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Third Session Eighth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 23 of 2005

[L.S.]

AN ACT to amend the Indictable Offences (Preliminary
Enquiry) Act, Chap.12:01

[Assented to 15th September, 2005]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

1. This Act may be cited as the Indictable Offences Short title
(Preliminary Enquiry) (Amendment) Act, 2005.

Interpretation
Chap. 12:01

2. In this Act, “the Act” means the Indictable Offences (Preliminary Enquiry) Act.

Section 16
repealed and
replaced

3. Section 16 of the Act is repealed and the following new section is substituted:

“Taking of
evidence for
prosecution

16. (1) When an accused person is before a Magistrate holding a preliminary enquiry, the Magistrate shall take or cause to be taken down in writing, or have recorded, the evidence of the witnesses on the part of the prosecution apart from each other.

(2) If the Magistrate thinks it is necessary or conducive to the ends of justice that any of the witnesses shall be permitted or required to be present during the whole or any part of the examination of any of the other witnesses, the Magistrate shall take or cause to be taken down in writing, or have recorded, the evidence of the witnesses in their presence accordingly.

(3) If the evidence is being taken down in writing, the following shall apply:

- (a) the evidence of each such witness shall be taken down in the form of a deposition;
- (b) such deposition shall be read over to the witness and shall be signed by the witness and the Magistrate; or if the witness refuses to sign or is incapable of signing, then the deposition shall be signed by the Magistrate, and the accused person, the witness and the Magistrate shall be present together at the time of such reading and signing;

- (c) any witness who refuses, without reasonable excuse, to sign his deposition may be committed to prison by warrant by the Magistrate holding the enquiry, there to be kept until after the trial or until the witness signs his deposition before a Magistrate, but if the accused is afterwards discharged, any Magistrate may order any such witness to be discharged; and
- (d) the signature of the Magistrate shall be at the end of the deposition of each witness, in such a form as to show that it is meant to authenticate the deposition.

(4) If the evidence is recorded by electronic audio recording, video recording or Computer Aided Transcription (CAT), a transcript of the recorded evidence shall be prepared and verified by the certificate of those responsible for the accuracy of the recording of the proceedings and of the transcript in accordance with the Recording of Court Proceedings Act, 1991.

Act No. 1
of 1991

(5) The evidence of each such witness shall be given in the presence of the accused person, or, if taken in his absence, the authenticated deposition or verified transcript shall be read over to the accused in the presence of the witness, and the accused person is entitled to cross-examine him.”.

Sections 16C and 16D
inserted

4. The Act is amended by inserting immediately after section 16B the following new sections:

“Admissibility
of written
statements

16C. (1) Notwithstanding sections 16 and 18, in a preliminary enquiry a written statement by a witness shall, if the conditions mentioned in subsection (3) are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that witness.

Chap. 46:01

(2) Where a child is a witness in a preliminary enquiry, the Magistrate shall first comply with section 19 of the Children Act and then this section shall be applied to any written statement made by such a witness.

(3) The conditions referred to in subsection (1) are that—

- (a) the statement purports to be signed by the witness who made it;
- (b) the statement was sworn before a Justice of the Peace and shall be authenticated by a certificate signed by him;
- (c) the statement contains a declaration by the witness who made the statement to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

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- (d) before the statement is tendered in evidence a copy of the statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the proceedings; and
- (e) none of the other parties, before the statement is tendered in evidence, at the preliminary enquiry, objects to the statement being so tendered under this section.

(4) The following provisions shall also have effect in relation to any written statement admitted in evidence under this section, that is to say—

- (a) if the statement is made by a witness under eighteen years of age, it shall state his age and that an adult of his choice was present with him when it was made;
- (b) if the statement is made on behalf of a witness it shall be signed by both the witness and the person who made it and dated;
- (c) if the statement is made on behalf of a witness who cannot read, the person who made it shall read it to him before he signs it and it shall be accompanied by a declaration by the person who made it that it was so read to the witness and he appeared to understand it and he agreed to it;

- (d) if the statement is made on behalf of a witness who cannot write, the person who made the statement shall read it to the witness before he puts his mark or thumbprint on it and it shall contain a declaration by the person who made it that it was read to the witness and he appeared to understand it and he agreed to it; and
- (e) if the statement refers to any other document as an exhibit, the copy of the statement given to any other party to the enquiry under subsection (3)(d) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy of it.

(5) Where any party objects to the admissibility of a written statement under subsection (3)(e), the Magistrate shall make a ruling on the objection and where he overrules the objection, the statement shall be admitted in evidence in accordance with subsection (1).

(6) So much of any statement as is admitted in evidence by virtue of this section shall, unless the Magistrate commits the accused for trial by virtue of section 23A(1) or the Magistrate otherwise directs, be read aloud at the hearing, and where the Magistrate so directs, an account shall be given orally of so much of any statement as is not read aloud.

(7) A document or an object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(8) Section 39(1) shall apply to any written statement tendered in evidence in a preliminary enquiry under this section as it applies to a deposition taken in such proceedings, but in its application to any such statement that subsection shall have effect as if paragraphs (b) and (c) thereof were omitted.

(9) Where the written statements to be tendered in evidence are given by the prosecution and accepted by the accused and his attorney-at-law, the accused is not entitled thereafter to object to a preliminary enquiry in accordance with section 23A or 23B and the Magistrate shall proceed to conduct the enquiry in accordance with section 23A or 23B.

(10) Where the accused and his attorney-at-law accepts the written statements given by the prosecution, the accused and his attorney-at-law shall sign Part A and Part B respectively of the form set out in the Third Schedule.

Procedure

16D. (1) A written statement shall be filed with the Clerk of the Peace of the Magistrates' Court by either party and a filed copy shall be served on the other party to the enquiry as soon as practicable thereafter.

(2) A written statement filed under subsection (1) by either party to the enquiry shall be tendered by such party and may be admitted into evidence by the Magistrate under section 16C(1), and where a statement is so admitted it shall be marked by the Magistrate as a court exhibit and kept together with all the other written statements and any other depositions.

(3) Where a statement is to be admitted in evidence under section 16C(1), and the Magistrate is of the opinion that a part of it is inadmissible there shall be written against that part the words “treated as inadmissible” together with the signature of the Magistrate.

(4) Where it is not possible to write on the statement, the words set out in subsection (3) shall instead be written on a label or other mark of identification which clearly identifies the part of the statement to which the words relate and contains the signature of the Magistrate in accordance with that subsection and which shall be attached to the statement.

(5) Where a written statement, admitted in evidence under section 16C(1), refers to any document or object as an exhibit, that document or object shall wherever possible be identified by means of a label or other mark of identification signed by the maker of the statement and before the Magistrate treats any document or object referred to as an exhibit in such a statement as an exhibit produced and identified in court by the maker of the statement, the Magistrate shall be satisfied that the document or object is sufficiently described in the statement for it to be identified.

(6) Where, during the conduct of a preliminary enquiry, a written statement is admitted in accordance with section 16C(1), the name of the maker of the statement shall be read aloud unless the Magistrate otherwise directs.

(7) Where during the conduct of a preliminary enquiry before a Magistrate under section 16C(6), any part of a written statement has to be read out aloud or an account has to be given orally of so much of a written statement as is not read out aloud, the statement shall be read or the account given by or on behalf of the party who has tendered the evidence.

(8) The written statements admitted into evidence by the Magistrate under section 16C(1), are deemed to be the evidence in chief of each witness for the purpose of section 23A or 23B.

(9) Notwithstanding this section, an accused person is entitled to submit to the Magistrate that any part of a statement is inadmissible in evidence.”.

5. Section 17 of the Act is repealed and the following new section is substituted: Section 17 repealed and substituted

“Accused to give evidence upon oath and record of accused person’s response 17. (1) After the examination of the witnesses called on behalf of the prosecution has been completed, the Magistrate shall, unless he discharges the accused person, inform him that he is entitled to give evidence upon oath or to remain silent or shall address him in the

following words, or words to the like effect: “Having heard the evidence, do you wish to say anything in answer to the charge? Do you wish to give evidence? You are not obliged to say anything, but if you do, you must do so under oath and you will be subject to cross-examination. Your statement will be taken down in writing or recorded, and may be given in evidence at your trial notwithstanding any promise or threat made to you to induce you to make any admission or confession of your guilt.”.

(2) Whatever the accused person then answers thereto, whether on oath or not, shall be taken down in writing or recorded in the same manner as described in section 16 and—

- (a) if taken down in writing, the statement of the accused shall be kept with the authenticated depositions of the witnesses and any verified transcripts of their recorded evidence; or
- (b) if recorded, the Magistrate shall cause a copy of the recording and the verified transcript to be kept with the authenticated depositions of the witnesses and any authenticated transcripts of their recorded evidence,

as stated in subsections (3) and (4).

(3) Where pursuant to sub-section (1) a Magistrate informs an accused person of his entitlement and the accused person—

- (a) chooses to remain silent; or

(b) replies that he reserves his defence or uses words to that effect,

the Magistrate shall take or cause to be taken down in writing, or have recorded, the latter's response or the fact of his silence, as the case may be, and the statement shall be read to and signed by the accused person, if he will, and the Magistrate, and such statement or transcript of the recording shall be kept with the depositions.

(4) Where the accused person refuses to sign the statement referred to in subsection (3), the Magistrate shall record, in writing, the refusal, and such record shall be kept with the depositions.

(5) At the trial, the statement of the accused, whether taken down or recorded, whether on oath or not, and whether signed by him or not, may be admitted into evidence without further proof thereof.

(6) Where the statement purports to bear the signatures of the Magistrate and the accused person, the statement shall be admitted into evidence unless it is proved that neither the accused person nor the Magistrate signed it.

(7) Notwithstanding anything in this section or in section 18, the Magistrate may, if he thinks fit and although the case for the prosecution has been closed, take the evidence of further witnesses for the prosecution or recall any witness for further examination.”

Section 17A
repealed

Section 17A
inserted

6. The Act is amended by repealing section 17A.

7. The Act is amended by inserting after section 17 the following new section:

“Accused and
his witness
may tender
written
statement

17A. (1) Without prejudice to section 17, the Magistrate, acting under section 23A or 23B, shall also inform the accused person that he is entitled to tender a written statement into evidence and to call any witness who is entitled to tender a written statement into evidence.

(2) Where the accused person or any of his witness decides to tender a written statement, he shall give a copy of it to the prosecution, and the original to the Magistrate who shall mark it as a court exhibit and it shall be kept together with the other written statements and any depositions.

(3) The written statement of the accused person and his witness if any may be admitted in evidence at the trial without further proof thereof unless it is proved that the accused or the witness, where such statement purports to have been signed by the accused or the witness, did not in fact sign it.”.

Section 18 repealed
and replaced

8. Section 18 of the Act is repealed and the following new section is substituted:

“Taking of
evidence for
defence

18. (1) After the proceedings required by section 17 are completed, the Magistrate shall ask the accused person if he wishes to call any witnesses. Every witness called by the accused person who testifies to any fact relevant to the case shall be heard, and his evidence shall be taken in the same manner as the evidence of a witness for the prosecution.

(2) After the Magistrate has enquired of the accused person whether he wishes to call any witnesses, the Magistrate shall take or cause to be taken down in writing or have recorded—

(a) the request; and

(b) the response, if any, of the accused person to the request,

and the statement shall be read to and signed by the accused person, if he will, and the Magistrate, and such statement or transcript of the recording shall be kept with the depositions.

(3) Where the accused person refuses to sign the statement referred to in subsection (2), the Magistrate shall record, in writing, the refusal and such record shall be kept with the depositions.”.

9. Section 23 of the Act is amended by—

Section 23 amended

(a) renumbering subsection (8) as subsection (9); and

(b) inserting after subsection (7), the following new subsection:

“ (8) Notwithstanding subsections (5), (6) and (7), the Director of Public Prosecutions or the Deputy Director of Public Prosecutions may prefer an indictment whether or not a preliminary enquiry has been conducted only in the following instances:

(a) where at the close of an inquest, a Coroner is of the opinion that sufficient

Chap. 6:04

grounds are disclosed for making a charge on indictment against any person pursuant to section 28 of the Coroners Act;

- (b) where a co-accused is arrested before the date fixed for the trial of a co-offender who has already been indicted and it is desired to join them both in the same indictment;
- (c) where a Magistrate has heard evidence and the depositions taken before him disclose a *prima facie* case and he is unable to complete the preliminary enquiry because of his:
 - (i) physical or mental infirmity;
 - (ii) resignation;
 - (iii) retirement; or
 - (iv) death;
- (d) where a person is charged with serious or complex fraud;
- (e) in exceptional circumstances to deal with offences of a violent or sexual nature and where there is a child witness, or an adult witness who has been assessed as one subject to threats, intimidation or elimination.”.

10. The Act is amended by inserting immediately after section 23 the following new sections: Sections 23A to G inserted

“Committal without consideration of the written statements 23A. (1) A Magistrate holding a preliminary enquiry shall, if satisfied that all the evidence before the court, whether for the prosecution or the accused person, consists of written statements admitted under section 16C(1), with or without exhibits, commit the accused for trial for the offence without consideration of the contents of those statements.

(2) Subsection (1) shall not apply where the—

- (a) accused or one of the accused is not represented by an attorney-at-law; or
- (b) attorney-at-law for the accused or one of the accused, as the case may be, has requested the Magistrate to consider a submission that the statements disclose insufficient evidence to put that accused on trial by jury for the offence.

(3) If the Magistrate is satisfied that the attorney-at-law for the accused or, as the case may be, the attorney-at-law for each of the accused does not wish to make a submission as provided for under subsection (2)(b), the Magistrate shall, after receiving any written statement under section 16C(1), commit the accused for trial without consideration of the evidence.

(4) Where a Magistrate commits an accused person for trial under this section he shall comply with sections 16A, 17 and 23(2).

(5) Where the Magistrate does not commit the accused under this section he shall proceed in accordance with section 23B.

Committal
based on the
written
statements

23B. (1) A Magistrate holding a preliminary enquiry, who does not commit an accused person under section 23A, and having ascertained that the—

- (a) accused has no attorney-at-law acting for him in the enquiry;
- (b) attorney-at-law for the accused has requested the Magistrate to consider a submission that there is insufficient evidence to put the accused on trial by jury for the offence with which he is charged;
or
- (c) accused or his attorney-at-law wishes to cross-examine any of the witnesses for the prosecution,

shall permit the prosecutor to tender to the court any statement that is in compliance with section 16C.

(2) After the prosecutor tenders any statement as provided for under subsection (1), the Magistrate shall admit the written statements in accordance with section 16C(1), and it shall be read out aloud, except where the Magistrate otherwise directs the prosecutor or to the extent that he directs the prosecutor that an oral account be given of any statement.

(3) The Magistrate may view any exhibits produced before him and may take possession of them.

(4) After all the evidence including the written statements on behalf of the prosecution have been admitted and subject to the right of the accused under section 23D, the Magistrate shall hear any submission which the accused or his attorney-at-law may wish to make as to whether there is sufficient evidence to put the accused on trial by jury for any indictable offence.

(5) The Magistrate shall permit the prosecutor to make a submission—

(a) in reply to any submission made by the accused or his attorney-at-law in pursuance of subsection (4);
or

(b) where the accused or his attorney-at-law has not made any such submission but the Magistrate is nevertheless minded not to commit the accused for trial.

(6) After hearing any submission made in pursuance of subsection (4) or (5), the Magistrate shall, unless he discharges the accused person, comply with sections 16A, 17 and 23(2) with appropriate modification of the language of the sections in relation to the relevant circumstances.

Depositions

23C. A written statement admitted in evidence under section 16C is deemed to be a deposition within the meaning of section 16(3).

Cross-examination 23D. Where a Magistrate holding a preliminary enquiry admits written statements of a person under section 23A or 23B, a party to the enquiry or an attorney-at-law acting on behalf of that party is entitled to cross-examine the maker of any statement admitted in evidence.

False written statements tendered in evidence 23E. A person who, in a written statement admitted in evidence in a preliminary enquiry by virtue of section 16C, wilfully makes a statement material in the preliminary enquiry which he knows to be false or does not believe to be true commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for seven years.

Non-application of certain written provisions Chap. 4:20 Appeals 23F. Neither section 55 nor Part VI of the Summary Courts Act shall apply to proceedings under this Act.

23G. An appeal by the State from a decision of a Judge of the High Court under section 23(6), shall lie as of right to the Court of Appeal.”.

Section 24A repealed **11.** Section 24A of the Act is repealed and sections 24B to 24D are renumbered as sections 24A to 24C.

Renumbered section 24A amended **12.** The renumbered section 24A of the Act is amended by deleting the words “section 24A” and substituting the words “section 23A or 23B”.

Renumbered section 24B amended **13.** The renumbered section 24B of the Act is amended by—
(a) deleting the words “21.”; and
(b) deleting the words “section 24A” and substituting the words “section 23A or 23B”.

14. The renumbered section 24C of the Act is amended by deleting the words "section 24A" and substituting the words "section 23A or 23B".

Renumbered section 24C amended

15. The Act is amended by inserting after the Second Schedule the following new Schedule:

Third Schedule inserted

"THIRD SCHEDULE

[Section 16c(10)]

ACCEPTANCE OF WRITTEN STATEMENTS

Complaint No. of 20.....

..... (Complainant)

Against

..... (Accused person) on the charge

of (State offence briefly).

PART A

I (name) of (address) the accused person accept the written statements of the prosecution given to me this day of, 20..., pursuant to section 16C of the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01.

..... (Signature of accused person)

PART B

I (name) of (address) attorney-at-law for (name of the accused person) accept the written statements of the prosecution given to me this day of, 20..., pursuant to section 16C of the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01.

..... (Signature of attorney-at-law)."

Transitional
Provision

16. This Act shall not apply to a preliminary enquiry that began before the commencement of the Indictable Offences (Preliminary Enquiry) (Amendment) Act, 2005.

Passed in the House of Representatives this 11th day of July, 2005.

J. SAMPSON-JACENT
Clerk of the House

Passed in the Senate this 24th day of August, 2005.

N. JAGASSAR
Acting Clerk of the Senate

Senate amendments agreed to by the House of Representatives this 5th day of September, 2005.

J. SAMPSON-JACENT
Clerk of the House