**Form 33**

Rule 476(3)

**LONG ORDER FOR COMMISSION TO EXAMINE WITNESSES**

**ORDER**

**BEFORE –** [*eg. The Chief Justice the Honourable Justice*

*or*

*the Honourable Justice*

*or*

*the Honourable Associate Justice*]

**DATE MADE –**

**ORIGINATING PROCESS –** [*eg. Writ filed 20 or Originating Application filed 20* ]

**HOW OBTAINED –** [*eg. on the hearing of the Originating Application or of the interlocutory application filed by the plaintiff on 20* ]

**OTHER MATTERS –** [*State any undertaking of a party or other matters as directed by the Court*]

THE COURT ORDERS THAT –

1. A commission may issue directed to –

(a) [*names, addresses and descriptions*] commissioners named by and on behalf of the [*party*]; and

(b) [*names, addresses and descriptions*] commissioners named by and on behalf of the [*party*] –

for the examination of witnesses on behalf of the [*parties*] before them or any 2 of them, being one commissioner on each side.

2. Each of the [*parties*] is to be at liberty to examine –

(a) orally; and

(b) upon interrogatories; and

(c) orally on the subject matter of any interrogatory or arising out of an answer to it –

each witness produced on behalf of the party and, if a witness is cross-examined, to re-examine the witness orally.

3. Each of the [*parties*] is to be at liberty to cross-examine –

(a) orally; and

(b) upon cross-interrogatories; and

(c) orally on the subject matter of any interrogatory or arising out of an answer to it –

each witness produced on behalf of any other party.

4. Each oral question and the answer to it is to be recorded in writing and returned with the commission.

5. Within [*number*] days of this order, the practitioners or agents of the [*parties*] are to exchange any interrogatories which they propose to administer to any witness they intend to produce.

6. Within [*number*] days from the exchange of interrogatories, if any, the practitioners or agents of the [*parties*] to exchange any cross-interrogatories which they propose to administer to any witness another party intends to produce.

7. [*Number*] days before the examination of a witness, notice in writing –

(a) signed by any one of the commissioners of the party on whose behalf the witness is to be examined; and

(b) stating the time and place of the intended examination; and

(c) stating the name of the witness intended to be examined –

is to be given to each of the commissioners of the other party by delivering it personally or by leaving it at the usual place of abode or business of the commissioner.

8. If the commissioners of a party neglect to attend in accordance with a notice under paragraph 7, one of the commissioners of the party on whose behalf the notice was given may –

(a) proceed with and take the examination of the witness or witnesses *ex parte*; and

(b) adjourn the examination; and

(c) after an adjournment of the examination, continue it without giving notice.

9. If a witness produces a document and, for good cause to be stated in the deposition, refuses to part with the original, a copy of it or extract from it, certified by each commissioner present to be true and correct, is to be annexed to the deposition of the witness.

10. Each witness to be examined under the commission is to be examined on oath, affirmation or otherwise in accordance with the law of the place at which the examination is conducted.

11. If a witness does not understand the English language –

(a) any interrogatories and cross-interrogatories are to be translated into a language with which the witness is conversant before the examination; and

(b) the examination is to be taken in English through the medium of an interpreter to be appointed.

12. An interpreter acting for the purposes of paragraph 11 is to take an oath, affirmation or promise in accordance with the law of the place at which the examination is conducted to truly interpret the questions to be put to the witness and the answers of the witness to such questions.

13. A deposition is to be signed by the witness and by each commissioner who took it.

14. Any interrogatories and cross-interrogatories, the depositions and any other documents referred to in them, or certified copies of them or extracts from them, are to be sent to the Registrar on or before [*specify date*] or such other date as may be ordered, enclosed in a cover under the seal of each commissioner.

15. An office copy of a document transmitted in accordance with paragraph 14 may be given in evidence on the trial of the proceeding by and on behalf of any of the [*parties*], saving all just exceptions, without any other proof of the absence from this State of the relevant witness other than an affidavit of the practitioner of the party attesting to a belief as to the absence.

16. The trial of this proceeding is to be stayed until the return of the commission or earlier order.

17. The costs of this order and of the commission to be issued and the proceedings pursuant to the order are to be costs in the cause [*or as otherwise ordered*].

Dated

Registrar [*or District Registrar*]