

THE COMMITTAL PROCEEDINGS ACT

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THE COMMITTAL PROCEEDINGS ACT

*Act
24 of 2013.*

[*1st January, 2016.*]

1. This Act may be cited as the Committal Proceedings Act.

2.—(1) Preliminary examinations of indictable offences are hereby abolished and, in lieu thereof, committal proceedings as provided in this Act shall be held by a Resident Magistrate sitting as an examining Justice in a Court of Petty Sessions.

Short title.

Abolition of
preliminary
examinations
and
introduction
of committal
proceedings.

(2) Reference in any enactment to “preliminary examination” or “preliminary enquiry” or other similar expression shall, unless the context otherwise requires, be construed as a reference to committal proceedings as provided in this Act.

(3) In this Act “indictable offence” means an offence that is triable in the Criminal Division of the Supreme Court.

3.—(1) Where an accused person charged with an indictable offence, appears or is brought before a Resident Magistrate and, pursuant to the Judicature (Resident Magistrates) Act, the Resident Magistrate makes an order that committal proceedings be held with a view to committal of that person to the Circuit Court for trial, the proceedings in relation thereto (in this Act referred to as “committal proceedings”) shall be conducted in accordance with this Act.

Commital
for trial on
written
statement

(2) Subject to subsections (3) and (4), committal proceedings may be conducted wholly on the basis of written statements submitted to the Resident Magistrate; and accordingly, if the Resident Magistrate is satisfied—

(a) that all the evidence tendered (whether for the prosecution or the defence) in respect of the offence consists of written statements, with or without exhibits; and

(b) that those statements comply with the requirements of section 6.

the Resident Magistrate may, after examining the written statements and exhibits (if any), commit the accused to stand trial or discharge him, as the case may be, in accordance with section 7.

(3) Nothing in subsection (2) shall prevent the accused person or his attorney-at-law from making a submission to the Resident Magistrate that the evidence is not sufficient to commit the accused to the Circuit Court for trial of an indictable offence and, if any such submission is made, the Resident Magistrate shall take it into consideration in determining whether or not to commit the accused for trial.

(4) Where the accused person is not represented by an attorney-at-law, the Resident Magistrate shall, before making a determination as to the committal or discharge of the accused person, inform the accused person of his right under subsection (3) to make a submission as to the insufficiency of evidence.

Oral evidence
from persons
other than the
accused.

4.—(1) A Resident Magistrate may, in his discretion, or upon hearing a submission made pursuant to subsection (4), authorize the taking of oral evidence at the committal proceedings from any person other than the accused if he is satisfied that (whether or not a written statement from that person has been tendered in evidence) oral evidence from that person is necessary in the circumstances of the case in order for the Resident Magistrate to be able to make a decision under section 7.

(2) Where in any committal proceedings, any person other than the accused gives oral evidence before a Resident Magistrate then, subject to any enactment or rule of law authorizing the reception of unsworn statements, any oral evidence given shall be under oath and shall be subject to cross-examination.

(3) Oral evidence given under this section shall be recorded, whether in writing or by electronic means, in the form of a deposition in writing which shall be read over to the

person giving the evidence and signed by him and by the Resident Magistrate.

(4) An accused person (where he is not represented by an attorney-at-law) or his attorney-at-law, may make a submission to the Resident Magistrate that any person other than the accused person should be required to give evidence in the committal proceedings.

(5) Where the accused person is not represented by an attorney-at-law, the Resident Magistrate shall, before making a determination as to authorizing the taking of evidence pursuant to subsection (1), inform the accused person of his right under subsection (4) to make a submission.

(6) Where a Resident Magistrate is to hear oral evidence from any person pursuant to subsection (1), he may issue a summons or warrant, as the case may require, to cause that person to attend and give oral evidence in the committal proceedings.

5.—(1) An accused person may at his option—

Oral evidence
by accused.

- (a) tender in evidence his own written statement;
- (b) elect to make an unsworn statement;
- (c) give oral evidence; or
- (d) remain silent.

(2) If an accused person elects to make an oral statement pursuant to subsection (1), the Resident Magistrate shall, before taking that statement, caution him in the words set out in the First Schedule or words to the like effect.

First Schedule.

(3) Any oral statement given by the accused pursuant to this section shall be—

- (a) recorded (whether in writing or by electronic means);
- (b) read over to the accused;
- (c) signed by the accused and by the Resident Magistrate;

- (d) kept with the statements and depositions (if any) of the witnesses; and
- (e) transmitted in accordance with section 10 to the Director of Public Prosecutions,

and may, upon the trial of the accused, be admitted in evidence without further proof thereof.

Requirements
for the
admissibility
of written
statements.

6.—(1) In committal proceedings a written statement by any person shall, if the conditions mentioned in subsections (2) and (3) are satisfied, be admissible as evidence to the like effect as oral evidence by that person.

(2) The conditions referred to in subsection (1) are as follows—

- (a) the statement has been recorded (whether in writing or by electronic means) by a member of the Jamaica Constabulary Force (hereinafter referred to as “the recorder”) in the presence of a Justice of the Peace or in the absence of a Justice of the Peace, a senior member of the Jamaica Constabulary Force not below the rank of Sergeant, and read over to the person who made it (hereinafter referred to as “the maker”); however, in the case of a person who is suffering from a physical disability, physical disorder or a mental disorder within the meaning of the *Mental Health Act*, which renders it impracticable for him to be communicated with in the absence of special assistance or equipment, the statement may be communicated in any other effective manner;
- (b) the statement purports to be signed by the maker and the recorder in the presence of each other and in the presence of—
 - (i) the Justice of the Peace (and has been sworn to by the maker before the Justice of the Peace); or, as the case may be; or
 - (ii) the senior member of the Jamaica Constabulary Force;

- (c) the statement contains a declaration by the maker to the effect that it is true to the best of his knowledge and belief and in the case of a person who has attained the age of fourteen years, that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he willfully stated in it anything which he knew to be false or did not believe to be true; and
- (d) copies of the statement have been served on the parties to the proceedings in accordance with section 8.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section—

- (a) the statement shall state whether it is made by a person who has attained the age of eighteen years, and if it is made by a person under the age of eighteen years, it shall state the age of that person;
- (b) if the statement is made by a person under the age of fourteen years, then, subject to the provisions of the *Child Care and Protection Act* specified in subsection (4), the Resident Magistrate shall receive evidence in the manner specified in paragraph (c), from a child psychiatrist, a probation officer, or any other person (hereinafter referred to as the “assessor”) who the Resident Magistrate considers to be qualified to make an assessment of the child and who is not a party to the proceedings, in order that the Resident Magistrate may determine—
 - (i) whether the child understands the nature of an oath; and
 - (ii) if the child does not understand the nature of an oath, whether he possesses sufficient intelligence to justify the reception of the evidence and understands the duty of telling the truth;

- (c) evidence of the assessment of a child under paragraph (b) may be adduced by an oral examination of the assessor by the Resident Magistrate or by a written statement by the assessor submitted to the Resident Magistrate;
- (d) if the statement is made by a person who cannot read it, it shall be read to him or otherwise effectively communicated to him before he signs it or makes his mark, and shall be accompanied by a declaration that he has made the mark;
- (e) if the statement is made by a person who is suffering from a physical disability or physical disorder that renders him unable to sign or otherwise make a mark, but capable of otherwise affirming or negating any statement recorded, then it shall be read to him or otherwise effectively communicated to him and shall be accompanied by a declaration by the recorder that the statement has been made with the affirmation of the person, indicating the manner of such affirmation;
- (f) if the statement refers to any other document as an exhibit—
 - (i) a copy of that document shall be given to the other parties to the proceedings; or
 - (ii) such information as may be necessary shall be given in order to enable any other party to the proceedings to inspect that document and to obtain a copy thereof; and
- (g) if the statement refers to any exhibit which cannot conveniently be copied, the statement shall include information as to where the exhibit shall be available for inspection.

(4) The specified provisions of the *Child Care and Protection Act* are sections 17 to 20, which shall apply with the substitution for the words “duly qualified medical practitioner” wherever they appear, or the words “duly qualified child

psychiatrist, probation officer, or any other person who the Resident Magistrate considers to be qualified to make an assessment of the child and who is not a party to the proceedings.

(5) A document or object referred to as an exhibit and identified in a written statement admitted in evidence under this section shall not be admissible as evidence in the committal proceedings unless—

- (a) subject to paragraph (b), it has been produced in court as an exhibit and marked as having been so produced and the accused person has had the opportunity of inspecting the exhibit; or
- (b) in the case of an exhibit that cannot be conveniently produced in court, the parties have been served with notice of the location of the exhibit.

(6) A person whose written statement is under this section admitted in evidence in committal proceedings shall be treated for the purposes of sections 11 and 12 as a witness who has given evidence in those proceedings.

7. Where a Resident Magistrate, having examined all the evidence before him in any committal proceedings—

- (a) is satisfied that the evidence against the accused is not sufficient to establish *prima facie* proof of the charge so that the accused ought not to be committed to stand trial for any indictable offence disclosed by the evidence, he shall discharge him; or
- (b) is satisfied that the evidence against the accused is sufficient to establish *prima facie* proof of the charge and that the accused ought to be committed for trial for an indictable offence, he shall remand the accused in custody, or admit him to bail, to stand trial for the offence charged or any other indictable offence disclosed by the evidence.

Powers of
Resident
Magistrate
in committal
proceedings.

Copies of statements to be served on other parties to proceedings.

8.—(1) For the purposes of committal proceedings, steps shall be taken by the prosecution and each accused person, to make available to the other and to any other accused person in the proceedings, copies of such statements or other documents as are intended to be considered at the committal proceedings in respect of the offence charged.

(2) Subject to subsection (3), statements or other documents required by subsection (1) to be made available to any other party to the proceedings shall be served on that party not less than seven days before the sitting of the Resident Magistrate at the committal proceedings (or, as the case may be, any adjournment thereof) in which those statements or documents are to be considered.

(3) A Resident Magistrate may, in his discretion, as regards any statement or document to be considered in committal proceedings, vary the time prescribed by subsection (2); however, where on the application of any party to the proceedings, the Resident Magistrate is satisfied that that party has not had adequate time to consider the statements or documents, he may adjourn the proceedings for such time as he considers appropriate.

Signing of statements by Magistrate.

9. Every written statement tendered to the court and every document tendered as an exhibit in committal proceedings in accordance with section 6, shall be signed by the Resident Magistrate presiding over those proceedings.

Transmission and custody of written statements and other documentary evidence taken in committal proceedings.

10.—(1) When a Resident Magistrate has committed an accused for trial for an indictable offence pursuant to section 7, the Resident Magistrate shall forthwith transmit to the Director of Public Prosecutions, the information or complaint, the written statements, the depositions, the documentary exhibits, copies of which have been given to the other parties to the proceedings pursuant to section 6(3)(e), the warrant of commitment for trial and any recognizance entered into.

(2) Unless the Resident Magistrate otherwise directs, the member of the Jamaica Constabulary Force assigned as investigating officer for the case against the accused or such other

member as the Commissioner of Police may designate for the purpose shall take charge of all other exhibits and shall produce them at the trial of the accused.

(3) The written statements, depositions and other documents received from the Resident Magistrate by the Director of Public Prosecutions shall be kept by him until the indictment (if any) to which they relate is filed, and shall then be transmitted to the proper officer of the court in which the accused is to be tried.

(4) A person committed for trial may be indicted not only for any offence for which he was committed for trial, but also (whether tried independently of or jointly with any such first-mentioned offence) for any offence which, in the opinion of the Director of Public Prosecutions, is disclosed by the evidence before the Resident Magistrate at the committal proceedings.

11. Where any person who has attained the age of fourteen years, in any written statement tendered in evidence in committal proceedings by virtue of this Act, willfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be guilty of an offence and shall be liable—

False
evidence in
written
statements.

- (a) upon summary conviction in a Resident Magistrate's Court, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;
- (b) upon conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

12.—(1) A Resident Magistrate conducting committal proceedings shall, in respect of each witness (other than the accused) who has given evidence in those proceedings, make an order (hereinafter referred to as a "witness order") requiring the witness to attend and give evidence before the court before which the accused is to be tried.

Witness
orders.

(2) Every witness order made pursuant to this section shall be served by a constable or an authorized person upon the person to whom it is directed, by delivering it to the person personally or, if he cannot be found, by leaving it with some person for him at his last or more usual place of abode; and the constable or authorized person who served it shall attend at the time and place, and before the court stated in the witness order, for the purpose of proving, if necessary, the service of such order.

(3) Any person who, without just cause, disobeys a witness order requiring him to attend before any court shall be guilty of contempt of that court and may be punished summarily by that court as if his contempt had been committed in the face of the court, so, however, that no person shall by reason of such disobedience be liable to imprisonment for a period exceeding three months.

(4) In this section, "authorized person" means a person authorized for the purpose by a Resident Magistrate.

Further
process to
secure
attendance.

13.—(1) Where a witness who is required to attend before a court by virtue of a witness order fails to attend in compliance with such order, the court may—

(a) caused to be served on him a notice requiring him to attend the court forthwith or at such time as may be specified in the notice; or

(b) if the court is satisfied that there are reasonable grounds for believing that he has failed to attend without just cause, or if he has failed to comply with a notice under paragraph (a), issue a warrant for his arrest, and upon such arrest he shall be brought before the court.

(2) A witness brought before the court in pursuance of a warrant under this section may be remanded by that court in custody or be admitted to bail (with or without sureties) until such time as the court may appoint for receiving the evidence or dealing with him as provided under section 12(3).

(3) Where a witness attends a court in pursuance of a notice under this section, the court may direct that the notice shall have effect as if it required him to attend at any later time appointed by the court for receiving his evidence or dealing with him, as the case may be.

14.—(1) Any room or building in which a Resident Magistrate conducts committal proceedings shall, subject to subsections (2) and (5), be deemed an open court for that purpose.

Room where
committal
proceedings
are held
deemed open
court.

(2) Subject to subsections (3) and (4), a Resident Magistrate may, where he considers it necessary or expedient in the interests of justice, exclude from the proceedings persons other than the parties thereto and their attorneys-at-law.

(3) An accused person (where he is not represented by an attorney-at-law) or his attorney-at-law may, where the Resident Magistrate proposes to exercise his discretion under subsection (2) to exclude persons, make a submission to the Resident Magistrate on whether that discretion should be exercised.

(4) Where the accused person is not represented by an attorney-at-law, the Resident Magistrate shall, before making a determination as to the exercise of his discretion under subsection (2), inform the accused person of his right under subsection (3) to make a submission.

(5) Subsection (1) shall not apply in any case where, pursuant to any provision of law, the categories of persons who may be present during committal proceedings is restricted.

15.—(1) Until other provision is made pursuant to this Act, the forms set out in the Schedule to the *Justices of the Peace Jurisdiction Act* shall, where relevant, apply *mutatis mutandis* to the provisions of this Act as respects committal proceedings, in like manner as, immediately prior to the commencement of this Act, they applied to preliminary examinations.

Adaptation of
forms from
*Justices of the
Peace
Jurisdiction
Act.*

(2) The forms referred to in subsection (1), in their application to proceedings under this Act, may be adapted or modified to meet the varying circumstances of each case which may have arisen, or may arise, under this Act.

Rules.

16. The Rules Committee of the Resident Magistrate's Courts may, subject to the approval of the Minister, make rules for carrying this Act into effect and, without prejudice to the generality of the foregoing, may make rules—

- (a) prescribing and regulating the use of forms required for the purposes of this Act, whether or not in substitution for forms referred to in section 15;
- (b) prescribing anything required to be prescribed pursuant to this Act; and
- (c) imposing and regulating the collection of fees in such circumstances as the Committee thinks fit.

Minister may vary fines.

17. The Minister may, by order subject to affirmative resolution, amend or vary any fine under this Act.

Review of Act.

18. This Act shall be reviewed, not later than three years after the coming into operation of this Act, by a Joint Select Committee of Parliament appointed for that purpose.

FIRST SCHEDULE

(Section 5 (2))

“You are not obliged to say anything in answer to the charge unless you desire to do so; but whatever you say will be taken down in writing and may be given in evidence upon your trial”.