

CRIMINAL PROCEDURE ACT

CHAPTER 12:02

Act
22 of 1925

Amended by

31 of 1931	12 of 1962
19 of 1936	8 of 1970
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Note

The Indictment Rules are contained in the First Schedule to this Act (*See* page 34).

Note on Increase of Fines

Section 8 of the Law Revision (Miscellaneous Provisions) Act 1980 (47 of 1980) provides that as from 31st July, 1981 (date of publication of the Revised Edition of the Laws of Trinidad and Tobago), a fine prescribed by any written law not published in the Revised Edition shall be increased in accordance with the provisions of paragraph 1(*b*), (*c*) and (*d*) of the Second Schedule to the Law Revision Act, Ch. 3:03.

Note on Transfer of Provisions

Section 41A and 41B of the Interpretation Act 1962 (Act No. 2 of 1962) have been transferred to this Act and appear in this Edition as sections 47 and 48.

CHAPTER 12:02

CRIMINAL PROCEDURE ACT

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CHAPTER 12:02

CRIMINAL PROCEDURE ACT

An Act to regulate the procedure in criminal cases triable on indictment.

1950 Ed.
Ch. 4 No. 3.
22 of 1925.

[2ND JUNE 1925]

Commencement.

1. This Act may be cited as the Criminal Procedure Act. Short title.

2. (1) In this Act, “Registrar”, “Deputy Registrar” and “Assistant Registrars” mean the Registrar, Deputy Registrar and Assistant Registrars appointed as such under the Supreme Court of Judicature Act. Interpretation.
Ch. 4:01.

(2) The Deputy Registrar and the Assistant Registrars, may perform any duty imposed on the Registrar by sections 18(1), 19, 28, 30, 32, 44, 46, 52, 70 and 76.

PLACE, TIME AND MODE OF TRIAL

3. (1) All persons committed within the Counties of St. George, St. David and St. Andrew or within the Wards of Chaguanas and Cunupia in the County of Caroni for trial for any offence shall be tried at Port-of-Spain. Trials in
Port-of-Spain.
[3 of 1957
4 of 1982
1 of 2000].

(2) All persons committed within the Counties of Victoria, St. Patrick, Nariva and Mayaro or within the Wards of Couva and Montserrat in the County of Caroni for trial for any offence shall be tried at San Fernando. Trials in
San Fernando.
[3 of 1957].

(3) All persons committed within the Ward of Tobago for trial for any offence shall be tried in Tobago. Trials in
Tobago.

(4) Notwithstanding subsections (2) and (3), a Judge may in any case either before the trial or on the arraignment of any person so committed, if satisfied that a fair trial cannot be had at San Fernando or in Tobago, order that the trial of such person shall take place at Port-of-Spain. Transfer of case
from San
Fernando or
Tobago to
Port-of-Spain.

Director of
Public
Prosecutions—
power to
transfer cases.
[1 of 2000].

(5) Notwithstanding subsections (1), (2) and (3) the Director of Public Prosecutions, whenever he considers that the ends of justice so require, or that having regard to all the circumstances it is desirable to do so in the interests of securing the more expeditious hearing and determination of cases, may in any case—

- (a) enter for trial at San Fernando any criminal case which but for this section would be triable at Port-of-Spain;
- (b) enter for trial at Port-of-Spain any criminal case which but for this section would be triable at San Fernando;
- (c) transfer the trial of any case entered for trial at Port-of-Spain to San Fernando; and
- (d) transfer the trial of any case entered for trial at San Fernando to Port-of-Spain;
- (e) enter for trial at Tobago any criminal case which but for this section would be triable at Port-of-Spain or San Fernando;
- (f) enter for trial at Port-of-Spain any criminal case which but for this section would be triable at Tobago;
- (g) transfer the trial of any case entered for trial at Port-of-Spain, or San Fernando to Tobago;
- (h) transfer the trial of any case entered for trial at Tobago to Port-of-Spain or San Fernando;
- (i) enter for trial at Chaguaramas any criminal offence to which subsection (6) refers which but for this paragraph would otherwise be triable at Port-of-Spain, San Fernando or Tobago;
- (j) transfer the trial of any criminal offence, to which subsection (6) refers, entered for trial at Port-of-Spain, San Fernando or Tobago to Chaguaramas.

- (6) The offences to which subsection (5)(i) and (j) apply are:
- (a) all drug trafficking offences as defined in the Dangerous Drugs Act;
 - (b) all offences under sections 6, 9, 10, 12, 15 and 31 of the Firearms Act;
 - (c) all offences under Parts V and VI of the Dangerous Drugs Act;

Ch. 11:25.

Ch. 16:01.

- (d) an offence of conspiracy to commit any of the offences mentioned in paragraphs (a), (b) and (c); and
- (e) an offence of attempting, inciting, aiding, abetting, counselling, or procuring the commission of any of the offences mentioned in paragraphs (a), (b) and (c).

(7) A transfer under subsection (5) shall be effected by delivering to the Registrar, ten clear days at least before the day of trial, a warrant for such transfer signed by the Director of Public Prosecutions; and the Registrar by himself or his assistants, six clear days at least before the trial, shall serve on the accused a copy of such warrant by delivering the same to him personally, or leaving the same at the place appointed for that purpose in the recognisance entered into by the accused.

Procedure for transfer of cases. [136/1976 1 of 2000].

(8) Where a criminal case is entered for trial or transferred under this section, the case shall be tried and determined at the place to which it was so entered for trial or to which it was transferred; and all recognisances, subpoenas and proceedings in or relating to the case shall thereupon be deemed to be returnable at such place; and all witnesses who are bound by recognisance or summoned to attend the trial shall attend at such place.

Trial of cases transferred. [1 of 2000].

4. At every Criminal Sessions of the Court for the trial of criminal cases at Port-of-Spain, two of the Judges shall hold separate Courts, and each of such Judges shall try all offences that are brought before him for trial. The Chief Justice may direct that one Court only shall be held at such Sessions, and he may also if he considers it expedient to do so, direct that more than two Courts shall be held at such Sessions, and if he so directs such number of Judges as are determined by him shall hold separate Courts at such Sessions.

Number of Courts to be held at the Port-of-Spain Criminal Sessions. [3 of 1957].

5. For the purposes of any Criminal Sessions of the Court for the trial of criminal cases at San Fernando, the Chief Justice may direct that more than one Court shall be held, and if he so directs the number of Judges designated by him shall hold separate Courts at such Sessions.

Chief Justice may direct holding of more than one Court at San Fernando Criminal Sessions. [22 of 1954].

Mode of trial. **6.** Every person committed for trial shall be tried on an indictment and, subject to the provisions of this Act, every such trial shall be held by and before a Judge and jury.

Issues of law. [45 of 1979
18 of 1994]. **7.** Whenever any issue of law is joined between the State and any person indicted for any offence, the issue shall be tried and determined by the Court according to written law.

Issues of fact. [45 of 1979
18 of 1994]. **8.** Whenever any issue of fact is joined between the State and any person indicted for any offence, the issue shall, subject to this Act, be tried and determined as nearly as may be according to written law.

PROCEEDINGS PRELIMINARY TO TRIAL

Director of Public Prosecutions may discharge prisoner. [136/1976
18 of 1994]. **9.** The Director of Public Prosecutions shall have the power to order the liberation of any person committed to prison for further examination or for trial, and to discharge from prosecution any person released on bail; for which release or discharge, a writing subscribed by the Director of Public Prosecutions setting forth that he sees no grounds for prosecuting such person shall be a sufficient warrant.

Private prosecution. [136/1976]. **10.** When any party injured or complaining desires to prosecute any person for whose liberation from prison a warrant may have been issued by the Director of Public Prosecutions under section 9, it shall be competent for such party, upon entering into such recognisance as is required under this Act, to apply to the Court, or, if the Court is not in session, to any Judge, for a warrant for the further detention in prison of that person, or, in case of his being already liberated, for his recommittal for trial, and the Court or Judge shall thereupon make such order therein as the Court or Judge thinks fit.

Right of Director of Public Prosecutions to enter *nolle prosequi*. [136/1976
18 of 1994]. **11.** Where a person charged with an offence triable on indictment is committed to prison or released on bail in respect of such offence, the Director of Public Prosecutions may, at any time before the trial, file in the Court the preliminary examinations upon which such prisoner was so committed for trial or released on bail,

and put in a declaration in writing, signed by him to the effect that considering the evidence adduced against such person in the preliminary examinations to be insufficient, he will not upon such evidence further prosecute such person in respect of such offence; a copy of the said declaration, certified by the Registrar, shall be served by the Registrar by himself or his Assistants by delivering the same to the person so committed for trial or released on bail, or leaving the same at his usual place of abode or at the place specified in the recognisance for the receiving of any indictment against such person in respect of such offence; and in such case the person so committed for trial, if in custody, shall be forthwith discharged, or if released on bail, the recognisance of bail shall be discharged or cancelled; but such discharge shall not operate as a bar to any subsequent proceedings against such person on the same facts.

INDICTMENTS

12. The Rules contained in the First Schedule with respect to indictments shall have effect as if enacted in this Act, but those Rules may be added to, varied, or annulled by further Rules made by the Rules Committee of the Supreme Court under this Act.

Rules as to
indictments.
First Schedule.

13. (1) Every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

General
provisions as to
indictments.

(2) Notwithstanding any rule of law or practice, an indictment shall, subject to this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the Rules under this Act.

Form of
indictments.

(3) Subject to the Rules under this Act, charges for more than one offence may be joined in the same indictment.

Joinder of
charges in the
same indictment.
[45 of 1979].

14. (1) Where, before trial, or at any stage of a trial, it appears to the Court that the indictment is defective, the Court shall make such order for the amendment of the indictment as the Court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

Orders for
amendment of
indictment,
separate trial,
and
postponement
of trial.
[18 of 1994].

(2) Where an indictment is so amended, a note of the order for amendment shall be endorsed on the indictment, and the indictment shall be treated for the purposes of the trial and for the purposes of all proceedings in connection therewith as if it had been originally presented in the amended form.

(3) Where, before trial, or at any stage of a trial, the Court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment, the Court may order a separate trial of any count, or counts of such indictment.

(4) Where, before trial, or at any stage of a trial, the Court is of opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of any power of the Court under this Act to amend an indictment or to order a separate trial of a count, the Court shall make such order as to the postponement of the trial as appears necessary.

(5) Where an order of the Court is made under this section for a separate trial or for the postponement of a trial—

- (a) if such an order is made during a trial, the Court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed or on the indictment, as the case may be; and
- (b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been presented in a separate indictment, and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged) as if the trial had not commenced; and
- (c) the Court may make such order as to releasing the accused person on bail, and as to the enlargement of recognisances, and otherwise, as the Court thinks fit.

(6) Any power of the Court under this section shall be in addition to and not in derogation of any other power of the Court for the same or similar purposes.

15. (1) Nothing in sections 12, 13 and 14 or Rules made under this Act shall affect the law or practice relating to the jurisdiction of a Court or the place where an accused person can be tried, nor prejudice or diminish in any respect the obligation to establish by evidence according to law any acts or intentions which are legally necessary to constitute the offence with which the person accused is charged, nor otherwise affect the laws of evidence in criminal cases. Savings.

(2) The provisions of sections 12, 13 and 14 relating to indictments shall apply to any plea, replication or other criminal pleading, with such modifications as may be made by Rules under this Act. Application to criminal informations, etc. [45 of 1979].

ATTENDANCE OF WITNESSES

16. Every person who is bound by recognisance to attend at any Criminal Sessions as a witness, whether for the prosecution or for the defence, in any case to be tried at such Sessions, shall be bound to attend the Court, whether or not he has received any subpoena or notice, on the day appointed for the trial of such case, and on subsequent days of the Sessions, until the case has been disposed of, or until he has been discharged by the Court from further attendance. Attendance of witness bound by recognisance to attend.

17. (1) Every person whose attendance as a witness, whether for the prosecution or for the defence, is required in any case, and who has not been bound by recognisance to attend as a witness at the Criminal Sessions at which such case is to be tried, shall be summoned by a writ of subpoena. Writs of subpoena.

(2) Every such subpoena shall issue in the name of the State and shall be tested in the name of the Chief Justice.

18. (1) Subject to subsection (2), the Registrar shall on being furnished with the names and places of abode of any witnesses on behalf of the prosecution or defence whose attendance is required to be secured by subpoena, prepare for service a writ or writs of subpoena directed to such witnesses, together with as many copies thereof, as there may be witnesses named in such writ or writs. Duty to prepare subpoenas. [12 of 1962].

(2) Notwithstanding subsection (1), the Registrar may, before a subpoena directed to any witness whose attendance is required on behalf of the defence is prepared, require to be satisfied by evidence on oath or otherwise that that witness is likely to be able to give material evidence, and the Deputy Registrar or an Assistant Registrar may exercise the like powers in relation to any application for any such subpoena directed to the Registrar. Nothing in this subsection shall be deemed to prejudice any right or power of the Court at the trial to call, or permit to be called, any witness.

(3) When application is made to postpone any trial by reason of the absence of any witness, it shall be taken as *prima facie* evidence, liable nevertheless to be rebutted, that the party applying for such postponement has not exercised all due and necessary diligence to secure the attendance of such witness if it appears that no subpoena to such witness was requested four clear days at the least before the first day of the Criminal Sessions.

Service of subpoenas.

19. The Registrar, by himself or his assistants, shall with all diligence, serve, or attempt to serve, a copy of the writ of subpoena upon each witness to be served, and shall note every such service or attempted service with the time thereof upon the original writ of subpoena, and shall endorse and subscribe thereon a certificate of the service or non-service thereof, as the circumstances of the case may require; any such certificate shall be *prima facie* evidence of the facts stated therein.

Warrant for apprehension of witness not attending on recognisance.

20. If any person who has been bound by recognisance to attend as a witness, whether for the prosecution or for the defence, at the trial of any case does not attend the Court on the day appointed for the trial of such case, and no reasonable excuse is offered for such non-attendance, the Court may issue a warrant to apprehend such person and to bring him, at a time to be mentioned in the warrant, before the Court in order to give evidence on behalf of the prosecution or of the defence, as the case may be.

Warrant for apprehension of witness disobeying summons.

21. If any person to whom any writ of subpoena is directed does not attend the Court at the time and place mentioned therein, and no reasonable excuse is offered for such non-attendance, then, after proof upon oath, to the satisfaction of the Court, that the writ

was duly served, or that the person to whom the writ is directed wilfully avoids service, the Court, being satisfied, by proof upon oath, that he is likely to give material evidence, may issue a warrant to apprehend such person, and to bring him, at a time to be mentioned in the warrant, before the Court in order to give evidence on behalf of the prosecution or of the defence, as the case may be.

22. Any person who makes default in attending as a witness in either of the cases mentioned in section 20 or 21 is liable, on the summary order of the Court, to a fine of one thousand dollars, and in default of payment, to imprisonment for two months.

Fine for non-attendance of witness.

23. (1) If a Judge is satisfied, by proof upon oath, that any person likely to give material evidence either for the prosecution or for the defence, on the trial of any case, will not attend to give evidence without being compelled to do so, he may order that, instead of a subpoena being issued, a warrant shall be issued in the first instance for the apprehension of such person.

Warrant for apprehension of witness in first instance.

(2) Every person arrested under any such warrant shall, if the trial of the case for which his evidence is required is appointed for a time which is more than twenty-four hours after the arrest, be taken before a Judge, and the Judge may, on his furnishing security by recognisance, to the satisfaction of the Judge, for his appearance at such trial, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained for production at such trial.

24. (1) If any person attending the Court as a witness, either on his recognisance, or in obedience to a subpoena, or by virtue of a warrant, or being present in Court and being verbally required by the Court to give evidence in any case—

Mode of dealing with witness refusing to be sworn, etc.

- (a) refuses to be sworn as a witness; or
- (b) having been sworn as a witness, refuses to answer any question put to him by or with the sanction of the Court; or
- (c) refuses or neglects to produce any document which he is required by the Court to produce,

without in any such case offering any sufficient excuse for such refusal or neglect, the Court may, if it thinks fit, adjourn or postpone the trial of the case for any period not exceeding eight days, and may in the meantime, by warrant, commit such person to prison.

(2) If such person, upon being brought before the Court at or before such adjourned or postponed trial, again refuses to do what is so required of him, the Court may, if it thinks fit, again adjourn or postpone the trial of the case, and commit him in like manner, and so again from time to time until such person consents to do what is so required of him.

(3) Every such person who is guilty of such refusal or neglect is also liable, on the summary order of the Court, either in addition to or in lieu of such punishment, to a fine of one thousand dollars, and in default of payment, to imprisonment for two months.

(4) Nothing herein contained shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him, or shall prevent the Court from disposing of the case in the meantime, according to any other sufficient evidence produced before it.

Non-attendance
of witness
adjourned trial.

25. Every witness who is present when the trial or further trial of a case is adjourned, or who has been duly notified of the time to which such trial or further trial is so adjourned, shall be bound to attend at such time, and in default of so doing, may be dealt with in the same manner as if he had failed to attend before the Court in obedience to a subpoena to attend and give evidence.

EXPENSES OF WITNESSES

Expenses of
witnesses for
the prosecution.
[45 of 1979].

26. Where any person appears before the Court on recognisance, or subpoena, or by virtue of a warrant, to give evidence against any person accused of an offence, the Court may order payment of the costs and expenses of such witness together with compensation for his trouble and loss of time.

27. The Court may, in its discretion, at the request of any person who appears before it on recognisance, or subpoena, or by virtue of a warrant, to give evidence on behalf of an accused person, order payment to such witness of such sum of money as the Court thinks reasonable and sufficient to compensate him for the expenses, trouble, and loss of time which he incurred or sustained in attending before the examining Magistrate and the Court.

Expenses of witnesses for accused.

28. (1) The amount of the expenses and compensation payable to any witness attending before the Court shall be ascertained by the Registrar and certified under his hand, and, on being allowed by a Judge under his hand, shall be paid to the witness by the Comptroller of Accounts.

Ascertainment of witness's expenses.

(2) The amount of the expenses and compensation payable to any witness attending before a Magistrate shall be ascertained by the certificate of such Magistrate granted before the attendance of the witness in the Court, and, on being allowed by a Judge under his hand, shall be paid to the witness by the Comptroller of Accounts.

PROCEEDINGS AT TRIAL AND SUBSEQUENT PROCEEDINGS

29. Where any person against whom an indictment has been duly preferred, and who is then at large, does not appear to plead to such indictment, whether he is under recognisance to appear or not, the Court may issue a warrant for his apprehension.

Bench warrant where accused person does not appear.

- 30.** (1) Where a person is arraigned on an indictment—
- (a) he shall in all cases be entitled to make a plea of not guilty in addition to any demurrer or special plea;
 - (b) he may plead not guilty of the offence specifically charged in the indictment but guilty of another offence of which he might be found guilty on that indictment;
 - (c) if he stands mute of malice or will not answer directly to the indictment, the Court may order the Registrar or officer deputising as such to enter a plea of not guilty on his behalf, and he shall then be treated as having pleaded not guilty.

Arraignment of accused person. [45 of 1979].

Ch. 10:04.

(2) On an indictment for murder a person found not guilty of murder may be found guilty—

- (a) of manslaughter;
- (b) of any offence of which he may be found guilty under a written law specifically so providing or under section 5 of the Criminal Law Act; or
- (c) of an attempt to commit murder, or of an attempt to commit any other offence of which he might be found guilty,

but may not be found guilty of an offence not included above.

(3) Where, on a person's trial on indictment for any offence except treason or murder, the jury find him not guilty of the offence specifically charged in the indictment, but the allegations in the indictment amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the Court of trial, the jury may find him guilty of that other offence or of an offence of which he could be found guilty on an indictment specifically charging that other offence.

(4) For the purposes of subsection (3) any allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged on indictment with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the completed offence, then (subject to the discretion of the Court to discharge the jury with a view to the preferment of an indictment for the completed offence) he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence.

(5) Where a person arraigned on an indictment pleads not guilty of an offence charged in the indictment but guilty of some other offence (whether an offence of which he might be found guilty on that charge or an offence separately charged), and he is convicted on that plea of guilty without trial for the offence of which he has pleaded not guilty, his conviction of the one offence shall be an acquittal of the other.

(6) Any power to bring proceedings for an offence by criminal information in the Court is hereby abolished.

(7) Subsections (1) to (3) apply to an indictment containing more than one count as if each count were a separate indictment.

31. Every accused person shall, on being called upon to plead, be entitled to have the indictment on which he is to be tried read over to him. Indictment to be read to accused.

32. The accused on being arraigned on any indictment may plead the general issue *ore tenus*, or he may in writing demur or plead any matter of law or fact which he would be permitted to plead according to the law in force in England on the 30th August 1962, upon which demurrer or plea in writing the Registrar, on behalf of the State may instanter join in demurrer, or demur, or reply. Procedure on plea or demurrer by accused.

33. In any plea of *autrefois convict* or *autrefois acquit* it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment. Plea of *autrefois convict* or *autrefois acquit*.

34. Where a prisoner is arraigned on an indictment for any offence, and can lawfully be convicted on the indictment of some other offence not charged in the indictment, he may plead not guilty of the offence charged in the indictment, but guilty of the other offence. Alternative plea.

35. Any accused person, on arraignment, may, if committed for trial less than six clear days before the day of his arraignment, require that his trial be postponed to the next Criminal Sessions held at the place at which he is arraigned, and the Court shall make order accordingly. Accused may require postponement.

36. In any case where the trial of an accused person is postponed, the Court may respite the recognisance of the accused person and his surety or sureties, if any, accordingly, and in such case the accused person shall be bound to appear to be tried at the time and place to which such trial may be postponed, without entering into any fresh recognisance for that purpose, in such and the same manner as if he was originally bound by his recognisance to appear and be tried at the time and place to which such trial has been so postponed. Effect on recognisance of postponement of trial.

Effect of plea of not guilty.

37. If the accused person pleads not guilty, he shall, by such plea, without any further form, be deemed to have put himself upon the country for trial, and the Court shall order a jury for the trial of the accused person accordingly.

Proof by formal admission. [16 of 2005].

37A. (1) Subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by the Attorney-at-law for the prosecution or the accused person or his Attorney-at-law, and the admission by any party of any such fact under this section shall, as against that party, be conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section—

- (a) may be made before or at the proceedings;
- (b) if made otherwise than in Court, shall be in writing;
- (c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or corporate secretary of the body corporate;
- (d) if made on behalf of a defendant who is an individual, shall be made by his Attorney-at-law; and
- (e) if made at any stage before the trial by a defendant who is an individual, must be approved by his Attorney-at-law, whether at the time it was made or subsequently, before or at the proceedings in question.

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter.

Case for the prosecution.

38. After the accused person has been given in charge to the jury, or when the jury have been sworn, the Attorney-at-law for the prosecution may open the case against the accused person, and adduce evidence in support of the charge.

Case for the defence.

39. The accused person or his Attorney-at-law shall be allowed, if he thinks fit, to open his case, and, after the conclusion

of such opening, the accused person or his Attorney-at-law shall be entitled to adduce evidence in support of the defence, and when all the evidence is concluded, to sum up the evidence.

40. The Attorney-at-law for the prosecution shall in all cases have the right of reply. Right of reply.

41. The Court shall have full power and authority, during any part of the trial, or after the case on both sides has been closed, to call up and examine any witness, whether such witness has been produced before the Court in the course of the trial or not. Calling of witnesses by Judge.

42. When the case on both sides is closed, the Judge shall, if necessary, sum up the law and evidence in the case. Summing up.

42A. The Judge may, after consultation with the Attorney-at-law for the prosecution and, the accused person or his Attorney-at-law, provide written directions to the jury on matters of substantial complexity. Written directions to jury. [16 of 2005].

43. After the Judge's summing up, or, if there is no summing up, on the conclusion of the case on both sides, the jury shall consider their verdict. Consideration of verdict.

44. The verdict, when returned by the jury and accepted by the Court, shall be entered by the Registrar or officer deputising as such, on the back of the indictment or on a sheet of paper annexed thereto, before the jury are discharged. Recording of verdict.

45. If the jury find the accused person not guilty, he shall be immediately discharged from custody on that indictment. Verdict of not guilty.

46. (1) Whenever any person is convicted by the verdict of the jury, or on his own confession, the Registrar, or officer deputising as such before the Court passes judgment, shall enquire and ask if such offender has anything to say why judgment should not be awarded against him, and in case such offender does not allege any matter or thing sufficient in law to arrest such judgment, the Court shall, immediately after conviction, or at any time during the same or the next succeeding Criminal Sessions, pronounce judgment, and sentence the prisoner to undergo such punishment as the Court sees fit. Sentence after conviction. [18 of 1994].

Ch. 4:60. (2) Where a defendant is brought up for judgment on an indictment, affidavits may be read and the Attorney-at-law may be heard in support of the prosecution and on behalf of the defendant; and the Court may, if it sees fit, postpone its judgment and grant bail to the defendant according to the Bail Act, on the condition that he undertakes to appear and receive judgment whenever he is ordered to be brought up for that purpose.

(3) Nothing contained in this section shall extend or be construed to prevent the Court from reserving the consideration of any question of law arising upon any criminal trial.

Where no penalty specified for indictable offence.

47. Where a person is convicted on indictment of an offence against any written law and no penalty is prescribed by any written law or the person is for that offence liable to be sentenced to imprisonment, but the sentence is not by any written law either limited to a specified term or expressed to extend to imprisonment for life, the person so convicted shall be liable to imprisonment for two years.

Power to impose fine.

48. Where a person is convicted on indictment of any offence other than a capital offence, the Court, if not precluded from sentencing the offender by its exercise of some other power (such as the power to make a probation order), may impose a fine in lieu of or in addition to dealing with him in any other way in which the Court has power to deal with him, subject however to any enactment limiting the amount of the fine that may be imposed or requiring the offender to be dealt with in a particular way.

Consecutive periods of imprisonment.

49. Whenever sentence is passed for any offence on any person already under sentence of imprisonment for another offence, the Court may award imprisonment for the subsequent offence to commence at the expiration of the imprisonment to which such person has been previously sentenced.

Conviction for arrestable offence after previous conviction. [16 of 2005].

50. (1) If any person is convicted of an arrestable offence, not punishable with death, committed after a previous conviction for an arrestable offence, such person is liable to imprisonment for life or for any term of years.

(2) Without prejudice to the offences listed in the Schedule to the Corporal Punishment (Offenders Over Eighteen) Act, a person convicted under subsection (1) may also be sentenced to undergo corporal punishment in accordance with the requirements of the Corporal Punishment (Offenders Over Eighteen) Act. Ch. 13:04.

51. (1) The proceedings upon any indictment for committing any offence after a previous conviction or convictions shall be as follows; that is to say, the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he pleads not guilty, or if the Court orders a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to enquire concerning such subsequent offence only; and if they find him guilty, or if on arraignment he pleads guilty, he shall then, and not before, be asked whether he has been previously convicted as alleged in the indictment, and if he answers that he has been so previously convicted, the Court may proceed to sentence him accordingly, but if he denies that he has been so previously convicted, or stands mute of malice, or will not answer directly to such question, the jury shall then be charged to enquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last mentioned enquiry. Procedure in case of previous convictions.

(2) If, upon the trial of any person for any such subsequent offence, such person gives evidence of his good character, the Attorney-at-law for the prosecution may, in answer thereto, give evidence of the conviction of such person for the previous offence or offences before such verdict of guilty is returned, and the jury shall enquire concerning such previous conviction or convictions at the same time that they enquire concerning such subsequent offence.

52. (1) A previous conviction may be proved in any legal proceeding by producing a record or extract of such conviction, and by giving proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted. Proof of previous conviction.

(2) A record or extract of a conviction, where the conviction was on indictment, shall consist of a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction, and purporting to be signed by the Registrar or other officer having the custody of the records of the Court by which such conviction was made; and in the case of a summary conviction shall consist of a copy of such conviction purporting to be signed by any Magistrate or Justice having jurisdiction over the offence in respect of which such conviction was made, or by the Clerk of the Peace or other proper officer of the Court by which such conviction was made.

(3) A record or extract of any conviction made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

(4) The mode of proving a previous conviction authorised by this section shall be in addition to and not in exclusion of any other authorised mode of proving such conviction.

Persons
convicted may
be condemned
in costs.
[136/1976].

53. (1) The Court may, when pronouncing judgment upon the conviction of any person for any offence, in addition to such sentence as may otherwise by law be passed, condemn such person to the payment of the whole or any part of the costs or expenses incurred in or about the prosecution and conviction for the offence of which he is convicted, if the Court thinks fit to do so; and the payment of such costs and expenses, or any part thereof, may be ordered by the Court to be made out of any moneys taken from such person on his apprehension, or may be enforced at the instance of the Director of Public Prosecutions or of any person liable to pay or who may have paid such costs and expenses, in the same manner (subject to the provisions of this Act) as the payment of any costs ordered to be paid by the judgment or order of the Court in civil cases may be enforced.

(2) In the meantime and until the recovery of such costs and expenses from the person so convicted as mentioned above, or from his estate, the same shall be paid and provided for in the same manner as if this section were not in force; and any money which may be recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed.

54. The Court may, if it thinks fit, upon the application of any person aggrieved, and immediately after the conviction of any person for any offence, award any sum of money, not exceeding fifty thousand dollars, by way of satisfaction or compensation for any loss or injury suffered by the applicant through or by means of the said offence, and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in the same manner as in the case of any costs ordered by the Court to be paid under section 53.

Compensation to persons defrauded or injured. [28 of 1996].

55. The Court may, in any case where a person prosecuted at the instance of a private party is acquitted, adjudge the prosecutor to pay to the party prosecuted the whole or any part of the costs and expenses which may have been occasioned to him by the prosecution.

Costs of private prosecution.

56. Where a person is convicted on indictment of an offence for which imprisonment may be awarded, the Court may sentence him to be imprisoned in the Port-of-Spain Prison and also direct that he shall be kept in solitary confinement for any portion or portions of such imprisonment, not exceeding one month at any one time, and not exceeding three months in any one year, as the Court thinks fit.

Place of imprisonment.

Solitary confinement.

57. (1) Every warrant for the execution of any prisoner under sentence of death shall be under the hand and Seal of the President, and shall be directed to the Marshal, and shall be carried into execution by such Marshal or his assistant at such time and place as mentioned in the warrant; and the warrant shall be in the form set out as Form A in the Second Schedule; and there shall issue in every such case a warrant for the delivery of the prisoner by the Keeper of the Port-of-Spain Prison to the said Marshal for the purpose of such execution and such last mentioned warrant shall be under the hand and Seal of the President and shall be in the form set out as Form B in the Second Schedule.

Warrant of execution.

Second Schedule. Form A.

Form B.

(2) The President may, by warrant under his hand and Seal directed to the Marshal, respite any such execution and, by the same or any subsequent warrant so signed and sealed, order such execution to be carried into effect at such time and place as shall be appointed and specified in the warrant, in

which case the execution shall be done at such time and place as shall be so appointed.

PROCEDURE ON COMMITTAL OF ACCUSED FOR SENTENCE

Accused to be brought before a Judge to be dealt with. [136/1976]. Ch. 12:01.

58. (1) As soon as convenient after the filing of an indictment against an accused person committed for sentence as provided by the Indictable Offences (Preliminary Enquiry) Act, the Registrar shall issue a summons to the accused person to appear, and if he is in custody an order to the gaoler to bring him before a Judge of the High Court at a time to be fixed by the Judge, and the Registrar shall notify the Director of Public Prosecutions accordingly.

Plea by accused committed for sentence.

(2) The accused person shall be called upon to plead to the indictment in the same manner as if he had been committed for trial, and he may plead either that he is guilty of the offence charged in the indictment or, with the consent of the prosecutor, of any other offence of which he might be convicted on the indictment.

Proceedings on plea of not guilty or if indictment is not sustainable. [18 of 1994].

(3) If the accused person pleads in the Court that he is not guilty, or if although he pleads that he is guilty it appears to the Court, upon the examination of the depositions of the witnesses, that he has not in fact committed the offence charged in the indictment, or any other offence of which he might be convicted on the indictment, the plea of not guilty shall be entered, and the trial is to proceed as in other cases when that plea is entered, and the Judge shall postpone the case for trial by a jury at the regular Criminal Sessions of the Court, and may remand the accused to prison or grant him bail in the meantime according to the Bail Act.

Ch. 4:60.

Special pleas competent to person committed for sentence. [18 of 1994].

(4) An accused person committed for sentence may plead *autrefois acquit*, *autrefois convict*, pardon or such special plea as he would be permitted to plead according to written law and in such case unless the accused person and the prosecutor and the Judge consent to the issue being tried by the Judge without a jury, the Judge shall postpone the case for trial by a jury as provided in subsection (3).

Withdrawal by accused of consent to his committal for sentence.

59. (1) An accused person may at any time before he is brought up for sentence give notice in writing to the Registrar

that he desires to withdraw his consent to be committed for sentence, and in such case he shall not be taken before the Court for sentence but shall be brought up for trial at the regular Criminal Sessions of the Court.

(2) The notice shall be filed on record in the Registrar's Office, and the Registrar shall notify the Director of Public Prosecutions of the withdrawal of the consent to committal for sentence; and such notice may be put in evidence at the trial or mention may be made at the trial of the fact that such notice was given.

Filing of notice of withdrawal. [136/1976]. Evidence thereof.

(3) In the event of the accused person withdrawing his plea of guilty or pleading not guilty, the Director of Public Prosecutions may refer back the case to the Magistrate in the manner and for the purposes stated in section 26 of the Indictable Offences (Preliminary Enquiry) Act.

Case may be referred back to the Magistrate. [136/1976].

Ch. 12:01.

60. (1) A Judge of the Court when sitting to deal with persons committed for sentence shall, subject to these provisions, possess all the powers, authorities and jurisdiction vested in the Court, with respect to the trial of criminal cases in the exercise of the ordinary criminal jurisdiction of the Court.

Powers of Court and Judge when dealing with committals for sentence.

(2) The Registrar or other proper officer shall attend before a Judge in any proceedings respecting persons committed for sentence, and keep a record thereof in like manner as in other proceedings in the Court.

Attendance of officials, and records in such cases.

61. (1) A person committed for trial, whether he is in custody or not, may, if he wishes to plead guilty and be sentenced prior to the regular Criminal Sessions of the Court, file with the Registrar a notice in writing to that effect; the notice shall be filed of record in the Registrar's Office.

Notice by person committed for trial of intention to plead guilty.

(2) In such case the Registrar shall notify the Judge and the Director of Public Prosecutions, or other prosecutor, of such notice and the subsequent proceedings shall be as in the case of a person committed for sentence and the provisions of sections 58, 59 and 60 shall *mutatis mutandis* apply.

Subsequent proceedings as for committal for sentence. [136/1976].

SENTENCE TO BE PASSED ON AN EXPECTANT MOTHER GUILTY OF A CAPITAL OFFENCE

62. (1) Where a woman convicted of an offence punishable with death is found in accordance with this section to be

Sentence of death not to be passed on pregnant woman.

pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death.

Procedure where woman convicted of capital offence alleges she is pregnant.

(2) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the Court before whom a woman is so convicted thinks fit so to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by a jury.

Constitution of the jury.

(3) Subject to subsections (4) and (5), the said jury shall be the trial jury, that is to say the jury to whom she was given in charge to be tried for the offence, and the members of the jury need not be resworn.

(4) If any member of the trial jury, either before or after the conviction, dies or is discharged by the Court as being through illness incapable of continuing to act or for any other cause, the inquiry as to whether or not the woman is pregnant shall proceed without him.

(5) Where there is no trial jury, or where a jury have disagreed as to whether the woman is or is not pregnant, or have been discharged by the Court without giving a verdict on that question, the jury shall be constituted as if to try whether or not she was fit to plead, and shall be sworn in such manner as the Court may direct.

Evidence and proof.

(6) The question whether the woman is pregnant or not shall be determined by the jury on such evidence as may be laid before them either on the part of the woman or on the part of the State and the jury shall find that the woman is not pregnant unless it is proved affirmatively to their satisfaction that she is pregnant.

Appeal.

Ch. 4:01.

(7) Where on proceedings under this section the jury find that the woman in question is not pregnant, the woman may appeal under the Supreme Court of Judicature Act to the Court of Appeal, and that Court, if satisfied that for any reason the finding should be set aside, shall quash the sentence passed on her and instead thereof pass on her a sentence of imprisonment for life.

Right to allege pregnancy in stay of execution abolished.

(8) The rights conferred by this section on a woman convicted of an offence punishable with death shall be in substitution for the right of such a woman to allege in stay of execution that she is quick with child, and the last mentioned right shall cease.

TRIAL AND VERDICT IN CASES OF INFANTICIDE

63. (1) Where a woman by any wilful act causes the death of her child, being a child under the age of twelve months, but at the time of the act the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

Offence of infanticide.

(2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act caused its death, but that at the time of the act the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, notwithstanding that the circumstances were such that but for this section they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.

(3) Nothing in this section shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane, or a verdict of concealment of birth, in pursuance of section 58 of the Offences Against the Person Act.

Ch. 11:08.

ARRAIGNMENT AND TRIAL OF INSANE PERSONS

64. If any accused person appears, on arraignment, to be insane, the Court may order a jury to be empanelled to try the sanity of such person, and the jury shall thereupon, after hearing evidence for that purpose, find whether such person is or is not insane and unfit to take his trial.

Procedure where person indicted appears on arraignment to be insane.

65. (1) If, during the trial of an accused person, such person appears, after the hearing of evidence to that effect or otherwise, to the jury before whom he is tried, to be insane, the Court shall in such case direct the jury to abstain from finding a verdict upon the indictment, and, in lieu thereof, to return a verdict that such person is insane.

Procedure where person indicted appears during trial to be insane.

(2) A verdict under this section shall not affect the trial of any person so found to be insane for the offence for which he was indicted, in case he subsequently becomes of sound mind.

Special verdict where accused person found guilty, but insane at date of act charged.

66. Where, in an indictment, any act is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible according to law for his actions at the time when the act was done, then, if it appears to the jury before whom such person is tried that he did the act charged, but was insane as mentioned above at the time when he did the same, the jury shall return a special verdict to the effect that the accused person was guilty of the act charged against him, but was insane as mentioned above at the time when he did the act.

Provision for custody of accused person found insane. [136/1976].

67. Where a person is found to be insane under section 64 or section 65, or has a special verdict found against him under section 66, the Court shall direct the finding of the jury to be recorded, and thereupon the Court may order such person to be detained in safe custody, in such place and manner as the Court thinks fit until the President's pleasure is known.

Court to report finding to President. [30 of 1975].

68. The Court shall as soon as practicable, report the finding of the jury and the detention of the person to the President who shall order the person to be dealt with as a mentally ill person in accordance with the laws governing the care and treatment of such persons or in any other manner he may think necessary.

PARDON AND COMMUTATION OF SENTENCES

Free or conditional pardon.

69. (1) Where the President, in the name and on behalf of the State, grants to any offender either a free or a conditional pardon, the discharge of such offender out of custody in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have for such offender, as to the offence for which such pardon is so granted, the same effect as a pardon under the Great Seal of the United Kingdom would have had in England on 2nd June 1925.

(2) No free pardon, nor any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases mentioned above, shall

prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any offence committed after the granting of any such pardon.

70. When any person is convicted of any crime punishable by death, if the President in the name and on behalf of the State intends to extend mercy to any such person upon condition of imprisonment, and such intention of mercy is signified by the President to the Court during the Criminal Sessions at which such person was convicted, the Court shall allow to such person the benefit of a conditional pardon, and make an order for imprisonment, of such person; and where such intention of mercy is so signified to the Court at any time when the Court is not in session, the Chief Justice shall allow to such person the benefit of a conditional pardon, and make an order for the imprisonment of such person, in the same manner as if such intention of mercy had been signified to the Court during the Criminal Sessions at which such person was convicted; and such allowance and order shall be considered as an allowance and order made by the Court, and shall be entered on the records of the Court by the Registrar, and shall be as effectual to all intents and purposes as if such allowance had been made by the Court during the continuance of the same Criminal Sessions, and every such order shall subject the person to be so imprisoned.

Commutation of punishment.

EVIDENCE

71. It shall not be necessary for the conviction of any person charged with any offence that the offence be proved by the direct or positive testimony of any witness, but the evidence given on the trial (although circumstantial only) shall be left by the Court to the consideration of the jury, and the jury may bring in a verdict of guilty upon such evidence, if they are satisfied with the same as sufficient to establish the guilt of the person charged.

Circumstantial evidence.
[45 of 1979].

72. All questions that arise touching the form, sufficiency or effect of any indictment or subsequent pleading, or touching the admissibility of any defence, or of any witness called to give evidence, or of any evidence, or of any question put to any witness, or of any document, paper, matter or thing tendered in evidence, or upon any matter or cause alleged for setting aside any

Admissibility of evidence.

verdict or staying or reversing any judgment, shall be decided by the Court as nearly as may be according to the law in force in England on the 30th August 1962.

Description of coin and notes.

73. (1) In every indictment in which it is necessary to make any averment as to any money or any currency note, it shall be sufficient to describe such money or currency note simply as money, without specifying any particular coin or currency note; and such averment, so far as regards the description of the property, shall be sustained by proof of any amount of coin, or of any currency note, although the particular species of coin of which such amount was composed, or the particular nature of the currency note, is not proved, and in cases of embezzlement and obtaining money or currency notes by false pretences, by proof that the offender embezzled or obtained any piece of coin or any currency note, or any portion of the value thereof, although such piece of coin or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part had been returned accordingly.

Currency note.
3 of 1965.

(2) For the purposes of this section, the expression “currency note” includes a Government currency note and a currency note as defined by the Currency Act.

MISCELLANEOUS PROVISIONS

Marshal to attend all sittings of Court.

74. The Marshal or his deputy or assistant shall be in attendance in Court at all times whilst the Court is sitting, and shall bring the prisoner before it, and during the continuance of the trial to have him under his charge and custody, and from time to time to remand him to prison by permission or order of the Court during the progress of the trial or any adjournment thereof.

Gaol delivery.

75. The Court at the close of every Criminal Sessions held in Port-of-Spain shall discharge all such prisoners entitled by law to be discharged; and the Keeper of Port-of-Spain Prison shall, on the last day of each such Sessions, deliver or cause to be delivered to the Court a list of all persons confined within such Prison and committed for trial before the Court, but who have not then been tried or upon whom sentence has not then been passed, together with the date and cause of commitment in each case and the name of the committing authority.

76. (1) In every case where an accused person, bound by recognisance to appear at any Criminal Sessions or for whose appearance any other person is so bound, fails to appear, the Registrar shall prepare a return in writing, in respect of such non-appearance.

Procedure for enforcing recognisance. [136/1976].

(2) Such return shall distinguish the principal from the sureties and shall contain—

- (a) the name of every such person so making default;
- (b) the nature of the offence in respect of which every such person or surety was so bound;
- (c) the residence of every such person or surety;
- (d) the trade, calling or profession of every such person or surety;
- (e) the statement of the cause, if known, why each such person has not appeared.

(3) On the last day of each Criminal Sessions the Registrar shall lay such return before the Court, and the Court shall examine such return, and, on the application of the Director of Public Prosecutions, make such order touching the enforcing of any such recognisance as shall appear to the Court to be just.

(4) Thereupon the Registrar shall copy on a roll all forfeitures and sums of money to be paid in lieu or satisfaction of them, or any of them, forfeited at such Criminal Sessions, and shall, within three days after the last day of such Criminal Sessions, send a copy of such roll, with a writ, according to the Form C in the Second Schedule to the Marshal.

Form C.
Second
Schedule.

(5) Such writ shall be the authority to the Marshal for proceeding to the immediate levying and recovering of such forfeitures or sums of money to be paid in lieu or satisfaction of them, or any of them, on the goods and chattels of such several persons, or for taking into custody the bodies of such persons in case sufficient goods and chattels are not found whereon levy can be made for recovery thereof.

(6) Every such person so taken shall be lodged in the Port-of-Spain Prison until the next Criminal Sessions, there to abide the judgment of the Court, unless in the meantime such forfeiture or sum of money is paid.

Power to make Rules.
Ch. 4:01.

First Schedule.

77. (1) The Rules Committee of the Supreme Court established by the Supreme Court of Judicature Act may, subject to negative resolution of Parliament, make Rules as they see fit for the better carrying into effect the objects of this Act and in particular to make Rules varying or annulling the Rules contained in the First Schedule and to make further Rules with respect to the matters dealt with in those Rules, and those Rules shall have effect subject to any modifications or additions so made.

(2) Any Rules so made shall have effect as if they were contained in an Act and shall come into operation on the day appointed in such Rules or, if no day is so appointed, on the day of their publication in the *Gazette*.

Sections 12 and 77.
[136/1976
45 of 1979
18 of 1994].
Citation.

FIRST SCHEDULE

INDICTMENT RULES

1. These Rules may be cited as the Indictment Rules, and these Rules, together with any Rules made under section 12 of this Act may be cited together by such collective title as may be prescribed by the last mentioned Rules.

Material, etc.,
for indictments.

2. (1) An indictment may be either written or printed, or partly written and partly printed.

(2) Figures and abbreviations may be used in an indictment for expressing anything which is commonly expressed thereby.

Commencement
of the
indictment.
[136/1976].

(3) The commencement of the indictment shall be in the following form:

THE STATE vs A.B.

In the Supreme Court of Trinidad and Tobago

Port-of-Spain [*or San Fernando or Scarborough, as the case may be*].

INDICTMENT BY THE DIRECTOR OF PUBLIC PROSECUTIONS
[*or INDICTMENT BY C.D. ADMITTED TO PROSECUTE PRIVATELY*].

A.B. is charged with the following offence (offences)—

Joining of
charges in one
indictment.
[45 of 1979].

3. Charges for any offences may be joined in the same indictment if those charges are founded on the same facts, or form or are a part of a series of offences of the same or a similar character.

UNOFFICIAL VERSION

UPDATED TO DECEMBER 31ST 2012

4. (1) A description of the offence charged in an indictment or, where more than one offence is charged in an indictment, of each offence so charged, shall be set out in the indictment in a separate paragraph called a count. Mode in which offences are to be charged.

(2) A count of an indictment shall commence with a statement of the offence charged, called the statement of offence.

(3) The statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by Act, shall contain a reference to the section of the Act creating the offence.

(4) After the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary; but where any rule of law or any Act limits the particulars of an offence which are required to be given in an indictment, nothing in this rule shall require any more particulars to be given than those so required.

(5) The forms set out in the Appendix to these Rules, or forms conforming thereto as nearly as may be, shall be used in cases to which they are applicable, and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case. Appendix.

(6) Where an indictment contains more than one count, the counts shall be numbered consecutively.

5. (1) Where a written law constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the written law, may be stated in the alternative in the count charging the offence. Provisions as to statutory offences.

(2) It shall not be necessary, in any count charging a statutory offence, to negative any exception or exemption from or qualification to the operation of the Act creating the offence.

6. (1) The description of property in a count in an indictment shall be in ordinary language and such as to indicate with reasonable clearness the property referred to, and if the property is so described it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property. Description of property.

(2) Where property is vested in more than one person, and the owners of the property are referred to in an indictment, it shall be sufficient to describe

the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such as “Inhabitants”, “Trustees”, “Commissioners”, or “Club” or other such name, it shall be sufficient to use the collective name without naming any individual.

Description of persons.

7. The description or designation in an indictment of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree, or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as “a person unknown”.

Description of document.

8. Where it is necessary to refer to any document or instrument in an indictment, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof.

General rule as to description.

9. Subject to any other provisions of these Rules, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any indictment, in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act, or omission referred to.

Statement of intent.

10. It shall not be necessary in stating any intent to defraud, deceive, or injure to state an intent to defraud, deceive or injure any particular person where the written law creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

Charge of previous convictions, etc.

11. Any charge of a previous conviction of an offence shall be charged at the end of the indictment by means of a statement that the person accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence.

Signing indictments. [136/1976].

12. (1) All indictments shall, subject to the provisions appearing below, be signed by the Director of Public Prosecutions.

(2) In cases in which, under any existing Act, any party injured or complaining is admitted to prosecute privately, the indictment shall be signed by such party and not by the Director of Public Prosecutions.

(3) The Registrar shall not receive an indictment from any private prosecutor unless the indictment has thereon endorsed a certificate by the Director of Public Prosecutions to the effect that he has seen such indictment and declines to prosecute at the public instance for the offence therein set forth,

and unless such prosecutor has entered into a recognisance in the sum of two thousand dollars, together with one surety to be approved by the Registrar in the like sum, to prosecute the said indictment to conclusion at the time at which the accused shall be required to appear, and pay such costs as may be ordered by the Court.

13. Every indictment shall be filed in Court.

Indictments to
be filed in Court.

14. (1) A copy of the indictment shall be served upon every accused person named therein four clear days at least before such person is required to plead thereto.

Copy of
indictment.
[18 of 1994].

(2) Where the accused person has been released on bail, the Registrar shall serve such copy by delivering the same at the place named in such person's recognisance of bail for the acceptance of such service, either to the accused person personally or, if he is not there, to any person willing to accept such service on behalf of such accused person or, if no such person can be found, by leaving the same between the hours of nine o'clock in the morning and four o'clock in the afternoon at the place mentioned above.

(3) Where the accused person is a prisoner in the Port-of-Spain Prison, the Registrar shall serve such copy by delivering the same to the Keeper of the Port-of-Spain Prison, who shall thereupon cause the same to be delivered to such prisoner.

(4) If, upon the arraignment of any accused person, it appears to the Court that such copy was not served according to this Act, such accused person shall, on application by himself or on his behalf, be entitled as of right to have the trial of the indictment postponed to the next Criminal Session held in the place in which he is arraigned.

15. Except as in these Rules otherwise provided, these Rules shall apply to any plea, replication or other pleading relating thereto.

Application to
informations,
and other
pleading.
[45 of 1979].

Rule 4.
[45 of 1979].

APPENDIX

FORMS OF INDICTMENT

FORM 1

STATEMENT OF OFFENCE

Uttering counterfeit coin, contrary to section 10 of the Coinage Offences Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
at in the County of, uttered
a counterfeit 25 cents coin, knowing the same to be counterfeit.

FORM 2

STATEMENT OF OFFENCE

Uttering counterfeit coin, contrary to section 13 of the Coinage Offences Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
at in the County of,
uttered a counterfeit fifty cents coin, knowing the same to be counterfeit.
A.B. has been previously convicted of a misdemeanor under section 13 of the
Coinage Offences Act, on the day of....., 20....., at
.....

FORM 3

STATEMENT OF OFFENCE

Murder.

PARTICULARS OF OFFENCE

A.B. on the day of, 20....., in the County of
....., murdered J.S.

FORM 4

STATEMENT OF OFFENCE

Assisting Offender, contrary to section 5(1) of the Criminal Law Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
after C.D. had committed an arrestable offence, namely, the theft of coat, the
property of E.F. and bearing the name of the manufacturer

knowing or believing that the said C.D. had committed the said offence or
some other arrestable offence, without lawful authority or excuse removed
from the said coat the name of the said manufacturer, with intent to impede the
apprehension or prosecution of the said C.D.

FORM 5

STATEMENT OF OFFENCE

Manslaughter.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, unlawfully killed J.S.

FORM 6

STATEMENT OF OFFENCE

Rape.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, had carnal knowledge of
E.F. without her consent.

FORM 7

FIRST COUNT

STATEMENT OF OFFENCE

Wounding with intent, contrary to section 12 of the Offences Against the Person Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of
wounded C.D., with intent to do him grievous bodily harm [*or to maim, disfigure, or disable him, or to resist the lawful apprehension of him the said A.B.*].

SECOND COUNT

STATEMENT OF OFFENCE

Wounding, contrary to section 14 of the Offences Against the Person Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, maliciously wounded C.D.

FORM 8

STATEMENT OF OFFENCE

Conspiracy to incite women to procure their own miscarriage.

PARTICULARS OF OFFENCE

A.B., and C.D., on divers days between the day of
..... and the day of
....., 20....., in the County of,
conspired together and with other persons unknown to incite women being with child to administer to themselves noxious things with intent to procure their own miscarriage.

FORM 9

STATEMENT OF OFFENCE

Libel.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of
published a defamatory libel concerning E.F., in the form of a letter [book,
pamphlet, picture, *or as the case may be*].
[Innuendo should be stated where necessary].

FORM 10

FIRST COUNT

STATEMENT OF OFFENCE

Publishing obscene libel.

PARTICULARS OF OFFENCE

E.M., on the day of, 20.....,
in the County of, sold, uttered and
published and caused or procured to be sold, uttered, and published an obscene
libel the particulars of which are deposited with this indictment.
*[Particulars to specify pages and lines complained of where necessary, as in
a book].*

SECOND COUNT

STATEMENT OF OFFENCE

Procuring obscene libel [*or thing*] with intent to sell or publish.

PARTICULARS OF OFFENCE

E.M., on the day of, 20.....,
in the County of, procured an
obscene libel [*or thing*], the particulars of which are deposited with this
indictment, with intent to sell, utter or publish such obscene libel [*or thing*].

FORM 11

STATEMENT OF OFFENCE

Libel.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, published a defamatory
libel concerning W.Y., in the form of a letter addressed to J.B., which said
letter contained the following defamatory matters concerning the said W.Y.:—

1. Do you know that about the year 20....., your friend W.Y. was in the
employ of L. and J., and that his accounts were found to be all wrong?
(meaning thereby that W.Y. was guilty of acts of dishonesty and falsification
of accounts whilst he was in the employ of L. and J.).

2. As soon as his defalcations were discovered and a warrant was applied
for he fled to (meaning thereby that the said
W.Y. was a fugitive from justice).

3. Sometime after this he appears to have returned to, for he
was found to be keeping a disorderly house in the (meaning thereby
that the said W.Y. had committed the criminal offence of keeping a disorderly
house).

[See Form 12 for plea of justification to Form 11].

FORM 12

**PLEA OF JUSTIFICATION OF A.B. IN ANSWER TO THE
INDICTMENT AGAINST HIM FOR LIBEL**

[See Form 11]

A.B. says he is not guilty, and for a further plea he says that all the defamatory matters alleged in the indictment are true.

PARTICULARS

1. On the day of, 20.....,
W.Y. received the sum of \$..... from T.S., and on the
..... day of, 20, W.Y. received the sum of
\$ from C.F., and the sum of
\$ from W.D. on behalf of his employers, L. and J., which
he fraudulently omitted to enter in their books or to account for in any way.

2. On the day of, 20, soon after W.Y.'s
defalcations were discovered and a warrant was applied for against him upon
charges of embezzling his employers' money and falsifying their books, W.Y.
left on a ship called the *Eagle* bound for
.....

3. On the 19th September and on other days in the year 20....., W.Y. kept a
house at for the purpose of betting,
contrary to
A.B. says it was for the public benefit that the defamatory matters charged in
the said indictment should be published by reason of the fact that W.Y. was at
the time of the publication thereof a candidate for the public office of
Councillor of the Borough of

[For Replication to Form 12, see Form 13]

FORM 13

**REPLICATION TO THE PLEA OF
JUSTIFICATION OF A.B.**

[See Form 12]

H.S., Registrar of the Supreme Court, joins issue on behalf of the State.

FORM 14

STATEMENT OF OFFENCE

Larceny, contrary to section 18 of the Larceny Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, being clerk or servant to
M.N., stole from the said M.N. ten yards of cloth.

FORM 15

STATEMENT OF OFFENCE

Robbery with violence, contrary to section 24 of the Larceny Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, robbed C.D. of a
watch, and at the time of or immediately before or immediately after such
robbery did use personal violence to the said C.D.

FORM 16

FIRST COUNT

STATEMENT OF OFFENCE

Larceny.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,

in the County of, stole a bag, the property of C.D.

SECOND COUNT

STATEMENT OF OFFENCE

Receiving stolen goods, contrary to section 34 of the Larceny Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,

in the County of, did receive a bag, the property of C.D., knowing the same to have been stolen.

A.B. has been previously convicted of arrestable offence, to wit, burglary, on the day of, 20, at

FORM 17

STATEMENT OF OFFENCE

Breaking into dwelling house and larceny, contrary to section 27 of the Larceny Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20, in the County of

....., did break and enter the dwelling house of C.D. with intent to steal therein, and did steal therein one watch, the property of S.T.

FORM 18

STATEMENT OF OFFENCE

Sending threatening letter, contrary to section 31 of the Larceny Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, sent, delivered, or uttered to
or caused to be received by C.D., a letter accusing or threatening to accuse the
said C.D., of an infamous crime with intent to extort money from the said C.D.

FORM 19

STATEMENT OF OFFENCE

Obtaining goods by false pretences, contrary to section 34 of the Larceny Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, with intent to defraud,
obtained from S.P. five yards of cloth by falsely pretending that he, the said
A.B., was a servant to J.S., and that he, the said A.B., had then been sent by
the said J.S. to S.P. for the said cloth, and that he, the said A.B., was then
authorised by the said J.S. to receive the said cloth on behalf of the said J.S.

FORM 20

STATEMENT OF OFFENCE

Conspiracy to defraud.

PARTICULARS OF OFFENCE

A.B. and C.D. on divers days between the day of and the
..... day of, 20....., in the County of,
conspired together and with other persons unknown to defraud such persons
as should thereafter be induced to part with money to the said A.B. and C.D., by
false representations that A.B. and C.D. were then carrying on a genuine business
as jewellers at, and that they were then willing and
prepared to supply articles of jewellery to such persons.

FORM 21

FIRST COUNT

STATEMENT OF OFFENCE

Falsification of accounts, contrary to section 9 of the Criminal Offences Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, being clerk or servant to
C.D., with intent to defraud, made or concurred in making a false entry in a
cash book belonging to the said C.D., his employer, purporting to show that on
the said day \$..... had been paid to L.M.

SECOND COUNT

STATEMENT OF OFFENCE

Same as First Count.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, being clerk or servant to C.D.,
with intent to defraud omitted or concurred in omitting from or in a cash book
belonging to the said C.D., his employer, a material particular, that is to say, the
receipt on the said day of \$ from H.S.

FORM 22

FIRST COUNT

STATEMENT OF OFFENCE

Forgery, contrary to section 4(1) of the Forgery Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,

in the County of, with intent to defraud,
forged a certain Will purporting to be the Will of C.D.

SECOND COUNT

STATEMENT OF OFFENCE

Uttering forged document, contrary to section 9 of the Forgery Act.

PARTICULARS OF OFFENCE

A. B., on the day of, 20, in the County of,
uttered a certain forged Will purporting to be the Will of C.D., knowing the
same to be forged and with intent to defraud.

FORM 23

FIRST COUNT

STATEMENT OF OFFENCE

Arson, contrary to section 4 of the Malicious Damage Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, maliciously set fire to a
dwelling house, one F.G. being therein.

SECOND COUNT

STATEMENT OF OFFENCE

Arson, contrary to section 5 of the Malicious Damage Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of,
maliciously set fire to a house with intent to injure or defraud.

FORM 24

STATEMENT OF OFFENCES

A.B., arson, contrary to section 5 of the Malicious Damage Act.

C.D., being aider and abettor to same offence.

PARTICULARS OF OFFENCES

A.B., on the day of, 20.....,
in the County of, maliciously set fire to a house
with intent to injure or defraud.

C.D., on the same day, in the County of,
did counsel, procure, and command the said A.B. to commit the said offence.

FORM 25

STATEMENT OF OFFENCE

Damaging trees, contrary to section 19 of the Malicious Damage Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, maliciously damaged a
tree there growing.

FORM 26

FIRST COUNT

STATEMENT OF OFFENCE

Offence under section 27 of the Malicious Damage Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, displaced a sleeper belonging to the
..... Railway with intent to obstruct, upset, overthrow, injure,
or destroy an engine, tender, carriage, or truck using the said railway.

SECOND COUNT

STATEMENT OF OFFENCE

Obstructing railway, contrary to section 29 of the Malicious Damage Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, by unlawfully displacing a sleeper belonging
to theRailway did obstruct or cause to be obstructed an
engine or carriage using the said railway.

FORM 27

STATEMENT OF OFFENCE

Perjury, contrary to section 4(1) of the Perjury Act.

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....,
in the County of, being a witness upon the trial of an action in the
.....Court, in which onewas
plaintiff, and onewas defendant, knowingly
falsely swore that he saw one M.N., in the street called Frederick Street, Port-
of-Spain, on the day of, 20.....

FORM 28

STATEMENT OF OFFENCE

Obstructing Coroner in the execution of his Duty. (Common Law Offence).

PARTICULARS OF OFFENCE

A.B. and G.C., on the day of, 20....., in
the County of, intending
to prevent the Coroner of from
holding an inquest in the execution of his duty upon view of the dead body of
S.C., who died a violent or an unnatural death or a sudden death of which the
cause was unknown, or intending to obstruct the said Coroner in the
holding of such inquest, did bury the said dead body in a certain place, to wit
.....

FORM 29

FIRST COUNT

STATEMENT OF OFFENCE

Bankruptcy Offence contrary to section 136 of the Bankruptcy Act.

PARTICULARS OF OFFENCE

A.B., has been adjudged bankrupt, and on the day of, 20....., in the County of did not fully and truly discover to the trustee all his property, and how and to whom and for what consideration and when he had disposed of a piano, part thereof.

SECOND COUNT

STATEMENT OF OFFENCE

Bankruptcy Offence contrary to section 136 of the Bankruptcy Act.

PARTICULARS OF OFFENCE

A.B., has been adjudged bankrupt, and on the day of, 20, in the County of, did not deliver up to the trustee a book called a ledger, relating to his property or affairs.

FORM 30

STATEMENT OF OFFENCES

A.B., undischarged bankrupt obtaining credit, contrary to section 137 of the Bankruptcy Act.

C.D., being aider and abettor to same offence.

PARTICULARS OF OFFENCES

A.B., on the day of, 20....., in the County of, being an undischarged bankrupt, obtained credit to the extent of from H.S. without informing the said H.S. that he then was an undischarged bankrupt.

C.D. at the same time and place did aid, abet, counsel, and procure A.B. to commit the said offence.

SECOND SCHEDULE
WARRANT OF EXECUTION

Section 57.
[136/1976].
Section 57(1).

FORM A

THE REPUBLIC OF TRINIDAD AND TOBAGO

To the Marshal.

GREETING:

Whereas (A.B.), late of
has been indicted for felony and murder by him done and committed, and the
said (A.B.) having been thereupon arraigned before the High Court at its Session
held on the day of in the year of our Lord Two Thousand
and, and having upon such arraignment pleaded NOT GUILTY
(or GUILTY, as the case may be), the said (A.B.) has before the said Court in its
aforesaid Session been tried and in due form of law convicted thereof: And
whereas judgment has been given by the said Court, that the said (A.B.) be
hanged by the neck until he be dead, the execution of which judgment yet remains
to be done, I, President of the Republic of
Trinidad and Tobago, do by these presents require and strictly command you
that upon the day of in the year of our Lord
Two Thousand and between the hours of six in the forenoon and
twelve at noon of the same day, him the said (A.B.) at the Port-of-Spain Prison
to you to be delivered, as by another writ to the Keeper of the said Port-of-
Spain Prison is commanded, into your custody, you then and there receive, and
him in your custody so being you forthwith convey to the usual place of
execution and that you do then and there cause execution to be done upon the
said (A.B.) in your custody so being in all things according to the said
judgment; And this you are by no means to omit at your peril.

Section 57(1).

FORM B

THE REPUBLIC OF TRINIDAD AND TOBAGO

To the Keeper of the Port-of-Spain Prison.

GREETING:

Whereas (A.B.), late of in
Trinidad and Tobago has been indicted for felony and murder by him done and
committed; and the said (A.B.) having been thereupon arraigned before the
High Court at its Session held on the day of in the
year of our Lord Two Thousand and and having upon such arraignment
pleaded NOT GUILTY (or GUILTY, as the case may be), the said (A.B.) has
before the said Court in its aforesaid Session been tried, and in due form of law
convicted thereof: And whereas judgment has been given by the said Court that
the said (A.B.) be hanged by the neck until he be dead, the execution of which
judgment yet remains to be done, I,..... President
of the Republic of Trinidad and Tobago, do therefore by these presents require
and strictly command you that upon the day of
..... in the year of our Lord Two Thousand and
between the hours of six and eleven in the forenoon of the same day him the
said (A.B.) at the Port-of-Spain Prison aforesaid to the Marshal you then
deliver, which said Marshal, by another writ to him directed, is commanded
then and there to receive the said (A.B.) that execution of the aforesaid
judgment may be done in manner and form as to the said Marshal is by the said
other writ commanded: And this you are by no means to omit at your peril.

FORM C

Section 76(4).

THE REPUBLIC OF TRINIDAD AND TOBAGO

To the Marshal.

GREETING:

You are hereby required and commanded, as you regard yourself and all fines, that of the goods and chattels of all and singular the persons mentioned in the list to this writ annexed you cause to be levied, all and singular the debts and sums of money upon them severally imposed and charged and mentioned in the said list, so that the money may be ready for payment at the next Criminal Sessions of the High Court, to be paid over in such manner as the said Court may direct; and if any of the said several debts and sums of money cannot be levied by reason of no goods or chattels being to be found belonging to the parties, then in all cases that you take the bodies of the parties refusing to pay the aforesaid debts and sums of money and lodge them in the Port-of-Spain Prison there to await the decision of the said Court at its next Session: And have you there then this writ.

Witness His Honour, Chief Justice of Trinidad and

Tobago at Port-of-Spain, this day of 20.....

Registrar.

SUBSIDIARY LEGISLATION

203/1980. **CRIMINAL PROCEDURE (CHANGE OF VENUE) RULES**

made under section 77

Citation. **1.** These Rules may be cited as the Criminal Procedure (Change of Venue) Rules.

Application for change of venue. **2.** (1) Without prejudice to the operation of section 3(4) of the Act, an application for an order under that subsection for the transfer of a trial may be made by motion to the High Court, except in vacation when it may be made by summons to a Judge in Chambers.

(2) An application under subrule (1) must be supported by an affidavit showing the grounds on which the application is made.

(3) The motion or summons together with a copy of the affidavit must, at least eight clear days before the day named in the notice or summons for the hearing, be served, if the applicant is the Director of Public Prosecutions, on the accused and, if the applicant is an accused person, on the Director of Public Prosecutions and all other persons jointly accused with the applicant.

(4) The provisions of Orders 7 and 8 of the Rules of the Supreme Court 1975 apply *mutatis mutandis* to applications made under this rule.