

## **BOARD OF INQUIRY**

### **BLACK HAWK 221**

### **PRACTICE NOTE 1**

#### **Introduction**

1. This Practice Note is issued for general guidance as to the practices and procedures to be adopted in this Board of Inquiry ("the Inquiry"/"the Board") and to advance the efficient discharge of the Board's functions under its Terms of Reference and in accordance with the requirements of procedural fairness. This Practice Note will apply until the conclusion of the calling of evidence or as extended by the Board.

#### **Notification of persons who may be affected**

2. Counsel Assisting will, as soon as is reasonably practicable, arrange for the notification of any person who may be affected in accordance with Regulation 33 of the Defence (Inquiry) Regulations 1985.

#### **Applications for and Grants of Leave to Appear**

3. Any application for leave to appear will be determined by the President.

4. The application, where practicable, is to be made in writing delivered to Counsel Assisting and supported by a written submission identifying the basis of the application.

5. Any grant of leave may be withdrawn by the President or be made subject to variation, limitation or conditions for the purpose of the efficient conduct of the Inquiry. It will be a condition of the grant of leave, unless otherwise directed by the President, that the applicant or that person's legal representative ("the applicant") will be authorized to receive all notifications and/or communications from the Board and/or Counsel Assisting in relation to the Inquiry and as may be required by this Practice Note.

6. The Board may limit the particular topics or issues upon which an applicant granted leave to appear may examine, cross examine or re-examine and impose time limits on examination, cross-examination, re-examination and submissions.

#### **Calling of Witnesses and Tendering of Statements and Other Documents**

7. Witnesses shall be called, first, by Counsel Assisting and shall be examined, cross examined and re-examined in accordance with this Practice Note (see Paragraph 15 below).

8. Thereafter, any person granted leave to appear shall have the right to have his/her evidence, that of a witness or witnesses placed before the Board by the person granted leave to appear and any such person, witness or witnesses shall be examined, cross-examined and re-examined in accordance with this Practice Note.

9. Counsel Assisting is to be notified in writing of the names of all such witnesses as are referred to in paragraph 8 and is to be provided a signed statement of the evidence expected to be given by such person, witness or witnesses as soon as practicable.

10. Counsel Assisting may interview any such person or witness referred to in paragraph 8 and/or take further statements from such person or witnesses. Any interview conducted by Counsel Assisting for the purpose of obtaining additional statements may, by leave of the President, be conducted in the absence of the person granted leave to appear.

11. Any person granted leave to appear who desires to have any document placed before the Board is to notify Counsel Assisting in writing a reasonable time in advance of the proposed tender, identifying the document and the basis of the tender.

**Presentation of Evidence**

12. Subject to the direction of the Board, Counsel Assisting will determine the order of witnesses and which documents are to be tendered by Counsel Assisting.

13. The substance of oral evidence to be presented to the Board by Counsel Assisting will, where practicable, be provided in advance to any person granted leave to appear.

**Notice of Adverse Oral Evidence**

14. Where Counsel Assisting considers that oral evidence to be adduced will be adverse to a person granted leave to appear, Counsel Assisting will so far as is practicable give advance notice of the evidence and provide an adequate opportunity to respond.

**The Sequence of Examination, Cross-examination and Re-examination of Witnesses**

15. Unless the President otherwise directs, the order for the examination, cross examination and re-examination of witnesses called by Counsel Assisting shall be:

- a. Counsel Assisting (Examination)
- b. Counsel Representing CAPT Bingley (Cross-examination)
- c. Counsel Representing affected party(ies) (Cross-examination)
- d. Counsel Representing TPR Porter (Cross-examination)
- e. Any questions by members of the Board
- f. In the same order as (a) – (d), any questions arising from (e)
- g. Counsel Assisting (re-examination)

16. In relation to any witness called by any party other than Counsel Assisting the course of examination, cross-examination and re-examination will be cognate with the order referred to in paragraph 15.

#### **Questions by Board of Inquiry**

17. Notwithstanding paragraph 15(e), the Board may ask questions of a witness at any time.

#### **Cross-examination**

18. Subject to the direction of the Board:

- a. cross-examination may only be permitted in relation to disputed issues of fact relevant to the Terms of Reference and directly relevant to the interests of the person requesting to cross-examine;
- b. where a number of persons granted leave to appear have a common interest in an issue about which cross-examination is proposed it will be expected that agreement will be reached between those persons as to the conduct of the cross-examination. Repetitive cross-examination will not be permitted;
- c. if a disputed fact is to be the subject of contradictory oral evidence by a person granted leave to appear, then the cross-examiner is required to give the witness a reasonable opportunity to respond to the substance of the proposed contrary evidence;
- d. if a person granted leave to appear proposes to put a submission inviting an adverse finding against any particular witness then the cross-examiner is to give the witness a reasonable opportunity to respond to the proposed submission; and
- e. if there is a disputed issue of fact which could reasonably give rise to an adverse finding against a particular person and the finding may be diminished or eliminated by the person being cross-examined as to credit, the Board will usually permit such cross-examination provided that it is kept within reasonable limits.

#### **Relevance**

19. Examination, cross-examination or re-examination is at all times to avoid irrelevant material, repetition, prolixity or matter that can properly be ascertained other than by cross-examination or that can properly be made the subject of later submissions.

#### **Exclusion of Prospective Witnesses**

20. Unless the Board otherwise directs any person who is to be a witness is not to be present while the evidence of another witness is being given.

#### **Oral Evidence to be on Oath or Affirmation**

21. A witness giving oral evidence to the Board is to take an oath or make an affirmation.

**Open Hearing**

22. Unless the Board otherwise directs evidence will be taken in public at such locations and times as are notified. Counsel Assisting or any person granted leave to appear who seeks a direction that evidence be given in a closed hearing must provide the Board in advance a written notice identifying such evidence and any submissions in support of the application for such a direction.

**Warning Notice of Rights and Obligations of Witnesses**

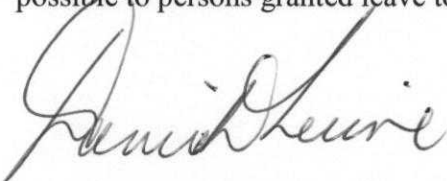
23. The Secretary to the Board is to give to any prospective witness a notice being Annexure F to Chapter 7 ADFP 06.1.4 – Administrative Inquiries Manual. Counsel appearing will seek to insure that witnesses understand obligations to the Inquiry and rights with respect to answering questions.

**Provision of Documents to Counsel Assisting**

24. In so far as practicable where a document is proposed to be put in cross-examination to a witness by a party granted leave to appear, Counsel Assisting should be provided with a copy of that document prior to its intended use.

**Notice of Legal Issues**

25. Persons granted leave to appear shall give as much notice as possible of any legal issues which they propose to raise to Counsel Assisting. Counsel Assisting shall give as much notice as possible to persons granted leave to appear of any legal issues they propose to raise.



**THE HON. D.D. LEVINE RFD QC**  
President

28 May 07