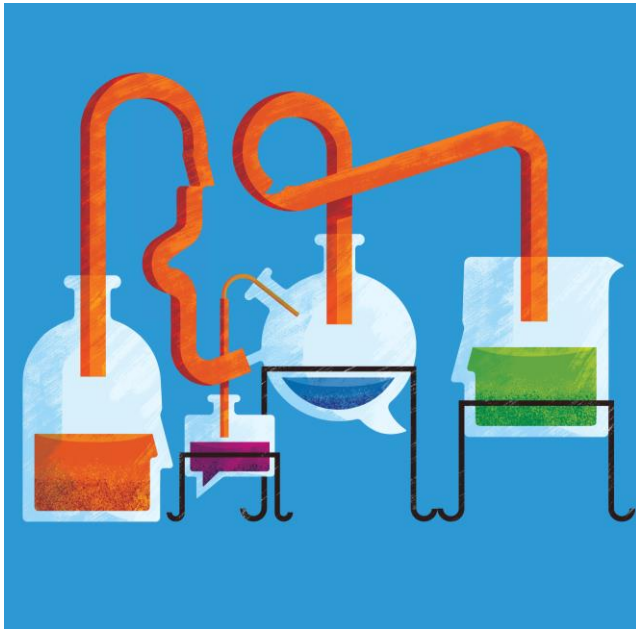


# Investigations & Inquiries: Let's Talk About Witnesses

Tuesday 5 November 2019



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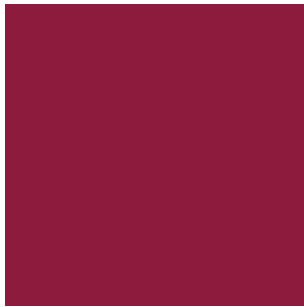
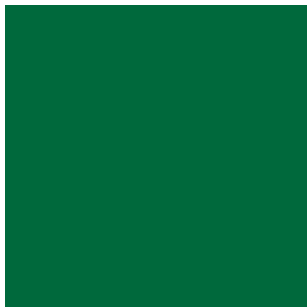
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# Welcome

Catherine Allen, Partner, Mason Hayes & Curran



# Rights and Obligations of Witnesses

Laura Rattigan, Senior Associate, Mason Hayes & Curran



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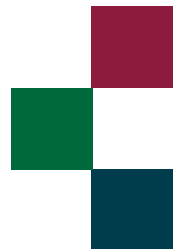
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# Introduction

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- Fair procedures
- Immunity of witnesses
- Privileges of witnesses
- Powers of compulsion of an inquiry
- Sanctions/remedies



# Types of Inquiries

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- Statutory Inquiries
- Non Statutory Inquiries

# Statutory Inquiries

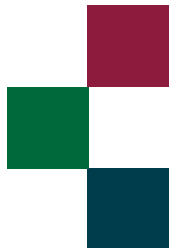
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- Tribunals of Inquiry
- Commissions of Investigation
- Oireachtas Committee Inquiries
- Sectoral Investigations

# Stages in an Inquiry

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- Terms of Reference
- Procedures
- Information gathering stage
- Hearings
- Submissions
- Report(s)



# Fair Procedures – Haughey Rights

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- Notice of allegations made
- Allowed to cross examine accuser
- Allowed to give rebutting evidence
- Allowed to give evidence in own defence



# Summary

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- Rights of Witnesses
  - Clear terms of reference
  - Right to fair procedures
  - Right to legal representation
  - Right to privilege of immunity from suit
  - Right to immunity of prosecution
  - Right to privilege against self incrimination
  - Right to claim legal privilege

# Summary

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- Duties of Witnesses
  - To cooperate with the Inquiry
  - To produce documents
  - To attend at a hearing
  - To give evidence on affirmation
  - Preserve confidentiality
  - To provide undertakings to the Inquiry

# Oireachtas Committees after Kerins and O'Brien

Rossa Fanning, Senior Counsel



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# A Checklist for Witness Attendance

Niall Michel, Partner, Mason Hayes & Curran



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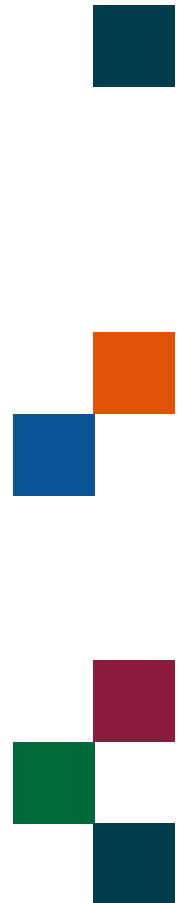
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# General

- Many different types of investigation, inquiry, forum
- Witness rights and obligations are context-specific
- Examples of contexts:
  - Nyberg Commission
  - IBRC Commission
  - Central Bank ASPs
  - Professional Disciplinary Inquiries
  - Oireachtas Banking Inquiry



# General Themes

Should be possible to ascertain:

- Remit of body
- Parameters of particular inquiry
- Powers/duties of body regarding witnesses
- Prescribed/IMPLIED procedures for the body
- Specified rights and obligations of witnesses
- IMPLIED rights of witnesses

# Omnibus Checklist

- Who is asking me to attend/produce documents?
- Under what authority?
- Is there a specific way, or person by whom, this should be done?
- Have any preconditions for the request been satisfied?
- Have I been given notice of the matters I am to address, or copies of other evidence/documents?
- Is this a request or a requirement?



# Omnibus Checklist

- What are my options if it is one or the other?
- Are there any other legal restrictions on my being called and/or my disclosing the evidence/documents sought?
- What happens if I decline/refuse/fail to cooperate?
- What use can be made of evidence/documents I give?
- Can I withhold any evidence or document – in a voluntary context/in a compelled context?

# Omnibus Checklist

- Can I refuse to provide evidence or a document/part of a document that
  - Might incriminate me
  - Would be covered by legal privilege
  - Is confidential or commercially sensitive?
- What if I might defame someone in giving my evidence?
- Can I be sued or prosecuted on foot of my evidence?

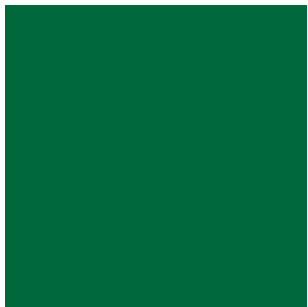
# Omnibus Checklist

- Will/can the proceedings be held in private?
- Can I be accompanied by someone/a lawyer?
- Do the strict rules of evidence apply?
- Can I test evidence that casts aspersions on me?
- Can another person I identify and cast aspersions on, cross-examine me?
- Can I make a general statement in writing/orally?

# Omnibus Checklist

- Will I have a chance to see the draft findings/report, and to comment?
- What remedies do I have during/after the process?
- Will my costs and expenses be paid?

# Questions?



# Thank You

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# Thank You

