

## OBJECTS AND REASONS

This Bill seeks to amend the *Evidence Act*, Cap. 121 so as to:

- (a) modify the law regarding the evidentiary effect of silence;
- (b) make better provision regarding the use of identification parades as identification evidence;
- (c) make better provision for facilitating the proof of public documents placed before the court;
- (d) make better provision for the warnings to be given in relation to evidence that may be unreliable; and
- (e) correct and clarify other provisions of the Act.

### *Arrangement of Sections*

#### *Section*

1. Short title.
2. Amendment of section 2 of Cap. 121.
3. Amendment of section 16 of Cap. 121.
4. Amendment of section 19 of Cap. 121.
5. Amendment of section 24 of Cap. 121.
6. Repeal and replacement of section 61 of Cap. 121.
7. Amendment of section 63 of Cap. 121.
8. Amendment of section 72 of Cap. 121.
9. Repeal and replacement of section 76 of Cap. 121.

*Section*

10. Amendment of section 77 of Cap. 121.
11. Amendment of section 88 of Cap. 121.
12. Amendment of section 98 of Cap. 121.
13. Repeal and replacement of section 100 of Cap. 121.
14. Amendment of section 102 of Cap. 121.
15. Amendment of section 104 of Cap. 121.
16. Amendment of section 108 of Cap. 121.
17. Amendment of section 116 of Cap. 121.
18. Amendment of section 126 of Cap. 121.
19. Amendment of section 127 of Cap. 121.
20. Repeal and replacement of section 129 of Cap. 121.
21. Amendment of section 132 of Cap. 121.
22. Amendment of section 132B of Cap. 121.
23. Amendment of section 132C of Cap. 121.
24. Amendment of section 137 of Cap. 121.
25. Amendment of section 156 of Cap. 121.
26. Amendment of First Schedule to Cap. 121.

**BARBADOS**

A Bill entitled

An Act to amend the Evidence Act.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Evidence (Amendment) Act, 2007*. Short title.
2. Section 2 of the *Evidence Act*, hereafter in this Act referred to as the principal Act, is amended by deleting the words " " telecommunication installation" and "telecommunication service" have the meanings assigned to them by the *Telecommunications Act*;" and substituting the following definitions in their appropriate alphabetical places:

Amendment  
of section 2  
of Cap. 121.

Cap. 282B. " "carrier" has the meaning assigned to it by section 2 of the *Telecommunications Act*;

Cap. 282B. "domestic telecommunications service" has the meaning assigned to it by section 2 of the *Telecommunications Act*;

Cap. 282B. "international telecommunications service" has the meaning assigned to it by section 2 of the *Telecommunications Act*;

Cap. 282B. "telecommunications apparatus" has the meaning assigned to it by section 2 of the *Telecommunications Act*;

Cap. 282B. "telecommunications service" has the meaning assigned to it by section 2 of the *Telecommunications Act*;

Amendment  
of section 16  
of Cap. 121.

3. Section 16 of the principal Act is amended by deleting subsection (2) and substituting the following:

"(2) A member of either House of Parliament is not compellable to give evidence if he would thereby be prevented from attending

- (a) a sitting of the House of which he is a member, or a meeting of a committee of that House;
- (b) a joint sitting of both Houses; or
- (c) a meeting of a joint committee of both Houses."

Amendment  
of section 19  
of Cap. 121.

4. Section 19 of the principal Act is amended by deleting subsection (3) and substituting the following:

"(3) A person who has a right of objection under subsection (2) may exercise that right either

- (a) before that person gives evidence; or
- (b) as soon as practicable after becoming aware that that person has that right,

whichever of those events later occurs".

5. Section 24 of the principal Act is amended by deleting subsection (3). Amendment of section 24 of Cap. 121.

6. Section 61 of the principal Act is repealed and the following is substituted: Repeal and replacement of section 61 of Cap. 121.

"Exception: telecommunications.

61. (1) Where a document has been

- (a) produced by a telecommunications apparatus; or
- (b) received from a carrier providing an international telecommunications service,

being a document that records a message that has been transmitted by means of a telecommunications service, the hearsay rule does not prevent the admission or use of a representation in the document as to the matters specified in subsection (2).

(2) The matters referred to in subsection (1) are

- (a) the identity of the person from whom or on whose behalf the message was sent;
- (b) the date on which, the time at which or the place from which the message was sent;
- (c) the identity of the person to whom the message was addressed."

7. Section 63 of the principal Act is amended by inserting the word "in" between the word "adduced" and the word "interlocutory". Amendment of section 63 of Cap. 121.

Amendment  
of section 72  
of Cap. 121.

**8. Section 72 of the principal Act is amended**

(a) by deleting subsection (2) and substituting the following subsection:

"(2) Evidence of the confession or admission is not admissible unless,

(a) if the confession or admission was made in circumstances where it was reasonably practicable to tape-record the confession or admission, the questioning of the person and anything said by that person during that questioning were tape-recorded;

(b) in any other case,

(i) at the time of the questioning, or as soon as practicable after the questioning, a record in writing was made, either in English or in another language used by the person questioned, of the things said by or to the person in the course of the questioning;

(ii) as soon as practicable after that record was made the record was read to the person questioned in the language used by that person during the questioning, and a copy made available to him;

- (iii) the person questioned was given the opportunity to interrupt the reading referred to in sub-paragraph (ii) at any time for the purpose of drawing attention to any error in or omission from the record, and at the end of the reading the person was also given the opportunity to state whether there were any errors in or omissions from the record in addition to any to which he had drawn attention in the course of the reading;
- (iv) a tape-recording was made of the reading referred to in sub-paragraph (ii) and of everything said by or to the person questioned as a result of compliance with sub-paragraph (iii); and the requirements of sub-paragraph (ii) were also observed in respect of that tape-recording;
- (v) before the reading referred to in sub-paragraph (ii) was commenced, an explanation in accordance with the form in the *Third Schedule* was given to the person questioned of the procedure that would be followed for the purpose of compliance with sub-paragraphs (ii), (iii) and (iv);
- (vi) the questioning was conducted, and the confession or admission made, in the presence of a person, not being an investigating official, who

Third  
Schedule.

- (A) was an attorney-at-law acting for the person questioned; or
  - (B) if no such attorney-at-law was reasonably available, had been chosen by the person questioned; and
- (c) a document, not being a sound recording or a transcript of a sound recording, prepared by or on behalf of the investigating official had been signed, initialled or otherwise marked by the person questioned and by the attorney-at-law or other chosen person, if any, present at the questioning acknowledging that the document was a true record of every question, representation or response asked, made or given during the questioning.”;
- (b) in subsection (3),
- (i) by deleting the introductory words to the subsection ending with the words “without charge,” and substituting the words “Where a confession or admission has been made in accordance with the requirements of subsection (2), the investigating official shall, without charge.”;
  - (ii) in paragraphs (a), (b), (c) and (d), by deleting the words “person or his or her” where those words appear and substituting the words “person questioned or his”;
  - (iii) in paragraph (d), by deleting the words “the question, representation and response,” and substituting the words “any question, representation or response asked, made or given during the questioning.”; and
- (c) in subsection (6), by deleting the words “he or she” and substituting the words “the Judge”.



9. Section 76 of the principal Act is repealed and the following section is substituted:

Repeal and replacement of section 76 of Cap. 121.

"Evidence of silence.

**76.** (1) An inference unfavourable to a party shall not be drawn from evidence that the party or another person failed or refused to answer a question, or to respond to a representation, put or made to the party or other person in the course of official questioning.

(2) Subject to subsection (3), if evidence referred to in subsection (1) can only be used to draw an inference unfavourable to a party, the evidence is not admissible.

(3) Subsection (1) does not prevent the use of the evidence to prove that the person failed or refused to answer a question or to respond to a representation if the failure or refusal is a fact in issue in the proceedings.

(4) In this section, "inference" includes

(a) an inference of consciousness of guilt; or

(b) an inference relevant to a party's credibility."

10. Section 77 of the principal Act is amended by deleting the word "(1)".

Amendment of section 77 of Cap. 121.

11. Section 88 of the principal Act is amended in subsection (2) by deleting the word "defendant" and substituting the word "accused".

Amendment of section 88 of Cap. 121.

Amendment  
of section 98  
of Cap. 121.

**12.** Section 98 of the principal Act is amended by deleting all the words following subsection (3)(b) and substituting the following:

"the credibility rule does not prevent the admission or use of evidence of a prior consistent statement of the witness if the court gives leave to adduce that evidence."

Repeal and  
replacement  
of section  
100 of  
Cap. 121.

**13.** Section 100 of the principal Act is repealed and the following section is substituted:

"Visual  
identifica-  
tion  
evidence  
excluded  
unless  
certain  
conditions  
are met.

**100.** (1) Visual identification evidence adduced by the prosecutor is not admissible unless

- (a) an identification parade that included the accused was held before the identification was made;
- (b) it would not have been reasonable to hold such a parade; or
- (c) the accused refused to take part in such a parade

and the identification was made without the person who made the identification having been influenced to identify the accused.

(2) Without limiting subsection (1), in determining whether it was reasonable to hold an identification parade the court shall take into account the following matters:

- (a) the kind of offence, and the gravity of the offence, concerned;
- (b) the importance of the evidence;

- (c) the practicality of holding an identification parade, having regard, among other things,
  - (i) if the accused failed to co-operate in the holding of the parade, to the manner and extent of, and the reason (if any) for, the failure; and
  - (ii) in any case, to whether the identification was made at or about the time of the commission of the offence; and
- (d) the appropriateness of holding an identification parade, having regard, among other things, to the relationship, if any, between the accused and the person who made the identification.

(3) It shall be presumed that it would not have been reasonable to hold an identification parade if it would have been unfair to the accused for such a parade to be held.

(4) If

- (a) the accused refused to take part in an identification parade unless an attorney-at-law acting for the accused or unless another person chosen by the accused was present while it was being held; and
- (b) there were, at the time when the parade was to be held, reasonable grounds to believe that it was not reasonably practicable for such an attorney-at-law or other person to be present,

it shall be presumed that it would not have been reasonable to hold an identification parade at that time.

(5) In determining whether it was reasonable to hold an identification parade, the court shall not take into account the availability of pictures or photographs that could be used in making identifications.

(6) In this section,

"picture identification evidence" means identification evidence relating to an identification made wholly or partly by the person who made the identification examining pictures kept for the use of police officers;

"visual identification evidence" means identification evidence relating to an identification based wholly or partly on what a person saw, but does not include picture identification evidence."

Amendment of section 102 of Cap. 121. **14.** Section 102 of the principal Act is amended by deleting the word "paragraph" where it appears in paragraphs (b) and (c) of subsection (4) and substituting the word "subsection".

Amendment of section 104 of Cap. 121. **15.** Section 104 of the principal Act is amended by deleting the word "nor" where it appears after the words "the client is" in subsection (2) and substituting the word "or".

Amendment of section 108 of Cap. 121. **16.** Section 108 of the principal Act is amended in subsection (4) by deleting the words "(4) do not apply in proceedings that is" and substituting the words "(3) do not apply in proceedings that are".

Amendment of section 116 of Cap. 121. **17.** Section 116 of the principal Act is amended by deleting the word "into" in paragraph (f) of subsection (3) and substituting the word "in".

**18.** Section 126 of the principal Act is amended by deleting the definitions at the end of the section and substituting the following subsection: Amendment of section 126 of Cap. 121.

"(10) In this section,

"financial institution" has the meaning assigned to it by section 2 of the *Financial Institutions Act*; Cap. 324A.

"legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration."

**19.** Section 127 of the principal Act is amended in subsection (2) by inserting the word "or" between the word "authorised" and the word "empowered". Amendment of section 127 of Cap. 121.

**20.** Section 129 of the principal Act is repealed and the following section is substituted: Repeal and replacement of section 129 of Cap. 121.

"Public documents.

**129.** A document that purports to be a copy of, or a faithful extract from, or a summary of, a public document and to have been

(a) sealed with the seal of a person who, or body that, might reasonably be supposed to have the custody of the public document; or

(b) certified as such a copy, faithful extract or summary by a person who might reasonably be supposed to have the custody of the public document

shall be presumed, unless the contrary is proved, to be a copy of the public document, or a faithful extract from or a summary of the public document, as the case may be."

Amendment  
of section  
132 of  
Cap. 121.

21. Section 132 of the principal Act is amended by deleting subsections (2), (3) and (4) and substituting the following:

- "(2) Where a message has been
- (a) sent by means of a telecommunications apparatus; or
  - (b) delivered to an office of a carrier providing a domestic telecommunications service for transmission by the carrier and any fee payable in respect of that transmission has been paid,

it shall be presumed, unless the contrary is proved, that the message was received by the person to whom it was addressed 24 hours after having been sent or delivered respectively.

- (3) Where a document that has been
- (a) received from a carrier providing a domestic telecommunications service; or
  - (b) produced by a telecommunications apparatus

purports to contain a record of a message transmitted by means of a telecommunications service, it shall be presumed, unless the contrary is proved, that the message was so transmitted, and that it was sent by the person from whom or on whose behalf it purports to have been sent on the date on which, and at the time at which, and from the place from which, it purports to have been sent.

- (4) In this section, "postal article" has the meaning assigned to it by section 2 of the *Post Office Act*."

Cap. 27A.

22. Section 132B of the principal Act is amended by deleting the words "subsection (4)" from subsection (6) and substituting the words "subsection (5)".

Amendment  
of section  
132B of  
Cap. 121.

23. Section 132C of the principal Act is amended by deleting the words "14 days" from subsection (6) and substituting the words "42 days".

Amendment  
of section  
132C of  
Cap. 121.

24. Section 137 of the principal Act is amended

Amendment  
of section  
137 of  
Cap. 121.

(a) in subsection (1), by

(i) deleting from paragraph (d) the words appearing immediately after the word "defendant," where that word last appears in that paragraph;

(ii) re-lettering paragraph (e) of the subsection as paragraph (f); and

(iii) inserting the following as paragraph (e):

"(e) in the case of a prosecution for an offence of a sexual nature, evidence given by a victim of the alleged offence;" and

(b) in subsection (2), by inserting immediately after the words "where there is a jury" the words "and a party so requests,".

25. Section 156 of the principal Act is amended by deleting the words "section 25B of the *Magistrates Jurisdiction and Procedure Act* or under section 157" and substituting the words "section 132 of the *Magistrate's Courts Act* or under section 158 of this Act".

Amendment  
of section  
156 of  
Cap. 121.  
Cap. 116.  
Cap. 116A.

26. The First Schedule to the principal Act is amended by deleting the words "*Vagrancy Act*, Cap. 156" and substituting the words "*Minor Offences Act*, Cap. 137" in the appropriate alphabetical order.

Amendment  
of First  
Schedule to  
Cap. 121.