQUIRY*

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## SCHEDULES

## THE COMMISSIONS OF ENQUIRY ACT

Cap. 68.  
Acts  
42 of 1969  
3rd Sch.  
19 of 1978,  
28 of 2013.

[27th March, 1873.]

1. This Act may be cited as the Commissions of Enquiry Act. Short title.

1A. In this Act—

“Constabulary Force” means—

- (a) the Jamaica Constabulary Force;
- (b) the Island Special Constabulary Force; or
- (c) the Rural Police;

Inter-  
pretation.  
28/2013  
S. 2.

“document” means, in addition to a document in writing, anything in which information of any description is recorded.

2. It shall be lawful for the Governor-General, whenever he shall deem it advisable, to issue a Commission, appointing one or more Commissioners, and authorizing such Commissioners, or any quorum of them therein mentioned, to enquire into the conduct or management of any department of the public service, or of any public or local institution, or the conduct of any public or local officers of this Island, or of any parish, or district thereof, or into any matter in which an enquiry would in the opinion of the Governor-General, be for the public welfare. Power to  
issue Com-  
missions of  
Enquiry.

Each such Commission shall specify the subject of enquiry, and may, in the discretion of the Governor-General, if there is more than one Commissioner, direct which Commissioner shall be Chairman, and direct where and when such enquiry shall be made, and the report thereof rendered, and prescribe how such Commission shall be executed, and may direct whether the enquiry shall or shall not be held in public. In the absence of a direction to the contrary, the enquiry shall be held in public, but the Commissioners shall nevertheless be entitled to exclude any particular person or persons for the preservation of order, for the due conduct of the enquiry, or for any other reason.

Powers to appoint fresh Commissioners, and to alter and revoke Commissions.

3. In case any Commissioner shall be or become unable or unwilling to act, or shall die, the Governor-General may appoint another Commissioner in his place; and any Commission issued under this Act may be altered as the Governor-General may deem fit by any subsequent Commission issued by the Governor-General or may be revoked altogether by a notification to that effect published in the *Gazette*.

Commission not affected by any change of Governor-General.

4. No Commission issued under this Act shall lapse by reason of, or be otherwise affected by the death, absence, or removal of the Governor-General issuing the same.

Commissioners to take oath of office.

5. It shall be the duty of each Commissioner appointed under this Act to make and subscribe an oath or affirmation, that he will faithfully, fully, impartially, and to the best of his ability discharge the trust, and perform the duties devolving upon him by virtue of such Commission, which oath or affirmation may be taken before any Justice, and shall be deposited by the Commissioner with the Governor-General's Secretary.

Power to appoint Secretary; his duties.

6. The Governor-General may appoint a Secretary to attend the sittings of the Commission to record their proceedings, to keep their papers, summon and minute the testimony of witnesses, and generally to perform such duties connected with such enquiry as the Commissioners shall prescribe, subject to the directions, if any, of the Governor-General.

Duties of Commissioners.

7. It shall be the duty of the Commissioners, after taking such oath or affirmation, to make a full, faithful and impartial enquiry into the matter specified in such Commission, and to conduct such enquiry in accordance with the directions (if any) in the Commission; and, in due course, to report to the Governor-General, in writing, the

result of such enquiry; and also, when required, to furnish to the Governor-General a full statement of the proceedings of such Commission and of the reasons leading to the conclusions arrived at or reported.

7A.—(1) The Commission shall not include any comment in a report of an enquiry into the matter specified in a Commission that is adverse to a person who is identifiable from the report, unless the Commission acts in accordance with this section.

Procedure where report proposed to include adverse comment. 28/2013 S. 3.

(2) Before making the report, the Commission shall give the person—

(a) a copy of the proposed adverse comment; and

(b) a written notice that—

(i) invites the person to make a written submission or a written statement to the Commission that is relevant to the proposed adverse comment within fourteen days after receipt of the notice, or within such longer period as the Commission may allow; and

(ii) includes the matters specified in the Second Schedule.

Second Schedule.

(3) At the end of the period specified in the notice, the Commission shall consider any written submission or written statement made by the person.

(4) After considering any written submission or written statement, the Commission shall subject to subsection (5), include the written submission or the written statement, or a summary of the submission or the statement, in the Commission's report of the enquiry.

(5) Where a written submission or a written statement is, in the opinion of the Commission, excessively long or contains defamatory or offensive language, the Commission

may include in the report of the enquiry, a fair summary of the submission or statement.

(6) Where the Commission gives a person a written notice under subsection (2) and no written submission or written statement is received by the Commission within the period specified in the notice, the Commission may note that fact in the report of the enquiry.

Division of  
opinion of  
Commis-  
sioners.

8. If the Commissioners shall, in any case, be equally divided on any question that arises during the proceedings of the Commission, the Chairman of the Commission shall have a second or casting vote.

Commis-  
sioners'  
powers for  
regulating  
their  
proceedings.

9. The Commissioners acting under this Act may make such rules for their own guidance, and the conduct and management of proceedings before them, and the hours and times and places for their sittings, not inconsistent with their Commission, as they may from time to time think fit, and may from time to time adjourn for such time and to such place as they may think fit, subject only to the terms of their Commission.

Commis-  
sioners'  
powers to  
summon  
and examine  
witnesses.

10. Commissioners acting under this Act shall have the powers of a Judge of the Supreme Court of this Island, to summon witnesses, and to call for the production of books, plans, and documents, and to examine witnesses and parties concerned on oath, and no Commissioner shall be liable to any action or suit for any matter or thing done by him as such Commissioner. All summonses for the attendance of witnesses, or other persons, or the production of documents, may be in the Form given in the Schedule, and shall be signed by one of the Commissioners, and oaths may be administered by one of the Commissioners, or by their Secretary.

Schedule.

Reference  
on point of  
law to  
Supreme  
Court.  
28/2013  
S. 4.

10A.—(1) The Commission may refer any disputed point of law arising in the course of an enquiry, or which is otherwise material to the enquiry, to the Supreme Court for a decision, and for this purpose may—

(a) conclude the enquiry subject to the decision; or

- (b) at any stage of the enquiry, adjourn it until after the decision has been given.

(2) The decision of the Supreme Court shall be final and binding upon all parties to the enquiry and upon the Commission.

**10B.** Where evidence that is adverse to a person is brought before the Commission, the Commission shall give that person the right to appear before the Commission and respond to the adverse evidence.

Right of person against whom adverse evidence is brought to appear.  
28/2013  
S. 4.

**11.** All persons summoned to attend and give evidence or to produce any book, plan or document before the Commission—

Duty of persons summoned and penalty for disobedience.  
42/1969  
3rd Sch.

- (a) shall be bound to obey the summons served upon them;
- (b) shall be entitled in respect of such evidence or the disclosure of any communication or the production of any such book, plan or document to the same right or privilege as before a court of law;
- (c) shall be entitled to be paid their expenses including travelling expenses at the rates prescribed by the Witnesses' Expenses Act for witnesses who are entitled to have their expenses paid from public funds:

Provided that the Commission may disallow the whole or any part of such expenses in any case, if it is satisfied that the expenses were improperly or unreasonably incurred or were excessive in the circumstances.

28/2013  
S. 5(c).

**11A.—(1)** If a person who has been summoned to attend before the Commissioners as a witness fails to attend or appear before the Commissioners as required by section 11 any Commissioner may, on proof by affidavit that the summons was served on the witness personally or that it has otherwise come to his knowledge, issue a warrant for the apprehension of that person.

Arrest of witness failing to appear.  
19/1978  
S. 3.

(2) A warrant so issued shall authorize the apprehension of the person and his being brought before the Commissioners and his detention in custody for that purpose until he is released by order of the Commissioners or any one of them.

(3) A warrant so issued may be executed by a person who is a member of the Constabulary Force, and the person executing it shall have power to break open and enter any place, building or vessel for the purpose of executing the warrant.

(4) The apprehension of a person under this section shall not relieve him from any liability incurred by reason of his failure to attend before the Commissioners.

**11B.**—(1) A person served with a summons to appear and give evidence before the Commission shall not—

- (a) without reasonable excuse; or
- (b) without having been excused, or released from further attendance, by the Commission,

fail to appear before the Commission.

(2) A person shall not, without reasonable excuse, refuse or fail to produce any book, plan or document that the person was required to produce by a summons under this Act served on the person under section 11(a).

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or, in default of payment, to imprisonment for a term not exceeding six months.

(4) It is a defence to a prosecution for contravention of subsection (2) that the book, plan or document was not relevant to the matter into which the Commission was enquiring.

**11C.**—(1) A person shall not assault, obstruct, hinder, or resist or use any threatening or abusive language or aid or incite any other person to assault, obstruct, hinder or resist a member

Failure of  
witness to  
attend or  
produce  
documents.  
28/2013  
S. 6.

Obstructing  
police.  
28/2013  
S. 6.



any other person to assault, obstruct, hinder or resist a member of the Constabulary Force in the execution of his duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or, in default of payment of the fine, to imprisonment for a term not exceeding six months.

**11D.**—(1) A person appearing as a witness before the Commission shall not, without reasonable excuse, refuse or fail to—

Refusal to  
take oath or  
answer  
question,  
*etc.*  
28/2013  
S. 6.

- (a) comply with a requirement under section 10 to take an oath; or
- (b) answer a question that the person is required by the Chairman to answer.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or, in default of payment of the fine, to imprisonment for a term not exceeding three months.

**11E.**—(1) A person shall not give evidence before the Commission that he knows is false or misleading in a material particular.

Giving false  
or misleading  
evidence.  
28/2013  
S. 6.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

**11F.**—(1) A person, knowing or having reasonable grounds for believing that a book, plan or document is or may be required in evidence before the Commission, shall not—

Improper  
dealings with  
documents.  
28/2013  
S. 6.

- (a) conceal, mutilate, destroy or alter the book, plan or document;
- (b) render the book, plan or document incapable of identification; or

- (c) render the book, plan or document illegible or indecipherable.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

Intimidation  
of witnesses.  
28/2013  
S. 6.

**11G.**—(1) A person shall not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage on or to a person—

- (a) because the person appeared or is to appear before the Commission as a witness or pursuant to a summons or warrant; or
- (b) on account of any evidence given, or which may be given, or any document or other thing produced or which may be produced before the Commission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

Dismissal of  
witness from  
employment  
for attending  
Commission.  
28/2013  
S. 6.

**11H.**—(1) An employer shall not dismiss an employee from employment or take any adverse action against an employee—

- (a) because the employee appeared or is to appear before the Commission pursuant to a summons or warrant or has otherwise acted in furtherance of the purposes of the Commission; or
- (b) on account of any evidence given, or which may be given, or any document or other thing produced or which may be produced, by the employee before the Commission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or, in default of payment of the fine, to imprisonment for a term not exceeding three months.

(3) If all elements of an offence under subsection (2) other than the motive for the employer's action are proved, the onus of proving that the dismissal or adverse action was not for any of the reasons specified in subsection (1)(a) or (b) is on the employer.

**11I.—**(1) A person shall not willfully prevent a person who has been summoned to attend before the Commission—

- (a) from so attending;
- (b) from answering a question that the person is required by the Chairman to answer; or
- (c) from producing a document or other thing referred to in the summons.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

**11J.—**(1) A person shall not—

- (a) give, confer or procure, or promise or offer to give, confer or procure any property or benefit of any kind to, or for, any person on the basis of any agreement or understanding that any person called or to be called as a witness before the Commission will give false testimony or withhold true testimony;
- (b) induce a person called or to be called as a witness before the Commission to give false testimony or to withhold true testimony; or
- (c) ask for, receive or obtain, or agree to receive or obtain, any property or benefit of any kind, whether for the person or for another person, on the basis of any agreement or understanding that any person called or to be called as a witness before the Commission will give false testimony or withhold true testimony.

Preventing  
witnesses  
from  
attending.  
28/2013  
S. 6.

Bribery of  
witnesses.  
28/2013  
S. 6.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

Fraud on  
witnesses.  
28/2013  
S. 6.

**11K.**—(1) A person shall not by any fraudulent misrepresentation or deceit, make or exhibit any false statement, representation, thing or writing, to any person with intent to affect the testimony of any person called or to be called as a witness before the Commission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three months.

Offence of  
contempt of  
Commission.  
28/2013  
S. 6.

**11L.**—(1) A person who does any act in the face of or within the hearing of the Commission that would constitute contempt if the Commission were a court of record, commits an offence.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or, in default of payment of the fine, to imprisonment for a term not exceeding one month.

Impersonating  
or falsely  
representing  
oneself as  
officer of  
Commission.  
28/2013  
S. 6.

**11M.**—(1) A person shall not falsely represent himself to be an officer of the Commission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(3) In subsection (1), “officer of the Commission” means—

(a) a Commissioner;

- (b) the Secretary appointed under section 6; or
- (c) a person employed, contracted or assigned to provide services to the Commission.

12. The Governor-General may direct the Commissioner of Police to detail constables to attend upon any such Commissioners, to preserve order during the proceedings of the Commission, and to perform such other duties as usually pertain to their office when in attendance upon the Supreme Court, and to serve summonses on witnesses, and to perform such ministerial duties as such Commissioners shall direct.

Constables detailed to attend upon Commissioners; their duties.

13.—(1) Subject to subsection (2), the Financial Secretary shall, prior to the commencement of the proceedings of the Commission—

Remuneration of Commissioners and expenses of Commission. 28/2013 S. 7.

- (a) enter into an agreement, in writing, with the Commissioners, for the remuneration of the Commissioners and any other person employed in or about any such Commission; and
- (b) make arrangements for the expenses attendant upon the carrying out of the Commission or upon any proceedings under this Act.

(2) Where an agreement under subsection (1)(a) provides for the payment of remuneration based on time based charges or fees, the agreement shall also stipulate the maximum sum that may be paid in satisfaction of the agreement between the parties, which sum shall not be exceeded, unless the Financial Secretary is satisfied that circumstances have arisen which were not within the contemplation of the parties at the time of entering into the agreement and which justify an amount being paid in excess of the agreed maximum sum.

(3) Sums to be paid in satisfaction of any agreement or arrangement under subsection (1), shall be paid from the Consolidated Fund.

14. All Commissions and all process and proceedings before the Commissioners under this Act shall be free from stamp duty.

Proceedings free from stamp duties.

Commissions, etc., to be published in *Gazette*.

15. All Commissions under this Act, and all revocations of any such Commissions, shall be published in the *Gazette*, and shall take effect from the date of such publication.

Director of Public Prosecutions or Commission to commence prosecution for offences. 28/2013 S. 8.

16.—(1) No prosecution for any offence under this Act shall be commenced, except by the direction of the Director of Public Prosecutions.

(2) The Commission may direct the Secretary, or such other person as the Commission thinks fit, to refer a matter arising under this Act to the Director of Public Prosecutions for a determination under subsection (1).

Minister may amend monetary penalty. 28/2013 S. 9.

17. The Minister may by order, subject to affirmative resolution, amend any monetary penalty specified in this Act.

28/2013 S. 10(a).  
Summons to witness.

## FIRST SCHEDULE

(Section 10)

*Summons to Witness*

To *A.B. (name of person summoned, and his calling and residence, if known)*.

You are hereby summoned to appear before (*here name the Commissioners*), appointed by the Governor-General to enquire (*state briefly the subject of enquiry*), at (*place*), upon the                      day of                      , 20                      , at                      o'clock, and to give evidence respecting such enquiry (*If the person summoned is to produce any documents add*): And you are required to bring with you (*specify the books, plans and documents required*). Therefore fail not at your peril.

Given under the hand of                      , Commissioner,  
this                      day of                      , 20                      .

*Matters for inclusion in Notice of Adverse  
Comment in Report*

A written notice to a person pursuant to section 7A shall—

(a) notify the person that if the person—

- (i) makes the written submission or written statement, the written submission or written statement, or a summary of it, may be included in the Commission's report of the enquiry;
- (ii) does not make a written submission or written statement within the period specified in the notice, the Commission may include the comment in the report of the enquiry; and

(b) inform the person that where a written submission or a written statement is excessively long or contains defamatory or offensive language, the Commission may include in the report of the enquiry a fair summary of the written submission or written statement.