

CHAPTER 05:02
COMMISSIONS OF INQUIRY
ARRANGEMENT OF SECTIONS

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Law 33, 1961,
H.M.C. Order 1, 1963,
L.N. 55, 1965,
L.N. 84, 1966.

An Act to make provision for the appointment of Commissions of Inquiry with special powers; to provide for such inquiries and for matters incidental thereto.

[Date of Commencement: 13th June, 1962]

1. Short title

This Act may be cited as the Commissions of Inquiry Act.

2. Power to issue Commission of Inquiry into any matter of public nature

It shall be lawful for the President, whenever he deems it advisable, to issue a commission appointing one or more commissioners, and authorizing such commissioners, or any quorum of them therein mentioned, to inquire into the conduct of any officer in the public service of Botswana, the conduct or management of any department of the public service, or of any public or local institution or into any matter in which an inquiry would, in the opinion of the President, be for the public welfare.

3. Particulars of commissions

Each such commission issued in terms of section 2 shall specify the subject of inquiry, and may, in the discretion of the President, if there is more than one commissioner, direct which commissioner shall be chairman, and direct where and when such inquiry shall be made, and the report thereof rendered, and prescribe how such commission shall be executed, and may direct whether the inquiry shall or shall not be held in public.

4. Mode of holding inquiry and as to preservation of order

In the absence of a direction to the contrary, the inquiry 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 inquiry or for any other reason.

5. Power to appoint fresh commissioners and to alter and revoke commissions

In case any commissioner is unable or unwilling to act, or dies, the President may appoint another commissioner in his place; and any commission issued under this Act may be altered as the President may deem fit by any subsequent commission issued by the President, or may be revoked altogether by the President.

6. Oath or affirmation by commissioners

It shall be the duty of each commissioner appointed under this Act to make and subscribe an oath or affirmation in the prescribed form, which oath or affirmation may be taken before the President, or before such person as the President may appoint, and shall be deposited by the commissioner with the Permanent Secretary to the President.

7. Power to appoint secretary

The President 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 inquiry as the commissioners shall require.

8. Duties of commissioners defined

It shall be the duty of the commissioners, after taking such oath, or making such affirmation, to make a full, faithful and impartial inquiry into the matter specified in such commission, and to conduct such inquiry in accordance with the direction, if any, in the commission; and, in due course, to report to the President in writing the result of such inquiry; and also, when required, to furnish to the President a full statement of the proceedings of such commission, and of the reasons leading to the conclusions arrived at or reported.

9. Division of opinion of commissioners

If the commissioners, in any case, are 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.

10. Commissioners' power to regulate proceedings

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 of 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.

11. Power to summon and examine witnesses on oath

(1) Commissioners acting under this Act shall have the powers of the High Court to summon witnesses, and to call for the production of books, plans and documents, and to examine witnesses and parties concerned on oath.

(2) Where the commissioners consider it desirable for the purpose of avoiding expense or delay or for any other special reason, they may receive evidence by affidavit or administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to such interrogatories.

(3) Summonses for attendance of witnesses, or other persons, or the production of documents, may be in the prescribed form, and shall be signed by one of the commissioners or by their secretary, and oaths and affirmations may be administered by one of the commissioners or by their secretary.

12. False evidence

Any witness who wilfully gives or fabricates false evidence in any inquiry under this Act concerning the subject matter of such inquiry shall be guilty of perjury, and be liable to be prosecuted and punished accordingly.

13. Duty of witnesses summoned and penalties for contumacy, insult or interruption of proceedings

(1) All persons summoned to attend and give evidence, or to produce books, plans or

documents at any sitting of any such commission shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey a summons issued from the High Court, and shall be entitled to like allowances as if they had been summoned to attend at such court in any criminal proceedings at Sessions, if the same shall be allowed by the commissioners, but the commissioners may disallow the whole or any part of such allowances in any case if they think fit. Orders for the payment of such witnesses shall be made as nearly as may be as orders are made for the payment of witnesses in the High Court, and shall be paid in such manner as the President may direct.

(2) Every person refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him, and every person attending, but leaving the commission without the permission of the commissioners, or refusing without sufficient cause to answer, or to answer fully and satisfactorily, to the best of his knowledge and belief all questions put to him by or with the concurrence of the commissioners, or refusing or omitting without sufficient cause to produce any books, plans or documents in his possession or under his control and mentioned or referred to in the summons served on him, and every person who at any sitting of the commission wilfully insults any commissioner, or the secretary, or wilfully and improperly interrupts the proceedings of the commission, shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding six months, or to both:

Provided that no person giving evidence before the commission shall be compellable to incriminate himself, and every person shall, in respect of any evidence given by him before the commission, be entitled to all the privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him before such court.

14. Representation by advocate or attorney

Any person whose conduct is the subject of inquiry under this Act, or who is in any way implicated or concerned in the matter under inquiry, shall be entitled to be represented by an advocate or an attorney at the whole of the inquiry, and any other person who may consider it desirable that he should be so represented may, by leave of the commission, be represented by an advocate or attorney.

15. Payment of remuneration and expenses of commissioner and secretary

The remuneration, if any, of any commissioner or secretary or other persons employed in or about such a commission, together with the expenses to be incurred in any inquiry made under the provisions of this Act, shall be determined by the President and such sums shall be paid from the public revenues of Botswana.

16. Commissions, etc. to be published in Gazette

All commissions under this Act, and all revocations of any such commissions, shall be published in the *Gazette*.

17. Non-liability of commissioner

No commissioner shall be liable to any action or suit for any matter or thing done by him as such commissioner.

18. Regulations

The President may, by statutory instrument, make regulations prescribing anything which under this Act requires to be prescribed.