

Commission of Inquiry into Money Laundering in British Columbia

RULES OF PRACTICE AND PROCEDURE

AUTHORIZED BY THE *PUBLIC INQUIRY ACT*, S.B.C. 2007, c. 9, s. 9

GENERAL

1. These rules of practice and procedure apply to the Commission of Inquiry into Money Laundering in British Columbia (the “Commission” or “Inquiry”).
2. The Commission will be conducted in accordance with the *Public Inquiry Act*, S.B.C. 2007, c. 9 (the “Act”) and pursuant to Order in Council No. 238/2019 (the “Terms of Reference”).
3. Subject to the Act and the Terms of Reference, the Commission has the power to control its own process.
4. The Commissioner may amend, supplement, vary or depart from any rule for the effective and efficient conduct of the Inquiry.
5. The Commissioner may issue directions or issue orders including on his own motion or following an application.
6. Except as otherwise ordered or directed by the Commissioner, participants, counsel and witnesses must comply with these rules.
7. Without limiting any other powers of enforcement, if any participant, counsel or witness fails to comply with any of these rules, including any time limits specified for taking any actions, the Commissioner, after giving reasonable notice to the participant, counsel or witness, may do one or more of the following:
 - a. schedule a meeting or hearing;
 - b. continue with the Inquiry and make a finding or recommendation based on the information before him, with or without providing an opportunity for submissions from that participant;
 - c. extend or abridge any time limit provided for in these rules; or
 - d. make any order necessary for the purpose of enforcing these rules or promoting the fair and efficient conduct of the Inquiry.
8. Commission counsel will communicate with participants primarily by email. Notice or service by email shall be considered adequate notice or service. All

participants must identify to Commission counsel the email address they wish to use for this purpose.

COMMISSIONER'S POWERS RESPECTING PARTICIPANTS

9. The Commissioner may make orders respecting:
 - a. the manner and extent of a participant's participation;
 - b. the rights and obligations of a participant, if any; and
 - c. any limits or conditions on a participant's participation.
10. In making an order under Rule 9, the Commissioner may:
 - a. make different orders for different participants or classes of participants; and
 - b. waive or modify one or more of his orders as necessary.

RIGHTS OF PARTICIPANTS

11. A participant:
 - a. may participate on his or her own behalf; or
 - b. may be represented by counsel or, with the approval of the Commissioner, by an agent.

RECORDS

General

12. In these rules, the term "record" has an extended meaning and includes a photograph, audio or video recording, any record of a permanent or semi-permanent character and any information recorded or stored by means of any device;
13. As soon as reasonably possible after being granted standing, a participant shall:
 - a. identify to the Commission the nature and character of records in the participant's possession or under the participant's control relevant to the subject matter of the Inquiry;

- b. if requested to do so, provide to the Commission a list of records or any subset of records in the participant's possession or under the participant's control; and
 - c. if requested to do so by the Commission, provide copies to and allow inspection of such records by the Commission. Wherever possible, records shall be provided electronically in the format requested by the Commission.
14. The obligation under paragraph 13(a) is a continuing obligation.
15. If it is claimed that a record is privileged from production, the claim must be set out when the record is listed pursuant to Rule 13(b) along with a statement of the grounds of privilege.
16. The nature of any record for which privilege from production is claimed must be described in a manner that, without revealing the information that is privileged, will permit a preliminary assessment of the validity of the claim for privilege.
17. Subject to Rule 18 (Undertaking), the Commission shall treat all records it receives as confidential unless and until they are made part of the public record in accordance with Rule 27. This does not preclude Commission counsel from showing or providing a record to a witness or potential witness, an expert, a consultant or a participant.
18. Commission counsel shall not provide a record to counsel for a participant or counsel for a witness until counsel has delivered to Commission counsel a signed undertaking, in a form approved by the Commission, that all records disclosed by the Commission will be used solely for the purpose of the Inquiry.
19. Counsel for a participant or a witness may provide a record to the participant or witness or expert or consultant only if that person has delivered to counsel a signed confidentiality agreement in a form approved by the Commission, that all records disclosed by the Commission will be used solely for the purpose of the Inquiry, and counsel has delivered the signed confidentiality agreement to Commission counsel.
20. Witnesses or participants who are unrepresented by counsel may be required to sign a confidentiality agreement, in a form approved by the Commission, before being provided records.
21. The Commissioner may:
- a. impose restrictions on the use and dissemination of records;

- b. require that a record that has not been entered as an exhibit in the evidentiary proceedings, and all copies of the record, be returned to the Commission; and
- c. on application, release counsel, a participant or a witness, in whole or in part, from the undertaking or confidentiality agreement in relation to any record, or may authorize the disclosure of a record to another person.

Applications for further disclosure of a record

22. A participant may seek disclosure of a record from another person (“record holder”) by asking Commission counsel, in writing, to use the powers of the Commission to obtain the record.
23. The request must state:
- a. the reasons the participant believes the record holder possesses or controls the record; and
 - b. the reasons the participant believes the record is relevant to a matter before the Commission.
24. If Commission counsel accepts the request, he or she will attempt to obtain the record.
25. If Commission counsel rejects the request, he or she will notify the participant, and the participant may apply to the Commissioner, in accordance with Rule 60 (Applications), for an order respecting the request.
26. If the participant applies to the Commissioner under Rule 60 (Applications), the Commission shall deliver the application and any supporting materials to the record holder and to each other participant having an interest in the subject matter of the record.

Public Access to Records

27. Unless the Commissioner otherwise determines:
- a. a record within the Commission’s control that has not been entered as an exhibit is not available for public inspection, copying or publication; and
 - b. a record that has been entered as an exhibit may be made available to the public on the Commission’s website including with redactions made by Commission counsel.

28. A participant or witness may apply to the Commissioner in accordance with Rule 60 (Applications) for an order that an exhibit, or parts of an exhibit, be redacted, sealed or otherwise made unavailable to the public.

INTERVIEWS AND SECTION 22 MEETINGS

29. Commission counsel may interview any person who they believe may have information or records that have any bearing upon the subject matter of the Inquiry.
30. A person may be required by summons issued under s. 22(1) of the Act to attend a meeting with Commission counsel and answer questions.
31. Commission counsel may meet with and/or interview the same person more than once. Persons who are met with and/or interviewed are entitled, but not required, to have legal counsel present.

OVERVIEW REPORTS

32. Commission counsel may prepare overview reports derived from their investigations. These overview reports may contain core or background facts, referring to their sources. They may also describe facts and circumstances relevant to the subject matter under discussion.
33. Once final, an overview report is an exhibit before the Commissioner without the necessity of being introduced into evidence through a witness.
34. Before an overview report is finalized:
 - a. Commission counsel will deliver a draft to each participant with standing to participate in respect of the subject matter of the overview report;
 - b. such participants may provide comments in writing on the draft overview report, within 14 days or such other time as Commission counsel advises; and
 - c. Commission counsel may modify the draft overview report in response to comments received from participants or on Commission counsel's own initiative.
35. In accordance with Rule 46, participants may propose witnesses for Commission counsel to call during the evidentiary hearings to support, challenge or comment upon the overview report in ways that are likely to significantly contribute to an understanding of the issues relevant to the Inquiry.

EVIDENTIARY HEARINGS

General

36. The Commissioner will set dates, hours and places for the evidentiary hearings, and will publish this information on the Commission's website.
37. The Commissioner may receive and accept information that he considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

Public and media access to evidentiary hearings

38. Subject to Rule 39 (below), the Commission will:
- a. ensure that evidentiary hearings are open to the public, in person and/or through broadcast proceedings; and
 - b. except as otherwise limited by these rules or order of the Commissioner, provide public access to information received in evidentiary hearings.
39. The Commissioner may, by order, prohibit or restrict a person or class of persons, or the public, from attending all or part of an evidentiary hearing, or from accessing all or part of any information provided to or held by the Commission,
- a. if the government asserts privilege or immunity over the information under section 29 of the Act;
 - b. for any reason for which information could or must be withheld by a public body under sections 15 to 19 and 21 to 22.1 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165; or
 - c. if the Commissioner has reason to believe that the order is necessary for the effective and efficient fulfillment of the Terms of Reference.
40. In making an order under Rule 39 (above), the Commissioner shall take into account the rights and interests of a participant against whom a finding of misconduct, or a report alleging misconduct, may be made.
41. The Commissioner may impose restrictions on the video and audio recording of the evidentiary hearing proceedings and may, on application, order that there be no video or audio recording of some or all of a witness's testimony.
42. The public and media may report the evidentiary hearing proceedings that are open to the public, except as otherwise ordered.

Witnesses

43. Commission counsel shall decide who will be called as a witness at the evidentiary hearings.
44. Each witness called shall, before testifying, be sworn or affirmed.
45. A witness may be called more than once.
46. Participants may propose witnesses to be called during the evidentiary hearings. Participants shall provide to Commission counsel at the earliest reasonable opportunity and in writing the name and contact information, if known, of any person who the participant believes should be called as a witness during the evidentiary hearings, with a statement of the subject matter of their proposed testimony, their experience and background, anticipated evidence and the estimated length of their testimony.
47. Commission counsel may decline to call a witness proposed by a participant. If the participant believes that the witness's evidence is necessary, the participant may apply, in accordance with Rule 60 (Applications), to the Commissioner for an order that Commission counsel call that witness.

Rules of Examination

48. Commission counsel will call all witnesses at the hearing and may adduce evidence by way of both leading and non-leading questions.
49. Each witness who testifies may, during his or her testimony, have counsel present.
50. Counsel for a witness who is not a participant may only ask questions of the witness with leave of the Commissioner.
51. Subject to direction by the Commissioner, participants may examine witnesses within the areas of their grant of standing.
52. The Commissioner may direct any counsel whose client shares a commonality of interest with the witness only to adduce evidence through non-leading questions.
53. Unless the Commissioner orders otherwise, the order of examinations of a witness will be as follows:
 - a. Commission counsel;
 - b. counsel for participants;

- c. Commission counsel, if appropriate.
54. The Commissioner may set reasonable time limits for the examination of witnesses and direct the order in which participants examine witnesses.
55. Commission counsel will provide reasonable notice in writing to participants of the name of each proposed witness, the subject matter of the proposed evidence of the witness and a list of records Commission counsel anticipates may be put to the witness.
56. Subject to direction of the Commissioner a participant may not put a record to a witness unless:
- a. the record has been disclosed to the Commission; and
 - b. written notice has been given to the Commission at least five days prior to the date of the witnesses' scheduled attendance and in the form directed by Commission counsel, identifying the record that the participant intends to put to the witness.
57. Commission counsel will provide all such notices to the witness.
58. The Commissioner has discretion to adjust or vary notice periods, and to determine whether the introduction of a subject matter or a record to a witness should be denied, allowed, or allowed on such terms as he directs.

Panels of Witnesses

59. Commission counsel may call a witness to give evidence as a member of a panel of witnesses.

APPLICATIONS TO THE COMMISSIONER

60. A person may apply to the Commissioner for an order by:
- a. preparing an application in writing;
 - b. attaching to the application any supporting materials; and
 - c. delivering the application and supporting materials to the Commission by email at applications@cullencommission.ca .
61. Unless the Commissioner otherwise directs, the Commission shall promptly deliver the application and supporting materials to each other participant.

62. Participants are entitled to respond to an application where their grant of standing identifies them as having an interest in the subject matter of the application.
63. Commission counsel may provide the Commissioner with any submissions or materials Commission counsel consider relevant and necessary to the proper resolution of the application.
64. The Commissioner will determine the schedule for the filing of submissions and materials and for the hearing of oral argument, if any.
65. The Commissioner may make an order or direction based on the written material filed or, at his discretion, after hearing oral argument.

NOTICES OF ALLEGED MISCONDUCT

66. The Commissioner will not make a finding of misconduct against a person or make a report that alleges misconduct by a person unless that person has had reasonable notice under s. 11(2) of the Act of the allegations against him or her and has had opportunity during the Inquiry to respond.
67. Any s. 11(2) notices will be delivered on a confidential basis to the persons or participants to whom they relate. Supplementary notices may be delivered from time to time by the Commission as warranted by the information before it.
68. If a person in receipt of a notice under s. 11(2) of the Act believes that it is necessary that additional evidence be received to respond to the allegations of misconduct, he or she may seek to have such evidence placed before the Commissioner in accordance with Rules 46 and 47.

STUDY COMMISSION ACTIVITIES

69. The Commission may use a range of investigative, research and policy development processes in its work.

SUBMISSIONS

70. Commission counsel, and each participant authorized to do so, may make submissions to the Commissioner as permitted by the Commissioner.