

GUIDANCE

Parliamentary Oversight – Committees and Relationships

Guide for Witnesses



CANADIAN AUDIT
& ACCOUNTABILITY
FOUNDATION

The following generic example of a guide for witnesses makes assumptions about the mandate and legal powers of a generic Public Accounts Committee (PAC) that may not be appropriate to every circumstance. PACs are encouraged to use it as a reference point for preparing their own document, bearing in mind these are only suggestions that must be reviewed for consistency with particular legislative requirements and with the preferences and practices of each jurisdiction.

This particular example was originally developed in 2006 based on input from PACs in British Columbia, the House of Commons, Saskatchewan and Nova Scotia. It has been updated to reflect recent developments in Canadian PACs. We thank all PACs for their co-operation in providing examples of reference documents to us and to the PAC clerk and researcher in Manitoba for their comments.

This guide answers the following questions to help witnesses from departments, agencies or Crown corporations (entities) prepare for their appearance before the PAC:

- 1 What is the committee's purpose in holding inquiries?***
- 2 Who can attend committee meetings?***
- 3 How are witnesses chosen?***
- 4 What is expected of a witness?***
- 5 What are the legal rights and responsibilities of witnesses?***
- 6 What is the normal order of proceedings?***
- 7 What is an opening statement?***
- 8 Will the committee expect witnesses to make a presentation?***
- 9 What will be the outcome of the committee's inquiry?***
- 10 Will there be a follow-up process?***
- 11 Where can witnesses get further information?***

1 WHAT IS THE COMMITTEE'S PURPOSE IN HOLDING INQUIRIES?

The PAC is a committee of the legislature which has a mandate to hold the government accountable for its spending of taxpayers' money and for its stewardship over public assets. In some cases, the PAC also works to improve public performance reporting and influence the quality of administrative processes. It carries out its mandate by holding a PAC inquiry into matters on which public money has been spent. An inquiry would probably have been called for one or more of the following reasons:

- Obtain agreement that there is (was) an important issue or problem, or explore alternative causes.
- Explore the seriousness of the consequences of an issue or problem.
- Explore alternative ways of dealing with the issue or fixing the problem.
- Obtain acceptance of responsibility for taking action.
- Discuss/explore ways and means of improving the administration of a particular program or process.

- Prompt the entity to take corrective action by endorsing the recommendations of the legislative auditor and/or issuing its own substantive recommendations.
- Monitor the status of implementation of the legislative auditors' and/or PAC's recommendations.

2 WHO CAN ATTEND COMMITTEE MEETINGS?

In addition to the members of the PAC, any other member of the legislature is permitted to attend. Although other members may ask questions, if permitted by the committee's established practices or with the permission of the Chair, they would likely not be permitted to vote in the committee. Sometimes an opposition critic will attend the meeting in order to ask questions (for example, the opposition education critic might attend a PAC hearing looking into the legislative auditor's report on the Department of Education).

Most committee meetings are open to the general public, including the media.

The legislative auditor usually attends either in the capacity as a witness or an advisor to the committee, depending on the jurisdiction.

3 HOW ARE WITNESSES CHOSEN?

Most PACs will require that the most senior public servant (Deputy Minister or CEO of a Crown corporation) attend the hearing. In some jurisdictions, this individual may be accompanied by senior managers or administrative officers who can help to address the specific issues likely to be of concern to the PAC. Entities that are the subject of the inquiry or could have an interest in the inquiry, such as officials of the Treasury Board and cabinet office, can sometimes attend as well. In a few jurisdictions ministers can attend but in practice, they rarely do.

4 WHAT IS EXPECTED OF A WITNESS?

Witnesses are invited in the expectation that they can make an important contribution towards enhancing the committee's understanding of the issues that are the subject of the inquiry.

Witnesses are expected to make known their position with respect to the recommendations or issues in the legislative auditor's report and can be asked to provide a status update on the implementation of those recommendations.

In many cases, witnesses will be asked to make an opening statement, and answer questions from committee members.

In some cases, witnesses may be invited to make a more detailed presentation to the committee. By participating in this process, witnesses provide the committee with valuable insights, observations and opinions that can help the committee make informed decisions.

Witnesses are required to attend, and they are expected to answer questions fully and frankly. However, because the committee operates in a public forum, witnesses are subject to the provisions of freedom of information and privacy legislation.

Thus witnesses may be allowed to testify in-camera (i.e. in private) when dealing with sensitive personal, commercial or confidential information. Witnesses are entitled to the protection of parliamentary privilege, which is explained in the next section. In light of the protection afforded witnesses, it is important they exercise judgement and restraint in presenting views to the committee.

Witnesses who are public servants are required to attend without cost. Others who are requested by the committee to appear may be granted reasonable travel and living expenses. The committee clerk would be consulted in the latter case.

5 WHAT ARE THE LEGAL RIGHTS AND RESPONSIBILITIES OF WITNESSES?

Nothing that a witness says to the PAC can form the basis for or support a civil or criminal legal action against the witness or any other person. Witnesses are protected from interference, threats and legal proceedings relating to what they say or do before the committee. No evidence given by a witness may be used against the witness or any other person in any other place without the permission of the legislature, unless false evidence is given. Witnesses may be required to give evidence under oath, or if preferable, under solemn declaration.

Witnesses are bound to answer all questions that the PAC thinks it is appropriate to ask. However, if a witness does not wish to answer a question, the witness may, after stating the reason for desiring to be excused from answering, appeal to the Chair as to whether, in the circumstances and for the reason stated, an answer should be given. If the witness is not excused from answering, he/she may request that the whole or part of the evidence be given in-camera and not published, and the committee would consider that request.

6 WHAT IS THE NORMAL ORDER OF PROCEEDINGS?

At least five working days in advance of the hearing, the committee would normally expect to receive electronic copies of the witnesses' opening statements. The clerk can provide specifications for opening statements. When they are received, he/she would distribute copies of these in advance to all members of the committee. As a courtesy, it is suggested that witnesses exchange statements with each other as well.

At the beginning of the meeting, the Chair would make a brief introductory statement about the purpose of the hearing. If the subject is a report by the legislative auditor, then the auditor would be invited to make a brief verbal statement first, and this would be a summary of the written statement already before the committee. This would be followed by opening statements from any other witnesses who have indicated a wish to speak.

After opening statements, the Chair would invite PAC members to question the witnesses. In some jurisdictions, questions rotate between the political parties (usually beginning with the largest opposition party) and there are time allocations for each party. Because of the time allocations, succinct answers are usually appreciated and encouraged by PAC members.

At the conclusion of questioning, the Chair may invite witnesses to make closing statements, and then he/she would sum up the proceedings and close the hearing.

Committee proceedings are recorded and transcribed by Hansard. After the meeting, the clerk can arrange for the witnesses to see the draft version of the testimony so that the witness can confirm what was said. Proceedings are then published.

7 WHAT IS AN OPENING STATEMENT?

An opening statement is the witness's opportunity to explain their viewpoint on the issues being considered. For example, if the committee were examining recommendations made by the legislative auditor, the committee would expect the witness from the entity to have a position on each recommendation; and if a recommendation were in the process of being implemented, the committee would expect a status report.

While there are no formal limits on the length of opening statements, in practical terms they are best kept brief.

8 WILL THE COMMITTEE EXPECT THE WITNESS TO MAKE A PRESENTATION?

Formal electronic presentations are not necessarily made at public meetings. If witnesses wish to make a formal presentation, it should be discussed and arranged in advance with the clerk. A witness may, however, be requested to brief the committee in advance at an informal in-camera meeting, and an electronic presentation may be appropriate there.

9 WHAT WILL BE THE OUTCOME OF THE COMMITTEE'S INQUIRY?

A PAC inquiry may consist of several hearings, as well as several in-camera meetings of the PAC or its steering committee, to consider its plans, progress and its report. After the public hearings are completed, the reporting phase may require several meetings as the committee reviews the findings in relation to its objectives, develops the broad outlines of its conclusions, and drafts its report. The outcome can be a report to the legislature with recommendations to address the issues of the inquiry. In some cases, the entity will be asked to respond to the committee's recommendations within a set period of time.

10 WILL THERE BE A FOLLOW-UP HEARING?

In the immediate future: If the committee members ask for clarification or supplementary information during a witness's testimony and the witness agrees to provide it, the witness would be requested to do so within a specified time period (e.g. 5 working days). Or the Chair of the PAC may write to a witness to request supplementary information, or an additional appearance if it is needed by the committee in light of subsequent proceedings or in the preparation of its report. In both cases, the clerk would follow-up to ensure commitments are met and the necessary information is provided. The report resulting from the committee's inquiry may also ask for commitments from the entity that the witness represents.

In the longer term: Most PACs have the power to recommend that an entity reappear before the PAC within a set period of time to report on progress made in implementing recommendations.

Most legislative auditors also conduct follow-up audits of report recommendations and some also follow up the implementation of the recommendations of the PAC. Follow-up hearings may be convened to review these follow-up reports.

11 WHERE CAN A WITNESS GET FURTHER INFORMATION?

Normally the clerk of the committee is the contact for appearance of witnesses and will keep all relevant parties informed about the committee and its plans including any changes in the schedule. The PAC website provides more information about the committee and the progress of its work. All the verbatim proceedings of meetings are posted on that site within a set number of days after each hearing.

ADDITIONAL REFERENCES RELATED TO THE LEGAL RIGHTS AND RESPONSIBILITIES OF WITNESSES

Alistair Fraser, W.F. Dawson, John Holtby, Beauchesne's Parliamentary Rules and Forms of the House of Commons of Canada, 6th, citation 109 and citations 853 to 855.

Derek Lee, The Power of Parliamentary Houses to Send for Persons, Papers & Records (Toronto: University of Toronto Press, 1993).

Robert Marleau and Camille Montpetit, eds, House of Commons Procedure and Practice, First Edition, 2000, pages 862-864.