CRIMINAL BENCH BOOK FOR MAGISTRATES AND PARISH COURT JUDGES IN THE CARIBBEAN REGION

JULY 2021



JUDICIAL REFORM AND INSTITUTIONAL STRENGTHENING (JURIST) PROJECT



Funded by the Government of Canada

Canada

FOREWORD

The Judicial Reform and Institutional Strengthening (JURIST) Project is a regional Caribbean judicial reform initiative funded under an arrangement with the Government of Canada. The Project is being implemented on behalf of Global Affairs Canada and the Conference of Heads of Judiciary of CARICOM by the Caribbean Court of Justice which was appointed by the Conference as its Regional Executing Agency.

The Project seeks to improve the administration of justice in the Caribbean region by strengthening the ability of the courts to resolve cases efficiently, fairly and in a timely manner. Special attention is being paid to improving the capacity and skills of judges and magistrates, court administrators and personnel to deliver services that meet the varying needs of their customers. The Project supports local jurisdictions of the region toward the attainment of the Project's ultimate Outcome, *"A judicial system that is more responsive to the needs of women, men, youth, business and the poor"*.

The Project has been engaged in several criminal justice and magisterial reform initiatives with a view to the improvement of the quality of justice in the criminal justice system in the CARICOM region. In this regard, an Advisory Committee on Criminal Justice and Magisterial Reform comprising judges, magistrates, prosecutors, defence counsel and other professionals from across the region, was established.

One of the common challenges identified in the magisterial court system in several countries of the Caribbean is that of delay. Delay has become endemic in some states. Magisterial matters are not resolved in a timely manner. There are frequent adjournments and persons who access the courts complain that, as a result, they are being denied justice. The view has also been expressed that there is a lack of consistency in the application of laws and procedures by magistrates and parish court judges.

In response, the Advisory Committee on Criminal Justice and Magisterial Reform has established a Sub-Committee to develop a Bench Book for magistrates and parish court judges in the English-speaking Caribbean. It is intended that the Bench Book will:

(1) Serve as a tool of trade for magistrates and parish court judges:

(2) Comprise guidelines, commentaries and statements of law that are intended to be a point of reference in the conduct of trials and in judicial decision-making process;

(3) Clarify complex areas of procedural law which present difficulty to magistrates and parish court judges;

(4) Equip magistrates and parish court judges to deliver immediate oral reasons for their decisions, thus helping to a) reduce any backlog of reserved decisions, thereby alleviating one aspect of the problem of delay; and b) assist magistrates and parish court judges in the articulation and reasoning of their decisions; and

(5) Serve as an evolving text to be reviewed over time to reflect developments in the law and procedure.

The ultimate aim is that this Bench Book will serve as a practical and accessible guide which will assist magistrates and parish court judges to conduct their courts and complete their matters in

a more efficient and timely manner. Its use should promote uniformity of procedure, improve the capacity and skills of magistrates and parish court judges, and result in a more efficient magisterial system that garners increased public trust and confidence.

The development of this Bench Book is a remarkable achievement. This was a challenging project which required extensive research into diverse areas of substantive and procedural law across the various jurisdictions of the English-speaking Caribbean. The Bench Book is the first of its kind in the English-speaking Caribbean and it is our hope that it will be the first point of reference for all magistrates and parish court judges.

The production of the Bench Book would not have been possible without the generous funding of the Government of Canada. We are deeply indebted to the Government of Canada, which has had a long and productive partnership with CARICOM countries in the area of judicial and legal reform with the objective of strengthening institutions, building capacity and eliminating delay.

It is with great honour that we present the ***Criminal Bench Book for Magistrates and Parish Court Judges in the Caribbean Region***.

Mr. Justice Adrian Saunders
President, Caribbean Court of Justice
July, 2021

About the Criminal Bench Book for Magistrates and Parish Court Judges in the Caribbean Region

The Criminal Bench Book for Magistrates and Parish Court Judges in the Caribbean Region (Bench Book), the first of its kind in the Caribbean region, is an initiative of the Judicial Reform and Institutional Strengthening (JURIST) Project. The Bench Book project, which commenced in 2016, was led by a Criminal Bench Book Committee comprising senior judicial officers and representatives of the Caribbean Court of Justice (CCJ) and the JURIST Project. It will serve as a practical tool for all Magistrates and Parish Court Judges across CARICOM and will contribute to region-wide judicial institutional strengthening.

The Bench Book is a compilation of rules of procedure distilled from primary legislation, case law, policy, and significantly, the contributions and experience of judicial officers practicing in the summary jurisdiction. It includes guidance on judgment writing and giving of reasons, procedures for dealing with vulnerable defendants and witnesses, sentencing options and methodology, and extradition proceedings, among others. It must be acknowledged that summary criminal procedure varies throughout the English-speaking Caribbean. Across jurisdictions, rules of procedure are prescribed in summary criminal codes, rules of court, interpreted from an assortment of legislation and developed incrementally by judicial precedent. In the space between these traditions, procedural gaps and inconsistencies flourish. An observation drawn from the delegates contributions at the consultation on the draft manuscript, was that in some instances, judicial officers have proactively developed ad hoc systems and processes to address procedural lacunae.

The Bench Book consolidates these rules of procedure, statutory provisions, recent amendments to primary legislation, and the guidelines set out in appellate judgments from the magisterial courts, into an easily navigable, concise treatise on summary procedure that Magistrates and Parish Court Judges can easily refer to, regardless of the territory in which they happen to be sitting. The amalgamation of these sources of law into a single volume, makes it easy for Magistrates and Parish Court Judges to rapidly identify the diverse bases of their judicial decision-making powers in individual cases, and simultaneously reference case law guiding the exercise of those powers. This promotes efficiency, accuracy and consistency in decision making. The corollaries of improvements in these measures are reductions in case backlogs, saving of judicial time, and bolstered public confidence in judicial integrity.

Concurrent with these performance benefits, the compilation of judicial precedents from cases across the region into one Bench Book, contributes to establishing consistent best practice in the summary courts of the Caribbean by presenting judicial officers with relevant authorities that have been tested and are accessible at a glance. In summary, it is expected that this regional Bench Book will supplement the invaluable experience of CARICOM judicial officers and further aid them in disposing of cases justly and efficiently.

Mme. Justice Alice Yorke-Soo Hon
JA., Trinidad and Tobago
Chairperson, Bench Book Committee

Mr. Justice Mark Mohammed
JA., Trinidad and Tobago
Co-chairperson, Bench Book Committee

ACKNOWLEDGEMENTS

A special thanks to the Chair of the Criminal Bench Book Committee, the Honourable Mme. Justice Alice Yorke-Soo Hon, JA., Trinidad and Tobago, for her leadership, technical expertise and dedication in the development of *the Criminal Bench Book for Magistrates and Parish Court Judges in the Caribbean Region*. The JURIST Project also wishes to express gratitude to the Honourable Mme. Justice Maureen Rajnauth-Lee, Judge, Caribbean Court of Justice, and the Honourable Mr. Justice Mark Mohammed, JA., Trinidad and Tobago, as well as other members of the Committee for their guidance.

The Project also acknowledges with gratitude, the support of the Rt. Honourable Sir Dennis Byron, former President, Caribbean Court of Justice, and participation of stakeholders from regional judiciaries, Directors of Public Prosecutions, Bar Associations and Course Directors of the various law schools throughout the CARICOM region, who contributed to the development of the Bench Book. The contributions provided deep insight and feedback resulting in the continuous improvement of the final draft.

Finally, the Project wishes to recognise the contribution of the Government of Canada, and the efforts of the editorial team who worked assiduously in streamlining the Bench Book and their significant contribution to its finalisation.

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CHAPTER 1

JURISDICTION

Magistrates are creatures of statute and their jurisdiction is based on each country's relative enabling statute. The court's function in any country is to maintain law and peace and order through its criminal process. Unless overridden by statute, the general principles of criminal jurisdiction in the Commonwealth Caribbean courts are based on common law. Territorial jurisdiction is established when the criminal conduct occurs within a State. Where that is so, the general rule is that only conduct occurring in that particular State can be subject to prosecution by the agencies of that State.[1]

Jurisdiction with respect to specific offences in the Commonwealth Caribbean

Magistrates/ Parish Court Judges/ District Magistrates in the Commonwealth Caribbean have jurisdiction with respect to the following:

i. Hybrid offences are offences that have been created by Statute and stipulate that a person may be guilty of a summary conviction with a particular sentence and may also be guilty of an indictable conviction with a different sentence. In all the territories, except Guyana the magistrate's court can hear an indictably laid hybrid offence summarily, where consent is given by the offender.[2] In Guyana, the magistrate may, if he considers it expedient to do so, hear representations from both sides in each other's presence and taking into consideration the nature of the offence as well as all the circumstances make a determination on whether the matter should be tried summarily.[3] Therefore the defendant's consent is not required.

ii. Committal Proceedings - A magistrate has the power to sit as an examining magistrate to enquire into whether evidence (in the form of written statements) adduced by the prosecution grounds a prima facie case upon which the defendant should stand trial for an indictable offence. Where the evidence establishes such a case the magistrate shall commit the defendant to trial by jury, but where it is not established the magistrate

[1] Cox v Army Council [1963] AC 48, HL

[2] Anguilla - Magistrate's Code of Procedure Act Chap. M5 Section 265;
Antigua and Barbuda - Magistrate's Code of Procedure Chap. 255 Sections 45-48;
Barbados - Magistrate's Court Act Chap. 116A Sections 46-49;
Belize - Summary Jurisdiction (Offences) Act Chap. 98 Section 50, Summary Jurisdiction (Procedure) Act Chap. 99 Sections 79-80;
Dominica - Magistrate's Code of Procedure Act Chap. 4:20 Section 211;
Grenada - Criminal Procedure Code Chap. 72B Section 85;
Jamaica - Judicature (Resident Magistrates) Act Chap. 179 Sections 272-273, 275;
Montserrat - Criminal Procedure Code No. 9 of 2010 Section 52, 59-60;
St Kitts and Nevis - Magistrate's Code of Procedure Act Chap. 3.17, Sections 51-53;
St Lucia - Criminal Code Chap. 3.01 Sections 774-775, Criminal Procedure Rules S.I. 22 (11th March 2015) Rule 9.1;
St Vincent and the Grenadines - Criminal Procedure Code Chap. 172 Sections 12-13;
Trinidad and Tobago - Summary Courts Act Chap 4:20 Sections 94-100;

[3] Guyana - Summary Jurisdiction (Procedure) Act Chap. 10:02 Section 63

may discharge the defendant.[4] In Montserrat, magistrates have the jurisdiction to conduct an initial hearing to determine whether the matter should be tried summarily or indictably. If it is decided that the matter should proceed indictably, the magistrate fixes a date for a sufficiency hearing, which is conducted by a judge and sends the case to the High Court.[5]

iii. Power to Convert - this is the power granted to magistrates to convert a matter from proceeding summarily to committal proceedings or vice versa where statute provides that these offences can be heard either summarily or on indictment.[6]

iv. Inquest Proceedings - A magistrate has the power to act as a coroner and to conduct inquest proceedings based on legislation.[7]

v. Extradition - Where the accused is to be extradited, the magistrate has the authority to make extradition orders and to grant bail. This process is governed by relevant *Extradition Act* of each Commonwealth Caribbean country; Anguilla, Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.[8]

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[4] Anguilla - Magistrate's Code of Procedure Act Chap. M5 Section 42;
Antigua and Barbuda - Magistrate's Code of Procedure Act Chap. 255 Section 42;
Barbados - Magistrate's Court Act Chap. 116A Sections 17-19, Part III;
Belize - Indictable Procedure Act Chap. 96 Sections 33, 36;
Dominica - Magistrate's Code of Procedure Act Chap. 4:20 Section 39, Part IV, Criminal Procedure (Preliminary Inquiries) Act 1995;
Grenada - Criminal Procedure Act Chap. 72B Sections 101-106;
Guyana - Criminal Law (Procedure) Act Chap. 10:01 Sections 62-68;
Jamaica - Committal Proceedings Act 2013 Section 3;
Montserrat - Criminal Procedure Code No. 9 of 2010 Section 83;
St Kitts and Nevis - Magistrate's Code of Procedure Act Chap 3.17 Part IV;
St Lucia - Criminal Code Chap. 3.01 Sections 797-802;
St Vincent and the Grenadines - Criminal Procedure Act Chap. 172 Chapter VIII;
Trinidad and Tobago - Indictable Offences (Preliminary Enquiry) Act Chap. 12:01 Sections 23-24;
[5] Montserrat - Criminal Procedure Code No. 9 of 2010 Sections 67 - 69;
[6] Antigua and Barbuda - Magistrate's Code of Procedure Act Chap. 255 Section 45;
Barbados - Magistrate's Court Act Chap. 116A Section 52(2);
Belize - Summary Jurisdiction (Offences) Act Chap. 98 Section 51;
Dominica - Magistrate's Code of Procedure Act Chap. 4.20 section 44;
Grenada - Criminal Procedure Code Chap. 72B Section 85;
Guyana- Summary Jurisdiction (Procedure) Act Chap. 10:02 Sections 33, 34;
Jamaica - Judicature (Resident Magistrate) Act Sections 275, 276
St. Kitts and Nevis - Magistrate's Code of Procedure Act Chap 3.17 Section 53;
St Lucia - Criminal Code Chap 3.01 Section 776;
St Vincent and the Grenadines - Criminal Procedure Code Sections 11-13;
Trinidad and Tobago- Summary Courts Act Chap 4:20, Sections 94-100
[7] Anguilla - Coroners Act Chap. C125;
Antigua and Barbuda - Coroners Act Chap. 105
Barbados - Coroners Act Chap. 113;
Belize - Coroners Act Chap. 126;
Dominica - Coroners Act Chap 4:30;

vi. Bail - Magistrates have the power to admit the defendant to bail through bail applications. These are made orally usually on the first date of appearance in the court. Bail is governed by the relevant legislation of each Commonwealth Caribbean country[9] except Guyana, which is guided by the common law and the *Criminal Law (Procedure) Act.*[10]

Grenada - Coroners Act Chap 69;
Guyana- Coroners Act Chap 4:03;
Jamaica - Coroners Act Chap. 77;
Montserrat - Coroners Act Chap. 2.05;
St. Kitts and Nevis - Coroners Act Chap. 3.08;
St. Lucia- Coroners Act Chap. 2.16;
St. Vincent and the Grenadines - Coroners Act Chap. 21;
Trinidad and Tobago - Coroners Act Chap 6:04;

[8] Anguilla - Extradition Act Chap 4.09;
Antigua and Barbuda - Extradition Act Chap. 164;
Barbados - Extradition Act Chap. 189;
Belize - Extradition Act Chap. 112;
Dominica - Extradition Act Chap. 12:04;
Grenada - Extradition Act, CAP 98;
Guyana - Fugitive Offenders Act, Cap 10:04;
Jamaica - Extradition Act, No. 7 of 1991;
Montserrat - Extradition Act Chap. 4.09;
St. Kitts and Nevis - Extradition Act Chap 4.08;
St. Lucia - Extradition Act Chap. 2.10;
St. Vincent and the Grenadines - Fugitive Offenders Act Chap. 175;
Trinidad and Tobago - Extradition Act Chap. 12:04, See also Ferguson and Galbaransingh v The Attorney General of Trinidad and Tobago HC 2010/4144

[9] Anguilla - Magistrates Code of Procedure Act Chap. M5 Section 20(1);
Antigua and Barbuda - Magistrate's Code of Procedure Act Chap. 255 Sections 62-66;
Barbados - Bail Act Chap. 122A Section;
Belize - Indictable Procedure Act Chap 96 Sections 56-64; Crime Control and Criminal Justice Act Chap. 102 Section 16;
Dominica - Magistrate's Code of Procedure Act Chap. 4.20 Sections 58-63;
Grenada - Criminal Procedure Code Chap. 72B Sections 47-57;
Jamaica - Bail Act;
Montserrat - Criminal Procedure Code Part 7;
St Kitts and Nevis - Magistrate's Code of Procedure Act Chap. 3.17 Sections 66-71;
St Lucia- Criminal Procedure Rules Part V;
St Vincent and the Grenadines- Criminal Procedure Code Chap. 172, Chapter IV;
Trinidad and Tobago - Bail Act Chap 4:60 Section 5;

[10] Chap. 10:01 Sections 81-89

Territorial jurisdiction

The principles of criminal jurisdiction in the Commonwealth Caribbean courts are based on common law. Territorial jurisdiction is established when criminal conduct occurs within a State, in which case, the criminal conduct and the perpetrator are subject to prosecution in the local courts.[11] Where territorial jurisdiction is claimed, only conduct occurring in a particular State is subject to the prosecution by the agencies of that State.[12]

Territorial waters

A state's jurisdiction extends into its territorial waters and accordingly offences committed within a state's territorial waters can be prosecuted as if the act was committed on land. The territorial waters in most Commonwealth Caribbean jurisdictions comprise those areas of the sea which extend not less than twelve nautical miles from the baseline in keeping with the standard demarcation established in the United Nations Convention on the Law of the Sea.[13] Where an offence has occurred within the territorial waters of a Commonwealth Caribbean country, the various territorial waters statutes give the magistrates of the respective states the jurisdiction to hear and determine the offence.[14]

ANTIGUA AND BARBUDA

The *Magistrate's Code of Procedure Act, Chap. 255, Section 29*, states that where any offence punishable on summary conviction has been committed on a ship, or vessel within the waters of Antigua and Barbuda, the magistrate assigned to the district where the offence is committed and where the vessel is present would have jurisdiction to hear and determine the charge.

BARBADOS

The *Magistrate's Court Act, Chap. 116A, Section 15,* provides that where any offence punishable on summary conviction is committed within its territorial waters, the same may be dealt with and determined by any magistrate in Barbados. In the case of **Fischer v R,** it was decided that territorial waters formed part of the extended jurisdiction of Barbados.[15]

[11] Gocking and Gocking v Anthony Payne (Customs and Excise Officer III) and Fitzgerald Daniel (Customs and Excise Officer II Ag.) Mag. App. No. P085 of 2014 (Trinidad and Tobago)
[12] Cox v Army Council [1963] AC 48
[13] Antigua and Barbuda - Maritime Areas Act Chap. 260 Sections 5, 24;
Barbados - Barbados Territorial Waters Chap. 386 Section 3;
Belize - Maritime Areas Act Chap. 11 Section 8;
Dominica - Territorial Sea, Contiguous Zone, Exclusive Economic and Fishery Zones Chap. 1.11 Sections 3,7;
Grenada - Territorial Waters Act Chap. 318 Sections 5, 26;
Guyana - Maritime Zone Act Chap. 63:01 Section 3-4;
Jamaica - Maritime Areas Act Section 12;
St Kitts and Nevis - Maritime Areas Act 1984;
St. Lucia - Maritime Areas Act No. 6 of 1984;
St Vincent and the Grenadines - Maritime Areas Act 1983. Section 5;
Trinidad and Tobago - Territorial Sea Act Chap. 1:51 Section 3, Summary Courts Act Chap. 4:20 Section 10;
[14] Pianka v R [1979] A.C. 107; Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 Article 27
[15] BB 2002 CA 7

BELIZE

The *Inferior Courts Act, Chap. 94, Section 5(3)*, states that any offence cognisable under any statute before a court of summary jurisdiction, that is committed or arises in or within the confines of any bay, creek or inlet of the sea, or on any river or creek or inlet of the sea or on any river or creek, of or within Belize, may be heard and determined by the magistrate of the judicial district bordering same. Per *Section 5(4)*, if the offence described above is committed or arises on board any ship, vessel or boat, beyond the limits described therein, it may be heard and determined by the court of summary jurisdiction in the district off the shore of which the ship, vessel or boat is at the time of the commission of the offence and matters, or by the court of summary jurisdiction in the judicial district on or near to the shore on which the ship first anchors or touches after the commission of the offence. Per *Section 5,* of the *Indictable Procedure Act, Chap. 96,* when an act which would amount to a crime if done wholly within the jurisdiction, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does, or abets any part of such an act, may be tried and punished under the code in the same manner as if the act had been done wholly within the jurisdiction.

DOMINICA

The *Magistrate's Code of Procedure Act, Chap. 4:20, Section 26,* states that where a person has committed or is suspected of having committed any offence punishable on summary conviction in or upon any ship, vessel or boat within any of the waters of the State, the same may be dealt with and determined by a magistrate in the district off the shores of whose shores it may be at the time of the commission of the offence, or near to the shore of the district it may anchor or touch after the commission of the offence.

GRENADA

The *Magistrates Act, Chap. 177, Section 29,* provides that where an offence is committed in or within the limits of any bay, creek, or inlet of the sea, it may be heard and determined or investigated by the magistrate of the district within which the bay, creek or inlet may be situated.[16] Where such offences are committed upon any ship, vessel, or boat beyond the limits mentioned, it may be heard and determined or investigated by the magistrate off the shores in which the said ship, vessel or boat may be when the offence was committed, or on or close to the shore it may anchor or touch after the offence was committed.

GUYANA

The *Summary Jurisdiction (Magistrates) Act, Chap. 3:05, Section 32(2),* provides that any offence that is cognizable under any written law before any magistrate that was committed or arises in or within the limits of any bay, creek or inlet of the sea or that river or creek; and any offence aforesaid committed or arising on board any ship, vessel, or boat, beyond such limits may be heard and determined by the court of the district off whose shore the same is, at the time when the offence was committed or the matter arose, or on or close to the shore of whose district the same anchors or touches after the commission of the offence.

[16] Grenada Territorial Waters Act No. 17 of 1978. Section 10 (2)

JAMAICA

The *Maritime Areas Act, 1996, Section 14(1),* provides that any act committed on or in the territorial sea which if committed on land, within a parish would be punishable on indictment according to the laws of Jamaica, is an offence punishable on indictment in a like manner regardless of whether it may have been committed on board a foreign vessel, or is a summary offence under the *Dangerous Drugs Act*.

ST. KITTS AND NEVIS

The *Magistrate's Code of Procedure Act, Chap. 3.17, Section 34,* states that when a person has committed a summary offence in or upon a ship, vessel or boat within any of the waters of the State, the same may be dealt with and determined by the magistrate off the shores of whose district the said may be at the time of the commission of the offence or near to the shore of whose district the said may touch or anchor after the commission of the offence.

ST. LUCIA

The *District Courts Act, Chap 2.02, Section 6(2),* provides that any summary offences and matters cognizable before any magistrate under any statute, which is committed or arises in or within the limits of any bay, creek or inlet of the sea of or within St. Lucia may be heard and determined by the magistrate of the district within which the same may be. Where all such offences and matters have been committed or arises on board a ship, vessel, or boat beyond the limits mentioned, such offence may be heard and determined by the magistrate off the shore of whose district that such ship, vessel or boat may be at the time the offence was committed or arose or on or close to the shore of whose district the same may anchor or touch after the offence was committed or arose.

ST. VINCENT AND THE GRENADINES

The *Magistrates Act, Chap. 24, 30, Section 26(2),* states that all offences and matters which are cognizable under any written law before a magistrate which may be committed or may arise within the confines of any bay, creek or inlet of the sea or any river or creek, of or within St. Vincent and the Grenadines may be heard and determined by the magistrate of the district bordering same. Where all such offences are committed or arise on board any ship, vessel or boat beyond the said confines, they may be heard and determined by the magistrate off the shore of whose district it may be present at the time the offence was committed or on or near to the shore of the district it may anchor or touch after the offence was committed.

TRINIDAD AND TOBAGO

The *Summary Courts Act, Chap. 4:20, Section 10,* states that where any summary offence is committed in or upon any vessel within any of the waters of Trinidad and Tobago, the offence may be dealt with and determined either by the magistrate of the district within which the vessel shall then be, or of the district within which the vessel shall first arrive after the commission of the offence.

Extra-Territorial Jurisdiction

High Seas

Antigua and Barbuda, Barbados, Belize,[17] Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines and Trinidad Tobago.

Article 92, of the United Nations Convention on Law of the Sea stipulates that a ship is subject to the jurisdiction of the State whose flag it bears. This principle of law has been restated in statute in many of the Commonwealth Caribbean countries. A ship may fly only one flag and is subject to the jurisdiction of the flag it flies.[18]

Further, *article 95,* states that warships on high seas shall have complete immunity from the jurisdiction of any State other than its flag State. However, *article 97(1),* provides that in the event of a collision or any other incident of navigation in relation to a ship on high seas, which involves the penal or disciplinary responsibility of the master or any person in ship's service, no penal or disciplinary proceedings can be instituted against him/her except by the flag state or the state from which the person is a national.

A ship may be subject to concurrent jurisdiction if it is not on the high seas. That is to say, it would be subjected to the jurisdiction of the flag state as well as the state in whose territorial waters it is present.

Most Commonwealth countries have adopted the Law of the Sea Convention into their respective domestic legislation. Accordingly, the principles of International law apply to issues of jurisdictional on the High Seas.

Airspace

Antigua and Barbuda,[19] Barbados,[20] Belize,[21] Dominica,[22] Grenada,[23] Guyana,[24] Jamaica, St. Kitts and Nevis,[25] St. Lucia,[26] St. Vincent and Grenadines[27] and Trinidad Tobago.[28]

The Commonwealth Caribbean countries that are signatories to the Tokyo Convention are:

Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines and Trinidad Tobago.

Jurisdiction over airspace is defined in the Tokyo Convention which states that crimes committed on board an aircraft in flight, any aircraft registered in a Convention country shall at any time while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State be deemed to be within the jurisdiction of that country, whether or not it is also within the jurisdiction of any other country.[29]

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[17] Maritime Areas Act Chap. 11
[18] Anderson (1868) LR 1 CCR 161
[19] Civil Aviation Act Chap. 86
[20] Civil Aviation Act Chap. 123B
[21] Civil Aviation Act Chap. 239
[22] Civil Aviation Act Chap. 47:10
[23] Tokyo Convention Act Chap. 320, Act 7 of 1990
[24] Guyana Fugitive Offender Act Chap 10:04 Section 37
[25] Tokyo Convention Act 33 of 1976
[26] Civil Aviation (Tokyo Convention) Act 13 of 1986

A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the certain circumstances based on legislation.[30]

Where an aircraft which is registered in another state is flying over one country's airspace then both states have concurrent jurisdiction. They may resolve between themselves which country should prosecute.

Local Summary Jurisdiction

ANGUILLA

There is one Magistrate's Court for Anguilla.[31] The magistrate possesses all the powers and jurisdiction and shall perform all the duties that are vested in or imposed upon magistrates or justices of the peace either at common law or by virtue of any Act.[32]

Magistrate's duties

Some specific duties as set out under the *Magistrate's Code of Procedure, Chap. M5,* are:

- To receive complaints and information of all offences and to cause to be brought before him by summons or warrant all persons charged with offences: *Section 20(1)(a)*;
- To investigate all charges that he is not empowered to try summarily and to dismiss the accused or commit him for trial in the high court: *Section 20(1)(c);*
- To make orders for the support, education and burial of illegitimate children and for the support of wives deserted by their husbands: *Section 20(1)(e);*
- To arbitrate in disputes relating to salvage and title to wreck where the amount in dispute does not exceed $15,000.00: *Section 20(1)(g);*
- To exercise jurisdiction in equity, where there is a conflict between the law and equity, equity shall prevail and govern the proceedings: *Section 20(1)(t);*
- To exercise jurisdiction where any Act directs or authorises the recovery of a sum of money summarily: *Section 20(1)(v)*.

Magistrate's lack of jurisdiction

- Over suits for malicious prosecution, false imprisonment, libel, slander, seduction or breach or promise of marriage: *Section 20(3);*
- To impose a term of imprisonment for more than two years in respect of any or all the offences which arose from the same factual circumstances: *Section 20(2)*.

[27] Civil Aviation (Tokyo Convention) Chap. 353, Act 26 of 1986
[28] The Civil Aviation (Tokyo Convention) Act Chap 11:21 Section 4
[29] Tokyo Convention on Offences and Certain other acts committed on board aircraft 704 UNTS 219, Article 1
[30] Tokyo Convention, Article 4
[31] Magistrate's Code of Procedure Chap. M5. Section 2
[32] Magistrate's Code of Procedure Chap. M5. Section 5

Where a magistrate ceases to act

The *Magistrate's Code of Procedure, Chap. M5,* states:

- A warrant or summons issued by a magistrate shall not be avoided by reason of the magistrate who signed the same dying or ceasing to hold office: *Section 39*;
- It shall not be necessary that the magistrate who acts before or after the hearing of a case should be the magistrate by whom the case is or was heard and determined: *Section 40*.

Statutory limitation

Under *Section 36, Magistrate's Code of Procedure, Chap. M5,* in all cases where no time is specially limited for making any charge in the Act or law relating to the particular case such charge shall be made within 6 months from the time when the matter of the charge arose.

ANTIGUA AND BARBUDA

Every magistrate wherever assigned shall have jurisdiction throughout Antigua and Barbuda. They shall have and possess all the powers and jurisdiction and shall perform all the duties which are now vested in or imposed upon them either at common law or by virtue of any Act now in force, or which may hereafter be vested in or imposed upon them by virtue of any such Act. One or more magistrates may be assigned to a district or one magistrate to more than one district by the Governor General. Where more than one is assigned to a district, each shall exercise concurrent jurisdiction in that district with the other or others so assigned.[33]

For the purpose of arranging sittings of the Magistrates Courts, Antigua and Barbuda is divided into 3 districts as follows: Antigua - two districts A and B; Barbuda - one district C.[34]

Magistrate's duties

Some specific duties as set out under the *Magistrate's Code of Procedure, Chap. 255,* are:

- To try summarily and to convict and sentence all persons charged with committing offences which he is empowered to try summarily by any Act: *Section 22(d)(i);*
- To make and give all such convictions, sentences, and orders as under any Act he is authorized to make or give and which may be carried out and enforced by fine or imprisonment in the first instance: *Section 22(d)(iii);*
- To receive complaints and information for all offences and to cause to be brought before him either by summons: *Section 22(a);*
- To issue warrants of arrest all persons charged with such offences: *Section 22(a);*
- To issue search warrants: *Section 22(b);*
- To investigate all charges which he is not empowered to try summarily and to dismiss or commit the accused to trial before the High Court: *Section 22(c);*
- To bind over persons to keep the peace and be of good behavior: *Section 22(g);*

[33] Magistrate's Code of Procedure Chap. 255 Sections 6, 7
[34] Magistrate's Code of Procedure Chap. 255 Section 3

- To admit to bail persons charged with or committed for trial for any offence save only as hereinafter mentioned: *Section 22(h);*
- To bind over prosecutors and witnesses by recognisances to prosecute and give evidence *Section 22(i);*
- To sit as coroner for the district, and as a coroner may to act for or assist another in the performance of their duty as coroner: *Coroner's Act, Chap. 105, Section 3;*
- To try summary offences under the specific legislation for example: *Child Justice Act, 2015; Customs (Control and Management) Act, 2015; Integrity in Public Life Act, 2004; Child Justice Act, 2015; Misuse of Drugs, Chap. 283.*

Magistrate's lack of jurisdiction

Some instances where the magistrate has no jurisdiction under the *Magistrate's Code of Procedure, Chap. 255,* include:

- To try any civil action founded on contract when the debt, demand or value of the thing claimed, or rent in arrear is more than $7,500.00: *Section 22(f)(i);*
- To try any action founded in tort where the demand or damage claimed is more than $7,500.00, provided that the magistrate shall not have any jurisdiction over any suits for: malicious prosecution; false imprisonment; libel; slander; seduction; or breach of promise of marriage: *Section 22(f)(ii).*

Where a magistrate ceases to act

The *Magistrate's Code of Procedure, Chap. 255,* states:

- A warrant or summons issued by a magistrate shall not be avoided by reason of the magistrate who signed the same dying or ceasing to hold office: *Section 39;*
- It shall not be necessary that the magistrate who acts before or after the hearing of a case should be the magistrate by whom the case is or was heard and determined: *Section 40.*

Statutory limitation

Under *Section 75, Magistrate's Code of Procedure, Chap. 255,* in all cases where no time is specially limited for making any charge in the Act or law relating to the particular case such charge shall be made within 6 months from the time when the matter of the charge arose. The period of statutory limitation for prosecution may vary in certain instances.[35]

[35] Fatal Accidents Act Chap. 166 section 5 - 12 months; Misuse of Drugs Act Chap. 283, section 25(5) - 12 months; Money Laundering (Prevention) Act 9 of 1996 section 28 - 6 years.

BARBADOS

Under the *Magistrate's Court Act, Chap. 116A, Section 7(1),* one or more magistrate may be assigned to one district and one magistrate may be assigned to more than one district by the Chief Justice. Therefore, if he is asked to sit in a particular district for a day or a week, he cannot try cases originating in another district, but is limited to those in which he sits. *Section 7(2),* provides that where more than one magistrate is assigned to a district each such magistrate shall exercise concurrent jurisdiction in that district with the other or others so assigned.

Section 14, states that where offences are committed between two districts or starts in one and completed in another or on in or on a vehicle on voyage through different districts, the offence would be deemed to have been committed in any of the districts.

Magistrate's duties

Some specific duties as set out under the *Magistrate's Court Act, Chap. 116A,* are:

- To try all summary offences committed within the district or districts to which he has been assigned: *Section 13(1);*
- To try summarily an indictable offence in any case which he would have had jurisdiction as an examining magistrate: *Section 13(5);*
- To act as an examining magistrate, regardless of whether the offence committed was within or outside the district or districts to which he is assigned: *Section 13(3);*
- To receive information, issue of summons to the accused and warrant for his arrest: *Section 12;*
- To bind over witness to the High Court: *Section 30(2)(a);*
- To convert a charge: *Sections 52(2),(3);*
- To issue search warrants and detention or disposal of articles seized thereunder: *Section 84;*
- To bind parties to be of good behaviour: *Section 139;*
- To bind over prosecutor and witnesses to attend trial: *Section 30;*
- To hear bail applications: *Magistrates Court Act, Chap. 116A, Sections 20(3),(4); Bail Act, Chap. 122A;*
- The Chief Magistrate has country-wide jurisdiction;
- Magistrates also have jurisdiction to summarily try offences under specific legislation for example: *Customs Act, Chap. 66; Drug Abuse (Prevention and Control), Chap. 131; Firearms Act, Chap. 179; Mental Health Act, Chap. 45; Criminal Damage Act, Chap. 113B; Liquor Licences Act, Chap. 182.*

Magistrate as coroner

In Barbados, the Chief Magistrate assigns a single magistrate to sit as coroner and that magistrate shall have jurisdiction in all magisterial districts to (a) cause an investigation to be conducted into the cause of an unnatural death; and (b) hold where necessary an inquest into an unnatural death: *Coroners Act, Chap. 113, Section 2.*

Magistrate's lack of jurisdiction

Some instances where the magistrate has no jurisdiction under the *Magistrates Court Act, Chap. 116A,* include: the recovery of land,[36] cases in which the title to any hereditament or to any franchise is in question; malicious prosecution; defamation; cases in which the validity of any devise, bequest or limitation under any will or settlement may be disputed.[37]

Where a magistrate ceases to act

- A warrant or summons that is issued by a magistrate does not cease to have effect by virtue of the death of the said magistrate or by him ceasing to be a magistrate: *Magistrates Court Act, Chap. 116A, Section 214; Magistrate's Courts (Criminal Procedure) Rules, 2001, rule 6(1);*
- Any person who succeeds a magistrate or any person so acting for a magistrate may hear, determine, execute, enforce and carry to completion any proceeding or matter that was commenced by that magistrate unless the matter or proceeding is part-heard: *Magistrate's Courts (Criminal Procedure) Rules, 2001, rule 6(2).*

Statutory limitation

Under the *Magistrate's Court Act, Chap. 116A, Section 217(1),* a magistrate shall not try an information unless the information was laid within six months from the time the offence is committed. However the limitation period may vary in certain instances.[38]

BELIZE

Magistrates

Pursuant to *Section 3,* of the *Inferior Courts Act, Chap. 94*, Belize is divided into six judicial districts. Each district has at least one summary jurisdiction court which has criminal jurisdiction in accordance with the *Summary Jurisdiction Procedure Act, Summary Jurisdiction Offences Act, Supreme Court of Judicature Act, Part VIII,* and the rules of the court made thereunder and any other Act or law conferring jurisdiction upon the court, to hear and determine any complaint or information.[39]

[36] Leacock v Griffith 2017 CCJ 1(AJ) is instructive on the point that a magistrate has no jurisdiction to hear claims involving land or title to land.
[37] Magistrates Court Act Cap. 116A Section 147(2)
[38] Customs Act, Chap. 66 section 211(1)- 7 years; Drug Abuse (Prevention and Control), Chap. 131 section 37(1) - 12 months; Insurance Act Chap. 310 section 184 (4), (5) within 1 year if supervisor had knowledge of the offence or 3 years from commission of offence; Land Acquisition Act Chap. 228B section 21 - 2 years; Liquor Licences Chap. 182 section 86 - 1 year
[39] Inferior Courts Act, Cap. 94, section 5(1)

Under *Section 8,* of the *Inferior Courts Act, Chap. 94,* the Public Services Commission may appoint one magistrate to more than one district, or may appoint more than one magistrate to any one district, and may direct that any magistrate or magistrates shall try only specific cases or classes of cases, or shall try cases only in certain areas within the district.

Additionally, under the *Inferior Courts Act, Chap. 94, Section 9(1),* the Public Services Commission may appoint fit and proper persons as mobile magistrates, and shall direct in what judicial district, or in what part of any judicial district or districts, any mobile magistrate shall act. A mobile magistrate shall have all the powers and jurisdiction of a magistrate in the judicial district in which he is appointed to act, but he or she shall only exercise those powers and that jurisdiction when and for such period as he or she may be directed by the Public Services Commission to do so. Subject to the foregoing, all enactments relating to magistrates shall apply to mobile magistrates.

Pursuant to *Section 4,* of the *Summary Jurisdiction (Procedure) Act, Chap. 99,* where an act which, if done wholly within the jurisdiction of a court, would be a summary conviction offence cognisable in that court, is done partly within and partly beyond that court's jurisdiction, every person who, within the jurisdiction, does or abets any part of that act shall be liable to be proceeded against and convicted and punished for the offence in the same manner as if the act had been done wholly within the jurisdiction.

Magistrate's duties

Some specific duties as set out under the *Inferior Courts Act, Chap. 94,* are:

- To hear and determine all complaints or information for summary conviction offences including complaints or information for the recovery of fines, penalties or forfeitures not specifically assigned by statute to the Supreme Court: *Section 5(2)(a);*
- To receive and inquire into all charges of indictable offences and to make any orders in respect thereof under the: *Indictable Procedure Act, Chap. 96, Section 5(2)(b);*
- Generally, to do all acts and things, required by any statute, law or usage now or hereafter in force, appertaining to a summary jurisdiction court in England: *Section 5(2)(c);*
- The magistrate of a district shall be the president of the summary jurisdiction court in that district, and shall have all the jurisdiction and power of that court: *Section 10(1);*
- To determine the distribution of the business of each court, subject to the Minister's approval: *Section 10(2);*
- To administer all oaths to be taken before him in the exercise of any of the jurisdictions and powers conferred upon him by this or any other statute: *Section 59.*

Some specific duties as set out under the *Summary Jurisdiction (Procedure) Act, Chap. 99* are:

- To transfer a cause where the ground of complaint has arisen out of jurisdiction of the court: *Section 49(1);*
- To reduce charge from indictable to summary for offences of a like kind: *Section 50(1);*

- To stay proceedings for a summary conviction offence where he is of the opinion it should be tried on indictment: *Section 51;*
- To issue search warrants and to detain or cause thing to be detained: *Section 23;*
- To receive complaint and issue summons to the defendant/witness: *Sections 25(1), 30;*
- To issue warrant to apprehend defendant/witness: *Sections 29, 33;*
- To bind over parties to be of good behavior: *Section 113;*
- To exercise discretion on whether to grant bail: *Indictable Procedure Act, Chap. 96 Section 56(2); Crime Control and Criminal Justice Act, Chap. 102, Section 16;*
- To be a coroner within the district assigned and shall be responsible for performing the duties of a coroner in such district: *Coroners Act, Chap. 126, Sections 3(3), 4(1);*
- To summarily try offences under specific legislation for example: *Customs Regulation Act, Chap. 49; Domestic Violence Act, Chap. 178; Firearms Act, Chap. 143; Gambling Prevention Act, Chap. 109; Motor Vehicles and Road Traffic Act, Chap. 230.*

Magistrate's lack of jurisdiction

Some instances where the magistrate has no jurisdiction include:

- Matters relating to the title to any real property or any interest therein or accruing therefrom; or arising out of any execution under the process of the Supreme Court: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 9;*
- Matters committed without the limits of the district to which he is assigned: *Indictable Procedure Act, Chap. 96, Section 26(1);*
- Any offences not contained in *Schedule 2,* and *3,* of the *Criminal Code, Chap. 101,* with or without consent;
- Trial of indictable offences under the *Criminal Code, Chap. 101,* such as rape, kidnapping, murder, attempted murder, manslaughter or abetment of suicide.

Where a magistrate ceases to act

- Where a magistrate ceases to exercise jurisdiction in the judicial district or to hold office before giving his decision, he must, within 6 weeks of the conclusion of the hearing, lodge his written decision with the clerk. The clerk will read it in open court at the earliest opportunity after notice to the parties and the decision shall be the decision of the court: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 52(2);*
- Where a magistrate has issued a summons or warrant, or otherwise taken or commenced any matter or proceeding under any authority conferred on him, and he subsequently ceases to act as magistrate, the summons or warrant may be executed and served in the same manner as if the issuing magistrate had not ceased to act; and any successor to the magistrate who ceases to act, or any person acting for the said magistrate may hear, determine, execute, enforce and carry to completion any matters or proceedings so commenced: *Inferior Courts Act, Chap. 94, Section 52;*
- A magistrate shall perform the duties of another magistrate who is temporarily unable to do so for so long as this inability continues: *Inferior Courts Act, Chap. 94, Section 15.*

Statutory limitation

The *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 20,* provides that relative to any summary offence, where no time is specially limited for making a complaint in any statute relative to that offence, the complaint shall be made within six months from the time when the matter of the complaint arose and not after. There are however instances where specific legislation has either extended or restricted this prescribed time for summary matters.[40]

Alcalde

Pursuant to *Section 69,* of the *Inferior Courts Act, Chap. 94*, within each Alcalde district there shall be established an Alcalde Jurisdiction Court which shall have both civil and criminal jurisdiction in accordance with this part of the Act. Under *Sections 75(1), (2)* the Attorney-General may appoint an alcalde and a deputy alcalde for each alcalde district who, under *Section 75(5),* when functioning shall be the president of the court and shall have and exercise all the jurisdictions, powers and authorities of the court in the district in which he is appointed.

Alcalde's duties

Some specific duties as set out under the *Inferior Courts Act, Chap. 94,* are:

- To exercise the criminal jurisdiction of the court in accordance with the criminal law and practice of Belize, but all causes and matters in the court shall be heard and determined in a summary manner: *Section 74;*
- To hear and determine certain criminal offences: *Section 73(1)*[41];
- To transfer more serious offences or any indictable offence to the nearest summary jurisdiction court: *Section 85;*
- To impose fines up to $50.00 or imprisonment up to two months: *Section 73(2);*
- In default of the payment of any fine imposed under this section the person convicted may be ordered to be imprisoned for a term not exceeding two months *Section 73(3)*.

[40] Customs Regulation Act, Chap. 49 section 128 - 3 years; Motor Vehicle Third Party Insurance Act Cap. 231 section 3(5)(a) - 6 months from the date of the commission of the alleged offence; or (b). within a period which exceeds neither 3 months from the date on which it came to the knowledge of the prosecutor that the offence had been committed nor one year from the date of the commission of the offence, whichever period is the longer; Environmental Protection Act Chap. 328 section 59(a) - 2 years after the commission of the offence; or (b). 2 years after the Commission becomes aware of it, whichever is the later; Money Laundering and Terrorism (Prevention) Act section 85 - 5 years.

[41] These offences include: riotous and disorderly conduct and breaches of the peace; common assaults; trespass and malicious injury to property, the damage resulting from which does not exceed twenty-five dollars; larceny and praedial larceny where the value of the goods or articles does not exceed twenty-five dollars; threatening and abusive language; fraudulent evasion or attempted evasion of customs duties where the value of the goods or articles does not exceed twenty-five dollars; the commission of any wanton or mischievous act causing damage or annoyance to any person.

Alcalde's lack of jurisdiction

Some instances where the Alcalde has no jurisdiction under *Section 70(2),* of the *Inferior Courts Act, Chap. 94:*

- Matters relating to possession of land or in which the title to any corporeal or incorporeal hereditaments is in question;
- Libel or slander;
- Malicious prosecution;
- Seduction or breach of promise of marriage.

Where an Alcalde ceases to act

- In the case of illness or the Alcalde's absence from any cause, the deputy Alcalde's duty shall be to act for, and perform the duties of the Alcalde: *Inferior Courts Act, Chap. 94, Section 75(2);*
- In the case of the death of the Alcalde, his office, powers and duties shall devolve upon the deputy Alcalde, unless the Attorney General otherwise directs: *Inferior Courts Act, Chap. 94, Section 75(3).*

Statutory limitation

The limitation periods for an Alcalde's jurisdiction are identical to those that apply to magistrates.[42]

DOMINICA

The *Magistrate's Code of Procedure Act, Chap. 4:02, Section 3(2),* provides that the State of Dominica shall be divided into three (3) magisterial districts (District E, F, G). Each magistrate has the authority to perform his functions within that district.[43] He shall be a magistrate for the State and shall investigate and adjudicate upon charges and complaints in any part of the State.[44]

Magistrate's duties

Some specific duties as set out under the *Magistrate's Code of Procedure Act, Chap. 4:20,* are:

- To try summarily and to convict and sentence all persons charged with committing offences which he is empowered to try summarily by any Act: *Section 19(d)(i);*
- To receive complaints and information of all offences and to cause to be brought before him by summons persons accused: *Section 19(a);*
- To issue warrants of arrest for all persons charged with such offences: *Section 19(a);*
- To investigate all charges which he/she is not empowered to try summarily and to dismiss the accused or commit him for trial before the High Court: *Section 19(c);*
- To bind over prosecutors and witnesses by recognisances to prosecute and give evidence: *Section 19(i);*

[42] Inferior Courts Act Chap. 94 Section 74
[43] Magistrate's Code of Procedure Act Chap. 4:20 Section 4
[44] Magistrate's Code of Procedure Act Chap. 4:20 Section 10(1), 202(1)

- To issue search warrants: *Section 19(b);*
- To make and give all such other convictions, sentences, and orders as under any Act he is authorised to make or give and which may be carried out and enforced by fine or imprisonment in the first instance: *Section 19(d)(iii);*
- To admit to bail persons charged with or committed for trial for any offence save only as hereinafter mentioned: *Section 19(h);*
- To bind over persons to keep the peace and be of good behaviour: *Section 19(g);*
- To exercise such other powers and do such other acts not hereinbefore mentioned as may be prescribed by this Act or by any other past or future Act in force in Dominica: *Section 19(o);*
- To make order to transfer an assigned case for trial to any other district court which he considers more appropriate for the trial: *Section 202(2);*
- To be ex officio a Justice of the Peace: *Section 6*.

A magistrate may act as coroner for the State acting anywhere in the State: *Coroner's Act, Chap. 4:30, Section 3(1)*. A magistrate also has jurisdiction to try summary offences under specific legislation for example: *Customs Act, 2010; Drugs (Prevention of Misuse), Chap. 40:07; Water and Sewage Act, Chap. 43:40; Mental Health Act, Chap. 40:62; Firearms Act, Chap. 15:31; Integrity in Public Office Act, 2003*.

Magistrate's lack of jurisdiction

Some instances where the magistrate has no jurisdiction under the *Magistrate's Code of Procedure Act, Chap. 4:20,* include:

- Any civil action founded on contract when the debt, demand or value of the thing claimed, or rent in arrears is over ten thousand dollars: *Section 19(f)(i);*
- Any action founded in tort where the demand or damage claimed is over $10,000.00: *Section 19(f)(ii);*
- Any action for the recovery of tax due and payable to the Comptroller of Inland revenue where the amount of arrears or amount claimed exceeds $30,000.00: *Section 19(f)(iii);*
- Suits for malicious prosecution, false imprisonment, libel, slander, seduction or breach of promise of marriage: *Section 19(f)(iv)*.

Where a magistrate ceases to act

- A warrant or summons issued by a magistrate shall not be avoided by reason of the magistrate who signed the same dying or ceasing to hold office: *Magistrate's Code of Procedure Act, Chap. 4:20, Section 36;*
- It shall not be necessary that the magistrate who acts before or after the hearing of a case should be the magistrate by whom the case is or was heard and determined: *Magistrate's Code of Procedure Act, Chap. 4:20, Section 37*.

Statutory limitation

Under the *Magistrate's Code of Procedure Act, Chap. 4:20, Section 68,* in all cases where no time is specially limited for making any charge in the Act or law relating to the particular case, the charge shall be made within six months from the time when the matter of the charge arose. This limitation period may be varied for specified offences.[45]

GRENADA

The *Magistrates Act, Chap. 177, Sections 3* and *4,* state that Grenada is divided into magisterial districts and in each district there is established a Magistrates Court with civil and criminal jurisdiction. Each magistrate has jurisdiction to hear and determine all charges of summary offences as defined in the *Criminal Code Act, Chap. 72;* and all charges of offences of which summary jurisdiction is by any law expressly given to magistrates.[46]

Where a matter, has begun in the wrong district and an objection is raised, if the magistrate thinks the objection made is invalid, he has the jurisdiction to continue the matter without his decision being subject to appeal.[47]

Every case which arises within the district to which the magistrate is assigned shall be heard and determined at any of the offices of the magistrate within the district regardless of the parish in which the prosecutor, complainant, plaintiff or defendant may reside unless the magistrate orders that the case be tried at some other office in his district.[48]

Magistrate's duties

Some specific duties as set out under the *Magistrates Act, Chap. 177,* are:

- To hear and determine all charges of summary offences *Section 28;*
- To receive and inquire into all charges of indictable offences within their respective districts: *Section 27(1);*
- To be ex officio Coroner within the limits of his or her district: *Section 8(2);*
- To be ex officio Justice of the Peace for Grenada: *Section 8(1);*
- To hear and determine a charge alleging an offence involving any act of violence against Government property or essential services or a breach of any provision of a financial law; provided in each instance a sentence of more than 5 years is not imposed: *Section 27(2)*.

Some specific duties as set out under the *Criminal Procedure Code, Chap. 72B,* are:

- To issue search warrants and authorise the detention of any thing: *Section 15;*
- To issue summons to the defendant: *Section 71;*
- To issue of warrants of arrest: *Sections 11, 78, 97;*
- To administer bail: *Sections 47-52;*

[45] Money Laundering (Prevention) Act 2011 No 8 of 2011, section 52 - 6 years
[46] Magistrates Act Chap. 177 Section 28
[47] Magistrates Act Chap. 177 Section 44
[48] Magistrates Act Chap. 177 Section 9(3)

- To deal with enforcement orders: *Section 34;*
- To reduce the charge from indictable to summary: *Criminal Procedure (Preliminary Inquiries) Act, 35 of 1978, Section 6*.

Magistrates also have jurisdiction to try summary offences under specific legislation for example: *Criminal Procedure (Preliminary Inquiries) Act, No. 35 of 1978; Drug Abuse Prevention Act, Chap. 84 A; Firearms Act, Chap. 105; Integrity in Public Life, Chap. 150 A; Proceeds of Crime Act, 201; Juvenile Justice Act, 2012.*

Where a magistrate ceases to act[49]

Under *Section 45,* of the *Magistrates Act, Chap. 117*, where a magistrate has issued any summons or warrant, taken any evidence, commenced any hearing, or otherwise taken or commenced any proceeding or matter, whether civil, criminal or quasi-criminal or any other matter under any authority however conferred, and subsequently ceases to act as such magistrate, it shall be lawful for the person in whose hands such summons or warrant may be to execute or serve the same in the manner as if the magistrate who issued such summons or warrant had not ceased to act as such magistrate; and any successor of such magistrate or any person acting for or assisting such magistrate, may hear, determine, execute, enforce, continue and carry to completion any proceeding or matter so commenced as aforesaid.

Section 15, of the Act states that whenever a magistrate is unable from sickness, absence or any other cause, to be present in court, any Justice of the Peace, being a barrister or solicitor or two Justices of the Peace (neither being a barrister or solicitor), may at the request of the magistrate in writing sit in court in his or her place and shall while so sitting have and exercise all the powers of a magistrate: Provided that such power shall not extend to more than one sitting of the court or for the completion of the hearing of any matter commenced at such sitting.

Magistrate's lack of jurisdiction

Some instances where the magistrate has no jurisdiction under the *Magistrates Court Act, Chap. 177,* include:

- Any action for contract or tort where that exceeds $10,000.00 and $7,500.00 respectively: *Section 30(1)(a);*
- To try any action for contract or tort that does not exceed $10,000.00 and $7,500.00 respectively when any title to land arises or in which the title to any corporeal or incorporeal hereditaments is in question. This is provided that magistrate shall have such jurisdiction if he is of the opinion that the issues under dispute does not involve title; the parties consented to the action, or where consent not received but the magistrate is of the opinion the value of the land is not more than $7,500.00: *Section 31(1*).

[49] Sydney Frederick v Chief of Police (1968) 11 WIR 330 High Court of Justice Grenada; Jones v Ricketts (1964) 7 WIR 62 Court of Appeal Grenada

Statutory limitation

Under the *Criminal Procedure Code, Chap. 72B, Section 69(1)*, where there is no time limit for making a complaint for a summary offence in the statute identifying the offence, the complaint shall be made within three months from the time when the matter relating to the complaint arose. If the same arose upon the high seas, then the complaint shall be made within three months from the arrival of the vessel at the port of discharge within the State.

This limitation period may vary according to statute. In the case of the following summary offences, the complaint shall be made within six months[50] from the time when the matter arose:

- Larceny or stealing;
- Attempting to commit larceny or to steal;
- Aiding or abetting or counselling or procuring the commission of larceny or stealing;
- Receiving;
- Unlawful possession;
- Obtaining anything, including credit by false pretences or fraud;
- Fraudulent breach of trust.

GUYANA

Magistrate

The *Summary Jurisdiction (Magistrates) Act, Chap 3:05, Section 8(1)(a),* states that a person may be appointed to be a magistrate in a particular district or districts or in a particular part or parts of a district or districts or to adjudicate upon particular cases or classes of cases. *Section 8(1)(b),* provides that a person may be appointed to be magistrate for the whole of Guyana with or without limitation with respect to the cases or classes of cases upon which he may adjudicate. There may be one or more magistrates appointed to any court.[51] Further, a magistrate may exercise and administer all jurisdiction and powers in any court within the area to which he is appointed.[52]

Magistrate's duties

Some specific duties as set out under the *Summary Jurisdiction (Magistrates) Act, Chap. 3:05,* are:

- To hear and determine all complaints or information for summary offences *Section 32(1)(a);*
- To receive and inquire into all charges of indictable offences, and to make any orders in respect thereof required by the provisions of any written law for the time being in force in relation to procedure in respect of indictable offences: *Section 32(1)(b);*
- To generally do all acts and things by any written law, or usage now or hereafter in force, appertaining to the office of a magistrate: *Section 32(1)(c);*

[50] Criminal Procedure Code Chap 72B Section 69(2)
[51] Summary Jurisdiction (Magistrates) Act Chap 3:05, Section 8(2)
[52] Summary Jurisdiction (Magistrates) Act Chap 3:05, Section 10

- To issue summons, warrants, orders, convictions and recognisances: *Section 68(2);*
- to be ex officio be a Justice of the Peace: *Section 13;*
- To hear certain matrimonial proceedings: *Sections 34, 36;*
- To act as Coroner in and for Guyana or that portion of Guyana in which he is a Justice of the Peace: *Section 17;*
- To receive a plea of guilty from any person in custody in respect of an offence, even if committed outside the jurisdiction of that court, and deal with that person according to the law: *Section 32(2A)*.

Some specific duties as set out under the *Summary Jurisdiction (Procedure) Act, Chap. 10:02,* are:

- To reduce an indictable charge to a summary conviction offence: *Section 33;*
- To convert a summary proceeding to an indictable proceeding before a High Court: *Section 34;*
- To bind over parties to be of good behavior: *Section 83*.

Some specific duties as set out under the *Criminal Law (Procedure) Act, Chap. 10:01,* are:

- To grant bail at any stage of the proceedings: *Section 82(1);*
- To bind over witnesses for the parties: *Section 74(1)*.

Magistrates also have jurisdiction to try summary offences under specific legislation for example: *Firearms Act, Chap. 16:05; Racial Hostility Act, Chap. 23:01; Integrity Commission Act, Chap. 26:01; Customs Act, Chap. 82:01; Narcotic Drugs and Psychotropic Substances (Control), Chap. 10:10.*[53]

Magistrate's lack of jurisdiction

The *Summary Jurisdiction (Petty Debt) Act, Chap 7:01, Section 3,* sets out specific limitations on a magistrate's jurisdiction:

- Suits for the recovery of debt/chattel/damages where the amount exceeds $100,000.00;
- Suits in incorporeal rights or title to immovable property are or may be questioned;
- Suits for validity of any devise, bequest or limitation under will or settlement;
- Suits for malicious prosecution, libel, slander, seduction or breach of promise of marriage.

Where a magistrate ceases to act

The *Summary Jurisdiction (Magistrates) Act, Chap. 3:05, Section 67,* provides that where a magistrate has issued any summons or warrant or commenced any proceedings and subsequently ceases to act as magistrate, the warrant may be executed and served in the same manner as if the magistrate who issued it had not ceased to act.

[53] See Vishnu Bridgelall v Hardat Hariprashad [2017] CCJ 8 (AJ)

Any successor magistrate may hear, determine, execute, enforce, and carry to completion, any proceeding or matter so commenced.

In the instance where the magistrate has completed hearing any proceedings and subsequently ceases to act as magistrate or has been transferred from that district or unable to deliver judgment, a judgment in the proceeding written by him may be read by another magistrate and entered into the minute book of the court. In this case the judgment shall have effect as if it was delivered by the magistrate hearing the proceeding.

The *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 37(2),* states that where before the court gives its decision the Magistrate ceases to exercise jurisdiction for that magisterial district or to hold office, it shall be still lawful for him within six weeks of the conclusion of the hearing to lodge with the clerk of the court his written decision for the matter. The court shall thereby read the decision at the earliest opportunity after notice to the parties and the decision when read, shall be deemed to be the court's decision.

Statutory limitation

The *Summary Jurisdiction (Procedure Act), Chap. 10:02, Act, Section 6,* states that in every case where no time is specifically limited for making a complaint for a summary conviction offence in the written law relating to that offence, the complaint shall be made within six months from the time when the matter of the complaint arose, and not after.

Certain offences have limitation periods that vary the six month default period within which proceedings can be instituted, for example:

- *Contempt of Court, Chap. 5:05, Section 16* – 1 year;
- *Firearms, Chap. 16:05, Section 42* – 4 years;
- *Intoxicating Liquor Licensing, Chap. 82:21, Section 87* – 1 month.

Lay magistrates

The *Summary Jurisdiction (Lay Magistrates) Act, Chap 3:12, Section 2(1),* establishes Lay Magistrates' Courts, the number of which varies as the Minister, after consultation with the Chancellor, may determine. The practice and procedure to be followed by a lay magistrates' court shall be regulated in its criminal jurisdiction in respect of summary conviction offences, by the *Summary Jurisdiction (Procedure) Act* and by any written law relating thereto.[54]

Pursuant to *Section 2(2)*, a lay magistrates' court shall be presided over by a lay magistrate and shall, in accordance with the provisions of the Act, exercise both criminal and civil jurisdiction. The jurisdiction of a lay magistrates' court shall extend only to causes and matters arising within the magisterial area of its jurisdiction.[55]

Every lay magistrate shall have jurisdiction throughout Guyana and may be assigned to any magisterial district by the Chancellor.[56]

[54] Summary Jurisdiction (Lay Magistrates) Act, Chap 3:12, section 21(2)
[55] Summary Jurisdiction (Lay Magistrates) Act, Chap 3:12, section 12
[56] Summary Jurisdiction (Lay Magistrates) Act, Chap 3:12, section 3

Lay magistrate's duties

Some specific duties set out under the *Summary Jurisdiction (Lay Magistrates) Act, Chap. 3:12,* are:

- To try any summary offences and such offences shall include those mentioned in the Schedule[57];
- To impose a limited fine not exceeding $10,000.00: *Section 9(1);*
- Promote reconciliation, and encourage and facilitate the settlement in certain matters: *Section 14;*
- To submit cases that warrant trial by a magistrate, to any magistrate in the same district to hear unless he makes objection to the Chancellor giving reasons: *Section15.*

A lay magistrate's lack of jurisdiction

Some instances where the lay magistrate has no jurisdiction under the *Summary Jurisdiction (Lay Magistrates) Act, Chap. 3:12,* are as follows:

- To impose a fine exceeding $10,000.00: *Section 9(1);*
- To impose a custodial sentence: *Section 9(2);*
- To hear indictable offences.

Where a lay magistrate ceases to act

Under the *Summary Jurisdiction (Lay Magistrates) Act, Chap. 3:12, Section 19*, where a lay magistrate who has commenced any proceedings, whether civil or criminal, ceases to act as a lay magistrate, any magistrate who succeeds him or acts in his place may hear and determine the proceeding de novo.

Statutory limitation

The *Summary Jurisdiction (Procedure) Act, Chap: 10:02, Section 6,* states that in every case where no time is specifically limited for making a complaint for a summary conviction offence in the written law relating to that offence, the complaint shall be made within six months from the time when the matter of the complaint arose, and not after.

JAMAICA

Parish Court judges

In Jamaica, a Parish Court judge was formerly called a Resident Magistrate.[58] A Parish Court judge has the jurisdiction to hear offences committed within his parish and one mile

[57] Summary Jurisdiction (Lay Magistrates) Act, Chap 3:12, section 9(1) Offences mentioned in the Schedule include: breach of the peace; traffic offence; licence and revenue offences; offences against the city and town councils; cruelty to animal.

[58] The Judicature (Resident Magistrates) (Amendment and Change of Name) Act, 2016 was assented to on the February 15, 2016 and it amended and renamed the Judicature (Resident Magistrates) Act to the Judicature (Parish Courts) Act under section 2. It amends the principal Act by deleting the word "Resident Magistrate" and substituting the words "Judge of the Parish Court"; the words "Resident Magistrate's Court" and substituting the words "Parish Court". These changes also apply to references in any other enactments.

beyond and further extension of jurisdiction by virtue of the *Criminal Justice Administration Act, Section 9(1)*[59]. The *Judicature (Parish Courts) Act, Section 3,* states that in each of the 14 parishes within the island there shall be a Parish Court for the parish which may contain so many stations as may be fixed by the minister from time to time who shall have and exercise the jurisdiction conferred upon this court by this Act. *Section 5,* provides that where more than one Parish Court judge is assigned to one Parish Court, each judge of the Parish Court will have the like functions, powers and duties as if he were the sole judge of the Parish Court to whom that court is assigned. Each judge of the Parish Court will exercise the jurisdiction of the court concurrently with every other judge of the Parish Court to whom that court is assigned.

A Parish Court judge shall have jurisdiction in any other parish or parishes as may from time to time be assigned to him by the Governor General (however cannot do so for more than a week at a time without the consent of the Governor General) as is stated in *Sections 6* and *7*.

Parish Court judges' duties

Each magistrate shall preside in the Magistrate's Court of the parish and shall have and exercise criminal jurisdiction as assigned to the said court, and shall ,also have and exercise a jurisdiction in all cases in bankruptcy under the provisions of the *Bankruptcy Act,* and in the recovery of all penalties or forfeitures to the Crown, and of fines in the nature of penalties, under all Statutes now or hereafter to be in force relating to the public revenue, and in cases under the *Maintenance Act*, and in all such causes, enquiries, and matters civil or criminal in which by any law any special jurisdiction, duty or power is given to or imposed on any judge of a District Court, the magistrate shall, within his parish, have, exercise and perform such jurisdiction, duty, or power **Provided**, that in the exercise of his civil jurisdiction, the magistrate may call upon one or more of the honorary justices of the parish to assist him in any particular matter, and thereupon such honorary justice or justices shall have an equal jurisdiction with the magistrate.

Summary jurisdiction is created by statute and is twofold that is to say Petty Sessions Jurisdiction, (two justices of the peace also have jurisdiction over such offences), as well as the Special Statutory Summary Offences where the Parish Court judge has jurisdiction by virtue of some statutory provision. The two cannot be exercised together.[60] Where the statute creates an offence punishable on summary conviction and the Parish Court judge is not mentioned, the act is presumed to be referring to the petty session jurisdiction. However, where it states that the offence is punishable on summary conviction before a Parish Court judge, then he if sitting as judge, excludes the justices of the peace from presiding.

Some specific duties as set out under the *Judicature (Parish Courts) Act*, are:

- To preside in the parish or parishes, or at any station or stations therein, to attend as judge of the Parish Court for all courts of Petty Sessions: *Section 63;*
- To exercise special statutory jurisdiction to hear the matters listed in *Section 268*[61];

[59] The local jurisdiction extends moreover to any part of the sea that is deemed by law to be the internal waters, and the territorial waters adjacent to the parish: Section 267 Judicature (Parish Courts) Act). Note Section 3A Judicature (Parish Courts) Act which states that the jurisdiction of the court in the parish of Kingston and of the court in the parish of Saint Andrew shall extend over the combined area of Kingston and St. Andrews, without prejudice to section 3.

[60] R v Donovan Alexander & Albert Lee (1982) 19 JLR 61

[61] Some of these include: unlawful wounding, administering poison with intent to injure or annoy; simple larceny, larceny of cattle, praedial larceny; forgery of certain documents with intent to defraud; false voluntary declarations and other false statements without oath, false statements as to marriage, births and death.

- This is the jurisdiction over indictable matters; its widened further by *Section 9(1) of Criminal Justice (Administration) Act, Section 267,* gives the power to try the matters under *Sections 268*, *272,* mandates the procedure to be followed by Parish Court judge in exercising indictable jurisdiction;
- To take all preliminary enquiries within his parish for indictable offences and the power for committal proceedings and order a trial: *Sections 64, 276;*
- To make enquiries and exercise powers in relation to persons the police have in custody for the purpose of holding an identification parade where parade has not yet been held: *Section 63A;*
- To fix the times and places for holding Courts of Petty Sessions and Parish Courts where assigned on or before the 31st day of October yearly subject to the Chief Justice's approval: *Section 66;*
- To make orders as to the mode of trial of persons before him charged with any indictable offence; to hear and determine applications for a change of venue from one station to another station in his parish or parishes; for any stay of execution; for a writ of habeas corpus to bring up any witness or prisoner: *Section 67;*
- Submit to the Chief Justice within seven days of ceasing to act, either temporarily or permanently, a report showing cases commenced before him where the evidence or submissions have not been heard or judgment reserved and not delivered: *Section 31(1);*
- To grant bail: *Bail Act, Section 3(1);*
- To be ex officio coroner for the parish: *Coroner's Act, Section 4*.

A Parish Court judge also has jurisdiction to try summary offences under specific legislation including *Firearms Act; The Dangerous Drugs Act; The Water Resources Act; The Customs Act; Motor Vehicles Insurance (Third Party Risks) Act.*

Judges of the Parish Court lack of jurisdiction

Some instances where the Parish Court judges does not have jurisdiction under the *Judicature (Parish Courts) Act,* include:

- Suits where the debt or demand claimed exceeds $250,000.00: *Section 74;*
- Suits where the whole or part of the unliquidated balance of a partnership account, or the amount, or part of the amount of a distributive share under an intestacy, or of any legacy under a will exceeds $250,000.00: *Section 75;*
- The execution of trusts in which the trust estate or fund exceeds $1,500,000.00: *Section 105*.

Where a judge of the Parish Court ceases to act

Under the *Judicature (Parish Courts) Act, Section 192*, where proceedings before any judge of the Parish Court commenced but then ceased, whether permanently or temporarily:

- If the judge of the Parish Court has reserved judgement but ceased to act prior to delivering that judgment, he can lodge the judgement with the clerk of court and

the judgement will be read in court as soon as possible thereafter by the present sitting judge of the Parish Court and it shall take effect in all aspects as if the person who reserved judgement had continued to be the judge of the Parish Court and had delivered judgement himself on the day that it was so read;

- He may, whether or not he has reserved judgement as aforesaid, be assigned at any time to be a Parish Court judge of that court for the purpose of concluding such hearing.

Statutory limitation

Under the *Justice of Peace Jurisdiction Act, Section 10*, where there is no time specifically limited for making a complaint or laying information, the same may be done not more than 6 months from the time the matter first arose. This does not apply to judges of the Parish Court when in the exercise of his special statutory summary jurisdiction.

There are however instances where specific legislation has either extended or restricted this prescribed time such as *Customs Act, Section 241 -* 7 years; *National Insurance Act -* 2 years.

Justices of the Peace in Court of Petty Sessions

The *Interpretation Act, Section 3,* states that a Justice of the Peace shall be appointed by the Governor General to the parish in which the matter requiring the cognizance of a justice arises.[62] Under *Section 15,* of the *Judicature (Parish Courts) Act*, every judge of the Parish Court shall be ex officio a Justice of the Peace for every parish in the Island.

Justices of the Peace duties in relation to a Court of Petty Sessions:

Some specific duties as set out under the *Justices of the Peace Jurisdiction Act,* are:

- Two justices sitting together shall have and exercise summary jurisdiction in respect of criminal offences under any of the Acts specified in the Second Schedule[63] so, however, that in respect of any such offence (a) the maximum penalty imposed by the justices shall not exceed two thousand dollars; (b) the maximum term of imprisonment imposed by the justices shall not exceed three months; and (c) justices shall not have power to impose an order for forfeiture: *Section 5A;*
- To issue summons which may be executed in another parish: *Sections 2, 51;*
- To issue warrants to be executed in any parish: *Sections 3, 49;*
- One Justice of the Peace may hear, determine, try and adjudge any information or complaint for the parish where it arose subject to any law stating otherwise: *Section 11;*

[62] Section 14 of the Proclamation, Rules and Regulations (December 14, 2006) provides that every Justice of the Peace shall be appointed with jurisdiction over a parish.

[63] Acts specified under Second Schedule, Justices of the Peace Jurisdiction Act are: The Agricultural Produce Act; The Agricultural Small Holdings Act; The Cocoa Industry Board Act; The Country Fires Act; The Cruelty to Animals Act; The Keeping of Animals Act; The Larceny Act. sections 18 to 51; The National Solid Waste Management Act; The Praedial Larceny (Prevention) Act; The Public Health Act; The Quarries Control Act; The Registration of Business Names Act; The Rent Restriction Act; The Trespass Act; The Weights and Measures Act; The Tourist Board (Prescribed Areas) Regulations. 1985

- To grant bail by recognizance where persons are apprehended in another parish other than where the offence was committed, for their appearance before the justice of the parish where the offence was committed: *Section 52;*
- May direct the Superintendent or other head of the prisons to bring up person imprisoned to answer further charges: *Section 62*.

Justice of the Peace lack of jurisdiction in relation to a Court of Petty Sessions

- To try indictable offences: *Justices of the Peace Jurisdiction Act, Section 5A,* only gives Justices of the Peace summary jurisdiction over criminal matters along with the Parish Court judges.

Statutory limitation

The *Justice of Peace Jurisdiction Act, Section 10,* states that where there is no time specifically limited for making a complaint or laying an information, the same may be done not more than six months from the time the matter first arose.

MONTSERRAT

Montserrat, a British Overseas Territory has internal self-governance and its legislature is responsible for the formulation and implementation of legislation. The criminal jurisdiction of the magistrate's court is set out in the *Magistrate's Court Act, Chap. 2:02, Sections 22* and *23,* and exercised in accordance with the *Criminal Procedure Code, (9 of 2010)*. *Section 3,* of the Act states that the court heretofore exercising summary jurisdiction under the *Magistrate's Code of Procedure Act,* shall continue, and shall be styled the Magistrate's Court, and shall have and exercise within Montserrat the jurisdiction and powers conferred by this Act and by any other law for the time being in force in Montserrat. *Section 5,* also states that the magistrate shall have and possess all the powers and jurisdiction and shall perform all the duties which are now vested in or imposed upon the magistrate or any Justices of the Peace by virtue of any law in force in Montserrat.

Magistrate's duties

Some specific duties as set out under the *Magistrate's Court Act, Chap. 2:02,* are:

- To receive complaints and informations of all offences and to cause to be brought before it, either by summons or warrant, all persons charged with such offences: *Section 22(a)(i);*
- To investigate all charges which are not triable summarily, or which, under *Section 75,* of the *Criminal Procedure Code, (9 of 2010),* the magistrate considers ought to be tried by the High Court, and to dismiss the accused or to commit him for trial before the High Court: *Section 22(a)(iii);*
- To try summarily and either discharge or convict and sentence any person charged with an offence which is triable summarily under the Criminal Procedure Code or any other law: *Section 22(a)(iv);*
- To bind over persons to keep the peace and be of good behavior: *Section 22(a)(vi);*

- To admit to bail persons charged with or committed for trial for any offence for which bail is permitted to be granted under *Section 27,* of the *Criminal Procedure Code, (9 of 2010)*: *Section 22(a)(vii);*
- To hear and determine in a summary way, per the provisions of the act, all disputes between party and party touching any matter of debt, breach of contract, covenant or other undertaking, injury to the person or other matter in any case in which the debt, damages or balance sought to be recovered does not exceed $10,000: *Section 22(e);*
- To arrange for a child or young person charged with an offence punishable on summary conviction to be brought before a Juvenile Court: *Section 29;*
- A Juvenile Court shall be constituted of the magistrate and two other persons, to be called assessors, appointed by the Governor acting on the advice of Cabinet: Provided that, a Juvenile Court shall be deemed to be duly constituted when the magistrate sits alone, if the magistrate considers that it would be impracticable for the Juvenile Court to be constituted as required by this subsection or that it would be inexpedient, in the interests of justice, to adjourn the sitting of the court until such time as the assessors are available; and in such case the magistrate shall record his reasons for sitting alone: *Juveniles Act, Chap 2:11, Section 4*.

Magistrate's lack of jurisdiction

- The court shall not have jurisdiction in suits for libel, slander, seduction or breach of promise of marriage: *Section 22(e);*
- Where it is provided by any law that an offence shall be punishable on summary conviction by a term of imprisonment and the court is not given the option of imposing a fine, the court may, nevertheless, impose a fine not exceeding $1,000, in lieu of a term of imprisonment, in a case in which the offender has not previously been convicted of the same offence: *Section 28(2);*
- No child convicted by the Magistrate's Court or by a Juvenile Court shall be sentenced to imprisonment or to pay a fine exceeding $50: *Section 30;*
- A young person convicted by the Magistrate's Court or by a Juvenile Court shall not be sentenced to imprisonment for a term exceeding three months or to pay a fine exceeding $200.00.

Statutory limitation

In Montserrat, the *Limitation Act, Chap. 2.12,* applies to any proceedings in any court of law including the Magistrate's Court. Except where a longer time is specially allowed by law, a magistrate's court shall not try an accused for an offence triable only summarily unless the charge (in proceedings commenced by arrest and charge) or the complaint (in proceedings commenced by complaint) relating to it was laid within 6 months from the time when the matter of such complaint or charge arose or the date upon which evidence sufficient to justify the proceedings first came to the actual or constructive knowledge of a competent complainant: *Criminal Procedure Code, Section 201.*

ST. KITTS AND NEVIS

The *Magistrate's Code of Procedure Act, Chap. 317, Section 3,* states that the State is divided into 3 magisterial districts with the island of St. Christopher containing 2 districts (A and B) and the island of Nevis 1 district. *Section 5,* provides that within each district the Governor General may appoint a district magistrate, and from time to time appoint an additional magistrate for any District or Districts of the State.

The district magistrate has all the powers and jurisdiction and can perform all duties vested or imposed at common law or by virtue of any enactment now in force or which may hereafter be vested in or imposed upon him.[64]

District magistrate's duties

Some specific duties as set out under the *Magistrate's Code of Procedure Act, Chap. 3.17,* are:

- To summarily try and to convict and sentence persons charged with committing a summary offence which he/she has the authority to try summarily via any enactment: *Section 27(d);*
- To receive complaints and information of all offences: *Section 27(a);*
- To cause the defendant to be brought before him by summons: *Section 27(a);*
- To cause the defendant to be brought before him by warrant: *Section 27(a);*
- To issue search warrants as hereinafter provided: *Section 27(b);*
- To investigate all charges which he/she is not empowered to try summarily and to dismiss the accused or commit him/her to trial: *Section 27(b);*
- To make and give all such convictions, sentences and orders under any enactment to which he/she is authorised to make or give which may be carried out and enforced by way of fine or imprisonment in the first instance: *Section 27(f);*
- Bind over persons to keep the peace and be of good behavior: *Section 27(l);*
- Admit bail to persons charged or committed to trial: *Section 27(m);*
- To bind over prosecutors and witnesses by recognisances to prosecute and give evidence: *Section 27(n);*
- To exercise all powers of a Justice of the Peace or two Justices of the Peace in the United Kingdom under the Merchant Shipping Acts of the Imperial Parliament: *Section 27(s)*.

District magistrates also possess jurisdiction to try summary offences under specific legislation for example: *Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Chap. 9.08; Vehicles and Road Traffic Act, Chap. 15.06; Juvenile Act, Chap. 4.15; Firearms Act, Chap. 19:05.*

[64] Magistrate's Code of Procedure, Chap. 3.17 Section 9

District magistrate's lack of jurisdiction

Some instances where a district magistrate has no jurisdiction under *Magistrate's Code of Procedure Act, Chap. 317, Sections 27 (h), (ii),* include actions involving malicious prosecution, false imprisonment, libel, slander, seduction or breach of promise of marriage.

Where district magistrate ceases to act

- A warrant or summons issued by a magistrate shall not be avoided by reason of the magistrate who signed the same dying or ceasing to hold office: *Magistrate's Code of Procedure Act, Chap. 3.17, Section 45;*
- It shall not be necessary that the magistrate who acts before or after the hearing of a case should be the magistrate by whom the case is or was heard and determined: *Magistrate's Code of Procedure Act, Chap. 3.17, Section 46;*
- In the event of absence or illness of the district magistrate, or in any case where it is expedient, it shall be lawful for the Governor-General to direct any fit and proper person, including another district magistrate, to act for any such district magistrate, and any such person so acting for a district magistrate shall have the same powers and jurisdiction, and be entitled to the same immunities and protections, as the district magistrate for whom he or she is acting has and is entitled to: *Magistrate's Code of Procedure Act, Chap. 3.17, Section 11*.

Statutory limitation

Under the *Magistrate's Code of Procedure Act, Chap. 317, Section 76,* any charge arising summarily shall be made within 6 months from the date of the alleged offence. However, the period of statutory limitation for prosecution may be varied by specific legislation.[65]

ST. LUCIA

The magistrate's jurisdiction is governed by the *District Courts Act, Chap. 2.02,* and the *Criminal Code, Chap. 3.01*. The island is divided into judicial districts by the Chief Justice and within each district there is a District Court which has both criminal and civil jurisdiction.[66] The Chief Justice may assign one magistrate to one or more than one district and may assign one or more magistrates to each district. Where more than one magistrate is assigned to one or several districts, each such magistrate shall have and exercise concurrent jurisdiction together with the others so assigned.[67]

For the purpose of conferring jurisdiction on a court every summary offence shall be deemed to have occurred either in the district in which the offence actually was committed or occurred or in any district in which the offender or person complained against may be residing or found. [68]

[65] Customs (Control and Management) Act Chap. 20.04, section 120 - 5 years.
[66] District Courts Act Chap. 2:02 Sections 3, 4
[67] District Courts Act Chap. 2:02 Sections 24(1),(3)
[68] Criminal Code Chap. 3.01 Section 655

Magistrate's duties

Some specific duties as set out under the *District Courts Act, Chap. 2:02,* are:

- To hear, try and determine all charges, matters and things punishable on summary conviction or which may be dealt with by summary order, and all complaints or information for the recovery of fines, penalties, or forfeitures which are not specifically assigned by statute to the High Court: *Section 6(1)(c);*
- To issue under his hand all warrants, orders, convictions and recognisances: *Section 23(1);*
- To issue under his hand all summons and other process: *Section 23(2);*
- To receive and inquire into all indictable offences and make orders required by the Criminal Code or any other statute where powers are conferred: *Section 6(1)(a);*
- To hear, try and determine matters cognisable by a district court: *Section 6(1)(c);*
- Generally to do all such acts and things as may, by any Act of Parliament, regulation, law, or usage now or hereafter to be in force, appertain to the office of a magistrate: *Section 6(1)(d);*
- To administer oaths: *Section 10*.

Some specific duties as set out under the *Criminal Code, Chap. 3.01,* are:

- To grant bail: *Section 593;*
- To transfer case to another district: *Section 660(1);*
- To issue a search warrant and seize items: *Sections 617, 618;*
- To reduce a charge from indictable to summary offence: *Section 776;*
- To bind persons for good behaviour: *Section 1239;*
- Bind parties to be of good behaviour: *Section 1240.*

District magistrates also possess jurisdiction to try summary offences under specific legislation for example: *Drug (Prevention of Misuse) Act, Chap. 3.02; Firearms Act, Chap. 14.12; Customs (Control and Management) Act, Chap. 15.05; Children and Young Persons Act, Chap. 3.09; Motor Vehicles and Road Traffic Act, 2008; Domestic Violence (Summary Proceedings) Act, Chap. 4.04; Water and Sewerage Act, Chap. 9.03*.

Magistrate's lack of jurisdiction

District magistrates lack jurisdiction under the *Criminal Code, Chap. 3:01,* to try the following offences: capital murder,[69] attempt to murder,[70] suicide pacts,[71] rape,[72] bestiality,[73] seditious libel or party to seditious assembly,[74] piracy,[75] treason,[76] libel.[77]

Where a magistrate ceases to act

Where a magistrate has issued a warrant or summons or otherwise taken or commenced any proceeding or matter, criminal or civil, and subsequently ceases to act as such magistrate, it shall be lawful for the person in whose hands such warrant or summons may be to execute or serve the same in the same manner as if the magistrate who issued such warrant or summons had not ceased to act; and any successor of such magistrate, or any person acting for such magistrate, may hear, determine, execute, enforce and carry to completion any proceeding or matter commenced as aforesaid: *District Courts Act, Chap. 2:02, Section 21.*

Statutory limitation

The *Criminal Code, Chap. 3:01, Section 671(1)(a),* states that where an enactment relating to a summary offence fails to prescribe a time for making a complaint in respect of that offence, such complaint shall be made within six months from the time when the matter arose. Under *Section 671(1)(b)*, where the summary offence occurred upon the high seas and there is no prescribed time for making a complaint, the complaint shall be made within six months after the arrival of the ship or vessel to the State. *Section 671(1)(c),* provides that in the instance of a continuous contravention, a complaint shall be made with respect to the same within six months from the last date of such contravention.

Some statutes that vary the limitation period of six months are:

- *Customs (Control and Management) Act, Chap. 15.05, Section 120* - save as expressly provided in this Act, proceedings for any customs enactment may not be commenced after five years;
- *Drugs (Prevention of Misuse) Act, Chap. 3.02, Section 37(5)* - 12 months;
- *Liquor Licence Act, Chap. 13.17, Section 67* – three months and such action or other proceeding shall not be commenced until one month has elapsed after notice in writing has been delivered to such officer or person, or left at his or her usual place of abode, by the plaintiff, his or her attorney-at-law or agent.

[69] Criminal Code, Chap. 3:01 Section 86
[70] Ibid Section 88
[71] Ibid Section 95
[72] Ibid Section 123
[73] Ibid Section 134
[74] Ibid Section 305
[75] Ibid Section 306
[76] Ibid Section 307
[77] Ibid Sections 313, 314

Olvin Jn. Baptiste v Inspector Peter Ermay (Ag.), is instructive on the point that where a magistrate has jurisdiction to amend a charge but the limitation period has passed, any amendment would make the charge a nullity and the magistrate's action will be considered ultra vires.[78]

ST. VINCENT AND THE GRENADINES

Magistrates are governed and created by the *Magistrates Act, Chap. 30, Section 3,* which provides that the state is divided into three magisterial districts distinguished as the first, second and third or, alternatively, as districts 1, 2 and 3. The magistrate of each district, except as otherwise provided, shall be the sole presiding officer of the court within such district and shall exercise full jurisdiction and powers thereof.[79]

Under *Sections 6(1), 6(2),* any magistrate may hear and determine in any Magistrate's Court any criminal or quasi-criminal cause or proceeding, whether it arose in that district or not and may transfer it from any district to another for hearing or continuation of the hearing subject to any contrary law, giving consideration to the interest of justice and convenience of the parties.

Magistrate's duties

Some specific duties as set out under the *Magistrate's Act, Chap. 30,* are:

- To hear and determine all complaints for summary offences: *Section 26(1)(a);*
- To generally do all acts and things under any written law or usage which appertains to the office of magistrate: *Section 26(1)(c);*
- To receive and inquire into all indictable charges, regardless whether the same was alleged to have occurred within or without his district: *Section 25;*
- To administer oaths: *Section 27;*
- To adjourn a matter: *Section 29;*
- The magistrate of the third magisterial district can adjourn matters pending in which he is interested in or thinks it can be more conveniently or fairly tried in another court, to the magistrate's court in Kingstown by the magistrate of the first magisterial district: *Section 54.*

Some specific duties as set out under the *Criminal Procedure Code Act, Chap. 172,* are:

- To issue search warrants: *Section 41;*
- To issue summons to compel the defendant to appear before the court: *Section 71(1);*

[78] MCRAP 2011/20

[79] Magistrates Act, Chap. 30 Section 5. Section 11 provides that the Governor General may: appoint a magistrate to act as magistrate of the district where the magistrate of the district is unable to perform his duties; appoint an additional magistrate to the district; transfer a magistrate from one district to another, and in such instances the person appointed shall have the same powers and jurisdiction of the magistrate of the district in which he is appointed or directed to act.

- To issue warrant for arrest of the defendant: *Section 71(1);*
- To bind over persons to keep the peace and be of good behaviour: *Section 61;*
- To bind over complainant and witnesses: *Section 151;*
- To grant bail with or without sureties: *Section 43;*
- Subject to any other law he may try any offence, not punishable with death or imprisonment or punishable with imprisonment for not more than one year or which is triable summarily by virtue of *Sections 9 - 15,* or which is stated in any law other than the Code to be triable summarily whether or not such offence may also be tried on indictment: *Section 8*.

Magistrates also possess jurisdiction to try summary offences under specific legislation:

- *Drug Trafficking Offences Act, Chap. 173;*
- *Drug (Prevention of Misuse) Act, Chap. 284;*
- *Firearms Act, Chap. 386; Juvenile Act, Chap. 231;*
- *Motor Vehicles and Road Traffic Act, Chap. 483;*
- *Motor Vehicles Insurance (Third Party Risks) Act, Chap. 309;*
- *Litter Act, Chap. 291;*
- *Financial Intelligence Unit Act, Chap. 174.*

Magistrate's lack of jurisdiction

Some instances where a magistrate does not have jurisdiction includes:

- Suits for proceeds of crime and money laundering matters which are only heard by the High Court: *Proceeds of Crime and Money Laundering (Prevention) Act, Chap. 181;*
- Indictable offences under the *Criminal Code, Chap. 171,* such as:
  - Treason: *Sections 38, 39;*
  - Incitement to mutiny: *Section 46*;
  - Piracy jure gentium: *Section 49*;
  - Unlawful oaths to commit capital offences: *Section 60*;
  - Rape: *Section 123*.

Where a magistrate ceases to act

The *Magistrates Court Act, Chap. 30, Section 38,* states that where a magistrate has issued any summons or warrant, or otherwise taken or commenced any proceeding or matter under any authority conferred on him and he subsequently ceases to act as such magistrate, the summons or warrant is still valid and may be executed or serve in the same manner as if the issuing magistrate had not ceased to act as such magistrate.

Any successor of any magistrate ceasing to act, or any person acting for such magistrate who ceases to act may hear, determine, execute, enforce and carry to completion and proceeding or matter thereby commenced by the preceding magistrate.

Statutory limitation

Under *Section 137,* of the *Criminal Procedure Code, Chap. 172*, except where a longer time is specifically allowed by law, no offence which is punishable only by a fine or by imprisonment for six months or less shall be triable by a Magistrate's Court unless the charge relating to it is laid within 12 months from the time when the matter of such charge arose or the date upon which evidence sufficient to justify proceedings first came to the actual or constructive knowledge of a competent complainant.

The statutory limitation of 12 months may be varied by various statutes:

- *Customs (Control and Management) Act, Chap. 422, Section 114 -* 7 years;
- *Drugs (Prevention and Misuse) Act, Chap. 284, Section 27(5) -* 12 months;
- *Motor Vehicle Insurance (Third Party Risks) Act, Chap. 309 Section 3(4) -* 1 year from commission or 3 months from date prosecutor has knowledge of it.

TRINIDAD AND TOBAGO

Criminal proceedings start in the Magistrate's Court whether the offence charged is an indictable or a summary offence. Magistrates have general jurisdiction over summary offences per the *Summary Courts Act, Chap. 4:20,* which provides that they shall have and exercise all such powers, privileges, rights, and jurisdiction as conferred upon them under the Act or of any other written law.[80]

Section 8, of the *Summary Courts Act* provides that the Chief Justice may assign one or more magistrates to a district or may assign a magistrate to more than one district. Where more than one magistrate is assigned to a district, each magistrate shall have concurrent jurisdiction in that district with the other or others so assigned.

An enquiring magistrate's jurisdiction extends to hearing matters wherever committed in Trinidad and Tobago. The division of the territory into magisterial districts by the *Summary Courts Act,* applies to summary proceedings only and not to enquiring magistrates.[81]

Magistrate's duties

Some specific duties as set out under the *Summary Courts Act, Chap. 4:20*, are:

- To exercise full power and jurisdiction in respect of all summary offences and all matters relating or in respect of which a Summary Court can make an order in the exercise of its jurisdiction: *Sections 6(2);*
- To adjourn a court at his discretion and subject to any special or general directions the Chief Justice may issue from time to time: *Section 9;*
- To hold sittings at a time and place other than those appointed by Order of the Chief Justice under this section where satisfied that it is in the interest of justice to do so: *Section 9;*

[80] Summary Courts Act Chap 4:20 Section 6

[81] Application No. 2 of 2008, In the matter of section 36(1) of the Supreme Court of Judicature Act Chap. 4:01

- To issue search warrants: *Section 41;*
- To issue warrant of arrest: *Section 44;*
- To issue summons: *Section 42;*
- Upon holding of any preliminary enquiry on a charge of an indictable offence, if the magistrate finds that the evidence establishes or appears likely to establish, the commission of a summary offence of a like kind unless the Director of Public Prosecutions otherwise directs, inform the accused person accordingly and proceed as if it were a summary offence: *Section 94;*
- Upon the hearing of any complaint, if it appears to the court that the case ought to be tried as an indictable offence, all further proceedings in the case as for a summary offence shall be stayed the case shall be dealt with as if the charge had been originally one for an indictable offence: *Section 55;*
- The Director of Public Prosecutions can direct at any time prior to the decision of the case that an indictable offence being proceeded with summarily be dealt with on indictment. If so directed, the magistrate's duty is to deal with the case accordingly: *Section 95;*
- To grant bail and take recognisance: *Section 6(3);*
- To bind persons to keep the peace and be of good behaviour, or not to do or commit some act or thing: *Section 115;*
- To administer oaths: *Section 6(3);*
- To transfer case where cause of complaint arose out of his district: *Section 56(1);*
- To commit for any indictable offence disclosed: *Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01*.

Magistrate's also possess jurisdiction under specific legislation for example:

- *Customs Act, Chap. 78:01;*
- *Coroners Act, Chap. 6:04;*
- *Children's Act, Chap. 46:01;*
- *Dangerous Drugs Acts, Chap. 11:25;*
- *Larceny Act, Chap. 11:12.*

<u>Magistrate's lack of jurisdiction</u>

Some instances where a magistrate does not have jurisdiction include:

- Matters involving issues of title to land: *Summary Offences Act, Chap. 4:02, Section 8;*
- Petty civil matters over $50,000.00: *Finance Act, No. 2 of 2015, Section 4;*
- Hire purchase matters;
- Matters contesting the validity of wills.

Non-sitting magistrates

Where a magistrate is classified as "non-sitting" he has no jurisdiction on matters except for those that have been part heard by him.[82] Legislation stipulates that the Chief Justice can assign any magistrate to any court or district and once assigned, the magistrate has jurisdiction throughout Trinidad and Tobago.[83] Unlike other jurisdictions, the practice of the courts in Trinidad and Tobago is that one court cannot continue a matter begun by another. Where a magistrate begins hearing a matter, he shouldreturn to the court to complete the case as he would have already heard all the evidence which was initially submitted and was crucial to the matter.[84]

Where a magistrate ceases to act

There are no statutory provisions permitting a magistrate to hear and determine a matter which has been commenced by another. Additionally, the act does not make provision for the giving of reasons where a magistrate ceases to act, resign or dies. Therefore, where a magistrate commences hearing a matter and subsequently ceases to hold office, the matter must be heard de novo before another magistrate.

However, 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 either his:

> (i) physical or mental infirmity; (ii) resignation; (iii) retirement; or (iv) death, 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 in that matter.[85]

In **Pierre Simon Andre Sip Heng Wong NG (Alias Wong) and another v The Queen,** it was held that it was a fundamental requirement for those returning the verdict to see and hear all the witnesses in order to evaluate the reliability and credibility of the evidence. *Section 124(2),* of *Courts Act, 1945,* empowered a magistrate, to take, follow up, and determine a case already commenced before the Intermediary Court. However, the section could not be construed as permitting the case to continue to verdict without a rehearing of the evidence before the reconstituted bench and since none of the magistrates convicting the defendants had heard any of the evidence and submissions prior, the defendants had been deprived of their rights under the Constitution to a fair hearing and the convictions were quashed.

Where a magistrate becomes functus officio, he is not be able to continue the hearing of the matter even if reappointed. In such instances, the trial would be a nullity.[86] Additionally, where a magistrate dies or ceases to hold office, any summons or warrant or other process shall not be held void by reason of the magistrate or justice who signed the same dying or ceasing to hold office.[87]

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[82] Mark v Alexis (1984) Mag App No. 123/84; Pierre Simon Andre Sip Heng Wong NG (alias Wong) et al v R [1987] 1 WLR 1356

[83] Summary Courts Act of Trinidad and Tobago Chap. 4:20 Section 8

[84] Elias Mark v Thomas Alexis Mag App No. 123/84; D' Oliviera Comptroller of Customs and Excise v Chase (1964) 7 WIR 18

[85] Indictable Offences (Preliminary Enquiry) Act Chap 12:01 section 23 (c)

[86] Sydney Frederick v Chief of Police (1968) 11 WIR 330; Jones v Ricketts (1964) 7 WIR 62

[87] Summary Courts Act Chap 4:20 section 116 (c)

Statutory limitation

In every instance where no time is stipulated in any Act for making a complaint, the statutory limitation of six months to make a complaint would apply unless a contrary intention appears.[88] Where an Act does not stipulate a limitation period, *Sections 2* and *67,* of the *Interpretation Act Chap. 3:01,* apply and the court must consider the purpose of the legislation and Parliament's intention where the application of a standard limitation period would make the legislation absurd.[89]

The standard limitation period applies except as specifically provided for in the *Summary Offences Act, Chap. 11:02,*[90] as follows:

- Larceny or stealing: *Section 42(a);*
- Attempting to commit larceny, or attempting to steal; *Section 42(b);*
- Aiding or abetting or counselling or procuring the commission of larceny or of stealing: *Section 42(c);*
- Receiving any chattel or money or valuable security knowing it to have been stolen or otherwise unlawfully come by or obtained: *Section 42(d);*
- Fraudulent conversion: *Section 42(e);*
- Embezzling or obtaining or attempting to obtain under false pretences any chattel or money or valuable security with intent to defraud may be prosecuted at any time within 12 months after the commission of the offence: *Section 42(f)*.

Certain other Acts provide for longer limitation periods:

- *Bankruptcy and Insolvency Act, Chap. 9:70, Section 262* - 3 years;
- *Custom Act, Chap. 78:01, Section 247* - 7 years;
- *Food and Drug Act, Chap. 30:01, Section 34* - 1 year;
- *Housing Act, Chap. 33:01, Section 32* - 3 years;
- *Immigration Act, Chap. 18:01, Section 43* - 3 years;
- *Perjury Act, Chap. 11:14, Section 6(3)* – 1 year;
- *Pesticides and Toxic Chemicals, Chap. 30:03, Section 17* – 1 year;
- *Praedial Larceny Act, Chap. 10:03, Section 30(2)* – 1 year;
- *Prevention of Crimes Act, Chap. 10:01, Section 8* – 1 year;
- *Prevention of Corruption Act, Chap. 11:11, Section 8* - 1 year;
- *Representation of the People Act, Chap. 2:01, Section 152(1)* – 1 year.

[88] Summary Courts Act Chap. 4:20 Section 33, Interpretation Act Chap 3:01 Sections 2, 67
[89] Finbar Gangar v Her Worship Ejenny Espinet [2008] UKPC 48;
[90] Summary Offences Act Chap 4:20 Section 42

Settling time or counting time in the Commonwealth Caribbean countries

Time is computed based on the *Interpretation Acts* of each state.[91] Generally, where in a written law a period of time is expressed to be reckoned from a particular day or a particular event, that day or the day of event shall not be included in the period. Sundays, public holidays and in some states, Saturdays are considered as excluded days and in computing time, where an excluded day falls within the specified period it is not counted.

[91] Anguilla - Interpretation and General Clauses Act Chap 125 Section 6;
Antigua and Barbuda - Interpretation Act Chap 224 Section 44 - 45;
Barbados - Interpretation Act Chap 1 Section 39(1);
Belize - Interpretation Act Chap. 1 Section 55;
Dominica - Interpretation and General Clauses Act Chap 3.01 Section 62;
Grenada - Interpretation and General Provisions Act Chap 153 Section 50 - 53;
Guyana - Interpretation and General Clauses Act Chap 2:01 Section 40;
Jamaica - Limitation Act Section 8;
Montserrat - Interpretation Act No. 12 of 2011 Sections 13 - 17;
St Kitts and Nevis - Interpretation Act Chap. 1.02 Sections 6,7;
St Lucia - Interpretation Act Chap 1.06 Section 36;
St Vincent and the Grenadines - Interpretation and General Provisions Act Chap 153 Sections 50-51;
Trinidad and Tobago - Interpretation Act Chap 3:01 Section 22-25

CHAPTER 2

SERVICE, ARREST AND SEARCH WARRANT

Summons

A summons is a written order to be served on a person for the appearance of a defendant in court at a date and time specifically stated.

Power to issue summons

Prior to the issuing of a summons, a complaint is made or information taken, by oath or not, to the magistrate's court in the relevant district. The complaint or information typically specifies that a person has committed, or is suspected to have committed an offence within the jurisdiction, or another jurisdiction as is provided in the laws some territories. The summons must state the particulars of the specific offence which must support the nature of the charge. In each territory, the exercise of the power to issue summons is guided by its own legislation.[1]

ANGUILLA

When is a summons issued?

In all cases where a charge or complaint is made before the magistrate: (a) that a person has committed or is suspected of having committed any indictable offence; (b) that any person being within the jurisdiction of the magistrate has committed or is suspected of having committed any offence punishable on summary conviction; (c) that any person being within the jurisdiction of the magistrate has done, or omitted to do any act for which he is liable to be fined or restrained by an order of the magistrate; or (d) that a person within the jurisdiction of the magistrate is likely to commit a breach of the peace: *Magistrate's Code of Procedure, Chap. M5, Section 21.*

In all such cases the magistrate may issue a summons directed to that person requiring him to appear before the court at the time mentioned in the summons to answer the charge or complaint and to be further dealt with according to law: *Magistrate's Code of Procedure, Chap. M5, Section 21.*

[1] Anguilla - Magistrate's Code of Procedure Act Chap. M5 Section 20(1)(a);
Antigua and Barbuda - Magistrate's Code of Procedure Act Chap. 255 Sections 22(a);
Barbados - Magistrate's Courts Act Chap. 116A Section 12;
Belize - Criminal Procedure Rules 2016 Part 7, Summary Jurisdiction (Procedure) Act Chap. 99 Section 25;
Dominica - Magistrate's Code of Procedure Act Chap 4:20 Sections 19;
Grenada - Criminal Procedure Code Chap. 72B Section 71(1);
Guyana - Summary Jurisdiction (Procedure) Act Chap. 10:02 Section 12;
Jamaica - Justice of the Peace Jurisdiction Act Section 2;
Montserrat - Magistrates Code of Procedure Act Chap. 2.02 Section 22;
St Kitts and Nevis - Magistrate's Code of Procedure Act Chap. 3.17 Section 27;
St Lucia - Criminal Code Chap. 3.01 Section 674;
St Vincent and the Grenadines - Criminal Procedure Code Chap. 172 Sections 5, 71;
Trinidad and Tobago - Summary Courts Act Chap. 4:20 Sections 42;

What are the characteristics of a summons?

The general practice in Commonwealth territories is that a summons must contain:

- Name and address of the person to whom the summons is directed;
- Date and time the person is required to appear before the court;
- Statement of the charge or complaint raised in the summons.

What are the modes of service of a summons?

- Personal service by a peace officer or other person, or if the intended person cannot be conveniently found, by leaving it with some other person for him at his last most usual place of abode: *Magistrate's Code of Procedure, Chap. M5, Section 27.*

How is service of a summons proved?

- The person who serves the summons shall attend before the magistrate at the time and place mentioned in the summons to depose if necessary to the service thereof: *Magistrate's Code of Procedure, Chap. M5, Section 29.*

ANTIGUA AND BARBUDA

When is a summons issued?

A magistrate may issue a summons where upon receipt of a complaint or information of any offences which shall cause to be brought before him, all persons charged with such offences: *Magistrate's Code of Procedure Act, Section 22(a).*

A magistrate may issue a summons in the following circumstances:

- Where any person has committed or is suspected of having committed any offence punishable on summary conviction within his jurisdiction;
- When the defendant has either committed or is suspected of committing an indictable offence within his jurisdiction;
- Where any person guilty or suspected to be guilty of having committed such offence as aforesaid out of the jurisdiction of such magistrate is to be found or likely to be found within the limits of the same;
- Where any person being within such jurisdiction as aforesaid, has done any act or omitted to do any act for which commission or omission as aforesaid he is liable to have an order made against him by such magistrate for the payment of any fine or for the doing or the abstaining from doing any act;
- Where any person within such jurisdiction as aforesaid is likely to commit a breach of the peace: *Magistrate's Code of Procedure, Chap. 255, Section 23;*
- A summons may be issued where a summary offence was committed within the waters of Antigua and Barbuda on any ship or vessel and within the magistrate's jurisdiction: *Magistrate's Code of Procedure Act, Chap. 255, Section 29.*

The general practice is that summons shall be served on the defendant not less than 48 hours before the hearing of the matter.

What are the characteristics of a summons?

The legislation does not expressly stipulate the content of the summons. Generally, it must briefly state:

- The substance of the complaint concisely;
- The date and time to appear at the magistrate court to answer the complaint.

What are the modes of service of a summons?

The *Magistrate's Code of Procedure Act, Chap. 255, Section 28,* states that a summons shall be served by a peace officer or other person upon the person to whom it is directed:

- By delivering it to him personally;
- If he cannot be conveniently found, by leaving it with some person for him at his last or most usual place of abode.

Service of a summons on a Company and Partnership

The *Interpretation Act, Chap. 224, Sections 26(2)(d),(e),* states that a summons may be served in the case of a corporate body or of any association of persons, whether incorporated or not:

- By delivering it to the secretary or clerk of the body or association at the registered or principal office of the body or association;
- Serving it by post on such secretary or clerk at such office;
- If it is not practicable after reasonable inquiry to ascertain the name or address of an owner, lessee or occupier of premises on whom the document should be served by addressing the document to him by the description of "owner" or "lessee" or "occupier", as the case may be of the premises (naming them) to which the document relates, and by affixing it or a copy of it, to some conspicuous part of the premises.

How is service of a summons proved?

A summons must be proved by the person who served it, attending the magistrate's court at the particular date and time to depose and state on oath whether there was service of the summons: *Magistrate's Code of Procedure Act, Chap. 255, Section 30.*

BARBADOS

When is a summons issued?

A magistrate may issue a summons where an information has been laid before him in his district that any person has or is suspected of having committed an offence, requiring him to appear before him to answer to the information under the *Magistrate's Court Act, Chap. 116A, Section 12(2),* as follows:

- Where the offence was committed or is suspected to have been committed within the district;
- Where it appears to the magistrate necessary or expedient, with a view to the better administration of justice, that the person charged should be tried jointly with, or in the same place as, some other person who is charged with an offence, and who is in custody or is being or is to be proceeded against, within the district;

- Where the person charged resides or is, or is believed to reside or to be, within the district;
- Where under any enactment the magistrate of the district has jurisdiction to try the offence;
- Where the offence was committed outside Barbados and where it is an offence exclusively punishable on summary conviction, if the magistrate of the district would have jurisdiction to try the offence if the offender were before him.

The information must be in writing and substantiated on oath: *Magistrate's Court Act, Chap. 116A, Section 12(3).*

What are the characteristics of a summons?

The *Magistrate's Court (Criminal Procedure) Rules, 2001, rule 4(1),* states that a summons should:

- Shortly state the nature of the information;
- The time and place at which the accused is required by the summons to appear.

What are the modes of service of a summons?

The *Magistrate's Court (Criminal Procedure) Rules, 2001, rule 5(1),* states that a summons shall be served by:

- Delivering it to the person to whom it is directed;
- Leaving it for him with some adult person at his last known or usual place of abode;
- Sending it by post in a registered letter addressed to him at his last known or usual place of abode.

Service of a summons on a Company and Partnership

Service of a summons may be effected upon a company pursuant to the *Companies Act, Chap. 308, Section 414,* and the *Interpretation Act, Chap. 1, Section 25(2)(d),* by:

- Leaving it at, or sending it by telex or by prepaid post or cable addressed to, the registered office of the company;
- By personally serving any director, officer, receiver, receiver manager or liquidator of the company.

Service of a summons may be effected upon a partnership pursuant to the *Interpretation Act, Chap. 1, Section 25(2)(d),* by:

- Delivering it to the secretary or clerk of the partnership at the registered or principal;
- Serving it by post on such secretary or clerk at such office.

How is service of a summons proved?

The *Magistrate's Court (Criminal Procedure) Rules, 2001, rule 35,* states that the service of summons shall be proved:

- By the server under a document purporting to be a solemn declaration in Form 14 (*First Schedule Magistrate's Court Criminal Procedure Rules*) made before a magistrate, justice of the peace or a registrar.

BELIZE

When is a summons issued?

The magistrate may issue a summons where any complaint or information has been laid before him that a crime has been committed by any person whose appearance he has power to compel.[2] He shall consider the allegations of the complainant or informant and, if he is of opinion that a case for so doing is made out, he shall issue a summons in the following circumstances:

- Where a complaint is made before him that a person has committed or is suspected of committing a summary offence: *Criminal Procedure, Rules 2016, rule 7.1;*
- Where a complaint is made before him that a person has committed or is suspected of committing an indictable or hybrid offence and he is of the opinion that a case is made out for doing so: *Criminal Procedure Rules, 2016, rule 7.2;*
- The magistrate shall not refuse to issue the summons only because the alleged crime is one for which an offender may be arrested without a warrant the commission of any summary conviction offence: *Indictable Procedure Act, Chap. 96, Section 21(2);*
- A magistrate may issue a summons even where there is no complaint or information in writing or upon oath: *Criminal Procedure Rules, 2016, rule 7.3; Indictable Procedure Act, Chap. 96, Section 23;*
- A summons may also be issued to compel the attendance of a witness before the court and/ or any books or other documents which are in his power, possession and control and which are likely to be material evidence in the hearing of the complaint: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 30;*
- A magistrate may also issue a summons for an accused person to be brought before him for the purpose of preliminary inquiry under the *Indictable Procedure Act, Chap. 96, Section 18:* if the person is accused of having committed in any place, a crime triable in Belize and is or is suspected to be, within the limits of his jurisdiction or resides or is suspected to reside within those limits. Additionally, if the person, wherever he may be, is accused of having committed a crime within those limits or on any journey during any part of which he has passed through them. And, extra-territorially, if he is alleged to have anywhere unlawfully received property which was so unlawfully obtained within the magistrate's territorial jurisdiction, as to render him liable for a crime.

What are the characteristics of a summons?

The *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 25(1),* states that a summons shall contain:

- A statement of the alleged offence together with the relevant section of the relevant legislation;
- A brief statement of the nature of the complaint including the date, time and place of the alleged offence(s);

[2] Belize - Summary Jurisdiction (Procedure) Act Chap.99 Section 25 (1); Indictable Procedure Act Chap.96 Section 21 (1)

- The date, time and court venue at which the defendant is to appear in answer to the summons, which shall be not less than 48 hours and not later than 28 days after the date upon which the summons is issued;
- A warning to the defendant that in the event that he fails to attend court as required a warrant for his arrest may be issued;
- The signature of the issuing magistrate.

What are the modes of service of a summons?

The *Criminal Procedure Rules, 2016, rule 7.4,* states:

- A copy of the summons shall be issued and transmitted to the police, if necessary, within seven days of the complaint being made or information being laid;
- Thereafter the summons shall be served upon the defendant within 14 days;
- Service shall be effected, save as provided for in sub-rule (iv) by delivering the summons directly to the person to whom it is addressed or if the same is not practicable by delivering it to the said person's usual place of abode or last known address[3];
- In the case of a master or seaman or other person employed on any ship or vessel if the summons is either delivered directly to him or to the captain or officer in charge of the vessel.

Service of a summons on a Company and Partnership

The *Criminal Procedure Rules, 2016, Part 7.4 (iv)(b),* states that a summons may be served by being delivered to a partner, director, mayor, chairman, president, manager or secretary or other official thereof at the ordinary place of business.

How is service of a summons proved?

Service of a summons may be proved by:

- A certificate of service containing the details of the date, time, place and method of service completed and signed by the person effecting service being filed with the Court: *Criminal Procedure Rules, 2016, rule 7.5;*
- In the event that it has not been reasonably practicable for such a certificate to be filed, by the court hearing oral evidence in respect of service from the person who executed service of the summons: *Criminal Procedure Rules, 2016, rule 7.5;*
- It shall be deemed sufficient proof of service if the person by whom the process has been served is duly sworn to an affidavit of service, the affidavit may be sworn by and before any magistrate, justice of the peace or, if authorised for that purpose by the Attorney General, the clerk: *Summary Jurisdiction (Procedure) Act, Chap. 99, Sections 128(1),(2);*

[3] Summary Jurisdiction Offences Act Chap.99 Section 27

- The affidavit shall be received in evidence in any proceeding in any court without proof of the signature or of the official character of the person making it, or of the person before whom it is made, and the onus of showing that any service referred to in the affidavit was not made in accordance with the tenor of the affidavit shall be on the party objecting: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 128(3);*
- Where the service was effected by a bailiff or police officer, a return of service purporting to be signed by the bailiff or police officer shall be received as prima facie evidence of the facts stated in the return without proof of the signature or the official character of the bailiff or police officer: *Indictable Procedure Act, Chap. 96, Section 23(5).*

DOMINICA

When is a summons issued?

The *Magistrate's Code of Procedure Act, Chap. 4:20, Section 20,* states that where a complaint has been laid either by complainant, any other person or a police officer, the magistrate may issue a summons in the following circumstances:

- The complaint states the accused either committed or is suspected of committing an indictable offence within the magistrate's jurisdiction or can be found within the magistrate's jurisdiction, or the accused committed a summary offence within the magistrate's jurisdiction;
- The accused has done or omitted to do an act for which he is liable to be fined or to have an order made against him by the magistrate;
- The accused has breached the peace;
- Where a summary offence was committed within the waters of Dominica on any ship or vessel and within the magistrate's jurisdiction: *Magistrate's Code of Procedure Act, Chap. 4:20, Section 26.*

What are the characteristics of a summons?

The legislation does not expressly stipulate the content of the summons. Generally, a summons ought to briefly state:

- The substance of the complaint concisely;
- The date and time to appear at the magistrates court to answer the complaint.

What are the modes of service of a summons?

The *Magistrate's Code of Procedure Act, Chap. 4:20, Section 25,* states that a summons may be served:

- By personal service by a peace officer or another person to the accused via person service;
- Where he cannot be found, leaving it with some person for him at his last known address.

Service of a summons on a Company and a Partnership

The *Interpretation and General Clauses Act, Chap. 3:01, Section 25(2)(d),* states that where a company or partnership has been issued a summons, the summons can be served:

- On the secretary or clerk of the company or body corporate at the registered or principal office of the company;
- By post on the secretary at the office.

How is service of a summons proved?

The *Magistrate's Code of Procedure Act, Chap. 4:20,* states that:

- A summons must be proven by the person who served the summons, attending the Magistrate's Court at the particular date and time to depose and state on oath whether there was service of the summons: *Magistrate's Code of Procedure Act, Chap. 4:20, Section 27;*
- Where the proof of service is questioned, a declaration is taken and until contrary is shown, is deemed to be sufficient proof and shall be received in evidence in any court of the magistrate's jurisdiction without proof of the signature or character of the person: *Magistrate's Code of Procedure Act, Chap. 4:20, Section 214*.

GRENADA

When is a summons issued?

A magistrate may issue a summons:

- Where a complaint is made before the magistrate that a person has committed or suspected of committing an offence within his jurisdiction: *Criminal Procedure Code, Chap. 72B, Section 71(1);*
- Upon receipt of a complaint or information that an indictable offence has been committed: *Criminal Procedure Code, Chap. 72B, Section 95;*
- To compel any person likely to give material evidence for the prosecution or defence to appear before the court at a time mentioned: *Criminal Procedure Code, Chap. 72B, Section 23;*
- To compel the attendance of a person for the purposes of a preliminary inquiry, where that person is alleged, inter alia, of receiving property elsewhere, which was unlawfully obtained within the limits of the magistrate's jurisdiction: *Criminal Procedure Code, Chap. 72B, Section 93(c).*

What are the characteristics of a summons?

The *Criminal Procedure Code, Chap. 72B, Section 71,* states that a summons must contain:

- The substance of the complaint which must be concise;
- The date and time to appear at the magistrate court to answer the complaint, being not less than 48 hours after the service of the summons.

What are the modes of service of a summons?

The *Criminal Procedure Code, Chap. 72B, Section 72,* states that a summons shall be served:

- By either delivering it or a copy personally, or, where this cannot be met, by leaving it or a copy with some person for the person to be summoned at his last or most usual place of abode.

Service on a Company and a Partnership

The *Interpretation and General Provisions Act, Chap. 153, Section 67,* permits the service of documents and notices required to be served under any written law on a body corporate or partnership by:

- Leaving it at or by sending it by post to the principal office of the body or any other office specified by the body as being one at which it will accept service of documents or notices of that same or a similar kind: *Interpretation and General Provisions Act, Chap. 153, Section 67(d);*
- By serving it personally upon a partner or the person having the control or management of the partnership or by sending it by post to him at his usual or last known place of abode: *Interpretation and General Provisions Act, Chap. 153, Section 67(c);*
- By leaving it at or by sending it by post to the principal office of the partnership.

How is a summons proved?

Under the *Criminal Procedure Code, Chap. 72 B, Section 72(2),* the person by whom the summons is served shall, attend at the time and place specified therein, in order, if necessary, to prove the service. The court may, in its discretion, receive proof of such service by a declaration of the fact and date of service if endorsed on the original summons before a magistrate.

GUYANA

When is a summons issued?

A summons may be issued by a magistrate:

- Subsequent to a complaint laid before him under sworn oath by a police officer that any person has committed or is suspected to have committed any summary offence. It shall require such person to appear before the magistrate of the district in which the offence occurred to answer same: *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 11(1);*
- To compel the appearance of the accused for the purpose of conducting a preliminary inquiry: *Criminal Law Procedure Act, Chap. 10:01, Section 48;*
- Where a magistrate has reason to believe that an indictable offence has been committed by a person within the limits of his jurisdiction: *Criminal Law Procedure Act, Chap. 10:01, Section 49.*

What are the characteristics of a summons?

The *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 11(1),* states that a summons must:

- Be in writing;
- Briefly the nature of the information/complaint;
- The time and place at which the accused is required by the summons to appear;
- Signed by the issuing magistrate.

How is a summons served?

The *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 12,* states that a summons shall be served by a police officer or other constable upon the defendant either by:

- Delivering it to him personally;
- If he cannot with the exercise of reasonable diligence be found, by leaving it with some person for him at his last or most usual place of abode;
- The summons shall be served on the defendant not less than 48 hours before the hearing of the matter. However, if the court thinks fit and with the parties consent the matter may be heard notwithstanding that 48 hours have not elapsed: *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 11(1).*

Service on a Company

Under the *Companies Act, Chap. 89:01, Section 489,* service of a summons may be effected upon a company by:

- Leaving it at, or sending it by telex or by prepaid post or cable addressed to, the registered office of the company;
- By personally serving any director, officer, receiver, receiver manager or liquidator of the company.

How is service of summons proved?

Service of a summons by a bailiff or constable is proven by a Return of Service in Form 6 in the Fourth Schedule of the *Criminal Law (Procedure) Act, Chap. 10:01*. This shall be signed by the bailiff or constable and is to be received in the court as prima facie evidence of the facts stated in the return without proof of the signature or the official character of the bailiff or constable: *Criminal Law (Procedure) Act, Chap. 10:01, Section 52(5).*

JAMAICA

When is a summons issued?

One or more Justice of the Peace for any parish shall issue a summons:

- Upon an information being laid before him or her that any person has committed or suspected to have committed any act or offence punishable upon summary conviction within such justice or justices jurisdiction: *The Justices of the Peace Jurisdiction Act, Section 2.* The summons shall be issued in a Form 1 in the First Schedule of *The Justices of the Peace Jurisdiction Act;*

- Where a charge or complaint is made before him or her that any person has committed or is suspected to have committed any treason, felony, or indictable misdemeanour whatsoever within such justice or justices jurisdiction: *The Justices of the Peace Jurisdiction Act, Section 29.* The summons shall be issued in a Form 1 in the First Schedule of *The Justices of the Peace Jurisdiction Act;*
- Where any person is guilty or suspected to be guilty of committing any treason, felony, or indictable misdemeanour occurring outside from the jurisdiction of such justice or justices but is residing or being, or suspected of such within the jurisdiction of such justice or justices: *The Justices of the Peace Jurisdiction Act, Section 29.* The summons shall be issued in a Form 17 in the First Schedule of *The Justices of the Peace Jurisdiction Act.*

What are the characteristics of a summons?

A summons shall contain[4]:

- The name and address of the defendant (or other person to whom it is meant to be issued);
- The parish in which the information/ complaint was laid;
- The substance of the information or complaint;
- The date, time and place at which the defendant (or other person as they case may be) should appear;
- The date of the summons.

What are the modes of service of a summons?

The Justices of the Peace Jurisdiction Act, Section 3, states that a summons may be served by a constable, peace officer or any other person whom it may have been delivered for the purpose of serving by:

- Delivering it personally;
- Leaving the same with some person for the accused at his last or most usual place of abode.

Service on a Company

A summons is served on a company by leaving the summons at or sending it by post to the registered office of the company: *Companies Act, Section 387;*

For companies that carry on business in Jamaica but are incorporated overseas, it is satisfactorily served once it is addressed to the person whose name appears on the register to accept service on behalf of the company and left or sent by post to the address stated in the register: *Companies Act, Section 368.*

[4] Form 1 and 17 in the First Schedule of The Justices of the Peace Jurisdiction Act

How is service of a summons proved?

The Judicature (Parish Courts) Act, Section 159, states that service of a summons shall be proved in the following ways:

- If it was effected by the bailiff or assistant bailiff, service may be proved by the bailiff's return of a certificate of service signed by him or he may appear and give evidence on oath that he did effect service;
- If not served by a bailiff or assistant bailiff, service is proved by affidavit sworn before any magistrate, clerk of the court or justice.

ST. KITTS AND NEVIS

When is a summons issued?

The *Magistrate's Code of Procedure Act, Chap. 3:17, Section 28,* states that where a complaint has been laid either by a complainant, any other person or a police officer, the magistrate may issue a summons where:

- The complaint states the accused either committed or is suspected of committing an indictable offence within the magistrate's jurisdiction or that any person guilty or suspected of the same outside such magistrate's jurisdiction can now be found within the same;
- The accused has committed or is suspected of having committed a summary offence within the magistrate's jurisdiction;
- The accused has done or omitted to do an act for which a fine is payable;
- The accused is likely to commit a breach of the peace.

What are the characteristics of a summons?

Though legislation do not stipulate the content of the summons it must briefly state:

- The substance of the complaint concisely;
- The date and time to appear at the magistrate court to answer the complaint, being not less than 48 hours after the service of the summons.

How is a summons served?

The *Magistrate's Code of Procedure Act, Chap. 3:17, Section 33,* states that the summons must be served by a peace officer or another person to the accused:

- Via personal service;
- When he or she cannot be found by leaving it with some person for the accused at his or her last or most usual place of abode.

How is service of summons proved?

The *Magistrate's Code of Procedure, Chap. 3:17, Section 35,* states that the person who serves the summons shall attend before the magistrate at the time and place mentioned therein to depose if necessary to the service thereof.

Service on a Company

The *Companies Act, Chap. 21.03, Section 73,* states that where a company has been issued a summons, the summons can be served:

- By leaving it at, or sending it by post to the registered office of the company;
- Where an existing company has no registered office by sending it by post to any director or secretary of the company or by default the person and address named on the company's memorandum.

ST. LUCIA

The *Criminal Procedure Rules, 2015, rule 3.15(a),* states that the court has immediate jurisdiction over a person accused of committing an offence when a summons is served on that person.

When is a summons issued?

A magistrate may issue a summons where:

- A complaint is made that a person has committed or is suspected to have committed any offence punishable by summary conviction within his jurisdiction: *Criminal Code, Chap. 3:01, Section 674(1);*
- A complaint is made or information laid that an indictable offence has been committed with respect to which he or she has jurisdiction to hold a preliminary inquiry: *Criminal Code, Chap. 3:01, Section 784(1);*
- He shall not refuse to issue such summons or warrant only because the alleged offence is one for which an offender may be arrested without warrant: *Criminal Code, Chap. 3:01, Section 784(2);*
- He may issue a summons although there is no complaint or information in writing upon oath: *Criminal Code, Chap. 3:01, Section 674(1).*

What are the characteristics of a summons?

The *Criminal Procedure Rules, 2015, rule 4.4,* states that a summons must:

- Briefly state the substance of the complaint;
- State the date, time and place the accused is to appear in court and shall require the person summoned to attend the court;
- Require the accused to appear not later than 48 hours after the service of such summons, before the magistrate to answer to the complaint, and to be further dealt with according to law: *Criminal Code, Chap. 3:01, Section 674(1);*
- Inform the person that a warrant may be issued for his or her arrest if he or she fails to appear;
- Not be signed in blank: *Criminal Code, Chap. 3:01, Section 785(3);*
- Be signed by the issuing magistrate and authenticated by the Criminal Division Manager. The signature may be done electronically.

A summons must be transmitted by the court to the police by hard copy or electronic means: *Criminal Procedure Rules, 2015, rule 3.16(1).*

A printed copy of a summons transmitted electronically by the court to the police is a valid copy: *Criminal Procedure Rules, 2015, rule 3.16(2).*

A copy of each summons shall be transmitted by the court to the Director of Public Prosecutions and this may be done electronically: *Criminal Procedure Rules, 2015, rule 3.17.*

What are the modes of service of a summons?

The Criminal Division Manager shall arrange service of the summons: *Criminal Procedure Rules, 2015, rule 4.5(2)*:

- A summons shall be served within forty-five days of the date of filing of the complaint: *Criminal Procedure Rules, 2015, rule 4.5(1);*
- It may be served by a sheriff or police officer upon the person to whom it is directed either by delivering it to him or her personally or where this is not possible by leaving it for him or her at his last or most usual place of abode: *Criminal Procedure Code, Chap. 3:01, Section 786; Criminal Procedure Rules, 2015, rule 4.5(3);*
- A summons shall be lawfully served on a defendant who is a master or seaman or person employed in any ship or vessel if such summons is left within the hands of a person employed on board that ship or vessel: *Criminal Procedure Rules, 2015, rule 4.5(4)(a).*

Service on a Company and a Partnership

Service of a summons shall be effected by leaving the summons at their ordinary place of business with a partner, director, secretary, manager, or other official thereof, or the partnership, company association, or corporation may be cited in the same manner as if the proceedings were in the civil court: *Criminal Code, Chap. 3:01, Section 787; Criminal Procedure Rules, 2015, rule 4.5(4).*

How is service of a summons proved?

Service of a summons is proved:

- By a certificate of service[5] appended to a copy of the summons and signed by the person who effected service. It must be filed promptly, however failure to file the certificate does not affect the validity of service: *Criminal Procedure Rules, rules 4.6(1),(3)-(5).*

ST. VINCENT AND THE GRENADINES

When is a summons issued?

A summons is issued under the *Criminal Procedure Code, Chap. 172:*

- Where a complaint is made before a magistrate he shall compel the attendance of the accused before the court to answer the same: *Criminal Procedure Code, Chap. 172, Section 71(1);*

[5] The certificate of service shall state: the date and time of service, the precise place or address at which the summons was served, the precise manner by which the person on whom the summons as served was identified and the precise manner in which the summons was served (Criminal Procedure Rules, 2015 rule 4.6(2))

- Where a complaint is made that there is reasonable and probable cause to believe that an offence has been committed by a person: *Criminal Procedure Code, Chap. 172, Section 70(2);*
- To require the attendance of a witness: *Criminal Procedure Code, Chap. 172, Section 93;*
- Provided the magistrate is of the opinion that the application is not frivolous or vexatious or an abuse of process of the court: *Criminal Procedure Code, Chap. 172, Section 71(2).*

What are the characteristics of a summons ?

The *Criminal Procedure Code, Chap. 172, Section 71,* states that a summons:

- Must be in writing, in duplicate and signed by the judicial officer;
- Shall be directed at the person named in the complaint;
- Shall state the time and place the person is required to appear before the court;
- Shall state the offence for which the person has been charged.

What are the modes of service of a summons?

The modes of service provided by the *Criminal Procedure Code, Chap. 172,* are as follows:

- The accused should be served personally by a police officer: *Section 74(1);*
- When served, the person receiving the summons should sign the back of the duplicate of the summons if so required: *Section 74(2);*
- Where service cannot be done personally after due diligence is exercised, it can be performed on an adult member of the accused family or the accused's employer. In both instances, the person receiving must sign the duplicate of the summons: *Section 75(1);*
- Where service cannot by due diligence be effected under *Sections 74, 75,* the person may be duly served by the server placing the summons on a conspicuous part of the building, vessel or other place where the person ordinarily resides: *Section 76.*

Service of a summons on a Company

A summons may be served on the secretary, manager or other principal officer or by registered letter addressed to the company at its registered address. Service is deemed to have been effected when the letter would have arrived in the ordinary course of post: *Criminal Procedure Code, Chap. 172, Section 77.*

[5] The certificate of service shall state: the date and time of service, the precise place or address at which the summons was served, the precise manner by which the person on whom the summons as served was identified and the precise manner in which the summons was served (Criminal Procedure Rules, 2015 rule 4.6(2))

How is service of a summons proved?

Service of a summons shall be proven under the *Criminal Procedure Code, Chap. 172, Section 78:*

- By the person who effected service of the summons attending before the magistrate at the particular date and time specified in the summons;
- Where he does not attend, the court may accept as prima facie evidence of service, the summons endorsed with the date of service and signed by the person who served same;
- Where the service was performed by registered post the certificate of registration is deemed to be prima facie evidence.

TRINIDAD AND TOBAGO

When is a summons issued?

A magistrate may issue a summons:

- Directed at a person where a complaint, made by oath or not, has been made before him, that a person has committed or is suspected to have committed a summary offence within his district: *Summary Courts Act, Chap. 4:20, Section 42(1);*
- To compel the appearance before him, for preliminary examination, of a person accused of having committed an indictable offence whether within or outside of Trinidad and Tobago: *Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, Section 3;*
- A magistrate may issue a summons although there is no complaint in writing or upon oath: *Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, Section 7(1);*
- A single summons may be issued against a person in respect of several complaints; but the summons shall state the matter of each complaint separately and shall have effect as several summonses each issued in respect of one complaint: *Summary Courts Act, Chap. 4:20, Section 42(2);*
- The court may, if it thinks fit, issue a summons directing a defendant to appear forthwith in cases where an affidavit is made by the complainant that such defendant is likely to leave Trinidad and Tobago within 48 hours (no time period is stipulated for indictable offences): *Summary Courts Act, Chap. 4:20, Section 42(4);*
- A magistrate is not obliged to issue any such summons in any case where the application for an order may by law be made ex parte: *Summary Courts Act, Chap. 4:20, Section 42(5);*
- A magistrate may issue or withdraw a summons: a) without giving the parties an opportunity to make representations and, b) without a hearing, or at a hearing in public or in private: *Criminal Procedure Rules, 2016, rule 5.4(1);*
- To secure the attendance of the complainant, notwithstanding that the court has received a reasonable excuse for the complainant's non-attendance or other sufficient reason and has adjourned the hearing: *Criminal Procedure Rules, 2016, rule 5.4(10);*

- Unless it is inconsistent with other legislation a replacement summons may be issued without a fresh information or complaint if the one replaced was served by leaving or posting it and it was shown that the addressee did not receive it: *Criminal Procedure Rules, 2016, rule 5.4(8).*

What are the characteristics of a summons?

The characteristics of the summons are as follows:

- It shall state the particulars of the specific offence with which the accused person is being charged, these particulars must support the nature of the charge: *Summary Courts Act, Chap. 4:20, Section 38(1)*[6];
- If the offence charged was one created by an Act or other written law, the statement must be made to the Section which created the offence: *Summary Courts Act, Chap. 4:20, Section 38(2);*
- After the statement of the offence, the necessary particulars of the offence must be set out in ordinary language: *Summary Courts Act, Chap. 4:20, Section 38(3);*
- If the summons is in such form as is sufficient in law as if this Section of the statute creating it had not come into force, it shall continue to be sufficient in law: *Summary Courts Act, Chap. 4:20, Section 38(4);*
- It shall contain a notice of the time and place in which the accused is required to attend court, specify each offence for which it is issued and identify the court that issued it (unless it is recorded by the court officer) and the court office for the court that issued it: *Criminal Procedure Rules, 2016, rule 5.4(5);*
- It may be contained in the same document as information or must be accompanied by the complaint or information: *Criminal Procedure Rules, 2016, rule 5.4(6);*
- A summons issued to an accused under the age of 18 years may require the parent or guardian of such person to attend the court accompanying the accused or a separate summons may be issued for doing so: *Criminal Procedure Rules, 2016, rule 5.4(9).*

What are the modes of service of a summons?

The *Criminal Procedure Rules, 2016,* states that:

- Where the court issues a summons, the complainant must serve it on the accused and notify the authorised officer or the authorised officer must serve it on the accused and notify the complainant: *rule 5.7;*
- A summons must be served personally[7] by handing it or leaving it with the person to be served: *rule 21.1(1)*[8];

[6] The statement of the offence must describe the offence in ordinary language and may not necessarily state all the essential elements of the offence (Summary Courts Act, Chap 4:20 section 38(2)).

[7] C.A. Mag. App No P085 of 2014 Gocking, Clint; Gocking, Troy v Payne, Anthony Customs and Excise Officer III

[8] Where a document is left with the person, the nature and contents of the document must be explained by the server where it is practicable to do so (Criminal Procedure Rules, 2016 rule 21.1(2)). See also the Summary Court Act, Chap 4:20 section 43(1).

- Service is deemed effected on the day it is handed to, or left with, the person being served: *rule 21.1(3).*

The *Criminal Procedure Rules*, *2016* makes provision for service on persons in custody and states that:

- A person in custody may be served by handing the document to the keeper or a person designated by him addressed to the person to be served: *rule 21.3(1);*
- The keeper or a person designated by him must endorse it with the time and date of receipt, record its receipt and forward it promptly to the addressee: *Criminal Procedure Rules, 2016, rule 21.3(2).*

Service on a Company

The *Criminal Procedure Rules, 2016,* states that:

- A company may be served by handing it to, or leaving it with a director, officer, receiver, manager or liquidator of the company or by prepaid post addressed to the registered office of the company: *rule 21.2(1);*
- Where service is effected on a company by prepaid post addressed to the registered office, service is deemed to be effected on the fourteenth day from the date on which the document was posted: *rule 21.2(2).*

How is service of a summons proved?

The *Criminal Procedure Rules, 2016, rule 21.10,* states that:

- Service is to be proved by affidavit sworn by the server of the document which shall state the date and time of service, the precise place or address where it was served, precisely how the person served was identified and how was service effected;
- If the person served was identified by another person, where practicable an affidavit must also be filed by the person proving the identification of the person served. This shall state how the person was able to identify how such person was served;
- Where the server identified the person to be served by means of photograph or description an affidavit must also be filed by a person verifying the description or photograph as being the person intended to be served and stating how that person was able to verify the description or photograph as being the person intended to be served.[9]

[9] see also the Summary Courts Act, Chap 4:20 section 43(2) and 119(1)

Arrest

An arrest is defined as the seizing or touching of a person with a view of restraining him or her.[10] It is the duty of the magistrate to ensure that any person who was arrested and brought before the court to answer any offence was lawfully arrested.

Arrest Under Warrant

The general practice within the Commonwealth Caribbean is that a summons is issued for lesser offences which are summary in nature, and for more serious offences or indictable offences, an arrest would be effected either by warrant or without a warrant.

ANGUILLA

The *Magistrate's Code of Procedure Act, Chap. M5, Section 31,* states that in all cases where a charge is made in respect of an offence punishable on indictment or on summary conviction, the magistrate, if he thinks it expedient that a warrant should be issued in the first instance, may take an information and require such evidence in that behalf as he considers necessary to substantiate the matter of the information and may issue his warrant in the first instance to apprehend the person and to cause him to be brought before him to answer the charge and to be dealt with according to law. Such warrant may issue notwithstanding the fact that a summons in respect of the matter charged has already been issued.

Some characteristics and features of an arrest warrant under the *Magistrate's Code of Procedure Act, Chap. M5, Section 34,* include:

- May be issued at any time or on any day and shall be under the hand and seal of the magistrate;
- May be directed to a member of the Police Force and to all peace officers of Anguilla;
- Shall state shortly the act charged;
- Shall name or otherwise describe the person to be charged;
- Shall order the person or persons to whom it is directed to apprehend the person so named or described and bring him before the magistrate to answer the charge or be dealt with according to law.

A warrant issued by a magistrate shall not be avoided by reason of the death of the magistrate who signed it or his/her ceasing to hold office: *Magistrate's Code of Procedure Act, Chap. M5, Section 39*.

It is not necessary that the magistrate who issues the warrant be the magistrate by whom the case is heard or determined: *Magistrate's Code of Procedure Act, Chap. M5, Section 40*.

ANTIGUA AND BARBUDA

The *Magistrate's Code of Procedure, Chap. 255, Section 32,* provides that a magistrate may in all cases where a charge is made in respect of an offence punishable either by indictment or summarily, issue a warrant in the first instance to apprehend the defendant where he thinks it

[10] Alderson v Booth [1969] 2 All ER 271

is expedient to do so and cause him to be brought before him or any other magistrate to answer the charge against him.

Some characteristics and features of an arrest warrant under the *Magistrate's Code of Procedure, Chap. 255,* include:

- It may be issued at any time or on any day to a member of the Police Force and to all peace officers of Antigua and Barbuda: *Section 34;*
- It shall be under the hand and seal of the magistrate: *Section 34;*
- It shall shortly state the act charged and the name or description of the person to be apprehended: *Section 34;*
- It shall order the persons to whom it is directed to apprehend the person named or described and bring him before the issuing magistrate or other magistrate to answer the charge: *Section 34;*
- Where a warrant is issued in the first instance the magistrate shall furnish a copy or copies thereof and cause a copy to be served on each party apprehended: *Section 32;*
- It stays in force until exercised: *Section 35;*
- It may be executed by either a peace officer in any part of Antigua and Barbuda without being backed by the magistrate: *Section 35;*
- When apprehended, the person shall be brought before the issuing magistrate or any other magistrate at a certain time and place, who shall either commit him to prison or to the custody of the officer apprehending him, or to such other safe custody as he thinks fit: *Section 36;*
- Notice shall be given to the person laying the information or complaint of the order but committal under this section shall not exceed one week: *Section 36.*

BARBADOS

The *Magistrate's Court Act, Chap. 116A, Section 12,* provides that upon an information being laid before a magistrate of any district that a person has, or is suspected of having committed an offence, the magistrate may issue a warrant to arrest that person and bring him before the magistrate for such district or other district as the case may be.

Some characteristics and features of an arrest warrant under the *Magistrate's Court (Criminal Procedure) Rules, 2001,* include:

- It shall describe in ordinary language the specific offence with which the accused is charged or of which he is convicted: *rule 8(1)(a);*
- It shall avoid as far as possible the use of technical terms: *rule 8(1)(b);*
- It shall state all the salient particulars of the offence without necessarily stating all the elements of it: *rule 8(1)(c);*
- It shall give particulars as may be necessary for giving reasonable information of the nature of the charge: *rule 8(1)(d);*

- The description of the offence shall contain a reference to the Section of the Act, rule, order or regulation creating the offence: *rule 8(2);*
- It shall be signed by the issuing magistrate: *rule 43;*
- It shall name or otherwise describe the person for whose arrest it is issued, and shall contain a statement of the offence charged or the ground on which the warrant is issued: *rule 44(2);*
- It shall be lawfully executed on any day: *Magistrate's Court Act, Chap. 116A, Section 216(3).*

BELIZE

The *Summary Jurisdiction (Procedure) Act, Chap. 99,* provides that the court may where a complaint is made on oath being by or on behalf of the complainant substantiating the matter of the complaint to the satisfaction of the court, issue a warrant to apprehend the person so summoned or avoiding service, and to bring him before the court to answer the complaint, and to be further dealt with according to law.

Some characteristics and features of an arrest warrant under the *Summary Jurisdiction (Procedure) Act, Chap. 99,* are as follows:

- Unless otherwise stated, each warrant issued for the apprehension of any person in relation to a summary conviction offence shall be dated on the day on which it is issued, and shall be signed by the issuing magistrate: *Section 97(1);*
- It shall not be signed in blank: *Section 97(2)(a);*
- It is issued without an information or other statement in writing upon oath: *Section 97(2)(b);*
- It may be directed either to any police officer or to the requesting police officer and all other police officers, or generally to all police officers: *Section 97(2)(c);*
- It may be executed by any police officer named therein or by any one of the police officers to whom it is directed: *Section 97(2)(d);*
- It shall concisely state the offence for which it is issued and shall name or describe the person to be arrested. It shall order the police office or other police officer to whom it is directed to apprehend that person and bring him to the court to answer the information, or to testify, or to be further dealt with according to the law: *Section 97(2)(e);*
- It may be lawfully executed on a Sunday: *Section 98(1);*
- Before it is executed, the police officer shall inform the person to be arrested that there is a warrant for his apprehension unless, there is reasonable cause for abstaining from giving such information where it is likely to occasion an escape, resistance or rescue: *Section 98(2);*
- It is not necessary for the police officer executing the warrant to have it in his possession, but if he does, and the person being arrested so requests, he must show it to him or her: *Section 98(3);*

- Where a police officer breaks open and enters any house, building or enclosed place, he must be in possession of the warrant, and before doing so he must notify of his possession thereof, as far as practicable: *Section 98(6).*

DOMINICA

The *Magistrate's Code of Procedure, Chap. 4:20, Section 29,* provides that where a charge is made against a person in respect of an offence which is punishable either on indictment or summary conviction the magistrate, if he thinks it expedient to issue a warrant in the first instance, may take an information and require the evidence in that behalf which is necessary to substantiate the information. Further, he may issue the warrant notwithstanding that a summons in respect of the matter charged has been issued at any time before the time of appearance mentioned in the summons.

Some characteristics and features of a warrant for arrest under the *Magistrate's Code of Procedure Act, Chap. 4:02, Section 31,* include:

- It may be issued at any time or on any day;
- Be issued under the hand and seal of the magistrate;
- It may be directed to the police and to all peace officers of the state;
- It must state shortly the offence charged;
- It must name or otherwise describe the person to be apprehended;
- It must order the person or persons to whom it is directed to apprehend the person so named or described and bring him before the issuing magistrate or before some other magistrate to answer the charge and to be dealt with further according to the law.

The *Magistrate's Code of Procedure Act, Chap. 4:02, Section 33,* also provides that:

- A person apprehended under warrant shall be brought before the issuing magistrate or any other magistrate, who shall commit him to prison or verbally to the custody of the officer apprehending him, or to such other safe custody as he thinks fit;
- The magistrate may order him to be brought up at a certain time and place before him, and shall give notice of the order to the person laying the information or complaint but no committal under this section shall exceed one week.

GRENADA

The *Criminal Procedure Code, Chap. 72B, Sections 11(3), (13),* provides that where an information is laid on oath a magistrate shall issue a warrant for the person to be brought before him as soon as is practicable.

Certain characteristics and features of a warrant of apprehension under the *Criminal Procedure Code, Chap. 72B,* are as follows:

- Unless otherwise provided, every warrant for the arrest of any person shall be dated on the day on which it is issued, and shall be signed by the magistrate by whom it is issued: *Section 11(1);*

- It shall not be signed in blank: *Section 11(2);*
- It shall not be issued by a magistrate without an information upon oath: *Section 11(3);*
- It may be directed either to any constable by name, or to a constable by name, and all other constables, or generally to all constables: *Section 11(4);*
- It shall state shortly the offence or matter for which it is issued: *Section 11(6);*
- It shall name or otherwise describe the person to be arrested, and it shall order the constable or constables to whom it is directed, to arrest the person, and bring him or her before the Court to answer the information, or to testify, or otherwise, according to the circumstances of the case: *Section 11(6);*
- A copy of every such warrant shall be kept by the court by which it is issued: *Section 11(7);*
- It may be issued and executed on a Sunday: *Section 12(1);*
- The constable executing the warrant must have it in his possession and must, upon request by the person to be arrested, show him or her the warrant: *Section 12(2);*
- The constables executing the warrant, before making the arrest, shall inform the person to be arrested that he or she has the warrant, unless there is reasonable cause for abstaining from giving the information on the ground that it is likely to occasion escape, resistance or rescue: *Section 12(2);*
- Any constable authorised to execute the warrant may, for the purpose of executing it, either with or without assistance from any other person, break open and enter any house, building or enclosed place, if admittance cannot otherwise be obtained. Before so doing, he or she must, as far as practicable, notify his or her possession of the warrant: *Section 12(3);*
- The Chief of Police shall cause copies of warrants to be made and when made to certify same, and every copy thus duly certified shall for all purposes be as valid as the original warrant: *Section 12(4).*

GUYANA

The *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 14,* provides that where a complaint in writing and upon oath is made before a magistrate for any summary offence, he may on good cause being shown to him for so doing, and on oath being made before him substantiating the matter of the complaint to his satisfaction, instead of issuing a summons, issue in the first instance a warrant to apprehend the person against whom the complaint has been made and to bring him before the court of the magistrate to answer the complaint.

Some characteristics and features of a warrant of apprehension under the *Summary Jurisdiction (Procedure) Act, Chap. 10:02,* are as follows:

- Unless the contrary is expressly provided, each warrant shall be dated on the day on which it is issued, and shall be signed by the issuing magistrate: *Section 72(1);*
- It shall not be signed in blank and must not be issued without an information or other statement in writing on oath: *Sections 72(2)(a),(b);*

- It may be directed either to any police or other constable by name, or to that police or other constable and all other police and other constables, or generally to all police and other constables: *Section 72(2)(c);*
- It may be executed by any police or other constable named therein, or by any one of the police or other constables to whom it is directed: *Section 72(2)(d);*
- It must state concisely the offence or matter for which it is issued, shall name or otherwise describe the person to be arrested, and shall order the police or other constable or constables to whom it is directed to apprehend that person, and bring him before the court to answer the said information or statement or to testify, or otherwise, according to the circumstances of the case, and to be further dealt with according to law: *Section 72(2)(e);*
- It remains in force until executed: *Section 72(3);*
- It may be issued and executed on a Sunday: *Section 73(1);*
- The police or other constable executing the warrant must, prior to making the arrest, inform the person to be arrested that there is a warrant for his apprehension, unless there is a reasonable cause for abstaining from giving that information on the ground that it is likely to occasion escape, resistance, or rescue: *Section 73(2);*
- It is not necessary for the police or other constable executing the warrant to have it in his possession; but if he does, he must, upon request to show it to the person arrested or to be arrested: *Section 73(3);*
- Any police or constable authorised to execute a warrant may, for the purpose of executing it, either with or without assistance from any other person or persons, break open and enter any house, building, or enclosed place, if admittance cannot otherwise be obtained. This is provided that in such a case such police or constable must be in possession of the warrant, and prior to doing so he must, as far as is practicable, notify his possession thereof: *Section 73(5).*

JAMAICA

The Justices of the Peace Jurisdiction Act, Section 3, states that upon an information being laid for any offence punishable on summary conviction before a justice or justices, if he or they think fit, upon oath or affirmation being made before him may, instead of issuing a summons, issue a warrant for the apprehension of such person in the first instance against whom such information have been laid. The warrant for apprehension shall order that such person be brought before the same justice or justices or before some other justice or justices in and for the same parish, to answer to the said information, and to be dealt with further according to the law.

The Justices of the Peace Jurisdiction Act, Section 29, states that where a charge or complaint is made to any justice or justices for any parish that:

- Any person has committed, or is suspected to have committed, any treason, felony, or indictable misdemeanour or other indictable offence within the jurisdiction of such justice or justices;

- Any person guilty or suspected to be guilty of having committed the above-mentioned crimes outside the jurisdiction of such justice or justices, and is residing or being, or is suspected to reside or be within the jurisdiction of such justice or justices, then a warrant to apprehend such person and bring him before such justice or justices or any other justice or justices for the same parish shall be issued in the event that such person is not already in custody;
- For indictable offences, the information or complaint must be in writing and upon the oath or affirmation of the informant or witnesses in that behalf: *The Justices of the Peace Act, Section 31.*

Other characteristics and features of a warrant of apprehension under *The Justices of the Peace Jurisdiction Act, Section 4,* include:

- It shall be under the hand or hands of the justice or justices issuing the same;
- It may be directed either to any constable or other person by name or generally to the constable of the parish within which the same is to be executed without naming him, or to such constable and all other constables within the parish of the issuing justice or justices who has jurisdiction, or generally to all constables within such parish;
- It shall state shortly the matter of the information or complaint on which it is founded;
- It shall name or otherwise describe the person against whom it has been issued;
- It shall order the constable or other person to whom it is directed to apprehend the defendant and to bring him before on or more justice or justice of the same parish to answer to the information or complaint and to be dealt with further according to the law.

The Justices of the Peace Jurisdiction Act, Section 30, also provides that an arrest warrant may be issued on any day.

The Constabulary Force Act, Section 16, states that an arrest warrant may be executed by any constable at any time notwithstanding that the warrant is not in his possession at the time, but on the demand of the person apprehended, the warrant shall be shown to him as soon as possible subsequent to his arrest.

MONTSERRAT

A person or a police officer, who has reasonable and probable cause to believe that an offence has been committed by any person may make a complaint to a magistrate.[11] Upon receiving a complaint, a magistrate, shall draw up or cause to be drawn up and shall sign a formal charge.[12] After drawing up the charge, the magistrate may issue either a summons or an arrest warrant to compel the attendance of the accused before the Magistrate's Court. An arrest warrant shall not be issued in the first instance unless the complaint has been supported by an oath, either by the complainant or by a witness.[13]

[11]Montserrat – Criminal Procedure Code No. 9 of 2010 Section 25
[12] Montserrat – Criminal Procedure Code No. 9 of 2010 Section 26
[13] Montserrat – Criminal Procedure Code No. 9 of 2010 Section 27(2)

Some characteristics and features of an arrest warrant include:

- An arrest warrant may be issued at any time on any day, and shall be under the hand and seal of the magistrate or justice of the peace by whom it is issued: *Criminal Procedure Code, No. 9 of 2010, Section 32(1);*
- A warrant may be executed by any one or more police officers: *Criminal Procedure Code, No. 9 of 2010, Section 34(1);*
- In the exercise of the powers conferred by an arrest warrant, a police officer may enter (if need be, by reasonable force) and search any place where that person is or where the police officer, with reasonable cause, believes him to be: *Criminal Procedure Code, No. 9 of 2010, Section 34(2);*
- A warrant shall remain in force until executed or cancelled by the magistrate or justice of the peace who issued it or by order of a court which has jurisdiction in the matter: *Criminal Procedure Code, No. 9 of 2010, Section 35(1);*
- A court may discharge an unexecuted arrest warrant for good cause shown: *Criminal Procedure Code, No. 9 of 2010, Section 35(2).*

The personal attendance of an accused person before the court to answer a summons alleging an offence may be dispensed with in specified circumstances. A warrant shall not be issued in a case in which the summons is one in respect of which a written plea of guilty in absentia has been entered and the penalty paid.[14]

ST. KITTS AND NEVIS

The *Magistrate's Code of Procedure Act, Chap. 3.17, Section 37,* provides that where a charge is made in respect of an offence punishable either on indictment or on summary conviction, the magistrate, if he thinks it expedient that a warrant be issued in the first instance, may take an information and require such evidence in that behalf which is necessary to substantiate the information.

The magistrate may issue the warrant notwithstanding that a summons in respect of the matter charged has been issued at any time before the time of appearance mentioned in the summons.

Some characteristics and features of a warrant under the *Magistrate's Code of Procedure Act, Chap. 3.17,* include:

- It shall be issued by a magistrate to apprehend any person at any time or on any day and shall be under the hand and seal of the magistrate: *Section 40;*
- It may be directed to a member of the police force and to all peace officers of the State: *Section 40;*
- It shall state shortly the act charged and name or otherwise describe the person to be apprehended: *Section 40;*
- It shall order the person or persons to whom it is directed to apprehend the person so named or described and bring him before the issuing magistrate or some other magistrate to answer the charge: *Section 40;*

[14] Montserrat – Criminal Procedure Code No. 9 of 2010 Section 36, 28(2)

- It may be executed by any peace officer in any part of the State without being backed by any other magistrate in any other district: *Section 41;*
- The person shall be brought before the issuing magistrate or any other magistrate who shall either commit him to prison or to the custody of the officer apprehending him or to such other safe custody as he thinks fit: *Section 42;*
- The magistrate may order him to be brought up at a certain time and place before him, and shall give notice of the order to the person laying the information or complaint but no committal under this section shall exceed one week: *Section 42.*

ST. LUCIA

The *Criminal Code, Chap. 3.01, Section 676,* provides that where a complaint is made in writing and on oath before a magistrate in respect of a summary offence, the magistrate may, where good cause is shown to him or her for doing so may, instead of issuing a summons, issue a warrant in the first instance to arrest the person against whom such complaint is made, and to bring him before the magistrate to answer the complaint, and to be dealt with further according to the law.

The *Criminal Procedure Rules, 2015,* state that:

- The court has immediate jurisdiction over a person accused of committing an offence when the person is arrested with an arrest warrant: *rule 3.15(b);*
- Where there are arrest warrants that are unexecuted for 30 days a magistrate may enquire of the status of such warrants from the Commissioner of Police, and the court may discharge an unexecuted warrant for good cause shown: *rules 4.8(2), 4.9;*
- Where a warrant for the arrest of a defendant remains unexecuted for 12 months after the date of issue, the case will be placed on inactive list and will be reactivated upon the warrant being executed: *rule 4.10.*

Some characteristics and features of a warrant for arrest under the *Criminal Code, Chap. 3.01,* include:

- Unless the contrary is expressly provided under any other enactment, it shall bear the date of the day on which it is issued and shall be signed by the magistrate by whom it is issued: *Section 578(1);*
- It shall not be signed in blank: *Section 578(2);*
- It may be directed either to a police officer by name, or to any police officer by name, or to any police officer or generally to all police officers: *Section 578(4);*
- It may be executed by a police officer named in the warrant, or by any one of the police officers to whom it is directed: *Section 578(5);*
- It shall briefly state the offence or matter for which it is issued: *Section 578(6)(a);*
- It shall state the name or otherwise describe the person to be arrested: *Section 578(6)(b);*
- It shall order the police officer, or police officers, to whom it is directed to arrest the person to bring him before a magistrate, to answer to the charge and to be dealt with further according to the law: *Section 578(6)(c);*

- The Commissioner of Police shall cause copies of warrants to be made and to certify such copies which shall be considered as valid as the original warrant: *Section 579(2);*
- It may be issued and executed on any day of the week including a Sunday or a public holiday: *Section 580;*
- Any police officer authorised to execute a warrant may, in executing it, either with or without the assistance from any other person or persons, break open and enter any house, building, or enclosed place: *Section 581(1);*
- In executing a warrant in the circumstances described in *Section 581(1),* the police officer must, as far as practicable, inform the occupier of the premises that he or she is in possession of a warrant, or that a warrant has been issued for his arrest or of a person suspected to be on such premises: *Section 581(2);*
- It is not necessary for the police officer executing a warrant to have it in his possession, but if he has it, he must, on request show it to the person arrested or to be arrested: *Section 582(1);*
- Before a police officer executes a warrant, he shall inform the person to be arrested that there is warrant for his arrest; but such information may not be given on the ground that is likely to occasion the escape, resistance or rescue of the person: *Section 582(2).*

The court shall transmit an arrest warrant to the police by hard copy or by electronic means: *Criminal Procedure Rules, 2015, rule 3.16(1).*

A printed copy of an arrest warrant transmitted by the court to the police via electronic means is a valid copy: *Criminal Procedure Rules, 2015, rule 3.16(2).*

The court shall transmit a copy of each arrest warrant to the Director of Public Prosecutions and may so electronically: *Criminal Procedure Rules, 2015, rule 3.17.*

ST. VINCENT AND THE GRENADINES

The *Criminal Procedure Code, Chap. 172, Section 71(1),* provides that upon receiving a complaint and the charge have been duly signed, a magistrate may issue a warrant of arrest to compel the accused before a magistrate's court provided that such warrant shall not be issued in the first instance unless the complaint is supported by the oath of the complainant or of a witness.

Some characteristics and features of a warrant of arrest under *Criminal Procedure Code, Chap. 172, Section 72,* include:

- It may be issued at any time on any day;
- It shall be under the hand and seal of the judicial officer by whom it issued;
- It shall shortly state the offence with which the person against whom it is issued is charged, or other reason for arrest;
- It shall name or otherwise describe the abovementioned person and shall order the police officers to whom it is directed to bring him or her before a Magistrate's Court to answer the charge;

- It shall be executed by any one or more police officers;
- The judicial officer issuing the warrant may at the same time or later issue one or more duplicate warrants, and the Commissioner of Police may also certify and issue copies of any warrant he has received. Any duplicate warrant or certified copy as aforesaid shall be deemed of the same force and effect as the original;
- In the executing a warrant of arrest, a police officer may enter, by force if necessary and search any place where that person is or where the police officer reasonable believes him to be.

TRINIDAD AND TOBAGO

The *Summary Courts Act, Chap. 4:20, Section 45,* states that where a complaint in writing is made before a magistrate for any summary offence, the magistrate may upon oath being made before him to substantiate the complaint, instead of issuing a summons, issue a warrant in the first instance to apprehend the person against whom such was made and to bring him before the court to answer the same, and to be dealt with further according to the law.

Under the *Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, Section 6,* a magistrate may issue a warrant where a complaint has been made to him or her that an indictable offence has been committed by any person whose appearance he has power to compel, and he is of the opinion that a case for issuing such a warrant has been made out. The magistrate may issue a warrant of apprehension in the first instance where there is a complaint in writing made upon oath, and he is of the opinion that a case for such warrant has been established.[15]

Some characteristics and features of a warrant of arrest include:

- Unless the contrary is expressly provided under any other written law a warrant shall bear the date of the issue and shall be signed the issuing magistrate or Justice: *Summary Courts Act, Chap. 4:20, Section 106(1);*
- It shall not be signed in blank: *Summary Courts Act, Chap. 4:20, Section 106(2):*
- It shall be directed to all constables: *Summary Courts Act, Chap. 4:20, Section 106(4);*
- It may be executed by any constable: *Summary Courts Act, Chap. 4:20, Section 106(5);*
- It shall state concisely the offence or matter for which it is issued, and shall name or describe the person to be arrested: *Summary Courts Act, Chap. 4:20, Section 106(6);*
- It shall order the constables to whom it is directed to apprehend the aforementioned person and bring him before the court to answer the said information or statement, or to testify, or otherwise, according to the circumstances of the case, and be dealt with further in accordance to the law: *Summary Courts Act, Chap. 4:20, Section 106(6);*
- Any warrant of apprehension may be issued and executed on a Sunday: *Summary Courts Act, Chap. 4:20, Section 108(1);*

[15] Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 section 8(1)

- The constable executing such a warrant shall, prior to making the arrest, inform the person to be arrested that there is a warrant for his apprehension, unless there is reasonable cause for not giving such information as it is likely to occasion escape, resistance, or rescue: *Summary Courts Act, Chap. 4:20, Section 108(2);*
- It shall not be necessary for the constable executing the warrant to have it in his possession; but if he does, he shall, upon request, show it to the person arrested or to be arrested: *Summary Courts Act, Chap. 4:20, Section 108(3);*
- Any constable authorised to execute a warrant may, in executing it, either with or without the assistance from any other person or persons, break open and enter any house, building, or enclosed place, in the event that admittance cannot be otherwise obtained. However, in such a case he shall be in possession of the warrant, and prior to doing shall notify his possession of the warrant, as far as practicable to do so: *Summary Courts Act, Chap. 4:20, Section 108(5).*

The court may issue or withdraw a warrant without giving the respective parties an opportunity to make representation and without hearing, or at a hearing in public or in private: *The Criminal Procedure Rules, 2016, rule 5.4(2).*

Where appropriate the court may inform the parties and participants that it has done so as the court may deem necessary: *The Criminal Procedure Rules, 2016, rule 5.4(3).*

A warrant may be issued in respect of more than one offence: *The Criminal Procedure Rules, 2016, rule 5.4(4).*

Arrest Without Warrant or Summary Arrest

Police officers or constables and/or private citizens have the power to arrest a person without a warrant. It may be exercised where a person has either been found committing an offence or, is reasonably suspected to have committed an offence or is about to commit an offence. Upon such an arrest, the arrestor shall take or cause the arrestee to be taken forthwith before a magistrate to be dealt with according to the law.

ANGUILLA

Arrestable offences are those for which a sentence is fixed by law or for which a person (not previously convicted) may be sentenced to a term of imprisonment of five years or longer, and includes attempts to commit such offences.[16] Where an offence is triable either way, and is punishable by imprisonment for five years or more if tried on indictment, it shall be deemed to be an arrestable offence notwithstanding that it would be punishable by a lesser sentence if tried summarily.[17]

Instances in which an arrest without warrant may be lawfully performed include:

- Any person may arrest, without a warrant, anyone who is, or whom he, with reasonable cause suspects to be, in the act of committing an arrestable offence: *Anguilla Criminal Code, Chap. C140, Section 365(2);*
- Where an arrestable offence has been committed, any person may arrest without warrant, anyone who is or whom he with reasonable cause suspects to be, guilty of the offence: *Anguilla Criminal Code, Chap. C140, Section 365(3);*
- A police officer, who has reasonable cause to suspect that an arrestable offence has been committed, may arrest without warrant, anyone whom he with reasonable cause suspects to be guilty of the offence: *Anguilla Criminal Code, Chap. C140, Section 365(4);*
- A police officer may arrest, without warrant, any person who is, or whom he, with reasonable cause, suspects to be, about to commit an arrestable offence: *Anguilla Criminal Code, Chap. C140, Section 365(5).*

For the purposes of performing an arrest without warrant, a police officer may enter, if need be by force, and search any place where that person is with reasonable cause suspected to be.

ANTIGUA AND BARBUDA

Instances in which an apprehension or arrest without a warrant may be lawfully performed include[18]:

- Where any person is found committing any offence, he may be immediately apprehended by any constable, peace officer, owner of the property in respect to which the offence is being committed or by his servant, or any other person authorized by such owner: *Criminal Procedure Act, Chap. 117, Section 3;*
- Where any private person finds another committing an indictable offence at night, he may apprehend such person and convey or deliver him to a constable, or other person in order that he may be taken, as soon as it's convenient, before a magistrate: *Criminal Procedure Act, Chap. 117, Section 5;*

[16] Anguilla – Criminal Code Chapter C140 section 365 (1)
[17] Anguilla – Criminal Code Chapter C140 section 366
[18] Criminal Procedure Act, Chap.117 Section 7: Any proceedings where an offender is brought before the magistrate shall subject to any special provision contained in any Act relating to the particular offence charged be regulated by the provisions of the Magistrate's Code of Procedure Act, relating to the summary jurisdiction (criminal) of Magistrates

- Where any person is offered any property or goods for sale, or for such property to be pawned and delivered and he has reasonable cause to suspect has been stolen, he may, and, if within his power he shall apprehend the person offering the same and carry him before a Magistrate together with such property: *Criminal Procedure Act, Chap. 117, Section 4;*
- A constable or peace officer may arrest any person and take into custody any person who is found loitering or lying on the highway, yard or other place during the night, where there is good cause to suspect has committed or about to commit a felony and to be brought before the magistrate to be dealt with according to law; provided that the detention shall not exceed 48 hours: *Criminal Procedure Act, Chap. 117, Section 6;*
- A constable may arrest any person who he sees committing trespassing on land and premises: *The Small Charges Act Chap. 405, Section 4.*

A police officer may also effect an arrest without a warrant under the following Acts:

- *The Misuse of Drugs Act, Chap. 283, Sections 23, 24;*
- *The Firearms Act, Chap. 171;*
- *The Immigration and Passport Act, Chap. 208, Sections 3(5),(6)*[19]*;*
- *The Larceny Act, Chap. 241, Section 43.*[20]

BARBADOS

Certain instances where a summary arrest can be exercised are as follows:

Arrestable offences[21]

- Any person may summarily arrest any person who is, or whom he, with reasonable cause, suspects to be, in the act of committing an arrestable offence: *Criminal Law (Arrestable Offences) Act, Chap. 125A, Section 4(2);*
- Where an arrestable offence has been committed, any person may summarily arrest anyone who is, or whom he, with reasonable cause, suspects to be guilty of the offence: *Criminal Law (Arrestable Offences) Act, Chap. 125A, Section 4(2), Section 4(3);*
- Where a police officer reasonably suspects that an arrestable offence has been committed, he may summarily arrest anyone whom he, reasonably suspects to be guilty of such offence: *Criminal Law (Arrestable Offences) Act, Chap. 125A, Section 4(4);*
- A police officer may arrest without warrant any person who is, or whom he, with reasonable cause, suspects to be, about to commit an arrestable offence: *Criminal Law (Arrestable Offences) Act, Chap. 125A, Section 4(5);*

[19] The immigration Officer may arrest and shall have all the powers, privileges, protections and authorities conferred by law on a police officer for and in relation to the investigation of offences.
[20] Any person may make an arrest where any offence has been committed under that Act, except for an offence under section 36 - Threatening to publish with the intent to extort)
[21] Under section 2 of the Criminal Law (Arrestable Offence) Act, Chap.125A an arrestable offence is an offence for which the sentence is fixed by law and one for which a person may by virtue of any enactment be sentenced to 5 or more years imprisonment

- A police officer may pursue a person arrested under this section into any building or other place to which that person has fled and enter the building or other place, if need be by force, and search any such building or place where that person is: *Criminal Law (Arrestable Offences) Act, Chap. 125A, Section 4(6).*

Non - arrestable offences[22]

A police officer who reasonably suspects that a non arrestable offence has been committed or attempted, may arrest the suspect if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied: *Criminal Law (Arrestable Offences) Act, Chap. 125A, Section 5(1).*

Certain arrest conditions must exist for a police officer to make an arrest for a non arrestable offence, these are listed under *Criminal Law (Arrestable Offence) Act, Chap. 125A, Section 5(3)*[23]:

- Any person found committing a summary offence may be taken into custody without a warrant by a police officer or parish constable or may be apprehended by the owner of the property on which the offence is committed, or by his servant, or any other person authorized by such owner: *Magistrate's Court Act, Chap. 116A, Section 76(1);*
- Every police officer or parish constable may stop, search and detain any vessel, boat, cart or carriage, or other vehicle in or upon which there is reason to suspect that anything stolen or unlawfully obtained may be found and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained: *Magistrate's Court Act, Chap. 116A, Section 76(2);*
- Where any person is offered any property for sale or for such property to be pawned and delivered and which he has reasonably suspects to have been stolen, he shall apprehend and detain the person offering the same and deliver him into the custody of the police or parish constable together with such property: *Magistrate's Court Act, Chap. 116A, Section 76(3).*

A police officer may also effect an arrest without a warrant under the following Acts:

- *Police Act, Chap. 167, Section 20;*
- *Firearms Act, Chap. 179, Section 28.*

[22] Only a police officer has the power to arrest without a warrant (Criminal Law (Arrestable Offence) Act, Chap.125A, section 5)

[23] Some of the general arrest conditions under the (Criminal Law (Arrestable Offence) Act, Chap.125A, section 5(3) include: (a) the relevant person's name is unknown to and cannot be readily ascertained by the police officer; (b) the police officer has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name; (c) that the relevant person has failed to furnish a satisfactory address for service, or the police officer has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service

BELIZE

Some instances where an apprehension or arrest without a warrant can be exercised are as follows:

Summary offence

- Where any person is found committing any offence punishable on summary conviction he may be taken into custody by any police officer or may be apprehended by the owner of the property on which the offence is committed or by his servant or any other person authorized by such owner and shall in the latter case be delivered as soon as possible into the custody of a police officer, to be dealt with according to law: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 95(1).*

Indictable offence

- Where a person is found committing any crime he may be apprehended and arrested by anyone without a warrant if that crime has actually been committed or if the person arrested is being pursued by hue and cry, but not otherwise: *Indictable Procedure Act, Chap. 96, Section 177(1);*
- Where any person who is offered any property to be sold, pawned or delivered, and who has reasonable ground to suspect that a crime has been or is about to be committed thereon or with respect thereto may and if he can shall, apprehend the person offering the property, and take possession of the property so offered: *Indictable Procedure Act, Chap. 96, Section 177(2);*
- Where any person who finds anyone in possession of property which he reasonably suspects to have been obtained by any crime may arrest that person and take possession of the property: *Indictable Procedure Act, Chap. 96, Section 177(3);*
- Where a person who arrests any person under this section shall, if the person making the arrest is not himself a peace officer, deliver the person arrested to a police officer, in order that he may be conveyed as soon as reasonably may be before a magistrate, to be dealt with by the magistrate according to law, or himself convey him before a magistrate as soon as reasonably may be: *Indictable Procedure Act, Chap. 96, Section 177(3).*

A police officer may also effect an arrest without a warrant under the following legislations:

- *Firearms Act, Chap. 143, Section 22;*
- *Misuse of Drugs Act, Chap. 103, Section 26;*
- *Police Act, Chap. 138, Section 42(1).*

DOMINICA

Some instances in which apprehension or arrest without a warrant can be performed are as follows:

- Where any person is found committing any offence, he or she may be immediately apprehended by any constable, peace officer, owner of the property on which the offence is being committed, or by his servant, or any other person authorized by such owner: *Criminal Law and Procedure Act, Chap. 12:01 Section 8(1);*
- Any person to whom any property is offered to be sold, pawned or delivered, and who has reasonable ground to suspect that an offence has been or is about to be committed with respect thereto may, and if he can shall, apprehend the person offering the property, and take possession of the property so offered: *Criminal Law and Procedure Act, Chap. 12:01, Section 9;*
- Where any private person finds another committing an indictable offence at night, he may apprehend such person and convey or deliver him to a constable, or other person in order that he may be taken before a magistrate: *Criminal Law and Procedure Act, Chap. 12:01, Section 10;*
- Any constable or peace officer may, without a warrant, take into custody any person whom he finds loitering or lying in any highway, yard or other place during the night, and whom he has good grounds to suspect of having committed, or being about to commit any felony: *Criminal Law and Procedure Act, Chap. 12:01, Section 11;*
- Any person may arrest anyone who is, or whom he reasonably suspects to be in the act of committing a felony or to be about to commit a felony: *Criminal Law and Procedure Act, Chap .12:01, Section 12(2);*
- Where a felony has been committed, any person may arrest anyone who is, or whom he reasonably suspects to be guilty of the offence: *Criminal Law and Procedure Act, Chap. 12:01, Section 12(3);*
- Where a constable reasonably suspects that a felony has been committed, he may arrest anyone whom he with reasonable cause suspects to be guilty of the offence: *Criminal Law and Procedure Act, Chap. 12:01, Section 12(4);*
- A constable may arrest any person who is, or whom he reasonably suspects to be about to commit a felony: *Criminal Law and Procedure Act, Chap. 12:01, Section 12(5).*

A police officer may also effect an arrest without a warrant under the following Acts:

- *Small Charges Act, Chap. 10:39;*
- *Firearms Act, Chap. 15:31.*

GRENADA

Some instances in which an arrest without a warrant can be lawfully performed include:

Summary offence

Whoever is found committing any summary offence against the person or against property may be arrested, without warrant, by any constable, or by any person whom a constable may

call to his assistance, or by the owner of the property on or with respect to which the offence is committed, or by his servant or any other person authorised by him: *Criminal Procedure Code, Chap. 72B, Section 8.*

Indictable offence

- Any person may arrest a person found committing any indictable offence: *Criminal Procedure Code, Chap. 72B, Section 9(1);*
- Any person may arrest a person who has in fact committed an indictable offence, or who is being pursued by hue and cry, but not otherwise: *Criminal Procedure Code, Chap. 72B, Section 9(2);*
- Any person to whom any property is offered to be sold pawned or delivered, and who reasonably suspects that any indictable offence has been or is about to be committed on or with respect to such property, may, and if he or she can, shall arrest the person offering it, and take possession thereof: *Criminal Procedure Code, Chap. 72B, Section 9(3);*
- Any person who finds a person in possession of any property which he or she, upon reasonable grounds, suspects to have been obtained by any indictable offence, may arrest such person and take possession of such property: *Criminal Procedure Code, Chap. 72B, Section 9(4).*

A police officer may also effect an arrest without a warrant under the following Acts:

- *Police Act, Chap. 244;*
- *Drug Abuse (Prevention and Control) Act, Chap. 84A.*

GUYANA

Instances in which a person may be lawfully arrested without a warrant include:

Summary offence

- Any person found committing a summary offence against a person or property may be arrested by any police or other constable, or by the owner of the property on or with respect to which the offence is committed, or by his or her servant or any other person authorized by him or her: *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 70.*

Indictable offence

- A person who actually committed an indictable offence or if such person being arrested is being pursued by hue and cry, but not otherwise: *Criminal Law (Procedure) Act, Chap. 10:01, Section 198(1);*
- A person offering to sell to him or her property to which he (the arrestor) reasonably suspects that an indictable offence has been or is about to be committed thereon, and shall take possession of the property so offered: *Criminal Law (Procedure) Act, Chap. 10:01, Section 198(2);*

- A person whom he reasonably suspects is in possession of property obtained by an indictable offence, and he shall take possession of the same: *Criminal Law (Procedure) Act, Chap. 10:01, Section 198(2), Section 198(3).*

A police officer may also effect an arrest without a warrant under the following Acts:

- *Firearms Act, Chap. 16:05;*
- *Juvenile Offenders Act, Chap. 10:03;*
- *Prevention of Crimes Act, Chap. 9:01;*
- *Police Act, Chap. 16:01.*

JAMAICA

Some instances in which an apprehension or arrest without a warrant can be lawfully performed include:

- Any constable may apprehend any person found committing any offence punishable upon indictment or summary conviction and take him forthwith before a justice who shall enquire into the circumstances of the alleged offence: *The Constabulary Force Act, Section 15;*
- Any person found committing any offence punishable under the *Larceny Act,* except an offence under *Section 45* may be immediately apprehended without a warrant by any person and forthwith taken, together with the property, if any, before a parish court judge or justice to be dealt with according to law: *Larceny Act, Section 62(1);*
- Any person to whom any property is offered to be sold, pawned, or delivered, if he has reasonable cause to suspect that any offence has been committed against the Larceny Act with respect to such property, shall, if in his power, apprehend and forthwith take before a Parish Court judge or justice, together with such property: *Larceny Act, Section 62(2).*

A constable may also effect an arrest without a warrant under the following Acts:

- *The Firearms Act;*
- *The Towns and Communities Act.*

MONTSERRAT

Arrestable offences are those for which a sentence is fixed by law or for which a person (not previously convicted) may be sentenced to a term of imprisonment of 5 years or longer, and includes attempts to commit such offences.[24] Where an offence is triable either way, and is punishable by imprisonment for five years or more if tried on indictment, it shall be deemed to be an arrestable offence notwithstanding that it would be punishable by a lesser sentence if tried summarily.[25]

[24] Montserrat – Penal Code Chap. 4.02, section 319
[25] Montserrat – Penal Code Chap. 4.02, section 320

Certain instances where the power to arrest without warrant can be lawfully exercised include:

- Any person may arrest without a warrant anyone who is, or whom he, with reasonable cause suspects to be, in the act of committing an arrestable offence: *Montserrat – Penal Code, Chap. 4.02, Section 319(2);*
- Where an arrestable offence has been committed, any person may arrest without warrant anyone who is, or whom he, with reasonable cause suspects to be, guilty of the offence: *Montserrat – Penal Code, Chap. 4.02, Section 319(3);*
- Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of that offence: *Montserrat – Penal Code, Chap. 4.02, Section 319(4);*
- A police officer may arrest without warrant any person who is, or whom he, with reasonable cause, suspects to be, about to commit an arrestable offence: *Montserrat – Penal Code, Chap. 4.02, Section 319(5);*
- For the purposes of performing an arrest without warrant a police officer may enter, if need be by force, and search any place where that person is or where the police officer, with reasonable cause, suspects him to be.

A police officer may also arrest without warrant under the following Acts:

- *Firearms Act, Chap. 10.02, Section 30;*
- *Customs (Control and Management) Act, Chap. 17.04, Section 98.*[26]

ST. KITTS AND NEVIS

Certain instances where an apprehension or arrest without a warrant can be exercised are as follows:

- Where any person is found committing any offence punishable either on indictment or summary conviction, he or she may be immediately apprehended by any constable, peace officer, owner of the property on or with respect to which the offence is being committed, or by his servant, or any other person authorized by such owner: *Criminal Procedure Act, Chap. 4.06 Section 3;*
- Any person to whom any property is offered to be sold pawned or delivered, and who reasonably suspects that any offence has been committed with respect to such property, may, and, if he or she can, shall apprehend the person and such property: *Criminal Procedure Act, Chap. 4.06, Section 4;*
- Where any private person finds another committing an indictable offence at night, he may apprehend such person and shall convey or deliver him to a constable, or other person in order that he may be taken before a magistrate: *Criminal Procedure Act, Chap. 4.06, Section 5;*

[26] A customs officer may also arrest without warrant any person who has committed, or whom there are reasonable grounds to suspect of having committed, any offence for which he is liable to be arrested under a customs enactment.

- Any constable or peace officer may, without a warrant, take into custody any person whom he finds loitering or lying in any highway, yard or other place during the night, and whom he has good grounds to suspect of having committed, or being about to commit any indictable offence: *Criminal Procedure Act, Chap. 4.06, Section 6.*

A constable may also effect an arrest without a warrant under the following Acts:

- *Juvenile Act, Chap. 4.15;*
- *Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Chap. 9.08;*
- *Firearms Act, Chap. 19.05;*
- *Police Act 2003.*

ST. LUCIA

Under the *Criminal Procedure Rules, 2015, rule 3.15(b),* the court has immediate jurisdiction over a person accused of committing an offence when the person is arrested without an arrest warrant.

Some instances in which an apprehension or arrest without warrant be lawfully performed include:

- Any police officer may arrest anyone who is or whom he reasonably suspects to be in the act of committing or about to commit an offence (an indictable or summary offence, or an offence for which he (if not previously convicted) may be sentenced to imprisonment for 5 years, or attempts to commit any such offence): *Criminal Code, Chap. 3.01, Sections 570(1),(2);*
- Where a police officer reasonably suspects that an offence has been committed, he or she may arrest anyone whom he or she, with reasonable cause, suspects committed the offence: *Criminal Code, Chap. 3.01, Section 570(3);*
- A person may arrest any other person who is, or whom he or she, with reasonable cause suspects to be in the act of committing or about to commit or has committed an offence: *Criminal Code, Chap. 3.01, Sections 570(4),(5);*
- A police officer may arrest any person who is charged by another person with committing an offence if the person making the charge is willing to accompany the police officer to a police station to enter into a recognizance to prosecute such charge: *Criminal Code, Chap. 3.01, Section 570(6);*
- A person may arrest any other person whom he or she may see engaged in committing an affray and deliver him or her over to the custody of a police officer to be dealt with according to law: *Criminal Code, Chap. 3.01, Section 572;*
- Any person found committing[27] an indictable offence may be arrested by another person, if the person making the arrest has grounds to reasonably believe that such person may escape punishment, or may complete the commission of the offence if he or she is not arrested (*Section 573(1)*). Where the offence has actually been committed, or if such person is being pursued by a mob for committing such offence, any person may arrest him or her: *Criminal Code, Chap. 3.01, Section 573(2);*
- Any person found committing any offence against property may be arrested and taken

[27] Bolai v St Louis (1936) 6 WIR 453

into custody by any police officer, or of the owner of the property with respect to which the offence is committed, or by his or her employee or any other person authorised by him or her, and may in the latter case be detained for any period, not exceeding twenty-four hours, until he or she can be delivered into the custody of a police officer, to be dealt with according to law: *Criminal Code, Chap. 3.01, Section 574;*

- A person who finds any other person in possession of any property which he or she, has reasonable cause to suspect has been obtained by the commission of an offence, may arrest such person and take possession of the property: *Criminal Code, Chap. 3.01, Section 575;*
- Where a person to whom any property is offered for sale, pawned, or delivered reasonably suspects that any offence has been or is about to be committed with respect to such property, may arrest such person and take possession of the property: *Criminal Code, Chap. 3.01, Section 576.*

A police officer may also effect an arrest without a warrant under the following Acts:

- *Drugs (Prevention of Misuse) Act, Chap. 3.02;*
- *Firearms Act, Chap. 14.12.*

ST. VINCENT AND THE GRENADINES

Certain instances in which a police officer acting under the *Criminal Procedure Code, Chap. 172, Section 30,* may without an order from the magistrate or without a warrant, arrest any person include:

- Any person whom he suspects upon reasonable grounds of having committed an indictable offence;
- A person who commits in his presence any offence punishable by imprisonment;
- A person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;
- Any person where anything is found in his or her possession which may reasonably be suspected to be stolen property, or who may reasonably be suspected of committing, or having committed, an offence with reference to such thing;
- A person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of St. Vincent and the Grenadines which, if committed in St. Vincent and the Grenadines would have been punishable as an offence, and for which he is under the *Fugitive Offenders Act,* or any other law relating to extradition and in force in St. Vincent and the Grenadines, or otherwise liable to be apprehended and detained in St. Vincent and the Grenadines;
- Any person whom he suspects upon reasonable grounds of having in his possession, without lawful excuse, any implement of housebreaking;

- Any person in respect of whom he reasonably believes a warrant of arrest has been issued by a court of competent jurisdiction in St. Vincent and the Grenadines;
- Where a police officer knows of a design to commit any offence, he or she may arrest the person so designing it if it appears to such officer that the commission of such offence cannot otherwise be prevented.

A police officer in whose presence a person has committed or has been accused of committing a non- indictable offence, and such person refuses on such police officer's demand to give his name and residence, or gives such name or residence which the officer reasonably believes to be false, the police officer may arrest that person in order to ascertain his name or residence: *Criminal Procedure Code, Chap. 172, Section 31(1).*[28]

Instances in which a private person may lawfully perform an arrest without warrant include:

- Any private person may arrest any person who in his view commits an indictable offence, or whom he reasonably suspects of having committed an offence punishable with imprisonment for three years or more (provided that such offence has been committed): *Criminal Procedure Code, Chap. 172, Section 32;*
- Any person found committing any offence involving injury to property may be arrested by the owner of the property or his employees or persons authorised by him: *Criminal Procedure Code, Chap. 172, Section 33.*

A police officer may also effect an arrest without a warrant under the following Acts:

- *Firearms Act, Chap. 386;*
- *Drugs (Prevention of Misuse) Act, Chap. 284.*

[28] Unless the police officer is in uniform, he shall produce evidence of his identity before demanding a person's name and residence (Criminal Procedure Code, Chap.172, section 31(1))

TRINIDAD AND TOBAGO

Some instances in which an apprehension or arrest without warrant be lawfully performed include:

Summary offences

A person found committing a summary offence may be taken into custody by any constable, or apprehended by the owner of the property on or with respect to which such offence is committed, or by his servant or any other person authorised by him, and shall in the latter case be delivered forthwith into the custody of a constable: *Summary Courts Act, Chap. 4:20, Section 3.*

Arrestable offences[29]

- Any person may arrest anyone who is, or whom he, with reasonable cause, suspects to be, in the act of committing an arrestable offence: *Criminal Law Act, Chap. 10:04, Section 3(2);*
- Where an arrestable offence has been committed, a person may arrest anyone who is, or whom he reasonably suspects to be guilty of such offence: *Criminal Law Act, Chap. 10:04, Section 3(3);*
- Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he or she may arrest anyone whom he or she, with reasonable cause, suspects to be guilty of the offence: *Criminal Law Act, Chap. 10:04, Section 3(4);*
- A police officer may arrest any person who is, or whom he, with reasonable cause, suspects to be, about to commit an arrestable offence: *Criminal Law Act, Chap. 10:04, Section 3(5);*
- In effecting an arrest under *Section 3,* a police officer may enter (if need be, by force) any place where he has reasonable cause to suspect such person as above to be: *Criminal Law Act, Chap. 10:04, Section 3(6).*

A police officer may also effect an arrest without a warrant under the following Acts:

- *Police Service Act, Chap. 15:01;*
- *Larceny Act, Chap. 11:12;*
- *Domestic Violence Act, Chap. 45:56.*

Commentary

What is an arrestable offence?

An arrestable offence is one for which the sentence is fixed by law which carries a term of imprisonment of five years or more. Any person may arrest without a warrant any person whom he reasonably suspects to be committing an arrestable offence.

[29] An "arrestable offence" refers to any capital offence or offences for which a person (not previously convicted) may, or by virtue of any written law be sentenced to imprisonment for 5 years, and to attempts to commit any such offence (Criminal Law Act, Chap 10:04, section 3(1)).

How do we define "found committing"?

In **Bolai v St Louis (1963) 6 WIR 453,** the Court of Appeal of Trinidad and Tobago in considering the meaning of "found committing" held that the commission of the offence by the arrestee must have been actually witnessed by the arrestor for an arrest without a warrant to be made. The offence must have been in the arrestor's presence or the arrestee must have been caught in the act of committing an offence. The suspicion of an offence having been committed is insufficient. Therefore, for offences which require the accused to be caught in the act, or "found committing", the arrestor must witness the commission of the offence. Where an arrest without warrant is performed (by a private citizen) for any other reason, such arrest will be unlawful.

What is "reasonable cause to suspect"?

The meaning of what is 'reasonable grounds to suspect' is generally the same throughout the Commonwealth Caribbean countries.[30]

In determining what may amount to reasonable grounds for suspecting in the Commonwealth Caribbean, **Calliste v The Queen GD 1994 CA 8,** is instructive. The court referred to the common law definition in **Archbold Criminal Pleading and Practice** which states:

> *"Reasonable suspicion does not require certainty. The officer does not have to be satisfied beyond a reasonable doubt. Reasonable suspicion in contrast to mere suspicion must be founded on fact. There must be some concrete basis for the officer's suspicion related to the individual person concerned, which can be considered and evaluated by an objective third person. .... Reasonable suspicion may arise from suspicious behaviour of the person concerned or those with him. Reasonable suspicion cannot be supported on the basis simply of a higher than average chance that the person has committed or is committing an offence."* [31]

This is reflective of the standard that is applied to the term "reasonable cause to suspect". Recent Privy Council judgements have also addressed the threshold for reasonable cause to suspect. In **Trevor Williamson v The Attorney General of Trinidad and Tobago [2014] UKPC 29,** an appeal arising from a claim for malicious prosecution, the court stated:

> *"On the question of reasonable and probable cause, or the lack of it, a prosecutor must have 'an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent*

[30] Antigua and Barbuda- Michael et al v Attorney General, Commissioner of Police and Walters (Magistrate) AN UHCV 97 of 2008; Barbados - Pile v The Commissioner of Police; Belize - Dean Lindo v The Commissioner of Police and the Commandant of the Belize Defence Force Action No. 291 of 1981; Grenada - Calliste (Devon) v R (1994) 47 WIR 130, Simon v The Queen GD 1995 CA 11; St Kitts and Nevis - Everette Davis v The Attorney General of St. Christopher and Nevis SKBHCV 2013-0220; St Lucia - Danny Severin v The Attorney General SLUHCV 2008/0973; St Vincent and the Grenadines- Miller v The Commissioner of Police VC 2004 CA 12; Trinidad and Tobago- Trevor Williamson v The Attorney General of Trinidad and Tobago [2014] UKPC 29

[31] Archbold Criminal Pleading and Practice (1988) 43rd Ed. Pg. 1195

> *and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed': **Hicks v Faulkner (1878) 8 QBD 167, 171** per Hawkins J, approved by the House of Lords in **Herniman v Smith [1938] AC 305, 316** per Lord Atkin. The honest belief required of the prosecutor is a belief not that the accused is guilty as a matter of certainty, but that there is a proper case to lay before the court: **Glinski v McIver [1962] AC 726, 758** per Lord Denning.*[32]
>
> ....
>
> *The respondent did not accept that the Court of Appeal was right to conclude that the laying of the "wrong" charge deprived the prosecuting officer of reasonable and probable cause to prosecute. It submitted that, in any event, it was beyond argument that the reasonableness of an officer's suspicion at the time of arrest cannot be undermined by some defect in the charges eventually laid against the suspect. The Board accepts this submission, which was not challenged on behalf of Mr Williamson. In **Christie v Leachinsky** at **page 593** Lord Simonds said, "it is not an essential condition of lawful arrest that the constable should at the time of arrest formulate any charge at all, much less the charge which may ultimately be found in the indictment."*[33]
>
> *In* **Sandra Juman v The Attorney General of Trinidad and Tobago [2017] UKPC 3,** *the committee endorsed the test as stated by the Court of Appeal of Trinidad and Tobago:*
>
> *"The Court of Appeal accurately summarised the test of reasonable and probable cause in **Willers v Joyce Trinity Term [2016] UKSC 43** On appeal from: **[2015] EWHC 1315** at **para 54** which is "In order to have reasonable and probable cause, the defendant does not have to believe that the proceedings will succeed. It is enough that, on the material on which he acted, there was a proper case to lay before the court: **Glinski v McIver, per Lord Denning at 758-759.**"*

Whether the standard of reasonable cause to suspect is sufficient in all instances, either for an arrest made without warrant or retention of items found in an illegal search or items found that are not related to a search warrant done legally, is a subjective one and depends on the circumstances that exist at the time the offence is being committed or is about to committed.

[32] Trevor Williamson v The Attorney General of Trinidad and Tobago [2014] UKPC 29 at [11]
[33] Ibid at [21]

Bench Warrant

Antigua and Barbuda,[34] Barbados,[35] Belize,[36] Dominica,[37] Grenada,[38] Guyana,[39] Jamaica,[40] St. Kitts and Nevis,[41] St. Lucia,[42] St. Vincent and the Grenadines,[43] Trinidad and Tobago.[44]

A bench warrant refers to an order issued by a magistrate to a police officer to arrest a defendant or witness and bring him or her before the court. Such a warrant is issued when a defendant or witness have been summoned or properly notified of his or her required attendance at a specified time and place but fails to appear unless, the magistrate is satisfied that there is some lawful excuse for such failure to appear. Once the magistrate is satisfied on oath that the summons was duly served at a reasonable time prior to the court date or, that the person to whom it is directed wilfully avoids service a bench warrant may be issued. In the instance of a witness who fails to appear, the court must be satisfied upon oath that such witness is likely to give material evidence in the relevant matter and that a reasonable sum was paid or tendered or was ready to be paid or tendered to him for his expenses in that behalf.

Search Warrant

A search warrant is an order issued by a magistrate that authorizes the police officer to conduct a search of any building, ship, vehicle, aircraft, box, receptacle or place for evidence of a crime and to confiscate any such evidence found.

ANGUILLA

Where a magistrate is satisfied on evidence upon oath that there is reasonable cause to believe that any property whatsoever on or with respect to which an offence has been committed is in any place, he may grant a warrant to search that place for the property, and, if it or any part of it is found there, to bring it before the magistrate.[45]

- A search warrant may be issued and executed at any time and may be issued and executed on a Sunday: *Magistrate's Code of Procedure Act, Chap. M5, Section 38(2);*
- A magistrate may, where satisfied by evidence on oath, issue a warrant for the search seizure and detention of any prohibited publication, where there is reasonable cause to believe such publication is in any place: *Criminal Code, Chap. C140, Sections 64, 66, 70;*
- Search warrants may also specifically issue for gunpowder or any other explosive,

[34] Antigua and Barbuda- Magistrate Code of Procedure Act Chap.255 (defendant- section 31); (witness- section 193)
[35] Barbados- Magistrate's Courts Act Chap.116A (defendant- sections 29, 35, 53(2)); (witness- sections 126(2), (3))
[36] Belize- Summary Jurisdiction (Procedure) Act Chap.99 (defendant - 28(1)(c)); (witness- section 32)
[37] Dominica- Magistrate's Code of Procedure Act Chap 4:20 (defendant section 28); (witness- sections 166)
[38] Grenada- Criminal Procedure Code Chap.72B (defendant- section 73(c)); (witness- section 25)
[39] Guyana- Summary Jurisdiction (Procedure) Act Cap. 10:02 (defendant- section 13(1)(c)); (witness- section 17)
[40] Jamaica- Justice of the Peace Jurisdiction Act (defendant- sections 3, 12); (witness - section 47)
[41] St Kitts and Nevis- Magistrate's Code of Procedure Act Chap.3.17 (defendant - section 36); (witness- section 191)
[42] St Lucia- Criminal Code Chap.3.01 (defendant - section 690(1)(b)); (witness - section 794)
[43] St Vincent and the Grenadines- Criminal Procedure Code Chap.172 (defendant- section 80); (witness - section 94)
[44] Trinidad and Tobago- Summary Courts Act, Chap 4:20 (defendant- section 44); (witness- section 48)
[45] Anguilla - Magistrate's Code of Procedure Act Chap. M5 section 38(1)

dangerous or noxious substance or thing which is suspected to be made, kept or carried for the purpose of being used in committing an offence: *Criminal Code, Chap. C140, Section 86;*

- If it is made to appear by information on oath that there is reasonable cause to believe that any person has in his custody or under his control or on his premises anything which there is reasonable cause to believe is intended for use (without lawful excuse) to destroy or damage property belonging to another or to damage any property in any way likely to endanger the life of another, the magistrate or justice of the peace may grant a warrant authorising any police officer to search for and seize the thing: *Magistrate's Code of Procedure Act, Chap. M5, Section 319.*

A justice of the peace on being satisfied by information on oath that there is reasonable cause to believe that an offence under the *Firearms Act, Chap. F30,* is being or is about to be committed may grant a search warrant authorising any police officer named therein to enter at any time any place named in the warrant and to search the premises or place and every person found therein. The warrant authorises the police officer to seize any firearm or ammunition found therein and to arrest without warrant any person found on the premises or in the place whom he has reason to believe is guilty of an offence under the Act: *Firearms Act Chap. F30, Section 43.*

A police officer may stop without warrant any vehicle in which he suspects any firearm or ammunition is being conveyed and may search the vehicle, driver and any person conveyed therein: *Firearms Act, Chap. F30, Section 42.*

ANTIGUA AND BARBUDA

Where a magistrate is satisfied of evidence upon oath that there is reasonable cause to believe that any property with respect to which any larceny or other felony has been committed is in any place, a warrant to search such place or places for such property may be granted: *Magistrate's Code of Procedure, Chap. 255, Section 38(1):*

- Where the above-mentioned property or any part thereof is so found it shall be brought before the issuing magistrate or some other magistrate: *Magistrate's Code of Procedure, Chap. 255, Section 38(1);*
- A search warrant may be issued and executed at any time and day: *Magistrate's Code of Procedure, Chap. 255, Section 38(2);*
- A warrant or summons issued by a magistrate shall not be avoided by reason of the magistrate who signed the same dying or ceasing to hold office: *Magistrate's Code of Procedure, Chap. 255, Section 39;*
- It shall not be necessary that the magistrate who acts before or after the hearing of a case should be the magistrates by whom the case is or was heard and determined: *Magistrate's Code of Procedure, Chap. 255, Section 40.*

A police officer may also effect a search without a warrant under the *Firearms Act Chap. 171, Section 30*: Power to stop and search vehicles.

BARBADOS

On being satisfied upon oath, a magistrate may issue a search warrant to a police officer or parish constable where there are reasonable grounds for believing that there exist in any building, ship, boat, vehicle, box, receptacle or place anything: (a) In which an offence has been or is suspected to have been committed for which the offender may be arrested without warrant; or (b) For which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or (c) In which there is reasonable ground for believing is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant: *Magistrate's Courts Act, Chap. 116A, Section 84(1).*

- Anything seized as per subsection 1 above and brought before a magistrate, may be detained until the conclusion of the inquiry or case depending on the charge. However, where a person is committed for trial or sentence or an appeal is made, the magistrate may order such property to be further detained accordingly: *Magistrate's Courts Act, Chap. 116A, Section 84(3);*
- A search warrant may be issued and executed on a Sunday and shall be executed between the hours of 5am and 8pm; but the magistrate, in his discretion, may, authorise the constable to execute it at any hour: *Magistrate's Courts Act, Chap. 116A, Section 84(2);*
- The magistrate shall direct that any property seized where there is no committal, conviction or appeal filed be returned to the person from whom it was taken or dispose of, if required by law: *Magistrate's Courts Act, Chap. 116A, Section 84(4);*
- The magistrate shall direct that any forged banknote, paper, instrument or other thing the possession of which would amount to an indictable offence in the absence of lawful excuse is brought before him, be detained for production in evidence or to be dealt with otherwise: *Magistrate's Courts Act, Chap. 116A, Section 84(5);*
- Where under any warrant issued under subsection 1 there is brought before any magistrate any counterfeit coin or other thing the possession of which, with knowledge of its nature and without lawful excuse, is an offence, every such thing shall be delivered up to the Accountant- General or to any person authorised by him to receive the same as soon as it has been produced in evidence or as soon as it appears that it will not be required to be so produced: *Magistrate's Courts Act, Chap. 116A, Section 84(6);*
- Where the thing to be searched for is gunpowder or any other explosive or dangerous or noxious substance or thing, it shall be disposed of in the manner directed by any statute relating to such substance or thing or, in default of such direction, as the magistrate may order: *Magistrate's Courts Act, Chap. 116A, Section 84(7);*
- Where pursuant to subsection (3) any property is seized and is of such a nature as to change form during a lengthy period of detention the magistrate shall order that a photograph or other pictorial record be made of the said property, and that the property then be returned to the person from whom it was taken: *Magistrate's Courts Act, Chap. 116A, Section 84(8).*

A police officer may also effect a search without a warrant under the *Firearms Act, Chap. 179, Section 26(2)*: Where person is suspected to be in possession of firearms.

BELIZE[46]

On being satisfied upon oath, a magistrate may issue a search warrant to a police officer where there are reasonable grounds for believing that there exist in any building, ship, vehicle, box, receptacle or place anything:[47] (a) In which any offence has been or is suspected to have been committed where the offender may be arrested without warrant; or (b) for which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or (c) In which there is reasonable ground for believing is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant:

- Anything found as abovementioned shall be seized and carried before the issuing magistrate or some other magistrate: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 23(1); Indictable Procedure Act, Chap. 96, Section 20(1);*
- A search warrant may be issued and executed on a Sunday and shall be executed between the hours of 5 am and 8pm; but the magistrate may authorise the police officer to execute it at any hour: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 23(2); Indictable Procedure Act, Chap. 96, Section 20(2);*
- Anything seized as abovementioned and brought before a magistrate, may be detained and preserved until the conclusion of the inquiry or matter: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 23(3); Indictable Procedure Act, Chap. 96, Section 20(3);*
- However, where a person is committed for trial or sentence or an appeal is made, the magistrate may order such property to be further detained. Where this does not occur, the property should be returned unless ordered by law to be disposed: *Summary Jurisdiction (Procedure) Act, Chap. 99, Sections 23(3),(4); Indictable Procedure Act, Chap. 96, Sections 20(3),(4);*
- Where any forged banknote, banknote paper, instrument or other thing the possession of which would amount to an indictable offence in the absence of lawful excuse is brought before a magistrate, such magistrate may direct that such be detained for production in evidence or to be dealt with otherwise: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 23(5); Indictable Procedure Act, Chap. 96, Section 20(5).*

A police officer may also effect a search without a warrant under the *Firearm Act, Chap. 143,* and the *Prevention of Crimes Act, Chap. 106.*

[46] See Unicorn International Securities LLC v The Attorney General Claim No. 598 of 2014and Cheryl Schuh and Arthur Schuh v the Attorney General Claim No. 747 of 2011

[47] Summary Jurisdiction (Procedure) Act Chap.99, section 23(1) (note that under this Act aircraft is included in the category); Indictable Procedure Act Chap.96, section 20 (1)

DOMINICA

- Where a magistrate is satisfied on evidence upon oath that there is reasonable cause to believe that any property with respect to which any larceny or other felony has been committed is in any place, a warrant to search such place or places for such property may be granted: *Magistrate's Code of Procedure Act, Chap. 4:20, Section 35;*
- Where the above-mentioned property or any part thereof is so found it shall be brought before the issuing magistrate or some other magistrate: *Magistrate's Code of Procedure, Chap. 4:20, Section 35.*

A police officer may also effect a search without a warrant under the following Acts:

- *Firearms Act, Chap. 15:31;*
- *Customs Act, 2010.*

GRENADA

Where a magistrate is satisfied on oath, he may issue a search warrant to a constable where there are reasonable grounds for believing that in any building, ship, carriage, box, receptacle or place anything: (a) in which an offence has been or is suspected to have been committed where the offender may be arrested without warrant; or (b) for which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or (c) in which there is reasonable ground for believing is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant anything: *Criminal Procedure Code, Chap. 72B, Section 15(1):*

- Anything found as abovementioned shall be seized and carry before the issuing magistrate or some other magistrate: *Criminal Procedure Code, Chap. 72B, Section 15(1);*
- A search warrant may be issued and executed on a Sunday and shall be executed between the hours of 5 am and 8 pm; but the magistrate may, authorise the constable to execute it at any hour: *Criminal Procedure Code, Chap. 72B, Section 15(2);*
- Anything seized as abovementioned and brought before a magistrate, may be detained and preserved until the conclusion of the inquiry or matter. However, where a person is committed for trial or sentence or an appeal is made, the magistrate may order such property to be further detained. Where this does not occur, the property should be returned unless ordered by law to be disposed: *Criminal Procedure Code, Chap. 72B, Section 15(3);*
- Where under the warrant there is brought before a magistrate any forged banknote paper, instrument or any other thing, the possession whereof, in the absence of lawful excuse, is an indictable offence, the Magistrate may direct the same to be detained for production in evidence, or to be otherwise dealt with as the case may require: *Criminal Procedure Code, Chap. 72B, Section 15(4).*

A police officer may also effect a search without a warrant under the *Firearms Act, Chap. 105.*

GUYANA

On being satisfied upon oath, a magistrate may issue a search warrant to a police officer or constable where there are reasonable grounds for believing that there exist in any building, ship, carriage, box, receptacle or place anything[48] in which an offence has been or is suspected to have been committed where the offender may be arrested without warrant; or which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or in which there is reasonable ground for believing is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant.

- Anything found as abovementioned shall be seized and carry before the issuing magistrate or some other magistrate: *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 10(1); Criminal Law (Procedure) Act, Chap. 10:01, Section 50(1);*
- A search warrant may be issued and executed on a Sunday and shall be executed between the hours of 5 am and 8 pm; but the magistrate, may, authorise the constable to execute it at any hour: *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 10(2); Criminal Law (Procedure) Act, Chap. 10:01, Section 50(2);*
- Anything seized as abovementioned and brought before a magistrate, may be detained and preserved until the conclusion of the inquiry or matter. However, where a person is committed for trial or sentence or an appeal is made, the magistrate may order such property to be further detained. Where this does not occur, the property should be returned unless ordered by law to be disposed: *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 10(3); Criminal Law (Procedure) Act, Chap. 10:01, Section 50(3);*
- Where under the warrant there is brought before a magistrate any forged banknote paper, instrument or any other thing, the possession whereof, in the absence of lawful excuse, is an indictable offence, the magistrate may direct the same to be detained for production in evidence, or to be otherwise dealt with as the case may require: *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 10(4); Criminal Law (Procedure) Act, Chap. 10:01, Section 50(4).*

A police officer may also effect a search without a warrant under the: *Firearms Act, Chap. 16:05.*

JAMAICA

A search warrant may be issued in specific instances. For example, under the *Firearms Act,* on being satisfied by information on oath that there is reasonable ground for suspecting that an offence under the Act has been, is being, or is about to be committed, a justice may grant a search warrant authorizing any constable named therein:

[48] Summary Jurisdiction (Procedure) Act Cap.10:02 section 10(1); Criminal Law (Procedure) Act Cap.10:01, section 50(1); Misuse of Drugs Act Chap.103

- To enter at any time any premises or place named in the warrant, if necessary by force, and to search the premises or place and every person found therein;
- To seize any firearm or ammunition in which he may find on the premises or in the place, or on any such person, in respect of which or in connection with which he has reasonable grounds for suspecting that an offence under the Act has been, is being, or is about to be committed;
- To retain such firearm or ammunition for so long as may be necessary for the purpose of any investigation in relation thereto, and where such investigation results in legal proceedings against any person for any such offence, until such legal proceedings are finally disposed of: *The Firearms Act, Section 43(1).*

A constable making the search may arrest without warrant any person found on the premises or in the place whom he has reason to believe to be guilty of an offence under this Act other than an offence against: *Section 41: The Firearms Act, Section 43(2).*

MONTSERRAT

The *Criminal Procedure Code, 9 of 2010, Section 4,* states that if a court or magistrate or justice of the peace is satisfied by evidence on oath that there is reasonable cause to believe that property with respect to which an offence has been committed is in any place, the court, magistrate or justice of the peace may grant a warrant directed to a police officer or other person to enter and search the place in any part of Montserrat, by reasonable force if necessary, at any time.

- A search warrant shall be under the hand of the person issuing it and when issued by a court shall bear the seal of the court and may be issued on any day including a Sunday: *Criminal Procedure Code, 9 of 2010, Section 6(1);*
- A search warrant directed to a police officer may be executed by another police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed: *Criminal Procedure Code, 9 of 2010, Section 6(4);*
- If the property or any part of it is found, the police officer or person shall seize it and bring the same and the person in whose possession the place is, or a person in the place reasonably suspected of being privy to the property being therein, before the Magistrate's Court to be dealt with according to law: *Criminal Procedure Code, 9 of 2010, Section 4(2);*
- If a place liable to search under a search warrant, issued under *Section 4,* is closed, a person who resides in or is in charge of the place shall, on demand of the police officer or other person executing such warrant and on production to him of the warrant, allow such police officer or person free ingress and egress and afford all reasonable facilities for a search: *Criminal Procedure Code, 9 of 2010, Section 5(1);*
- If access cannot be obtained or the person in charge cannot be found, the police officer may use force that is reasonably necessary to break open any outer or inner door or window of the place in order to enter or leave: *Criminal Procedure Code, 9 of 2010, Section 5(2);*

- If a person in or about the place is reasonably suspected of concealing about his person any article for which search should be made, the person may be searched by a person of the same sex and with strict regard to decency: *Criminal Procedure Code, 9 of 2010, Section 5(3);*
- If anything is seized and brought before a court under powers conferred by any search warrant, it may be retained until the conclusion of the case of investigation in respect of which its seizure was authorized, reasonable care being taken for its preservation. The court may order its further detention if an appeal is made or the person concerned is committed for trial: *Criminal Procedure Code, 9 of 2010, Sections 5(4),(5).*

ST. KITTS AND NEVIS

- Where a magistrate is satisfied on evidence upon oath that there is reasonable cause to believe that any property with respect to which any larceny or other felony has been committed is in any place, a warrant to search such place or places for such property may be granted: *Magistrate's Code of Procedure Act, Chap. 3.17, Section 44(1);*
- Where the above-mentioned property or any part thereof is so found it shall be brought before the issuing magistrate or some other magistrate of the state: *Magistrate's Code of Procedure, Chap. 3.17, Section 44(1);*
- A search warrant may be issued and executed at any time, and may be issued and executed on a Sunday: *Magistrate's Code of Procedure, Chap. 3.17, Section 44(1).*

A police officer may also effect a search without a warrant under the *Firearms Act, Chap. 19:05.*

ST. LUCIA

Where a magistrate is satisfied upon oath, he may issue a search warrant under his hand to a police officer where there are reasonable grounds for believing that there exist in any building, ship, carriage, box, receptacle or place anything: (a) in which an offence has been or is suspected to have been committed; or (b) there is reasonable ground for believing will afford evidence as to the commission of any such offence; or (c) there is reasonable ground for believing is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant: *Criminal Code, Chap. 3.01, Section 622.*

- Anything found as abovementioned shall be seized and carry before the issuing magistrate or some other magistrate: *Criminal Code, Chap. 3.01, Section 622;*
- A search warrant may be issued and executed on any day including Sunday, or public holiday and at any hour: *Criminal Code, Chap. 3.01, Section 625;*
- A magistrate may issue a search warrant upon being satisfied, by proof on oath, that there is reasonable ground for believing that there is in any building, vessel, carriage, box, receptacle, or place: *Criminal Code, Chap. 3:01, Section 624;*
- Anything upon or in respect of which any offence has been or is suspected to have been any offence-related property.

The warrant authorizes a police officer to search the premises as stated above for any such thing and seize and bring it before the justice or other magistrate to be dealt with according to law.

Where the person searching is authorized to search computer systems in a place or building for data he may also search the computer systems for data and use or cause the system to be used, reproduce or cause to be reproduce any data in the form of a printout or other intelligible output or use or cause the system to be used for any copying equipment to make copies: *Criminal Code, Chap. 3:01, Section 624(2).*

The police authorized to execute the warrant may also use any device or investigative technique or procedure or do anything described in the warrant that would if not authorized would constitute an unreasonable search or seizure of a person or a person's property: *Criminal Code, Chap. 3:01, Section 624(4);* A warrant under this section may be issued by telephone or other means of telecommunication where it is impracticable for a police officer to appear personally to make an application for a warrant: *Criminal Code, Chap. 3:01, Section 624.*

The person executing the warrant may seize in addition to the things mentioned in the warrant that he believes on reasonable grounds has been obtained by or has been used in the commission or will afford evidence regarding any offence against the Code or other enactment: *Criminal Code, Chap. 3:01, Section 623.*

A police officer may also effect a search without a warrant under the *Firearms Act, Chap. 14.12.*

ST. VINCENT AND THE GRENADINES

Where a judicial officer is satisfied on oath there is reasonable cause to believe that any property whatsoever with or with respect to which an offence has been committed is in any place, such as a building, vessel, aircraft, vehicle, box, receptacle or locality, such officer may grant a search warrant directed to a police officer or other person to enter and search any place in any part of St. Vincent and the Grenadines by force if necessary at any time of day or night: *Criminal Procedure Code, Chap. 172, Section 41(1).*

- Where such property or any part thereof is found, such officer shall seize it and bring it to a Magistrate's Court to be dealt with according to the law: *Criminal Procedure Code, Chap. 172, Section 41(1);*
- The search warrant shall be set out according to the second schedule and shall be under the hand of the person issuing it and shall bear the seal of the court. It may be issued on any day including Sundays: *Criminal Procedure Code, Chap. 172, Section 41(3);*
- It shall remain in force until executed or until cancelled by the person or court issuing it: *Criminal Procedure Code, Chap. 172, Section 41(4);*
- It may be directed to one or more persons and may be executed by all or anyone or more of them: *Criminal Procedure Code, Chap. 172, Section 41(5);*
- A search warrant directed by a police officer may be executed by any other police officer whose name is endorsed on the warrant any the officer to whom it is directed or endorsed: *Criminal Procedure Code, Chap. 172, Section 41(6).*

A police officer may also effect a search without a warrant under the *Drugs (Prevention of Misuse) Act, Chap. 284.*

TRINIDAD AND TOBAGO

A magistrate may issue a search warrant where he is satisfied, by proof upon oath, that there is reasonable ground for believing that there is in any building, vessel, carriage, box, receptacle, or place anything in respect of which any summary offence has been or is suspected to have been committed; anything which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or anything which there is reasonable ground for believing is intended to be used for the purpose of committing any offence against the person punishable on summary conviction: *Summary Courts Act, Chap. 4:20, Section 41.*

- A search warrant may be issued to enter a premises or other place to search for evidence in relation to any summary offence. There must be reasonable grounds to warrant a search[49];
- The search warrant is issued upon information sworn on oath;
- The police must disclose all necessary information that the magistrate requires in order to discharge his duty;
- The warrant should be signed but in the event that it is not, the omission does not invalidate a subsequent charge;
- It is a common law practice that the warrant must be executed and read in occupier's presence or an adult who is on the premises in his absence;
- Where on searching the premises, property is found that does not relate to the specific crime for which the search warrant was issued[50] and there is reasonable ground for believing will afford evidence as to the commission of any other summary offence, such items may also be seized and the offender may be arrested without warrant;
- After the search, the back of the warrant should be endorsed by the police officer who must record what has been found and seized, the name of the persons present, noting the time and date of the search, this is called backing the warrant.

Commentary

Illegal Search

In all jurisdictions, a search warrant is necessary for the purpose of searching any premises where there are grounds for believing that there exists in that place, any offence in relation to an offence that has been or about to be committed. The warrant usually states what are the items to be located.

Subsequent to the search, any items which have been found and constitute evidence in relation to an offence may be seized by the police. There is a common law right of seizure: **Ghani v Jones [1970] 1 QB 693.**

[49] Ag v Williams et al (1997) 51 WIR 264, p 270.
[50] Chevalier v AG et al (1985) 38 WIR 240

Where a search is exercised with a warrant and items are found that are not related to the offence for which the warrant was granted, the police are entitled to retain them: **Malone V Commissioner of Police [1979] 1 All ER 256.**

Where a search is done without a warrant and items are found that may constitute a crime, these items can also be retained by the police: **Herman King v R [1969] 1 AC 304; Karuma v R [1955] 1 All ER 236 PC.** In cases such as this, the issue is whether the items seized, though relevant to a crime, would be received as evidence: **R v King JM 1966 CA 174.** It is for the judicial officer to exercise his or her discretion, to admit evidence obtained from an illegal search. In every criminal case, a judge has a discretion to disallow evidence, even if it is relevant, if its admission would operate unfairly against an accused.

In determining whether the admission of an item of evidence would operate unfairly against an accused, the judge is entitled to consider whether it had been obtained in an oppressive manner, by force or against the wishes of the accused or by false representations, trick, threats or bribes or anything of that sort. It is only if the shortcoming in the exercise of the power of search was evidence of oppression, force, false representations, trick, threats or the like, that a trial judge could be asked to exclude the evidence resulting from such a search.

In any event where a search has been done illegally, there is recourse through civil action against the police for trespass to premises or person but whatever evidence has been found will still be admitted where it is relevant to the crime.

Retention of seized goods

If goods are in the possession of a person, he has a right to possession on the face of it: **Field v Sullivan [1923] VLR 70.** This right may be suspended or temporarily divested in the event that the goods are seized by the police lawfully. If the police right to retain the goods comes to an end, the right to possession of the person from whom they were seized is revived. In the absence of evidence that another person is the owner of the seized goods, the person from whom the goods were taken is entitled to possession.

Retention before charge

In **Malone v Metropolitan Police Commissioner [1980] QB 49,** it was held that the police have no general power, "when they have lawfully seized property which is thereafter not the subject of any charge and is clearly shown not to have been stolen, to retain that property as against the person entitled to possession of it against some uncertain future contingency."[51] If the police wish to continue to detain the property, it must be justified upon a clearly ascertainable ground.

In **Ramdial v Commissioner of Police TT HC 2000/106,** the court, in referring to **Ghani v Jones [1970] 1 QB 693,** stated that where there is no pending charge and the item is removed from the possession of a person against whom a charge is not contemplated, the police have jurisdiction to detain such item for so long as it is reasonably necessary for them to complete their investigations.

[51] [1980] QB 49 at 70

In **Jaroo v Attorney General of Trinidad and Tobago [2002] 2 WLR 705,** the appellant, by way of appeal to the judicial committee of the Privy Council, sought a declaration that his constitutional rights had been infringed by the police detention of his vehicle pending investigations and the laying of charges. The Judicial Committee held that to justify continued detention of the car, the police had to show that there were reasonable grounds for its original and continuing retention. In the circumstances of that case, it meant the police must have had reasonable grounds to believe the vehicle was stolen, and additionally, had to be in a position to show that its continued detention was reasonably necessary to complete their investigations or to preserve it for evidence.

Retention after charge

In **Emraan Ali v The State CV 2012-02695,** a motor vehicle suspected to have been stolen was detained for further investigations more than 5 years after the initial charge was dismissed. The claimant's possessory title to the property had not been rebutted by evidence of superior title by anyone during that time, the police was not entitled to continue to retain the vehicle on the "uncertain future contingency" that they may yet establish that someone has superior title to the property over the claimant. The vehicle must be returned to the claimant. if it had been established that the vehicle was unlawfully obtained, while the "true owner" may have a better right than claimant, the police do not, and therefore have no right to retain the property. In **Nigel Lashley v Ag HC 1271/2009,** delivered 16th April 2012 (upheld by the Court of Appeal in **CA Civ 267/2011 on 25th August 2013**), where there was evidence as to the actual owner of stolen vehicle, this justified the police in detaining the vehicle and not returning it to the claimant but in delivering it to the actual owner who established legal ownership. This was a superior claim to the claimant's mere possession.

CHAPTER 3

PROCEDURES: OATHS, VULNERABLE DEFENDANTS

Oaths and Affirmations

What is an oath?

An oath is a sworn declaration, such as the promise to tell the truth in a court of law. It takes the form of the person swearing on their respective Holy Book that what they are about to say in court is the truth. It is the usual way to bind the conscience of the person making the oath however a witness may be sworn in any manner which is recognized as binding on his conscience.[1]

Where a person does not wish to swear to an oath, they must make an affirmation that what they are about to say is the truth.

What is an affirmation?

An affirmation is the process of affirming or declaring what is being said is the truth. Where a person objects to being sworn because of his religious belief, he shall be permitted to make his solemn affirmation instead of taking an oath, in all places and for all purposes. An affirmation has the same force and effect where an oath is or shall be required by law as if an oath had been taken and the penalties and other legal consequences for an oath is the same for an affirmation.[2]

The affirmation usually takes some form of the following words: *"I solemnly affirm that the evidence to be given by me shall be the truth, and nothing but the truth."* Written affirmations are permitted.

[1] R v Hines and King (191) 17 WIR 326
[2] Trinidad and Tobago Oaths Act Chap 7:01 sections 6, 7

ANGUILLA

Who can administer an oath?

Every court, judge, magistrate, officer, commissioner, arbitrator, or other person, having by law, or by consent of parties, authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively: *Evidence Act, Chap. E65, Section 23*.

How is an oath administered?

The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words – "*I swear by almighty God that .....*" followed by the words of the oath prescribed by law: *Oaths Act, Chap. O5, Section 2.*

How is an affirmation made?

Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath which shall be of the same force and effect as if he had taken the oath: *Oaths Act, Chap. O5, Section 3.*

Every affirmation shall be as follows: " *I, A.B., do solemnly, sincerely, and truly declare and affirm,*" and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witnesses: *Oaths Act, Chap. O5, Section 4.*

An affirmation in writing shall commence: " *I, ... , of ....., do solemnly and sincerely affirm,*" and the form in lieu of jurat shall be – "*Affirmed at ....., this ....., day of ....., Before me*."

Who may take an oath?

Every person offered as a witness may and shall be admitted to give evidence on oath, notwithstanding that such a person may or shall have an interest in the matter in question or, or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding, in which he is offered as a witness, and notwithstanding that such person offered may have been convicted of any crime or offence: *Evidence Act, Chap. E65, Section 3*.

Can a child make an oath?

For the purposes of the evidence act, a child is a person under 14 years of age. A child's evidence in criminal proceedings, shall be given unsworn. A deposition of a child's unsworn evidence may be taken for the purposes of criminal proceedings as if that evidence had been given under oath. The court shall receive a child's evidence unless it appears to the court that the child is incapable of giving intelligible testimony: *Evidence Act, Chap. E65, Section 10*.

Refusal to be sworn?

If any person attending court as a witness, either on his own recognizance, or in obedience to any subpoena, or by virtue of any warrant, or being present in court and being verbally required by the court to give evidence in any case, either refuses to be sworn, or having been sworn refuses to answer any questions put to him with the sanction of the court, or refuses or neglects to produce any document which he is required by the court to produce, and does not provide sufficient excuse for his refusal or neglect, the court may, if it thinks fit, adjourn the matter in the first instance for a period not exceeding eight days and in the meantime commit the person to prison: *Criminal Procedure Act, Chap. C150, Section 42(1).*

If he again refuses, at or before the adjourned trial, the court may, if it thinks fit, adjourn or postpone the trial and again commit him from time to time until he consents to do what is required of him: *Criminal Procedure Act, Chap. C150, Section 42(2).*

Every person guilty of refusal or neglect as described above is liable on summary order of the court, either in addition to or in lieu of that punishment, to a fine of $3,840.00, and in default of payment, to imprisonment for 2 months: *Criminal Procedure Act, Chap. C150, Section 42(3).*

ANTIGUA AND BARBUDA

Who can administer an oath?

Every court, judge, magistrate, officer, commissioner, arbitrator, or other person, who by law or by consent of parties, has the authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively: *Evidence Act, Chap. 155, Section 24.*

How is an oath administered?

Where an oath is being administered, the person may with uplifted hand swear as is done in the form and manner in Scotland and he shall say or repeat after the officer administering the oath, the words - "*I swear by Almighty God that .....*" followed by the words of the oath prescribed by law: *Oaths Act, Chap. 297, Section 3.*

How is an affirmation administered?

An affirmation is administered either orally in the form:

"*I, ..., do solemnly, sincerely, and truly declare and affirm*,' followed by the words of the oath prescribed by law, omitting any words of imprecation or calling to witness: *Oaths Act, Chap. 297, Section 5;*

or in writing in the form:

"*I ..... of ..... do solemnly and sincerely affirm*," and the form in lieu of jurat shall be ..... " *Affirmed at ..... this ..... day of, 19* Before me.": *Oaths Act, Chap. 297, Section 7.*

Who may take an oath?

All persons are eligible to give evidence on oath or by solemn affirmation according to the practice of the court, even where they may or shall have an interest in the matter in question or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding arising in any court or before any judge, magistrate or other authorized person to hear, in which he is offered as a witness and not- withstanding that such person offered may have been previously convicted of any crime or offence: *Evidence Act, Chap. 155, Section 3; Criminal Procedure Act, Chap. 117, Sections 45, 46*.

Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had no religious belief will not affect the validity of the oath: *Oaths Act, Chap. 297, Section 6.*

Where any person wilfully and corruptly gives any false evidence, they shall be deemed and taken to be guilty of perjury and shall and may be indicted and prosecuted for such offence: *Evidence Act, Chap. 155, Sections 20, 28*.

Can a child make an oath?

- A "child" is defined as a person under the age of fourteen years: *Juvenile Act, Chap. 229, Section 2;*
- Where the court is of the opinion that any child of tender years called as a witness does not understand the nature of an oath, his evidence may be received if he has sufficient intelligence to justify the reception of the evidence and understand the duty of speaking the truth; and his evidence, though not given on oath, may be taken and reduced into writing as a deposition in accordance with the provisions of the *Magistrate's Code of Procedure Act, Chap. 255, Section 53;*
- Unless the child's evidence is corroborated by some other material evidence supporting it, implicating the accused, he shall not be liable to be convicted of the offence: *Juvenile Act, Chap. 229, Section 24(1);*
- If the child wilfully gives false evidence in such circumstances as he would have, had it been given under oath and would have been guilty of perjury, he shall be guilty of an offence against the *Juvenile Act, Chap. 229, Section 24(2)*.

What if someone refuses to be sworn?

Where a person attending the court as a witness by virtue of his recognizance, 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 and he refuses to be sworn as a witness without sufficient excuse, 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: *Criminal Procedure Act, Chap. 117, Section 42(1);*

If he again refuses to do what is required of him upon being brought before the court at or before such adjourned or postponed trial, 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: *Criminal Procedure Act, Chap. 117, Section 42(2);*

Every such person who is guilty of such refusal or neglect shall also be 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: *Criminal Procedure Act, Chap. 117, Section 42(3);*

These provisions do not 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: *Criminal Procedure Act, Chap. 117, Section 42(4).*

BARBADOS

Who can administer an oath?

Every court, judge, justice, officer, commissioner, arbitrator or other person having by law or by consent of parties authority to hear, receive and examine evidence is hereby empowered to administer an oath or affirmation to all such witnesses as are legally called before them: *Evidence Act, Chap. 121, Section 167.*

How is an oath administered?

- It is not necessary that a religious text be used in swearing an oath: *Evidence Act, Chap. 121, Section 21(3);*
- An oath is effective notwithstanding that the person who swore it did not have a religious belief or did not have a religious belief of a particular kind or did not understand the nature and consequences of the oath: *Evidence Act, Chap. 121, Section 21(5);*
- A person who is called merely to produce a document or object to the court need not swear an oath or make an affirmation before producing the document or objecting to the court: *Evidence Act, Chap. 121, Section 21(6);*
- An oath is made in accordance with the *Second Schedule to the Evidence Act, Chap. 121*.

How is an affirmation administered?

- Subject to subsection (2), before a witness gives evidence, the court shall inform the witness that he has a choice of swearing an oath or making an affirmation before giving evidence: *Evidence Act, Chap. 121, Section 24(1);*
- The court shall inform the accused, in the presence of the jury if there is one, that he has a choice of swearing an oath or making an affirmation before giving evidence and need not swear an oath or make an affirmation before giving evidence but where he neither makes an oath or affirmation may not also give sworn evidence without the leave of the court: *Evidence Act, Chap. 121, Section 24(2);*
- Where the accused is represented by an attorney-at-law, the court shall inform him, if there is a jury, in their presence that sworn evidence may be more persuasive than unsworn evidence and it is a serious offence knowingly to give false evidence, whether sworn or not: *Evidence Act, Chap. 121, Section 24(3);*

- An affirmation is made in accordance with the Second Schedule to the *Evidence Act, Chap. 121*.

Who can make an oath?

- Every person is competent to give evidence and a person who is competent to give evidence about a fact is compellable to give that evidence with the exception of children under 14 years: *Evidence Act, Chap. 121, Section 13;*
- The general rule is that a person may not give evidence or act as an interpreter in any proceedings unless he has sworn an oath or made an affirmation: *Evidence Act, Chap. 121, Section 21(1); Magistrate's Court Act, Chap. 116, A Section 128*.

Can a child make an oath?

- A child seven years of age and under 14 may make an oath or affirmation where the court is satisfied after an inquiry is done that he is possessed of sufficient intelligence to justify the reception of his evidence and has determined he is competent to know the nature and consequences of giving false evidence and to know that it is wrong to do so: *Evidence Act, Chap. 121, Section 15(1);*
- A child under seven years of age or seven years of age and under 14 years of age, and who does not qualify as a witness as above, may be permitted to give evidence where the court is satisfied that he is possessed of sufficient intelligence to justify the reception of his evidence, and understands that he should tell the truth. and where the court so finds, it shall permit the child to give evidence upon stating. "I promise to tell the truth": *Evidence Act, Chap. 121, Section 15(2);*
- Where a child gives evidence as stated above in subsection 2, a person may be charged upon that evidence however in a trial by jury of a person so charged, the court shall warn the jury of the danger of acting on such evidence unless they find that the evidence is corroborated by some other evidence to implicate that person: *Evidence Act, Chap. 121, Section 15(3);*
- A child whose evidence has been received under subsection (2) is liable to be convicted of perjury in all respects as if he had given the evidence on oath: *Evidence Act, Chap. 121, Section 15(4);*
- The evidence of a child, though not given upon oath, but otherwise taken and reduced in writing as a deposition, shall be deemed to be a deposition to all intents and purposes: *Evidence Act, Chap. 121, Section 15(5);*
- Nothing in this section limits or affects any rule of law that prevents a person from being convicted of an offence upon uncorroborated evidence: *Evidence Act, Chap. 121, Section 15(6)*.

What happens when a person refuses to swear?

- It is for the person who is to give evidence to choose whether to swear an oath or make an affirmation: *Evidence Act, Chap. 121, Section 21(2);*
- Where a person refuses to choose to swear an oath or make an affirmation, the court may direct that this person gives an affirmation. *Evidence Act, Chap. 121, Section 21(4);*
- Should he refuse to do so then he will be in contempt of court.

Unsworn evidence

An accused may give unsworn evidence but may not also give sworn evidence unless there are special circumstances and the court gives leave: *Evidence Act, Chap. 121, Section 22(2)*.

In giving unsworn evidence, the accused:

- May read from a statement in writing and may use notes: *Evidence Act, Chap. 121, Section 22(3);*
- Must be advised by the attorney-at-law with the leave of the court, to direct his evidence to matters he has not given unsworn evidence to or as to which the accused might wish to give further unsworn evidence: *Evidence Act, Chap. 121, Section 22(4);*
- Shall not be cross- examined: *Evidence Act, Chap. 121, Section 22(5);*
- May not use his unsworn evidence for or against any other accused: *Evidence Act, Chap. 121, Section 22(6);*
- Subsections (5) and (6) do not apply where the accused gives both sworn and unsworn evidence: subsection: *Evidence Act, Chap. 121, Section 22(7);*
- The *Perjury Act, Chap. 142, Section 3*, the offence of perverting the course of justice, and the common law respecting the fabrication of false evidence apply in relation to unsworn evidence as they apply in relation to sworn evidence.

BELIZE

Who can administer an oath?

A judge shall have power by himself or by an officer of the court, if he presides in or is a member of a court, to administer an oath to all witnesses lawfully called before him: *Evidence Act, Chap. 95, Section 100.*

How is an oath administered?

- All oral evidence shall be given upon oath: *Evidence Act, Chap. 95, Section 95, Oaths Act, Chap. 130;*
- The person swearing shall swear standing and holding up his right hand and shall repeat the words of the oath after the officer administering it: *Oaths Act, Chap. 130, Section 39;*
- The oath shall commence, "I swear by Almighty God, as I shall answer to God at the Great Day of Judgment," followed by the words or the substance as prescribed by law, omitting any further words of imprecation or calling to witness: *Oaths Act, Chap. 130, Section 40;*
- In case of wilful false swearing any person may be convicted of the crime of perjury in the same manner as if the oath had been administered in the form and with the ceremonies most commonly adopted: *Oaths Act, Chap. 130, Section 41*.

How is an affirmation administered?

Where a person objects to being sworn, and states, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, should be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is required by law: *Oaths Act, Chap. 130, Section 21*.

The form of the Affirmation is; "I, A.B., do solemnly, sincerely, and truly declare and affirm," and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness. That affirmation carries the same force and effect as if it had been an oath: *Oaths Act, Chap. 130, Section 23*.

Who can make an oath?

Anyone who is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth can give all oral evidence upon oath: *Evidence Act, Chap. 95, Sections 99, 103*.

Where an interpreter is to be used, he shall be sworn to interpret in accordance with the provisions of the *Oaths Act, Chap. 130*: *Evidence Act, Chap. 95, Section 104*.

Can a child make an oath?

- The *Evidence Act Chap. 95,* does not contain a definition of a child. The *Juvenile Offenders Act, Chap. 119,* provides that a child is a person under the age of fourteen years, for the purposes of that act;
- Where the court is of the opinion that a child does not understand the nature of an oath, the evidence of that child or other person may be received without the oath being taken if the court is of the opinion that the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth: *Evidence Act, Chap. 95, Section 103(1);*
- The evidence of that child not given on oath but taken in accordance with the provisions of the law, has the same effect as one duly given upon oath, however, no accused person is liable to be convicted of any offence upon the unsworn evidence of a child unless there is other corroborating evidence to implicate him: *Evidence Act, Chap. 95, Section 103(2);*
- Where a child whose unsworn evidence is received, willfully gives false evidence under such circumstances that, if the evidence had been given on oath, he would have been guilty of perjury shall, even though the evidence has been given without oath, be guilty of an offence and be liable on summary conviction to a fine not exceeding $250.00 or to imprisonment for a term not exceeding six months. *Evidence Act, Chap. 95, Section 103(3).*

What if a person refuses to be sworn?

- Where a person refuses to be sworn, or neglects to answer questions posed to him with the sanction of the court after being sworn, without offering any sufficient excuse for his refusal or neglect, the court may, if it thinks fit, adjourn the hearing of the cause for any period not exceeding eight days, and may in the meantime, by warrant, commit the person to prison, unless he sooner consents to do what is required of him: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 36;*
- This process may continue until the witness decides to do what is required of him and nothing precludes the magistrate proceeding with the matter on any other sufficient evidence before it;
- There is no statutory basis for a magistrate to accept the evidence of a witness not given under oath save and except in the case of child witnesses. There is however authority at common law for a magistrate to accept an unsworn statement from the dock from an accused person.

Unsworn evidence

The evidence of a child or other person, although not given on oath but otherwise taken in accordance with the provisions of the law, shall have the same effect as the evidence of a person duly given upon oath, however, no accused person in a criminal cause shall be liable to be convicted of any offence upon the unsworn evidence of a child or such other person unless that evidence is corroborated in some material particular implicating the accused person: *Evidence Act, Chap. 95, Section 103(2).*

DOMINICA

Who can administer an oath?

An officer, meaning any person duly authorized to administer oaths, shall administer the oath in the form and manner prescribed: *Oaths Act, Chap. 5:50, Section 5(2);*

When the accused appears or is brought before the magistrate, the magistrate, except where otherwise provided, shall take the evidence upon oath of the witnesses called in support of the charge offered on the part of the prosecution: *Magistrate's Code of Procedure Act, Chap. 4:20.*

How is an oath administered?

An oath may be administered by the person holding the New Testament or in the case of a Jew, the old testament: *Oaths Act, Chap. 5:50, Section 3(1)*. Where the person is neither Christian nor Jew, the oath shall be administered in any lawful manner: *Oaths Act, Chap. 5:50, Section 3(3)*.

Any person taking the oath may swear with uplifted hand, and shall repeat the words of the oath as follows - "*I ..... swear by Almighty God that .....*" followed by the relevant words of the oath prescribed in Sections 9 or 10, as the case may be: *Oaths Act, Chap. 5:50, Section 5(1)*.

- Where the person swears with uplifted hand, he is not required to take in his hand any Testament or other book: *Oaths Act, Chap. 5:50, Section 5(2);*
- In the case of witnesses, jurors, interpreters or bailiffs, specific words of the oath are set out in *Sections 9 (1),(2),(3)* and *(4)* of the *Oaths Act, Chap. 5:50;*
- Where an oath is to be taken for which no words are prescribed in *Section 9,* the Chief Justice shall so prescribe or if none have been prescribed, the officer administering the oath shall choose such words as appear appropriate and shall record them: *Oaths Act, Chap. 5:50, Section 10*.

How is an affirmation administered?

Any person who objects to being sworn or where it is not reasonably practicable without inconvenience or delay to administer an oath according to his religious beliefs, may make a solemn affirmation instead of taking an oath: *Oaths Act, Sections 7(1), (2).*

An affirmation is administered either by orally in the form - "*I, ..., do solemnly, sincerely, and truly declare and affirm*," followed by the words of the oath prescribed by Sections 9 or 10 omitting any words of imprecation or calling to witness: *Oaths Act, Chap. 5:50, Section 8(1)*;

Or in writing in the form "*I ..... of ..... do solemnly and sincerely affirm*," and the form in lieu of jurat shall be ..... " *Affirmed at ..... this ..... day of, 19 Before me*.": *Oaths Act, Chap. 5:50, Section 8(2).*

Who can make an oath?

- All persons are eligible to give evidence on oath or by solemn affirmation according to the practice of the court, even where they may or shall have an interest in the matter in question or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding arising in any court or before any judge, magistrate or other authorized person to hear, in which he is offered as a witness and notwithstanding that such person offered may have been previously convicted of any crime or offence: *Evidence Act, Chap. 64, Section 3;*
- An accused who appears or is brought before a magistrate, the magistrate, except where otherwise in this Act provided, shall take the evidence upon oath of the witnesses called in support of the charge offered on the part of the prosecution: *Magistrate Code of Procedure Act, Chap. 4:20, Section 47;*
- Any person, unless he voluntarily objects to or is physically incapable of doing so, may take an oath in the form and manner prescribed in subsection (1) without question: *Oaths Act, Chap. 5:50, Section 3(2);*
- Witnesses, jurors, interpreters and bailiffs can make an oath: *Oaths Act, Chap. 5:50, Sections 9(1),(2),(3),(4)*.

Can a child make an oath?

The *Children and Young Persons Act, 1991,* defines a child as a person under the age of 14 years, a juvenile as a person under the age of 18 years and a young person as an individual who has attained the age of 14 but is below the age of 18. By virtue of the Act, the evidence of a child of tender years may be received otherwise than by oath if in the opinion of the court he does not understand the nature of an oath but he is possessed of sufficient intelligence to justify reception of the evidence and he understands the duty of speaking the truth.

His evidence though not taken on oath may be otherwise taken and reduced to writing pursuant to the *Magistrates Code of Procedure Act, Chap. 4:20,* and any other Act and will be deemed a deposition. Like Belize however, where the unsworn evidence of a child is admitted by the prosecution, the accused cannot be convicted unless the evidence is independently corroborated.

What if a person does not want/is unable to be sworn?

Where a person does not wish to be sworn, he shall be permitted to make a solemn affirmation instead of an oath: *Oaths Act, Chap. 5:50, Oaths Act, Section 7(1).*

GRENADA

Who can administer an oath?

The court shall have power, by itself or by an officer thereof, to administer an oath to all such witnesses as are lawfully called before it: *Criminal Procedure Code, Chap. 72 B, Section 31.*

How is an oath administered?

The oath may be taken in the scotch form and the person swearing shall swear standing and holding up his right hand and shall repeat the words of the oath after the officer administering it. The oath shall commence "*I swear by Almighty God as I shall answer to God at the great day of judgement,*" and shall proceed with the words of the oath or the substance thereof as prescribed by law, but omitting any further words of imprecation or calling to witness: *Oaths Act, Chap. 217, Section 11;*

Where an oath is to be taken or administered either as a juryman, witness, deponent, party, judge, arbitrator, officer or any other person, in any criminal proceeding the oath may be taken in the manner administered in Scotland as aforesaid: *Oaths Act, Chap. 217, Section 2.*

How is an affirmation administered?

The court shall have power, by itself or by an officer thereof, to administer an affirmation, to all such witnesses as are lawfully called before it. Where a witness refuses or is unwilling from alleged conscientious motives to be sworn, the court may, upon being satisfied of the sincerity the objection, allow him to make a solemn affirmation, which shall have the same force and effect as if he had taken an oath in the usual form, and shall, if untrue, entail the same penalties as are provided against persons guilty of perjury: *Criminal Procedure Code, Chap. 72 B, Section 29;*

The same consequences and results shall in every respect follow and take place from the making of the affirmation or declaration or the taking of the oath in Scotch form as would follow and take place if the ordinary oath had been taken: *Oaths Act, Chap. 217, Section 12(1);*

Where an affirmation or declaration is substituted for the taking of an oath, it shall be the duty of the Judge or other person having authority to administer the oath, before allowing the affirmation or declaration to be made, to satisfy himself or herself that the person about to make it understands the consequences and results aforesaid: *Oaths Act, Chap. 217, Section 12(2).*

Who can make an oath?

Every witness shall be examined upon oath or solemn affirmation: *Criminal Procedure Code, Chap. 72B, Section 29;*

All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to the questions by tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind: *Evidence Act, Chap. 92, Section 117.*

Can a child make an oath?

All evidence must be sworn on oath or solemn affirmation. Evidence obtained as a result of a confession, or an admission that is admissible pursuant to the *Criminal Procedure Code, Chap. 72B,* shall only be admissible as evidence in the court if the parent of the child or an appropriate adult or the attorney-at-law representing the child was present when the confession or the admission was made: *Juvenile Justice Act, 24 of 2012, Section 44.*

What if a person refuses to be sworn?

Where a person objects to being sworn from alleged conscientious reasons to take it, or if he is ignorant of the nature of an oath, or if it is objected that he is incompetent to take it, the Governor- General or the judge or any other person having authority to administer the oath may permit him to make his solemn affirmation or declaration in substitution of the oath that what is being said is the truth: *Oaths Act, Chap. 217, Section 10;*

He is not required to use the word "swear" or the words "so help me God," but shall, in lieu thereof, solemnly, sincerely, and truly affirm and declare the truth of that which he or she would otherwise have to swear to or as the case may be, that he will do and act as required by the oath for which the affirmation or declaration is substituted: *Oaths Act, Chap. 217, Section 10;*

Where any person, appearing either in obedience to a summons, or by virtue of a warrant, or being present in court, and being verbally required by the court to give evidence either refuses to be sworn as a witness; or having been so sworn, refuses to answer any question put to him or her by or with the sanction of the court; or refuses or neglects to produce any document which he or she is required to produce, without in any such case offering any sufficient excuse for his or her refusal or neglect, the court may adjourn the case for any period not exceeding eight days, and may, by warrant, commit him or her to prison in the meantime, unless he or she sooner consents to do what is required of him or her: *Criminal Procedure Code, Chap. 72B, Section 30(1);*

If, upon being brought before the court at or before the adjourned hearing, he or she again refuses to do what is so required of him or her, the court may, if it sees fit, again adjourn the case, and commit him or her for the like period, and so again from time to time until he or she consents to do what is so required of him or her: *Criminal Procedure Code, Chap. 72B, Section 30(2);*

Nothing herein contained shall affect his or her liability to any other punishment or proceedings for refusing or neglecting to do what is so required of him or her, or shall prevent the court from disposing of the case in the meantime, according to any other sufficient evidence taken by it: *Criminal Procedure Code, Chap. 72B, Section 30(3).*

GUYANA

Who can administer an oath?

Every magistrate and justice of the peace is authorised to administer all oaths required to be taken before him in the exercise of any of the jurisdictions and powers conferred upon him by the *Summary Jurisdiction (Magistrates) Act, Chap. 3:05,* or any other written law and those oaths may also be administered by the clerk of the court under the direction and in the presence of the magistrate.[3]

How is an oath administered?

A person to whom an oath is administered may swear with uplifted hand in the form and manner in which an oath is administered in Scotland. The person swearing in this manner shall swear standing and holding up his right hand and shall repeat the words of the oath after the officer administering it: *Evidence Act, Chap. 5:03, Section 67;*

The validity of an oath which has been duly administered and taken shall not be affected by the fact that the person to whom and by whom it was administered and taken, had, at the time of taking it, no religious belief: *Evidence Act, Chap. 5:03, Section 68.*

How is an affirmation administered?

An affirmation is administered either orally, as follows - "*I, ..., of ..... do solemnly, sincerely, and truly declare and affirm*," followed by the words of the oath prescribed by Sections 9 or 10 law, omitting any words of imprecation or calling to witness: *Evidence Act, Chap. 5:03, Section 70(1).*

Or in writing as follows - "*I ..... of ..... do solemnly and sincerely affirm,*" and the form in lieu of jurat shall be ..... "*Affirmed at ..... this ..... day of, 19 Before me.*": *Evidence Act, Chap. 5:03, Section 70(2).*

Who can make an oath?

Save for limited exceptions, all oral evidence must be given on oath[4] and generally all persons are competent, and therefore compellable to give evidence, subject to exceptions.[5] Any person who is ignorant of the nature and obligation of an oath may be allowed to give evidence without oath or affirmation.[6]

Can a child make an oath?

A child may make an oath, however the decision to administer an oath turns on the judicial officer's assessment of the witness's understanding of the nature and obligation of an oath: *Guyana Evidence Act, Chap. 5:03, Section 71*.

[3] Summary Jurisdiction (Magistrates) Act Chap. 3:05 section 57
[4] Guyana Evidence Act Chap. 5:03 section 64
[5] Guyana Evidence Act Chap. 5:03 section 48, 49
[6] Guyana Evidence Act Chap. 5:03 section 71

Where evidence of a child is given by the prosecution, the accused shall not be liable to be convicted of the offence unless the evidence is corroborated by some other material evidence that implicates him: *Evidence Act, Chap. 5:03, Section 71(3).*

What if someone refuses to be sworn?

Where a person objects to being sworn because he has no religious belief or the taking of the oath is contrary to his religious belief, he shall be permitted to make a solemn affirmation instead, in all places and for all purposes where an oath is required by law and it shall be to all intents and purposes, of the same force and effect as if he had taken the oath: *Evidence Act, Chap. 5:03, Section 69.*

Where a witness has been summoned or brought by warrant to court or being present in court and verbally required by the court to give evidence; and such person refuses to be sworn as a witness without reasonable excuse; the court may adjourn the matter for 8 days. In the meantime, the court may commit the person for the like period to prison, until the person so consents to do what is required of him. If upon return to the court the person so again refuses to comply, he shall thereby be committed to prison for the like period until he consents to follow that which is required of him: *Summary Jurisdiction(Procedure) Act, Chap. 10:02, Sections 21(1),(2).*

JAMAICA

Who can administer an oath?

Every court, judge, justice, officer, commissioner, arbitrator, or other person now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively: *Judicature (Residents Magistrates) Act*.

How is an oath administered?

In Jamaica, the procedure for administering oath requires that the person taking the oath shall hold the Bible in his uplifted hand repeating the words of the oath;

Any oath may be administered and taken in the form and manner following, that is to say, the person taking the oath shall hold the Bible in his uplifted hand, and shall say or repeat after the officer administering the oath the words - "*I swear by Almighty God that. . . . . .*" followed by the words of the oath prescribed by law;

The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question: Provided that, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any manner which is now lawful. If any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without question: *Oaths Act, Section 3;*

Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had, at the time of taking such oath, no religious belief, shall not for any. purpose affect the validity of such oath: *Oaths Act, Section 4*.

How is an affirmation administered?

Where the person objects to being sworn, and states, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, he should be permitted to make his solemn affirmation, instead of taking an oath. Every such affirmation shall be as follows- "*I, All, do solemnly, sincerely and truly, declare and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness. and affirm*", (3) Every affirmation in writing shall commence "*I, of do solemnly and sincerely affirm*", and the form in lieu of jurat shall be "*Affirmed at this . day of 19 . Before me*": *Oaths Act, Section 6*.

Who can make an oath?

All persons are eligible to give evidence on oath or by solemn affirmation according to the practice of the court, even where they may or shall have an interest in the matter in question or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding arising in any court or before any judge, magistrate or other authorized person to hear, receive and examine evidence, in which he is offered as a witness and notwithstanding that such person offered may have been previously convicted of any crime or offence: *Evidence Act, Chap. 155, Section 3.*

Can a child make an oath?

The evidence of children and consequently, any relevant oaths to be taken by them are dealt with under the *Evidence (Amendment) Act of Jamaica*, specifically, the new *Part 1C*. By those provisions, a child is deemed to be any person under the age of 14. The law provides that a child will be competent to give evidence if it appears to the court that the child possesses sufficient intelligence to justify the reception of his evidence and if he understands the duty of speaking the truth. The provisions go on to state that the evidence of a child who is competent to give evidence will not be given on oath but that the evidence will be treated with as if given on oath. In circumstances where a magistrate accepts the evidence of a child, he needs no corroboration of such evidence to ground a conviction however, he may give a corroboration warning to himself to exercise caution in determining whether to accept the evidence of the child and the weight to be given to such evidence.

What happens when someone refuses to swear?

Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation, instead of taking an oath, in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath: *Oaths Act, Section 6.*

Unsworn statements

In **Jerome Arscott v R,**[7] the appellant had been charged with rape and indecent assault. His defence at trial was that the interaction between himself and the complainant was consensual, and he gave an unsworn statement to this effect. It was accepted that the issue to be resolved by the resident magistrate rested solely on the issue of credibility, that is, whether she accepted the evidence of the complainant or the appellant. The magistrate rejected the appellant's evidence because she did not find him to be a witness of truth, stating in her reasons:

> *"I however, make no adverse finding against the accused simply because of my rejection of his unsworn statement and his responses or lack [thereof] in the question and answer interview but I must look back instead, at the prosecution's case to see whether the prosecution, by the evidence presented has proved the case to the extent that I feel sure of the guilt of the accused, bearing in mind that he has nothing to prove."*

At the appeal, it was submitted that the magistrate had drawn adverse inferences against the appellant because of his refusal to answer the questions in the question and answer. The court of Appeal addressed the issue in its assessment of the magistrate's treatment of the appellant's unsworn statement and said that the learned resident magistrate's approach (quoted above) was unimpeachable. After stating that her rejection of the unsworn statement was not conclusive of the matter, she properly went back to assess the prosecution's case and found that she was convinced by the latter. The issue was one of credibility and the learned Resident Magistrate's approach was in accordance with the requirements placed on tribunals of fact.

Effect of a magistrate's refusal to hear an accused's evidence other than in the prescribed manner

In **R v Hines and King,**[8] Hines, a Rastafarian wanted to give sworn evidence at his trial however he refused to take the oath administered to him which incorporated the words: "*I swear by almighty God*." He wished to swear by the words "*Almighty God King Rasta*". The trial judge ruled that it was not competent for Hines to take the oath in the form in which he desired to take it. As Hines in answer to the trial judge declined to testify on affirmation he did not give evidence and he did not make any statement from the dock. He thereupon rested his case and was subsequently convicted. On appeal, it was held that the trial judge erred in refusing to allow him to swear in the manner binding on his conscience. The important thing was that the oath must be such as the witness considered to be binding on his conscience. Having regard to the multitude of different religious beliefs which exist in this world it is but to be expected that an oath under the common law would take one of very many forms. The judge also fell into error in inviting him to affirm since Hines had not objected to the taking of an oath on the ground that he had no religious belief or that an oath was contrary to his religious belief. He was therefore deprived of his right to give sworn testimony in his defence and his convictions were quashed.

[7] Jerome Arscott v R [2014] JMCA Crim 52

[8] R v Hines and King (1971) 17 WIR 326. See also Athlee Swaby et al v R (1982) 19 JLR 413

MONTSERRAT

Who can administer an oath?

In respect of its criminal jurisdiction, the magistrate has the powers set out in the *Criminal Procedure Code* in relation to, inter alia, the administration of oaths.[9] The court before which a witness appears may administer the appropriate oath or affirmation in accordance with the provisions of the *Evidence Act, Chap. 2.08*.

Every court, judge, magistrate, officer, commissioner, arbitrator, or other person, now or hereafter, having by law, or by consent of parties, authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively: *Evidence Act, Chap. 2.08, Section 23*.

How is it administered?

Any oath may be administered and taken in the form and manner following - The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath, the words "*I swear by Almighty God that .....*" followed by the words of the oath prescribed by law: *Oaths Act, Chap. 2.14, Section 3;*

Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath; and, if any person making such affirmation shall wilfully, falsely, and corruptly affirm any matter or thing which, if deposed on oath, would have amounted to wilful and corrupt perjury, he shall be liable to prosecution, indictment, sentence and punishment in all respects as if he had committed wilful and corrupt perjury: *Oaths Act, Chap. 2.14, Section 4;*

Every such affirmation made orally shall be as follows - "*I, A. B., do solemnly, sincerely, and truly declare and affirm*." and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness: *Oaths Act, Chap. 2.14, Section 5*.

Every affirmation in writing shall commence "*I..... of ....., do solemnly and sincerely affirm*," and the form in lieu of jurat shall be "*Affirmed at ....., this ..... day of ....., 20..... Before me*.": *Oaths Act, Chap. 2.14, Section 7*.

Who can make an oath?

No person, offered as a witness, shall hereafter be excluded, by reason of incapacity from crime or interest, from giving evidence either in person or by deposition, according to the practice of the court, on the trial of any issue joined, or of any matter or question, or any inquiry, arising in any court, or before any judge, jury, coroner, magistrate, officer, or person having by law, or by consent of parties, authority to hear, receive, and examine evidence; but every person, so offered, may and shall be admitted to give evidence on oath, or solemn affirmation in those cases wherein affirmation may by law be receivable, notwithstanding that such person may or

[9] Criminal Procedure Code No. 9 of 2010

shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding, in which he is offered as a witness, and notwithstanding that such person offered may have been previously convicted of any crime or offence: *Evidence Act, Chap. 2.08, Section 4*.

The court may at any time, if it thinks it just and expedient (for reasons to be recorded in the proceedings), take without oath the evidence of a person declaring that the taking of any oath whatever is according to his religious belief unlawful, or who by reason of immature age or want of religious belief ought not, in the opinion of the Court, to be admitted to give evidence on oath and the fact of the evidence having been so taken shall be recorded in the proceedings: *Criminal Procedure Code, No. 9 of 2010, Section 13(2)*.

Can a child make an oath?

The *Juveniles Act, Chap. 2.11,* defines a "child" as a person under the age of 18 years. Notwithstanding any provisions of the *Criminal Procedure Code* or the *Magistrate's Court Act;*

Chap. 2.02, where, in any proceedings against any person for any offence, any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received though not given upon oath, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and his evidence, though not given on oath, but otherwise taken and reduced into writing in accordance with the provisions of the Criminal Procedure Code, shall be deemed to be a deposition: *Juveniles Act, Chap. 2.11, Section 18(1);*

If any child whose evidence is received unsworn wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be guilty of an offence and liable to the same punishment as if he had committed perjury: *Juveniles Act, Chap. 2.11, Section 18(2);*

The unsworn evidence of a child, may corroborate evidence (sworn or unsworn) given by any other person: *Juveniles Act, Chap. 2.11, Section 18(4).*

What happens when someone refuses to swear?

The *Criminal Procedure Code, No. 9 of 2010,* does not make provision for refractory witnesses in summary proceedings.

If a person, appearing either in obedience to a summons or by virtue of a warrant refuses to be sworn; or having been sworn, refuses to answer any question put to him; or refuses or neglects to produce any document or thing which he is required to produce and which is in his possession or under his control; or refuses to sign his deposition, without in any such case offering any sufficient excuse for such refusal or neglect, the High Court may adjourn the case for any period exceeding 10 days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him: *Criminal Procedure Code, No. 9 of 2010, Section 152(1);*

If the person, upon being brought before the High Court at or before such adjourned hearing, again refuses to do what is required of him, the High Court may, if it sees fit, again adjourn the case and commit him for the like period, and so again from time to time until such person consents to do what is so required of him: *Criminal Procedure Code, No. 9 of 2010, Section 152(2);*

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 prevent the High Court from disposing of the case in the meantime according to any other sufficient evidence taken before it: *Criminal Procedure Code, No. 9 of 2010, Section 152(3)*.

ST. KITTS AND NEVIS

Who can administer an oath?

Every court, judge, master, magistrate, officer, commissioner, or other person having by law or by consent of parties, authority to hear, receive and examine evidence, is hereby empowered to administer an oath or affirmation to all such witnesses as are legally called before them: *Evidence Act, No. 30 of 2011, Section 172.*

How is it administered?

The person taking the oath should hold the New Testament or in the case of Jew, the Old Testament and in his or her uplifted hand repeat after the officer administering the oath saying: "*I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.";*

Where a witness objects to the swearing of an oath, on the ground that he or she is not religious or that the oath is contrary to his or her religious beliefs, the person must be allowed to affirm: *Oaths Act, Chap. 3:19, Section 4;*

The affirmation shall be in the following form -"*I do solemnly, sincerely, and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth*.": *Oaths Act, Chap. 3:19, Section 5;*

Where a person wishes to affirm by writing and if the person wishes to swear with an uplifted hand and the manner prescribed in Scotland the person shall be permitted to do so without further question: *Oaths Act, Chap. 3:19, Sections 7, 8.*

Who can make an oath?

The general rule is that every person is competent to give evidence; and a person who is competent to give evidence about a fact is compellable to give that evidence: *Evidence Act, No. 30 of 2011, Section 8;*

A person who is incapable of understanding that, in giving evidence, he is under an obligation to give truthful evidence is not competent to give sworn testimony: *Evidence Act, No. 30 of 2011, Section 9(1);*

A person who is incapable of giving a rational reply to a question is not competent to give evidence in relation to that question. Further, a person is not competent to give evidence if: he or she is unfit by reason of his or her mental condition; or the person is incapable of hearing or understanding, or of communicating a reply to a question about the fact and that incapacity cannot be overcome without undue cost or undue delay: *Evidence Act, No. 30 of 2011, Sections 9(2),(3).*

Can a child make an oath?

Where a child who is under sixteen years is presented as a witness, the court shall conduct an inquiry to determine if the child is possessed of sufficient intelligence to justify the reception of the child's evidence, and to determine if the child is competent to know the nature and consequences of giving false evidence and to know that it is wrong to give false evidence, and if the court so finds, it shall permit the child to give evidence upon taking the affirmation or oath: *Evidence Act, No. 30 of 2011, Section 13(1)*.

What happens when someone refuses to swear?

If a person attending the court as a witness, either on his or her recognizance, 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, (a) refuses to be sworn as a witness; (b) having been so sworn, refuses to answer any question put to him or her by or with the sanction of the court; or (c) refuses or neglects to produce any document which he or she is required by the court to produce; without in such case offering any sufficient excuse for the refusal or neglect, the court may, if it thinks fit, adjourn or postpone the trial of the case for a period not exceeding eight days, and may in the meantime, by warrant, commit that person to prison: *Criminal Procedure Act, Chap. 4.06, Section 51(1);*

If the person, upon being brought before the court at or before the adjourned or postponed trial, again refuses to do what is so required of him or her, the court may, if it thinks fit, again adjourn or postpone the trial of the case, and commit him or her in like manner, and so again from time to time until such person consents to do what is so required of him or her: *Criminal Procedure Act, Chap. 4.06, Section 51(2);*

A person who is found guilty of refusing or neglecting to do what is required of him or her under this section shall also be 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: *Criminal Procedure Act, Chap. 4.06, Section 51(3)*.

Unsworn Evidence

An accused person shall not, in any criminal proceedings, make a statement without being sworn, unless it is statement he or she is required by law to make personally or a statement in mitigation before sentencing: *Criminal Procedure Act, Chap. 4.06, Sections 32(1),(3);*

Where a child who is under 16 years is presented but is not considered competent to give sworn evidence, the court shall conduct an inquiry to determine if the child is possessed of sufficient intelligence to justify the reception of the child's unsworn evidence, and if the child understands that he or she should tell the truth, and where the court so finds, it shall permit the child to give unsworn evidence upon the child stating that: "*I promise to tell the truth*.": *Evidence Act, No. 30 of 2011, Section 13(1)*.

ST. LUCIA

Who can administer an oath?

Magistrates have the power to administer or cause to be administer an oath to every witness who is legally called to give evidence before the court: *Oaths and Affirmation Act, Chap. 2:14, Section 3(1)*.

How is it administered?

An oath may be taken either by the swearing person:

- Holding the New Testament, in the case of a Christian, or in the case of the Jew, the Old Testament, and lifting the same hand state on oath the words "*I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth*": *Oaths and Affirmation Act, Chap. 2:14, Section 4(1)(a);*
- Holding a crucifix instead of the New Testament in his or her uplifted hand or by keeping his or her hand uplifted before the crucifix, in case of a Roman Catholic or if the person so desires: *Oaths and Affirmation Act, Cao 2:14, Section 4(1)(b);*
- In the Scotch form which entails the person standing and holing up his or her right hand and repeating the words of the oath saying, "*I swear by Almighty God, as I shall answer to God at the great Day of Judgment, that I will speak the truth, the whole truth and nothing but the truth*." *Oaths and Affirmation Act, Chap. 2:14, Section 5*.

Who can make an oath?

Every person is competent to give evidence and a person who is competent to give evidence about a fact is compellable to give that evidence: *Evidence Act, Chap. 4:15, Section 13;*

Subject to limited exceptions[10], a person may not give evidence, or act as an interpreter, in any proceedings unless the person has sworn an oath or made an affirmation in accordance with the *Oaths and Affirmations Act, Chap. 2:14: Evidence Act, Chap. 4:15, Section 21;*

With the exception of child witnesses, a person who is incapable of understanding that, in giving evidence, he or she is under an obligation to give truthful evidence is not competent to give evidence: *Evidence Act, Chap. 4:15, Section 14(1);*

A person who is incapable of giving a rational reply to a question about a fact is not competent to give evidence about the fact. Further, where (a) a person is incapable of hearing or understanding, or of communicating a reply to, a question about a fact; and (b) that incapacity cannot be overcome, or cannot be overcome without undue cost or undue delay, the person is not competent to give evidence about the fact: *Evidence Act, Chap. 4:15, Section 14(2),(3)*.

[10] Evidence Act Chap 4:15 sections 15(3) 22, 23

Can a child take an oath?

Where a child who is 12 years of age or more is presented as a witness in proceedings, the court shall presume that the child is competent to give evidence and no inquiry into the competence of the child is required unless the judge has reason to believe that the child is unable to understand questions or provide intelligible answers;

In determining the competence of a child pursuant to subsection (1), the court shall consider whether— (a) the child is possessed of sufficient intelligence to justify the reception of his or her evidence; and (b) the child is competent to know the nature and consequences of giving false evidence and to know that it is wrong, and if the court so finds, it shall permit the child to give evidence upon swearing an oath or making an affirmation in accordance with the *Oaths and Affirmations Act, Chap. 4:15, Sections 15(1),(2)*.

What happens when someone refuses to be sworn?

A person commits the offence of contempt of court if he or she, being a witness, without lawful excuse, refuses to be sworn or on being sworn in refuses to answer any question: *Criminal Code, Chap. 3.01, Section 308(1)(e)*.

Unsworn evidence

Any rule of law or practice which allows a defendant in criminal proceedings to give unsworn evidence is hereby abolished: *Evidence Act, Chap. 4:15, Section 21(2);*

Where a child who is less than 12 years of age is presented as a witness in proceedings, the court shall conduct an inquiry to determine if, in its opinion, the child is possessed of sufficient intelligence to justify the reception of his or her evidence, and understands that he or she should tell the truth and, where the court so finds, it shall permit the child to give evidence upon stating: "*I promise to tell the truth*": *Evidence Act, Chap. 4:15, Section 15(3);*

A child whose unsworn evidence has been received is liable to be convicted of perjury in all respects as if he or she had given the evidence on oath or affirmation: *Evidence Act, Chap. 4:15, Section 15(5)*. The evidence of a child, though not given upon oath, but otherwise taken and reduced in writing as a deposition, shall be deemed to be a deposition to all intents and purposes: *Evidence Act, Chap. 4:15, Section 15(6)*.

In **Abraham (Nelson) v R (1992) 43 WIR 142,** (St. Lucia) Byron JA, in determining the competence of a child of tender age to give evidence, clarified the speech of Bridge LJ in **R v Hayne [1977] 1 WLR 234** and stated that where a *"child has no religious education and does not know about and believe in God, the child could still be sworn if the Judge is satisfied that the child understands the added responsibility to tell the truth which is involved in taking an oath over and above telling the truth as an incident of the ordinary duty of normal social conduct."*

ST. VINCENT AND THE GRENADINES

Who can administer an oath?

Every court, judge, magistrate, officer, commissioner, arbitrator or other person having by law or consent of parties authority to hear, receive and examine evidence, is empowered to administer an oath to all such witnesses as are called before them: *Evidence Act, Chap. 220, Section 4*.

How is an oath administered?

An oath may be administered by the person holding the New Testament or in the case of a Jew, the old testament: *Oaths Act, Chap. 222, Section 3 (1)*. Where the person is neither Christian nor Jew, the oath shall be administered in any lawful manner: *Oaths Act, Chap. 222, Section 3(3);*

Any person taking the oath may swear with uplifted hand and shall repeat the words of the oath as follows - "*I ..... swear by Almighty God that .....*" followed by the relevant words of the oath prescribed in the act, as the case may be: *Oaths Act, Chap. 222, Sections 3(1), 5;*

Where the person swears with uplifted hand, he is not required to take in his hand any Testament or other book: *Oaths Act, Chap. 222, Section 5(2)*.

How is an affirmation administered?

An affirmation is administered either orally, as follows - "*I, ..., do solemnly, sincerely, and truly declare and affirm*," followed by the words of the oath prescribed by the act omitting any words of imprecation or calling to witness: *Oaths Act, Chap. 222, Section 8(1);*

Or in writing as follows: "*I ..... of ..... do solemnly and sincerely affirm*," and the form in lieu of jurat shall be ..... "*Affirmed at ..... this ..... day of, 19 Before me.": Oaths Act, Chap. 222, Section 8(2)*.

Who can make an oath?

Every witness, subject to limited exceptions, in any criminal cause or matter shall be examined upon oath and the court before which any witness shall appear shall have full power and authority to administer the appropriate oath: *Criminal Procedure Code, Chap. 172, Section 100(1);*

A person charged with the commission of a criminal offence cannot give evidence unless it is sworn.[11]

Can a child make an oath?

The court shall not receive the evidence of a child of tender years unless the court is satisfied that the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth: *Criminal Procedure Code, Chap. 172, Section 100(3);*

Where a child of tender years is called as a witness in any proceedings against any person for

[11] Saint Vincent and the Grenadines - Evidence Act Chap 220, section 12A(1); Criminal (Procedure Code) Act, Chap 172, section 130(1)

any offence, and the child does not understand the nature of an oath in the court's opinion, he may give unsworn evidence. However, where the unsworn evidence of a child is given on behalf of the prosecution, the accused shall not be convicted of the offence save that the evidence is corroborated by some other material evidence implicating him: *Juveniles Act, Chap. 231, Section 31(1); Criminal Procedure Code, Chap. 172, Section 100(4);*

If any child whose evidence is received as aforesaid wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be guilty of an offence against the *Juveniles Act, Chap. 231*.

What happens when someone refuses to be sworn?

Any person who objects to being sworn or where it is not reasonably practicable without inconvenience or delay to administer an oath according to his religious beliefs, may make a solemn affirmation instead of taking an oath: *Oaths Act, Sections 7(1),(2);*

When any person, appearing either in obedience to a summons or by virtue of a warrant, or being present in court and being orally required by the court to give evidence (a) refuses to be sworn; (b) having been sworn refuses to answer any question put to him; (c) refuses or neglects to produce any document or thing which he is required to produce and which is in his possession or under his control; or (d) refuses to sign his deposition, without in any such case offering any sufficient excuse for such refusal or neglect, the court may adjourn the case for any period not exceeding ten days, and may in the meantime commit such person to prison unless he sooner consents to do what is required of him: *Criminal Procedure Code, Chap. 172, Section 101(1);*

If the person continues to refuse to give evidence the court may commit him from time to time until such person consents to do what is required of him. The coercive power of the court also applies to person who is neither sworn nor affirmed but whose evidence is received by the court as if such person had been sworn: *Criminal Procedure Code, Chap. 172, Sections 101(2),(4)*.

Unsworn Evidence

The court may at any time, if it thinks it just and expedient (for reasons to be recorded in the proceedings), take without oath the evidence of any person declaring that the taking of any oath whatever is, according to his religious belief, unlawful, or who by reason of want of religious belief ought not, in the opinion of the court, to be admitted to give evidence on oath: *Criminal Procedure Code, Chap. 172, Section 100(2)*.

TRINIDAD AND TOBAGO

Who can administer an oath?

All courts and persons having by law or consent of parties authority to receive evidence are empowered to administer, by themselves or, in the case of a court, by an officer authorized by the court in that behalf, oaths in discharge of the duties or in exercise of the powers conferred upon them respectively by law. An officer of a court who in fact administers an oath shall, prima facie, be deemed, for all purposes, to have been duly authorized to administer the oath: *Oaths Act, Chap. 7:02, Sections 1-2*.

How is an oath administered?

An oath may be administered to a person in such form and with such ceremonies as he declares to be binding, and every such person may, in case of wilful false swearing, be convicted of the crime of perjury: *Oaths Act, Chap. 7:01, Section 3;*

Any oath may be administered and taken in the form and manner following: The person taking the oath shall hold the New Testament or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words: "*I swear by Almighty God that . . .*," followed by the words of the oath: *Oaths Act, Chap. 7:01, Section 4(1);*

The person administering the oath shall (unless the person about to take the oath voluntarily objects, or is physically incapable of so taking the oath) administer the oath in the above form and manner without question. However, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any manner which is now lawful: *Oaths Act, Chap. 7:01, Section 4(2);*

The person to whom the oath is administered may choose to swear with uplifted hand, repeating the words of the oath, which shall be as follows: "*I, A. B., swear by Almighty God*"; then proceeding with the remaining words of the oath, but omitting the words, "*So help me God*.". Both the person administering and the person taking the oath in this form shall stand while it is administered: *Oaths Act, Chap. 7:01, Sections 5(1),(2).*

How is an affirmation administered?

An affirmation made orally shall commence as follows - "*I, A. B., do solemnly, sincerely, and truly affirm*", and then proceed with the words of the oath, omitting any words of imprecation or calling to witness: *Oaths Act, Chap. 7:01, Section 7;*

Or in writing as follows - "*I, ..., of ....., do solemnly affirm*," and the form in lieu of jurat shall be— "*Affirmed at ..... this ..... day of ....., 20...., before me.": Oaths Act, Chap. 7:01, Section 7.*

What happens when someone refuses to be sworn?

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— (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: *Criminal Procedure Act, Chap. 12:02, Section 24(1);*

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: *Criminal Procedure Act, Chap. 12:02, Section 24(2);*

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: *Criminal Procedure Act, Chap. 12:02, Section 24(3).*

Unsworn evidence

Where a person is charged on indictment, he shall not be entitled to make a statement without being sworn, and accordingly if he gives evidence he shall do so on oath and be liable to cross-examination: *Evidence Act, Chap. 7:02, Section 13B;*

A child under ten years of age shall give unsworn evidence in criminal proceedings. Before receiving the evidence of a child under subsection a court shall hold an enquiry to determine whether the child is possessed of sufficient intelligence to justify the reception of his evidence, and understands the duty of speaking the truth: *Children Act, Chap. 46:01, Sections 98(1),(2);*

The unsworn evidence of a child may not be corroborated solely by the unsworn evidence of another child. A person may not be convicted of an offence unless the unsworn evidence of a child admitted and given on behalf of the prosecution is corroborated by some other material particularly implicating the accused and such corroboration may consist of evidence other than oral evidence: *Children Act, Chap. 46:01, Sections 98(4),(5);*

However, an accused person may be convicted on the uncorroborated unsworn evidence of a child provided that the court warns the jury of the danger of convicting the accused person on the uncorroborated unsworn evidence of a child: *Children Act, Chap. 46:01, Section 98(6);*

In **DPP v Walker,**[12] the accused was charged with the murder of his wife. The only material before the jury was an unsworn statement made by him and the evidence of a witness who alleged that he had seen the body of a woman, streaming with blood, fall from the passenger side of a car into the road. On appeal to the Judicial Committee of the Privy Council, the board addressed the mode of treatment of unsworn statements and stated that:

"The judge should, in "plain and simple language, make it clear to the jury that the accused was not obliged to go into the witness box but that he had a completely free choice either to do so or to make an unsworn statement or to say nothing...The jury should always be told that it is exclusively for them to make up their minds whether the unsworn statement has any value, and, if so, what weight should be attached to it; that it is for them to decide whether the evidence for the prosecution has satisfied them of the accused's guilt beyond reasonable doubt, and that in considering their verdict they should give the accused's unsworn statement only such weight as they may think it deserves."[13]

[12] [1974] 1 WLR 1090. See also Delroy Laing v R [2016] JMCA Crim 11 in which the Court of Appeal of Jamaica held that the appellant's defence, though raised in an unsworn statement, ought to have been fairly left for the consideration of the jury as the sole judges of the facts for them exclusively to make up their minds what value it had, if any, and what weight they would attach to it in considering whether the prosecution had made out its case against him to the requisite standard. See also Alvin Dennison v R [2014] JMCA Crim 7 on the treatment of dock statements.

[13] The judge may tell the jury that they may consider that the statement is of less value than sworn evidence because the accused has chosen not to submit himself to cross-examination but in any event, he must direct them that it is material in the case and that it is for them to decide what weight, if any, they will give to it.

Vulnerable defendants

Who is a vulnerable defendant?

The following factors are relevant in assessing persons who may be vulnerable defendants:

- Unrepresented litigants;
- Gender and age, which includes children and the elderly;
- Social exclusion and poverty;
- Physical disability and mental illness;
- Sexual orientation, and gender reassignment.

The research seeks to highlight in particular unrepresented defendants, disabled parties and mentally challenged parties and magistrates' duty.

Unrepresented defendants

Right to fair trial

When a defendant is unrepresented, the court should be vigilant to ensure that a fair trial is afforded to him.[14] The Constitutions of **Barbados, Belize, Guyana** and **St. Vincent and the Grenadines** state that a person charged with a criminal offence should be afforded the express constitutional right to a fair trial and this includes that he or she shall be permitted to defend himself before the court in person or by a legal representative.[15]

ANTIGUA AND BARBUDA

Where a person is charged with a criminal offence then, unless the charge is withdrawn, he must be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.[16]

BARBADOS

In **Cumberbatch (Glyne) v R,**[17] it was held that although the constitution provides for the right to a fair trial, the accused is not entitled to legal aid automatically where he does not have a legal representative. *Section 12,* of the Constitution of Barbados expressly states that a person

[14] Seeraj Ajodha and Others v. The State (1981) 32 W.I.R. 360 (Trinidad and Tobago)
[15] Barbados - Constitution section 18(1)(2)(d); Belize - Constitution Chap. 4 section 6 (2); Guyana - Constitution Chap 1:01, section 144(1)(2)(d); Saint Vincent and the Grenadines - Constitution 1979, section 8(1)(2)(d).
[16] Selwyn Charles v The Attorney General ANUHCV 2011/0069 (Antigua and Barbuda)
[17] (2004) 67 WIR 48

who has been charged shall be permitted to defend himself and to have legal representation but this is not be construed as entitling a person to such representation at the public's expense.[18]

For matters falling within the scope of the *Community Legal Services Act, Chap. 112A,* legal aid may be provided where a legal aid certificate is granted. The Act stipulates which matters legal services may be provided on the grant of a legal aid certificate, which includes all offences where a minor is charged, and rape among others.

GUYANA

The constitutional right to legal representation is not absolute and adjournments will not be repeatedly granted to the defendant to secure legal representation of his choosing.[19] Other relevant considerations are the availability of the witnesses and any inconvenience that may be caused to them if the trial is unnecessarily delayed. The defendant will not be allowed to frustrate the administration of the justice when he seeks legal representation and does not avail himself of it. Consideration is also given to whether the litigant experiences any advantage or injustice of any kind was taken of, or meted out to, any litigant who was unrepresented at his trial.[20]

In **Britton v Paul,**[21] the defendant was not legally represented at trial. He pleaded guilty and upon appeal against his conviction the full court allowed his appeal and quashed his conviction. This decision was then appealed by the Assistant Director of Public Prosecutions to the Court of Appeal which held that the defendant's plea was unambiguous and his lack of legal representation did not lead to an unfair trial. Accordingly, his conviction was reinstated. The Court of Appeal emphasised its stance stating that the court *"always exercises watchfulness and takes scrupulous care to discover whether any advantage or injustice of any kind was taken of, or meted out to, any litigant who was unrepresented at his trial."*

ST. KITTS AND NEVIS; ST. LUCIA

Where the accused forgoes legal representation or does not accept legal aid, the presiding magistrate must ensure that the accused understands the proceedings and the roles of the parties involved at all stages. The magistrate's duty to an unrepresented defendant includes:

- Ensuring the criminal summary procedure is explained in simple language to the unrepresented litigant;
- Ensuring that the unrepresented litigant has access to appropriate information and the opportunity to cross-examine and call witnesses, and give evidence;
- Ensuring that the litigant is adequately informed on his responsibilities in the trial process and is given adequate time to comply;

[18] Hinds v Attorney-General No. 2 (1999) 59 WIR 75; [2001] UKPC 56 (Barbados). Bingham LJ at [17] stated that "there will be very many cases, in Barbados as elsewhere, which may be fairly heard without representation of the defendant. The less serious the charge, the more straightforward the facts and the more modest the potential penalty, the likelier this is to be true. But the contrary is true also: the more serious the charge, the more complex the case and the greater the potential penalty, the more likely it is that legal representation of the defendant (if he wishes it) will be needed if the trial is to be fair to him."

[19] Caesar (Donovan) v The State (1999) 59 WIR 284 (Guyana)

[20] Britton v Paul GY 1979 CA 012

[21] GY 1979 CA 012

- Where the unrepresented accused is a person with a disability, ensuring that they receive sufficient time in accordance with their own needs.

Careful scrutiny is given to cases in which the defendant was unrepresented, and convictions which are preceded by procedural errors may be quashed and aside. In **Gordon v R,**[22] the appellant challenged his conviction on charges of rape and indecent assault on the ground that he was unrepresented during the trial. The Court of Appeal held inter alia that the summation to the jury (which lasted approximately two hours) was wholly imbalanced and was demonstrative of a flippant attitude. This case makes evident the need for guidelines when dealing with unrepresented defendants who are the mercy of the courts and the judiciary.

ST. VINCENT AND THE GRENADINES

In **Maurice Clifton v Commissioner of Police,**[23] the appellant, who was unrepresented at his trial, appealed against his conviction and sentence. The Court of Appeal considered, inter alia, his lack of legal representation in the proceedings below, vacated the sentence and remitted the matter to the magistrate's court for fresh sentencing.

Before a defendant can plead, the magistrate must determine whether he is fit to plead and understands the course of proceedings, and importantly, the consequences of his plea. Thus, an accused is likely to be unfit to plead if he shows signs of mental disability. The overriding principle with respect to a guilty plea is that it must be unambiguous and voluntary. A defendant who is unrepresented and elects to plead guilty, might be at risk of entering a plea without having fully understood his case.[24] The magistrate's role in such instances is to mitigate the risk by ensuring the accused understands the nature of his plea and listening for any explanation which might indicate a not guilty plea.

Under the *Criminal (Procedure Code) Act, Chap. 172, Section 115,* the court is empowered to enquire into the suspected incapacity of the accused during the preliminary enquiry. If the court finds reason to believe that the accused is of unsound mind and incapable of defending himself, the court shall order that the defendant be detained in such place as the court may direct for medical observation and report for a month. Subsequently, the court shall postpone any further proceedings. If the accused is incapable of making his defence, and the offence is a bailable one, he may be released on security and the court may order that he be taken care of and prevented from harming himself or others. Where the offence is not bailable the court may order the accused to be detained in a mental hospital.

[22] KN 1996 CA 3, St. Kitts

[23] Magisterial Criminal Appeal No.63 of 2006

[24] Baker (1912) 7 Cr App R 217 an unrepresented defendant initially pleaded guilty to charges against him, but his explanation given subsequently demonstrated that he had a reasonable excuse which was equivalent to a not guilty plea.

TRINIDAD AND TOBAGO

The legislation is silent on whether and how a trial ought to proceed in respect of an unrepresented defendant. At common law, all defendants in criminal proceedings are entitled to a fair trial.[25] The defendant's right to a fair and public hearing by an independent and impartial tribunal is also constitutionally guaranteed.[26]

Prior to its repeal, the procedure set out in *Section 39* of the *Criminal Procedure Act, Chap. 12:02*, required a defendant be legally represented before arraignment. The importance of legal representation remains within the spirit of the Act. *The Legal Aid and Advice Act, Chap. 7:07,* provides for state funded legal representation for suspects in detention; and entitles persons charged with specific summary offences or involved matters of urgency in relation to domestic violence cases, and criminal appeals to apply for legal aid.[27]

In non - capital cases, an adjournment is usually granted to an accused to seek legal representation. Where he chooses to remain unrepresented the trial may continue.[28] Where an adjournment is refused, the issue of whether such refusal amounts to a breach of the defendant's constitutional right to a fair trial may arise. Though there is no absolute right to legal representation, in instances where the court intends to proceed with a trial against an unrepresented defendant, the court should inquire into the defendant's reasons for continuing unrepresented, and the court should ensure that the defendant has sufficient time to prepare for the trial.[29]

It is essential that an unrepresented defendant understand the nature of the charge against him so that he may properly answer.[30] A defendant cannot enter a valid guilty plea to a charge he does not understand. A magistrate must ensure that a note is made of whatever he says to an unrepresented defendant by way of informing him of his rights, advising him or assisting him in the course of a trial and of anything that the accused may say in response.[31]

In capital matters the defendant should be represented from the start of the trial, and even before he volunteers information to the court when he is arraigned.[32] If the accused is unrepresented at the time of his arraignment, steps must be taken to provide him with an attorney through Legal Aid Authority. The magistrate must ensure that an unrepresented defendant is informed of his right to give evidence, remain silent and to call witnesses; failure to do so may result in the convictions being quashed. Where an unrepresented accused chooses to plead guilty and it cannot be said that he is ignorant to what is happening, the court must still satisfy itself of his fitness to plead.[33]

[25] Wilberforce Bernard v The State (2007) 70 WIR 255
[26] Constitution of Trinidad and Tobago section 4
[27] The Legal Aid and Advice Act Chap. 7:07 sections 15B - 20
[28] R v Mings (1976) 27 WIR 12
[29] Jahree v The State [2005] UKPC 7
[30] Noel v Rawlins P.C.#16750 63 of 2015 at p 12
[31] Tiwarie v The State 43 WIR 406
[32] Habib v The State (1989) 43 WIR 391 at 392
[33] Ibid at 393

Witnesses with disabilities

In most Commonwealth Caribbean territories, a witness' competence to give evidence will only negated if that person's disability impairs his appreciation of the duty to give truthful evidence and his ability to understand and intelligibly communicate a response to questions posed. In Guyana, the evidence act expressly provides that a witness shall not be deemed incompetent to give evidence on account of an inability to speak or hear, and may be permitted to give his evidence in open court by writing or by signs or in any other manner in which he can make it intelligible.[34]

A person is not competent to give evidence in **St. Kitts and Nevis,** if that person is incapable of hearing or understanding, or of communicating a reply to a question about a fact and that incapacity cannot be overcome without undue cost or undue delay.[35] However, witnesses who are deaf and/or mute may be questioned in any appropriate way including the use of a court interpreter for sign language, and may give evidence by any appropriate means or as directed by the court.[36]

In **Trinidad and Tobago,** all persons are deemed competent and compellable to give evidence. Where a person is unable to understand the obligation to give truthful evidence he would be considered incompetent to do so. Where the court is satisfied that the person is incapable of understanding any question put to him or reply to it and that incapacity cannot be readily overcome, that person is deemed incompetent to give evidence.[37] Persons with disabilities enjoy a constitutionally guaranteed right to equality before the law and the protection of the law and should not be discriminated against but treated equally as though there were no disability.[38]

In **Daniel v The Attorney General,**[39] the court looked at the issue of persons with physical disabilities and their inability to access State services in particular the judiciary. Though the matter was steeped within a constitutional motion the court recognized the rights of physically impaired persons and the country's ratification of the United Nations Declaration on the Rights of Disabled Persons. The court noted that at present the judiciary does not apply draconian legislation[40] on citizens with physical impairment since they have the right to enjoy a decent life as normal and full as possible.

In **Barbados,** *The Evidence Act, Chap. 121, Sections 38 (1), (2)*, state that with respect to misleading questions, or those which are harassing, intimidating, offensive and oppressive which are put to the witness under cross-examination, the court may in considering the witness age, mental or physical disability disallow the same or inform the witness that he is not required to answer.

[34] Guyana – Evidence Act Chap. 5:03 section 49(2)
[35] St Kitts and Nevis – Evidence Act No. 30 of 2011 section 10.
[36] St Kitts and Nevis – Evidence Act No. 30 of 2011 section 30
[37] Trinidad and Tobago - Evidence Act Chap 7:02 section 13 A
[38] Trinidad and Tobago – Constitution section 4(b).
[39] George Daniel v The Attorney General of Trinidad and Tobago HCA 393 of 2005
[40] Matthews v the Transport Commissioner of Trinidad and Tobago and Another HCA 972 of 1999, pg 22

Vulnerable witnesses

In **St. Lucia,** a "vulnerable witness" is one whose ability to give evidence or the quality of whose evidence, is likely to be affected by reason of:

- Age of maturity;
- Physical, intellectual, or psychiatric disability;
- Trauma suffered by the witness;
- The witness's fear of intimidation;
- The linguistic or cultural background of the witness;
- The nature of the proceedings;
- The nature of the evidence that the witness is expected to give;
- The relationship of the witness to any party in the proceedings;
- Or any other ground of similar nature.[41]

Complainants under the age of 12 years old are also taken to be vulnerable witnesses.[42] To ensure that vulnerable witnesses are safeguarded and able to testify effectively, the magistrate may direct that the witness give evidence in any of the following manners:

- The witness gives evidence while in the courtroom but unable to see the defendant or specified party or witness by virtue of a screen or other device;
- The witness gives evidence from an appropriate place outside the courtroom, either in **St. Lucia** or elsewhere by means of technology which allows for the witness to see and or hear a person in the courtroom and be seen and heard by the magistrate, legal representatives acting in the proceedings and an interpreter, if one has been appointed;
- A video recording of an interview of the witness, or a portion thereof made before the hearing be admitted as evidence in chief;
- The witness be assisted in the giving of evidence by a person approved by the court; or gives evidence using a device to overcome any disability, disorder or impairment that may affect the ability of the witness to hear or understand the questions and communicate answers.[43]

In **St. Vincent and the Grenadines,** the court may make an anonymity order in respect of a witness following an application made by the prosecution or the defence to protect the identity of the witness.[44] Furthermore, the *Youth Justice and Criminal Evidence Act, 1999, Part II, Chap. 1,* provides that on a special measures direction being given by the court, witnesses are allowed special measures if it would be likely to improve the quality of evidence given.[45] Special measures for the giving evidence include evidence by live link, evidence in private, video recorded

[41] St. Lucia - Evidence Act Chap. 4:15 section 2
[42] St. Lucia - Evidence Act Chap. 4:15 section 29 (1)
[43] St. Lucia - Evidence Act Chap. 4:15 section 29 (5)
[44] St. Vincent and the Grenadines - Witness (Special Measures) Act, 2013 Section 6(1)
[45] Witness (Special Measures) Act, 2013 section 13(a): The special measure direction is only available to witnesses.

evidence, video recorded cross-examination and re-examination and aids to communication.

In **Belize,** the *Juvenile Offenders Act,* lends itself to assisting children, a category of vulnerable witnesses, when they appear before the court as an accused person. Some of the assistance offered includes:

- It is the duty of the court to explain to the juvenile in simple language the substance of the offence;
- If a young person doesn't admit the offence with which he is charged, then the evidence of the witnesses against the child will be taken and after each gives their evidence, the court will ask the child (or his parents or attorney etc.) whether they have any questions of the witness. If the child or young person instead of asking questions wishes to make a statement he shall be allowed to do so, and it shall be the duty of the court to put to the witnesses such questions as appear to be necessary;
- Where a child or young person is charged with any offence, the court may in its discretion require the attendance of his parent or guardian and may make such orders as are necessary for the purpose.

In **Dominica,** the *Protection of Witnesses Act, 2013,* provides limited powers to the court to make provisions for vulnerable witnesses. The act defines a witness as a person called or proposed to be called to give evidence at the trial or hearing in question. Whether a witness is eligible for assistance is determined by *Section 12,* of the Act. *Sections 16 – 21,* make provisions for giving evidence by live link, evidence in private, video recorded evidence, video recorded cross examination/ re-examination, examination of a witness through an intermediary or providing aids to communication to a witness who may be deaf etc. Notably however *Section 12,* specifically excludes any assistance to an accused/ defendant.

In **Grenada,** all persons are deemed competent to testify unless they are unable to understand the questions put to them and to answer rationally.[46] A person who is unable to speak may give evidence either in writing or by sign language.[47] Where a person suffers from a mental disorder he is not incompetent to testify unless he is unable to understand the questions put to him and to reply to them rationally.[48]

In **Jamaica,** a magistrate dealing with a child brought before him whether as a defendant or in any other capacity must be guided by the provisions of the *Child Care and Protection Act,* in so far as it provides a certain amount of protection for a child. By the terms of the act, a Parish judge must, in all things, have regard to what is in the best interest of the child. Where a child is called as a witness in any proceedings in relation to an offence contrary to decency or morality, the court may direct that the courtroom be cleared of all persons not being officers of the court, the parties, their attorneys-at-law or other persons directly concerned in the case. In addition to the foregoing, the court has power to hear proceedings in camera; direct that no report of the proceedings publishes any particulars or picture likely to identify the child as being a person

[46] Evidence Act Chap 92 S117
[47] Evidence Act Chap 92 S118
[48] Evidence Act Chap 92 section 117

against or in respect of whom the proceedings are taken or as a witness therein ; order that where an offence is committed against a child and their attendance is not essential, the case may be proceeded with and determined without the attendance of the child ; and where the child's presence to give evidence in respect of an offence against them would pose a serious risk to the life or health of the child and a duly qualified medical practitioner so states, authorize a justice of the peace to take a deposition.

Guidelines

The following are reasonable and cost-effective steps which courts may and can assist in removing barriers to access to justice. The list is non-exhaustive.

- The magistrate should ask questions of concern directly to the person disabled since there are various levels of sensitivity amongst disabled persons, for instance, a simple enquiry such as 'Can you see/ hear?' 'Are you comfortable sitting there?';
- Enquire as to what is needed rather than the nature and extent of the impairment;
- Talk directly to the person disabled; even if there is an interpreter, carer or personal assistant speak to the person directly if you can;
- Avoid disclosure of medical histories where possible, since these measures may dehumanize the individual;
- Where the person's disability is such that he or she requires regular breaks to rest or use the lavatory for example, determine in advance how the person will indicate the need for a break to avoid them appearing to 'ask permission' on each occasion.

District Judge Ashton in his article Equal Access to Justice for Disabled People[49] states:

> *"It is not sufficient to ensure that wheelchair users can gain access to the courtroom; physical disabilities come in many other forms. Defective vision, hearing impairment and speech defects may all affect an individual's ability to participate in the proceedings unless compensated for by a sympathetic approach and the use of available aids....A simple assessment of someone's ability to take an oath in the witness box and face a confrontation in a courtroom is no longer an acceptable approach to the protection of those with such disabilities; all available evidence should be evaluated and a learning disabled witness treated with the same care as a child, an individual approach being tailored to the specific need or needs identified."*

[49] Judicial College Equal Treatment Bench Book 2013

The English position

The *Youth Justice and Criminal Evidence Act, 1999*, as amended by the *Coroners and Justice Act, 2009,* defines a vulnerable witness as being a person who is under 18, suffering from a mental disorder within the meaning of the *Mental Health Act, 1983*, otherwise having a significant impairment of intelligence and social functioning or having a physical disability or suffering from a physical disorder (such as deafness, blindness etc). Vulnerability is not limited to defendants.

Conclusion

There are several options available to a court dealing with a vulnerable witness. However, very few commonwealth Caribbean territories extend specific protections to an accused person and none of the territories have substantive legislation targeting unrepresented defendants. Admittedly, across several of the commonwealth states there are provisions which can be used to assist vulnerable parties such as the duty of the magistrate to inform an unrepresented party as to his right to appeal a decision on bail (as evidenced for example in the *Bail Act* of Jamaica) however they are scattered across several enactments and they are often limited in scope. Insofar as the presence or absence of directions to assist a magistrate dealing with such a party may go to the heart of whether a fair trial was granted, it is highly recommended that practice directions or rules of procedure be developed to assist summary courts.

CHAPTER 4

CHARGES

1. Commencement of Proceedings

The information or complaint normally initiates proceedings in court.

ANGUILLA

The *Magistrate's Code of Procedure Act, Chap. M5,* states that:

- The charge(s) must be laid on complaint and the complaint may, in the discretion of the magistrate, be reduced into writing: *Section 22;*
- Any person may make a complaint against any person committing an offence punishable on summary conviction, unless it appears from the enactment on which the complaint is founded, that the complaint must be made by a particular person or class of persons: *Section 24.*

ANTIGUA & BARBUDA

The *Magistrate's Code of Procedure, Chap. 255*, states that:

- All charges must be made by way of a complaint and may be reduced in writing at the magistrate's discretion: *Section 24;*
- Anyone may make a complaint against person found committing a summary offence, unless the enactment on which it is founded states that any complaint for such offence shall be made only by a particular person or class of persons: *Section 26(1).*

BARBADOS

The *Magistrate's Court Act, Chap. 116A,* states that:

- Proceedings shall be instituted upon an information laid before a magistrate: *Section 12(1);*
- An information may be laid by the prosecutor, complainant in person or by his attorney-at-law or other person authorised on his behalf: *Magistrate's Courts (Criminal Procedure) Rules, 2001, rule 7(2);*
- In cases of assault or battery, even if the victim declines or refuses to lay an information, a constable may, contrary to any other enactment, proceed to lay same: *Magistrate's Court Act, Chap. 116A, Section 211(2).*

The form and requisites of an information are set out in the *Magistrate's Courts (Criminal Procedure) Rules, 2001, rule 8,* which stipulates that an information must:

- Describe in ordinary language the speci c offence with which the accused is charged;
- Avoid the use of technical terms;

- State all the salient particulars of the offence without necessarily stating all the elements of it;
- State such particulars as may be necessary for giving reasonable information of the nature of the charge;
- Where the offence charged is created by an Act, include in the description of the offence, a reference to the section of the Act, rule, order or regulation that created the offence.

BELIZE

The *Summary Jurisdiction (Procedure) Act, Chap. 99,* states that every proceeding in respect of a summary conviction offence shall be instituted by way of a complaint made before the magistrate of the court: *Section 18.*

The form and requisites of the complaint are as follows:

- No complaint need be in writing, unless it is required to be so by the statute on which it is founded or by some other statute, but if a complaint is not made in writing, the clerk shall reduce it into writing: *Section 21(1);*
- Subject to *Section 29,*[1] every complaint may, unless some other statute otherwise requires, be made without any oath being made of the truth thereof: *Section 21(2);*
- Can be made by the complainant in person or by his attorney-at-law or by any other person authorized in writing on his behalf: *Section 21(3)*[2];
- Contain a statement of the specific offence charged, together with particulars for giving sufficient details about nature of the offence: *Section 21(4);*
- The statement of the offence shall describe the offence shortly in ordinary language, and if the offence charged is one created by statute, contain a reference to the section of the statute creating the offence: *Section 21(5);*
- After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language, the use of technical terms is not required: *Section 21(6);*
- Where it is in such form as would have been sufficient in law if the Act had not been passed, it will continue to be sufficient in law: *Section 21(7).*

DOMINICA

The *Magistrate's Code of Procedure Act, Chap. 4:20,* states that proceedings shall be instituted by way of a charge or complaint made before a magistrate: *Section 20.*

The form and requisites of the complaint are as follows:

[1] Belize - Summary Jurisdiction (Procedure) Act Cap. 99, section 29 stipulates that a complaint on oath is a prerequisite to the issuance of a warrant of arrest in the rst instance

[2] Ewart Itza v A.C.P Bernard Lino Criminal Appeal No. 34 of 2005

- The charge shall be laid on complaint and such complaint may be reduced into writing based on the discretion of the magistrate: *Section 21;*
- It may be laid or made by the complainant in person or by counsel or solicitor or other person authorized on his behalf: *Section 23.*

GRENADA

The *Criminal Procedure Code, Chap. 72B,* states that proceedings shall be instituted by way of an information or complaint made before a magistrate: *Sections 68, 95.*

The form and requisites of the complaint are as follows:

- Need not be in writing, unless it is required to be so by the statute on which it is founded, or by some other statute: *Section 70(1);*
- Subject to *Section 74,*[3] a complaint may be made without any oath as to the truth thereof unless some other statute so requires: *Section 70(2);*
- Shall be for only one offence: *Section 70(3);*
- May be made by the complainant in person or by his counsel or other person authorised in writing on his behalf: *Section 70(4);*
- Shall contain a description of the offence in the same or similar words of the statute creating it, with a specification so far as may be practicable of the time, place when and where the offence was committed: *Section 70(5);*
- Shall not specify any exception, proviso, condition, excuse or qualification in relation to the offence and if it does, no proof is required from the complainant: *Section 70(6).*

GUYANA

The *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 4,* states that proceedings for a summary conviction offence shall be instituted by a complaint before a magistrate. However, in respect of indictable offences, this may be instituted either by an information or a complaint: *Criminal Law (Procedure) Act, Chap. 10:01, Section 51.*

The form and requisites of the complaint or information under the *Summary Jurisdiction (Procedure) Act, Chap. 10:02,* are as follows:

- Need not be in writing unless the statute on which it is founded or any other enactment so requires. Where it is not in writing however, the clerk of court should reduce it to writing: *Section 7(1);*
- Subject to *Section 14,* a complaint may be made without any oath as to the truth thereof unless some other statute so requires: *Section 7(2);*

[3] Grenada – Criminal Procedure Code Cap. 72B, section 74 stipulates that a complaint on oath is a prerequisite to the issuance of a warrant of arrest in the first instance

- May be made by the complainant in person, or by his counsel or other person authorised in writing on his behalf: *Section 7(3);*
- Shall be sufficient if it contains the description of the offence according to the written law creating the offence, with specifications of the time and place in which the offence was committed: *Section 7(4).*

JAMAICA

The *Justices of the Peace Jurisdiction Act,* states that:

- Proceedings shall be instituted by way of information laid before one or more Justice of the Peace for any parish: *Section 2;*
- The information may be made without any oath or affirmation being made of the truth thereof, except in cases where the justice or justices receiving the same shall thereafter issue his or their warrant in the first instance to apprehend the defendant: *Section 9;*
- The information shall be made in person, or by his counsel or solicitor, or other person authorized on his behalf: *Section 9*.

The form and requisites of an information under *Section 64*,[4] are as follows:

- It shall contain a statement of the specific offence with which the accused is charged together with particulars as may be necessary for giving reasonable information as to nature of the charge;
- If the offence charged is one created by statute, it should contain a reference to the section of the statute creating it: **Earl Colley v R (2012) JMCA Crim 43;**
- The statement and particulars of offence should as much as possible be set out in plain simple language;
- An information which would have met the requirements of the law before the statute came into being will continue to be sufficient in law, as if the Act had not been passed.

MONTSERRAT

The *Criminal Procedure Code, No. 9 of 2010,* states that:

- Criminal proceedings are instituted by making a charge against a person either by the police laying a charge upon arrest or by any person or a police officer, who has reasonable and probable cause to believe that an offence has been committed, making a complaint to a magistrate: *Sections 23, 24, 25;*
- Upon receiving a complaint, a magistrate, shall draw up or cause to be drawn up and shall sign a formal charge in accordance with the provisions relating to the form and content of a charge: *Section 26;*

[4] Rohan Whyte v R (2010) JMCA Crim 16 where an information was held to be in conformity with sections 28 and 64 in the absence of an impressed seal being placed on documents by the Justice of the Peace.

- A charge shall contain, and, subject to the provisions of the *Criminal Procedure Code,* shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with the particulars necessary for giving reasonable information as to the nature of the offence alleged and the acts or omissions alleged to have given rise to the offence: *Section 193.*

ST. KITTS AND NEVIS

The *Magistrate's Code of Procedure Act, Chap. 3.17,* states that:

- Proceedings shall be instituted by way of a charge or complaint made before a magistrate: *Section 28.*

The form and requisites of the complaint include:

- The charge shall be laid on complaint and such complaint may be reduced into writing based on the discretion of the magistrate: *Section 29;*
- It may be made by any person or police officer: *Section 31;*
- The description of any offence in the words of the Act, order, by-law, regulation, or other document creating the offence or in similar words shall be sufficient in law: *Section 232.*

ST. LUCIA

The *Criminal Code, Chap. 3.01*, states that:

- Proceedings in the court for an order against any person shall be instituted by way of a complaint made before a magistrate: *Section 661.* The form and requisites of the complaint are as follows:
- It shall be made on oath or affirmation by the complainant or a witness on his or her behalf: *Criminal Procedure Rules, 2015, rule 4.1;*
- It may be signed by the complainant or on his behalf by his counsel or other person so authorised to the magistrate's satisfaction: *Criminal Code, Chap. 3.01, Section 666(2);*
- Unless otherwise required by the particular enactment, it is not necessary that a complaint upon which the court may make an order is in writing: *Criminal Code, Chap. 3.01, Section 663;*
- It shall give a description of the offence including the time and place when and where the offence was committed and a reference to the section of the enactment creating it: *Criminal Code, Chap. 3.01, Section 667(1).*

ST. VINCENT AND THE GRENADINES

The *Criminal Procedure Code, Chap. 172,* states that:

- Proceedings may be initiated by making a complaint or by the bringing before a magistrate a person who has been arrested without a warrant: *Section 70(1).*

The form and requisites of the complaint are as follows:

- It shall be done in writing or made orally, but if done orally it shall be reduced to writing by the magistrate and shall be signed by both the complainant and the magistrate: *Section 70(3);*
- Upon receiving the complaint, unless it is already drawn up in the form of a formal charge, the magistrate shall draw up a formal charge containing a statement of the offence with which the accused is charged which shall be signed by the magistrate: *Section 70(4);*
- Where a proceeding is instituted by a police o cer a formal charged drawn up and duly signed by that o cer may be presented to the magistrate and this shall be regarded as a complaint and shall be signed by the magistrate: *Section 70(3).*

TRINIDAD AND TOBAGO

The *Summary Courts Act, Chap. 4:20,* states that:

- Proceedings in the court for an order against any person shall be instituted by way of a complaint and information made before a magistrate: *Section 33(1).*

The form and requisites of the complaint are as follows:

- It shall contain a statement of the specific offence 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: *Section 38(1);*
- The statement of the offence shall describe the offence in ordinary language shortly, without necessarily stating all the essential elements of the offence and if the offence charged is created by statute or other written law, the statement shall make reference to the section creating it: *Section 38(2);*
- After the statement of the offence, the particulars of the offence shall be set out in ordinary language: *Section 38(3);*
- Where it is in such form as would have been sufficient in law if the Act had not been passed, it will continue to be sufficient in law: *Section 38(4);*
  - It shall not be in writing unless it is required to be so by the written law on which it is founded or by some other written law. But if it is not made in writing, the clerk shall reduce it to writing: *Section 39(1);*
  - Subject to *Section 45,* it shall be made without any oath being made of the truth thereof, unless required otherwise by some written law: *Section 39(2);*
  - It shall be made either by the complainant in person or by his Attorney-at-Law or by any person authorized in writing on that behalf: *Section 39(3);*

- It shall be su cient if it contains the description of the offence according to the written law creating the offence, with speci cations of the time and place in which the offence was committed: *Section 39(5).*

2. Duplicity

Anguilla, Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago.

What is the rule against duplicity?

Duplicity looks at the form of a charge and is not concerned with the examination of evidence called in relation to the charge. A complaint or information shall be for only one offence[5] and where it describes two or more offences this is duplicitous. The reasoning behind the rule is to prevent a defendant from being prejudiced in his defence as a defendant should be able to know exactly for which charge he has been brought before the court to answer.

Exceptions to the rule against duplicity

1. Single or one activity

   Where a person commits a series of acts similar in nature, related in time and place of their commission and comprises one activity or criminal enterprise this shall constitute one offence: **DPP v Merriman [1973] AC 584, HL; Social Security Board v Stout [1992] Crim LR 885.**

2. Continuous offence

   Where a person commits the same act repeatedly over a period of time, against the same legal person, this shall constitute one offence. The reasoning is that the substance of the offence is the same, the evidence is easy to prove one charge and there is no prejudice to the defendant: **Sewchand v Da Costa GY 1948 HC 12[6]; DPP v McCabe [1992] Crim LR 885.**

[5] Anguilla – Magistrate's Code of Procedure Act Chap. M5, section 23
Antigua and Barbuda - Magistrate's Code of Procedure Cap. 255, section 25
Barbados - Magistrate's Courts (Criminal Procedure) Rules 2001, Rule 7(1)
Belize - Summary Jurisdiction (Procedure) Act Cap. 99, section 21(3)
Dominica - Magistrate's Code of Procedure Chap. 4.20, section 22
Grenada - Criminal Procedure Code Cap. 72B section 70(3)
Guyana - Summary Jurisdiction (Procedure) Act Cap. 10:02, section 7(3)
Jamaica - Justices of the Peace Jurisdiction Act, section 9
Montserrat – Criminal Procedure Code No. 9 of 2010, section 25(2)
St. Kitts and Nevis - Magistrate's Code of Procedure Act Cap. 3.17, section 30
St. Lucia - Criminal Code Cap. 3.01, section 665
St. Vincent and the Grenadines - Criminal Procedure Code Cap 172, section 70(6)
Trinidad and Tobago - Summary Courts Act Chap 4:20, section 39(4)

[6] Sewchand v Da Costa GY 1948 HC 12: The offence of using an unlicensed vehicle may comprise of a single act done on one occasion or a series of acts done on different occasions which may be regarded as a continuing offence that may be proven by evidence of similar acts showing the course of conduct which constitute the res gestae

3. Conjunctivity

   Where a person is charged for a statutory offence and the stipulated provision contained within the statute creates two or more offences the person can be charged conjunctively if the matter related to one activity and conjunctive words are used such as "and." It should be noted that when the separate offences are charged in the alternative, this indicates that one activity is not being alleged and this is disjunctive: **Doobay v Inspector of Police (1967) 11 WIR 1874.**

When should an objection to duplicity be taken?

The statutory provisions of the Commonwealth Caribbean countries have not dictated when an objection to duplicity shall be taken. However, in **Sharma v Leacock (1970) 17 WIR 353,** *p. 354,* the position was taken that any objection on the grounds of duplicity should be taken at the earliest possible time, ideally, before the defendant pleads. It was acknowledged though that the failure to take the objection earlier would not necessarily be fatal to an appellant's case where he relies on duplicity as the ground for his appeal against conviction.

How should a magistrate proceed when dealing with a duplicitous complaint or information?

Edwards v Jones [1947] 1 KB 659, states that insofar as summary courts legislation specifies that a complaint or information shall be for only one offence, if a complaint or information is found to contain two offences, the prosecution should elect on which charge to proceed. The complaint or information must then be amended to strike out the second offence and the defendant should afterwards be called upon to plead on the one remaining charge. Legislation providing for no objection to be made to a defect in a complaint or information in substance or in form does not therefore mean that a court can proceed on a duplicitous charge.

Effect of a duplicitous charge on conviction

There is no specific statutory provision in Commonwealth Caribbean countries which speak about the effect of duplicity on a conviction. Once it is ascertained that a charge is duplicitous, the validity of an ensuing conviction depends on the circumstance of the particular case. The position adopted by the Court of Appeal of Trinidad and Tobago in **Sharma v Leacock (1970) 17 WIR 353,** was that, if it is clear that no prejudice accrued to the defendant, the conviction should stand.[7]

[7] Bhagwan v Chester (1967) 11 WIR 187
[8] R v Assim (1966) 2 All ER 881; Nandlal v e State (1995) 49 WIR 412
[9] Anguilla - Magistrate's Code of Procedure Act Chap. M5, section 99(3)
Antigua and Barbuda - Magistrate's Code of Procedure Act Chap. 255, section 84
Barbados - Magistrate's Courts Act Cap. 116A, section 40
Grenada - Criminal Procedure Code Cap. 72B, section 80
Guyana - Evelyn Dick et al v e State Guyana Criminal Appeal Nos. 42 and 43 of 1983 Jamaica - Criminal Justice (Administration) Act section 22(1)
Montserrat - Criminal Procedure Code No. 9 of 2010, section 195
St. Kitts and Nevis - Magistrate's Code of Procedure Act Cap. 3.17, section 86(3)
St. Lucia - Criminal Code Cap. 3.01 sections 68,69, 693, Emmanuel v Cox (1967) 10 WIR 560 St. Vincent and the Grenadines – Criminal Procedure Code Chap. 172, section 16
Trinidad and Tobago - Summary Courts Act Chap. 4:20, section 64(2)

3. Joinder

Anguilla, Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago.

a. Joinder of parties[8]

- This relates to where two or more defendants are joined and tried together in one complaint or information.[9] Such parties may have either been accused of:
  - Similar offences committed in the course of the same transaction;
  - An offence and other persons are accused of aiding, abetting or attempting the commission of the;
  - Different offences committed in the course of the same transaction or arising out of the same or closely connected facts.
- For the territories of **Grenada** *(Criminal Procedure Code, Chap. 72B, Section 80),* **St. Lucia** *(Criminal Code, Chap. 3.01, Section 693)* and **Trinidad and Tobago** *(Summary Courts Act, Chap. 4:20, Section 64(2))*, each defendant shall be informed of his right to have such information or complaint to be taken separately and he shall consent to it being taken together.

b. Joinder of charges/Joint hearing of charges

- This relates to the magistrate hearing two or more information or complaints at the same time;
- The joint hearing of charges occur where:
  - Two or more complaints or information are founded on the same transaction.[10] In the territories of **Grenada, St. Lucia,** and **Trinidad and Tobago,** the consent of the defendants are required to such joinder of charges;
  - The prosecutor lays two or more complaints against the same person at the same time and the magistrate considers it necessary in the interest of justice to deal with the complaints or information together: **Clayton v Chief Constable of Norfolk (1983) 1 All ER 984, HL; Kadan and Stoute v The State DM 2010 CA 1; R v Brandon (1964) 6 WIR 346.**[11]

[10] Anguilla - Magistrate's Code of Procedure Act Chap. M5, section 99
Antigua and Barbuda - Magistrate's Code of Procedure Cap. 255, section 84
Barbados - Magistrate's Courts Act Cap. 116A, sections 39, 40
Belize - Summary Jurisdiction (Procedure) Act Cap. 99, section 45
Dominica - Magistrate's Code of Procedure Act Cap. 4.20, section 22
Grenada - Criminal Procedure Code Cap. 72B, section 80(1)
Guyana - Summary Jurisdiction (Procedure) Act Cap. 10:02, section 29; Compton Greene v Richard Frank Det. Cpl. 14169 (2005-2007)/265 e Law Reports of Guyana
Jamaica - Criminal Justice (Administration) Act, section 22(2);
Montserrat - Criminal Procedure Code No. 9 of 2010, section 194
St. Kitts and Nevis - Magistrate's Code of Procedure Act Cap. 3.17, section 86
St. Lucia - Criminal Code Cap. 3.01, section 693
St. Vincent and the Grenadines - Criminal Procedure Code Cap. 172, section 70(6),(7)
Trinidad and Tobago - Summary Courts Act Chap. 4:20, section 64(1)
[11] Antigua and Barbuda: Magistrate's Code of Procedure Cap. 255, section 25

4. Defects and Amendments

The legislation of the English speaking Commonwealth Caribbean countries specify that no objection is to be taken or allowed in any proceedings in the court to any summons, information or complaint, warrant or other process for any alleged defect therein in substance or in form, or for any variance between any complaint or summons and the evidence adduced in support.[12] However, in **Belize, Grenada, Guyana, Jamaica, Montserrat, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago,** where such defect or variance appears to the court at the hearing to be such that the defendant has been deceived or misled, the court is entitled to make any amendments as is necessary, and may adjourn the matter if it is expedient to do so.[13]

The position in **Anguilla, Antigua and Barbuda, Barbados, Dominica and St. Kitts and Nevis,** is different since legislation does not provide for an amendment to be made at summary level. However, if the defendant is misled by the variance, then upon the defendant's application, the magistrate shall adjourn the hearing.[14]

Dominica - Magistrate's Code of Procedure Act Cap. 4:20, section 22
Jamaica - R v Brandon (1964) 6 WIR 346
St. Kitts and Nevis - Magistrate's Code of Procedure Act Cap. 3.17, section 30
St. Vincent and the Grenadines - Criminal Procedure Code Cap 172, section 70 (6)
Trinidad and Tobago - Summary Courts Act Chap. 4:02, section 64(2)

[12] Anguilla – Magistrate's Code of Procedure Act Chap. M5, section 216
Antigua and Barbuda - Magistrate's Code of Procedure Act Cap. 255, section 230
Barbados - Magistrate's Court Act CAP 116A, section 212(1)
Belize - Summary Jurisdiction (Procedure) Act Cap. 99, section 127(2)
Dominica - Magistrate's Code of Procedure Act Cap 4.20, section 203
Grenada - Criminal Procedure Code Act Cap. 72B, section 88 (2)
Guyana: Summary Jurisdiction (Procedure) Act Cap. 10:02, section 95(2)
Jamaica: Justice of the Peace Jurisdiction Act, section 2
Montserrat – Criminal Procedure Code No 9 of 2010, section 263
St. Kitts and Nevis - Magistrate's Code of Procedure Act Cap. 3.17, section 228
St. Lucia - Criminal Code Cap. 3:01, section 698(1)
St. Vincent and the Grenadines - Criminal Procedure Code, Cap. 172, section 144
Trinidad and Tobago - Summary Courts Act Chap. 4:02, section 118(2)

[13] Belize - Summary Jurisdiction (Offences) Act, CAP 99, section 127(2)
Grenada - Criminal Procedure Code Act Cap 72B section 88 (2);
Guyana - Summary Jurisdiction (Procedure) Act, Cap 10:02, section 95(2)
Jamaica - Justice of the Peace Jurisdiction Act, section 2; Judicature (Resident Magistrates) Act section 190; In respect of indictments Judicature (Resident Magistrates) Act section 278; R v Egbert Wilson (1953) 6 JLR 269
Montserrat - Criminal Procedure Code No. 9 of 2010, section 198
St. Lucia - Criminal Code Cap. 3:01, sections 687, 698(2)
St. Vincent and the Grenadines - Criminal Procedure Code Cap, 172 sections 132(5); 144 (preliminary enquiry)
Trinidad and Tobago - Summary Courts Act Chap 4:20, section 118(3)

[14] Anguilla – Magistrate's Code of Procedure Act Chap. M5, section 259
Antigua and Barbuda - Magistrate's Code of Procedure Cap. 255, section 232;
Barbados - Magistrate's Courts Act Cap, 116A section 212(2);
Dominica - Magistrate's Code of Procedure Act Chap. 4.20, section 205;
St. Kitts and Nevis - Magistrate's Code of Procedure Act Cap 3.17, section 230

In **Larry Joe eld P.C. No. 17306 v Rupert Gri th Mag. App. No. 097 of 2016,** a recent Trinidadian case, the Court of Appeal referred to the case of **New Southgate Metals Ltd v London Borough of Islington 1996 Crim LR 334.** It stated that there are three (3) types of errors which are likely to occur in an information or complaint. This includes:

- **Incurable error,** where the error is so fundamental that it cannot be cured by a reasonable amendment and will lead to the prosecution's case failing, for example, the offence is allegedly committed on the 18th April but this type of offence could not have been committed before the period of 28 days from March 28th: **Foster v DPP (2014) 178 J.P;**
- **Substantial error,** where the court is entitled to allow an amendment if the error can be corrected. If the defendant is misled or deceived by the original charge, an adjournment may be granted to ensure that no prejudice accrued to the defendant. If such an error is not corrected, any resulting conviction upon a defective information may be quashed for example, cases which require the substitution of an offence di erent from the offence originally charged: **R v Rohit Singh 1978 26 WIR 124; James v DPP (2004) 16 SP 596; William v DPP (2009) EWHC 2354 (Admin); R v Fong (1970) 16 WIR 156;**
- **Trivial error,** where the error is merely technical in nature. No amendment is required once it is shown that the defendant has had full notice of the case he is to meet. Any resulting conviction may be upheld despite no amendment being made to the charge for example, a charge referring to the wrong statute: *New Southgate Metals Ltd (Supra);* a complaint referring to the wrong date: **Cross v John (1964) 7 WIR 359;** an incorrectly cited part of schedule to the Act: **DPP v Stewart (1982) 35 WIR 296 PC;** a typographical error: **Joseph v the State (1983) 32 WIR 225;** wrong particulars, time and place: **Sandwell Justices Ex parte West Midlands Passenger Transport Executive (1979) RTR 17.**[15]

The Court of Appeal stated that *"the test to be applied in granting an amendment, both in respect of a complaint or an indictment, is the same. Shielding the defendant from prejudice is of paramount concern to the court."* [16]

In *Rupert Gri th,* the amendment sought was to correct the manner of commission of the offence from "to the annoyance of persons in the road" to the exact wording of the statutory provision creating the offence "insulting language with intent to or which might tend to provoke another to commit a breach of the peace." The Court of Appeal held that the error was trivial in nature and the magistrate should have granted the amendment to the charge since no prejudice would have accrued on the defendant, for the following reasons:

(i) The respondent knew the case he had to meet and cross examination was elicited on his behalf to that effect. Moreover, the statement of the prosecution's witnesses was supplied to him three months in advance. Those statements provided such particulars as were necessary for the respondent to fully prepare and conduct his case;

[15] Seetahal D, Commonwealth Caribbean Practice and Procedure, 4th edition - technical defects also include but are not limited to duplicitous information or complaint; inaccuracies regarding time and place which varies with the evidence; incorrectly spelt names; incorrectly named provisions or sections are quoted and incorrect value of an item is stated

[16] Mag. App. No. P 097 of 2016, Yorke - Soo Hon JA at [21]; see also State v Rohit Singh (1978) 26 WIR 124; Julian v R (1969) 14 WIR 181.

(ii) The penalty for the offences under section 49 is the same. The maximum penalty is fixed at $200.00. The Respondent would not have been exposed to any greater penalty by an amendment;

(iii) The factual basis of the prosecution's case remained the same;

(iv) The respondent was not confronted with a different or more diffcult case; and

(v) The respondent was not deprived of mounting a full and effective defence." [17]

Whether the expiration of the limitation period is fatal to the granting of an amendment?

- The old position in the English-speaking Commonwealth Caribbean countries was that where the limitation period for commencement of a prosecution at summary level expires, no amendment can be properly sought and granted.
- The modern approach suggests that where no injustice will occur, the expiration of the time period is not fatal to an application to amend an existing charge. This position was adopted in *Rupert Griffith* (supra) where the Court of Appeal referred to **R v Thames Magistrates' Court ex parte Stevens (2000) 164 JP 233,** and stated that:

  "it may even allege a different offence provided that it arises out of the same or substantially the same facts as the original offence. However, the most important consideration is that must be made in the interests of justice." [18]

In *Rupert Griffith* (supra), the defendant would have suffered no prejudice and the expiration of the statutory period was not fatal to the amendment of the complaint:

(i) The amendment arises out of the same facts as those which give rise to the original complaint;

(ii) It alleges the same wrong doing;

(iii) The evidence to be adduced by the prosecution remains unchanged;

(iv) The respondent was not deprived of a defence; and

(v) The effect of the amendment was to establish the means of commission of the offence in accordance with the exact words of section 49 of the Summary Offences Act.[19]

When is an amendment granted?

- In *Rupert Griffith* (supra), it was held that *"the time of the amendment is important. The earlier the application is made to amend, the less likely it is that prejudice would accrue against the defendant. e later the amendment, the more likely it is that the defendant may be prejudiced."* [20] (see also **Conliffe v Weekes (1963) 5 WIR 180**). The legislation in all territories indicates that an amendment may be made at the hearing, however, **St. Vincent and the Grenadines** and **Montserrat** have indicated that the magistrate may make an amendment at any stage of the trial before the close of the case for the prosecution.[21]

[17] Mag. App. No. P 097 of 2016, Yorke – Soo Hon JA at [39]
[18] Mag. App. No. P 097 of 2016, Yorke - Soo Hon JA at [47]; Scunthorpe Justices Ex parte Mc Phee and Gallagher (1998) 162 J.P 635 applied in Williams v DPP [2009] EWHC 2354 (Admin); Crann v Crown Prosecution Services [2013] EWHC 552 (Admin).
[19] Mag. App. No. P 097 of 2016, Yorke - Soo Hon JA at [48]
[20] Mag. App. No. P 097 of 2016, Yorke - Soo Hon JA at [23]
[21] Montserrat - Criminal Procedure Code No. 9 of 2010, section 198
St. Vincent and the Grenadines - Criminal Procedure Code Cap. 172, section 132(1)

- When an amendment in relation to altering a charge is granted the charge should be read over to the defendant and he should be allowed to plead again if necessary. Further, the defendant should be granted an adjournment to obviate any embarrassment arising from the amended charge to which he would now be seized.[22]

5. Hybrid or triable either way offences

These are offences that have been created by statute and stipulate that a person found guilty may be liable on summary conviction to a particular sentence and shall be heard in the Magistrate's Court. Alternatively, such person may be liable on an indictable conviction for a different sentence which shall be heard in the High Court. Such offences are normally scheduled offences within the jurisdictions, but nothing limits any other enactment under which any offence is triable either way.

Indictable offences that may be dealt with summarily

- Where the court takes into consideration the representations made by or on behalf of the prosecutor and the defendant, the nature and all other circumstances of the case, the magistrate shall assume the power to deal with an indictable case summarily. Until, this is done the case shall be dealt with indictably.[23] This power shall not be exercised without the consent of the Director of Public Prosecutions where the prosecution is conducted by such director.
- In **Barbados,**[24] the magistrate shall consider whether the matter should be tried summarily or on indictment. Where he considers it more suitable for summary trial this should be communicated to the accused and the accused is permitted to elect whether he wishes to be tried by a jury or summarily.[25] However, where the magistrate considers that the accused should be tried on indictment then the accused does not have the right to elect the mode of trial and the magistrate proceeds to inquire into the information as an enquiring magistrate.

By consent

- Except for **Grenada, Guyana** and **Montserrat,** the defendant should be informed of his right to consent to being tried summarily, and where he so chooses, the matter

[22] Seetahal D, Commonwealth Caribbean Criminal Practice and Procedure, 4th edition p 80
[23] Anguilla - Magistrate's Code of Procedure Act Chap. M5, section 42
Antigua and Barbuda - Magistrate's Code of Procedure Cap. 255, section 45(1) Belize - Summary Jurisdiction (Procedure Act) Cap. 99, section 80
Dominica - Magistrate's Code of Procedure Act Chap. 4.20, section 211(a) Guyana - Summary Jurisdiction (Procedure) Act, Cap. 10:02, sections 61(1)(2), 64 Montserrat - Criminal Procedure Code No. 9 of 2010, sections 66(4)(5)
St. Kitts and Nevis: Magistrate's Code of Procedure Act, Cap 3.17 section 236(a) St. Lucia: Criminal Code Cap 3.01, section 773(a), 774(1)
Trinidad and Tobago: Summary Courts Act, Chap 4:20, section 97(a)
[24] Barbados - Magistrates Courts Act Cap. 116A, sections 46(1)(3)
[25] Barbados - Magistrates Courts Act Cap. 116A section 47

should proceed summarily.[26] However, where the defendant does not consent to a summary trial, the defendant shall be tried on indictment by a jury and the magistrate shall proceed to hold a preliminary inquiry to inquire into the charge.

- The position in **Belize,** is distinct as it classifies the crimes listed in the *Summary Jurisdiction (Offences) Act, Chap. 98, Second Schedule,* as hybrid offences, which are punishable accordingly without the consent of the defendant.[27] There are also specified offences in the third Schedule for which consent is required.
- In **Trinidad and Tobago,** where a child[28] is charged before a court for any offence other than murder or manslaughter the case shall be dealt with summarily and it shall not be necessary to ask the parent or guardian of the child if he consents to the child being dealt with summarily.[29]
- In **St. Lucia,** where the child is charged with an indictable offence other than murder, if the court thinks it expedient to do so, and if the parent or guardian of the child when informed of the child's right to be tried by a jury does not object to the child being dealt with summarily, may deal summarily with the offence.[30] The same position is adopted in Dominica.[31]

By plea

Where the defendant is charged with a hybrid offence, and the magistrate is satis ed that there is adequate evidence to put him on his trial, he shall cause the charge to be reduced into writing and read to the defendant. e magistrate shall explain that he is not obliged to plead or answer and where he pleads guilty he will be dealt with summarily and if he pleads not guilty he will be dealt with on indictment and the magistrate shall proceed to hold a preliminary inquiry.[32] is does not apply in **Trinidad and Tobago.**

[26] Anguilla - Magistrates Code of Procedure Act Chap. M5, section 45(4)
Antigua and Barbuda - Magistrate's Code of Procedure Act Cap. 255, section 46
Barbados - Magistrate's Court Act Cap. 116A, section 47(3)
Belize - Summary Jurisdiction (O ences) Act Cap. 99, sections 51(1)(2)
Dominica - Magistrate's Code of Procedure Act, Cap. 4:20, section 43
Jamaica - Judicature (Parish Courts) Act, section 276
St. Kitts and Nevis - Magistrate's Code of Procedure Act Cap. 3.17, section 51
St. Lucia - Criminal Code Cap 3:01, sections 775(3), (4)
St. Vincent and the Grenadines: Criminal Procedure Code, CAP 172 section 12. Consent may be given by the parent of child under 14 years, but where parent absent no consent may be required section 15(1)
Trinidad and Tobago: Summary Courts Act Chap 4:20, sections 97(d); 100(3) and Second Schedule for certain indictable o ences that may be dealt with summarily.
[27] Belize - Summary Jurisdiction (O ences) Act Cap. 98 section 50(1)
[28] Trinidad and Tobago - Children Act Chap. 46:01: Child is a person under 18 years, young person between 14 and 18 years.
[29] Trinidad and Tobago - Summary Courts Act Chap. 4:20, sections 99(2)(3)
[30] St. Lucia – Criminal Code Cap. 3.01, section 777(1)
[31] Dominica – Magistrate's Code of Procedure Act Chap. 4.20, section 40, 41
[32] Antigua and Barbuda: Magistrate's Code of Procedure Act, Cap 255 section 47
Dominica: Magistrate's Code of Procedure Act, Cap 4:20, section 44
St. Kitts and Nevis: Magistrate's Code of Procedure Act, Cap 3.17, section 52
St. Vincent and the Grenadines: Criminal Procedure Code, CAP 172 sections 11, 13

Summary offence that may be dealt with on indictment

- Upon the hearing of any complaint, it appears to the court that the case should be tried as an indictable offence or if the Attorney-General (Grenada) or Director of Public Prosecutions suggests to the court his opinion to the effect in writing, the offence shall be stayed as a summary one and all depositions shall be taken and the case shall be dealt with as if it had been an indictable one in all other respects.[33]

Special Position of St. Vincent and the Grenadines under the *Criminal Procedure Code, Chap. 172, Section 16.*

What occurs where two or more persons are jointly charged for a triable either way offence?

- Where two or more accused persons are jointly charged for a scheduled offence, each has the separate right to elect a summary trial but will be only allowed the same where all accused elects the same. If one accused elects an indictable trial, then the matter regarding the both accused shall be proceeded with indictably: *Criminal Procedure Code, Chap. 172, Section 16(3).*

What occurs where one person is charged with more than one offence?

- Where an accused is charged with more than one scheduled offence, the accused cannot elect a summary trial in respect of one charge only. The accused must elect summary trial or indictable trial for all: *Criminal Procedure Code, Chap. 172, Section 16(2).*

Whether a defendant has a right to re-elect their mode of trial?

In **R v Birmingham JJ ex p Hodgson et al [1985] 2 All ER 193,** the test that the court should apply in determining whether a defendant should be permitted to re-elect was whether in fact at the time of making the election of summary trial did the defendant properly understood both the nature and significance of his selection. Where the defendant did not understand the same the magistrate should allow the defendant to withdraw his consent to summary trial and thereby re-elect the mode of trial preferred.

[33] Anguilla - Magistrate's Code of Procedure Act Chap. M5, section 42
Antigua and Barbuda - Magistrate's Code of Procedure Cap. 255, section 45(5) Barbados - Magistrate's Courts Act Cap. 116A, sections 46(4); 48
Belize - Summary Jurisdiction (Procedure) Act Cap. 99, section 51
Dominica - Magistrate's Code of Procedure Act Chap. 4.20, section 39
Grenada - Criminal Procedure Code Act Cap. 72B, section 85
Guyana - Summary Jurisdiction (Procedure) Act Chap. 10:02 section 34
Jamaica - Judicature (Parish Courts) Act section 277
Montserrat - Criminal Procedure Code No. 9 of 2010, section 66(5)
St. Lucia - Criminal Code Cap. 3.01 section 774(6)
St. Vincent and the Grenadines - Criminal Procedure Code Cap. 172 section 11(4) Trinidad and Tobago - Summary Courts Act Chap 4:20, section 95

Like offences

Some jurisdictions provide an additional power to a magistrate to switch from committal proceedings to a summary trial.[34] The effect is to permit a magistrate the power to stay a preliminary enquiry into an indictable offence and proceed with such offence summarily. Where the magistrate believes that the evidence establishes the commission of a summary offence of a like kind or of a similar kind, the magistrate is authorized to switch to summary proceedings. According to Seetahal, it is *"apparent that the 'like offence' provisions do not really permit offences to be tried either way, but authorises a special procedure to be invoked if the evidence at the preliminary enquiry appears to establish not the indictable offence charged, but a similar or like summary offence."* [35]

[34] Antigua and Barbuda: Magistrate's Code of Procedure Act, CAP 255 section 46; Dominica: Criminal Procedure (Preliminary Inquiries) Act No. 14 of 1995 section 6; Grenada: Criminal Procedure (Preliminary Inquiries) Act No. 35 of 1978 section 6(1); Guyana: Summary Jurisdiction (Procedure) Cap 10:02 section 33;
St. Kitts and Nevis: Magistrate's Code of Procedure Act, Cap 3.17 section 53;
Trinidad and Tobago: Summary Courts Act Chap 4:20 section 94(1)

[35] Seetahal D, Commonwealth Caribbean Criminal Practice and Procedure 4th Ed., p192

CHAPTER 5

PLEAS

Fitness to plead

If the defendant raises the issue of fitness to plead,[1] he bears the burden of proof and must establish on a balance of probabilities that he is unfit: **R v Robertson 1968 52 Cr. App. R 690.** When the prosecution challenges the defendant's fitness to plea they must prove beyond reasonable doubt that he is unfit: **R v Padola [1960] 1 Q.B. 325.**

In **Taitt v The State [2012] UKPC 38,** the Judicial Committee of the Privy Council summarised the general tests that apply to all cases where fitness to plead is in issue:

- Whether the incapacity is genuine;
- Whether the defendant can plead to the charge or not;
- Whether he has sufficient intellect to comprehend the course of the proceedings in the trial so as to make a proper defence.

The questions which a court should ask itself in assessing the defendants fitness are:

- Does the defendant understand the charges that have been made against him?
- Is he able to decide whether to plead guilty or not?
- Is he able intelligently to convey to his lawyers the case which he wishes them to advance on his behalf, and the matters which he wishes to put forward in his defence?
- Is he able to follow the proceedings when they come to court?
- Is he able, if he wishes, to give evidence on his own behalf?

ANGUILLA

There is no statutory provision governing the inquiry into an accused's fitness to plead. The common law principles in **R v Robertson 1968 52 Cr. App. R 690**, **R v Padola [1960] 1 Q.B. 325** and **Taitt v The State [2012] UKPC 38,** are applicable.

ANTIGUA AND BARBUDA

Where a magistrate has reason to believe that a person charged with an offence who appears before him is of unsound mind and unfit to properly give instructions, the magistrate has the power under the *Mental Health Act, Chap. 274, Section 6,* to write an order to direct that person be received into an institution and be there detained under observation for a period not exceeding fourteen days to gather evidence as to the person's state of mind.

[1] Pritchard (1836) 173 ER 135

BARBADOS

The *Mental Health Act, Chap. 45, Section 7,* states that where, in the opinion of a court, an accused person charged before it is, or appears to be suffering from mental disorder, the court may order that person to be admitted to a mental hospital for a period not exceeding eight weeks for examination.

In **Bourne v The Queen BB 1999 CA 1,** the appellant sought to adduce fresh evidence on appeal that he may have been unfit to plead having suffered from schizophrenia before the offence. The Court of Appeal held that the appellant had not shown that the question of his ability to plead or to instruct counsel was an issue at the trial, however, on his petition to appeal to Her Majesty the Privy Council quashed his conviction and sentence and a retrial was ordered.

BELIZE

The Unsoundness of Mind Act, Chap. 122, Section 23(4), states that where it appears to any court of summary jurisdiction by which a person charged with an offence is remanded or committed for trial that such person is a defective,[2] the court may order that pending the further hearing or trial he shall be detained in an institution for defectives, or be placed under the supervision or guardianship of any person on that person entering into a recognisance for his appearance.

DOMINICA

An accused person is unfit to stand trial if he lacks decision-making capacity. The *Criminal Law and Procedure (Amendment) Act, 2013, Section 36(5),* sets out the factors in which the magistrate should take into account in determining the decision-making capacity of a person:

- The complexity of the particular proceedings and gravity of the outcome;
- How important any disability is likely to be in the context of the decision the accused must make in the context of the trial which the accused faces;
- The ability of the accused to (i) understand the nature of the charge; (ii) understand the requirement to tender a plea to the charge and the effect of such a plea; (iii) understand the purpose of, and follow the course of, the trial; (iv) understand the evidence that may be given against him; (v) instruct and otherwise communicate with his legal representative;
- Any other factor which the court considers relevant.

[2] Belize - Unsoundness of Mind Act Cap. 122, section 2 the definition of 'defective' includes an idiot, that is to say, a person in whose case there exists mental defectiveness of such a degree that he is unable to guard himself against common physical dangers; an imbecile, that is to say, a person in whose case there exists mental defectiveness which, though not amounting to idiocy, is yet so pronounced that he is incapable of managing himself or his affairs; a feeble-minded person, that is to say, a person in whose case there exists mental defectiveness which, though not amounting to imbecility, is yet so pronounced that he requires care, supervision and control for his own protection or for the protection of others or, in the case of a child, that he appears to be permanently incapable by reason of such defectiveness of receiving proper benefit from the instructions in ordinary schools;

GRENADA

The *Criminal Procedure Code, Chap. 72B,* only provides for inquiry into the fitness of an accused to plead or take his trial in proceedings in the High Court. Accordingly, in the summary jurisdiction the common law principles in **R v Robertson 1968 52 Cr. App. R 690**, **R v Padola [1960] 1 Q.B. 325** and **Taitt v The State [2012] UKPC 38,** are applicable.

GUYANA

There is no statutory provision governing the magistrate's inquiry into the accused's fitness to plead, therefore the common law principles apply. In **Reid v R [1961] 3 WIR 404,** the British Guiana Federal Supreme Court held that a person has the capacity to stand his trial if he is able to understand the course of proceedings at the trial, the relevant evidence and to be able to exercise his right to give evidence for himself. Magistrates should be guided by this test and the guidance in **R v Robertson 1968 52 Cr. App. R 690, R v Padola [1960] 1 Q.B. 325** and **Taitt v The State [2012] UKPC 38.**

JAMAICA

The *Criminal Justice (Administration) Act, Section 25,* states that where at any stage of criminal proceedings any question arises ion arises as to the fitness of a defendant, the court may of its own motion, or on the application of the defendant or the prosecutor, direct that the issue of the fitness of the defendant be tried.[3]

Where the issue of the defendant's fitness arises before the close of the case for the prosecution at a preliminary enquiry, the court shall postpone a direction for the trial of the defendant's fitness until a time that is not later than the time that the defendant is called on to answer the charge; or where the issue arises before the close of the case for the prosecution at a trial, the court may postpone the direction until (i) a time not later than the opening of the case for the defence; or (ii) on the motion of the defendant, any later time that the court may direct.

The issue of fitness shall not be tried in relation to a defendant where the court has postponed a direction that the issue be tried; and the defendant is discharged or acquitted before the issue is tried.

A court shall not arrive at a verdict on the issue of fitness to plead except on the written or oral evidence of two or more duly qualified medical practitioners, at least one of whom is an approved medical practitioner: **Brown v the Queen JM 2016 UKPC 16.** Where the verdict on the trial of the issue of fitness to plead is that the defendant is fit, then the criminal proceedings should continue as if the issue of fitness to plead had never arisen.

A verdict of unfit to plead does not prevent the defendant being tried at any time that he becomes fit to plead. Insofar as the court is able to make an order of remand for persons deemed unfit to plead, a report should be submitted at least once every month by the commissioner of corrections outlining the condition of the defendant in respect of which the order was made. The report should be reviewed by the parish judge who may thereafter give such directions as he thinks fit.

[3] Jamaica - Mental Health Act 1999, section 9 states that the managers of a public psychiatric hospital or a duly authorised medical officer shall, on an order issued by a court, admit and detain for treatment in that hospital persons who are found unfit to plead on trial.

In **Brown v the Queen JM 2016 UKPC 16,** the appellant argued that prior to the amendment of *Section 25,* of the *Criminal Justice (Administration) Act*, which was three years after the appellant's conviction, a verdict of unfitness to plead was of permanent effect and a defendant who subsequently recovered his health could not lawfully be put on trial. The Privy Council rejected this argument and held that if the defendant recovered his sanity, there was nothing in the Act which prohibited the Crown from sending the defendant back to the court for arraignment and trial.

MONTSERRAT

The *Mental Treatment Act, Chap. 14.03, Section 7,* states that whenever a judge or a magistrate has reason to believe that a person committed for trial before him or charged before him with an offence is of unsound mind, he may, for the purpose of obtaining evidence as to whether such person is or is not of unsound mind, by written order direct that such person be received into an institution, to be named in the order, and be there detained under observation during such period, not exceeding fourteen days, as to the judge or magistrate may seem expedient:

- Provided that on good cause shown such order may be enlarged for a further period or periods each not exceeding eight days at a time: Provided further that no order under this subsection shall be made in respect of persons who are not being kept in custody pending trial.

When such an order has been made, a certificate under the hand of the medical officer in charge of the institution shall be sufficient evidence of the facts therein stated concerning the state of mind of the person kept under observation and it shall not be necessary to prove the handwriting of such officer, but the judge or magistrate may examine any members of the staff of such institution who shall have had the patient under observation.

Every person ordered under *Section 7,* to be received into an institution for observation shall be received into the institution named in the order and be there detained under observation for the period stated in the order or for such shorter period as the judge or magistrate who made the order may direct, and it shall be lawful for any person to whom the execution of the order is entrusted to convey the person named therein to such institution.

ST. KITTS AND NEVIS

Magistrates should be guided by the common law principles when determining an accused's fitness to plead. In **Rudolph Lewis v The Queen HCRAP 2009/016,** the Eastern Caribbean Supreme Court, adopting the principles established in **James Vent (1936) 25 Cr. App. R 55** and **Habib (Simon) v The State (1989) 43 WIR 391,** recommended the following procedures for courts embarking on a determination of an accused's competence or fitness to plead:

- Ensure that the accused has competent legal representation;
- The accused should been examined by a medical officer in order to determine whether he is fit to plead;
- The medical should attend court and testify as to his or her opinion concerning the accused's fitness to plead;

- Verify that the accused has not been coerced by his attorney or anyone else to plead guilty and that no one has promised the accused anything to plead guilty;
- Verify that the accused understands the nature and elements of the offence, and that he or she has the right to plead not guilty, the right to state his or her defence, give evidence, remain silent, call witnesses, and address the witnesses and court;
- Ensure that the accused is made aware of the sentencing process and that in determining its sentence, the court has an obligation to apply the sentencing guidelines, consider a psychiatrist and social inquiry report, his antecedents and other sentencing factors;
- Ensure that the defendant is made aware of the maximum possible penalty, as well as the minimum possible penalty.

ST. LUCIA

The *Criminal Procedure Rules, No. 22 of 2015, rule 6.10,* provides that a magistrate may refuse a plea of guilty where he or she believes it is in the interest of justice to do so and where the defendant has made a guilty plea without understanding the consequences of such plea. Magistrates should be guided by the procedure suggested by the Eastern Caribbean Supreme Court in **Rudolph Lewis v The Queen HCRAP 2009/016.**

ST. VINCENT AND THE GRENADINES

The *Criminal Procedure Code, Chap. 172, Section 115(1),* states that the magistrate may during the course of a trial or preliminary inquiry, inquire into the mental state of the accused if he has reason to believe that the accused may be of unsound mind and incapable of making his defence. Magistrate's should adopt the guidelines set out by the Eastern Caribbean Supreme Court in **Rudolph Lewis v The Queen HCRAP 2009/016,** when assessing the accused's fitness to plead.

The *Criminal Procedure Code, Chap. 172, Section 117,* provides that the magistrate may order that the accused be detained for medical observation and report for any period not exceeding one month. A certificate from a medical practitioner from the mental hospital which the accused is detained can be used as prima facie evidence of the capacity of the accused.

The *Criminal Procedure Code, Chap. 172, Section 119,* states that where the accused though not of unsound mind, is unable to understand the proceedings, the court may proceed with the trial or inquiry and if the trial results in a conviction, the proceedings should be forwarded to the High Court with a report of the circumstances.

TRINIDAD AND TOBAGO

The common law principles for determining a defendant's fitness to plead are applicable. In **Taitt v The State [2012] UKPC 38,** the Privy Council stated that on an inquiry into the defendant's fitness to plead, the emphasis should be placed on the defendant's ability or inability to: understand the charges that have been made against him, decide whether to plead guilty or not,

intelligently to convey to his lawyers the case which he wishes them to advance on his behalf, and the matters which he wishes to put forward in his defence, to follow the proceedings when they come to court, and if he wishes, to give evidence on his own behalf.

Guilty plea

A magistrate shall convict a defendant who admits the truth of the charge and shows no cause why he should not be convicted.[4] A guilty plea given by the defendant must be unequivocal and unambiguous since there must be a clear acknowledgement of guilt. The guilty plea must be given voluntarily by the defendant and he must understand the substance of the charge to which he is pleading: **R v Iqbal Begum (1991) 93 Cr App R 96.** An accused who does not understand the nature of his plea or the charge to which he is pleading because of language barrier, disability, mental disorder or some other reason that affects his understanding cannot be said to have made a voluntary plea.

A guilty plea must be unequivocal. If the defendant says he is guilty with an explanation then the plea is qualified. After listening to the defendant's explanation when he is called upon to plead, if the magistrate is of the view that the explanation discloses a valid defence, the magistrate should record a not guilty plea and fix the matter for trial: **Lewis v Commissioners of Police (1969) 13 WIR 186**, **Baker (1912) 7 Cr App R 217.**

A guilty plea may be withdrawn by the defendant at any time before the sentence is passed. After a sentence is passed, the magistrate becomes functus officio and does not have the authority to accept a change of plea: **Beswick v R (1987) 36 WIR 318.**

In **Graham and Jno Baptiste v The Police**; **Azille v The Police DM2010 CA 2,** the appellants challenged their respective convictions in circumstances where they initially pleaded guilty, and following prosecution's evidence, the magistrate refused to entertain a change in plea.

The court adopted the dicta in **Regina v Blandford Justices ex parte G [1967] 1 Q.B. 82:**

> *"... when a Magistrate receives the reply "Guilty" to the common form question asking the defendant to plead, it is necessary for the Magistrate to consider: whether it is safe to accept the plea and enter a conviction. ... in cases where the defendant is not represented or where the defendant is of tender age or for any other reasons there must necessarily be doubts as to his ability finally to decide whether he is*

[4] Anguilla - Magitrate's Code of Procedure Act Chap. M5, section 97
Antigua and Barbuda - Magistrate's Code of Procedure Act Cap. 255, section 82
Barbados - Magistrates Court Act Cap. 116A, section 31(3), Gilkes v Commissioner of Police BB 2013 CA 10
Belize - Summary Jurisdiction (Procedure) Act Cap. 99, section 41
Dominica - Magistrates Code of Procedure Act Chap. 4:20, section 75
Grenada - Criminal Procedure Code Cap. 72B, Section 79(3)
Guyana - Summary Jurisdiction (Procedure) Act Cap. 10:02, section 30(2), James Britton v Charles Paul Crim. App. Nos. 16 and 19 of 1979
Jamaica - Judicature (Parish Court Judges) Act 1928, section 187
Montserrat - Magistrate's Court Act Cap. 2.02, section 4, Criminal Procedure Code No. 9 of 2010, section 214
St Kitts and Nevis - Magistrate's Code of Procedure Act Cap. 3.17, section 84
St Lucia - Criminal Procedure Rules No. 22 of 2015, Rule 6.10
St Vincent and the Grenadines - Criminal Procedure Code Chap. 172, section 126
Trinidad and Tobago - Summary Courts Act Chap. 4:20, section 63(2)

> *guilty or not, the Magistrate ought, in my judgment, to accept the plea, as it were, provisionally, and not at that stage enter a conviction. He ought, in my judgment, in these cases to defer a final acceptance of the plea until he has had a chance to learn a bit more about the case, and to see whether there is some undisclosed factor which may render the unequivocal plea of guilty a misleading one. If at that stage the Magistrate feels that nothing has been disclosed to throw doubts on the correctness of the plea of guilty, he properly accepts it, enters a conviction and that is the end of the matter so far as this point is concerned. If however, before he reaches that stage he finds that there are elements in the case which indicate that the accused is really trying to plead not guilty or, as Lord Goddard C.J. put it, "Guilty, but," then the Magistrate has, in my judgment, no discretion, but must treat the plea for what it is, namely, a plea of 'not guilty'."* [5]

The Court of Appeal set aside the appellants' convictions since it was apparent that their pleas of guilt were not unequivocal.

Not guilty plea

Where the defendant pleads not guilty, the magistrate shall proceed with the trial.[6] The prosecution must be heard on all the evidence adduced to prove the elements of the offence and the defendant must be heard on his evidence in his defence, if he chooses to advance any. Other instances where a not guilty plea will be recorded are:

- The defendant refuses to plea;
- The defendant is mute of malice by visitation of God;
- The defendant pleads guilty, but the plea is unequivocal, or the defendant's explanation amounts to a not guilty plea;
- The defendant has been properly notified but fails to attend court and the court proceeds to ex parte trial.

Pleas in Bar

A plea in bar is a one which puts forward special reasons why a trial cannot proceed. They comprise of the pleas of autrefois acquit, autrefois convict and pardon.

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[5] [1967] 1 Q.B. 82 Widgery J at pg. 90

[6] Anguilla - Magistrate's Code of Procedure Act Chap. M5, section 97
Antigua and Barbuda - Magistrate's Code of Procedure Cap. 255, section 83
Barbados - Magistrate Courts Act Cap. 116A, section 31(1)(2)
Belize - Summary Jurisdiction (Procedure) Act Cap. 99, sections 44(3)(4)(5)
Dominica - Magistrates Code of Procedure Act Chap. 4:20, section 76
Grenada - Criminal Procedure Code Cap. 72B, section 79(4)(5)
Guyana - Summary Jurisdiction (Procedure) Act Cap. 10:02, section 30(3)(4)
Jamaica - Judicature (Parish Court Judges) Act 1928, section 184
Montserrat - Criminal Procedure Code No. 9 of 2010, section 215
St Kitts and Nevis - Magistrate's Code of Procedure Act Cap. 3.17, section 85
St Lucia - Criminal Code Cap. 3.01, section 703, Criminal Procedure Rules No. 22 of 2015, Rule 6.7(2)(a)(c)
St Vincent and Grenadines - Criminal Procedure Code Chap. 172, section 128
Trinidad and Tobago - Summary Courts Act Chap 4:20, section 63(3)(4)

Autrefois Acquit and Autrefois Convict

In the Magistrate's Court pleas in bar are usually taken at the commencement of the case, before any plea of guilty or not guilty. The plea of autrefois acquit should be taken on behalf of the defendant: **Joseph v Mohammed (1964) 7 WIR 96.**

The common law principles upon which the pleas of autrefois acquit and autrefois convict are set out in **Connelly v Director of Public Prosecutions [1964] 2 AC 1254:**

- A defendant cannot be tried for a crime or offence in respect of which he has previously been acquitted or convicted;
- A defendant cannot be subsequently tried for a crime or offence in respect of which he could on some previous trial have been convicted;
- What has to be considered is whether the crime or offence charged in the later trial is the same or is in effect or is substantially the same as the crime charged (or in respect of which there could have been a conviction) in a previous trial and it is immaterial that the facts under examination or the witnesses being called in the later proceedings are the same as those in some earlier proceedings.

In **Connelly,** the House of Lords held that a plea of autrefois cannot be raised as a plea in bar where the defendant has been previously acquitted of a charge of murder and is subsequently tried on another charge for robbery arising out of the same incident since the facts and evidence necessary to support the charge for robbery are different from those needed for a charge of murder.

ANGUILLA

The *Constitution of Anguilla 1982, Section 9(8),* states that no person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

ANTIGUA AND BARBUDA

The *Constitution of Antigua and Barbuda 1981, Section 15(5),* states that no person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any criminal offence of which he could have been convicted at the trial for the offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

BARBADOS

The *Constitution of Barbados 1966, Section 18(5),* states that no person who has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal proceedings relating to the conviction or acquittal.

The *Magistrate's Court Act, Chap. 116A, Section 41,* states that the dismissal of an information for want of prosecution shall not operate as a bar to any other proceedings in the same matter.

In **Stoute v Braithwaite(1962) 4 WIR 391,** the Supreme Court of Barbados held that where a charge against a defendant was previously dismissed for want of jurisdiction, that dismissal was not a bar to a later charge being brought by the prosecution for the same offence.

In **R v Haywood (2016) 88 WIR 45,** the Court of Appeal of Barbados considered the dicta in **Connelly v DPP [1964] 2 AC 1254,** in relation to the doctrine of autrefois acquit and autrefois convict. In Haywood, the appellant was charged under *Sections 4(3),6(2) and 18(4)* respectively of the *Drug Abuse (Prevention and Control) Act, Chap. 131*, on an indictment containing three counts of importation, possession and trafficking of a controlled drug, namely 370.01 kg of cannabis. He was convicted and sentenced on each count and appealed against sentence on the ground, inter alia, that the sentencing judge had erred in law by acting contrary to the principle that a person should not be punished twice for the same act or omission when she had imposed sentences of imprisonment on the appellant for trafficking and for possession of a controlled drug having already imposed a sentence of imprisonment on the appellant for importation of the said controlled drug on the same facts.

The Court of Appeal held that since the appellant was not previously charged with any of the drug-related offences the pleas of autrefois convict or acquit were inapplicable. However, the principle embedded in the *Interpretation Act, Chap. 1, Section 22(1),* provided that an offender should not be punished twice for the same act or omission and was applicable. The possession of 370.01 kilogrammes of cannabis being the actual basis of the offence of trafficking as particularised in the indictment meant the offences of trafficking and possession were one and the same offence in fact and in law. Further, the factual foundation of the offence of importation was the same as that for the offence of possession. Thus, the offences of importation and possession intersected and were consequently one and the same offence in law and in fact. Therefore, multiple sentences had been imposed on the appellant for the same act or omission in contravention of the principles of criminal law embedded in the *Interpretation Act*, to wit that an offender was not to be punished twice for the same act or omission. The appeal was allowed and the sentences for importation and possession were vacated, while the sentence for trafficking by importation was upheld.

BELIZE

The *Constitution of Belize, Section 6(5),* states that a person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

In **Requena and Flores v R (1981) 32 WIR 126,** the Court of Appeal of Belize applied the principles in relation to autrefois acquit and autrefois convict established in **Connelly v DPP.** In **Requena,** the appellants were tried for murder and acquitted of that charge. They were also acquitted of manslaughter. After their acquittal they were re-arrested and charged with robbery on the facts arising out of the same incident. At the second trial the evidence adduced by the prosecution was essentially the same as in the first trial. It was held that there was no rule or principle that evidence which had been adduced by the prosecution on a charge in respect of which a person had been acquitted could not be adduced at his subsequent trial on a different charge arising out of the same facts.

DOMINICA

The *Constitution of Dominica 1978, Section 8(5),* states a person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

The *Criminal Law and Procedure Act, Chap. 12.01, Section 30,* provides that where autrefois convict and autrefois acquit are pleaded, it is sufficient for the defendant to state that he or she has been lawfully convicted or acquitted of the offence.

GRENADA

The *Criminal Procedure Code, Chap. 72B, Section 143,* states that on the trial of an issue on a plea of autrefois acquit or autrefois convict, if it appears that the matter on which the accused was tried on the former trial is the same in whole or in part as that on which it is proposed to try him or her, and that he or she might on the former trial, have been convicted of all the offences of which he or she may be convicted on the count to which the plea is pleaded, the court shall give judgement that he or she be discharged from that count.

If it appears that the accused might, on the former trial, have been convicted of any offence of which he or she may be convicted on the count to which the plea is pleaded, but that he or she may be convicted on that count of some offence of which he or she could not have been convicted on the former trial, the court shall direct that he or she shall not be convicted on that count of any offence of which he or she might have been convicted on the former trial, but that he or she shall plead over as to the other offence charged.

GUYANA

The *Constitution of the Co-operative Republic of Guyana, Chap. 1:01, Section 144(5),* states that no person who has been tried by a court for a criminal offence and either convicted or acquitted shall again be tried for that offence or other criminal offence of which he could have been convicted of at the trial for that offence except in for an order in appeal proceedings relating to that conviction or acquittal.

In **Patrick Bowen PC v Vernie Johnson (1977) 25 WIR 60,** the magistrate struck out the case and discharged the defendant when the prosecution was not ready to proceed, offered no explanation for their non-appearance, and made no application for adjournment. The

prosecution then brought a second information in respect of the same charge against the defendant. It was held that the burden of proving autrefois acquit was on the defendant who must adduce evidence to establish that there had been a judgment of acquittal legally given on merits. A dismissal consequent on no prosecution evidence being offered was a dismissal on the merits. Once a valid complaint was dismissed, having not been proved because the prosecution led no evidence, it cannot be unjust or against public interest to bar a second prosecution for the same offence.

JAMAICA

The *Constitution of Jamaica 1962, Section 16(9),* states that no person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

In **Dennis Thelwell v Director of Public Prosecutions and the Attorney General SCCA No: 56/98 delivered on March 26, 2007,** the Resident Magistrate dismissed the charges against the appellant Thelwell on the basis that no evidence had been offered by the prosecution. When the charges were later presented before another Resident Magistrate, the appellant objected and proceeded to seek relief from the Constitutional Court. Forte, J.A. (as he then was) said:

> *"— at common law a man who has once been tried and acquitted for a crime may not be tried again for the same offence; if he was in 'jeopardy' on the first trial ... He was so in jeopardy if (1) the court was competent to try him for the offence; (2) the trial was upon a good indictment, on which a valid judgment of conviction could be entered; and (3) the acquittal was on the merits, i.e. by verdict on the trial, or in summary cases by dismissal on the merits, followed by a judgment or order of acquittal."*

Since the appellant had failed to prove that he had ever pleaded to these charges thereby putting him in jeopardy and consequently not having joined issues with the Crown, the plea of autrefois acquit could not avail him.

In **Paul Brown and Jeffery Litwin v R [2015] JMCA Crim 30,** the applied the principle that unless there has been an acquittal after adjudication on the facts or 'merits' there is no ground for the plea of autrefois acquit. In the instant case, the defective informations were withdrawn by the prosecution and new ones substituted. It was held that an accused could not properly claim to have been acquitted by the mere withdrawal of informations, in a situation where there has not been any adjudication by the court, or any acknowledgment by the prosecution that the informations were being withdrawn because the accused had committed no offence.

MONTSERRAT

The *Criminal Procedure Code, No. 9 of 2010,* does not expressly link the special pleas of autrefois acquit and autrefois convict to the provisions relating to summary trials, however the rules for the taking of the special pleas are set out in *Section 121,* which states that the pleas of autrefois acquit, autrefois convict, and pardon may be pleaded together, and shall, if pleaded, be disposed of before the accused is called on to plead further; and if every such plea is disposed of against the accused, he shall be allowed to plead not guilty.

In any plea of autrefois acquit, or autrefois convict, it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count to which the plea is pleaded.

ST. KITTS AND NEVIS

The *Constitution of St. Kitts and Nevis 1983, Section 10(5),* states that a person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

In **John B. Goddard and Co. Ltd v. Accountant General LC 1971 CA 1,** the court grappled with the issue whether the magistrate had erred in accepting a plea of autrefois acquit. The case established that the courts should not to entertain a special plea without cogent evidence by the defendant.

ST. LUCIA

The *Constitution of St. Lucia 1978, Section 8(5),* states that a person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

The *Criminal Code, Chap. 3.01, Section 866,* codifies the special pleas. It states that the pleas of autrefois acquit, autrefois convict or pardon, may be pleaded together, and shall, if pleaded, be disposed of before the accused person is called on to plead further.

In respect of the pleas of autrefois acquit or autrefois convict, it is sufficient for the accused to state that he or she has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count or counts to which such plea is pleaded.

ST. VINCENT AND THE GRENADINES

The *Criminal Procedure Code, Chap. 172, Sections 88, 89,* state that an accused person is permitted to make the special pleas of autrefois acquit and autrefois convict by stating that he has been lawfully acquitted or convicted of the offence charged in the count.

Section 89(1), states that if it appears that the matter on which the accused was tried on the former trial is the same in whole or in part as that on which it is proposed to try him, and that he might on the former trial have been convicted of any of the offences of which he may be convicted on the count to which the special plea is pleaded, then, subject to subsection (2), the court shall give judgement that he is discharged from those counts which relate to such offences of which he might, on the former trial, have been convicted.

Section 89(2), states that if it appears that the accused might, on the former trial, have been convicted of any offence of which he may be convicted on the count to which the special plea is

pleaded, but that he may be convicted also on that count of some offence of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on that count of any offence of which he might have been convicted on the former trial, but that he shall plead over to the other offence charged.

TRINIDAD AND TOBAGO

The plea of autrefois may be raised in summary proceedings before a magistrate: **Joseph v Mohammed (1964) 7 WIR 96.**

In **De Gannes v Maharaj TT 1981 CA 33,** the defendant pleaded not guilty in the Magistrate's Court to charges of unlawful assault and beating. The case was dismissed on account of the non-appearance of the prosecution's witnesses. The prosecution subsequently laid a new information against the defendant for the same offence. The defendant made a plea of autrefois acquit which the magistrate accepted. On appeal the Court of Appeal took the view that where a defendant had appeared before a court of competent jurisdiction in answer to a charge and pleaded not guilty and indicated his readiness to proceed with the hearing, if the prosecution offered no proof of their case, whether through absence of witnesses or otherwise, and the magistrate dismissed the complaint, it was an acquittal on the merits and a bar to a subsequent prosecution.

The *Interpretation Act, Chap. 3.01, Section 62(1)(a),* states that where an act constitutes an offence under two or more laws the offender is liable to be prosecuted and punished under either or any of those laws, but a conviction or an acquittal following prosecution under one of those laws, is a bar to prosecution for the same offence or for an offence which is substantially the same offence under any other of those laws.

Plea of pardon

The plea of pardon[7] may be raised by a person who was previously convicted for an offence and was subsequently pardoned for the whole or part of the same by the Head of State, a judge or the Director of Public Prosecution (depending on the country). A plea of pardon sets aside any punishment and disabilities for an offence that the person may have committed.[8] A person who was convicted and subsequently granted a pardon has no redress against the state.

[7] Anguilla - Constitution 1982, section 9(8)
Antigua and Barbuda - Criminal Procedure Act Cap. 117, sections 71,72
Barbados - The Constitution of Barbados, sections 78(1), 18(6)
Belize - Constitution 1981, section 52
Dominica - Constitution of The Commonwealth of Dominica 1978, sections 8(6), 73(1)
Grenada - The Constitution 1973, section 72(1)
Guyana - The Constitution of the Co-operative Republic of Guyana Cap. 1:01, section 144(6)
Jamaica - The Constitution 1962, sections 16(9), 90
Montserrat - Criminal Procedure Code No. 9 of 2010, section 121
St Kitts and Nevis - Constitution of St. Christopher and Nevis 1983, sections 10(6), 66
St Lucia - Constitution of Saint Lucia Cap. 1.01, sections 8(6), 74
St Vincent and the Grenadines - Constitution 1979, sections 8(6), 65, Criminal Procedure Code Chap. 172, section 88
Trinidad and Tobago - Constitution 1976, section 87(1)
[8] Phillip and Others v Director of Public Prosecutions and Another (1991) 40 WIR 410 PC

CHAPTER 6

THE TRIAL

Opportunity to be heard

Anguilla

The *Magistrate's Code of Procedure Act, Chap. M5, Sections 95 – 97, 100 – 101,* provide as follows:

- If both parties appear (at the time and place of hearing mentioned in the summons), the magistrate shall cause the substance of the charge to be stated to the defendant and shall ask him if he has any cause to show why he should not be convicted;
- If the defendant admits the truth of the charge and, if he does not show cause as to why he should not be convicted, the magistrate shall convict him;
- If the defendant does not admit the truth of the charge, the magistrate shall hear (a) the prosecutor and such evidence as he may adduce; (b) the defendant and such evidence as he shall adduce in his defence; and (c) such evidence as shall be tendered in reply if the defendant has given any evidence other than as to his character;
- The prosecutor shall not be entitled to make any observations in reply on the evidence given by the defendant nor the defendant on any evidence given in reply by the prosecutor, but this does not preclude counsel on either side from addressing the court on the whole case;
- After hearing the evidence and addresses from counsel the magistrate shall then consider the whole matter and determine it and shall either dismiss the charge or convict the defendant.

Antigua and Barbuda

According to the *Magistrates Code of Procedure, Chap. 255, Sections 81-86:*

- If both parties appear (in answer to the summons) the magistrate shall cause the substance of the charge to be stated to the defendant and shall ask him if he has any cause to show why he should not be convicted;
- If the defendant admits the truth of the charge and if he shows no cause as aforesaid, the magistrate shall convict him;
- If he does not admit the truth of the charge the magistrate shall hear the prosecutor, and such evidence as he may adduce and shall also hear the defendant and such evidence as he shall adduce in his defence and also such evidence as shall be tendered in reply if the defendant has given any evidence other than as to his character;
- The prosecutor shall not be entitled to make any reply on the observations in reply upon the evidence given by the defendant nor the defendant upon the evidence given in reply by the prosecutor, but this shall not preclude counsel on either side from addressing the court on the whole case;

- The magistrate shall then consider the whole matter and determine the same, and shall either dismiss the charge or convict the defendant.

Barbados

- The *Constitution of Barbados, Section 18(2),* states that every person who is charged with a criminal offence shall be permitted to defend himself before the court in person or by legal representation of his own choice;
- The defendant should be given adequate time and facilities to prepare his defence;
- Every defendant shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;
- The *Magistrate's Courts Act, Chap. 116A, Section 31,* states that on the summary trial of an information, the magistrate shall, if the accused appears, state to him the substance of the information and ask him whether he pleads guilty or not guilty;
- The magistrate, after hearing the evidence and the parties, shall convict the accused or dismiss the information;
- If the accused pleads guilty, the magistrate may convict him without hearing evidence.

Belize

The *Constitution of Belize, Section 6,* states that every person who is charged with a criminal offence shall:

- Be given adequate time and facilities for the preparation of his defence;
- Be permitted to defend himself before the court in person or, at his own expense, by a legal practitioner of his own choice;
- Be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- Except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

The *Summary Jurisdiction Procedure Act, Chap. 99, Section 44,* provides as follows:

- At the commencement of the hearing, the court shall state to the defendant the substance of the complaint and ask him whether he is guilty or not guilty;
- If the defendant says that he is guilty and shows no cause, or no sufficient cause, why an order should not be made against him, the court shall make such order against him as the justice of the case requires;
- If the defendant says that he is not guilty, the witnesses on both sides shall, unless the court in any instance otherwise expressly orders, be called and placed out of court and out of hearing under the charge of the proper officer of the court or of some other person appointed by the court for that purpose;
- The court shall then proceed to hear the complainant and any witnesses he examines, and any other evidence he adduces in support of his complaint, and also to hear the defendant and any witnesses he examines, and any other evidence he adduces in his defence, and also, if the court thinks fit, to hear any witnesses the complainant examines in reply, if the defendant has examined any witnesses or given any evidence.

Dominica

According to the *Constitution of Dominica, Section 8(1),* every person who is charged with a criminal offence shall be:

- Given adequate time and facilities for the preparation of his defence;
- Permitted to defend himself before the court in person or, at his own expense, by a legal practitioner of his own choice;
- Afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- The *Constitution, Section 8(2),* states that the trial may proceed in the defendant's absence however, in any case in which it is so provided by a law, he is entitled to adequate notice of the charge and the date, time and place of the hearing and to a reasonable opportunity of appearing before the court.

Grenada

According to the *Criminal Procedure Code, Chap. 72B, Section 79:*

- If, when the case is called, both the complainant and the defendant appear, the court shall proceed to hear and determine the complaint;
- At the commencement of the hearing the court shall state to the defendant the substance of the complaint and ask him or her whether he or she is guilty or not guilty;

- If the defendant says that he or she is guilty, and shows no cause, or no sufficient cause, why an order should not be made against him or her, the court shall make such order against him or her as the justice of the case requires;
- If the defendant says that he or she is not guilty, the witnesses on both sides, shall, unless the court in any instance otherwise expressly orders, be called and placed out of court and out of hearing, under the charge of a constable or other person appointed by the court;
- The court shall then proceed to hear the complainant and such witnesses as he or she may examine, and such other evidence as he or she may adduce, in support of his or her complaint, and also to hear the defendant and such witnesses as he or she may examine, and such other evidence as he or she may adduce, in his or her defence, and also, if the court thinks fit, to hear such witnesses as the complainant may examine in reply: Provided that nothing herein contained shall render a defendant compellable to be a witness for or against himself or herself.

Guyana

The *Constitution of the Co-operative Republic of Guyana, Section 144(2),* states that every person who is charged with a criminal offence shall be:

- Given adequate time and facilities for the preparation of his defence;
- Permitted to defend himself before the court in person or, at his own expense, by a legal practitioner of his own choice;
- Afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution.

The *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Sections 30, 32,* state:

- At the commencement of the hearing, the court shall state to the defendant the substance of the complaint and ask him whether he is guilty or not guilty;
- If the defendant says that he is guilty and shows no cause, or no sufficient cause, why an order should not be made against him, the court shall make such order against him as the justice of the case requires;
- If the defendant says that he is not guilty, the witnesses on both side shall, unless the court in any instance otherwise expressly orders, be called and placed out of court and hearing, under the charge of the proper officer of the court, or of some other person appointed by the court for that purpose;
- The court shall then proceed to hear the complaint and any witnesses he examines, and any other evidence he adduces in support of his complaint, and also to hear the defendant and any witnesses he examines, and any other evidence he adduces in his defence, and also, if the court thinks fit, to hear any witnesses the complainant examines in reply, if the defendant has examined any witnesses or given any evidence;

- The complainant shall be entitled to address the court at the commencement of his case, the defendant shall be entitled to address the court at the commencement or the conclusion of his case, as he thinks fit; and if the defendant has examined any witnesses or given any evidence, the magistrate may allow the complainant to reply on the conclusion of the case.

Jamaica

The *Constitution of Jamaica, Section 16(6),* provides that any person who has been charged with a criminal offence is entitled to:

- Have adequate time and facilities for the preparation of his defence;
- Defend himself in person or through legal representation of his own choosing or, if he has not sufficient means to pay for legal representation, to be given such assistance as is required in the interests of justice;
- Examine or have examined, at his trial, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- Except with his own consent, the defendant should not be tried in his absence unless¬ he so conducts himself in the court as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence; or he absconds during the trial.

The Judicature (Resident Magistrates) Act, Sections 184, 186 – 187, provide that:

- On the day in that behalf named in the summons the plaintiff shall appear, and thereupon the defendant shall be required to answer by stating shortly his defence to such plaint; and on answer being so made in court, the magistrate shall proceed in a summary way to try the cause, and shall give judgment without further pleading, or formal joinder of issue;
- Where judgment is entered in the absence of the defendant, it may be set aside at a later upon sufficient cause shown to the magistrate for that purpose;
- When a defendant appears at the hearing, and admits the claim, the magistrate may enter up judgment accordingly as a judgment of the court.

Montserrat

The *Criminal Procedure Code, No. 9 of 2010, Sections 210, 213-224,* provide as follows:

- When in the course of preliminary proceedings or trial in the Magistrate's Court, the magistrate's has reason to suspect that the accused person is of unsound mind so that he is incapable of making his defence, the Magistrate's Court shall inquire into the fact of such unsoundness and for this purpose may receive evidence and may postpone the proceedings and remand the accused person for a medical report;
- If both parties appear, the Magistrate's Court shall proceed to hear the case and

the substance of the charge or complaint shall be read to the accused person by the Magistrate's Court and he shall be asked whether he admits or denies it;

- If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the Magistrate's Court shall convict him and pass sentence upon or make an order against him;
- Before accepting a plea of guilty, the magistrate must assure himself or herself, by questioning the defendant either personally or, at the magistrate's discretion, by calling upon counsel for the defendant to lead the questioning, that the defendant committed the offence, that the plea of guilty is voluntarily made, (and not as a result of any threats or inducements not disclosed on the record), and that it is made with an understanding of the consequences of the plea;
- If the accused person pleads not guilty, the Magistrate's Court shall proceed to try the case;
- If the accused person refuses to plead, the Magistrate's Court shall direct that a plea of not guilty be entered for him, or in an appropriate case may enquire to the soundness of his mind;
- The prosecutor shall be entitled to address the Magistrate's Court at the commencement of his case;
- If the accused person, or any one of several accused persons, adduces any evidence, the prosecutor shall be entitled to address the Magistrate's Court again;
- At the close of the evidence in support of the charge, the Magistrate's Court shall consider whether or not a sufficient case is made out against the accused person to require him to make a defence, and if the Magistrate's Court considers that such a case is not made out the charge shall be dismissed and the accused acquitted and discharged;
- At the close of the evidence in support of the charge, if it appears to the Magistrate's Court that a case is made out against the accused person sufficiently to require him to make a defence, the Magistrate's Court shall (a) again explain the substance of the charge to the accused; (b) inform him that he need not say anything, but that he has a right to give evidence on oath from the witness box and that, if he does so he will be liable to cross-examination; and (c) ask him whether he has any witnesses to examine or other evidence to adduce in his defence. The Magistrate's Court shall then hear the accused and his witnesses (if any), and shall permit the accused to question any witnesses whom he calls;
- If the accused person states that he has witnesses to call but that they are not present in Magistrate's Court, and the Magistrate's Court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the Magistrate's Court may adjourn the trial and issue process or take other steps, as necessary to compel the attendance of such witnesses.

St. Kitts and Nevis

The *Constitution of St. Kitts and Nevis, Section 10(2),* provides that any person who has been charged with a criminal offence is entitled to:

- Have adequate time and facilities for the preparation of his defence;
- Defend himself in person or through legal representation of his own choosing or, if he has not sufficient means to pay for legal representation, to be given such assistance as is required in the interests of justice;
- Examine or have examined, at his trial, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- Except with his or her own consent the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

The *Magistrate's Code of Procedure Act, Chap. 3:71, Sections 83-87:*

- If both parties appear the magistrate shall cause the substance of the charge to be stated to the defendant and shall ask him or her if he or she has any cause to show why he or she should not be convicted;
- If he or she does not admit the truth of the charge the magistrate shall hear the prosecutor, and such evidence as he or she may adduce and shall also hear the defendant and such evidence as he or she shall adduce in his or her defence and also such evidence as shall be tendered in reply if the defendant has given any evidence other than as to his or her character;
- The prosecutor shall not be entitled to make any observations in reply upon the evidence given by the defendant nor the defendant upon the evidence given in reply by the prosecutor, but this shall not preclude counsel on either side from addressing the court on the whole case;
- The magistrate shall then consider the whole matter and determine the same and shall either dismiss the charge or convict the defendant.

St. Lucia

The *Constitution of St. Lucia, Section 8(2),* provides that any person who has been charged with a criminal offence is entitled to the following protections:

- Have adequate time and facilities for the preparation of his defence;
- Defend himself in person or through legal representation of his own choosing or, if he has not sufficient means to pay for legal representation, to be given such assistance as is required in the interests of justice;
- Examine or have examined, at his trial, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

- Except with his or her own consent the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

The *Criminal Code, Chap. 3.01, rules 691 - 692, 694, 702, 705-710,* state that:

- If both the complainant and the defendant are present when the case is called, the court shall proceed to hear and determine the complaint. The court shall inform the defendant of the substance of the complaint, and shall ask him or her what answer, if any, he or she desires to make to the complaint;
- Both the complainant and the defendant are entitled to conduct their respective cases in person or by counsel. Where the defendant admits the truth of the complaint and shows no cause why an order should not be made against him or her, the court shall make such order against him or her as the justice of the case requires;
- If the defendant does not admit the truth of the complaint, the court shall proceed to hear the complainant and such other evidence as he or she may adduce in support of his or her complaint;
- Where the defendant is not represented by counsel, on the completion of the examination of the witnesses on the part of the prosecution, the following caution or words to the like effect shall, before he or she is called as a witness, be addressed to him or her by or under the direction of the court:

  "Having heard the evidence against you, do you wish to be called as a witness and give evidence in answer to the complaint? You are not obliged to give evidence unless you wish, but if you are called, the evidence you give will be evidence in the case."

- The court shall also hear the defendant and any witnesses as he or she may call and such other evidence as he or she may adduce, in his or her defence;
- The court shall also hear such witnesses as the prosecution may call in reply, if the defendant has called any witnesses or given any evidence other than evidence as to the defendant's general character;
- Upon the conclusion of the hearing, the court shall, either immediately or at an adjourned sitting of the court, give its decision on the case, by either dismissing the complaint or making such order as the justice of the case requires against the defendant.

St. Vincent and the Grenadines

The *Constitution of St. Vincent and the Grenadines, Section 8(2),* provides that any person who has been charged with a criminal offence:

- Shall be given adequate time and facilities for the preparation of his defence;
- Shall be permitted to defend himself before the court in person or, at his own expense, by a legal practitioner of his own choice;

- Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to tender the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence;
- Provided that the trial may take place in his absence in any case in which or is so provided by a law under which he is entitled to adequate notice of the charge and the date, time and place of the trial and to a reasonable opportunity of appearing before the court.

The *Criminal Procedure Code, Chap. 172, Sections 124, 126, 130 and 133,* state:

- If both parties appear, the court shall proceed to hear the case and the substance of the charge shall be read to the accused by the court and he shall be asked whether he admits or denies it;
- If the accused admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him unless, after hearing anything which may be said by or on behalf of the accused, whether in mitigation or otherwise, there shall appear to the court to be sufficient cause to the contrary;
- At the close of the evidence in support of the charge, if it appears to the court that a case has been made out against the accused sufficiently to require him to make a defence, the court shall again explain to the accused the substance of the charge and shall inform him that he need not say anything but that he has the right to give evidence on oath from the witness box and that if he does so he will be liable to cross-examination. The court shall ask him whether he has any witnesses to call and examine or has any other evidence to adduce in his defence. The court shall hear the accused and his witnesses, if any, and shall permit the accused to examine any witnesses whom he calls;
- If the accused states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused and that there is likelihood that they could, if present, give material evidence on behalf of the accused, the court may adjourn the trial and issue;
- The court having heard both the prosecutor and the accused and their witnesses shall either convict the accused and pass sentence upon or make an order against him according to law or shall acquit him, or may without proceeding to conviction deal with the accused under the provisions of the *Probation of Offenders Act*.

Trinidad and Tobago

The *Constitution of Trinidad and Tobago, Section 5,* states that a person charged with a criminal offence may not be deprived of the following rights:

- The right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- The right to a fair and public hearing by an independent and impartial tribunal;
- The right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak English.

The *Summary Courts Act, Chap. 4:20, Sections 62 - 63, 65, 67,* state as follows:

- If, when the case is called, both the complainant and the defendant appear, the court shall proceed to hear and determine the complaint;
- At the commencement of the hearing, the court shall state or cause to be stated to the defendant the substance of the complaint, and shall ask him whether he is guilty or not guilty;
- If the defendant says that he is guilty, and shows no cause, or no sufficient cause, why an order should not be made against him, the court shall make such order against him as the justice of the case requires;
- If the defendant says that he is not guilty, the witnesses on both sides shall, unless the court in any instance otherwise expressly orders, be called, and placed out of the court and out of hearing, under the charge of the proper officer of the court or of some other person appointed by the court for that purpose;
- The court shall then proceed to hear the complainant and such witnesses as he may examine, and such other evidence as he may adduce, in support of his complaint, and also to hear the defendant and such witnesses as he may examine, and such other evidence as he may adduce, in his defence, and also, if the court thinks fit, to hear such witnesses as the complainant may examine in reply, if the defendant has examined any witnesses or given any evidence;
- The complainant shall not be obliged to give evidence in support of his complaint, but if he wishes to give evidence he may do so at any time before his case is closed;
- The complainant, or his attorney-at-law, shall be entitled to address the court at the commencement of his case; the defendant, or his attorney-at-law, shall be entitled to address the court at the commencement or the conclusion of his case, as he thinks fit; and if any witnesses for the defence have been examined or any evidence given, the magistrate or justice may in his discretion allow the complainant, or his attorney-at-law, to reply on the conclusion of the case;
- Upon the conclusion of the hearing, the court shall, either at the same or at an adjourned sitting, give its decision on the case, by either dismissing the complaint or making such order as the justice of the case requires against the defendant.

Adjournments

A magistrate may at any time during the proceedings, whether before or after beginning to try an information/or complaint, adjourn the trial.[1]

A magistrate also has the discretion to dismiss or adjourn a matter in the absence of either or both parties at the trial, or in some territories, the magistrate may make an order as the justice of the case requires.[2]

A magistrate may also grant an adjournment to allow a defendant to properly put forward his defence by allowing him the time to seek legal advice if unrepresented and also allowing him time to get his witnesses. Thus, a rejection of adjournment in some cases can amount to a denial of the opportunity to be heard or a breach of natural justice: **Aris v Chin (1972) 19 WIR 459.**

In **Crown Prosecution Service v Picton [2006] EWHC 1108 (Admin),** the court recommended the following guidelines to magistrates for the exercise of the discretion to grant an adjournment:

- Magistrates should pay great attention to the need for expedition in the prosecution of criminal proceedings; delays are scandalous; they bring the law into disrepute; summary justice should be speedy justice; an application for an adjournment should be rigorously scrutinized;
- Where an adjournment is sought by the prosecution, magistrates must consider both the interest of the defendant in getting the matter dealt with, and the interest of the public that criminal charges should be adjudicated upon, and the guilty convicted as well as the innocent acquitted;
- Where an adjournment is sought by the accused, the magistrates must consider whether, if it is not granted, he will be able fully to present his defence and, if he will not be able to do so, the degree to which his ability to do so is compromised;

[1] Anguilla - Magistrate's Code of Procedure Act Chap. M, section 267
Antigua and Barbuda - Magistrate's Code of Procedure Act CAP.255, section 232 Barbados - Magistrate's Court Act Cap. 116A, section 32
Belize - Summary Jurisdiction Procedure Act CAP. 99, section 28; Dominica - Magistrate's Code of Procedure Act Chap. 4:20, section 212 Grenada - Criminal Procedure Code Cap 72B, section 82
Guyana - Summary Jurisdiction (Procedure) Act Cap. 10:02, section 33 Jamaica - Judicature (Resident Magistrates) Act 1928, section. 169 Montserrat - Magistrate's Court Act CAP. 2.02, section 141
St. Kitts and Nevis - Magistrate's Code of Procedure Act Cap. 3.17, section 237 St Lucia - Criminal Code Cap. 3.01, section 686
St. Vincent and the Grenadines - Criminal Procedure Code Chap. 172, section 187 Trinidad and Tobago - Summary Courts Act Chap 4:20, section 66

[2] Anguilla - Magistrate's Code of Procedure Act Chap. M5, sections 92 - 93
Antigua and Barbuda - Magistrate's Code of Procedure Act CAP. 255, sections 78 - 79 Belize - Summary Jurisdiction (Procedure) Act CAP. 99, sections 39 - 40
Dominica - Magistrates Code of Procedure Act Chap. 4:20, sections 71 - 72 Grenada - Criminal Procedure Code Chap. 72B, sections 77 - 79
Guyana - Summary Jurisdiction (Procedure) Act CAP. 10:02 sections 25 - 26 Montserrat - Criminal Procedure Code No. 9 of 2010, sections 206 - 208
St Kitts and Nevis - Magistrate Code Procedure Act Cap. 3.17, sections 80 - 81
St Vincent and the Grenadines - Criminal Procedure Code Chap. 172, sections 121, 123 Trinidad and Tobago - Summary Courts Act Chap 4:20, section 59, 61

- In considering the competing interests of the parties the magistrates should examine the likely consequences of the proposed adjournment, in particular its likely length, and the need to decide the facts while recollections are fresh;
- The reason that the adjournment is required should be examined and, if it arises through the fault of the party asking for the adjournment, that is a factor against granting the adjournment, carrying weight in accordance with the gravity of the fault;
- The magistrates should take appropriate account of the history of the case, and whether there have been earlier adjournments and at whose request and why;
- Lastly, of course the factors to be considered cannot be comprehensively stated but depend upon the particular circumstances of each case, and they will often overlap. The court's duty is to do justice between the parties in the circumstances as they have arisen.[3]

Ex Parte Hearings

There are instances where the law permits the hearing to proceed in the absence of defendant. Generally, this occurs when the defendant has been duly informed of the date, time and place of the hearing but does not appear and fails to offer an explanation for his/her absence. In such circumstances, the magistrate may issue a warrant for the arrest of the defendant as an alternative to proceeding ex parte, but the magistrate cannot do both.[4]

Anguilla

The *Magistrate's Code of Procedure, Chap. M5, Section 91,* states that the magistrate may proceed ex parte to adjudicate on the case as fully as if the defendant had duly appeared if:

- At the time and place of hearing mentioned in the summons the defendant does not appear;
- It is proved on oath that the summons was duly served on him a reasonable time before the time appointed for his appearance;
- The magistrate does not think it expedient to issue his warrant for the apprehension of such person.

[3] See also: Burgess v Silverton Mag. App. No. 98 of 2008, Francis v Singh Mag. App. No. 58 of 1986
[4] Perreira v Cato (1979) 28 WIR 169

Antigua and Barbuda

According to the *Magistrate's Code of Procedure, Chap. 255, Section 77,* the magistrate may proceed ex parte to adjudicate on a case as fully as if the defendant had duly appeared if:

- At the time and place of hearing mentioned in a summons the defendant does not appear;
- It be proved on oath that the summons was duly served on him a reasonable time before the time appointed for his appearance;
- If the magistrate does not think it expedient to issue his warrant for the apprehension of such person.

Barbados

The *Magistrate's Court Act, Chap. 116A, Section 33,* states that where, at the time and place appointed for the trial or adjourned trial of an information, the prosecutor appears but the accused does not, the magistrate may proceed in his absence, provided that:

- Where a summons has been issued, the magistrate shall not begin to try the information in the absence of the accused unless either he is satisfied on oath, or in such other manner as may be prescribed, that the summons was served on the accused within what appears to him to be a reasonable time before the trial or adjourned trial or the accused has appeared on a previous occasion to answer to the information;
- A magistrate shall not in a person's absence sentence him to imprisonment or make an order that a deferred sentence passed on him;
- A magistrate shall not in a person's absence impose any disqualification on him except on resumption of the hearing after an adjournment under *Section 32(3),* and where a trial is adjourned under this subsection the notice required by *Section 32(2),* shall include notice of the reason for the adjournment;
- The magistrate may also accept a notice from the accused or his attorney at law that the accused desires to plead guilty to the information without appearing before the magistrate, in which case he may proceed to hear and dispose of the case in the absence of the accused, whether or not the prosecutor is present, in like manner as if both parties had appeared and the accused had pleaded guilty: *Magistrate's Court Act, Chap. 116A, Section 34(2).*

Belize

The *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 28(1),* states that if the defendant does not appear before the court at the time and place mentioned in the summons, then, after proof upon oath, to the satisfaction of the court, that the summons was duly served or that the defendant wilfully avoids service, the court may, in its discretion:

- Unless the statute on which the complaint is founded otherwise directs, proceed ex parte to the hearing of the complaint, and adjudicate thereon as fully and effectually to all intents and purposes as if the defendant had personally appeared before it in obedience to the summons;
- Adjourn the hearing to some future day;
- On oath being made by or on behalf of the complainant substantiating the matter of the complaint to the satisfaction of the court, issue a warrant to apprehend the person so summoned or avoiding service.

In **Jones v Baizar BZ 1987 SC 17,** Brown J stated that for ex parte trials to be conducted the requirements of the Act must be clearly adhered to. It is not sufficient for magistrates to include in their reasons for decision information which properly should be evidence in the records or notations as to occurrences in the court proceedings. The statute must be strictly followed when trials proceed in the absence of a defendant.

Dominica

The *Magistrate's Code of Procedure Act, Chap. 4:20, Section 70,* states that if at the time and place of hearing mentioned in a summons the defendant does not appear and it be proved on oath that the summons was duly served on him a reasonable time before the time appointed for his appearance, and if the magistrate does not think it expedient to issue his warrant for the apprehension of the defendant the magistrate may proceed ex parte to adjudicate on the case as fully as if the defendant had duly appeared.

Grenada

According to the *Criminal Procedure Code, Chap. 72B, Section 73,* if the person against whom the summons is issued does not appear before the court at the time and place mentioned therein, and it is proved upon oath, to the satisfaction of the court, that the summons was duly served or that the defendant wilfully avoids service, the court may, in its discretion, either:

- Unless the statute on which the complaint is founded otherwise directs, proceed ex parte to the hearing of the complaint, and adjudicate thereon as fully and effectually to all intents and purposes as if the defendant had personally appeared before it in obedience to the summons;
- Adjourn the hearing to some future day;
- Upon oath being made by or on behalf of the complainant, substantiating the matter of the complaint to the satisfaction of the court, issue a warrant to arrest the person so summoned or avoiding service, and to bring him or her before the court to answer to the complaint, and to be further dealt with according to law.

Guyana

The *Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 14,* states that if the defendant does not appear before the court at the time and place mentioned in the summons, then, after proof upon oath, to the satisfaction of the court, that the summons was duly served or that the defendant wilfully avoids service, the court may, in its discretion either:

- Unless the law on which the complaint is founded otherwise directs, proceed ex parte to the hearing of the complaint, and adjudicate thereon as fully and effectual to all intents and purposes as if the defendant had personally appeared before it in obedience to the summons;
- Adjourn the hearing to some future day;
- Issue a warrant to apprehend the person so summoned for avoiding service, and bring him before the court to answer the complaint, and to be further dealt with according to law;
- A defendant in any proceedings before the court may be represented by counsel, and any defendant so represented shall be deemed not to be absent.

In **Anthony v Thomas (1995) 54 WIR 238,** the defendant failed to attend trial at the date to which it was adjourned, due to his fault in noting the wrong date. The magistrate proceeded to hear the complaint in his absence. The Court of Appeal of Guyana dismissed the appeal and held that the magistrate had been entitled under the *Summary Jurisdiction (Procedure) Act, Section 31(3),* to hear the matter in the absence of the defendant and had not proceeded with undue haste; nor could it be said that she had exercised her discretion under *Section 31(3),* wrongly.

Jamaica

The *Judicature (Parish Court Judges Act) 1928 Act, Section 186,* provides that if on the day so named in the summons, or at any continuation or adjournment of the court or cause in which the summons was issued, the defendant shall not appear or sufficiently excuse his absence, or shall neglect to answer when called in court, the magistrate, upon due proof of the service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only; and the judgment thereupon shall be as valid as if both parties had attended:

- Provided always, that the magistrate in any such cause, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant and the execution thereupon, and may grant a new trial of the cause, upon such terms as to costs or otherwise as he may think fit, on sufficient cause shown to him for that purpose.

Montserrat

The *Criminal Procedure Code, No. 9 of 2010, Section 208,* states that if at the time and place of hearing appointed in a summons the defendant does not appear, and it be proved that the summons was duly served a reasonable time before the time appointed for his appearance, and if the Magistrate's Court is satisfied on any sufficient evidence that the accused has wilfully refused to attend or otherwise may be deemed to have consented to the trial taking place in his

absence, the Magistrate's Court may either proceed to adjudicate on the case as if the defendant had appeared or, if the Magistrate's Court is not satisfied that the defendant has so consented or considers that it is inexpedient for any other reason that the trial should proceed in the absence of the accused, the Magistrate's Court may issue a warrant for the arrest of the defendant in accordance with *Section 28,* and may adjourn the trial to some other date.

St. Kitts and Nevis

According to the *Magistrate's Code of Procedure Act, Chap. 3.17, Section 79,* the magistrate may proceed ex parte to adjudicate on a case as fully as if the defendant had duly appeared if:

- At the time and place of hearing mentioned in a summons the defendant does not appear;
- It be proved on oath that the summons was duly served on him a reasonable time before the time appointed for his appearance;
- If the magistrate does not think it expedient to issue his warrant for the apprehension of such person.

St. Lucia

According to the *Criminal Code, Chap. 3.01, Section 690,* if the defendant against whom a summons is issued fails to appear before the court at the time stated in the summons and it is proved upon oath, to the satisfaction of the court, that the summons was duly served within the time appointed for his or her appearance or that the defendant wilfully avoided service, the court may, in its discretion either:

- Proceed ex parte to hear and determine the complaint, and as if the defendant had appeared in person before the court in obedience to the summons;
- Upon oath made by or on behalf of the complainant, substantiating the complaint, to the satisfaction of the court, issue a warrant to arrest the defendant and to bring him or her before the court to answer to the complaint, and to be dealt with further according to law;
- If service of the summons is not proved to the satisfaction of the court, or if a warrant is issued for the arrest of the defendant, the court may adjourn the hearing of the case to some future date, in order that proper service may be effected, or until the defendant is arrested, as the case may be.

In **Jean Baptiste Wilson v Stanley Gellizeau (1971) 17 WIR 175,** the defendant was in prison when the charge against him was heard and determined by the magistrate. Since he could not possibly have been present to answer the charge and since no effort was made to bring him before the court on the date of hearing, his conviction after an ex parte trial in those circumstances could not stand and in the interests of justice was set aside.

In **Edmund v Nicholas (Sr. Magistrate) LC 2010 HC 29,** the stated that where a magistrate exercises the power to hear a matter ex parte the magistrate must balance the right of fairness to the complainant and the defendant and the possibility of delay and rules of natural justice.

St. Vincent and the Grenadines

According to the *Criminal Procedure Code, Chap. 172, Section 122,* a magistrate may procced in the defendant's absence to adjudicate on the case as if the defendant has appeared where:

- If at the time and place of hearing appointed in a summons the defendant does not appear, and it be proved that the summons was duly served within a reasonable time before the time appointed for his appearance;
- If the court is satisfied on any sufficient evidence that the accused has wilfully refused to attend or otherwise may be deemed to have consented to the trial taking place in his absence.

In **Balcombe v Chief of Police VC 1969 HC 38,** it was held that where a defendant was told by the learned magistrate of the date to which his matter was adjourned for trial and he thereby failed to appear, the magistrate had the power to hear the matter ex parte and there was no miscarriage of justice.

Trinidad and Tobago

According to the *Summary Courts Act, Chap. 4:20, Section 44,* if the defendant does not appear before the court at the time and place mentioned in the summons, then, after proof upon oath, to the satisfaction of the court, that the summons was duly served or that the defendant wilfully avoids service, the court may, in its discretion, either:

- Unless the written law on which the complaint is founded otherwise directs, proceed ex parte to the hearing of the complaint, and adjudicate thereon as fully and effectually as if the defendant had personally appeared before it in obedience to the summons;
- Adjourn such hearing to some future day;
- Upon oath being made by or on behalf of the complainant, substantiating the matter of the complaint to the satisfaction of the court, issue a warrant to apprehend the person so summoned or avoiding service, and to bring him before the court to answer the said complaint, and to be further dealt with according to law.

In **Gocking and Gocking v. Payne and Daniel TT 2016 CA 25,** one of the issues to be determined was whether the magistrate erred in law or committed a specific illegality by proceeding to conduct an ex parte trial without evidence on oath of service, that the defendants were wilfully avoiding service, and that service was affected by an authorised officer within the meaning of the *Summary Courts Act, Chap. 4:20, Section 43(3).* The Court of Appeal applied **R v. Jones [2003] 1 A.C. 1,** and the considerations set out in that case which a judge must take into account when deciding whether to proceed ex parte:

- Whether the defendant could be said to have had a fair trial;
- The discretion must be exercised with great care and only in rare and exceptional circumstances could a trial proceed ex parte;
- The reason for the defendant's absence is important - it is relevant to consider if the defendant's absence is due to illness or some other misfortune or to a deliberate decision on his part to abscond;
- The number of witnesses and the nature of the offence;
- The wider public interest.

Applying these principles to the case before them, the Court of Appeal concluded that the magistrate's decision to proceed to trial in the absence of the appellants was an eminently reasonable one. It was a decision which was properly grounded both in statute and also in accordance with the common law principles on ex parte trials as set out above.

Dismissal for want of prosecution

In determining whether to dismiss a case for want of prosecution, the magistrate should look at the history of the matter in relation to the prosecution and whether they have neglected or failed to take steps to prosecute the defendant. Where a matter is set for trial and the prosecutor fails to appear or fails to offer an explanation for the non-appearance this may warrant a dismissal for want of prosecution. However, this discretion should be exercised reasonably and judicially and not in an arbitrary manner: **Burgess v Silverton Mag. App. No. 98 of 2008.**

Anguilla

The *Magistrate's Code of Procedure Act, Chap. M5, Section 92,* states that if at the time and place appointed the defendant appears, or is brought before the magistrate, and the person making the charge, having had due notice does not appear, the magistrate shall dismiss the charge unless he thinks it proper to adjourn the hearing till some other day.

Antigua and Barbuda

Under the *Magistrate's Code of Procedure, Chap. 255, Section 78,* the magistrate may dismiss a charge where on the time and date appointed to hear the matter:

- The defendant appears;
- The person making the charge having due notice does not appear;
- The magistrate does not think it proper to adjourn the hearing to another day.

Barbados

A magistrate has the discretion under the *Magistrate Court Act, Chap. 116A, Section 37(1),* to dismiss an information where:

- At the time and place appointed for the trial or adjourned trial of an information, the accused appears or is brought before the magistrate;
- The prosecutor does not appear on such time and place;
- The magistrate is satisfied that the prosecutor has been informed of the matter;
- No evidence has been received from the Prosecution on a previous occasion.

Belize

The *Summary Jurisdiction Procedure Act, Chap. 99, Section 39,* states:

- If, when the cause is called, the defendant appears voluntarily in obedience to the summons, or is brought before the court under a warrant, and the complainant, having had due notice of the time and place of hearing, which shall be proved to the satisfaction of the court, does not appear in person or by an attorney-at-law, the court shall dismiss the complaint, unless the court, having received a reasonable excuse for the non-appearance of the complainant, or for other sufficient reason, thinks fit to adjourn the hearing thereof to some future day, upon such terms as the court thinks just.

Dominica

The *Magistrate's Code of Procedure Act, Chap. 4:20, Section 71,* states that if at the time and place appointed the defendant appears or is brought before the magistrate, and the person making me charge having had due notice does not appear, the magistrate shall dismiss the charge unless he thinks it proper to adjourn me hearing till some other day.

Grenada

The *Criminal Procedure Code, Chap. 72B, Section 77(1),* states: if, when the case is called, the defendant attends voluntarily in obedience to the summons or is brought before the court under a warrant, and the complainant, having had due notice of the time and place of hearing (which shall be proved to the satisfaction of the court), does not appear in person or by counsel, the court may dismiss the complaint, or adjourn the hearing to some future day, upon such terms as the court may think just.

Guyana

The *Summary Jurisdiction (Procedure) Act, Chap. 10.02, Section 24,* states: if, when the case is called, the defendant attends voluntarily in obedience to the summons or is brought before the court under a warrant, and the complainant, having had due notice of the time and place of hearing (which shall be proved to the satisfaction of the court), does not appear in person or

by counsel, the court shall dismiss the complaint, unless the court having received a reasonable excuse for the non-appearance of the complainant, or for other sufficient reason, thinks fit to adjourn the hearing thereof to some future day, upon such terms as the court thinks fit.

In **Patrick Bowen Police Constable 7094 v Vernie Johnson (1977) 25 WIR 60,** the respondent pleaded guilty to an information alleging unlawful and malicious wounding. The prosecution were granted three adjournments. When the matter came up for hearing the respondent appeared but the prosecution did not lay on any proof. Their witnesses were absent. The officer prosecuting for the police offered no explanation for the non-appearance of the witnesses and made no application for an adjournment. The magistrate marked the case-jacket "struck out" and in his reasons said: "I struck out the case which striking out amounted to a dismissal on the merits." The appellant subsequently the appellant swore to a second information in respect of the same charge against the respondent who again pleaded not guilty. On this occasion, however, counsel on her behalf entered a special plea of autrefois acquit, on the grounds that she had been acquitted on that very charge when the case-jacket was marked "struck out" by the trial magistrate. The learned magistrate accepted the respondent's plea. The Court of Appeal endorsed this decision and held that that if a prosecutor's conduct on the whole amounts to an implied abandonment of the further prosecution of a cause, an ensuing dismissal should have the identical legal consequence as if the magistrate was told that the prosecution was offering no evidence. On the facts, there was such an abandonment of further prosecution of the case.

Jamaica

According to the *Justices of the Peace Jurisdiction Act 1850, Section 12,* if, upon the day and at the place so appointed … such defendant shall attend voluntarily, in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of any warrant, then, if the complainant or informant, having had such notice as aforesaid, do not appear by himself, his counsel, or solicitor, the said justice or justices shall dismiss such complaint or information, unless for some reason, he or they shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he or they shall think fit, in which case such justice or justices may commit the defendant (according to Form (4) in the First Schedule), in the meantime, to prison or to such other custody as such justice or justices shall think fit; or may grant him bail in accordance with the *Bail Act.*

In deciding whether to grant an adjournment, a court should consider the adverse consequences likely to accrue to the person seeking the adjournment; the convenience of the court; the importance of the proceedings and the extent to which the applicant has been responsible for the circumstances leading to the application.[5]

In the **Dennis Thelwell v DPP and AG SCCA No. 56/98 (March 26, 2007),** the Jamaican Court of Appeal, while dealing with the issue of whether a dismissal for want of prosecution could ground a claim of autrefois acquit noted that "…serious offences ought to be dealt with seriously and not frivolously. To have dismissed the cases on the first trial date to my mind, was not serious action…"

[5] See Dana Seetahal, Criminal Practice and Procedure, 1st Edition, Page 143

Montserrat

The *Criminal Procedure Code, No. 9 of 2010, Section 207,* states if the accused person appears at the time and place appointed in the summons for the hearing of the case, or is brought before the Magistrate's Court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, either in person or by a legal practitioner or other person authorized to represent him, the Magistrate's Court shall dismiss the charge, unless for some reason the Magistrate's Court thinks proper to adjourn the hearing of the case to some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him in custody, or take such security for his appearance as the Magistrate's Court shall think fit.

St. Kitts and Nevis

A magistrate has a discretion under the *Magistrate Code of Procedure Act, Chap. 3.17, Section 80,* to dismiss a charge where on the time and place of the hearing of the matter:

- The defendant appears or is before the magistrate at time and place appointed:
- The person making the charge having had due notice does not appear;
- The magistrate does not think it proper to adjourn the hearing to another day.

St. Lucia

A magistrate has the discretion under the *Criminal Code, Chap. 3.01, Section 689(1),* to dismiss a complaint where on the time and place of the hearing of the matter:

- The defendant appears or brought before the court at the time and place appointed;
- The complainant having due notice of the time and place of hearing (which should be proved to the satisfaction of the court) does not appear;
- The complainant does not have a reasonable excuse or other sufficient cause for their non-appearance;
- The court does not think it fit to adjourn the hearing to some future day.

Additionally, the *Criminal Procedure Rules, rule 8.4,* provides that a magistrate may dismiss any summary matter or a matter that can be disposed of summarily:

- If the charge has been pending for more than 180 days;
- A trial has not commenced and the delay is not attributable to the defendant.

St. Vincent and the Grenadines

A magistrate has the discretion under the *Criminal Procedure Code, Chap. 172, Section 121,* to dismiss a complaint where at the time and place appointed to hear the case:

- The accused for the hearing of the case, or is brought before the court under arrest;

- The complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear either in person or by counsel or other person authorised to represent him;
- The magistrate does not think it proper to adjourn the hearing to some other date.

Trinidad and Tobago

The *Summary Courts Act, Chap. 4:20, Section 59,* states that if, when the case is called, the defendant appears voluntarily in obedience to the summons, or is brought before the court under a warrant, and the complainant, having had due notice of the time and place of hearing (which shall be proved to the satisfaction of the court), does not appear in person or in the manner provided in *Section 58,*[6] or by attorney-at-law and, in the case of a police complainant, by any police officer, the court shall dismiss the complaint, unless the court, having received a reasonable excuse for the non-appearance of the complainant, or for other sufficient reason, thinks fit to adjourn the hearing of the case to some future day, upon such terms as the court may think just.

In **PC Callender v Kevon Neptune Magisterial Appeal No.s 083 of 2016,** the respondent was charged with stealing contrary to the *Summary Offences Act, Chap. 11:02, Section 9.* The matter came before the magistrate on seven occasions (two times fixed for trial) and the complainant was absent on every occasion. At the time, no reasonable explanation for the absence of the complainant was given to the court. The respondent was present on six out of the seven occasions that the matter was called despite his attorney being absent. He elected to represent himself. The magistrate subsequently dismissed the charge. The Court of Appeal considered the history of the matter and notwithstanding the public interest in having the matter ventilated in court, found that the magistrate's decision to dismiss the charges for want of prosecution was reasonable in the circumstances.

Vulnerable Witnesses

1. Witnesses with disabilities

A person who can neither hear nor speak is competent as a witness, provided that the court is satisfied that he understands the nature of an oath.[7] Such a person may take an oath (or make an affirmation) and be examined and cross-examined, through an interpreter, using sign language. The interpreter should also take an oath (or make an affirmation). A witness who cannot speak may be allowed to give his evidence in written form.[8] **Anguilla, Dominica, Guyana, Jamaica, St. Lucia** and **St. Vincent** allow eligible witnesses (at the discretion of the court) to give evidence by special measures such as audio-visual technology or video conferencing/recording. Where a witness with a disability qualifies as a vulnerable witness, these special measures may be utilised.

[6] Section 58 (1) of the Summary Courts Act Chap. 4:20 states: The head of a department shall not be bound to attend in a Summary Court to conduct any proceedings in which he is a complainant, but may, by writing under his hand, authorise any subordinate officer of his department to appear for him and conduct such proceedings on his behalf.

[7] Ruston (1786) 1 Leach 408, O'Brien (1845) 1 Cox CC 185

[8] Blackstone's Criminal Practice 2015 Part F Evidence - Section F4 - Competence and Compellability of Witnesses and Oaths and Affirmations: Deaf and Speech Impaired Witnesses

Anguilla

Under the *Evidence Act, Chap. E65, Section 27,* a magistrate may direct that a witness (other than the accused), give evidence through a live link in criminal proceedings.

- A direction may be given under this section on an application by a party to the proceedings or on the court's own motion;
- No direction shall be given under this section unless the magistrate is satisfied that it is in the interests of the efficient or effective administration of justice that for the person concerned to give evidence in the proceedings through a live link and the court has been notified by the Governor in Council that suitable facilities for receiving evidence through live link are available.

When deciding whether to give a direction under this section the magistrate must consider all the circumstances of the case including:

- The availability of the witness;
- The need for the witness to attend in person;
- The importance of the witness' evidence to the proceedings;
- The views of the witness;
- The suitability of the facilities at the place where the witness would give evidence through a live link;
- Whether a direction might tend to inhibit any party from effectively testing the witness' evidence.

The court must state in open court its reasons for refusing an application under this section and if it is a Magistrate's Court, must cause such reasons to be recorded by the court. Where a direction has been given that a witness give evidence via live link, that witness may only give evidence by live link, unless or until the direction is rescinded by the court on its own motion or upon an application by a party to the proceedings.[9] Where a direction provides for a witness to give evidence by live link, the court may permit the witness to give evidence other than through a live television link, if it appears to be in the interests of justice to do so.

Antigua and Barbuda

- If a witness has difficulty communicating by reason of a physical disability, the court may order that the witness be permitted to give evidence by any means that enables the evidence to be intelligible: *The Evidence (Special Provisions) Act, 2009, Section 7;*
- Where a witness is so ill as to be unable to travel and it is proved that his deposition was taken in the presence of the accused, and he or his counsel had full opportunity to cross-examine the witness and the deposition has been signed by the magistrate by or before whom the same purports to have been taken, then the deposition shall be read as evidence without further proof unless it can be proved that it was not in fact signed by the Magistrate: *Magistrate's Code of Procedure, Chap. 255, Section 197.*

[9] Anguilla - Evidence Act Chap. E65, section 28(2) - (7)

Dominica

- The *Protection of Witnesses Act, 2013,* provides limited powers to the court to make provisions for vulnerable witnesses;
- *Section 12,* of the Act states that a witness is eligible for assistance if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings. Physical infirmity and disability are not included in the factors which the court shall take into account in determining eligibility;
- If a person with a disability qualifies as an eligible witness then the special measures including giving evidence via a live link or video conferencing, video recording, or intermediary;
- *Section 21,* of the Act states that a special measures direction may provide for the witness, while giving evidence, whether by testimony in court or otherwise, to be provided with a device that the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.

Grenada

- The *Evidence Act, Chap. 92, Section 117,* states that all persons are deemed competent to testify unless they are unable to understand the questions put to them or from answering rationally to those questions by tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind;
- Where a person's disability manifests as a mental disorder, he or she may not be competent to testify if their disability is of such a nature to prevent them from understanding or answering rationally the questions put to them;
- The *Evidence Act, Chap. 92, Section 118A,* states that a person who is mute may give evidence either in writing or by sign language.

Guyana

- The *Evidence Act, Chap. 5:03, Section 49(2),* provides that a witness who is mute or deaf is not an incompetent to testify and may give evidence by writing or by signs made in open court;
- With respect to documentary evidence, the *Evidence Act, Chap. 5:03, Section 9,* states that where a person gives information contained in the business record but is subsequently unable to attend as a witness due to physical infirmity, the court shall take all relevant circumstances into account and may as a matter of discretion allow the documentary record to be admitted as evidence;
- The *Evidence Act, Chap. 5:03, Section 73A,* permits physically disabled witnesses to give evidence at criminal trials via audio visual link.

Jamaica

- The *Evidence (Special Measures) Act, 2012, Section 2,* defines a vulnerable witness as including witnesses who are unlikely to be available to the court, or a witness in respect of whom the quality of the evidence if given in court by the witness is likely to be diminished as regards its completeness, coherence or accuracy, by reason of the fact that the witness has a physical disability, physical disorder or suffers from a mental disorder within the meaning of the *Mental Health Act;*
- *Section 3,* of the Act states that vulnerable witnesses or witnesses who are physically unable to attend court in criminal proceedings are allowed special measures to give their evidence;
- These special measures include giving evidence by; live link *(Section 6)* and video recording *(Section 7)*.[10]

Montserrat

The *Criminal Code, No. 9 of 2010, Part 32,* empowers the court issue special measures directions in respect of vulnerable and intimidated witnesses:

- *Section 270,* provides that a witness is eligible for special measures assistance if the court considers that the quality of evidence given by the witness is likely to be diminished in circumstances where the witness is of unsound mind within the meaning of the *Mental Treatment Act,* or otherwise has a significant impairment of intelligence and social functioning; or that the witness has a physical disability or is suffering from a physical disorder;
- *Section 272(2)a,* provides that the magistrate may only issue a special measures direction where the court has been notified by the Attorney General that relevant arrangements may be made available in the area in which it appears to the court that the proceedings will take place;
- *Section 273(2),* states that when considering whether to issue a special measures direction the magistrate must determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and if so determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence;
- In so determining, the magistrate must have regard to all the circumstances of the case including the views of the witness;
- The special measures available include screening the witness from being seen by the accused, permitting the witness to give evidence via live link, ordering the removal of gowns during the giving of evidence, receiving the witness' evidence in chief by video recording, examining the witness through an intermediary and providing aids to communication.[11]

[10] R v Christopher Thomas [2017] JM SC Crim 2

[11] Montserrat - Criminal Procedure Code No. 9 of 2010, sections 277 - 284

St. Kitts and Nevis

- The *Evidence Act, 2011, Section 30(1),* states that a witness who cannot hear adequately may be questioned in any appropriate way including the use of a court interpreter for sign language;
- *Section 30(2),* states that a witness who cannot speak adequately may give evidence by any appropriate means.

St. Lucia

The *Evidence Act, Chap. 4.15, Section 29(2),* provides that the court may on its own initiative or on the application of a party or witness, direct that a vulnerable witness be permitted, exceptionally to give evidence by the following means:

- An appropriate place outside the courtroom, either in St. Lucia or elsewhere by means of technology;
- A video recording of an interview of the witness, or a portion thereof made before the hearing be admitted as evidence in chief;
- The witness be assisted in the giving of evidence by a person approved by the court;
- The witness gives evidence with the assistance of a device to overcome any disability, disorder or impairment that may affect the ability of the witness to hear or understand the questions and communicate answers;
- A witness who cannot adequately hear may be questioned in any appropriate manner;
- A witness who cannot adequately speak may give evidence by any appropriate means.

A complainant who is under 12 years of age is automatically a vulnerable witness, and in all other cases, including cases of deafness or muteness, vulnerability is determined by the court.

In **St Romaine v Attorney General LC 2012 HC 16,** the prosecution sought to have the testimony of an expert witnesses be given by video link under *Section 29,* of the *Evidence Act*. The court considered whether the term 'vulnerable witness' was intended to include witnesses whom the prosecution chose not to bring to court because he or she was overseas. Two crucial considerations arise when determining whether to declare a witness vulnerable, namely, the impact that a declaration will have on the trial and the type of witnesses that the Act intended be automatically considered vulnerable:

> *"From a constitutional point of view the important issue in relation to any reading of the Evidence Act with regard to the definition of the "vulnerable" witness is the impact that a declaration that such a witness is "vulnerable" would have on the trial. It is instructive that section 29 of the Act makes a distinction between those vulnerable witnesses who "shall" (subsection (1) be taken to be a vulnerable witness, and whose evidence must be taken subject to certain specified conditions and those who the Court "may" (subsection (2) on the application of a party or a witness or on the judge's own initiative, direct, is to give evidence in a manner described in subsection (5)."*[12]

[12] St Romaine v Attorney General LC 2012 HC 16, Belle J [48]

St. Vincent and the Grenadines

- The *Evidence Act, Chap. 220, Section 23(1),* provides with respect to documentary evidence, that where a person gives information contained in a business record but is subsequently unable to attend as a witness due to physical unfitness, the court shall take all the relevant circumstances into account and may in its discretion allow the documentary record to be admitted as evidence;
- The *Witness (Special Measures) Act, 2013, Sections 12, 13,* permit vulnerable witnesses to access special measures when giving evidence, however, the definition of vulnerable witness does not extend to persons with disabilities.

Trinidad and Tobago

- The *Evidence Act, Chap. 7:02, Section 14(2),* states that (2) in any criminal proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as evidence of that fact if (a) the document is, or forms part of, a record relating to any trade or business and compiled, in the course of that trade or business, from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and (b) the person who supplied the information recorded in the statement in question is, inter alia, unfit by reason of his bodily or mental condition to attend as a witness. The court may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a registered medical practitioner;
- *Section 15C,* provides that a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if it is proved to the satisfaction of the court that such person is, inter alia unfit, by reason of his bodily or mental condition, to attend as a witness;
- *Sections 15I,15J,* allow for the reception of evidence by way of writing or by signs or by way of any device.

2. Victims of Sexual Offences

Sexual Offences are normally heard in camera to protect the victim and witnesses from public exposure, this is especially important when the victim is a minor.

The *Model Guidelines for Sexual Offence Cases in the Caribbean Region* are intended to provide guidance to Magistrates' Courts, High Courts and supreme courts in adjudicating sexual offences. The overall aim is to ensure that re-victimization to survivors is minimized as they receive support services to facilitate them being able to give the best quality evidence to the court while ensuring adequate safeguards for the rights of defendants.

Part 3: Guidelines for the Trial Process, 4.4 Ongoing Care and Protection of Vulnerable Witnesses During the Trial, states:

1. *A complainant or other witness, who has been declared a vulnerable witness, will need continued care and support during the court process, particularly if the witness has been identified as vulnerable or liable to intimidation. Care and support units will continue their work to provide care and support as well as other practical help for witnesses, such as help with transport to get to court and liaison with the courts over any disabilities or other special needs. They also facilitate effective communication with the police, the child protection services, D.P.P. and legal representatives as required.*
2. *If there is no specific care and support unit, this may be done by the investigating officer or liaison officer or a supporter from an NGO or other agency already recognized or appointed to provide support services.*
3. *However, the court appointed supporter can provide the witness with information about the court process. The court, in collaboration with the relevant agencies, should provide an orientation video for orientating witnesses with the proceedings of court and the use of special measures in court.*
4. *Judges and magistrates are expected to take an active role in the management of cases involving vulnerable and intimidated witnesses, and to ensure that elements of the court process that cause undue distress to such witnesses are minimised.*
5. *On-going support may also include referring the vulnerable witness to psychotherapy or counselling therapies, from the outset in the Magistrates' Court. Attention needs to be paid to how such therapy may become relevant during the trial.*
6. *If the court has approved the use of an intermediary to assist the witness, then that intermediary will be present to assist the witness in communicating their evidence to the court, but not as a supporter.*
7. *The role of an intermediary is separate from that of the court supporter and they should be available during pre-trial preparation to assist in the preparation of the witness. An intermediary will usually have undertaken an assessment of a vulnerable witness at an early stage in the proceedings and may be asked to provide a report for the judge, the prosecution and the defence. This report should highlight matters such as limited concentration spans and times when the witness appeared to be experiencing trauma.*
8. *Where the court has made an order establishing a measure specifically to protect a witness during the pre-trial stages, such a measure should be continued during the trial process.*

Anguilla

The *Criminal Justice Reform Bill, 2018, Section 10A(4),* proposes to amend the *Evidence Act* to make special measures available where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence, or to that offence and any other offences. In such cases the witness will automatically be eligible for assistance as a vulnerable witness in relation to those proceedings unless the witness has informed the court of the witness's wish not to be so eligible.

Antigua and Barbuda

- The *Sexual Offence Act, No.9 of 1995, Section 26,* states that any proceedings in respect of the offences of rape or sexual assault by a husband, and in any sexual offence involving a minor, the proceedings shall be heard in camera unless the court otherwise directs.

Barbados

- The *Magistrate's Court Act, Chap. 116A, Section 133,* states that in any proceedings before a magistrate inquiring into a sexual offence as an examining magistrate a child shall not be called as a witness for the prosecution; but any statement made in writing by or taken in writing from the child shall be admissible in evidence of any matter of which his oral testimony would be admissible, except in a case where the application of this subsection is excluded under subsection (2).

Dominica

- The *Protection of Witnesses Act, 2013, Section 12,* provides limited powers to the court to make provisions for vulnerable witnesses. A witness is eligible for assistance where quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceeding;
- Victims of sexual offences may qualify for special measures under *Section 12,* including giving evidence by live link or video conferencing, giving evidence in private, giving evidence in chief via video recording and examination of the witness through intermediaries.

Grenada

The *Criminal Procedure Code, Chap. 72B, Section 70A,* states that a judge or magistrate shall, in any matter before him or her involving a sexual offence or indecent assault, order that no person other than the officers of the court, the virtual complaint, other persons engaged in the prosecution, and the accused, his or her witnesses and his or her counsel, if any, shall have access to or remain in the room or building in which the matter is being heard.

Guyana

The *Sexual Offences Act, Chap. 8.03, Section 45,* states that the public is to be excluded from the hearing of any offences under the Act unless the magistrate thinks such an order is not necessary in interest of proper administration of justice.

Jamaica

- The *Evidence (Special Measure) Act, 2012, Section 2,* defines vulnerable witness as including witnesses who are unlikely to be available to the court, witnesses in respect of whom the quality of the evidence if given in court by the witness is likely to be diminished as regards its completeness, coherence or accuracy, by reason of fear or distress on the part of the witness in connection with testifying in the proceedings;
- *Section 3(6),* states that if the vulnerable witness is also a child, each of the special measures or a combination of them shall be deemed to be appropriate in the interests of the administration of justice and a direction to that effect shall be made by the court unless: (a) the special measures would not be likely to improve the quality of the evidence of the child or (b) the child witness wishes to testify in open court and the court is satisfied that the quality of the evidence would not be diminished as a result;
- Vulnerable witnesses may be afforded special measures to give their evidence including evidence via live link and video recording.

In **R v Christopher Thomas [2017] JM SC Crim 2,** the prosecution applied for a special measures direction to permit a minor vulnerable witness to give evidence by live link. In the instant case (defendant charged with rape) the application was found to concern a vulnerable witness under *Section 2(1)(a),(b),* and the presumption that special measures were appropriate was triggered. In those circumstances the court must balance the interest of the administration of justice pursuant to *Section 3(5),* against the needs of a vulnerable witness or a child witness by weighing the following factors:

- The views of the witness or submissions from prosecuting counsel made on behalf of the witness;
- The importance of the witness's evidence to the proceedings;
- The availability of the witness;
- Whether the special measure would improve the quality of the evidence;
- Whether a direction may inhibit any party to the proceedings from effectively testing the witness's evidence;
- Any other relevant factor.

The court determined that the presentation of the evidence by live link would not impact upon its ability to make findings as to the witness' credibility since the questions to be asked both in evidence in chief and cross examination would be asked and answered as if the witness was present in person. The court also stated that the prosecution must ensure that the necessary safeguards are in place for the presentation of its case in an environment which preserves the

integrity of the evidence. Thus, the location from which the witness will testify must be sterile and the court must know the venue of the testimony and the events taking place there.

The court also stated that each request for special measures should be decided on its own facts and circumstances provided that there is a reasonable explanation for the witness not being able to attend court to give evidence. Once the technology is available and can readily be deployed a court should be slow to refuse the request of either side to receive the testimony of a witness by live link. The application to give evidence by live link was granted.

Montserrat

- The *Criminal Procedure Code, No. 9 of 2010, Section 287,* provides that that no person charged with a sexual offence may in any criminal proceedings cross-examine in person a witness who is the complainant, either (a) in connection with that offence, or (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings;
- *Section 288,* states that no person charged with, inter alia, a sexual offence, may in any criminal proceedings cross-examine in person a protected witness, either (a) in connection with that offence, or (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings;
- A 'Protected witness' is a witness who (a) either is the complainant or is alleged to have been a witness to the commission of the offence and (b) either is a child or falls to be cross-examined after giving evidence in chief (whether wholly or in part) (i) by means of a video recording at a time when the witness was a child, or (ii) in any other way at any such time.

St. Kitts and Nevis

The *Evidence Act, 2011, Section 13(9),* provides that a child under 16 years may, if the court permits, give evidence in proceedings in respect of sexual offences and shall be cross-examined by a video or television link or other technological means and the court may utilise whatever means it considers necessary, including technological means, to minimise the trauma that may be caused to the child in the circumstances.

The *Evidence Act, 2011, Section 10,* states that on the application of the prosecution, a video or television link or other technological means shall not be used when the court is satisfied that a child under 16 years is able and wishes to give evidence in the presence of the accused and the court thinks it is desirable to do so.

The *Evidence Act, 2011, Sections 28(3), 46(5),* provide that a complainant in a trial for rape or any other sexual offence may give evidence if the court permits by means of technology such as a video or television link that permits the virtual presence of the witness before the court and that permits the court and the parties to the proceedings to hear, examine, and cross-examine the witness, whether the witness is within or outside St. Kitts and Nevis.

St. Lucia

The *Criminal Code, Chap. 3.01, Section 136,* provides that where proceedings are being conducted in relation to sexual offences the public should be excluded, however, the magistrate may permit the presence of a person as an observer at the request of the complainant or the defence and any legitimate representative of a news agency.

The *Evidence Act, Chap. 4.15, Section 29(2),* provides that the court may on its own initiative or on the application of a party or witness, direct that a vulnerable witness is to give evidence by special measures including:

- Being screened from the sight of the accused;
- Giving evidence from an appropriate place outside the courtroom, either in Saint Lucia or elsewhere by means of technology which allows for the witness to see and or hear a person in the courtroom;
- A video recording of an interview of the witness, or a portion thereof made before the hearing be admitted as evidence in chief;
- No person other than the judge and legal representatives and the accused be present in the courtroom during the giving of the testimony;
- The wearing of wigs or gowns be dispensed with during the giving of the evidence.

St. Vincent and the Grenadines

- The *Witness (Special Measures) Act, 2013, Sections 12, 13,* provide that vulnerable witnesses are allowed to use special measures when giving evidence;
- These special measures for giving evidence include evidence via live link, giving evidence in private, and giving evidence in chief via video recording.

Trinidad and Tobago

The *Sexual Offences Act, Chap. 11.28, Section 29,* states that proceedings for the offences of rape, sexual assault and any sexual offence involving children shall be heard in camera unless the court otherwise directs.

3. Mental capacity

Antigua and Barbuda

- The *Evidence (Special Provisions) Act, 2009, Section 7(2),* states that if a court determines under that a witness with a mental disability is capable of giving evidence but has difficulty communicating by reason of his disability, the court may order that the witness be permitted to give evidence by any means that enables the evidence to be intelligible;

- A witness whose capacity is in question (1) if a proposed witness is a person of fourteen years of age or older whose mental capacity is challenged, the court shall, before permitting the person to give evidence, conduct an inquiry to determine— (a) whether the person understands the nature of an oath or a solemn affirmation; and (b) whether the person is able to communicate the evidence.

Barbados

- The *Evidence Act, Chap. 121, Section 14(2),* states that a person is not competent to give evidence in court where he is incapable of giving a rational reply to a question about a fact or where he is incapable of hearing or understanding, or of communicating a reply to, a question about a fact; and that incapacity cannot be overcome, or cannot be overcome without undue cost or undue delay.

Belize

The *Evidence Act, Chap. 95, Section 54(1),* states that a witness is incompetent to give evidence if, in the opinion of the court, he is prevented by extreme youth, disease affecting his mind, or any other cause of the same kind, from recollecting the matter on which he is to testify, from understanding the questions put to him, from giving rational answers to those questions, or from knowing that he ought to speak the truth.

Grenada

The *Evidence Act, Chap. 92, Section 117,* provides that where a witness does not understand the questions put to them or does not give rational answers to those questions due to disease whether body or mind then he/she is not competent to testify and give evidence.

Guyana

The *Evidence Act, Chap. 5.03, Section 49,* a witness is incompetent to give evidence if, in the opinion of the court, he is prevented by extreme youth, disease affecting his mind, or any other cause of the same kind, from recollecting the matter on which he is to testify, from understanding the questions put to him, from giving rational answers to those questions, or from knowing that he ought to speak the truth.

St. Kitts and Nevis

The *Evidence Act, 2011, Section 9(3),* states that a person is not competent to give evidence if he or she is unfit by reason of his or her mental condition; or the person is incapable of hearing or understanding, or of communicating a reply to a question about the fact and that incapacity cannot be overcome without undue cost or undue delay.

St. Lucia

The *Evidence Act, Chap. 4.15, Section 14,* states that a person is incompetent to give evidence in court where:

- The person is incapable of understanding that, in giving evidence, he or she is under an obligation to give truthful evidence is not competent to give evidence;
- The person is incapable of giving a rational reply to a question about a fact is not competent to give evidence about the fact;
- The person is incapable of hearing or understanding, or of communicating a reply to, a question about a fact;
- The person's incapacity cannot be overcome, or cannot be overcome without undue cost or undue delay, or the person is not competent to give evidence about the fact.

Trinidad and Tobago

- The *Evidence Act, Chap. 7.02, Section 13A(3),* states that where in the opinion of the court a person is incapable of understanding and of communicating a reply to a question and where that incapacity cannot be readily overcome for the purposes of the trial, that person is deemed incompetent to give evidence;
- *Section 14(2),* states that in any criminal proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as evidence of that fact if the person who supplied the information recorded in the statement in question is unfit by reason of his bodily or mental condition to attend as a witness.

Burden and standard of proof

In criminal matters, in English-speaking Commonwealth Caribbean countries, the prosecution has the legal burden to prove guilt beyond reasonable doubt.

R v Galbraith [1981] 1 WLR 1039, instructs that on a submission of no case to answer at the close of the prosecution's case, the trial judge should stop the case and direct an acquittal if there is no evidence that the crime alleged against the accused was committed by him. However, if there is some evidence but it is of a tenuous character, it is the judge's duty, on a submission of no case, to stop the case if he comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it; but, where the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or on other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the accused is guilty, then the judge should allow the matter to be tried by the jury.

The defendant/accused does not have a legal burden. If he raises a defence, he only has an evidential burden (to raise sufficient facts/evidence to support his defence).

Exceptions to the general rule

The two exceptions to the general rule that the burden to prove is on the prosecution are:

(a) *Insanity:* the defendant has a legal burden to prove insanity (this is the only common law exception);

(b) *Statute:* statute may also impose a legal burden on the defendant. Statute creates an offence and the magistrate must therefore carefully examine the relevant statute to see whether the specific statute imposes a burden on the defendant to prove. Where a burden is imposed by statute, it may be expressed or implied.

In the English case of **R v Edwards [1975] QB 27,** the statute in question created an offence where the accused person was not in possession of a licence. By implication therefore, it was for the accused to prove he had a licence. He therefore had a legal burden. The Court of Appeal held that the exception is limited to offences under enactments that prohibits the doing of an act save in specified circumstances, or by persons of specified classes or with specified qualifications, with the licence or permission of specified authorities. Where the accused seeks to rely on such proviso, exemption, excuse or qualification, he will bear a legal burden,

Proof of Intention

In non-strict liability offences, the prosecution must establish that the defendant had a guilty mind. A person who aids, abets, counsels or procures the commission by another person of an offence has the same criminal liability as that person.

Proof of Intent is applied to summary, indictable and triable either way offences. Offences requiring specific intent include: Burglary, Assault, Murder, Theft, Robbery, Wounding with Intent.

Victim Impact Statement

A victim impact statement is one made by the victim as to the impact of the offence on him: **AG's Reference No 2 of 1995 (R v S) [1995] Crim LR 835.** Whilst this is encouraged by the English courts with respect to matters the court should have regard to when sentencing a defendant, the practice is not popular in the Caribbean as there is no legislation which deals with the same in the various territories. However, according to Seetahal *"although victim statements are not usually tendered in the Commonwealth Caribbean, it is not uncommon for the courts to enquire orally of the victim, after a finding of guilt has been made, as to matters he may wish to raise."* [13]

The use of victim impact statements has been recommended as 'a useful vehicle to enhance justice in adversarial criminal justice systems.'[14] According to the Court of Appeal in **AG's Reference (supra),** it is wholly appropriate for the court to receive factual information in relation to impact of the offences on the victim as the court is well equipped to determine which matters were relevant and which were merely inflammatory.

In the United States, there are several guarantees for the protection of the rights of victims. Once such right is the right to submit a victim impact statement report which is reviewed by the court prior to the sentencing of the defendant. The victim impact statement is strong recognition that the victim is recognised in the criminal justice system other than as a witness.

[13] Commonwealth Practice and Procedure, 4th edition

[14] Ferez, E, 'Who's afraid of the big bad victim' (1999) Crim LR 545, p 555.

CHAPTER 7

EVIDENCE

Admissions[1]

The first rule of admissibility is relevance. The second rule, which is an exclusionary one, is the rule against the admissibility of hearsay.

An admission is a statement made by a party to proceedings out of court which may or may not adversely affect his interest in the outcome of the proceedings. It is admissible as evidence against him as an exception to the hearsay rule: **Slatterrie v Pooley (1840) 6 M+W 664**.

- The admission may be by words either written or spoken or conduct of the parties concerned: **Bessala v Stern (1877) 2 CPD 265;**
- It must be voluntary and not unduly prejudicial: **Commissioners of Customs and Excise v Harz and Another [1967] AC 760, (1967) 1 AER 177;**
- An admission cannot be based on a statement from a third party, since a party can only admit a matter of which he has personal knowledge, he can only confess to his own acts: **Surujpaul v R (1958) 1 WLR 1050 PC; AG's Ref (No. 4 of 1979) (1981) WLR 667 CA;**
- Where a statement is made in the presence of the accused in effect accusing him of a crime, the accused's silence is evidence against him of the facts stated in the accusation only in so far as he adopts the statement: **R v Christie (1914) AC 545 HOL;**
- Where such a statement is made, the judge is under a duty to tell the jury the effect of the statement and the possible acknowledgment that it is not evidence of the truth: **Shabir Ali (1989) 36 WIR 410 PC;**
- However, when the allegations of a third party are repeated by a police officer to the defendant, his silence alone cannot be an acknowledgment of their truth; even if he is not cautioned: **Hall v R (1970) 16 WIR 277 PC;**

[1] Anguilla – Magistrate's Code of Procedure Act Chap. M5, section 59
Antigua and Barbuda - Magistrate's Code of Procedure Act Cap. 255, sections 47, 56; Criminal Procedure (Committal for Sentence) Act Cap. 118, section 2
Barbados - Evidence Act Cap. 121, sections 70, 71, 73, 77
Belize - Evidence Act Chap. 95, Belize s. 90, 91
Dominica – Magistrate's Code of Procedure Act Chap. 4:20 section 52
Grenada - Evidence Act Cap. 92, sections 17- 20, 30, 31
Guyana - Evidence Act Cap. 5:03, section 4
Jamaica - Evidence Act, sections 31A – 31L Patricia Henry v R [2011] JMCA Crim 16;
Montserrat – Criminal Procedure Code No. 9 of 2010, sections 79 - 80
St Kitts and Nevis - Evidence Act No. 30 of 2011, section 2
St Lucia - Evidence Act Cap. 4.15, sections 68-77
St Vincent and the Grenadines - Criminal Procedure Code Cap. 172, section 102; Evidence Act Cap. 220, section 3.
Trinidad and Tobago - Evidence Act Chap 7:02, section 14

- Where suspicious circumstances appear to demand an explanation, and no explanation or an entirely incredible explanation is given, the lack of explanation may warrant an inference of guilty knowledge in the defendant: **Raviraj et al (1986) 85 Cr App R 93;**
- Where the defendant's attorney is present with the police however it may be that they are on equal terms and so admissible. Where the party making the accusations is the mother of the victim and no police is present: **Parkes v R (1976) 1 WLR 585.**

A confession is a statement by a person charged stating or suggesting that he has committed the crime. There is no difference between a full confession and a mere incriminating admission: **Harz [1967] AC 760.**

- Confessions can be written or oral: **Jurysingh (1985) LRC 105;**
- A confession could not be given in evidence by the prosecution unless shown by them to be a voluntary statement in the sense that it was not obtained from the accused by fear of prejudice or hope of advantage exercised or held out by a person in authority or by oppression: **Ibrahim v R (1914) ASC 599;**
- The test for admissibility of a confession is fairness and voluntariness and the burden is the criminal standard beyond a reasonable doubt: **Shabadine Peart v R [2006] UKPC 5**; **DPP v Ping Lin (1975) 3 AER 175 HOL.**

Hearsay[2]

Hearsay evidence is any statement that is made by a person other than the person giving oral evidence and is tendered to prove the truth of some fact that has been asserted. Such evidence is generally not admissible: **Shaw v Roberts (1818) 2 Stark 455.**

The reason for the hearsay rule is that the truthfulness and accuracy of the person whose words are spoken to another witness cannot be tested by cross examination, since the speaker is not or cannot be called as a witness: **Teper v R [1952] 2 All ER 447 at 449.**

Despite the general rule, magistrates must determine the purpose for which the evidence will be used before peremptorily excluding it under the hearsay rule. For instance, evidence of a statement made to a witness by a person who is not himself called as a witness, is not hearsay if it is tendered only to prove the fact that the statement was made, and not to prove the truth of its contents: **Subramanian v Public Prosecutor [1956] 1 WLR 965.**

[2] Anguilla - Evidence Act Chap. E65, section 35
Antigua and Barbuda - The Evidence (Special Provisions) Act No. 5 of 2009, sections 37, 42, 43
Barbados - Evidence Act Cap. 121, section 52
Belize - Evidence Act Chap. 95, section 105
Grenada - Evidence Act Cap. 92, section 30, 36
Guyana - Price v The State (1982) 37 WIR 222
Jamaica - Evidence Act, sections 31D, 67
Montserrat – Keithroy Lloyd v The Queen HCRAP 2011/002;
St Kitts and Nevis -Evidence Act No. 30 of 2011, section 67, Part VIII of the Evidence Act
St Lucia - Evidence Act Cap. 4.15, section 48, Part 4 of the Evidence Act
St Vincent and the Grenadines - Antoine v The Queen VC 2004 CA 18
Trinidad and Tobago - Evidence Act Chap 7:02 section 5(c)

Similarly, a magistrate must decide whether a statement made to a witness by a person who is not called to be a witness may or may not be hearsay.

Magistrates must ensure that any witness who gives evidence on a matter, has direct personal knowledge of the evidence contained in the statement especially where the prosecution relies on the evidence as being the truth of what is contained in the statement: **R v Springer (1968) 12 WIR 446.**

The common law exceptions to the hearsay rule include:

- Statements admitted as part of res gestae; These are statements or acts which are connected with the facts in issue and occur at the same time and are an integral part of what happened and is the subject of the court's proceedings are admissible: **Price v The State (1982) 37 WIR 222:**
    a) Spontaneous (not solicited);
    b) Contemporaneous, there should be no possibility of concoction or fabrication or the statement will be excluded.
- Dying declarations: A dying declaration at common law may be admitted where it is shown that the maker of the statement died, that a trial where the statement is needed follows, that the statement related to the cause of the deceased death and that when making the statement the deceased was shown to have had a settled hopeless expectation of death: **R v Lawson [1998] EWCA Crim. 1495 (1 WIR 344)**; **Jainarine Prashad v The State (1998) 58 WIR 236;**
- Other statements by the deceased: interest, duty, pedigree, public rights, testators;
- Public documents;
- Admissions and confessions: Confession statements made in the presence of a party to a criminal proceedings are not themselves admissible as truth or proof of the statement save and except that acknowledgement of truth of the statement can be inferred from either a response of the party by words or conduct: **Queen v Christie [1914] AC 545.**

Admission of documents

Anguilla

Every document which by any law in force on or after 25th April, 1876, is admissible in evidence in any court of justice in England shall be admissible in evidence in the like manner, to the same extent, and for the same purpose, in any court in Anguilla, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence.

Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof, or extract therefrom shall be admissible in evidence in any court, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence, if it is provide to be an examined copy or extract, or if

it purports to be signed and certified as a true copy, or extract, by the officer to whose custody the original is entrusted, and which officer is hereby required to furnish such certified copy, or extract, to any person applying at a reasonable time, for the copy or extract, upon payment of a fee for the same of 18 cents for every folio of 96 words.[3]

Antigua and Barbuda

Whenever any book, or other document, is of a public nature as to be admissible in evidence on its mere documents production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof, or extract therefrom, shall be admissible in evidence in any court of justice, or before any person now, or hereafter, having by law, or by consent of parties, authority to hear, receive, and examine evidence provided that:

- It be proved to be an examined copy or extract;
- It purports to be signed and certified as a true copy or extract by the officer in whose custody the original is entrusted, and which officer is hereby required to furnish such certified copy, or extract, to any person applying, at a reasonable time, for the same, upon payment of a fee for the same of 18 cents for every folio of 96 words.[4]

Barbados

The general position is that where in any proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish such fact shall, on production of the document be admissible as evidence if the same if:

- The document is or forms a part of a record with respect to any trade or business and compiled in the course of that trade or business, from the information supplied by persons who have, or reasonably may supposed to have, personal knowledge dealt with in the information they supply;
- The person who supplied the information recorded in the statement is dead or absent from the jurisdiction or unfit by reason of his bodily or mental condition to attend as a witness or cannot with reasonable diligence be identified of found or cannot reasonably be expected (having regard to the time which has elapsed since he supplied the information and to all the circumstances) to have any recollection of the matters dealt with in the information so supplied.[5]

In deciding whether a person is unfit to attend as a witness the court may rely on a certificate purported to be signed by a registered medical practitioner.[6]

[3] Anguilla - Evidence Act Chap. E65, sections 13, 22

[4] Antigua and Barbuda - Evidence Act Cap. 155, section 22; Evidence (Special Provisions) Act No. 5 of 2009, sections 26 – 47

[5] Barbados - Evidence Act - Cap. 121 section 55

[6] Barbados: Evidence Act - Cap. 121, section 56(8)

Belize

Business records are admissible in criminal proceedings in circumstances where they contain any statement of which direct oral evidence would have been admissible to establish that fact where the requirements under subsection (2) of the relevant section are met.[7]

Dominica

Statements contained in documents are subject to the general rules of admissibility of evidence, particularly those relating to hearsay and opinion evidence (in particular expert evidence) and are in simply referred to as 'out of court' statements.[8]

Magistrates must ensure that the document can be proven adequately, and the contents of the documents can be used for the trial.

The *Best Evidence Rule* relates to the use of documents as evidence. The rule is that if an original document is available and can be produced without any difficulty, it should be produced. If the original has been lost or destroyed, or there is some other good explanation as to why the original cannot be produced, a copy may be produced as it is the best evidence that is now available. It must be proved to be an examined copy extract or provided it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted. The officer who is hereby required to furnish such certified copy or extract to any person so applying upon payment of a fee for the same 18 cents for every folio of 96 words.[9]

Where the document is in respect of electronic records and printouts of electronic records, the *Best Evidence Rule* is applied and it is satisfied on proof of the integrity of the electronic records system and printout of the electronic records storage and record keeping.[10]

Examples of documents that can be admitted as evidence consists of:

- Public documents (statutes, parliamentary material, judicial documents or public registers);
- Private documents (business records, agreements, deeds);
- Plans, reports and certificates;
- Statements in documents produced by computers;
- Tape recordings and photographs.

[7] Belize - Evidence Act Chap. 95, section 84(2)(a)(b); Part 2, Division 2; Electronic Evidence Act Chap. 95:01
[8] Dominica - Evidence Ordinance Cap. 64, section 13(1); Electronic Evidence Act No. 13 of 2010
[9] Dominica - Evidence Ordinance Cap. 64, section 22
[10] Dominica - Electronic Evidence Act No. 13 of 2010, section 6

Grenada

Evidence includes all documents produced for the inspection of the court; such documents are called documentary evidence.[11]

"Document" also includes, in addition to a documents in writing:

- Any map, plan, graph or drawing;
- Any photograph;
- Any disc, tape, soundtrack or other device in which sounds or other data are embodied so as to be capable of being reproduced therefrom.[12]

A written statement by a person shall be admissible in evidence to the same extent and effect as direct oral evidence by that person, provided the following conditions are satisfied:

a) The statement purports to be signed by the person who made it;

b) A copy of the statement and a notice of intention to tender the statement in evidence are served on all other parties to the proceedings by or on behalf of the person seeking to tender the statement in evidence, at least twenty-one days before the hearing at which the statement is to be so tendered;

c) None of the parties to the proceedings or their attorneys-at-law have, within ten days from the service of the copy of the statement, served a counter-notice on the party seeking so to tender it, objecting to the statement being tendered in evidence and requiring the attendance of the maker of the statement as a witness at the hearing;

d) Notice of the intention to tender the statement in evidence is accompanied by a declaration by the person who made it to the effect that it is true to the best of his or her knowledge and belief and that he or she made it knowing that, if it were tendered in evidence, he or she would be liable to prosecution if he or she wilfully stated in it anything which he or she knew to be false or did not believe to be true.

The conditions at b. and c. above may be dispensed with by agreement of the parties before or during the hearing that the statement be tendered in evidence.[13]

A statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him or her would be admissible if it is proved to the satisfaction of the court that such person:

- Is dead;
- Is unfit, by reason of his or her bodily or mental condition to attend as a witness;
- Is outside of Grenada and it is not reasonably practicable to secure his or her attendance;
- Cannot be found after all reasonable steps have been taken to find him or her;
- Is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person.[14]

[11] Grenada – Evidence Act Cap. 92, section 2, 37, 59 – 63, 72 – 76.
[12] Grenada – Evidence Act Cap. 92, sections 36A – 36J only
[13] Grenada – Evidence Act Cap. 92, sections 36C
[14] Grenada – Evidence Act Cap. 92, sections 36D, 36G

Business documents may also be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, subject to conditions.[15] Where a document is produced by a computer, there are several conditions relating to the accuracy of the record and the functioning of the machine, its software and its mechanisms which must be satisfied before the record or document can be admitted.[16]

Guyana

In any criminal proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document be admissible as prima facie evidence of that fact if:

- The document is, or forms part of, a record relating to any trade or business and compiled in the course of that trade or business from information supplied by persons who have, or reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply;
- The person who supplied the information recorded in the statement is called as a witness in the proceedings.

For the purpose of deciding admissibility of a statement under the above section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a registered medical practitioner.[17]

In deciding what weight to attach to a statement in a document, regard shall be had to all the circumstances from which any inference may be reasonably drawn as to the accuracy or otherwise of the statement and in particular, the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.[18]

Jamaica

A "document" includes, in addition to a document in writing, anything in which information of any description is recorded.[19]

Written statements are admissible without the maker of the document attending and giving oral evidence where certain conditions are met. Of these conditions the primary requirements are:

- The statements must purport to be signed by the person who made it;
- A copy of the statement and a notice of intention to tender the statement into evidence must be served on all other parties to the proceedings by or on behalf of

[15] Grenada – Evidence Act Cap. 92, sections 36F, 36G
[16] Grenada – Evidence Act Cap. 92, sections 36G
[17] Guyana – Evidence Act Cap. 5:03, section 92
[18] Guyana – Evidence Act Cap. 5:03, section 93
[19] Jamaica – Evidence Act 1843, section 31B

the person seeking to tender the statement into evidence, at least 21 days before the hearing at which the statement is to be so tendered.[20]

The court may also admit into evidence any statement in a document where the maker of the statement:

- Is dead;
- Is unfit by reason of his bodily or mental condition to attend as a witness;
- Is outside of Jamaica and it is not reasonably practicable to secure his attendance;
- Cannot be found after all reasonable steps have been taken to find him;
- Is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person.[21]

Computer generated documents may be admitted where the requisite standards for the accuracy of the record and the operation of the machine and its mechanisms are met.[22]

Statements contained in business documents are admissible as evidence of any facts stated therein of which direct oral evidence would be admissible, where the requirements of subsections (2) and (3) of the relevant section are satisfied.[23]

Montserrat

Every document, which, by any law now in force, or hereinafter to be in force, is or shall be admissible in evidence in any court of justice in England, shall be admissible in evidence in the like manner, to the same extent, and for the same purpose, in any court in Montserrat, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence.[24]

A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but, if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; provided that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it, for the purpose of the trial, as he shall think fit.[25]

No examination or deposition, to be taken by virtue of any of the provisions of this Act, shall be read in evidence at any trial, without the consent of the party against whom the same may be offered, unless it shall appear, to the satisfaction of the court, that the examinee, or deponent, is beyond the jurisdiction of the court, or dead, or unable from permanent sickness, or other

[20] Jamaica – Evidence Act 1843, section 31C; See also official or public documents under section 22
[21] Jamaica – Evidence Act 1843, section 31D
[22] Jamaica – Evidence Act 1843, section 31G, 31H
[23] Jamaica – Evidence Act 1843, section 31F, 31G
[24] Montserrat – Evidence Act Cap. 2.08, section 12
[25] Montserrat – Evidence Act Cap. 2.08, section 17

permanent infirmity, to attend the trial; in all, or any, of which cases the examination and depositions certified under the hand of the judge, officer, commissioner, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions.[26]

Notwithstanding anything to the contrary contained in any law, but subject always to the provisions of *Section 32,* of the Act, any certificate or report, if accompanied by a sworn statement by the medical practitioner who has signed the certificate or report, shall be admitted in evidence in any criminal proceedings before a magistrate, or at a Coroner's Inquest, without the medical practitioner being called upon to attend and to give evidence upon oath.

Where, in any criminal proceedings before a magistrate, it is intended to put in evidence a certificate or report as provided by the preceding subsection, the prosecution shall, at least three clear days before the proceedings, serve upon the defendant written notice of such intention, together with a copy of the certificate or report, and the defendant, at the commencement of the proceedings, may object to the admission of the certificate or report, and may require the attendance of the medical practitioner to give evidence on oath.

Nothing in this section contained shall be deemed to prejudice or take away the rights of the defendant, or of the court or coroner, as the case may be, at any stage of the proceedings to require the medical practitioner who has signed the certificate or report to attend and give evidence on oath.[27]

St. Kitts and Nevis

The common law principles apply in that if an original document is available and can be produced without any difficulty, it should be produced. If the original has been lost or destroyed, or there is some other good explanation as to why the original cannot be produced, a copy may be produced as it is the best evidence that is now available. The *Best Evidence Rule* relates to the use of documents as evidence.[28]

A "document" includes:

- Anything on which there is writing;
- Books, maps, plans, graphs, drawings and photographs;
- Any disc, tape, soundtrack or other device in which sound or other data, not being visual images, are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;
- Any film, microfilm, negative, disc, tape or other device on which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom.[29]

[26] Montserrat – Evidence Act Cap. 2.08, section 30
[27] Montserrat – Evidence Act Cap. 2.08, section 32(1)-(3)
[28] St. Kitts and Nevis - Evidence Act No. 30 of 2011, sections 56- 62
[29] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 1

In any criminal proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as prima facie evidence of that fact if:

- The document is, or forms part of, a record relating to any trade, business, profession or occupation or relating to any paid or unpaid office and compiled or received in the course of that trade, business, profession or occupation or office from information supplied whether directly or indirectly by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply;
- The person who supplied the information recorded in the statement in question is dead, or outside of St. Christopher and Nevis, or unfit by reason of his or her bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected, having regard to the time which has elapsed since he or she, supplied the information and to all the circumstances, to have any recollection of the matters dealt with in the information he supplied.[30]

Where the statement contained in a document is produced by a computer, that statement is admissible as evidence of any fact stated therein unless it is shown that:

- There are reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;
- At all material times the computer was not operating properly, or was out of operation such as to affect the production of the document or the accuracy of its contents;
- Any relevant conditions specified in regulations made pursuant to the provisions of subsection (3) are not satisfied.[31]

Where it is desired to give a statement in evidence by virtue of this section, the information concerning the statement may be required in such form and at such times as may be prescribed.[32]

For the purposes of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate issued by a registered medical practitioner.[33]

In estimating the weight to be attached to a statement rendered admissible as evidence by virtue of this part, regard shall be had to all the circumstances from which any inference may reasonably be drawn as to the accuracy or otherwise of the statement and in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.[34]

[30] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 57(1)
[31] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 57(2)
[32] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 57(3)
[33] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 57(4)
[34] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 58

Where a documentary label, tag or other document has been attached to an object, or a writing has been placed on a document or object, being a document or writing that may reasonably be supposed to have been so attached or placed in the course of a business, the hearsay rule does not prevent the admission or use of the document or writing.[35]

Where a document has been:

- Produced by a telecommunications installation;
- Received from an external telecommunications carrier;

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 for the following specified matters:

- The identity of the person from whom or on whose behalf the message was sent;
- The date on which, the time at which or the place from which the message was sent;
- The identity of the person to whom the message was addressed.[36]

For the purposes of this Act, where a representation is contained in a document that:

- Was written, made, dictated or otherwise produced by a person;
- As recognised by a person as his representation by signing, initialling or otherwise marking the document;

the representation shall be taken to have been made by the person.

St. Lucia

In St. Lucia, the *Best Evidence Rule* is abolished.[37] This means the current rule is if the original of the document is available then it must be produced. However, the failure to produce the original document will not affect the weight the court attaches to a copy of the document. The absence of the original does not affect the admissibility of the document.

A party may adduce evidence of the contents of a document in question[38]:

- By tendering it;
- By adducing evidence of an admission made by some other party to the proceedings as to the contents of it;
- By tendering a document that is, or purports to be, a copy of the document in question, and has been produced, or purports to have been produced, by a device that reproduces the contents of documents;

[35] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 60
[36] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 61
[37] St. Lucia – Evidence Act Cap. 4.15, section 121
[38] St. Lucia – Evidence Act Cap. 4.15, section 122(1)(a)-(g)

- If the document in question is an article or thing by which words are recorded in such a way as to be capable of being reproduced as sound, or in which words are recorded in a code, including shorthand writing, by tendering a document that is or purports to be a transcript of words;
- If the document in question is an article or thing on or in which information is stored in such a manner that it cannot be used by the court unless a device is used to retrieve, produce or collate it, by tendering a document that was or purports to have been produced by use of the device;
- By tendering a document that forms part of the records of or kept by a business, whether or not the business is still in existence, and purports to be a copy of, or an extract from, or a summary of the document in question, or is or purports to be a copy of such a document;
- If the document in question is a public document, by tendering a document, that was purports to have been printed by the Government Printery, or by the authority of the Government of a foreign country, and is or purports to be a copy of the document in question.

A party may adduce evidence of the contents of a document in question that is unavailable by tendering a document that is a copy of, or a faithful extract from, or summary of the document in question, or by adducing oral evidence of the contents of the document in question.[39]

St. Vincent and the Grenadines

Where any book or other document is of such a public nature as to be admissible in evidence on its mere production from proper custody and no written law exists which renders its contents provable by means of a copy, any copy thereof or extracts shall be admissible in evidence in any court provided it is proved to be an examined copy or extract by the officer to whose custody he original is entrusted.[40]

Copies of public documents are admissible in evidence.[41] The officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of a reasonable sum not exceeding fifty cents for every folio of 90 words.

Trinidad and Tobago

Whenever any question arises in any action, suit, information, or other proceeding in or before any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence touching the admissibility or the sufficiency of any evidence, or the competency or obligation of any witness to give evidence, or the swearing of any witness, or the form of oath or of affirmation to be used by any witness, or the admissibility of any question

[39] St. Lucia – Evidence Act Cap. 4.15, section 122(3)
[40] St. Vincent and the Grenadines – Evidence Act Cap. 220, section 31(1)-(2)
[41] St. Vincent and the Grenadines – Evidence Act Cap. 220, section 34

put to any witness, or the admissibility or sufficiency of any document, writing, matter, or thing tendered in evidence, every such question shall be decided according to the law in force in England on 30th August 1962.[42]

Section 21, of the *Evidence Act, Chap. 7:02,* governs the admissibility of documentary evidence in certain cases. The following definitions apply to this part of the Act:

- "Document" means and includes: proclamations, orders, bye-laws, rules, regulations, warrants, circulars, lists, assessment rolls, minutes, certificates, notices, requisitions, letters, decrees, and all other records and writings whatsoever of a public character pertaining to the several departments of the Government in the first column of the Second Schedule;
- "Bankers' books" means and includes: ledgers, day books, cash books, account books, and all other books used in the ordinary business of a bank;
- "Legal proceeding" means any civil or criminal proceeding or enquiry in which evidence is or may be given before any court of justice, judge, magistrate or justice, arbitrator, commissioner or person or persons authorised by the Supreme Court to take evidence.[43]

Every document issued by the President; under the authority of the President; by or under the authority of any department of the Government or officer mentioned in the first column of the Second Schedule; or being a record in any such department of the Government, may be received in evidence in all courts of justice, and in all legal proceedings whatsoever, in every case in which the original document would be admissible in evidence in all or any of the following modes:

- By production of a copy of the Gazette purporting to contain the document;
- By production of a copy of the document purporting to be printed by the Government Printer;
- By production (in the case of any document issued by the President or under the authority of the President) of a copy or extract purporting to be certified by the Minister, Secretary to the Cabinet or any Permanent Secretary;
- By production (in the case of any document issued by or under the authority of any of the departments or officer, or being a record in any such department of the Government) of a copy or extract purporting to be certified to be true by the person or persons specified in the second column of the said Second Schedule in connection with such department or officer.[44]

Any copy or extract made in pursuance of this part may be in print or in writing, or partly in print and partly in writing. No proof shall be required of the handwriting or official position of any person certifying in pursuance of this part to the truth of any copy of or extract from any document.

[42] Trinidad and Tobago – Evidence Act Chap. 7:02, section 2
[43] Trinidad and Tobago – Evidence Act Chap. 7:02, section 21
[44] Trinidad and Tobago – Evidence Act Chap. 7:02, section 22

In this section "Minister" means the Minister responsible for the subject matter in respect of which the document was issued and "Permanent Secretary" means the Permanent Secretary to the Minister.[45]

Where an original document cannot be found: **Calcraft v Guest [1898] 1 QB 759.**

Admissions of Exhibits

Anguilla

Any document or object referred to as an exhibit and identified in a written statement taken as evidence pursuant to *Section 76,* shall be treated as if it has been produced as an exhibit and identified by the magistrate by the maker of the statement and that document or object shall, wherever possible, be identified by means of a label or other means of identification signed by the maker of the statement.

Before the magistrate treats any document or object referred to as an exhibit in a written statement as an exhibit produced and identified before the magistrate, he shall be satisfied that the document or object is sufficient described in the written statement for it to be identified.[46]

Antigua and Barbuda

Any document or 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.[47]

Barbados

In any criminal proceedings, other than proceedings before an examining magistrate, a written statement by any person is, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, admissible as evidence to the like extent as oral evidence to the like effect by that person.[48]

Any document or object referred to as an exhibit and identified in a written statement tendered in evidence shall be treated as if it has been produced as an exhibit and identified in court by the maker of the statement.[49]

Division 3A, of the *Evidence Act. Chap. 121,* deals with retention of evidence in criminal proceedings. For the purposes of this division "agent" means a person authorised in writing by the accused to act on his behalf.[50]

[45] Trinidad and Tobago – Evidence Act Chap. 7:02, section 22(2)
[46] Anguilla - Magistrate's Code of Procedure Act Chap M5, section 82
[47] Antigua and Barbuda – Magistrate's Code of Procedure Act Cap. 255, section 71(5)
[48] Barbados – Evidence Act Cap. 121, section 154(1)(2)
[49] Barbados – Evidence Act Cap. 121, section 154(8); Police Commissioner v Springer (1962) 4 WIR 286
[50] Barbados – Evidence Act Cap. 121, section 132A

Any photograph of a scene or of anything seized by the police for the purposes of a criminal investigation shall be admitted for use as evidence in a criminal trial but not unless it was taken in the presence of the accused or his attorney-at-law or an agent acting on his behalf or a copy of the photograph is signed by them acknowledging that the photograph is a true likeness of the thing photographed.[51]

A copy of any photograph taken as above must be served on the accused or his attorney-at-law or agent personally or by registered post within seven days of its being taken who may, not later than seven days after the receipt of the copy of the photograph object by notice in writing to the photograph being used as evidence.[52]

- Where a photograph is offered as evidence in a criminal trial, the production of negatives shall not be required.[53]

Where goods or moveable property have been seized by the police they shall not be retained for use as evidence once photographs have been taken and no objection has been made[54]:

- With reference to goods or moveable property referred to in subsection (4), the Commissioner of Police shall cause such number of photographs as necessary to be taken and where it the goods or property are owned by any person other than the accused, it shall be returned to them on the written undertaking that he presents them at trial if so required[55];
- Where a photograph was taken in the absence of the accused, his attorney-at-law or his agent or a copy of the photograph was not signed by them, the person who took the photograph shall make a statement certifying that the photograph was taken in their absence or that a copy of the photograph was not signed by them and the reason therefore.[56]

A sample of a controlled drug within the meaning of *Section 3(1),* of the *Drug Abuse (Prevention and Control) Act,* or of any other substance which has been seized by a police officer for the purposes of a criminal investigation, shall, subject to *Section 132D,* be admitted as evidence in a criminal trial if the requirements of this section have been complied with in relation to the sample[57]:

- A police officer shall, in the presence of the accused and a Justice of the Peace take the sample from the bulk of the controlled drug or other substance of which it is a part and weigh the sample and the substance from which the sample was taken; secure the sample in a container that is wrapped and sealed and the officer and the Justice of the Peace shall sign and initial the container[58];

[51] Barbados – Evidence Act Cap. 121, section 132B(1)(2)
[52] Barbados – Evidence Act Cap. 121, section 132B(3)
[53] Barbados – Evidence Act Cap. 121, section 132B(4)
[54] Barbados – Evidence Act Cap. 121, section 132B(5)
[55] Barbados – Evidence Act Cap. 121, section 132B(6)
[56] Barbados – Evidence Act Cap. 121, section 132B(7)
[57] Barbados – Evidence Act Cap. 121, section 132C(1)
[58] Barbados – Evidence Act Cap. 121, section 132C(2)

- Where subsection (2) above has been complied with in relation to a sample, the police officer who took the sample shall sign and date a certificate in the form set out in the Fifth Schedule, (which certificate shall be countersigned and dated by the Justice of the Peace) and shall render the certificate, along with the sample, to the Commissioner of Police[59];
- The Commissioner of Police shall refer the sample to an authorised analyst for analysis; and in this section and *Sections 132D,* and *132E,* "authorised analyst" means a person who is authorised by the Minister responsible for health by notice in the Gazette to analyse any substance for the purposes of this section[60];
- Where an authorised analyst has made an analysis of a sample as above, he shall make and sign a report to the Commissioner of Police stating that the sample was referred to him by the Commissioner, specifying the nature and the amount of the sample and setting forth the result of his analysis[61];
- Within 14 days of receipt of a certificate under subsection (3) or of a report under subsection (5), whichever is later, the Commissioner shall serve copies of the certificate and the report on the accused or his attorney-at-law or his agent either in person or by registered post[62];
- Where it is desired to use a sample in evidence by virtue of *Section 132C,* in a trial, the originals of a certificate rendered under subsection (3), and of a report made under subsection (5), of that section relating to the sample shall, without further proof, be prima facie evidence of the matters respectively stated in the certificate and the report; and the report shall, without further proof, be prima facie evidence of the authorisation of the authorised analyst[63];
- As soon as may be practicable after receiving an authorised analyst's report under *Section 132C(5),* relating to a sample, the Commissioner of Police shall dispose of the remainder of the substance from which the sample was taken by destroying it or otherwise dealing with it as the circumstances may require.[64]

Belize

After the opening address, if any, the examining magistrate shall cause evidence to be tendered in accordance with *Sections 35, 36, 37, 38, 39, 40, 41* and *42,* of the *Indictable Procedure Act, Chap. 96,* that is to say by being read out loud, except where the court otherwise directs or to the extent that it directs that an oral account be given of any of the evidence.

The evidence tendered by the prosecution at the inquiry shall be in the form of documentary evidence only and it shall not be necessary to call any witnesses, and if any witnesses are called they shall not be cross-examined.

[59] Barbados – Evidence Act Cap. 121, section 132C(3)
[60] Barbados – Evidence Act Cap. 121, section 132C(4)
[61] Barbados – Evidence Act Cap. 121, section 132C(5)
[62] Barbados – Evidence Act Cap. 121, section 132C(6)
[63] Barbados – Evidence Act Cap. 121, section 132D
[64] Barbados – Evidence Act Cap. 121, section 132E

Evidence falling within subsection (2), and only that evidence, shall be admissible by a magistrate's court inquiring into an offence as examining magistrate. Evidence falls within the subsection if it:

- Is tendered by or on behalf of the prosecutor;
- Falls within subsection (3):
    a) Written statements complying with *Section 36,* (the documents or other exhibits (if any) referred to in such statements); depositions complying with *Section 37,* (the documents or other exhibits (if any) referred to in such depositions); statements complying with *Section 38;* documents falling within *Section 39.*[65]

In this section, "document" means anything in which information of any description is recorded:

- Any document or other object referred to as an exhibit and identified in a statement admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement[66];
- Any document or other object referred to as an exhibit and identified in a deposition admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in court by the person whose evidence is taken as the deposition.[67]

The examining magistrate may review any exhibits produced before the court and may take possession of them.

Dominica[68]

When documentary evidence is introduced in court, it becomes an exhibit. When a party is tendering an exhibit in court, magistrates should check that:

- The witness has seen the item;
- The witness been able to identify the item to the court;
- The party seeking to have the item become an exhibit formally asked to tender it to the court;
- The opposing party been put on notice about the existence of the exhibit and through an application have the authority to inspect all documents in the custody or under the control of the opposite party relating to the action.

[65] Belize – Indictable Procedure Act Chap. 96, section 35(1)(2)(3)
[66] Belize – Indictable Procedure Act Chap. 96, section 36(5)
[67] Belize – Indictable Procedure Act Chap. 96, section 37(5)
[68] Dominica – Evidence Ordinance, section 11

Once a document or article has become an exhibit, magistrates have a responsibility to preserve and retain all documents until the trial is concluded. Magistrates must ensure that the documents are marked and recorded. The recording or marking must state the existence of the item, and that the item or document is entrusted to the police service for safekeeping. Additionally, magistrates must make certain that proper care is taken to keep the exhibit safe from loss or damage; and that if the police are entrusted with the item, that the defence is given reasonable access to it for inspection and examination.

Grenada

Oral evidence must in all cases whatever be direct, that is to say:

- If it refers to a fact which could be seen, it must be the evidence of a witness who says he or she saw that fact;
- If it refers to a fact which could be heard, it must be the evidence of a witness who says he or she heard that fact;
- If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he or she perceived that fact by that sense or in that manner.

Provided also that if oral evidence refers to the existence or condition of any material thing other than a document the court may, if it thinks fit, require the production of the material thing for its inspection.[69]

When the accused is before a magistrate at a preliminary inquiry, the magistrate shall take the evidence of the witnesses called on the part of the prosecution. The evidence of every witness shall be given in the presence of the accused; and the accused, or his or her counsel, shall be entitled to cross-examine each witness. The evidence of every witness shall be taken down in writing by the magistrate in a legible hand, and on one side only of the paper, in the form of a deposition, and as nearly as possible in the witness' own words.[70]

The magistrate shall as soon as may be after the committal of the accused, send to the Registrar the information, if any, the depositions of the witnesses, the documentary exhibits thereto, the statement of the accused, and all the recognisances entered into. All exhibits, other than documentary exhibits, shall, unless the magistrate otherwise directs, be taken charge of by the police, and shall be produced by them at the trial.[71]

Guyana

The *Evidence Act, Chap. 5.03,* states that "judge" includes all persons authorised to take evidence, either by law or by consent of the parties. Subject to the act and to any other written law for the time being in force, the rules and principles of the common law relating to evidence shall, so far as they are applicable to the circumstances of Guyana, be in force therein.[72]

[69] Grenada – Evidence Act Cap. 92, section 58
[70] Grenada – Criminal Procedure Code Cap.72B, section 102
[71] Grenada – Criminal Procedure Code Cap.72B, section 110
[72] Guyana – Evidence Act Cap. 5.03, sections 2, 4

A judge may, of his own motion, call or recall any competent person as a witness and examine the person in any manner he thinks fit, and may call for and compel the production of any document or other evidence, and may impound any document or other thing he considers material.[73]

In **The State v Solomon (1982) 33 WIR 149,** the defendant was charged with possession of a piece of paper (Exhibit D) bearing the impression of a currency note without lawful authority or excuse:

- Where this exhibit (Exhibit D) was lost during the course of the trial, the defence made an application to stop the trial, the court held that the prosecution was only required to show that the exhibit bore an impression of a Bank of Guyana $1 note. Accordingly, the appellant had not been prejudiced by the loss of exhibit D and there were no grounds for the dismissal of the charge.

Jamaica

The *Evidence Act 1843, Section 52,* states that at any preliminary investigation held by a court into fact which constitute an indictable office, and which may necessitate the sending on of an accused person for trial, such court may, for the purpose of determining whether to dismiss the charge or send on the accused for trial, accept as evidence at that stage, the certificate of a statutory analyst, purporting to be signed by him as such, as prima facie evidence of the matters therein contained: Provided that the receptacle containing the thing analysed and in respect of which the certificate is given, had its seals or other fastening un-injured at the time it was delivered to the analyst.

In **Kevon Black v R [2014] JMCA Crim 36,** the appellant was convicted in the Resident Magistrates Court for breaches of the *Dangerous Drugs Act,* namely, unlawfully dealing with, possession of, and attempting to export the dangerous drug cocaine. At trial, a forensic report was produced in respect of DNA samples obtained from the appellant's clothes which were said to be 'similar' to DNA obtained from pellets containing the cocaine (all of which were found in a room in which the appellant was taken for investigation). One of the questions raised on appeal was whether the non-exhibition of the appellant's clothes at the trial precluded the learned magistrate from relying on the results of the forensic certificate. The court responded in the negative:

> *"It was clear that, the learned magistrate could have accepted the DNA evidence notwithstanding the absence of the appellant's clothes at the trial. The verdict was based on the acceptance of Corporal Taylor as a reliable witness as well as the DNA evidence from the forensic analyst's report. It was clear that the learned magistrate accepted both. The DNA evidence and the direct evidence from Corporal Taylor were capable of proving the charge and had the capacity in law of supporting a conviction. In any event, in the absence of the DNA evidence, there was ample material upon which the learned magistrate could have relied. Even if the DNA evidence were to be disregarded, there*

[73] Guyana – Evidence Act Cap. 5.03, section 8

was cogent evidence from Corporal Taylor to show that the burden of proof placed on the prosecution was discharged and the requisite standard of proof was met. Complaint was also directed at the lack of evidence on the taking of swabs from the appellant's clothes and whether they were sealed at the time of delivery to the analyst. This, in our opinion, would not have affected the integrity of the DNA evidence. There was nothing to show that the material from which the DNA profiles were obtained was contaminated before it was submitted for analysis."

Montserrat

At any preliminary investigation held by a magistrate into the facts which constitute an indictable offence, and which may necessitate the sending on of an accused person for trial, such magistrate may, for the purpose of determining whether he shall dismiss the charge or send on the accused person for trial, accept at that stage the certificate of the Government chemist purporting to be signed by him as such, as prima facie evidence of the matters therein contained, if it is otherwise proved that the bottle or other vessel containing the food, viscera, or other matter or thing analysed, and in respect of which the said certificate is given, had its seals, or other fastenings uninjured, at the time the same was delivered to the said chemist.[74]

St. Kitts and Nevis; and St. Lucia

When documentary evidence is introduced in court, it becomes an exhibit. When a party is tendering an exhibit in court, magistrates should check that:

- The witness has seen the item;
- The witness has been able to identify the item to the court;
- The party seeking to have the item become an exhibit formally asked to tender it to the court;
- The opposing party been put on notice about the existence of the exhibit and through an application have the authority to inspect all document s in the custody or under the control of the opposite party relating to the action;
- Once a document or article has become an exhibit, magistrates have a responsibility to preserve and retain all documents until the trial is concluded. Magistrates must ensure that the documents are marked and recorded;
- The recording or marking must state the existence of the item, and that the item or document is entrusted to the Police Service for safekeeping. Additionally, magistrates must make certain that proper care is taken to keep the exhibit safe from loss or damage;
- That if the police are entrusted with the item, that the defence is given reasonable access to it for inspection and examination.

[74] Montserrat – Evidence Act Chap. 2.08, section 3

St. Vincent and the Grenadines

Once an article has become an exhibit the court bears the responsibility to preserve and retain or arrange for its preservation and retention until the trial ends. Normally the court entrusts the exhibits to the police or the DPP. If the prosecution is entrusted with the exhibits pending trial it has the duty to:

- Take all proper care to preserve the exhibits safely from loss or damage;
- To co-operate with the defence in order to permit them reasonable access to the exhibits for the course of inspection and examination; to produce the exhibits at the trial.[75]

Trinidad and Tobago

Subject to subsection (2), in any criminal proceedings a photograph of any object may be admitted in evidence as prima facie proof of the identity of that object, provided that the photograph is supported by a certificate signed by the photographer before a Justice of the Peace authenticating the photograph as being a true image of the object aforesaid. Subsection (2) states: The photographer shall be required to give evidence of the procedure adopted by him to produce the photograph.[76]

Section 63, of the *Summary Courts Act, Chap. 4.20,* prescribes the manner of hearing summary complaints. If the defendant says that he is not guilty, the court shall then proceed to hear the complainant and such witnesses as he may examine, and such other evidence as he may adduce, in support of his complaint, and also to hear the defendant and such witnesses as he may examine, and such other evidence as he may adduce, in his defence, and also, if the court thinks fit, to hear such witnesses as the complainant may examine in reply, if the defendant has examined any witnesses or given any evidence. The complainant shall not be obliged to give evidence in support of his complaint, but if he wishes to give evidence he may do so at any time before his case is closed.[77]

Section 63A, of the *Summary Courts Act, Chap. 4:20,* governs the admissibility of written statements. 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.[78]

Where a written statement, admitted in evidence under *Section 63(4),* 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.[79]

[75] Blackstone's Criminal Practice 2017 > Part F Evidence > Section F8.46 Documentary Evidence and Real Evidence > Real Evidence > Tangible Objects

[76] Trinidad and Tobago Evidence Act – Chap. 7.02, section 14A

[77] Trinidad and Tobago – Summary Courts Act Chap. 4:20, section 63(4)

[78] Trinidad and Tobago – Summary Courts Act Chap. 4:20, section 63A(7)

[79] Trinidad and Tobago – Summary Courts Act Chap. 4:20, section 63B(5)

Rebuttal Evidence

Rebuttal evidence is evidence that is produced by a party that tends to oppose or disprove evidence introduced by the other party. In general, the prosecution is expected to adduce all the evidence on which it intends to rely before the close of the case for the prosecution: **R v Rice**.[80]

However, there are three exceptions to this practice[81]:

- Where any matter arises ex improviso which the prosecution could not foresee, evidence may be given in reply to this new matter;
- Where the evidence is a mere formality: **Khatibi v DPP**[82];
- In very exceptional cases in the light of the facts of the particular case: **R v McKain**.[83]

After any evidence is called by the defence the prosecution may introduce further evidence if it is then admissible to rebut evidence adduced by the defence.[84] In deciding whether to exercise their discretion to permit the calling of evidence after the close of the prosecution case, the magistrates must look carefully at the interests of justice overall, and in particular the risk of any prejudice to the defendant.

Anguilla

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or by leave of the judge, prove that he has made, at other times, a statement inconsistent with his present testimony; but, before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such a statement.[85]

If a witness, upon cross examination as to a former statement made by him relative to the subject matter of the cause and inconsistent with his present testimony, does not distinctly admit that he has made such a statement, proof may be given that he did in fact make it, but, before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.[86]

[80] [1963] 1 All ER 832
[81] Seetahal D, Commonwealth Caribbean Criminal Practice and Procedure, 4th ed. p 276
[82] (2004) 168 JP 36,
[83] (1994) 47 WIR 290
[84] Blackstone's Criminal Practice 2015, Section D22 Summary Trial: The Course of the Trial, Defence Case and Speeches - Evidence in Rebuttal
[85] Anguilla – Evidence Act Chap. E65, section 15
[86] Anguilla – Evidence Act Chap. E65, section 16

Antigua and Barbuda

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character.[87]

If a witness, in the opinion of the court, proves adverse, the party producing the witness may contradict him by other evidence, or, by leave of the court, may prove that he had made at other times a statement inconsistent with the testimony being given.[88]

Before attempting to prove an inconsistency, the party attempting to prove it shall outline the circumstances of the inconsistent statement in sufficient detail to the witness, and the witness shall be given an opportunity to reply.[89]

Where the party producing a witness alleges that the witness made at another time a statement in writing, or a statement which has been reduced to writing, or recorded by a reliable means, that is inconsistent with the testimony being given by the witness, the court may, without proof that the witness is adverse, grant leave to that party to cross-examine the witness as to the statement and the court may consider the cross-examination in determining whether the witness is adverse.[90]

Barbados

Where evidence that a witness is biased or has a motive to be untruthful, has been convicted of an offence, including an offence against the law of a foreign country or made a prior inconsistent statement, is adduced, otherwise than from the witness, the credibility rule does not prevent the admission or use of the evidence if the witness has denied the substance of the evidence.[91]

Where evidence that a witness is or was unable to be aware of matters to which his evidence relates or knowingly or recklessly made a false representation while under an obligation imposed by or under a law, including a law of a foreign country, to tell the truth is adduced, otherwise than from the witness, the credibility rule does not prevent the admission or use of the evidence if the circumstance set out in subsection (3) exist.[92]

The circumstances referred to in subsection (2) are that the witness has denied the substance of the evidence and that the court has given leave to adduce the evidence.[93]

[87] Antigua and Barbuda – The Evidence (Special Provisions) Act No. 5 of 2009, section 10(1)
[88] Antigua and Barbuda – The Evidence (Special Provisions) Act No. 5 of 2009, section 10(2)
[89] Antigua and Barbuda – The Evidence (Special Provisions) Act No. 5 of 2009, section 10(3)
[90] Antigua and Barbuda – The Evidence (Special Provisions) Act No. 5 of 2009, section 10(4)
[91] Barbados – Evidence Act Cap. 121, section 96(1)
[92] Barbados – Evidence Act Cap. 121, section 96(2)
[93] Barbados – Evidence Act Cap. 121, section 96(3)

Belize

A witness under cross-examination may be asked whether he has made any former statement relative to the subject-matter of the cause or matter and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion and, if he does not distinctly admit that he has made that statement, proof may be given that he did in fact make it.[94]

The same course may be taken with a witness upon his examination-in-chief, if the judge is of opinion that he is adverse to the party by whom he was called, or that his memory is in good faith at fault, and permits the question.[95]

A witness under cross-examination, or a witness whom the judge, under *Section 71(2),* has permitted to be examined by the party who called him as to previous statements, inconsistent with his present testimony, may be questioned as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause or matter, without the writing being shown to him or being proved in the first instance but, if it is intended to contradict him by the writing, his attention must, before contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of contradicting him.[96]

The judge may, at any time during the hearing or trial, require the document to be produced for his inspection, and may thereupon make any use of it for the purposes of the hearing or trial he thinks fit.[97]

The credit of any witness may be impeached by the opposite party by the evidence of persons who swear that they, from their knowledge of the witness, believe him to be unworthy of credit upon oath, but those persons may not, upon their examination-in-chief, give reasons for their belief, although they may be asked their reasons in cross-examination and their answers cannot be contradicted. It shall not be competent for the party by whom any witness is called to impeach the credit of that witness by any such evidence but, when it is given by the opposite party, the party who called the witness may give evidence in reply to show that the witness is worthy of credit.[98]

Grenada

Notwithstanding the failure of any party to the proceedings to serve a counter-notice objecting to the admissibility of a written statement, the court may, if it thinks fit, permit the party to lead evidence contradicting the evidence contained in the written statement.[99]

Where contradicting evidence is given as mentioned in subsection (6), the party who tendered the written statement may lead additional evidence in response to the contradicting evidence.

[94] Belize – Evidence Act Cap. 95, section 71(1)
[95] Belize – Evidence Act Cap. 95, section 71(2)
[96] Belize – Evidence Act Cap. 95, section 72(1)
[97] Belize – Evidence Act Cap. 95, section 72(2)
[98] Belize – Evidence Act Cap. 95, section 73
[99] Grenada – Evidence Act Cap. 92, section 36C(6)

A witness may be cross-examined as to previous statements made by him or her in writing, or reduced into writing and relevant to matters in question in the suit or proceeding in which he or she is cross-examined, without the writing being shown to him or her or being proved; but if it is intended to contradict him or her by the writing, his or her attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him or her.[100]

If a witness upon cross-examination as to a previous oral statement made by him or her relevant to matters in question in the suit or proceeding in which he or she is cross-examined, and inconsistent with his or her present testimony, does not distinctly admit that he or she made the statement, proof may be given that he or she did in fact make it, but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he or she must be asked whether or not he or she made the statement.[101]

Guyana

The admission of rebuttal evidence in Guyana is guided by the common law.

A witness under cross-examination may be asked whether he has made any former statement relative to the subject matter of the cause or matter inconsistent with his present testimony, the circumstance of the proposed statement being referred to sufficiently to designate the particular occasion, and, if he does not distinctly admit that he has made that statement, proof may be given that he did in fact make it.[102]

The same course may be taken with a witness upon his examination in chief, if the judge is of opinion that he is adverse to the party by whom he was called, or that his memory is in good faith at fault, and permits the question.[103]

A witness under cross-examination, or a witness whom the judge, under the provisions of the preceding section, has permitted to be examined by the party who called him as to previous statements inconsistent with his present testimony, may be questioned as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause or matter, without the writing being shown to him or being proved in the first instance; but, if it intended to contradict him by the writing, his attention must, before contradictor proof can be given, be called to those parts of the writing which are to be used for the purpose of contradicting him.[104]

The judge may, at any time during the hearing or trail, require the document to be produced for his inspection and may thereupon make any use of it for the purposes of the hearing or trial he thinks fit.[105]

[100] Grenada – Evidence Act Cap. 92, section 145(1)
[101] Grenada – Evidence Act Cap. 92, section 145(2)
[102] Guyana – Evidence Act Cap. 5:03, section 79(1)
[103] Guyana – Evidence Act Cap. 5:03, section 79(2)
[104] Guyana – Evidence Act Cap. 5:03, section 80(1)
[105] Guyana – Evidence Act Cap. 5:03, section 80(2)

Jamaica

In cases where the right of reply depends on the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.[106]

If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.[107]

A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him:

- Provided always, that it shall be competent for the judge (including Parish Court judge) at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purpose of the trial as he shall think fit.[108]

Montserrat

If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the cause and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but, before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.[109]

A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but, if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him:

- Provided that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it, for the purpose of the trial, as he shall think fit.[110]

[106] Jamaica – Evidence Act 1843, section 11
[107] Jamaica – Evidence Act 1843, section 16
[108] Jamaica – Evidence Act 1843, section 17
[109] Montserrat – Evidence Act Cap. 2:08, section 16
[110] Montserrat – Evidence Act Cap. 2:08, section 17

St. Kitts and Nevis

[Exception: Rebutting denials by other evidence.]

Where evidence that a witness (a) is biased or has a motive to be untruthful, (b) has been convicted of an offence, including an offence against the law of a foreign country, or (c) made a prior inconsistent statement, is adduced, otherwise than from the witness, himself or herself the credibility rule does not prevent the admission or use of the evidence if the witness had denied the substance of the evidence.[111]

Where evidence that a witness (a) is or was unable to be aware of matters to which his evidence relates, or (b) knowingly or recklessly made a false representation while under an obligation imposed by or under a law, including a law of a foreign country, to tell the truth, is adduced, otherwise than from the witness, the credibility rule does not prevent the admission or use of the evidence if the circumstances set out in subsection (3) exist.

The circumstances referred to in subsection (2) are (a) that the witness has denied the substance of the evidence; and (b) that the court has given leave to adduce the evidence.[112]

Where a witness under cross-examination has been asked and has answered any question referred to in *Section 44,* no evidence can be given to contradict him, except in the following cases:

- If a witness is asked whether he has been previously convicted of any offence and he denies or does not admit it, or refuses to answer, evidence may be given of the previous conviction; If a witness is asked any question tending to show that he is not impartial and answers it by denying the facts suggested, he may, by permission of the court, be contradicted by evidence of those facts[113];
- Where any declaration or statement made by a deceased person which is admissible in evidence, or any deposition, is proved, all relevant evidence may be adduced in order to contradict it, or in order to impeach the credibility of the person by whom it was made which might have been proved if that person had been called as a witness, and had denied upon cross-examination the truth of the matter suggested[114];
- The evidence that may be brought pursuant to *Section (1),* to rebut the declaration or statement or credibility of a deceased person shall be restricted to the kind of evidence that might have been brought if the deceased person had been called as a witness and had denied upon cross-examination the truth of the matter suggested[115];

[111] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 106(1)
[112] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 106(2)(3)
[113] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 45
[114] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 47(1)
[115] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 47(2)

- Where a cross-examiner (a) is cross-examining or has cross-examined a witness about a prior inconsistent statement alleged to have been made by the witness, or (b) in cross-examination of a witness, is using or has used a previous representation alleged to have been made by some other person, being a statement or representation that is recorded in a document, the cross-examiner shall, if the court so orders or if some other party so requires, produce the document, or such evidence of the contents of the document as is available to the cross-examiner, to the court or to that other party[116];
- Where a document or evidence has been produced in accordance with subsection (1), the court may (a) examine it; (b) give directions as to its use; or (c) admit it notwithstanding that it has not been tendered by a party.[117]

A cross-examiner shall not, by reason only of having produced a document to a witness who is being cross-examined, be required to tender the document.[118]

St. Lucia

Where evidence that a witness is biased or has a motive to be untruthful, has been convicted of an offence, including an offence against the law of a foreign country or made a prior inconsistent statement, is adduced, otherwise than from the witness, the credibility rule does not prevent the admission or use of the evidence if the witness has denied the substance of the evidence.[119]

Where evidence that a witness is or was unable to be aware of matters to which his evidence relates or knowingly or recklessly made a false representation while under an obligation imposed by or under a law, including a law of a foreign country, to tell the truth is adduced, otherwise than from the witness, the credibility rule does not prevent the admission or use of the evidence if the circumstance set out in subsection (3) exist. The circumstances referred to in subsection (2) are that the witness has denied the substance of the evidence and that the court has given leave to adduce the evidence.[120]

The credibility rule does not prevent the admission or use of evidence adduced in re-examination of a witness. The credibility rule does not prevent the admission or use of evidence that explains or contradicts evidence adduced as mentioned in *Section 97,* if the court gives leave to adduce that evidence.[121]

Without limiting subsection (1) or (2), where (a) evidence of a prior inconsistent statement of a witness has been admitted; or (b) it is suggested, either expressly or by implication, that evidence given by the witness has been fabricated or reconstructed, whether deliberately or otherwise, or is the result of a suggestion, 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 the evidence.[122]

[116] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 48(1)
[117] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 48(2)
[118] St. Kitts and Nevis - Evidence Act No. 30 of 2011, section 48(3)
[119] St. Lucia - Evidence Act Cap 4:15, section 96(1)
[120] St. Lucia - Evidence Act Cap 4:15, section 96(2)(3)
[121] St. Lucia - Evidence Act Cap 4:15, section 98(1)(2)
[122] St. Lucia - Evidence Act Cap 4:15, section 98(3)

Trinidad and Tobago

If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the indictment or proceeding and inconsistent with his present testimony, does not distinctly admit that he did make the statement, proof may be given that he did in fact make it; but before such proof is given, the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he made the statement.[123]

Evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment is not admissible unless upon the issue whether the acts charged against the accused were designed or accidental, or unless to rebut a defence otherwise open to him. It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried.

On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused: **Makin v AG**[124] and **R v Smith**.[125]

Expert Evidence

Anguilla

The *Evidence Act* does not expressly provide for the admission "expert" evidence. However, the *Evidence Act* and the *Government Chemist's Certificate Act,* may be read together to permit the admission of certificates of analysis routinely referred to in criminal proceedings.

It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission, or other, as if there had been no attesting witness thereto.[126]

At any preliminary investigation held by the magistrate into the facts which constitute an indictable offence, and which may necessitate the sending of an accused person for trial, such magistrate may, for the purpose of determining whether he shall dismiss the charge or send on the accused person for trial, accept at that stage the certificate of the Government chemist purporting to be signed by him as such, as prima facie evidence of the matters therein contained,[127] if it is otherwise proved that the bottle or other vessel containing the food, viscera, or other matter or thing analysed, and in respect of which the certificate is given, had its seals,

[123] Trinidad and Tobago – Evidence Act. Chap. 7:02, section 6
[124] (1894) AC 57
[125] (1915) 11 CAR 229
[126] Anguilla – Evidence Act Chap. E65, section 19
[127] Anguilla – Government Chemist's Certificate Act Chap. G5, section 3 applies to Coroner's Inquests as well

or other fastenings uninjured, at the time it was delivered to the chemist, but (a) if such accused person shall require that the Government chemist shall attend such preliminary enquiry, the police and the magistrate shall take the necessary steps to procure his attendance; and (b) such certificate shall not be received as evidence at the trial of any accused person, and at such trial, if the evidence of the Government chemist is considered necessary, he shall attend in the same way as any other witness.[128]

"Government chemist" means such person as the Governor may from time to time appoint as such.[129]

Antigua and Barbuda

A party may not without the leave of the court call more than five expert witnesses entitled according to law or practice to give expert opinion evidence.[130]

At any preliminary investigation held by a magistrate into the facts which constitute an indictable preliminary offence, and which may necessitate the sending on of an accused person for trial, such magistrate may, for the purpose of determining whether he shall dismiss the charge or send on the accused person for trial, accept at that stage the certificate of the Government chemist purporting to be signed by him as such, as prima facie evidence of the matters therein contained, if it is otherwise proved that the bottle or other vessel containing the food, viscera, or other matter or thing analysed, and in respect of which the said certificate is given, had its seals, or other fastenings uninjured, at the time the same was delivered to the said chemist:

- Provided that, if such accused person shall require that the Government chemist shall attend such preliminary enquiry, the police and presiding magistrate shall take the necessary steps to procure his attendance;
- Provided that such certificate shall not be received as evidence at the trial of any accused person, and that at such trial, if the evidence of the Government chemist is considered necessary he shall attend in the same way as any other witness.[131]

At any Coroner's Inquest the coroner may accept as prima facie evidence of the matters contained, the certificate of the Government chemist, if the same purports to be signed by such Government chemist.[132]

"Government chemist" means the analytical and agricultural chemist or the assistant chemist of Antigua and Barbuda.[133]

[128] Anguilla – Government Chemist's Certificate Act Chap. G5, section 2
[129] Anguilla – Government Chemist's Certificate Act Chap. G5, section 1
[130] Antigua and Barbuda – The Evidence (Special Provisions) Act No. 5 of 2009, section 9
[131] Antigua and Barbuda – The Government Chemist's Certificate Act Cap. 192, section 3
[132] Antigua and Barbuda – The Government Chemist's Certificate Act Cap. 192, section 4
[133] Antigua and Barbuda – The Government Chemist's Certificate Act Cap. 192, section 2

Barbados

Expert evidence is admissible in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.[134]

Leave of the court is required where the person making the expert report does not give oral evidence.[135]

In determining whether to give leave for the admission in evidence of an expert report the court shall have regard to: (a) the contents of the report; (b) the reasons why it is proposed that the person making the report shall not give oral evidence; (c) any risk, in particular, the probability that statements in the report may be controverted if the person making the report does not attend to give oral evidence in the proceedings, that its admissions or exclusion would result in unfairness to the accused or, if there is more than one accused to any of them; and (d) to any other circumstances that appear to the court to be relevant.[136]

An expert report, when admitted, shall be evidence of any fact or opinion of which the person making the report could have given oral evidence.[137]

In this Act, "expert report" means a written report by a person dealing wholly or mainly with matters on which he is (or would if living) be qualified to give expert evidence.[138]

Belize

Where there is a question as to any point of science or art, the opinion upon that point of a person specially skilled in the science or art is admissible in evidence.[139] It is the duty of the judge[140] to decide whether the skill of any person in the matter on which evidence of his opinion is offered is sufficient to entitle him to be considered as an expert.[141]

The opinion of an expert as to the existence of the facts on which his opinion is to be given is inadmissible unless he perceived those facts himself.[142] Whenever the opinion of any living person is admissible in evidence, the grounds on which the opinion is based are also admissible.[143]

The evidence of an expert may be used as prima facie evidence in ay proceedings.[144]

[134] Barbados – Evidence Act Cap. 121, section 59(1)
[135] Barbados – Evidence Act Cap. 121, section 59(2)
[136] Barbados – Evidence Act Cap. 121, section 59(3)
[137] Barbados – Evidence Act Cap. 121, section 59(4)
[138] Barbados – Evidence Act Cap. 121, section 59(5)
[139] Belize – Evidence Act Cap. 95, section 45(1). Note that such a person is called an expert and that the words "science or art" include all subjects on which a course of special study or experience is necessary to the formation of an opinion and, amongst others, the examination of handwriting.
[140] Belize – Evidence Act Cap. 95, section 2 "Judge" includes all persons authorised to take evidence either by law or by consent of parties
[141] Belize – Evidence Act Cap. 95, section 45(5)
[142] Belize – Evidence Act Cap. 95, section 45(6). See section 45(4) on expert opinion on foreign law; section 47 as to expert opinion on handwriting
[143] Belize – Evidence Act Cap. 95, section 49
[144] Belize – Evidence Act Cap. 95, section 36

Dominica

Any document purporting to be a report under the hand of the Government analytical chemist, Government assistant analytical chemist, Government pathologist, Government bacteriologist or medical practitioner about any person, matter or thing submitted to the person for examination may be used as prima facie evidence in the proceedings.[145] When examining such a report, magistrates must ensure all signatures are genuine and that the writer of such a report held the qualification or office claimed at the time of signing. Magistrates and the prosecution and the defence may during cross examination summon a party to attend court however where the magistrate has not requested the party to attend court, any party requesting the expert is required to pay all costs occasioned by having been so called.[146]

Examples of expert witnesses include a registered medical practitioner giving an opinion about the health of the victim or the accused or a registered forensic ballistics expert giving an opinion about the fragments relating to firearms at a crime scene.

Grenada

Where the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity or genuineness of handwriting, the opinions on that point of persons specially skilled in those areas or in questions as to identity or genuineness of handwriting are relevant facts. Such persons are called experts.[147]

Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts when the opinions are relevant.[148]

When the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was not written or signed by that person is a relevant fact. A person is said to be acquainted with the handwriting of another person when he or she has seen that person write, or when he or she has received documents purporting to be written by that person in answer to documents written by himself or herself or under his or her authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him or her.[149]

Guyana

The fact that any person is of the opinion that a fact which may be proved does or does not exist is generally inadmissible in evidence on the trial of any question as to the existence of that fact.[150]

[145] Dominica – Evidence Ordinance, sections 13(1)(3)
[146] Dominica – Evidence Ordinance, section 13(3)
[147] Grenada – Evidence Act Cap. 92, section 43
[148] Grenada – Evidence Act Cap. 92, section 44
[149] Grenada – Evidence Act Cap. 92, section 45
[150] Guyana – Evidence Act Cap. 5:03, section 15

Where there is a question as to any point of science or art, the opinion on that point of a person specially skilled in the science or art is admissible in evidence.[151] That person is called an expert.

The words science or art includes all subjects or experience necessary to the making of the opinion and the examination of handwriting.[152]

On the question of foreign law, the opinion of the expert, who in his profession is acquainted with the law, is the only admissible evidence thereof, though the expert may produce to the court books which he declares to be the authority on the foreign law in question, and those books the court, having received all the necessary explanations from the expert may construe for itself.[153]

It is the duty of the judge to decide whether the skill of any person whose opinion is offered is sufficient to entitle him to be considered as an expert.[154]

The expert's opinion as to the existence of the facts on which his opinion is given is inadmissible unless he perceived them himself.[155]

Where a fact though inadmissible in evidence, may, with the judge's permission, be proved if it supports or is inconsistent with the opinion of the expert when that opinion is admissible.[156]

Where there is a question as to the person who wrote or signed any document, the opinion of any person acquainted with the handwriting of the supposed writer it was or was not written or signed by him is admissible in evidence. Any comparison of a disputed writing with any writing proved to the satisfaction of the judge, to be genuine may be submitted as evidence along with the evidence of the witnesses respecting them.[157]

Where the opinion of any living person is admissible in evidence, the grounds on which the opinion is based are also admissible.[158]

Jamaica

The current legal position in relation to reliability of the expert evidence is that the expert evidence in question must be sufficiently well established to pass the ordinary test of relevance and reliability, that is to say, it must be sufficiently reliable to be suitable for a jury to understand and consider. It must be noted however, that because questions of fact are within the sole purview of the tribunal of fact (the Parish Court judge), it is open to the jury to reject the opinion of an expert and draw their own conclusions bearing in mind the evidence of the case: **R v Carletto Linton and Others.**[159]

[151] Guyana – Evidence Act Cap. 5:03, sections 16(1)(2)
[152] Guyana – Evidence Act Cap. 5:03, section 16(3)
[153] Guyana – Evidence Act Cap. 5:03, section 16(4)
[154] Guyana – Evidence Act Cap. 5:03, section 16(5)
[155] Guyana – Evidence Act Cap. 5:03, section 16(6)
[156] Guyana – Evidence Act Cap. 5:03, section 17
[157] Guyana – Evidence Act Cap. 5:03, sections 18(1)(2), 19
[158] Guyana – Evidence Act Cap. 5:03, sections 18(1)(2), 20
[159] SCCA Nos. 3, 4, 5 of 2000

In **Richard Pearce v R,**[160] the Court of Appeal reaffirmed the decision of the English Court of Appeal in **R v Turner,**[161] that an expert opinion was only necessary where the expert could furnish the court with scientific information that was likely to be outside the experience and knowledge of the judge or jury. Furthermore, when an expert witness was asked to express an opinion on a question, the primary facts on which that opinion was based had to be proved by admissible evidence given either by the expert himself or some other competent witness.

The *Evidence Act,* also provides that at any preliminary investigation by a court into a facts which constitute an indictable offence, a certificate of analysis purporting to be signed by the island chemist may be accepted as prima facie evidence of the matters therein provided the seals of the receptacle within which the sample in respect of which the certificate was issued, were intact at the time it was delivered to the chemist.[162]

Montserrat

Notwithstanding anything to the contrary contained in any law, but subject always to the provisions of this section, any certificate or report, if accompanied by a sworn statement by the medical practitioner who has signed the certificate or report, shall be admitted in evidence in any criminal proceedings before a magistrate, or at a Coroner's Inquest, without the medical practitioner being called upon to attend and to give evidence upon oath.[163]

Where, in any criminal proceedings before a magistrate, it is intended to put in evidence a certificate or report as provided by the preceding subsection, the prosecution shall, at least three clear days before the proceedings, serve upon the defendant written notice of such intention, together with a copy of the certificate or report, and the defendant, at the commencement of the proceedings, may object to the admission of the certificate or report, and may require the attendance of the medical practitioner to give evidence on oath.[164]

Nothing in this section contained shall be deemed to prejudice or take away the rights of the defendant, or of the court or coroner, as the case may be, at any stage of the proceedings to require the medical practitioner who has signed the certificate or report to attend and give evidence on oath.[165]

At any preliminary investigation held by a magistrate into the facts which constitute an indictable offence, and which may necessitate the sending on of an accused person for trial, such magistrate may, for the purpose of determining whether he shall dismiss the charge or send on the accused person for trial, accept at that stage the certificate of the Government chemist purporting to be signed by him as such, as prima facie evidence of the matters therein contained, if it is otherwise proved that the bottle or other vessel containing the food, viscera, or other matter or thing analysed, and in respect of which the said certificate is given, had its seals, or other fastenings uninjured, at the time the same was delivered to the said chemist:

[160] [2013] JMCA Crim 54
[161] [1975] 1 All ER 70
[162] Jamaica – Evidence Act 1843, section 52
[163] Montserrat – Evidence Act Cap. 2.08, section 32(1)
[164] Montserrat – Evidence Act Cap. 2.08, section 32(2)
[165] Montserrat – Evidence Act Cap. 2.08, section 32(3)

- Provided that, if such accused person shall require that the Government chemist shall attend such preliminary enquiry, the police and presiding magistrate shall take the necessary steps to procure his attendance;
- Provided further that such certificate shall not be received as evidence at the trial of any accused person, and that at such trial, if the evidence of the Government chemist is considered necessary he shall attend in the same way as any other witness.[166]

At any Coroner's Inquest the coroner may accept as prima facie evidence of the matters contained, the certificate of the Government chemist, if the same purports to be signed by such Government chemist.[167]

"Government chemist" means the analytical and agricultural chemist or the assistant chemist of Montserrat.[168]

St. Kitts and Nevis

An expert report is admissible, subject to subsection (2), as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.[169]

Where it is proposed that the person making an expert report shall not give oral evidence, the report may only be admitted in evidence with the leave of the court.[170]

In determining whether to give leave for the admission in evidence of an expert report, the court shall consider the following: (a) the contents of the report; (b) the reasons why it is proposed that the person making the report shall not give oral evidence; (c) any risk, in particular the probability that statements in the report may be controverted if the person making the report does not attend to give oral evidence in the proceedings, that its admission or exclusion would result in unfairness to the accused or, if there is more than one accused, to any of them; and (d) any other circumstances that appear to the court to be relevant.[171]

An expert report, when admitted, shall be evidence of any fact or opinion of which the person making the report could have given oral evidence.[172]

St. Lucia

This section applies reports made under the *Medical Evidence Act,* the *Firearms Act,* and the *Drugs (Prevention of Misuse) Act,* and other expert reports.[173]

An expert report is admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those criminal proceedings.[174]

[166] Montserrat – Government Chemist's Certificate Acts Nos. 8 of 1908 and 24 of 1956 Cap. 2.08, section 3
[167] Montserrat – Government Chemist's Certificate Acts Nos. 8 of 1908 and 24 of 1956 Cap. 2.08, section 4
[168] Montserrat – Government Chemist's Certificate Acts Nos. 8 of 1908 and 24 of 1956 Cap. 2.08, section 2
[169] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 59(1)
[170] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 59(2)
[171] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 59(3)
[172] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 59(4)
[173] St. Lucia – Evidence Act Cap. 4:15, section 59(1)
[174] St. Lucia – Evidence Act Cap. 4:15, section 59(2)

Where it is proposed that the person making an expert report shall not give oral evidence, the report may only be admitted in evidence with the leave of the court.[175]

For the purpose of determining whether to give leave for the admission in evidence of an expert report, the court shall have regard to the following: (a) the contents of the report; (b) the reasons why it is proposed that the person making the report shall not give oral evidence; (c) any risk in particular, the probability that statements in the report may be controverted if the person making the report does not attend to give oral evidence in the proceedings, that its admissions or exclusion would result in unfairness to the defendant or, if there is more than one defendant, to any of them; and (d) to any other circumstances that appear to the court to be relevant.[176]

An expert report, when admitted, shall be evidence of any fact or opinion of which the person making the report could have given oral evidence.[177]

St. Vincent and the Grenadines

The *Evidence Ordinance 1926,* incorporates the law and practice of administered for the time being in England into the law of evidence of St. Vincent and the Grenadines with such modifications as may be applicable and necessary.[178]

As seen above, the various jurisdictions permit the use of expert evidence in certain circumstances. Expert evidence may be given orally or may be given via a report. Before an expert's report is admissible in evidence, generally the leave of the court is required:

- Expert opinion evidence is generally admissible to assist the court with matter which lie outside the court's experience and understanding: **R v Turner**[179];
- Where, a court can be expected to understand the evidence in question without the requirement for such assistance, then expert testimony in respect of that evidence will be inadmissible in court: **R v Henry**[180];
- Expert witnesses may express opinions only on matters falling within their own areas of expert knowledge or competence: **R v Doheny, R v Adams**[181];
- The weight to be given to expert evidence is a matter for the court to decide: **R v Luttrell**[182];
- A court is not bound to accept the truth of expert evidence where other material is before the court which is in conflict with such expert evidence and outweighs it: **R v Byrne**[183];

[175] St. Lucia – Evidence Act Cap. 4:15, section 59(3)
[176] St. Lucia – Evidence Act Cap. 4:15, section 594)
[177] St. Lucia – Evidence Act Cap. 4:15, section 59(5)
[178] St. Vincent and the Grenadines – Evidence Act Cap. 158, section 3
[179] [1975] QB 834
[180] [2005] EWCA Crim 1681
[181] [1997] 1 Cr App Rep 369 [1997] Crim LR 669, CA
[182] [2004] 2 Cr App Rep 520
[183] [1960] 2 QB 396

- The court may not reject such expert evidence where there is no rational basis for doing so and where it is unchallenged: **R v Brennan**.[184]

Trinidad and Tobago

- An expert is only required to furnish the tribunal of fact with information which is outside their knowledge and experience: **Turner**,[185] **Chard**,[186] **R v Anderson**[187];
- The expert must be skilled in the field involved but need not have acquired his skill as a professional: **R v Silverlock**.[188]

In any criminal proceeding any document purporting to be a certificate or report under the hand of a Government expert on any matter or thing which has been submitted to him for examination, analysis or report is admissible as evidence of the facts stated in it without proof of the signature or appointment of the Government expert, unless the court, acting ex proprio motu or at the request of a party to the proceeding requires the expert to be called as a witness:

- The court is not bound to require the attendance of the expert as a witness if the court is of opinion that the request for such attendance is made for the purpose of vexation, delay or defeating the ends of justice[189];
- Where medical evidence is contained in a report signed by (a) a District Medical Officer, and the evidence relates to a fatality and is being led in criminal proceedings or in an inquest; or (b) a registered medical practitioner and the evidence does not relate to a fatality, the report shall be admitted as if it were the report of a Government expert within the meaning of this section[190];
- Where any substance or thing is required to be submitted to a Government expert for examination, analysis or report, that substance or thing can be lawfully received by any person duly authorised by the Director of the Trinidad and Tobago Forensic Science Centre[191];
- Where a duly authorised person, mentioned in subsection (2B), receives any substance or thing he shall maintain a record stating the date on and time at which and the name and signature of the person from whom he received the substance or thing, and the date on and time at which it was taken and the name and signature of the Government expert who takes it from him for examination, analysis or report.[192]

[184] [2014] EWCA Crim 2387; See also Halsbury's Laws of England Vol. 27 (2015) Para. 1–434; Vol. 28 (2015), Para. 435–957; 574 Weight and evaluation of expert evidence.
[185] (1975) 1 AER 70
[186] (1971) 56 CR APP Rep 268
[187] 43 WIR 286 at 313
[188] (1894) 2 QB 776 at 771
[189] Trinidad and Tobago – Evidence Act Chap. 7:02, section 19(2)
[190] Trinidad and Tobago – Evidence Act Chap. 7:02, section 19(2A)
[191] Trinidad and Tobago – Evidence Act Chap. 7:02, section 19(2B)
[192] Trinidad and Tobago – Evidence Act Chap. 7:02, section 19(2C)

Subsections (2B) and (2C) do not in any manner affect the admissibility into evidence of a document referred to in subsection (2A).[193]

In any inquest held by a coroner any such certificate or report is likewise admissible as evidence of the facts stated in it unless the coroner requires the expert to be called as a witness.[194]

In this section "Government expert" means the following public officers:

- Senior Pathologist;
- Pathologist;
- Government chemist;
- Armourer;
- Forensic Document Examiner;
- Forensic Biologist;
- Scientific Examiner (Motor Vehicles);
- A Fingerprint Technician from the Criminal Records Office;
- A Firearm and Toolmark Examiner;
- The holder of any other office or any other suitably qualified and experienced person declared by the President by Notification published in the Gazette to be an officer or person to which this section applies;
- A Forensic DNA analyst; "report" includes a post mortem report.[195]

This list also includes officers of the Forensic Sciences Centre.[196]

Character Evidence: Good Character and Bad Character

Anguilla

A person charged and called as a witness in pursuance of this act shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed, or been convicted of, or charged with, any offence other than that wherewith he is then charged, or is of bad character, unless:

- The proof that he has committed or been convicted of such other office is admissible evidence to show that he is guilty of the offence with which he is then charged;
- He has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character or the nature or conduct of his defence is such as to involve imputations on the character of the prosecutor of the witnesses for the prosecution;
- He has given evidence against any other person charged with the same offence.[197]

[193] Trinidad and Tobago – Evidence Act Chap. 7:02, section 19(2D)
[194] Trinidad and Tobago – Evidence Act Chap. 7:02, section 19(3)
[195] Trinidad and Tobago – Evidence Act Chap. 7:02, section 19(4)
[196] Trinidad and Tobago – Legal notice 175 of 2007
[197] Anguilla – Evidence Act Chap. E65, section 6(e)

Antigua and Barbuda

A person charged and called as a witness in pursuance of this act shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed, or been convicted of, or charged with, any offence other than that wherewith he is then charged, or is of bad character, unless:

- The proof that he has committed or been convicted of such other office is admissible evidence to show that he is guilty of the offence with which he is then charged;
- He has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character or the nature or conduct of his defence is such as to involve imputations on the character of the prosecutor of the witnesses for the prosecution;
- He has given evidence against any other person charged with the same offence.[198]

Barbados

Good character

The hearsay rule, the opinion rule and the tendency rule do not accused prevent the admission or use of evidence adduced by an accused that tends to prove that the defendant is, either generally or in a particular respect, a person of good character[199]:

- Where evidence that tends to prove that the accused is generally a person of good character and the tendency rule do not prevent the admission or use of evidence that tends to prove that the accused is not generally a person of good character[200];
- Where evidence that tends to prove that the accused is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence that tends to prove that the accused is not a person of good character in the respect.[201]

Bad character

In criminal proceedings, the hearsay rule and tendency rule do not prevent the admission or use of evidence of an opinion about an accused adduced by some other accused[202]:

- Where evidence of an opinion as mentioned in subsection (1) has been admitted, the hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence that tends to prove that evidence should not be accepted.[203]

[198] Antigua and Barbuda – Evidence Act Cap. 155 6(e)
[199] Barbados – Evidence Act Cap. 121, section 88(2)
[200] Barbados – Evidence Act Cap. 121, section 88(3)
[201] Barbados – Evidence Act Cap. 121, section 88(4)
[202] Barbados – Evidence Act Cap. 121, section 89(1)
[203] Barbados – Evidence Act Cap. 121, section 89(2)

Subject to this section, an accused may not be cross-examined as to a matter that is relevant only to the credibility of the accused unless the court gives leave.[204]

Leave shall not be given for cross-examination by the prosecutor as to any other matter that is relevant only to the credibility of the accused unless:

- Evidence has been adduced by the accused that tends to prove that the accused is, either generally or in a particular respect, a person of good character;
- Evidence has been admitted that (a) was given by the accused, (b) tends to prove that a witness called by the prosecutor has a tendency to be untruthful, and (c) was adduced solely or mainly to impugn the credibility of that witness.[205]

A reference in subsection (4) to evidence does not include a reference to evidence of conduct:

- In the events in relation to which;
- In relation to the investigation of the offence for which, the accused is being prosecuted.[206]

Belize

Good character

In criminal causes or matters, the fact that the defendant or the accused person, as the case may be, has a good character may be proved, but the fact that he has a bad character is inadmissible in evidence, unless it is itself a fact in issue, or unless evidence has been given that he has a good character, in which case evidence that he has a bad character is admissible.[207]

Bad character

Where evidence of his good character is given by any person who:

- Being on his trial for any felony not punishable with death, has been previously convicted of felony;
- Being on his trial for any offence involving fraud or dishonesty punishable under the *Summary Jurisdiction (Offences) Act,* or the *Criminal Code,* has been previously convicted of any offence punishable on summary conviction or on indictment;
- Being on his trial for any offence in respect of coin punishable under either of the said Acts, has been previously convicted of any offence in respect of coin.

The complainant or prosecutor, or the Crown, may, in answer to the evidence of good character, give evidence of any of those previous convictions before the magistrate gives his decision, or before the jury return its verdict, in respect of the offence for which the offender is being tried.[208]

[204] Barbados – Evidence Act Cap. 121, section 95(2)
[205] Barbados – Evidence Act Cap. 121, section 95(4)
[206] Barbados – Evidence Act Cap. 121, section 95(5)
[207] Belize – Evidence Act Cap. 95, section 51(1)
[208] Belize – Evidence Act Cap. 95, section 51(2)

In this section, the word "character" means reputation as distinguished from disposition, and evidence may be given only of general reputation, and not of particular acts by which reputation or disposition is shown.[209]

A person charged and called as a witness in pursuance of this Act shall not be asked and, if asked, shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless:

- The proof that he has committed or been convicted of that other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged;
- He has personally or by his attorney asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution;
- He has given evidence against any other person charged with the same offence.[210]

Dominica[211]

The character of either a witness or the accused can be examined at the trial in the Magistrates' Court. Magistrates must ensure where it is allowed to be examined that it is done only in exceptional circumstances.

Good character

An accused may introduce evidence to show that he or she is of good character. By doing so, the accused places his or her character in issue and the prosecutor may cross-examine witnesses or, in some cases, the accused about their character and about any previous convictions.

The purpose of introducing evidence of good character is primarily to establish the credibility of a witness or the accused, as well as to point to the improbability of guilt. Evidence of previous good character is also relevant when sentencing the accused upon conviction of an offence.

Bad character

The prosecution is not generally permitted to introduce evidence of the bad character of the accused. The accused's previous convictions, previous misconduct, disposition towards immorality or the accused foul reputation within his or her community may not form part of the case against him or her.

Some of the exceptions to this rule at common law are:

- Evidence of other misconduct forming part of the same transaction of the offence charged is also admissible at common law;

[209] Belize – Evidence Act Cap. 95, section 51(3)
[210] Belize – Evidence Act Cap. 95, section 58(e)
[211] Dominica – Evidence Ordinance Cap. 64, section 17

- The accused puts his or her character in issue; Evidence of bad character may be admitted at common law.

The previous convictions of a witness, other than the accused, may be admitted as evidence on cross-examination in some cases. The cross-examiner may call evidence to prove the conviction if the witness:

- Denies having been so convicted;
- Does not admit a conviction;
- Refuses to answer.

Grenada

Good character

In criminal proceedings the fact that the person accused is of good character is relevant.[212]

Bad character

The fact that an accused has a bad character is irrelevant except where evidence has been given that he has a good character. This section does not apply where the bad character is itself an issue. A previous conviction is relevant as evidence of bad character.[213]

Guyana

The fact that a person is of a particular character is inadmissible in evidence on any inquiry respecting his conduct except in the cases hereinafter mentioned.

Good character

In criminal causes or matters, the fact that the defendant or the accused person, as the case may be, has a good character may be proved; but the fact that he has a bad character is inadmissible in evidence, unless it is itself a fact in issue, or unless evidence has been given that he has a good character, in which case evidence that he has a bad character is admissible.[214]

Bad character

When anyone gives evidence of his good character who:

- Being on his trial for any felony not punishable with death, has been previously convicted of felony;
- Being on his trial for any offence involving fraud or dishonesty punishable under the *Summary Jurisdiction (Offences) Act,* or the *Criminal Law (Offences) Act,* has been previously convicted of any offence punishable on summary conviction or on indictment;

[212] Grenada – Evidence Act Cap. 92, section 51
[213] Grenada – Evidence Act Cap. 92, section 52
[214] Guyana – Evidence Act Cap. 5.03, section 22(1)

- Being on his trial for any offence in respect of coin punishable under either of the said Acts has been previously convicted of any offence in respect of coin.

The complainant or prosecutor, or the State, may, in answer to the evidence of good character, give evidence of any of those previous convictions before the magistrate gives his decision, or before the jury return their verdict, in respect of the offence for which the offender is being tried.[215]

In this section, the word "character" means reputation as distinguished from disposition, and evidence may be given only of general reputation, and not of particular acts by which reputation or disposition is shown.[216]

Jamaica

Good character

The *Evidence Act,* in Jamaica is silent on the issue of good character evidence however the issue was dealt with at length in the case of **Patricia Henry v R,**[217] where one of the issues raised was whether the appellant lost an opportunity of acquittal by the learned Resident Magistrate's failure to give demonstrable credence and due consideration to the evidence of her good character that emerged during the trial.

The court noted that in **Michael Reid v R,**[218] this court adopted and applied the earlier decision of the Court of Appeal of England and Wales in **R v Vye,** in which it was held, firstly, that the trial judge should direct the jury as to the relevance of a defendant's good character to his credibility where he has testified or given pre-trial answers or statements, and, secondly, that a direction as to the relevance of his good character to the likelihood of his having committed the offence charged is also to be given, whether or not he has testified or given pre-trial answers or statements. However, although it is now well established that, *"where credibility is in issue, a good character direction is always relevant,"* the defendant is not entitled to the benefit of such a direction unless he has distinctly raised the issue, either by direct evidence given by or on his behalf or by eliciting it in cross-examination of prosecution witnesses.

More recent authorities show however that the absence of a good character direction is not necessarily fatal to the ensuing conviction. Much will depend on "on the nature of and issues in a case, and on other available evidence."[219]

> *"In the instant case, the court was satisfied that the circumstances were such that the appellant was entitled to the benefit of a direction "that a person of good character is more likely to be truthful than one of bad character, and... that she is less likely to commit a crime, especially one of the nature with which*

[215] Guyana – Evidence Act Cap. 5.03, section 22(2)
[216] Guyana – Evidence Act Cap. 5.03, section 22(3)
[217] Patricia Henry v R [2011] JMCA Crim 16. In this case the court considered and applied a number of earlier authorities such as R v Vye [1993] 1 WLR 471; R v Aziz [1996] AC 41 and Teeluck & John v The State (2005) 66 WIR 319
[218] Michael Reid v R (SCCA No. 113/2007, judgment delivered 3 April 2009)
[219] R v Hunter [2015] EWCA Crim 631

> *[she was] charged". It is common ground that the Resident Magistrate did not warn herself in these terms and the question that therefore remains is what should be the consequence of her not having done so in the particular circumstances of this case. The approach required of this court in a case in which it considers that such a direction should have been given is to make its own assessment of the evidence to and to consider whether the outcome would have been the same had the trial judge given the proper direction. In all the circumstances of the instant case, taking into account in particular the appellant's confession and the other items of circumstantial evidence referred to by the learned Resident Magistrate in her reasons for judgment (see para. [43] above), it appears to us that this is a case in which the potential benefit of a good character direction to the appellant was wholly outweighed by the nature and coherence of the evidence which she accepted. We accordingly consider that ground four must fail as well."* [220]

Bad character

Generally speaking, no question should be asked of a person charged with an offence that would tend to illicit evidence that he is of bad character.[221]

Evidence of the bad character of an accused person may be adduced in the following circumstances:

- The proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged;
- He has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution;
- He has given evidence against any other person charged with the same offence.[222]

Montserrat

A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless:

- The proof that he has committed or been convicted of such other offence is admissible

[220] Patricia Henry v R [2011] JMCA Crim 16

[221] Jamaica – Evidence Act 1843, section 9(f)

[222] Jamaica – Evidence Act 1843, section 9(f)(i)(ii)(iii); Note also that under section 15 of the Act, a party calling a witness is not allowed to impeach his credit by calling evidence of his bad character. However, of in the opinion of the judge the witness proves adverse, he may, with leave of the judge, be contradicted by other evidence that he has made at other times a statement inconsistent with his present testimony.

evidence to show that he is guilty of the offence wherewith he is then charged;

- He has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution;
- He has given evidence against any other person charged with the same offence.[223]

St. Kitts and Nevis

Good character

The hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence adduced by an accused that tends to prove that the accused is, either generally or in a particular respect, a person of good character.[224]

The purpose of introducing evidence of good character is primarily to establish the credibility of a witness or the accused, as well as to point to the improbability of guilt: **Director of Public Prosecutions v Selena Varlack.**[225]

Bad character

Where evidence that tends to prove that the accused is generally a person of good character has been admitted, the hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence that tends to prove that the accused is not generally a person of good character.[226]

Where evidence that tends to prove that the accused is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence that tends to prove that the accused is not a person of good character.[227]

An accused in criminal proceedings shall not be cross-examined as to matters arising out of evidence to which *Section 100,* applies except with the leave of the court.[228]

Bad character – Credibility

Evidence that relates to the credibility of a witness is not admissible to prove that the evidence of the witness should or should not be accepted.

Where such evidence is relevant otherwise than as mentioned in subsection that subsection does not prevent the use of the evidence to prove that the evidence of the witness should or

[223] Montserrat – Evidence Act Cap. 2.08, section 6(e)
[224] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 100(2)
[225] [2008] UKPC 56
[226] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 100(3)
[227] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 100(4)
[228] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 101
[229] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 102(1)(2)

should not be accepted.[229]

The hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence adduced by an accused that tends to prove that the accused is either generally or in a particular respect, a person of good character.[230]

Where evidence that tends to prove that the accused is generally a person of good character has been admitted, the hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence that tends to prove that the accused is not generally a person of good character.[231]

Where evidence that tends to prove that the accused is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence that tends to prove that the accused is not a person of good character in that respect.[232]

The credibility rule does not prevent the admission or use of evidence that relates to the credibility of a witness and has been adduced in cross-examination of the witness.[233]

Evidence referred to in subsection (1) is not admissible if it (a) is relevant only to the credibility of the witness; and (b) does not have substantial probative value as to the credibility of the witness.[234]

In determining whether the evidence referred to in subsection (1) has substantial probative value, the court shall, among other things, consider:

- Whether the evidence tends to prove that the witness knowingly or recklessly made a false representation at a time when the witness was under an obligation to tell the truth;
- The period that has elapsed since the acts or event to which the evidence relates were done or occurred.[235]

Subject to this section, an accused shall not be cross-examined as to a matter that is relevant only to his or her credibility unless the court gives leave.[236]

Leave shall not be given for cross-examination by the prosecutor as to any matter that is relevant only to the credibility of the accused unless:

- Evidence has been adduced by the accused that tends to prove that the accused is,

[230] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 103(2)
[231] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 103(3)
[232] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 103(4)
[233] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 104(1)
[234] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 104(2)
[235] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 104(3)
[236] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 105(2)

either generally or in a particular respect, a person of good character;

- Evidence has been admitted that:
    a) Was given by the accused;
    b) Tends to prove that a witness called by the prosecutor has a tendency to be untruthful;
    c) Was adduced solely or mainly to impugn the credibility of that witness.[237]

A reference in subsection (3) to evidence does not include a reference to evidence of conduct:

- In the events in relation to which;
- In relation to the investigation of the offence for which, the accused is being prosecuted.[238]

St. Lucia

Good character

The hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence adduced by an accused that tends to prove that the accused is, either generally or in a particular respect, a person of good character.[239]

Bad character

Where evidence that tends to prove that the accused is generally a person of good character has been admitted, the hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence that tends to prove that the accused is not generally a person of good character.[240]

Where evidence that tends to prove that the accused is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence that tends to prove that the accused is not a person of good character.[241]

An accused in criminal proceedings shall not be cross-examined as to matters arising out of evidence to which *Sections 88* or *89*, applies except with the leave of the court.[242]

The hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence adduced by a defendant that tends to prove that the defendant is, either generally

[237] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 105(3)(a)(b)
[238] St Kitts and Nevis – Evidence Act No. 30 of 2011, section 105(4)
[239] St Lucia – Evidence Act Chap. 4.15, section 88(2)
[240] St Lucia – Evidence Act Chap. 4.15, section 88(3)
[241] St Lucia – Evidence Act Chap. 4.15, section 88(4)
[242] St Lucia – Evidence Act Chap. 4.15, section 90
[243] St Lucia – Evidence Act Chap. 4.15, section 92(2)

or in a particular respect, a person of good character.[243]

Where evidence that tends to prove that the defendant is generally a person of good character has been admitted, the hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence that tends to prove that the defendant is not generally a person of good character.[244]

Where evidence that tends to prove that the defendant is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence that tends to prove that the defendant is not a person of good character in that respect.[245]

Leave shall not be given for cross-examination by the prosecutor as to any other matter that is relevant only to the credibility of the defendant unless:

- Evidence has been adduced by the defendant that tends to prove that the defendant is, either generally or in a particular respect, a person of good character;
- Evidence has been admitted that:
    a. Was given by the defendant;
    b. Tends to prove that a witness called by the prosecutor has a tendency to be untruthful;
    c. Was adduced solely or mainly to impugn the credibility of that witness.[246]

A reference in subsection (4) to evidence does not include a reference to evidence of conduct:

- In the events in relation to which;
- In relation to the investigation of the offence for which; the defendant is being prosecuted.[247]

St. Vincent and the Grenadines

A person charged and being a witness may be asked any question in cross examination even if it would tend to incriminate him as to the offence charged.[248]

He shall not be asked and if asked, shall not be required to answer any question tending to show that he has committed or been convicted of or charged with any offence other than that which he is charged or that he is of bad character unless:

- He has personally or by his counsel asked questions of any witness for the prosecution with a view to establishing his own good character or has given evidence of his own good character or the nature or conduct of the defence is such as to involve imputation on the prosecutor or the witnesses for the prosecution;
- He has given evidence against any other person charged in the same proceedings.

The proof that he has committed or been convicted of the other offence is admissible evidence

[244] St Lucia – Evidence Act Chap. 4.15, section 92(3)
[245] St Lucia – Evidence Act Chap. 4.15, section 92(4)
[246] St Lucia – Evidence Act Chap. 4.15, section 94(4)(a)(b)
[247] St Lucia – Evidence Act Chap. 4.15, section 94(5)
[248] St. Vincent and the Grenadines - Evidence Act Cap. 220, section 10(1)

to show that he is guilty of the offence now charged.[249]

Trinidad and Tobago

Good character

Magistrates are obliged to take into account evidence of good character where it is distinctly raised. If it is not raised and it therefore not taken into consideration, the question then arises whether the defendant would have suffered any prejudice by the fact that it has not been raised. As a matter of course, magistrates should state in their reasons how they have taken the defendant's good character into account.

The reasons should articulate, whether orally or in writing, how the defendant's good character was factored into account in assessing either the credibility of the defendant (if he gives evidence), and the favourable propensity of the defendant as well. The reasons should also demonstrate how the good character evidence was weighed. Thus, the reasons should show why little weight was accorded, for example, if the case against the defendant was quite overwhelming and cogent:

> *"A magistrate may take the evidence of a defendant's good character into account in his favour on the question of whether the prosecution has proven his guilt beyond reasonable doubt. The propensity limb of good character cannot be rejected in its entirety if the defence case is found to be unreliable and unlikely. If that were the correct position, then propensity in good character would never count for anything once the defence case is rejected as being unreliable. It was a material error by the magistrate to dispose of the propensity limb and of good character in its entirety after considering only the defence case. The magistrate should have gone on to consider propensity when evaluating the prosecution's case and in determining whether the prosecution had proven the case beyond reasonable doubt. This is because propensity in good character is relevant to the likelihood of the commission of the offence."*[250]

Bad character

The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished.[251]

Evidence of the accused's bad character is admissible where[252]:

- All parties to the proceedings agree to the evidence being admissible;
- The evidence is adduced by the accused himself or is given in answer to a question asked by him in cross-examination and intended to elicit it;
- It is important explanatory evidence;
- It is relevant to an important matter in issue between the accused and the prosecution;
- It has substantial probative value in relation to an important matter in issue between the accused and a co-accused;
- It is evidence to correct a false impression given by the accused;

[249] St. Vincent and the Grenadines - Evidence Act Cap. 220, section 10(2)(a)(b)(c)
[250] Varidan Lakraj v Kelton Neptune P.C. #17320 Mag. App No. P 063 of 2016 Mohammed JA
[251] Trinidad and Tobago – Evidence Act. Chap 7.02, section 15L
[252] Paul Vincent Seerattan v The State Cr. App. No 32 of 2013

- The accused has made an attack on another person's character.[253]

The court shall not admit evidence under subsection (1) if, on an application by the accused to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.[254]

On an application to exclude evidence under subsection (3) the court shall have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.[255]

R v Hunter,[256] has placed important limitations on the extent to which evidence of defendant's good character must be taken into account by the tribunal of fact. Though it was a consolidated appeal arising from the assizes, the principles are equally applicable in the summary jurisdiction. The key shift in jurisprudence cemented by this decision is that the failure to take into account good character evidence will not inevitably lead to the quashing of a conviction on appeal. Where an appellant with a spurious claim to good character, or in instances where good character evidence is of little weight in the context of the case as a whole, judges are no longer obliged to give good character directions which will be meaningless or absurd. In the summary jurisdiction, much will turn on the facts of the case, and whether good character evidence is evident from the record. It is, however, undoubtedly good practice for a sitting magistrate to enquire whether there may be any character evidence that may be beneficial to the defendant, and to show clearly in their reasons how that evidence factored into their decision.

The Caribbean Court of Justice has also given recent consideration to the treatment of good character evidence. In **August and Gabb v the Queen,**[257] the appellant August contended, inter alia, that the trial judge's failure to give a good character direction affected the safety of his conviction for murder and the fairness of the trial. During his trial, the issue of good character never arose and the trial judge did not give any good character direction. It was only after his conviction, and during the sentencing hearing, that it came to the fore that August had a clean criminal record. The court observed that the aim of a good character direction is to ensure fairness of the trial process, and pointed to the entitlement of a defendant who has given sworn testimony to have his good character taken into account relative to his credibility. August having not given sworn testimony was not entitled to the credibility limb of a good character direction. After examining the circumstantial evidence on the prosecution's case, the court was satisfied that the case against August was sufficiently strong, and that it a conviction was inevitable, even if the propensity limb had been given.

Magistrates and Parish Court judges sitting as the tribunal of fact, must conduct a similar weighing exercise when balancing evidence of good character, where such evidence is advanced, against the other evidence in the case. The stronger the prosecution's case, the less likely the failure to take it into account is to be fatal to the conviction. However, best practice requires reasons demonstrating the weighing of the evidence and how it has been factored into account in each case.

[253] Trinidad and Tobago – Evidence Act. Chap 7.02, section 15N(1); See also sections 15O – 15S which define and explain the parameters of the gateways of section 15N.
[254] Trinidad and Tobago – Evidence Act. Chap 7.02, section 15N(3)
[255] Trinidad and Tobago – Evidence Act. Chap 7.02, section 15N(4); See also Trinidad and Tobago Criminal Bench Book 2015 Chapters 13 - 14
[256] [2015] EWCA Crim 631
[257] [2018] CCJ 7 (AJ)

CHAPTER 8

FUNCTUS OFFICO/CEASES TO ACT

Once a magistrate has adjudicated fully on a matter, he is considered functus officio in relation to that matter: **R v Midhurst JJ ex p Thomson et al [1973] 3 All ER 1164, Beswick v R 36 WIR 318 PC.**

Generally, once sentence is passed by the magistrate, the court becomes functus officio and cannot continue any further hearing in that particular matter: **Walter v Stewart DM 1967 HC 16**; **Lovell v Romain DM 1967 HC 9.**

Similarly, where a court has acquitted a defendant, the matter is considered adjudicated upon and the magistrate cannot revisit his dismissal of the case. A verdict of not guilty is a final adjudication and disposal of the case: **Richards v R (1992) 41 WIR 263.**

Therefore, once a court of competent jurisdiction returns a verdict of guilty or not guilty, the court is functus officio in respect of that case: **Paynter v Lewis (1965) 8 WIR 318,** the Trinidad and Tobago Court of Appeal, purporting to follow **R v Sheridan [1937] 1 KB 223.**

A finding of guilt is to be distinguished from the acceptance of a guilty plea, which does not amount to a final adjudication:

> *"It has long been the law that when a man pleads guilty to an indictment the trial judge can permit him to change his plea to not guilty at any time before the case is finally disposed of by sentence or otherwise. The need for finality of adjudication by the court whose decision is relied on to found a plea of autrefois convict is even more clearly apparent where a defendant has pleaded guilty. Not only may the defendant be permitted, in the discretion of the court, to change that plea at any time before sentence, but, when a plea of guilty to a lesser offence than that charged has initially been accepted by the prosecutor with the approval of the court, there can, it appears to their Lordships, be no finality in that "acceptance" until sentence is passed."* [1]

Where a guilty plea has been made, the court may, in its discretion allow the withdrawal of that plea at any time before sentencing.

The position is different in Barbados, where the *Magistrate's Court Act*, permits a magistrate to reopen a case within a limited window after the completion of the matter to vary or rescind the sentence or order made. The discretion must be exercised within 28 days, and in that jurisdiction is known as the "slip rule."

A magistrate may also become functus officio, where, after part of the evidence has been heard in a trial in which the accused pleads not guilty, it becomes necessary to replace him or her. If a magistrate retires or resigns from the bench, he is not permitted to continue hearing the matter at a later stage even if he is subsequently reappointed: **Frederick v Chief of Police (1968) 11 WIR 330.**

[1] Richards v R (1992) 41 WIR 263

In **Jones v Ricketts (1964) 7 WIR 62,** the case under appeal was heard on 31st May, 1963, by a magistrate who was then acting as additional resident magistrate for the parish of St. James. After hearing the evidence, the magistrate reserved judgment and ceased as of that day to act as additional resident magistrate for the parish of St. James. The magistrate was subsequently re appointed to act as additional resident magistrate for the parish of St James, and, on 27th September, 1963, delivered judgment. *Section 182,* of *The Judicature (Resident Magistrates Law) Chap. 179*, provided that whenever a magistrate reserved judgment and ceased either temporarily or permanently to be a magistrate of the court in which judgment was reserved, before he delivered his judgment, it shall be lawful for him at any time within two months of reserving judgment, to lodge his written judgment on the matter reserved, which would then be read at the earliest opportunity by the sitting magistrate and take effect in all respects as if it had been delivered by the unavailable magistrate.

On appeal it was held that the obvious intention of the legislature was that reserved judgments should be delivered within a limited time – fixed at two months. Where the Resident Magistrate had ceased to be Resident Magistrate for a particular parish, his jurisdiction in that parish to hear a particular case and to determine that case terminated and could not be revived by his subsequent re appointment. The only way in which he could deliver a valid judgment would be if it were delivered within a period of two months from the date of reservation of the judgment. In the circumstances, the judgment which was purported to be delivered in September was not a valid judgment and had no force whatsoever.

In such a case there is no alternative but to re-commence the trial de novo and recall the evidence so that the reconstituted bench hear all the evidence and the submissions made on behalf of the accused: **Wong and Ors. V. The Queen [1987] UKPC 23.**

The consent of the parties to the continuation of a part heard matter before a different magistrate cannot validate what is a nullity at law. Part heard matters cannot be continued before a different magistrate and must be started de novo: **CV2017- 03190 & 03707 Attorney General of Trinidad and Tobago v Chief Magistrate (ag.) and Ors.**

The position is slightly different in Guyana, where, when a magistrate has completed hearing any proceeding and subsequently ceased to act as a magistrate or is otherwise unable to deliver judgement, a judgment in the proceeding or matter written by him may be read by any other magistrate and entered into the minute book.

ANGUILLA

- A warrant or summons issued by a magistrate shall not be avoided by reason of the magistrate who signed the same dying or ceasing to hold office: *Section 39;*
- It shall not be necessary that the magistrate who acts before or after the hearing of a case should be the magistrate by whom the case is or was heard and determined: *Section 40.*

ANTIGUA AND BARBUDA

- A warrant or summons issued by a magistrate shall not be avoided by reason of the magistrate who signed the same dying or ceasing to hold office: *The Magistrate's Code of Procedure, Chap. 255, Section 39;*
- It shall not be necessary that the magistrate who acts before or after the hearing of a case should be the magistrate by whom the case is or was heard and determined: *The Magistrate's Code of Procedure, Chap. 255, Section 40.*

BARBADOS

- A warrant or summons that is issued by a magistrate does not cease to have effect by virtue of the death of the said magistrate or by him ceasing to be a magistrate: *Magistrates Court Act, Chap. 116A, Section 214; Magistrate's Courts (Criminal Procedure) Rules, 2001, rule 6(1));*
- Any person who succeeds a magistrate or any person so acting for a magistrate may hear, determine, execute, enforce and carry to completion any proceeding or matter that was commenced by that magistrate unless the matter or proceeding is part-heard: *Magistrate's Courts (Criminal Procedure) Rules, 2001, rule 6(2).*

BELIZE

- Where a magistrate ceases to exercise jurisdiction in the judicial district or to hold office before giving his decision, he must, within six weeks of the conclusion of the hearing, lodge his written decision with the clerk. The clerk will read it in open court at the earliest opportunity after notice to the parties and the decision shall be the decision of the court: *Summary Jurisdiction (Procedure) Act, Chap. 99, Section 52(2);*
- Where a magistrate has issued a summons or warrant, or otherwise taken or commenced any matter or proceeding under any authority conferred on him, and he subsequently ceases to act as magistrate, the summons or warrant may be executed and served in the same manner as if the issuing magistrate had not ceased to act; and any successor to the magistrate who ceases to act, or any person acting for the said magistrate may hear, determine, execute, enforce and carry to completion any matters or proceedings so commenced: *Inferior Courts Act, Chap. 94, Section 52;*
- A magistrate shall perform the duties of another magistrate who is temporarily unable to do so for so long as this inability continues: *Inferior Courts Act, Chap. 94, Section 15;*
- In the case of illness or the Alcalde's absence from any cause, the Deputy Alcalde's duty shall be to act for, and perform the duties of the Alcalde: *Inferior Courts Act, Chap. 94, Section 75(2);*
- In the case of the death of the Alcalde, his office, powers and duties shall devolve upon the Deputy Alcalde, unless the Attorney General otherwise directs: *Inferior Courts Act, Chap. 94, Section 75(3).*

DOMINICA

- A warrant or summons issued by a magistrate shall not be avoided by reason of the magistrate who signed the same dying or ceasing to hold office: *Magistrate's Code of Procedure Act, Chap. 4:20, Section 36;*
- It shall not be necessary that the magistrate who acts before or after the hearing of a case should be the magistrate by whom the case is or was heard and determined: *Magistrate's Code of Procedure Act, Chap. 4:20, Section 37.*

GRENADA

- Where a magistrate has issued any summons or warrant, taken any evidence, commenced any hearing, or otherwise taken or commenced any proceeding or matter, whether civil, criminal or quasi-criminal or any other matter under any authority however conferred, and subsequently ceases to act as such magistrate, it shall be lawful for the person in whose hands such summons or warrant may be to execute or serve the same in the manner as if the magistrate who issued such summons or warrant had not ceased to act as such magistrate; and any successor of such magistrate or any person acting for or assisting such magistrate, may hear, determine, execute, enforce, continue and carry to completion any proceeding or matter so commenced as aforesaid: *Magistrates Act, Chap. 117, Section 45;*
- Whenever a magistrate is unable from sickness, absence or any other cause, to be present in court, any Justice of the Peace, being a barrister or solicitor or two Justices of the Peace (neither being a barrister or solicitor), may at the request of the magistrate in writing sit in court in his or her place and shall while so sitting have and exercise all the powers of a magistrate: Provided that such power shall not extend to more than one sitting of the court or for the completion of the hearing of any matter commenced at such sitting: *Magistrates Act, Chap. 117, Section 15.*[2]

GUYANA

- Where a magistrate has issued any summons or warrant or commenced any proceedings and subsequently ceases to act as magistrate, the warrant may be executed and served in the same manner as if the magistrate who issued it had not ceased to act. Any successor magistrate may hear, determine, execute, enforce, and carry to completion, any proceeding or matter so commenced;
- In the instance where the magistrate has completed hearing any proceedings and subsequently ceases to act as magistrate or has been transferred from that district or unable to deliver judgment, a judgment in the proceeding written by him may be read by another magistrate and entered into the minute book of the court. In this case the judgment shall have effect as if it was delivered by the magistrate hearing the proceeding: *The Summary Jurisdiction (Magistrates) Act, Chap. 3:05, Section 67;*

[2] Sydney Frederick v Chief of Police (1968) 11 WIR 330

- Where before the court gives its decision the magistrate ceases to exercise jurisdiction for that magisterial district or to hold office, it shall be still lawful for him within six weeks of the conclusion of the hearing to lodge with the clerk of the court his written decision for the matter. The court shall thereby read the decision at the earliest opportunity after notice to the parties and the decision when read, shall be deemed to be the court's decision: *The Summary Jurisdiction (Procedure) Act, Chap. 10:02, Section 37(2);*
- Where a lay magistrate who has commenced any proceedings, whether civil or criminal, ceases to act as a lay magistrate, any magistrate who succeeds him or acts in his place may hear and determine the proceeding de novo: *The Summary Jurisdiction (Lay Magistrates) Act, Chap.3:12, Section 19.*

JAMAICA

Where proceedings before any judge of the Parish Court commenced but then ceased, whether permanently or temporarily:

- If the judge of the Parish Court has reserved judgement but ceased to act prior to delivering that judgment, he can lodge the judgement with the clerk of court and the judgement will be read in court as soon as possible thereafter by the present sitting judge of the Parish Court and it shall take effect in all aspects as if the person who reserved judgement had continued to be the judge of the Parish Court and had delivered judgement himself on the day that it was so read;
- He may, whether or not he has reserved judgement as aforesaid, be assigned at any time to be a Parish Court judge of that court for the purpose of concluding such hearing: *Judicature (Parish Courts) Act, Section 192*.

MONTSERRAT

The statute is silent on the procedure to be followed when a magistrate ceases to act. In the circumstances, the common law applies, thus:

- A magistrate is functus officio upon making a final adjudication in a case or where he resigns or ceases to hold office;
- A magistrate cannot continue to hear a part heard matter commenced under him even if he is re-appointed. Such part heard matters must be commenced de novo before a new magistrate;
- A guilty plea made by the defendant is not a final adjudication and a magistrate may, in his discretion, permit the defendant to withdraw the guilty plea at any time before sentence.

ST. KITTS AND NEVIS

- A warrant or summons issued by a magistrate shall not be avoided by reason of the magistrate who signed the same dying or ceasing to hold office: *Magistrate's Code of Procedure Act, Chap. 3.17, Section 45;*
- It shall not be necessary that the magistrate who acts before or after the hearing of a case should be the magistrate by whom the case is or was heard and determined: *Magistrate's Code of Procedure Act, Chap. 3.17, Section 46;*
- In the event of absence or illness of the District Magistrate, or in any case where it is expedient, it shall be lawful for the Governor-General to direct any fit and proper person, including another District Magistrate, to act for any such District Magistrate, and any such person so acting for a District Magistrate shall have the same powers and jurisdiction, and be entitled to the same immunities and protections, as the District Magistrate for whom he or she is acting has and is entitled to: *Magistrate's Code of Procedure Act, Chap. 3.17, Section 11*.

ST. LUCIA

- Where a magistrate has issued a warrant or summons or otherwise taken or commenced any proceeding or matter, criminal or civil, and subsequently ceases to act as such magistrate, it shall be lawful for the person in whose hands such warrant or summons may be to execute or serve the same in the same manner as if the magistrate who issued such warrant or summons had not ceased to act; and any successor of such magistrate, or any person acting for such magistrate, may hear, determine, execute, enforce and carry to completion any proceeding or matter commenced as aforesaid: *District Courts Act, Chap. 2:02, Section 21.*

ST. VINCENT AND THE GRENADINES

- Where a magistrate has issued any summons or warrant, or otherwise taken or commenced any proceeding or matter under any authority conferred on him and he subsequently ceases to act as such magistrate, the summons or warrant is still valid and may be executed or serve in the same manner as if the issuing magistrate had not ceased to act as such magistrate. Any successor of any magistrate ceasing to act, or any person acting for such magistrate who ceases to act may hear, determine, execute, enforce and carry to completion and proceeding or matter thereby commenced by the preceding magistrate: *The Magistrates Court Act, Chap. 30, Section 38.*

TRINIDAD AND TOBAGO

- Where a magistrate is classified as "non-sitting" he has no jurisdiction on matters except for those that have been part heard by him.[3] A part heard matter before one magistrate, cannot be continued before another magistrate and must be commenced de novo: **CV2017- 03190 & 03707 Attorney General of Trinidad and Tobago v Chief Magistrate (ag.) and Ors;**

[3] Mark v Alexis (1984) Mag App No. 123/84;

CHAPTER 9

NO CASE SUBMISSION

Guidance

The *Practice Note [1962] 1 All ER 448, DC, 33 Digest (Repl) 227, 614*, provides guidance for magistrates in respect of a no case submission. It states that a submission that there is no case to answer may be properly made and upheld:

- When there has been no evidence to prove an essential element in the alleged offence;
- When the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict.

Apart from these two situations, a tribunal should not generally be called on to reach a decision on conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.

Stone's Justices' Manual 2017, states that *"although magistrates are judges of both fact and law, we would suggest that a submission of no case to answer is... a submission of law. Accordingly, magistrates' considering a submission are not at that stage in the proceedings deciding whether they themselves believe the witnesses but only whether they are capable of belief."*[1]

According to **R v Galbraith [1981] 2 All ER 1060,** on a no case submission:

- If there is evidence that the crime alleged has been committed by the defendant, the case should be stopped;
- If there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence:
    a) Where it is concluded that the prosecution's evidence, taken at its highest could not properly convict the defendant, the case should be stopped; and
    b) Where the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability and where on one possible view of the facts there is evidence from which the tribunal of fact can properly conclude that the defendant is guilty, then case should be allowed to proceed.

R v Anderson (1998) Independent (CS), 13 July, CA, has indicated that it is open for the court to hear and rule upon a no case submission at the end of the defence's case.

[1] See also R v Barking and Dagenham Justices, ex p DPP [1995] Crim LR 953.

The court does not have jurisdiction to entertain a submission of no case to answer in advance of any evidence being called, or before the conclusion of the prosecution's evidence: **R v N Ltd and another [2008] 1 WLR 2684.**

Procedure

After the no case submission is made the prosecution has a right to reply, unless having heard the defence's submission the magistrate rules against it and indicates this to the prosecutor. After the prosecutor's reply, if one is necessary, the magistrate rules on the submission. Where the submission is upheld, the defendant is discharged. Where the submission is overruled the trial proceeds and the defence may call evidence.[2]

Anguilla

- In **Glen Richardson v R HCRAP 2006/001,** the appellant was charged with a sexual offence which included a requirement that the virtual complainant be within a prescribed age. There was uncertainty in her evidence relating to when the offence took place. The dates in question were relevant to the question of her age at the time of the act. Since the prosecution was required to prove the virtual complainant's age at the time of the act beyond reasonable doubt, her uncertainty as to whether the act took place on or after her birthday negatived the legal requirement and the appellant's no case submission should have been upheld.

Antigua and Barbuda

- In **Byers v Queen AG 1993 CA 2,** the Court of Appeal approved of the *Galbraith* case as being an accurate reflection of the law. It stated that where the surrounding circumstances were proven in evidence, which linked the defendant to the commission of the offence with such mathematical precision, a no case submission should be rejected.
- In **The Queen v Eston James Criminal No. 2005/0036,** the High Court approved of the *Galbraith* case, particularly the second limb. The court was of the opinion that the prosecution had failed to adduce cogent evidence on the issue of causation and therefore had not made out a prima facie case.

Barbados

- In **Davis v The Queen BB 2014 CA 8,** where there was compelling circumstantial evidence that the defendant was found aboard a pirogue laden with cannabis, it was necessary for him to be called upon to answer the charge. Therefore, it was correct not to uphold the no case submission made by the defence. This was affirmed by the Court of Appeal on appeal by the defendant.

[2] Moran v DPP (2002) 166 JP 467

- In **Haynes and Edwards v The Queen [2017] CCJ 10 (AJ),** the admissibility of evidence of disputed oral admissions was affirmed. The only evidence against the appellants were uncorroborated and unacknowledged oral statements attributed to them by the police. The Caribbean Court of Justice, overturning the Court of Appeal, held that the position at common law as in *Galbraith* fell to be read in light of the reforms introduced by the *Evidence Act* of Barbados. These applied standards that were more stringent than the common law. What is relevant at the no-case submission stage is for the judge to consider, in light of the clear scheme of the *Evidence Act* whether the incriminating oral statements, previously admitted, are themselves sufficient to send the case to the jury. In the absence of electronic verification and independent corroboration of the alleged confessions, the court concluded that the evidence was such that the case should not have gone to the jury.
- Where the evidence raises issues of facts that had to be decided upon, it was correct for the no case submission to be overruled: **Taitt and Gooding v R BB 2011 CA 23.**

Belize

- In **The Queen v Roches et al BZ 2015 CA 15,** the test in *Galbraith* was approved. The Court of Appeal held that where there was sufficient circumstantial evidence against a defendant, this establishes a prima facie case for him to answer, therefore the trial judge was wrong in upholding the no case submission.
- In **Lino v Itza BZ 2005 SC 32,** the Supreme Court reiterated the grounds on which a no case submission may be made in the magistrate's court and in any criminal proceedings in accordance with the *English Practice Note [1962) 1 All E.R. 448 [supra]*. The court held that none of these grounds were taken into account by sitting magistrate in upholding the no case submission, and consequently he fell into error.

Dominica

- The **State v William Greenaway DOMHCR2010/012**: Approving *Galbraith*, it was held that the prosecution had established the essential elements of the offence charged and therefore a submission of no case to answer by the defendant would not be upheld.

Grenada

- In **Mustaphakhan et al v The Queen GD 2007 CA 1,** the test in *Galbraith* was approved. It stated that the prosecution had built a strong case against the defendant and there was sufficient cogent evidence to prove the elements of the offences charged with. While the evidence of the main prosecution's witness was punctuated with inconsistencies in respect of time and other issues, this did not disturb his direct evidence.

- In **Smith v The Queen GD 1998 CA 1,** it was held that where there were inconsistencies that caused the evidence to be of a tenuous character then this warranted that the matter be stopped.

Guyana

- In **DPP's Reference (No 2 of 1980) (1981) 29 WIR 154,** the Court of Appeal reaffirmed the *Galbraith* case. It states that the test in deciding whether to uphold a no case submission is whether: a) all the elements constituting the offence are proven, or b) the evidence was so weak or via cross examination was manifestly unreliable that no reasonable tribunal could safely convict on it.
- In **The State v Khan GY 1974 CA 14,** where the prosecution presented cogent and compelling circumstantial evidence, it was inescapable that a no case submission be overruled. In this case the trial judge had failed to do so and the Court of Appeal subsequently found this to be a grave miscarriage of justice.
- In **The State v Khan (2012) 80 WIR 407,** the Court of Appeal held that whilst there was no direct evidence of the death of the deceased, there was circumstantial evidence which possessed some inculpatory value. In those circumstances a no case submission should not be upheld.
- In **The State v Mitchell (1984) 39 WIR 185 at 190,** it was stated that the standard of proof required in each criminal trial is proof beyond a reasonable doubt. Any evidence presented by the prosecution must be capable, if accepted, of proving the guilt of the accused beyond a reasonable doubt. The standard is no different for evidence that ought to be considered in relation to a no case submission.[3]

Jamaica

- In **Ricardo Wright v R [2016] JMCA Crim 15,** *Galbraith* was approved as laying down the principles governing the approach to a no case submission. In this case the resident magistrate had sufficient material before her to decide that a prima facie case was made out against the defendant. Therefore, the resident magistrate was correct to overrule the no case submission.
- In **Kevon Black v R [2014] JMCA Crim 36,** where the evidence that was adduced by the prosecution was "extremely weak" and "manifestly inadequate", the defendant should not be called upon to answer the offences for which he has been charged. The quality of the evidence is the critical decisive factor which directs a trial judge's discretion. In this case the learned resident magistrate had sufficient material before him to form the opinion that a prima facie case was made out against the defendant. The evidence adduced by the prosecution met the requisite test.[4]

[3] see also R v Somae (2006) 2 LRC 431

[4] See also Director of Public Prosecutions v Varlack PC 23/2007

- In **Alwayne Jackson v R [2014] JMCA Crim 34,** it was held that at the end of the prosecution's case, the evidence adduced was not discredited in any material way through cross-examination and it was such that a reasonable tribunal could safely convict on it.

Montserrat

- At the close of the evidence in support of the charge, the magistrate's court shall consider whether or not a sufficient case is made out against the accused person to require him to make a defence, and if the magistrate's court considers that such a case is not made out, the charge shall be dismissed and the accused acquitted and discharged.[5]
- **Fitzroy Farrell v The Queen MNIHCRAP 2015/0005:** The test set out in Galbraith applies. On a charge of possession of drugs, the prosecution has a duty to prove that the appellant had knowledge of the presence of drugs. Whether an appellant has knowledge is fact intensive and depends on the circumstances in each case. In the instant case, the evidence used to prove the appellant had knowledge comprised several circumstantial strands, including that he resided at, and had keys to the house where the drugs were found, the other occupants were off the island for some time prior to the search, and that the house was under surveillance prior to the search. Having regard to the evidence of the prosecution the judge was justified in not upholding the no case submission.

St. Kitts and Nevis

- In **Director of Public Prosecutions v Sutton et al KN 2015 HC 15,** the case in *Galbraith* was applied. It was held that the prosecution's evidence as a whole did not establish that the accused person had committed the crime for which they were charged.

St. Lucia

- In **The Queen v Ann Marie Benoit SLUCHRD2013/1094,** the **Practice Direction (Submission of No Case) (1962) 1 WLR 227,** as well as *Galbraith* was referred to. In this case it was held that where direct prima facie evidence of the essential elements of the offence were absent, or where legitimate inferences grounding a prima facie case could not be drawn, then the charge against the defendant should be dismissed.

[5] Montserrat – Criminal Procedure Code No. 9 of 2010, section 218

St. Vincent and the Grenadines

- In **Anthony Gellizeau v The State SVGMCRAP2013/0058,** the case of *Galbraith* was approved as setting out the test for assessing a submission of no case to answer. The learned Chief Magistrate, as trier of both fact and law correctly applied the principles applicable to circumstantial evidence to the factual circumstances of the case and was correct in her conclusion that the defendant had a case to answer. The circumstantial evidence could have led a jury that was properly directed to the conclusion that the defendant had committed the crime.
- In **Commissioner of Police v Ordan Graham Criminal Appeal No. 56 of 2006,** it was held that where an essential ingredient of an offence is not proven, in that case seditious intent, it was the duty of the magistrate to stop the case from proceeding on a submission of no case to answer.

Trinidad and Tobago

- In **Riley v Barran (1965) 8 WIR 164,** the Court of Appeal applied the dictum of *Practice Note [1962] 1 All ER 448, DC*. It stated that in respect of a no case submission, where there existed discrepancies in the evidence which were not relevant to the key question for determination, such discrepancies would not seriously weaken the case for the prosecution. Therefore, a submission of no case to answer by the defendant would not be upheld.
- **Errol Hernandez, Sgt v Nathaniel Brooks Mag. App. No. 33 of 1969:**
  - For the purpose of determining whether a prima facie case is established at the close of the prosecution's case upon a no case submission, a magistrate's duty at that stage is not to consider whether there are discrepancies in the evidence (except where the evidence is of such a quality that no reasonable tribunal might consider it in any sense worthwhile). The magistrate's duty at that stage is to determine whether there is evidence, which if believed, is supportive of the charge;
  - The defendant may at that stage also, if called upon, close his case without leading evidence. Should this occur, and although nothing further has occurred by way of additional evidence led, the magistrate, has now to perform a different function. He has then to decide what evidence he should accept as truthful or reject as untruthful or unworthy of probative value, in order to determine whether on the whole of the evidence the prosecution has surely proved the case. It is only at this stage that questions of veracity, demeanour, conflicts and discrepancies in the evidence become essential to deciding whether the prosecution has ultimately discharged the burden of proof;
  - At that point the magistrate may well take the view, notwithstanding that a prima facie case is established, that on the whole of the evidence, there being inexplicable discrepancies or irreconcilable conflicts, he is left in doubt, and consequently, he must resolve the case in the defendant's favour. That function

is materially different from deciding whether or not a prima facie case is made out. The requirements for establishing a prima facie case are purely evidentiary, whereas the essentials necessary to satisfy a tribunal of proof beyond a reasonable doubt must comprehend moral conviction.

- In **Sangit Chaitlal v The State (1985) 39 WIR 295,** the Court of Appeal stated that in respect of the second limb of the test in **R v Galbraith,** where there is some evidence but it is tenuous in nature; The approach requiring that there be no evidence upon which a tribunal could convict before stopping the case was too restrictive. The ultimate matter should be left to the *"good sense of the trial judge who must be depended upon to see that there is no miscarriage of justice."*
- In **The State v Kerry Samad Crim. App. No. P 042 of 2015,** the Court of Appeal referred to *Galbraith*. In *Samad*, the court considered the quality and reliability of the prosecution's evidence to determine whether it was too inherently weak or vague or inconsistent with other evidence for any reasonable tribunal to rely on it. Applying the principle from *Sanjit Chaitlal* (supra), the court found that the prosecution had failed to establish sufficient evidential support for its case and therefore it was wholly lacking.

When can the prosecution's case be reopened following a no case submission?

After the no case submission, certain deficiencies in the prosecution's case may be highlighted. In such instances the magistrate may allow for the reopening of the prosecution's case to cure the deficiencies occasioned by oversight: **R (Payne) v South Lakeland Magistrates Court 2008 EWHC 771.**[6]

Can a magistrate reconsider a decision on a no case submission?

There is no statutory authority conveying power on a magistrate to reconsider a decision made on a submission of no case to answer. The general rule applicable in England however has always been that a justice should not re-open a case once they have reached their decision.[7]

In **Steward v DPP [2004] 4 All ER 1105,** however, the court distinguished between the instant case and earlier decisions and stated that justices were entitled to reopen a case despite having acceded to a submission of no case to answer where an error in the reasons had been identified by the prosecution and the accused agreed that there was an error. In those circumstances, the adjudication process was not complete and the justices were not functus.

[6] The accused was charged with driving a motor vehicle on the road in excess of the speed limit. However, through an oversight the prosecution, no evidence of the speed limit was adduced. An adjournment was granted to enable the prosecution to cure this deficiency.

[7] See decision of Essex Justices, ex parte Final [1963] 2 QB 816. In that case, the case had been re-opened in order to hear further submissions on the evidence and that was found to be impermissible.

CHAPTER 10

FINDING GUILT

The magistrate is the tribunal of fact and law and must examine the evidence placed before him to determine the guilt of a defendant. A finding of guilt is the ruling made by the magistrate when:

- The prosecution has proven beyond a reasonable doubt that the defendant had in fact committed the offence charged;
- After the facts have been read to the defendant, he pleads guilty and accept all the facts that amount to the offence charged with.

Where the magistrate has found the defendant guilty he/she may order him/her to be sentenced and/or fined as the case may be.

The magistrate must be satisfied on the evidence before him that he feels sure of the guilt of the defendant before he finds him guilty of the offence charged: **Zetina v Mckoy BZ 1969 CA 2.**

Although the magistrate is presumed to know the law, it is important that that he should use the correct judicial approach in applying the appropriate standard of proof before arriving at a conclusion that the defendant is guilty: **Kevon Black v R [2014] JMCA Crim 36.**

Adverse inferences

An adverse inference is a legal inference, adverse to the defendant that is:

- An inference drawn from the absence of requested evidence;
- Made where the defendant presents a case at trial that is inconsistent with the case set out in the defence statement;
- Made where the defendant relies on a matter that was not disclosed in the defence statement.

When a magistrate is considering whether to draw an adverse inference in circumstances where the defendant has failed to mention, when questioned, matters on which he subsequently relies in his defence, the magistrate should ask himself three questions[1]:

- Has the defendant in his defence relied on a fact which he could reasonably have been expected to mention in his interview, but did not? If so, what is it?
- What is his explanation for not having mentioned it?
- If that explanation is not a reasonable one, is the proper inference to be drawn that he is guilty?

[1] T v DPP (2007) 171 JP 605, Hughes LJ at [26]

Across the Commonwealth Caribbean, there is a general absence of legislation addressing the treatment of the silence of a defendant when questioned. The common law principles in *Practice Note (Judges' Rules) [1964] 1 WLR 152* are applicable. A person has a right to remain silent, however, if he does choose to say anything this will be placed in writing and used as evidence in court. Therefore, an accused's silence when questioned should not be taken by a magistrate as evidence that is supportive of an inference of guilt.[2]

Personal knowledge of local circumstances

A magistrate is permitted to draw upon his personal knowledge of matters which are well known in the locality when deciding issues of fact. Where such knowledge is relied on, both the prosecution and the defence should be informed by the magistrate, as this will allow the parties or their counsel to make comment upon the knowledge the magistrate claims to possess: **Norbrook Laboratories (GB) Ltd v Health and Safety Executive [1998] EHLR 207.**[3]

Lesser alternative offence

In the summary jurisdiction, there is no common law entitlement for the magistrate to accept a guilty plea to a lesser alternative offence not charged in the original complaint.[4] Magistrates are creatures of statute whose powers are circumscribed by statute. Therefore, unless legislation expressly authorizes the acceptance of a plea to a lesser alternative offence not charged in the information or complaint, it is not permissible. The convention across the Commonwealth Caribbean is that the Crown or state offers the plea and decides on alternate counts. If the Crown or state charges both the greater and lesser offences, then the court may accept the lesser.[5] Legislation that allows a magistrate to find a defendant not guilty of an offence charged but guilty of another specific offence usually includes crimes such as receiving and larceny in the alternative or unlawful possession and larceny.[6]

[2] Barbados Evidence Act Cap. 121, section 76(1); Huggins v R [2004] UKPC 7; Oscar Serratos v R RMCA No. 26 of 2004

[3] Mullen v Hackney Borough Council [1997] 2 All ER 906;

[4] Seetahal D, Commonwealth Caribbean Criminal Practice and Procedure, 4th ed. p 117

[5] Yeardley v R [2000] 2 Cr App R 141

[6] Belize - Summary Jurisdiction Procedure Act Cap 99, section 58; Criminal Procedure Rules 2016 Rules 8, 9
St. Lucia - Criminal Code Cap. 3.01 section 717, 718
St. Vincent and the Grenadines - Criminal Procedure Code Cap. 172, section 112(1)
Trinidad and Tobago - Summary Courts Act Chap. 4:20, section 76

CHAPTER 11

GOODYEAR HEARING

An application for a Goodyear[1] hearing, is one made by the defence counsel on behalf of his client, or by the defendant himself if unrepresented, to have the court give an indication as to the maximum sentence the court would be minded to impose should the defendant plead guilty at that stage to the offence charged.

a) There is no statutory basis for the conduct of Goodyear hearings in the summary courts of the Commonwealth Caribbean countries in respect of summary offences. However, in **Jamaica**,[2] **Trinidad and Tobago**[3] and some **Organisation of Eastern Caribbean States (OECS)** territories judges are authorised to conduct Goodyear hearings in respect of indictable matters.[4]

b) The foundation of the Goodyear hearing is **R v Goodyear,** which departed from the principle espoused in **R v Turner,**[5] which restricted the court from giving the defendant any information on the likely sentence a guilty plea could attract. The guidance laid down in **R v Goodyear,** is as follows:

- An advance indication of sentence should not be given unless one has been sought by the defendant;
- The judge is entitled, if he sees fit, to indicate that the likely sentence, or type of sentence would be the same whether the case proceeds as a plea of guilty or goes to trial, with a resulting conviction;
- In appropriate cases the judge is entitled to remind defence counsel that the defendant is entitled to seek an advanced indication of sentence. However, the defendant's counsel should not seek an indication without first obtaining the written authority, signed by the defendant, that he wishes to seek an indication;
- The defence counsel is personally responsible for ensuring that the defendant fully appreciates:
  - That he should not plead guilty unless he is guilty;
  - That any sentence indication given by the judge remains subject to the entitlement of the Attorney General (where it arises) to refer an unduly lenient sentence to the Court of Appeal;

[1] R v Goodyear [2005] 3 All ER 117

[2] Jamaica – Practice Direction (Criminal) Advance Sentence Indications PD No. 2 of 2016

[3] Trinidad and Tobago – Supreme Court of Judicature of Trinidad and Tobago, Practice Direction Maximum Sentence Indications Gazette No. 90 Vol.54 (25th August 2015)

[4] St. Lucia – Eastern Caribbean Supreme Court Criminal Procedure Rules Sentence Indications PD No. 2 of 2015
St. Vincent and the Grenadines – Eastern Caribbean Supreme Court Criminal Procedure Rules PD No. 3 of 2014

[5] [1970] 2 All ER 281

  - That any indication given by the judge reflects the situation at the time when it is given and if a guilty plea is not tendered in the light of that indication the indication ceases to have effect;
  - That any indication which may be given relates only to the matters about which an indication is sought.

- A judge may refuse altogether to give an indication, or may postpone doing so, with or without giving reasons;
- If a judge refuses to give an indication, this does not prevent the defendant from seeking a further indication at a later stage. But once a judge refused to give an indication, he should not normally re-initiate the process, except to indicate that the circumstances have changed sufficiently for him to be prepared to consider a renewed application for an indication;
- Once an indication is given, it is binding and remains binding on the judge and any other judge who becomes responsible for the case. If, after a reasonable opportunity to consider his position in the light of the indication, the defendant does not plead guilty, the indication will cease to have effect;
- An indication should not be sought while there is any uncertainty between the prosecution and the defence about an acceptable plea or pleas, or any factual basis relating to the plea. Any agreed basis should be reduced into writing before an indication is sought. Where there is a dispute about a particular fact, which counsel for the defendant believes to be effectively immaterial to the sentencing decision, the difference should be recorded, so that the judge can decide;
- A judge should never be invited to indicate the levels of sentence which he may have in mind depending on possible different pleas. If there is no final agreement about the plea, or the basis of plea, and the defence nevertheless proceeds to seek an indication, which the judge appears minded to give, prosecuting counsel should remind him of this guidance;
- If an indication is sought, the prosecution should inquire whether the judge is in possession of or has had access to all the evidence relied on by the prosecution, including any personal impact statement from the victim of the crime, as well as any information of relevant previous convictions recorded against the defendant;
- A sentence indication is normally sought at the plea and case management hearing;
- A judge is most unlikely to be able to give an indication in complicated or difficult cases, unless issues between the prosecution and the defence have been addressed and resolved. In such cases, no less than seven days a written notice of an intention to seek an indication should be given in, to the prosecution, and the court. If an application is made without notice, the judge may conclude that any inevitable adjournment should have been avoided and that

the discount for the guilty plea should be reduced accordingly. The fact that notice to the State has been given, and any reference to a request for a sentence indication, or the circumstances in which it was sought, will be inadmissible in any subsequent trial;

- Should an indication be given, it is not envisaged that there will be an opening address by the State, nor a plea in mitigation by the defence.

CHAPTER 12

SENTENCING OPTIONS AND SENTENCING METHODOLOGY

Sentencing methodology in the English-Speaking Caribbean countries

Sentencing objectives

There are five principal objectives of sentencing set out by **Wooding C.J. in the case of Benjamin v R (1964) 7 W.I.R 459,** which constitute the aims punishment. These five objects are as follows[1]:

- Retributive or denunciatory which is the same as punitive. This objective recognises that punishment is intended to reflect the denouncement by the society and legislature of the offence and the offender.
- Deterrent vis-a-vis potential offenders. The offender must be punished appropriately to deter other likeminded offenders from engaging in that form of deviant behaviour.
- Deterrent vis-a-vis the particular offender being sentenced. The purpose of this objective is to seek to ensure that the offender himself is deterred from future criminal conduct by the punishment inflicted on him.
- Preventative, which aims at preventing the offender from again offending by incarcerating him.
- Rehabilitative, which contemplates the rehabilitation of the offender so that he may resume his place as a law-abiding and contributing member of society.

In **Edwin Farfan v The State Cr App No 34 of 1980 (unreported) 7 May 1984,** the Court of Appeal of Trinidad and Tobago stated that in some cases one objective may very well constitute the predominant one and that while the objects of sentencing policy should be kept in view, they ought not to be overstrained. Each case must depend inter alia upon its own particular facts, the nature of the offence and, of course, the question of its prevalence.

The above objectives were also applied in **Desmond Baptiste and Others v The Queen and Another [2004] ECSCJ No. 350.** The Eastern Caribbean Supreme Court (ECSC) in its judgement stated at page 3:

> *"We emphasise that the advice that we are about to give must be read subject to the need to have regard to the particular circumstances of the offence committed, its effect upon the victim and the record of the offender. In other words, a sentencing range should not obviate the need for the sentencer fully to consider the host of aggravating or mitigating factors that might accompany any particular crime. The sentencing of an offender who has been found or who has pleaded guilty to an offence is a duty of the presiding judicial officer having regard to the principles and rules provided by statute and the common law."*

[1] Seetahal S., Dana: Commonwealth Caribbean Criminal Practice and Procedure. (4th ed.) 2014 Routledge

Sentencing principles[2]

The philosophy behind the decision of the Court of Appeal of Trinidad and Tobago in **Aguillera, Ballai, Ballai and Ayow v The State Crim App 5678 of 2015,** was to establish a consistent, methodical and structured approach that would lend to overall consistency in sentencing. The decision also raised points of broad application as to what is meant by the term "the starting point" in sentencing.

The "Aguillera Approach" seeks to tease out the aggravating and mitigating factors relative to both the offence and the offender with greater precision and clarity. The court opined that the overall sentencing structure should, in general terms, (apart obviously from containing the judge's explicit reasoning on all relevant issues) reflect the following matters or in other words take the form of a four-step process:

- ***Step 1:*** Calculation of the starting point;
- ***Step 2:*** Upward or downward adjustment of the starting point;
- ***Step 3:*** [Where appropriate] Discount for a guilty plea;
- ***Step 4:*** Credit for the period of time spent in pre-trial custody.

> **Step 1:** *Consider the seriousness of the offence and find the starting point. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.*

In the past, there was an occasional misalignment between the proper meaning and the actual usage of the term "the starting point" and an ensuing lack of clarity as to what precisely is meant by that term. All sub-issues relevant to sentencing were amalgamated by the sentencer. There was little real sense of whether the various strands of relevant aggravating and mitigating factors were duly considered at the most appropriate stage. Fixing the starting point is the mechanism for seeking consistency in sentencing.

The starting point is a notional point within the normal range, from which the sentence may be increased or decreased to allow for aggravating or mitigating features of the case[3]. In arriving at the appropriate starting point in each case, the sentencing judge must make an assessment of the

[2] See the Eastern Caribbean Supreme Court (ECSC) sentencing guidelines for application by the Supreme Court and the Magistrates Court in the Eastern Caribbean States (OECS); the Independent States of Antigua and Barbuda, the Commonwealth of Dominica, Grenada, St. Kitts and Nevis, Saint Lucia, St. Vincent; and the Grenadines; and the British Overseas Territories of Anguilla, Montserrat. The Court has unlimited jurisdiction in each Member State and Territory. These guidelines are contained in the ECSC Sentencing Guidelines Rules 2019- Practice Directions 8A- 8D.
See also the Penal System Reform (Amendment) Act, 2018-34 for the territory of Barbados;
Section 31 of the Penal System Reform (Alternative Sentences) Act, Cap. 102:01 for the territory of Belize;
The Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, 2017;
The Trinidad and Tobago Sentencing Handbook 2016;
and the following cases which outline the application of sentencing principles and guidelines in the OECS:
The State v Donald Massicot, ECSC, Criminal Case No. DOMHCR2014/0039,
The State v Khalid Nanthan, ECSC, Criminal Case No. 24 OF 2015.

[3] R v Everald Dunkley, RMCA No 55/2001, judgment delivered 5 July 2002 per Harrison JA at page 4
R v Saw and others [2009] EWCA Crim 1, per Lord Judge CJ at para. 4

intrinsic seriousness of the offence, taking into account the offender's culpability in committing it, and the harm, physical or psychological, caused or intended to be caused, or that might foreseeably have been caused, by the offence[4].

The starting point therefore represents, on a purely provisional basis, the sentence which the sentencing judge considers to be appropriate for the offence, before adjustment, upwards or downwards, on account of any particular aggravating or mitigating factors in the case. Accordingly, the maximum period of imprisonment provided by statute for a particular offence, which is usually reserved for the worst examples of that offence likely to be observed in practice, will not normally be an appropriate starting point for sentencing purposes.

The court in Aguillera adopted the dicta in **R v Taueki, Ridley and Roberts [2005] NZLR 372,** a decision of the New Zealand Court of Appeal, which stated that the calculation of the starting point in sentencing is the sentence which is appropriate when the aggravating and mitigating factors relative to the offending are considered. These are the objective circumstances which relate to the gravity of the offence itself and which assist in gauging its seriousness, that is, the degree of harmfulness of the offence.

A sentencing court must balance the aggravating and the mitigating factors in arriving at a sentence that was commensurate with the seriousness of the offence. Thought must be given to the nature of the crime and how it was committed to determine, objectively, how serious the crime was[6]. However, any aggravating and mitigating factors relative to the offender must be excluded at this stage.

- Examples of *aggravating factors*[7] relevant to an offence include, but are not limited to: the use of extreme violence; deliberate and premeditated acts; serious injury caused to the victim; use of weapons; multiple attackers; attempts to conceal evidence; vulnerability of the victim; a racially charged crime was committed; previous convictions for like or other serious offences; and previous convictions for like or other serious offences. Some other aggravating factors to which court considers include:

  (i) Prevalence of the offence - If there is a high incidence of a particular offence then the court is entitled to take this into account. If it affects the sentence, then reasons must be given. Prevalence can be established by taking judicial notice of local circumstance if appropriate, or by receiving evidence from local police, prosecutors, probation officers, or other appropriate persons.

  In the Organisation of Eastern Caribbean States (OECS), there appears to be conflicting opinions on whether judicial notice can properly be taken of the prevalence factor or whether this must be a matter proved by statistical evidence.

[4] Meisha Clement v R, [2016] JMCA Crim 26, para. [29]
Nadia Pooran v The State Criminal App No. 32 of 2015
[5] Kurt Taylor v R [2016] JMCA Crim 23
Meisha Clement v R, [2016] JMCA Crim 26, paras [27]-[28]
[6] Boodoosingh K., Ronnie: The Complete Advocate (2nd ed.) 2013 Xlibris Corporation
[7] ECSC Sentencing Guidelines Rules 2019- Practice Direction 8A- No. 1 of 2019
Judicial Education Institute: Trinidad and Tobago Sentencing Handbook 2016, Paria Publishing Company Limited

In addressing the question of whether prevalence of the offence can be factored in at the first step of the four-stage process, that is, under aggravating factors relative to the offence, the following points of observation are noted:

- Prevalence is a matter which goes well beyond judicial notice and there is the need for some form of statistical evidence or expert law enforcement evidence; there is the need for sufficiently cogent information in this regard.
- No adverse comment was made in cases where sentencing judges took judicial notice of the prevalence of the particular offence.

(ii) Dangerousness - In cases involving serious physical and/or sexual violence the court may find the offender to be 'dangerous.' The reasons for such a finding must be expressed in the sentencing remarks.

- Dangerousness is established by a finding that the defendant presents a significant ongoing risk of serious harm to any member of the public by the commission of future similar offences. "Serious harm" means death or serious personal injury, whether physical or psychological.
- The finding can only be made on the extreme facts of the current offence alone or on the combination of the current offence with previous serious offending.
- The court must seek a report on the issue but is not necessarily bound to follow any recommendation. Reasons for not following such a recommendation must be given as part of the sentence.
- If the offender is found to be 'dangerous,' the court may impose a longer than commensurate sentence. If so, the court should specify the original sentence and additional term imposed to reflect the finding of dangerousness.
- Dangerousness should be considered at step four as part of the process of considering the principle of totality.

(iii) Abuse of trust - Abuse of trust is an aggravating factor, particularly in sexual offences and offences of dishonesty.

- Examples of mitigating factors relevant to an offence include, but are not limited to:
  (i) Provocation.
  (ii) Excessive self-defence.
  (iii) Lack of violence in how the crime was committed.
  (iv) The offender was an accomplice and his participation was minimal.
  (v) An act of kindness done even as the crime was being committed.
  (vi) That there was no significant loss to the victim.
  (vii) Whether the victim may have somehow contributed to or provoked the prisoner's actions.

(viii) Any remorse shown to the victim right after the act.

(ix) Voluntary intoxication, whether by drink or drugs, is not a mitigating factor save in exceptional circumstances, and in many cases may be aggravating.

(x) Delay may be a mitigating factor warranting in appropriate circumstances some discount of a sentence, if there has been unreasonable delay through no fault of a defendant or his legal representation between the time of charge and of sentence.

- Case examples of calculating the starting point:

(i) In **Ramoutar, Badree and Hosein v The State Cr. App. Nos. S 028, 029 and 030 of 2015,** all three appellants pleaded guilty to murder upon the basis of the felony murder construct. The Court of Appeal note the following aggravating factors in relation to the offence:

- The offence was committed for gain;
- The involvement of multiple assailants;
- The use of a weapon;
- The use of gratuitous violence;
- The disposal of the body.

There were no mitigating factors relative to the offence. The starting point adopted was **30 years.**

(ii) In **Ramah and Oliverrie v The State Cr. App. Nos. 34 and 35 of 2015,** the appellants pleaded guilty to murder upon the basis of the felony murder construct. In determining the starting point, the Court of Appeal note the following aggravating factors in relation to the offence:

- The offence was committed for gain;
- The involvement of multiple assailants;
- The use of a weapon;
- The use of gratuitous violence;
- The deceased pleaded for his life;
- The appellants threatened to kidnap the sister of the deceased.

There were no mitigating factors relative to the offence. The starting point adopted was **35 years.**

(iii) In **Fizul Rahaman v The State Cr. App. No. P 027 of 2015,** the appellant pleaded guilty to murder upon the basis of the felony murder construct. In determining the starting point, the Court of Appeal noted the following aggravating factors in relation to the offence:

- The use of a weapon;
- The number and severity of the injuries afflicted by the Appellant;
- The breach of trust involved;

- The offence was committed for gain;
- The home invasion.

There were no mitigating factors relative to the offence. The starting point adopted was **35 years.**

Step 2: *Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.*

The objectives of sentencing as stated on page one are applied here. An appropriate upward or downward adjustment of the starting point (or dependent on the circumstances, and if there is in effect, a cancelling out, no adjustment at all), which takes into account the aggravating and mitigating factors relative to the offender; these are the subjective circumstances of the offender which in turn inform the degree of the culpability of the particular offender.

- Examples of *aggravating factors relevant to the offender* include, but are not limited to:
  (i) **The offender's criminal history -** Where the offender has previous convictions, this gives an indication of his bad character, the likelihood of his re-offending, and that the offender is unrepentant and recalcitrant.
  (ii) **Maturity of the offender -** Where the offender is an adult person in society, he is expected to appreciate the consequences of his wrongful act.
  (iii) **Commission a subsequent offence whilst on bail -** Re-offending whilst on bail enhances sanctions to reflect the abuse of trust and the manifested proclivity for offending behaviour.
  (iv) **Bad character -** In most cases, bad character, if relevant, is an aggravating factor affecting the offender and may result in an increase in sentence.

- Examples of *mitigating factors relevant to the offender* include, but are not limited to:
  (i) **The appellant's good character -** As a general principle of sentencing good character is a mitigating factor affecting the offender and should result in a reduction of sentence. However, there may be circumstances where the combination of aggravating factors makes the offence so abhorrent that the good character of a defendant may be insufficient to merit a reduction in sentence.
  (ii) **Mentally impaired**[10] **offenders or a lack of capacity to appreciate the criminality of his act -** Where the offender acted in situations of extreme mental stress or anxiety, where the act was spontaneous or provoked, or where the offender acted under duress, it may be evident that he did not willfully intend the consequences of his actions.

  Additionally, due to a physical or mental impairment, the offender may have lacked substantial capacity for judgement at the time the offence was committed. Such impairment is a relevant consideration if the offender has a diagnosed mental illness or a severe impairment. This must be supported by a report from a suitably qualified professional.

[10] Regina v Godwin Modeste, GDAHCR2016/0064

(iii) **Assistance to the authorities or co-operation with law enforcement officials**[11]- If an offender has provided accurate and hitherto unknown information to the prosecuting authorities, enabling serious criminal activity to be stopped and criminals to be apprehended, then in accordance with the case of **Ong v Regina 2012 NZLR 258,** there may be a further reduction in sentence. Such information must be confirmed in evidence in camera by a senior police officer. In this case, at *para.13,* the Court of Appeal of New Zealand stated:

> *"Any credit must be linked to tangible and valuable assistance. The sentencing Judge is entitled appropriately as matter of discretion to give no or minimal credit where assistance was of little or no value. The proper approach is to identify credit as a mitigating factor independent of any reduction from other mitigating factors and guilty plea."*

At *para. 16,* the concept of "invaluable assistance" was described as follows:

> *"Value is a function of quality and quantity. If the information given is unreliable, vague, lacking in practical utility, or already known to the authorities, no identifiable discount may be given, or if given, any discount will be minimal. If the information given is accurate, particularised, useful in practice, and hitherto unknown to the authorities, enabling serious criminal activity to be stopped, and serious criminals brought to book, the discount may be substantial."*

(iv) **Youth and immaturity of the offender -** Youth and the prospects of rehabilitation may be mitigating factors relative to an offender. In some situations, young offenders may have been directed by others who are older. Imposing lower sentences in those cases would only encourage that practice, unless there are real prospects of rehabilitation and the unlikelihood of re-offending.

However, where the offender is a youth who is in relevant respects a first offender and appears genuinely motivated to reform, there may be benefit both to the offender and society in a significantly reduced sentence.[12]

In **R v Mako CA 446/99 (New Zealand),** the sentencing judge fixed the sentence on the aggravated robbery charge to reflect the overall offending. On considering the factor of youth, the judge said:

> *"Where the offender is a youth who is in relevant respects a first offender and appears genuinely motivated to reform, there may be benefit both to the offender and society in a significantly reduced sentence. Whether this is so in a particular case requires a realistic assessment which gives proper weight to the fact that aggravated robbery even when committed by an immature offender, remains serious violent offending."*

[11] R v A (Informer: Reduction of Sentence) [1999] 1 Cr App R (S) 52

[12] The ECSC Sentencing Guidelines Rules 2019- Practice Direction 8D- No. 1 of 2019 outlines the sentencing principles concerning persons below the age of 18 years.
Jaggernauth and Kanhai v The State Cr. App. Nos. 16 and 18 of 2007

In **Ramoutar, Badree and Hosein v The State Cr. App. Nos. S 028, 029 and 030 of 2015,** the Court of Appeal, in calculating the sentences of the appellants, considered in great detail the young age considerations. The court held that once the age of majority had been attained (i.e., 18 years) with the attendant conferral of important adult rights and privileges (such as the capacity to contract and to vote), youth by itself would not inevitably lead to a reduction in sentence. Adult offenders must be taken, where deliberate action is engaged in, to have courted the consequences of their behaviour and choices.

The court held that if the age of majority was to be considered as meaningful, representing as it does both notionally and practically the portal into the world of adult decision-making and overall responsibility, then any offender of and over that age will have a severely uphill task in persuading a sentencing court that without more, comparative youth is a mitigating factor.

The court went on to say that if on the evidence, it could be seen that the youth of an offender had rendered him susceptible to more mature influence, this may be a factor which could, depending on the context, be taken into account and it might lead either to a minor reduction or to a more substantial reduction in the sentence.

In respect of offenders who had not yet attained the age of majority, the court held that the courts might assume a certain level of immaturity in the absence of any evidence which might suggest otherwise, for example, where a minor was clearly a "ringleader" and involves others, even adults, in the subject wrongdoing. In the absence of such evidence, a nominal reduction may be given as a nod to youth.

(v) **Ill health of the offender**[13] - A medical condition, which may at some time in the future affect either the offender's life expectancy, or the prison's ability to treat them, is not generally a reason to interfere with an otherwise appropriate sentence. If the offender is HIV positive or otherwise has a reduced life expectancy, this should not generally affect the sentence. Where the offender has a serious medical condition and it is not easily treatable in prison, they are not automatically entitled to a lesser sentence. In exceptional circumstances, the offender's serious medical condition might enable the court to reduce the sentence as an act of mercy.

(vi) **Other personal circumstances -** The offender's family life is especially relevant, for instance, where the offender has several dependents and he is the sole surviving provider for them or the offender has a strong family background and the family is willing to provide support to his rehabilitation.

[13] R v Bernard [1997] 1 Cr App R (S) 135

Step 3: *Adjust the figure on assessing discount for any plea of guilty, if applicable.*

(Where appropriate), a discount of sentence is applied for a guilty plea,[14] however, the fact that a person has pleaded "not guilty" to an offence does not constitute an aggravating factor. Any deviation from the usual discount requires particularly careful justification and an explanation which is clearly expressed.[15] Therefore, reasons must be given if the court decides to give no or reduced credit. It is insufficient for a judge to simply indicate that he has taken an accused's guilty plea into account. It is best practice when imposing sentence after a guilty plea, for the judge to state the measure of the discount if any occasioned by the guilty plea. Judges are also required to set out in their reasons the methodology of the discount and explain in arithmetical terms how he has dealt with the discount for the guilty plea.

The basis for a reduction is that it is helpful in many respects when someone guilty of an offence indicates willingness to plead guilty at the earliest opportunity. This avoids the guilty being acquitted. It also benefits those most closely affected by the crime by sparing them the tension of a trial and the requirement to give evidence. It reduces the time spent in bringing the case to a conclusion (with all the consequential savings in public money); saves victims and witnesses from the ordeal of giving evidence; and shortens the time that elapses between an offence being committed and sentence being passed. It also serves to encourage others to plead guilty where appropriate.[16] A guilty plea may also be regarded as an indication of remorse in an appropriate case.[17]

In determining the amount of reduction of sentence, the court may take into account the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty and the circumstances in which this indication was given. The maximum reduction will be given only where the offender indicated willingness to admit guilt at the first reasonable opportunity. We consider that the first real opportunity to plead guilty is upon arraignment. While there is an earlier technical opportunity to plead guilty available at a preliminary enquiry, in the absence of case management rules and given the current state of court lists, this is not a first opportunity when viewed from any reasonable pragmatic point of view.

Whether a defendant pleads guilty at the first reasonable opportunity is always relevant, this is, however, a matter for particular inquiry rather than formalistic quantification. The following are some points to note when considering discounts for guilty pleas.

(i) It was held in **Alexander Don Juan Nicholas, Gregory Tan and Oren Lewis v The State Cr. App. Nos. 1-6 of 2013,** at *para. 57,* that there is a long-established principle that an early and/or non-tactical plea of guilt attracts a "discount," unless there is compelling reason to deny it. Whatever the starting point, the "discount" is to be applied so that in circumstances in which, at first blush, a life sentence appears

[14] Meisha Clement v R, [2016] JMCA Crim 26, paras [36]-[39]
Sterlin Vincent v The State Cr. App. No. P 017 of 2016
[15] Nadia Pooran v The State Criminal App No. 32 of 2015
[16] Keith Smith v R (1992) 42 WIR 33, 35-36
Jermaine Barnes v R [2015] JMCA Crim 3, para. [11]
[17] R v Collin Gordon, SCCA No 211/1999, judgment delivered on 3 November 2005, page 4; Kurt Taylor v R, [2016] JMCA Crim 23 para [32]

appropriate, the existence of a guilty plea, would serve to mitigate that the imposition of that sentence. The inevitable result will be a term of years. It is circuitous to argue that where a life sentence is appropriate, the "discount" cannot be given effect.

(ii) It is important that the accused ascertain what discount is applied, the Court of Appeal in **Terry Daly v The State Cr. App. No. 1 of 2012,**[18] at *para. 14,* endorsed the reasoning of the Scottish Court in **Du Plooy v HM Advocate (No. 1) 2003 S.L.T 1237,** where Lord Justice General Cullen emphasised the importance of the accused being able to clearly ascertain what discount was applied. He stated at *para. 25:*

> *"In our view it is desirable that, where a plea of guilty and related matters call for some allowance, the sentencer should use a distinct discount in the process of arriving at the appropriate sentence, and should state in court the extent to which he or she has discounted the sentence. ...*
>
> *It is in the interests of the public as well as that of the accused that the extent to which sentences are discounted should be known. Those who represent accused persons should know, at least in general terms, the extent to which a sentence is likely to be reduced in the event of an early plea of guilty, so that they can advise the accused accordingly. Stating the discount which has been applied will also serve the purpose of providing victims and the public with a clear explanation as to how the sentences on a plea of guilty have been arrived at.*
>
> *In indicating that this practice should be adopted, we do not mean to suggest that, as from this time, there should necessarily be a reduction in sentences, but rather that there should be greater transparency in the process by which sentencers explain what has led them to the sentences which they impose."*

(iii) It was held in **R. v. Paul Edward Buffrey (1993) 14 Cr. App. R. (S.) 511,** that it would be quite wrong to suggest that there was any absolute rule as to what the discount should be. Each case must be assessed by the trial judge on its own facts and there would be considerable variance between one case and another. As general guidance, the court believed that something of the order of one third would very often be an appropriate discount from the sentence which would otherwise be imposed on a contested trial.

(iv) While the one-third discount for a guilty plea acts generally, there are cases in which the circumstances are so grievous that even on a guilty plea; this disentitles the convict to a one third discount or to any discount at all.

(v) Jamaica appears to be the only country in the region that has statutory provisions on this point providing details on the appropriate discount based on the circumstances of the case. In Jamaica, *Sections 42C- 42E,* of the *Criminal Justice (Administration) (Amendment) Act, 2015,* provides a scale of discount depending on the circumstances of the case.

[18] Terry Daly v The State Cr. App. No. 1 of 2012, Yorke-Soo Hon, J.A at paras. [16]-[18]

The provisions of this Part of the legislation is not applicable to the offence of murder falling within under *Section 2(1),* of the *Offences Against the Person Act;* the offence of murder where *Section 3(1A),* of the *Offences Against the Person Act* applies; or an offence following plea negotiations and the conclusion of a pleas agreement pursuant to the provisions of the *Criminal Justice (Plea Negotiations and Agreements) Act*.[19]

Where a defendant pleads guilty to an offence with which he has been charged, the court may, in accordance with subsection (2), reduce the sentence that it would otherwise have imposed on the defendant, had the defendant been tried and convicted with the offence. The court may reduce the sentence that it would otherwise have imposed on the defendant in accordance in the following manner:

- 50%, where the plea is entered on the first relevant date;
- 35%, where the offender indicates to the court that he or she wishes to plead guilty after the first relevant date, but before the trial commences;
- 15%, where the offender pleads guilty, after the trial has commenced, but before the verdict is given.[20]

Section 42E, provides for a reduction of sentence upon guilty plea for the offence of murder falling within *Section 2(2),* of the *Offences Against a Person Act.* The factors that the court ought to consider in determining the reduction of sentence is prescribed by *Section 42H.*

(vi) In **Aguillera, Ballai, Ballai and Ayow v The State Crim App 5678 of 2015,** the Court of Appeal held that the precise moment when a plea of guilty is entered, is only one of several circumstances that must be evaluated by the judge. The usual discount of approximately one-third (1/3) may be properly reduced if the plea is motivated by tactical considerations.

In this regard, the strength of the prosecution case may, on occasion, be a relevant factor to be evaluated in considering all the circumstances in which the plea is entered. The court found that the trial judge acted well within the parameters of the discretion entrusted to him in concluding that because of the strong prima facie quality of the prosecution evidence, the pleas were tactical in nature and attracted a reduced discount of 25%. Remorse may be sometimes demonstrated by a guilty plea but it is not necessarily exemplified by it. If after a thorough and robust evaluation by the judge, a defendant's remorse is manifest, sentencing credit may be given to it, separate and apart from the guilty plea.

(vii) It was noted in **Najeeb Dawood v The Queen [2013] NZCA 381,** that while a guilty plea is an admission of responsibility in the face of an inevitable conviction, there may be in reality, very little remorse for which credit could be given.

[19] Section 2 of the Criminal Justice (Administration) (Amendment) Act 2015, amends the Criminal Justice (Administration) Act, Cap. 83 by inserting section 42C.

[20] Section 2 of the Criminal Justice (Administration)(Amendment) Act 2015, amends the Criminal Justice (Administration) Act, Cap. 83 by inserting section 42D.

(viii) In determining the discount in overwhelming cases, the court considers the decision in **R v Caley and Others [2012] EWCA Crim. 2821,** *Hughes LJ said at para. 24:*

> *"The various public benefits which underlie the practice of reducing sentence for plea of guilty apply just as much to overwhelming cases as to less strong ones. Next, judges ought to be wary of concluding that a case is "overwhelming" when all that is seen is evidence which is not contested. Thirdly, even when the case is very strong indeed, some defendants will elect to force the issue to trial, as indeed is their right. It cannot be assumed that defendants will make rational decisions or ones which are born of any inclination to co-operate with the system, but those who do merit recognition. When contemplating withholding a reduction for plea of guilty in a very strong case, it is often helpful to reflect on what might have been the sentences if two identical defendants had faced the same "overwhelming" case and one had pleaded guilty and the other had not."*

(ix) The practice of taking other pending charges into consideration when imposing a sentence is a conventional practice, not founded on statute or any rule of law. It is essential that those administering justice should ensure that the accused understands what is being done, admits the offences and wishes to have each and every one of them taken into consideration.

Step 4: *Give credit for time served on remand.*

In **Da Costa Hall v The Queen CCJ Appeal No. Cr. 1 of 2010 [2011] JCCJ 6 (AJ),** a decision of the Caribbean Court of Justice, the majority of the panel laid down "the primary rule" that:

> *"A judge should grant substantially full credit for time spent on remand in terms of years or months and must state his or her reason for not granting a full reduction or no reduction at all."*[21]

This should as far as possible be done by way of an arithmetical deduction when assessing the length of the sentence that is to be served from the date of sentencing.[22] Therefore, the sentencing judge should therefore ensure that accurate information about the precise number of days spent in custody is made available to the court. The prison authorities, prosecution and defence practitioners must ensure that the court is furnished with accurate information relating to the time spent in custody on remand.

In pronouncing sentence arrived at in this way, the sentencing judge should state clearly what he or she considers to be the appropriate sentence, taking into account the gravity of the offence

[21] Callachand v The State [2008] UKPC 49; Walter Borneo v The State Criminal App. No. 7 of 2011; Gomes v The State [2015] UKPC 8, para 12
Shonovia Thomas v The Queen BVIHCRAP2010/0006

[22] Callachand & Anor v The State [2008] UKPC 49, para. 9
Romeo Da Costa Hall v The Queen [2011] CCJ 6 (AJ)
Meisha Clement v R, [2016] JMCA Crim 26, paras [34]-[35]
Richard Brown v R [2016] JMCA Crim 29

and all mitigating and aggravating factors, before deducting the time spent on remand.[23] In some cases, with the significant passage of time, the offender may have changed and the court will take into account the defendant's subsequent positive character.[24] Despite the general rule, the sentencing judge retains a residual discretion to depart from it in exceptional cases.[25]

Examples of some exceptional circumstances are:

- Where the offender has deliberately contrived to enlarge the amount of time spent on remand;
- Where the offender is or was on remand for some other offence unconnected with the one for which he or she is being sentenced;
- Where the offender was serving a sentence of imprisonment during the whole or part of the period spent on remand;
- Generally, where the offender has been in custody for more than one offence and cannot therefore expect to be able to take advantage of time spent on remand more than once.

Additionally, it was noted in **R v Tiso [1990] 12 Cr App R (S) 122,** that offences involving sexual abuse are by their very nature likely to remain undetected for substantial periods, partly because of fear, partly because of family solidarity and partly because of embarrassment. Taylor LJ, went on to say:

> *"We consider that whilst any factors which have positively emerged in the time between the offences and the trial are open to the court to be taken into consideration., the mere passage of time cannot attract a great deal of discount by way of sentence in relation to offences of this kind."*

However, because the primary rule is that substantially full credit should be granted for the time spent on remand, the sentencing judge must give reasons for not doing so in any case in which it is decided to depart from the rule in any way.[26] All in all, proper consideration when dealing with the time an accused has spent in custody to ensure transparency.

[23] Romeo Da Costa Hall v The Queen [2011] CCJ 6 (AJ), para. [26]
[24] R v Bird [1987] 9 Cr App R (S) 77
[25] Callachand v The State [2008] UKPC 49, para. 10
Romeo Da Costa Hall v The Queen [2011] CCJ 6 (AJ), para. 18
[26] Romeo Da Costa Hall v The Queen [2011] CCJ 6 (AJ)

Other sentencing considerations

(i) **Totality -** The principle of totality requires a court, when sentencing for more than one offence, to pass a sentence that reflects the total criminality, but which is just and proportionate so that the sentence does not exceed what is necessary to reflect the overall offending behaviour. Where there has been multiple offending in one count or charge, sentences should be increased, even into a more serious category, to reflect the number of instances of offending when it is just to do so. The principle of totality should be considered. This principle applies regardless of whether the offences form a single episode of criminality or two or more separate acts of criminality.

The court's first task is to consider the appropriate sentence for each individual offence applying the relevant guideline. Secondly, it must decide whether the sentences should be made to run concurrently or consecutively. Finally, the court will then assess the overall sentence for justness and proportionality, adjusting the sentence accordingly.

(ii) **Sentence indication**[27] **-** The court may give a formal indication of sentence prior to plea if sought by the defence. The court should only give this indication if it is appropriate in all the circumstances and the usual principles of sentencing must be applied.

(iii) **Pre-sentence reports -** Whether any report is ordered and if any recommendation is followed remains a matter for the discretion of the court. Reasons should be given when a recommendation is or is not followed. If possible, the report must consider the impact of the offence on any victim.

(iv) **Concurrent sentences -** In cases where an offender is convicted for more than one offence tried at the same time:

- Where more than one offence is committed in the course of the same transaction or arises out of the same incident or facts, the general rule is that the sentences are to run concurrently with each other (e.g. assaulting a number of persons during a fight);
- Where the offences are of a similar nature and were committed over a short period of time against the same victim, sentences should normally be made to run concurrently (e.g. theft by an employee from an employer);

Where the offender is already serving a sentence for another offence, the court may pass a sentence of imprisonment for the subsequent offence to commence at the expiration of the previous sentence of imprisonment. Where the offences were committed on separate occasions or were committed while the offender was on bail for other offences for which he was eventually convicted, or in cases involving the use of a firearm, consecutive sentences are in principle appropriate. Even in cases where consecutive sentences may be ordered, when sentencing for a series of similar offences the court should usually pass a substantial sentence for the most serious offence, with shorter concurrent sentences for the less serious ones. A court shall have regard to the totality principle when passing consecutive sentences.

[27] ECSC Practice Direction No. 2 of 2015.

(v) **Victim impact statements -** It was reiterated in the case of the **Director of Public Prosecutions v Elvis Richardson SKBHCR 2013/0030,** that a prosecutor should not request that the court impose a custodial sentence in matters such as this. A prosecutor's role at sentencing is limited to presenting to the court all the relevant material, and to ensuring that the court is aware of the maximum or minimum ranges of sentence. It is up to the court to decide whether a custodial sentence is suitable; this is a judicial matter.

It is important for the court, in approaching the determination of an appropriate sentence, to understand the effect that the offence has on the victim or his or her immediate family in cases where the victim is deceased. In future, the prosecution should normally present admissible evidence, possibly in the form of 'victim impact statement(s)' showing the impact the offence has on either the victim or his or her family. In an appropriate case it might also be important to consider the impact the offence has on the community. The opinions of the victim or the victim's close relatives as to the appropriate sentence are not relevant.

Application of sentencing principles and methodology

The case of **Oudho Bhagaloo v. P.C. Nicholas Vialva (unrep.) Mag. App. No. 125 of 2001,** was referred to in **Shelley Ann Anganoo v The State Cr App 39 of 2008,** of where de la Bastide C.J. (as he then was) opined (at page 3):

> *"..... there is a principle that like cases should be treated alike, and that means in the context of this case that persons who are convicted of the same offence ought not to receive different punishments unless there are circumstances which justify making a distinction between their cases."*

Generally, regard must be had for the facts of each case and the factors that present themselves in each case scenario. Having followed the steps, the court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guidelines. It is important to note that though the four-step approach set out above is preferable. What is required is that the relevant factors are considered and the appropriate adjustments be made to the starting point. Additionally, in arriving at an appropriate sentence, it is always useful for a magistrate to consider the *'Principles of Sentencing.'* Magistrates are also reminded that sentencing must contain an appropriate level of flexibility per each case.

The four-stage sentencing process exemplified in a hypothetical scenario

Scenario: On the 26th July 2015, Dan Vader, who was then 30 years old, was charged with causing grievous bodily harm to Lucas Skywalker. The motive for the offence was revenge over a perceived [and not actual] slight by the victim, over the affections of Ms. P. Leia. The incident occurred after a week of careful planning by Vader, during which time, he stalked Skywalker. As a result of the incident, Skywalker sustained severe injuries and although not life threatening, some of them have led to permanent disability. At the end of the trial, Vader was found guilty of the offence.

In the jurisdiction of Coruscant, where the incident occurred, the maximum penalty prescribed under the relevant legislation for the offence in question is 15 years. It was revealed that Vader had three previous convictions, all a summary nature, for the offences of assault. He spent two years in remand for the offence in question.

Step 1: *Aggravating factors of the offence*	*Mitigating Factors of the offence*
- The extent of planning and premeditation. - The extent of injuries inflicted on the victim - The fact that the injuries lead to the permanent disability of the victim.	- There are no mitigating factors relevant to the offence.

Starting point: This starting point range is usually at the very high end of the spectrum. However, there is the need to consider that this figure will increase at the second stage because of the previous convictions. It is crucially important to leave some "headroom" in advance. This is because the statutory maximum penalty cannot be exceeded. It is helpful to rationalise the entire calculation in advance to eliminate the possibility of error. Thus, the starting point is approximately 13 years.

Step 2: *Aggravating factors relative to the offender*	*Mitigating factors relative to the offender*
- The offender's three previous convictions for offences of a broadly similar nature.	- There are no mitigating factors relative to the offender.

Upward adjustment of Starting Point (+2 Years) = 15 years

Step 3: Discount for a guilty plea is not applicable since there was a full-blown trial. However, there is no penalisation for a contested trial which is the defendant's right.

Step 4: Credit for time spent in pre-trial custody is two years.

Final sentence – 13 years imprisonment

Sentencing options

(i) *Community service order*

A community cervice order is an alternative to custodial sentences which has been introduced and may be utilized by the court in instances where a first offence has been committed by a defendant. According to Seetahal,[28] this type of order promotes the ideas of rehabilitation and making reparation to the victim of the offence while reinstating that the defendant is not being set free.

(ii) *Suspended sentences*

A suspended sentence is one that is applied by the court where the defendant is sentenced to imprisonment for a specific period. However, this sentence of imprisonment is suspended for a particular period. Sentence is passed on a person on the same basis that ordinary imprisonment would be. In other words, imprisonment is considered the appropriate sentence. The only difference is that the offender is not asked to serve the time because of exceptional circumstances operating in his favour. In **Khan (1994) 15 Cr. App R. (S.) 320,** the court held that the serious health problems that face this aging man are capable of being exceptional circumstances to warrant a suspended sentence.

A suspended sentence operates by statute as an alternative form of punishment. It is usually a term of imprisonment of up to two to three years which does not take effect immediately mainly due to the health of the offender or attempts made to make reparation to the offender. The normal antecedents of the offender such as age, good character and a plea of guilty are not in themselves exceptional circumstances. Any offence committed during the period may cause the court to impose the original sentence, however it may order a lesser sentence if the offender is deserving of it. It is generally necessary that the defendant be apprised of the nature of the suspended sentence and the consequences should he commit another offence during the period.

It was held in **Director of Public Prosecutions v Elvis Richardson SKBHCR 2013/0030,** that a custodial sentence may be suspended in an appropriate case where an immediate custodial sentence might have the effect of derailing the stability and future prospects of a man of good character in a case with strong mitigating factors. In this case, this custodial sentence will be suspended, this defendant being a stable man, and one of the few certified divers on the island, with a steady job in his field, and with future prospects. The custodial part of the sentence will be suspended for a period of twelve months. Should the defendant commit any further offences in this period, he will be brought back to court for consideration of the possible activation of the suspended sentence.

[28] Commonwealth Caribbean Criminal Practice and Procedure, 4th edition- Chapter 17

(iii) *Fines*

A fine is a sum of money ordered to be paid by the offender to the State. A fine is primarily a chastisement for the current offence and is meant to be a deterrent to future offending. It is designed to make sufficient impact on the spending power of the defendant and cause significant hardship proportionate with the seriousness of the offence. This serves as punishment for offenders who have committed summary offences; these are usually the more frequent offences such as traffic offences. All territories contain the sum of the fine to be paid under the specific legislation that they are charged under.

It was held in **Authority Cambridge v Brown Mag App No. 34 of 1983,** that in determining the fine, the magistrate takes into account the defendant's ability to pay, employment record, age, any previous convictions and in instances of drug trafficking, the market value of the illegal drugs seized.

In **Osbourne et al v Commissioner of Police VC 2004 CA 2,** the appellants were charged with possession of cannabis with intent to supply and were sentenced to a fine to be paid forthwith. The Court of Appeal allowed the appeal, holding that although there was no direct authority that states that the court should order an inquiry into the means of the appellants to pay the same,

> *"The imposition of fines to be paid forthwith without enquiry as to means was tantamount to imposing a prison sentence."*

A point to note from **Lester Charles, Ahmed Williams v The Commissioner of Police MCRAP 2009/001,** is that where there is a default in payment, either the fine not being paid at all or not being paid on time, an alternate period of imprisonment is set out in the relevant statute.

In the magisterial criminal appeal of **Govindra Ramnarine v PC Christopher Emrite A2-24 C.A.MAG.19/2009,** from Trinidad and Tobago, the court reviewed the conviction and sentence of 12 months imprisonment with hard labour where the appellant and another removed 10 feet of electrical cable that was attached to the panel box of the victim's house. The appellant was charged with larceny of the electrical cable valued at $2,500.00. The court allowed the appeal and varied the sentence to a fine of $3,000.00 or in default nine months imprisonment with hard labour. This case is exemplified the use of fine as a sentencing option within the Caribbean.

(iv) *Probation orders*

Instead of sentencing a person convicted of an offence (not an offence for which its sentence is fixed by law), a court may make a probation order. A probation order is one that requires the offender to be under the supervision of a probation officer for a specified period. These types of orders are normally made in lieu of other forms of punishment.

(v) *Conviction and discharge*

Where a court considers that it is inexpedient or not appropriate to inflict punishment or order probation, it may, discharge an offender absolutely. In such a case no conviction is recorded against the defendant, even though he is guilty of the offence. The power to discharge an offender absolutely appears to derive from statute and should be imposed in accordance with the terms of the provision.

On the other hand, a court may discharge an offender on condition that he commits no offence during a specified period. In such a case, the court must explain to the offender the consequences of the order in that should he commit another offence during the period of the conditional charge, he will be liable to be sentenced for the original offence.

(vi) *Discharge with no record of conviction*

Where the defendant is released absolutely; or conditionally and commits no offence during a specified period, the defendant is absolutely discharged with no offence recorded against him.

(vii) *Compensation*

A compensation order is an order made by the magistrate requiring a person convicted of an offence to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence under consideration by the magistrate. The concept here is to prevent the defendant from committing other crimes in order to meet the compensation order.

It was held in **R v Wylie [1974] Crim LR 608,** that a compensation order may be made in addition to another sentence but only where the other sentence is not a harsh one. Where it accompanies a substantial term of imprisonment, an order for compensation should not be made as the offender would have already served the alternative term in imprisonment.

A compensation order may be made in addition to another sentence but only where the other sentence is not a harsh one. Where it accompanies a substantial term of imprisonment, an order for compensation should not be made as the offender would have already served the alternative term in imprisonment. The concept here is to prevent the defendant from committing other crimes in order to meet the compensation order.

Where the victim accepts the compensation, he is precluded from bringing a civil action for the damages; he can refuse to accept it in order to preserve his rights to the claim. Restitution orders are also made by the court for the defendant to return the property to the owner.

(viii) *Imprisonment*

This punishment consists of the custodial detention of an offender in prison for a specific term, during which time he is subjected to discipline. The maximum period of imprisonment for any offence is determined by the statute that either creates the particular offence or provides the penalty for the particular offence. However, the power of a magistrate to impose imprisonment is determined by the maximum provided in the relevant summary procedure or summary offences legislation. In practice, a magistrate will rarely impose a sentence of imprisonment for a purely summary offence. Where an indictable offence is tried summarily, however, imprisonment is more frequently utilised for these more serious offences.

Sentencing children

With regards to children, imprisonment/life imprisonment is not to be imposed on a child, except as a last resort. When a child is convicted of an offence, the court on determining the sentence may request an investigation and report from a probation or social worker; a child psychologist or psychiatrist; a Children's Home; the Authority or any other suitable person. Where the court imposes a sentence different from that which is recommended in the report, it shall record the reasons for the imposition of the different sentence.

The purpose of the sentencing in the respective Acts are set out to promote awareness to the child of the act performed and its repercussions; the reintegration of the child into the family and the community; and to ensure that the child receives the necessary supervision, guidance, treatment and services necessary for the reintegration process. Thus, community service, probation and non-custodial sentences in generally preferred.

ANGUILLA

Sentencing guidelines[29]

The Eastern Caribbean Supreme Court implemented Practice Directions on sentencing which were made pursuant to *rule 6(1),* of the *Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019,* and supplements *rule 7(2);* and are applicable to the territory of Anguilla.

Sentencing options in Anguilla

Children[30]

- Where a juvenile has been found guilty of any offence before a juvenile court, that court (which for the purposes of this section shall be deemed to be the Magistrate's Court) may, notwithstanding the provisions of *Sections 114, 115, 116, 117 and 118,* of the *Magistrate's Code of Procedure Act,* make an order:

[29] ECSC (Sentencing Guidelines) Rules L.S.I 2/2019 and Practice Directions 7A- 7D.
[30] Anguilla- Juvenile Act, R.S.A. c. J20, section 8.

- Dismissing the case: *Section 8(1)(a);*
- Under the *Probation Act: Section 8(1)(b);*
- Committing the offender to the care of any fit person, whether a relative or not, who is willing to undertake the care of him: or *Section 8(1)(c);*
- Ordering the parent or guardian of the offender to enter into a recognizance for the good behaviour of such offender: *Section 8(1)(d);*

- Consent of any person to undertake the care of a juvenile in pursuance of an order made under subsection (1)(d), shall be proved in such manner as the court may think sufficient to bind him: *Section 8(2).*

i. **Community service order -** The *Probation Act, R.S.A. c. P96,* read conjunctively with the *Probation Regulations, R.R.A. c. P96-1*

- Where the court makes a community service order, the offender is required to perform unpaid work for such number of hours and in such manner as prescribed by the order, and in accordance with instructions and advice given under subsection (5): *Section 16(3);*
- The court shall not make a community service order unless the offender consents and the court is satisfied that the offender has the capacity to perform the work under the order: *Section 16(4);*
- A community outreach officer and the supervisor of the community service site shall instruct and advise the offender regarding general and specific expectations and tasks to be met and performed by the offender while on site: *Section 16(5);*
- Any instructions or advice given under subsection (5), shall as far as practicable avoid conflict with the offender's religious beliefs and with the times, if any, during which he normally works or attends an educational institution: *Section 16(6);*
- The Chief Probation Officer may engage the voluntary services of persons, as he thinks fit, to assist the Department of Probation in the supervision of the offender: *Section 16(7);*
- When the court makes community service orders in respect of two or more offences by the same offender, the court may order that the hours of work specified in the orders be concurrent with or consecutive to each other, but the total number of consecutive hours shall not exceed 1,200: *Section 16(8);*
- Subject to *Section 20,* a probation order that includes a condition under *Section 15(a),* is called a "community service order": *Section 16(2).*

ii. **Suspended sentence -** *The Criminal Code, R.S.A. c. C140*

- Subject to subsection (2), where a court passes a sentence of imprisonment for a term of not more than two years for an offence, it may order that the sentence shall not take effect unless, during a specified period in the order, being not less than one year or more than two years from the date of the order, the offender commits in Anguilla another offence punishable with imprisonment: *Section 45(1);*

- A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion that:
    - The case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence: and *Section 45(2)(a);*
    - The exercise of that power can be justified by the exception circumstances of the case: *Section 45(2)(b);*
- A court which passes a suspended sentence on any person for an offence shall:
    - Consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order: and *Section 45(3)(a);*
    - Not make a probation order in his case in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court: *Section 45(3)(b);*
- Where an offender is convicted of an offence punishable with imprisonment committed during the period of a suspended sentence, then, unless the sentence has already taken effect, the court shall consider his case and deal with by one of the following methods:
    - The court may order that the suspended sentence shall take effect with the original term unaltered: *Section 45(4)(a);*
    - The court may order that the sentence shall take effect with the substitution of a lesser term for the original term: *Section 45(4)(b);*
    - The court may by order vary the original order under subsection (1) by substituting for the period specified therein a period expiring not later than two years from the date of the variation: *Section 45(4)(c);*
    - The court may make no order with respect to the suspended sentence: *Section 45(4)(d);*
- Where the court orders that a suspended sentence shall take effect, with or without any variation of the original term, it may order that the sentence shall take effect immediately or that the term thereof shall commence on the expiration of another term of imprisonment passed on the offender by that or another court: *Section 45(5);*
- In proceedings for dealing with an offender in respect of a suspended sentence, any question whether the offender has been convicted of an offence punishable with imprisonment committed during the period of the suspended sentence is one of law to be determined by the court and not by the verdict of a jury: *Section 45(6).*

iii. **Fines -** *The Criminal Code, R.S.A. c. C140*

Magistrate's power to impose fine

- Subject to the provisions of this Code or any other law:
  - A person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment: and *Section 39(1)(a);*
  - In the case of an offence punishable by a fine or a term of imprisonment or to both, the imposition of a fine or of a term of imprisonment or to both shall be in the discretion of the court: *Section 39(1)(b);*
- Where a fine is imposed under any law, then, in the absence of express provisions relating to the fine in the law, the following provisions shall apply:
  - Where no limit is expressed as regards the amount of the fine which may be imposed is unlimited but shall not be excessive: *Section 39(2)(a);*
  - Where a court is imposing a fine:
    (i) in the case of an offence punishable with imprisonment as well as a fine, and in which the offender is sentenced to a fine (with or without imprisonment): or *Section 39(2)(b)(i);*
    (ii) in every case of an offence punishable with a fine only, in which the offender is sentenced to a fine: *Section 39(2)(b)(ii);*

  the court imposing the fine may, in its discretion, direct by its sentence that in default of payment of the fine, within such time (if any) as the court may direct, the offender shall suffer imprisonment for the maximum term specified in *Section 40,* which imprisonment shall be in addition to and consecutive with any other imprisonment to which he may have been sentenced or may be liable under a commutation of sentence.
- For the purposes of *para. (2)(b),* where the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such person has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless, for special reasons to be recorded in writing by the court, it considers it necessary to do so: *Section 39(3).*

The Magistrate Code of Procedure Act, R.S.A. c. M5

- In all cases where the magistrate has jurisdiction to inflict imprisonment, he may reduce the prescribed period: *Section 110(1);*
- Where he has jurisdiction to impose a fine, if it is in respect of a first offence, he may reduce the prescribed amount thereof: *Section 110(2);*
- Where he is authorised to inflict imprisonment and does not have the option of imposing a fine, he may impose a fine of $4,800.00, but the amount of the fine so inflicted shall not subject the offender in default of payment to any greater term of imprisonment than that to which he would have been otherwise liable: *Section 110(3);*

- Where in case either of fine or imprisonment there is prescribed a requirement for the offender to enter into his recognizances and to find sureties for keeping the peace and observing some other condition or to do any of those things, the magistrate may dispense with that requirement or any part of it: *Section 110(4);*
- This section:
  - Does not apply to any proceedings taken under any Act relating to Her Majesty's regular or auxiliary forces: and *Section 110(5)(a);*
  - Does not authorise the magistrate to reduce the amount of a fine where the Act prescribing the amount carries into effect a treaty, convention, or agreement with a foreign state and the treaty, convention or agreement stipulates for a fine of a minimum amount: *Section 110(5)(b).*

Payment of fine

- The magistrate by whose conviction any sum is adjudged to be paid may do all or any of the following things:
  - Order imprisonment in the first instance, unless the sum be paid forthwith: *Section 124(a);*
  - Allow time for the payment of the sum: *Section 124(b);*
  - Direct payment to be made of the sum by instalments: *Section 124(c);*
  - Direct that the person liable to pay the sum shall be at liberty to give to the satisfaction of that magistrate, or such person as may be specified by him, security with or without a surety or sureties for the payment of the sum or of any instalment thereof and the security may be given and enforced in manner provided by this Act: *Section 124(d);*
  - Issue a warrant of distress for the levying of the sums: *Section 124(e);*
  - Order imprisonment in default of sufficient distress or of the payment of any instalment: *Section 124(f);*
- Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment forthwith of the full amount of the fine or of the amount that remains unpaid: *Section 125;*
- A warrant committing a person to prison in respect of the non-payment of a sum adjudged to be paid by a conviction[31] of the magistrate shall not be issued forthwith unless the magistrate is satisfied that the person is possessed of sufficient means to enable him to pay the sum forthwith, or unless, upon being asked by the magistrate whether he desires that time should be allowed for payment, he does not express such a desire or fails to satisfy the magistrate that he has a fixed abode in Anguilla or unless the magistrate for any other special reason expressly directs that no time shall be allowed: *Section 128(1);*

[31] Anguilla- Magistrate's Code of Procedure Act M5, section 128(5). The expression "sum adjudged to be paid by a conviction" includes any costs adjudged to be paid by the conviction, the amount of which is ascertained by the conviction.

- Where any such person desires to be allowed time for payment, the magistrate in deciding what time shall be allowed shall consider any representation made by him, but the time allowed shall not be less than seven clear days, but, if before the expiration of the time allowed the person convicted informs the magistrate that he prefers immediate committal to awaiting the expiration of the time allowed, the magistrate may if he thinks fit forthwith issue a warrant committing him to prison: *Section 128(2);*
- In all cases where time is not allowed for payment, the reasons of the magistrate for the immediate committal shall be stated in the warrant of commitment: *Section 128(3);*
- Where time has been allowed for the payment of a sum adjudged to be paid by a conviction or order of the magistrate, the magistrate may allow further time or he may direct payment by instalments of the sum adjudged to be paid: *Section 128(4);*

Children

- Where a child is charged with any offence for the commission of which a fine, damages or costs may be imposed and the magistrate or a Juvenile Court is of opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the magistrate or a Juvenile Court shall order that the fine, damages or costs awarded be paid by the parent or guardian of the child instead of by the child, unless the magistrate or a Juvenile Court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child: *Section 115(1);*
- An order under this subsection may be made against a parent or guardian who, having been required to attend, has failed to do so, but, except in that case, no order shall be made without giving the parent or guardian an opportunity of being heard: *Section 115(2);*
- Any sums imposed and ordered to be paid by a parent or guardian under this section may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged: *Section 115(3).*

iv. **Probation -** *The Probation Act, R.S.A. c. P96,* read conjunctively with the *Probation Regulations, R.R.A. c. P96-1*

Eligibility for a probation order

- When a person pleads guilty to or is convicted of an offence, the court may:
  - Instead of passing sentence, discharge the offender on the condition that he complies with conditions set out in a probation order: or *Section 13(1)(a);*
  - In addition to fining the offender, direct that he complies with conditions set out in a probation order: *Section 13(1)(b).*

Procedure

- When the court makes a probation order, it shall:
  - Take reasonable steps to ensure the offender understands the order: *Section 21(1)(a);*
  - Explain the procedure for applying for a change to the optional conditions: *Section 21(1)(b);*
  - Explain the consequences of being convicted of an offence while on probation: *Section 21(1)(c);*
  - Explain the consequences of non-compliance with the probation order: *Section 21(1)(d);*
  - Require the offender to sign the probation order and in the case of a juvenile offender require the parent or appointed person, as the case may be, to co-sign the probation order: and *Section 21(1)(e);*
  - Cause a sealed or court stamped copy of the order to be given to the offender: *Section 21(1)(f);*
- When the court exercises it powers under *Section 13,* the court shall order that the offender complies with the following conditions which constitute a probation order:
  - Not to commit another offence during the period of the order: *Section 14(a);*
  - To appear before the court when required to do so by the court: *Section 14(b);*
  - To notify the Department of Probation in writing in advance of any intended change of address and to promptly notify the Department of Probation of any change of employment or occupation: *Section 14(c);*
  - To report to the Department of Probation within the times stated in the order and thereafter when required by the Department of Probation and in the manner directed by the Department of Probation: *Section 14(d);*
  - Not to leave Anguilla without the written permission of the Department of Probation: and *Section 14(e);*
  - To maintain employment with an employer approved by the Department of Probation or to attend an educational institution, as appropriate: *Section 14(f);*
- In addition to the conditions outlined in *Section 14,* the court may, if it thinks fit, order that the offender complies with one or more of the following conditions of a probation order:
  - To perform up to 1,200 hours of community service over a period not exceeding 12 months: *Section 15(a);*
  - To abide by the terms of any curfew as the court directs and to refrain from:
    (i) participating in specified activities or attending specified places: *Section 15(b)(i);*
    (ii) associating with a specified person or class of persons: *Section 15(b)(ii);*
  - To submit to drug and alcohol testing as directed by the court and to abstain

from the consumption of controlled drugs within the meaning of the Drugs (Prevention of Misuse) Act, and the consumption of alcohol: *Section 15(c);*

- To participate in a drug or alcohol treatment or rehabilitative programme approved by the Department of Probation: *Section 15(d);*
- To participate in other rehabilitative programmes designed to correct the offending behaviour, improve social skills and reduce the risk of re-offending: *Section 15(e);*
- To serve intermittent periods of incarceration as the court thinks fit: *Section 15(f);*
- To do one or more of the following:
  (i) pay compensation: *Section 15(g)(i);*
  (ii) pay costs: or *Section 15(g)(ii);*
  (iii) make restitution of property: *Section 15(g)(iii);*

in accordance with *Sections 42, 43, 286* or *305* of the *Criminal Code,* as the case may be: or

- To abide by such other reasonable conditions as the court may direct for the purpose of ensuring the successful reintegration of the offender into the community: *Section 15(h);*

- A probation order comes into force when made, except that where the offender at that time is incarcerated in respect of another offence, the probation shall come into force on such date as the court orders or when no such order is made, on the date that the offender is released from prison save when the offender is released pursuant to a parole licence granted under the *Parole of Prisoners Act,* in which case the probation order shall not come into force: *Section 21(1);*
- A probation order continues in force for such period as the court may specify in it, but unless suspended under subsection (3), no probation order shall continue in force for more than three years after the date which it came into force: *Section 21(4);*
- Unless the court orders otherwise a probation order is automatically discharge on the expiration of its term: *Section 31;*
- If an offender is bound by a probation order is subsequently imprisoned in relation to an offence committed prior to making of the probation order, the order is suspended during the period of imprisonment and shall at the court's discretion continue in force when the offence is released from prison, save when the offender is released pursuant to a parole licence granted under the *Parole of Prisoners Act,* in which case the probation order shall cease to have effect: *Section 21(3);*
- If an offender who is bound by a probation order is convicted of an offence committed during the term of the probation order, in addition to any punishment that may be imposed for that offence, the court shall, after hearing the prosecutor and the offender or his counsel, exercise its power under *Sections 33(2)* or *34(3),* as the case may be: *Section 37;*

- The court may, after hearing the Department of Probation and the offender, discharge the probation order: *Section 30(2).*

Children/Young Persons

- Where a probation order has been made in relation to a juvenile offender and that offender thereafter ceases to be a juvenile, the probation order shall continue in force until it is discharged or otherwise ceases to have effect: *Section 28;*
- The court shall revoke a probation order in relation to a juvenile order only when it is satisfied that probation has not resulted and is unlikely to result in the rehabilitation of a juvenile offender: *Section 35(2).*

v. **Conviction and discharge**

The Criminal Code, R.S.A. c. C140

- Where in any trial the court thinks that the charge is proved, but is of the opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge: *Section 51(1);*
- An order made under subsection (1), shall, for the purpose of revesting or restoring stolen property and of enabling a court to make an order in that behalf, have the like effect of a conviction: *Section 51(2);*
- Where any charge is dismissed under subsection (1), the court may order the accused person to pay the whole or any part of the costs of and incidental to the prosecution: *Section 51(3).*

The Probation Act, R.S.A. c. P96 read conjunctively with the Probation Regulations, R.R.A. c. P96-1

- The Department of Probation may apply to the court for an order that a probation order be discharged before the expiration of its term, where:
  - The offender has served at least three quarters of his probation period: *Section 30(1)(a);*
  - The offender has been fully compliant with the conditions in the probation order: and *Section 30(1)(b);*
  - The Department of Probation is satisfied that the offender is sufficiently rehabilitated that his likelihood of re-offending is negligible: *Section 30(1)(c).*

Children/ Young Persons - *The Magistrate Code of Procedure Act, R.S.A. c. M5*

- Where a child or young person is convicted as mentioned in *Sections 114* to *117,* the magistrate if he thinks it inexpedient to inflict any punishment may discharge the accused: *Section 118.*

vi. **Discharge with no record of conviction -** *The Magistrate Code of Procedure Act, R.S.A. c. M5*

- If the magistrate dismisses the case upon the merits, he may, when required to do so, make an order of dismissal and give the defendant a certificate thereof that shall without further proof be a bar to any subsequent charge for the same matter against the same party: *Section 103.*

vii. **Compensation -** *The Criminal Code, R.S.A. c. C140*

- Any person who is convicted of an offence may be ordered by the court to make compensation to a person injured, in person or property, by his offence and any such compensation may be in addition to any other punishment: *Section 43(1);*
- Subsection (1), shall not preclude any person who or whose property has been injured by the Act or omission of another from bringing an action in respect of such injury but, if he does so the court, in making an award, shall take into account any compensation that may have been paid by virtue of an order under subsection (1): *Section 43(2).*

viii. **Imprisonment**[32]

The Criminal Code, R.S.A. c. C140

- All imprisonment for an offence shall be without hard labour: *Section 37(1);*

The Magistrate Code of Procedure Act, R.S.A. c. M5

- Where the magistrate convicts a person and orders him to be imprisoned without the option of a fine, he shall by his warrant commit him to prison there to be imprisoned for the period mentioned in the warrant: *Section 111;*
- Where a sentence of imprisonment[33] for a summary offence is passed on any person, the magistrate may order that the sentence commence at the expiration of any other term of imprisonment to which that person has been previously sentenced, so, however, that where two or more sentences of the magistrate are ordered to run consecutively, the aggregate term of imprisonment shall not exceed two years, unless the sentences include at least:
  - Two sentences for indictable offences dealt with summarily by consent: or *Section 112(1)(a);*
  - A sentence for an offence for which the magistrate was empowered to order a term of imprisonment of more than two years: *Section 112(1)(b);*

  in which case the aggregate term of imprisonment shall not exceed four years.

[32] Anguilla- The Prison (Extramural Sentences) Act R.S.A. c. P80 provides that persons sentenced for short-term periods may opt for non-residential labour in lieu of imprisonment.

[33] Anguilla- Magistrate's Code of Procedure Act M5, section 112(2). In subsection (1) "sentence of imprisonment" includes cases where imprisonment is imposed on any person either with or without the option of a fine, or in respect of non-payment of any sum of money, or for failing to do or abstaining from doing any act or thing required to be done or left undone.

- Where a person has been sentenced to imprisonment in default of payment of a fine, the magistrate may, notwithstanding the provisions of subsection (1), order that the sentence begin at the expiration of any term of imprisonment imposed for that offence on that person in addition to the fine: *Section 112(3);*
- In the absence of express provisions in any law relating thereto, the term of imprisonment which may be ordered by the magistrate in respect of the non-payment of any sum adjudged to be paid as a fine, costs or compensation or of any sum adjudged to be paid under any law relating to the offence of which the offender has been convicted shall be fixed in accordance with *Section 39(1),* of the Code: *Section 129*.

Where the amount of the sum of money adjudged to be paid	The period of imprisonment shall not exceed
does not exceed $200	14 days
exceeds $200 but does not exceed $500	30 days
exceeds $500 but does not exceed $1,000	2 months
exceeds $1,000 but does not exceed $2,000	4 months
exceeds $2,000	6 months

Children

The Probation Act, R.S.A. c. P96, read conjunctively with the *Probation Regulations, R.R.A. c. P96-1*

- A juvenile offender remanded in custody under *Section 34(1),* shall be detained at a designated institution: *Section 35(1).*

The Magistrate Code of Procedure Act, R.S.A. c. M5

- No child convicted under this Act or the Juvenile Act is liable to be imprisoned or to pay a fine exceeding $384: *Section 114.*

ANTIGUA AND BARBUDA

Sentencing guidelines[34]

In 2019, the Eastern Caribbean Supreme Court implemented *Sentencing Guidelines Rules* which are applicable in Antigua and Barbuda. These rules apply to all criminal proceedings conducted in the court for which sentencing guidelines have been issued. In determining sentence, the court must have regard to any relevant principles stated in a practice direction issued under these rules. In sentencing for an offence for which a guideline has been issued, the court must apply the relevant sentencing guideline and sentence, unless to do so would not be in the interests of justice.

[34] Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules No. 49 of 2019 and Practice Directions 8A - 8D.

Sentencing options in Antigua and Barbuda

i. **Community service order -** *The Prison (Extramural Sentences) Act, Chap. 342,* which must be read conjunctively with the *Prison (Extramural Sentences (Amendment)Act, No. 10 of 2014*

Eligibility for a community service order

- Notwithstanding any law to the contrary, a person:
  - Sentenced by a court of competent jurisdiction to imprisonment for a term not exceeding 12 months: *Section 3(1)(a);*
  - Below the age of 25 years, who is convicted of an offence which, in the opinion of the court, is not a serious offence[35]: *Section 3(1)(b);*
  - Liable to be committed to prison for non-payment of a fine of a sum of money ordered to be paid in respect of maintenance, affiliation or civil proceedings: *Section 3(1)(c);*

  may on the recommendation of the court and subject to the consent of the person opt to be employed on public work outside the prison under the supervision and control of a public authority instead of serving the sentence of imprisonment.[36]

Procedure

- Every such person shall be employed on a daily task which shall be such as can normally be completed in the usual working day and at the usual working hours as the Extramural Prison Officer[37] shall direct and while not so employed shall not be subject to any prison rules: *Section 3(2);*
- Every person employed on such labour as aforesaid shall be required to report daily during the term of his sentence to the Extramural Prison Officer or to such person as the Extramural Prison Officer shall nominate and at such time and place as he shall direct: *Section 3(3);*
- If any such person fails, without reasonable cause to the satisfaction of the extramural prison officer, to present himself at the appointed time and place or absents himself from his task without permission or works or conducts himself in a manner which the extramural prison officer shall consider unsatisfactory the extramural prison officer may, after due warning, order that such person shall undergo the confinement

[35] Antigua and Barbuda - The Prison (Extramural Sentences (Amendment) Act No. 10 of 2014, section 2, "serious offence" means an indictable offence under any Act of Parliament for which the maximum punishment is imprisonment for five years or more or another offence that is prescribed by regulation.

[36] Section 4 of the Prison (Extramural Sentences (Amendment) Act No. 10 of 2014 amended section 3 of the Prison (Extramural Sentences Act) Cap 342.

[37] Antigua and Barbuda- Prison (Extramural Sentences Act) Cap 342 read conjunctively with the Prison (Extramural Sentences (Amendment) Act No. 10 of 2014, section 2. "Extramural Prison Officer" means a person appointed as such by the Governor-General and in default of such appointment means the Superintendent of the Prison to which the persons mentioned in paragraphs (a), (b) and (c) of section 3 would be liable to be committed by the Court.

to which he is liable, subject nevertheless to a deduction of the number of days on which he has completed his daily task and he shall thereupon be committed to prison accordingly: *Section 3(4).*

Children[38]*- The Child Justice Act, No. 23 of 2015,* read conjunctively with the *Child Justice Amendment Act, No. 4 of 2018*

- Sentences which allow children to remain in the community and which may be imposed pursuant to the provisions of this Act are as follows:
  - Any of the options referred to in *Sections 46(2)(a)* to *(h): Section 62(1)(a);*
  - Placement under a supervision and guidance order pursuant to the *Probation of Offenders Act*, for a period not exceeding three years: *Section 62(1)(b);*
  - In cases which warrant such specialised intervention, referral to counselling or therapy in conjunction with any of the options listed in this section for a period of time as the court deems fit: *Section 62(1)(c);*
  - Where the child is over the age of compulsory school attendance, and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose, for a period not exceeding one year and for no more than 35 hours per week: *Section 62(1)(d);*
  - Performance without remuneration of some service for the benefit of the community under the supervision or control of a specified person or institution identified by the court for a maximum period of 250 hours and which shall be completed in one year: *Section 62(1)(e);*
  - Committing the child to the care of any fit person, whether a relative or not, who is willing to undertake the care of him: *Section 62(1)(f);*
  - Ordering the parent of the child to enter into a recognizance for the good behaviour of such child: *Section 62(1)(g);*
  - Any other sentence, subject to *Section 71,* which is appropriate to the circumstances of the child and in keeping with the principles of this Act and which, if it includes a period of time, shall not exceed 12 months: *Section 62(1)(h);*
- Consent of any person to undertake the care of a child in pursuance of an order made under *para. (g)* of subsection (1), shall be proved in such manner as the court may think sufficient to bind him: *Section 62(2);*
- Before a child under the age of 14 years is sentenced pursuant to subsection (1)(e), special consideration shall be given to the age and development of the child: *Section 62(3).*

[38] Antigua and Barbuda- Child Justice Act No. 23 of 2015 read conjunctively with the Child Justice Amendment Act No. 4 of 2018, section 2. "Child" means a person under the age of eighteen years.

ii. **Suspended sentences**

- It was held in the case of **Director of Public Prosecutions v Shane Williams-ANUHCRAP2018/0011,** where it was held that the legislature of Antigua and Barbuda has not enacted any legislation providing for the imposition of suspended sentences, and pointed out that the learned judge did not refer to any legislation upon which he relied to impose the sentence. The learned judge fell into error in imposing a suspended sentence and acted without jurisdiction or lawful authority.

  It was further submitted that even if the legislature had provided for a suspended sentence, the particular circumstances of the case did not warrant its imposition. The offence was a very serious one, attracting a life sentence; the aggravating factors significantly outweighed the mitigating factors, and there were no exceptional circumstances justifying its imposition.

The Eastern Caribbean Supreme Court (Sentencing Guidelines), Rule No. 49 of 2019, which must be read conjunctively with *Practice Direction 8C*

- Since the decision in the above case, the *Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019, Statutory Instrument 2019, No. 49,* was enacted which provided the following:
  - In determining whether a suspended sentence is appropriate the court must have regard to the principles as identified in the relevant Practice Direction[39] issued in relation to the power of the court to suspend a sentence: *rule 8(4).*

Children *- The Child Justice Act, No. 23 of 2015,* read conjunctively with the *Child Justice Amendment Act, No. 4 of 2018*

- The passing of any sentence may be postponed, with or without one or more of the conditions referred to in subsection (3), for a period not exceeding three years: *Section 70(1);*
- The whole or any part of any sentence may be suspended, with or without one or more conditions referred to in subsection (3), for a period not exceeding five years: *Section 70(2);*
- The conditions contemplated in subsections (1) and (2), may be any condition appropriate to the circumstances of the child which is keeping with the objects of this Act and which promotes the reintegration of the child into society and may include:
  - Restitution, compensation or symbolic restitution: *Section 70(3)(a);*
  - An apology: *Section 70(3)(b);*
  - The obligation not to commit a further offence of a similar nature: *Section 70(3)(c);*
  - Good behaviour: *Section 70(3)(d);*
  - Regular school attendance for a specified period: *Section 70(3)(e);*

[39] ECSC Sentencing Guidelines Rules 2019, Practice Direction 8C- No. 1 of 2019

- Attendance at a specified time and place of a family group conference: *Section 70(3)(f);*
- Placement under the supervision of a probation officer: *Section 70(3)(g);*
- A requirement that the child shall appear before the court on a date or dates to be determined by the court for a periodic progress report: and *Section 70(3)(h);*
- Referral to any diversion option referred to in *Sections 46(2)(d), (e), (f), (g), (h), (i), (j)* or *(k): Section 70(3)(i);*

- Where the court has postponed the passing of a sentence pursuant to subsection (1), on one or more conditions, the court may request the social worker or probation officer concerned to submit regular reports indicating the compliance of the child with the conditions: *Section 70(4).*

iii. **Fines -** The *Magistrates Code of Procedure, Chap. 255,* which must be read conjunctively with the *Magistrates Code of Procedure (Amendment) Acts, No 3. of 1993, No. 8 of 1994, No. 13 of 2004, No. 7 of 2005, No. 2 of 2014* and *No. 2 of 2018*

Power of the magistrate to impose fine

- It is noteworthy to mention, the judgement of the Court of Appeal in **R v Ramcharan (1970) 17 WIR 407,** which held that a judge has no common law power to impose a fine for a felony or an arrestable offence, that power is given through statute throughout the Commonwealth Caribbean;
- In all cases where a magistrate has jurisdiction to inflict imprisonment, the magistrate may order the imprisonment to be without hard labour, and reduce the prescribed period of such imprisonment or do either of such acts: *Section 96(1);*
- Where the magistrate has jurisdiction to impose a fine, if it be in respect of a first offence, he may reduce the prescribed amount of such fine: *Section 96(2);*
- Where the magistrate is authorized to inflict imprisonment and has not the option of imposing a fine, the magistrate may impose a fine not exceeding twenty thousand ($20,000.00) dollars, provided that the amount of the fine imposed will not subject the offender in default of payment to any greater term of imprisonment than that to which he would have been otherwise liable: *Section 96(3);*
- Where, in case either of fine or imprisonment, there is prescribed a requirement for the offender to enter into his recognizances and to find sureties for keeping the peace, observing some other condition, or to do any or all of such things, the magistrate may dispense with any such requirement or any part thereof: *Section 96(4);*
- Subsection (4), shall not apply to any proceedings taken under any Act relating to Her Majesty's regular or auxiliary forces; neither is the magistrate authorized to reduce the amount of a fine where the Act prescribing such amount carries into effect a treaty, convention, or agreement with a foreign state and such treaty, convention, or agreement stipulates for a fine of a minimum amount": *Section 96(5).*

Payment of fine

- A magistrate by whose conviction any sum is adjudged to be paid may do all or any of the following things, namely:
    - Order imprisonment in the first instance, unless such sum be paid forthwith: *Section 111(a);*
    - Allow time for the payment of the said sum: *Section 111(b);*
    - Direct payment to be made of the said sum by instalments: *Section 111(c);*
    - Direct that the person liable to pay the said sum shall be at liberty to give to the satisfaction of that magistrate, or such person as may by specified by him, security with or without surety or sureties for the payment of the said sum or of any instalment thereof and such security may be given and enforced in manner provided by this Act: *Section 111(d);*
    - Issue a warrant of distress for the levying of the said sums: *Section 111(e);*
    - Order imprisonment in default of sufficient distress or of the payment of any instalment: *Section 111(f);*
- Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment forthwith of the full amount of the fine or of such amount as remains unpaid: *Section 112;*
- It was held in **Lester Charles, Ahmed Williams v The Commissioner of Police MCRAP 2009/001,** that where there is a default in payment, either the fine not being paid at all or not being paid on time, an alternate period of imprisonment is set out in the relevant statute;
- A magistrate to whom application is made either to issue a warrant of distress or for any endorsement thereon for any sum adjudged to be paid by a conviction or order or to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid by a conviction, or for default of sufficient distress to satisfy any such sum, may, if he deem it expedient so to do, postpone the issue of such warrant until such time and on such conditions, if any, as to him shall seem just: *Section 114;*
- A warrant committing a person to prison in respect of the non-payment of a sum adjudged to be paid by a conviction of a magistrate shall not be issued forthwith unless the magistrate is satisfied that such person is possessed of sufficient means to enable him to pay the sum forthwith, or unless, upon being asked by the magistrate whether he desires that time should be allowed for payment, he does not express any such desire, or fails to satisfy the magistrate that he has a fixed abode within the magistrate's district, or unless the magistrate for any other special reason expressly directs that no time shall be allowed: *Section 115(1)(a);*

- Where any such person desires to be allowed time for payment the magistrate in deciding what time shall be allowed shall consider any representation made by him, but the time allowed shall not be less than seven clear days:
    - Provided that if before the expiration of the time allowed the person convicted informs the magistrate that he prefers immediate committal to awaiting the expiration of the time allowed, the magistrate may if he thinks fit forthwith issue a warrant committing him to prison: *Section 115(1)(b);*
- In all cases where time is not allowed for payment, the reasons of the magistrate for the immediate committal shall be stated in the warrant of commitment: *Section 115(1)(c);*
- The statutory position was reiterated in **Mills v Byron (1968) 12 WIR 301,** where it was held that where a defendant is unable to pay, he can request an extension in which to do so. The magistrate should enquire whether he can pay the fine for or he wishes an extension of time to pay the fine. The magistrate is prohibited from committing a defendant to prison for failing to paying a fine forthwith unless the magistrate is satisfied that such person is possessed of sufficient means to enable him to pay the sum forthwith. He must follow the guidelines set out by statute;
- Where time has been allowed for the payment of a sum adjudged to be paid by a conviction[40] or order of a magistrate, the magistrate may allow further time or he may direct payment by instalments of the sum so adjudged to be paid: *Section 115(2).*

Children *- The Child Justice Act, No. 23 of 2015,* read conjunctively with the *Child Justice Amendment Act, No. 4 of 2018*

- Notwithstanding the provisions of any other law, the court convicting a child of an offence for which a fine or imprisonment is stated by law as the penalty, may impose any one of the following penalties in place of that fine or imprisonment:
    - Symbolic restitution to a specified person or institution: *Section 71(1)(a);*
    - Payment of compensation not exceeding $20,000 to a specified person or institution where the child or his family is in a financial situation to afford such an amount: *Section 71(1)(b);*
    - An obligation on the child to provide a service or benefit or to pay compensation to a specified organisation identified by the child concerned or by the court, if there is no identifiable person to whom restitution or compensation could be made: or *Section 71(1)(c);*
    - Any other sentence as stated in this Act, except imprisonment: *Section 71(1)(d).*

[40] Antigua and Barbuda- Magistrate's Code of Procedure Act, Cap. 255 read conjunctively with the Magistrates Code of Procedure (Amendment) Acts No 3. of 1993, No. 8 of 1994, No. 13 of 2004, No. 7 of 2005, No. 2 of 2014 and No. 2 of 2018, section 115 (3). The expression "sum adjudged to be paid by a conviction" includes any costs adjudged to be paid by the conviction of which the amount is ascertained by such conviction.

The Magistrates Code of Procedure, Chap. 255, which must be read conjunctively with the *Magistrates Code of Procedure (Amendment) Acts, No 3. of 1993, No. 8 of 1994, No. 13 of 2004, No. 7 of 2005, No. 2 of 2014* and *No. 2 of 2018*

- No child convicted under the provisions of this Act or the Juvenile Act, shall be liable to be imprisoned or to pay a fine exceeding fifty dollars: *Section 101;*
- Where a child is charged with an offence for the commission of which a fine, damages or costs may be imposed and the magistrate or a Juvenile Court is of the opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the magistrate or a Juvenile Court shall order that the fine, damages or costs awarded be paid by the parent or guardian of the child instead of by the child, unless the magistrate or a Juvenile Court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child: *Section 102(1);*
- An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard: *Section 102(2);*
- Any sums imposed and ordered to be paid by a parent or guardian under this section may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged: *Section 102(3);*
- A young person convicted under this Act shall be liable to be imprisoned without hard labour for a period not exceeding three months or to pay a fine not exceeding two hundred dollars: *Section 103(1).*

iv. **Probation orders -** *The Probation of Offenders Act, Chap. 345*

Eligibility for a probation order

- Any person charged before an inferior court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, is eligible of a probation order: *Section 2(1).*

Procedure

- A recognizance ordered to be entered into under this Act shall, if the court so order, contain a condition that the offender be under the supervision of such person as may be named in the order (in this Act referred to as the supervisor) during the period specified in the order and such other conditions for securing such supervision as may be specified in the order, and an order requiring the insertion of such conditions as aforesaid in the recognizance is in this Act referred to as a probation order: *Section 3(1);*

- A recognizance under this Act may contain such additional conditions with respect to residence, abstention from intoxicating liquor, and any other matters, as the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences: *Section 3(2);*
- The court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he is required to observe: *Section 3(3);*
- The court before which any person is bound by a recognizance under this Act to appear for conviction and sentence or for sentence:
    - May at any time if it appears to it, upon the application of the supervisor, that it is expedient that the terms or conditions of the recognizance should be varied, summon the person bound by the recognizance to appear before it, and, if he fails to show cause why such variation should not be made, vary the terms of the recognizance by extending or diminishing the duration thereof (so, however, that it shall not exceed three years from the date of the original order) or by altering the conditions thereof or by inserting additional conditions: or *Section 6(a);*
    - May on application being made by the supervisor, and on being satisfied that the conduct of the person bound by the recognizance has been such as to make it unnecessary that he any longer be under supervision, discharge the recognizance: *Section 6(b);*
- The person named in a probation order as supervisor may at any time be relieved of his duties, and, in any such case, or in case of the death of the person so named, another person may be substituted by the court before which the offender is bound by his recognizance to appear for conviction or sentence: *Section 4;*
- It shall be the duty of a supervisor, subject to the directions of the court:
    - To visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order or, subject thereto, as the supervisor may think fit: *Section 5(a);*
    - To see that he observes the conditions of his recognizance: *Section 5(b);*
    - To report to the court as to his behaviour: *Section 5(c);*
    - To advise, assist and befriend him, and, when necessary, to endeavour to find him suitable employment: *Section 5(d).*

Children *- The Child Justice Act, No. 23 of 2015,* read conjunctively with the *Child Justice Amendment Act, No. 4 of 2018*

- See *Section 62,* outlining "Community based sentences."

The Juvenile Act, Chap. 229

- Where a juvenile has been found guilty of any offence before a Juvenile Court, that court (which for the purposes of this section shall be deemed to be an inferior court of summary jurisdiction within the meaning of the *Probation of Offenders Act,* may, notwithstanding the provisions of *Sections 101,102,103,104 and 105,* of the *Magistrate's Code of Procedure Act,* make an order:
  - Dismissing the case: *Section 12(1)(a);*
  - Under the *Probation of Offenders Act: Section 12(1)(b);*
  - Placing the offender, either in addition to or without making any other order under this section, for a specified period not exceeding three years, under the supervision of a probation officer: *Section 12(1)(c);*
  - Committing the offender to the care of any fit person, whether a relative or not, who is willing to undertake the care of him: *Section 12(1)(d);*
  - Ordering the parent or guardian of the offender to enter into a recognizance for the good behaviour of such offender: *Section 12(1)(e);*
- Consent of any person to undertake the care of a juvenile in pursuance of an order made under *para. 6,* of subsection (1), shall be proved in such manner as the court may think sufficient to bind him: *Section 12(2);*
- Where a juvenile has been placed under the supervision of a probation officer, that officer shall, while the order remains in force, visit, advise and befriend him and when, necessary, endeavour to find him suitable employment, and may, if it appears necessary in his interest so to do, at any time while the order remains in force and he is under the age of 16 years, bring him before a juvenile court, and that court may, if it thinks it is desirable in his interest so to do, commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him: *Section 13(1);*
- Where a person is bound by his recognizances before a Juvenile Court or that court makes an order under the *Probation of Offenders Act,* in respect of a juvenile, the attainment by that person of the age of 16 years shall not deprive the court of jurisdiction to enforce his attendance and deal with him in respect of any failure to observe the conditions of his recognizance, or of jurisdiction to vary or discharge the recognizance: *Section 13(2);*

v. **Conviction and discharge -** *The Probation of Offenders Act, Chap. 345*

- Where any person is charged before an inferior court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either:

- Dismissing the information or charge: or *Section 2(1)(a);*
- Discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order: *Section 2(1)(b);*

- If the court before which an offender is bound by his recognizance under this Act to appear for conviction or sentence, or any inferior court of summary jurisdiction is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties (if any) requiring him or them to attend at such court and at such time as may be specified in the summons: *Section 7(1);*
- The offender, when apprehended, shall, if not brought forthwith before the court before which he is bound by his recognizance to appear for conviction or sentence, be brought before an inferior court of summary jurisdiction: *Section 7(2);*
- The court before which an offender on apprehension is brought, or before which he appears in pursuance of such summons as aforesaid, may, if it is not the court before which he is bound by his recognizance to appear for conviction or sentence, remand him to prison or on bail until he can be brought before the last-mentioned court: *Section 7(3);*
- A court before which a person is bound by his recognizance to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his recognizance, may forthwith, without further proof of his guilt, convict and sentence him for the original offence, or, if the case is one in which the court in the first instance might, under the *Training Schools Act,* have ordered the offender to be sent to a Training School, and the offender is still apparently under the age of 16 years, make such order: *Section 7(4).*

vi. **Discharge with no record of conviction**

- There is no legislation enacted on this option for Antigua and Barbuda.

vii. **Compensation -** *The Probation of Offenders Act, Chap. 345*

- The court may, in addition to any such order, order the offender to pay such damages for injury or compensation for loss (not exceeding in the case of an inferior court of summary jurisdiction, five hundred dollars, or if a higher limit is fixed by any enactment relating to the offence, that higher limit) and to pay such costs of the proceedings as the court thinks reasonable: *Section 2(3);*
- An order for the payment of damages or compensation as aforesaid may be enforced in like manner as an order for the payment of costs by the offender; and where the court, in addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced

as if they constituted a single order for the payment of costs: *Section 2(4);*

- Where an order under this section is made by an inferior court of summary jurisdiction, the order shall, for the purpose of revesting or restoring stolen property, and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery, have the like effect as a conviction: *Section 2(5).*

viii. **Imprisonment -** *The Magistrates Code of Procedure, Chap. 255,* which must be read conjunctively with the *Magistrates Code of Procedure (Amendment) Acts, No 3. of 1993, No. 8 of 1994, No. 13 of 2004, No. 7 of 2005, No. 2 of 2014* and *No. 2 of 2018*

- Where a magistrate shall convict a person and order him to be imprisoned without the option of a fine, he shall by his warrant commit him to prison there to be imprisoned for the period mentioned in the warrant: *Section 97;*
- Where a sentence of imprisonment[41] for a summary offence is passed on any person the magistrate may order that the sentence shall commence at the expiration of any other term of imprisonment to which that person has been previously sentenced, so, however, that where two or more sentences of a magistrate are ordered to run consecutively the aggregate term of imprisonment shall not exceed two years, unless such sentences include at least:
  - Two sentences for indictable offences dealt with summarily by consent: or *Section 98(1)(a);*
  - A sentence for an offence for which the magistrate was empowered to order a term of imprisonment of more than six months: *Section 98(1)(b);*

  in which case the aggregate terms of imprisonment shall not exceed five years.[42]
- Scale of imprisonment in default of payment of fine or of sufficient distress. The period of imprisonment imposed by a magistrate under this or any other Act in respect of the nonpayment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum or in respect of the default of payment of any instalment of such sum shall, notwithstanding any enactment to the contrary, be such period as in the opinion of the magistrate will satisfy the justice of the case, but shall not in any case exceed the maximum fixed by the following scale and may be either with or without hard labour in the discretion of the Magistrate[43]: *Section 116;*

[41] Antigua and Barbuda- Magistrate's Code of Procedure Act, Cap. 225, which must be read conjunctively with the Magistrates Code of Procedure (Amendment) Acts No 3. of 1993, No. 8 of 1994, No. 13 of 2004, No. 7 of 2005, No. 2 of 2014 and No. 2 of 2018, section 98 (2). In subsection (1) "sentence of imprisonment" includes cases where imprisonment is imposed on any person either with or without the option of a fine, or in respect of non-payment of any sum of money, or for failing to do or abstaining from doing any act or thing required to be done or left undone.

[42] Section 11 of the Magistrate's Code of Procedure (Amendment) Act No. 2 of 2014 amends section 98 of the Magistrate's Code of Procedure Act, Cap. 225.

[43] Section 4 of the Magistrate's Code of Procedure (Amendment) Act No. 2 of 2018 amended section 116 of the Magistrate's Code of Procedure Act, Cap. 255 by repealing and replacing it in its entirety.

Where the amount of the sum or sums of money adjudged to be paid:	The said period shall not exceed:
does not exceed $500.00	14 days
exceeds $500 but does not exceed $1,000.00	30 days
exceeds $1,000 but does not exceed $2,500	4 months
exceeds $2,500 but does not exceed $5,000	12 months
exceeds $5,000 but does not exceed $7,500	18 months
exceeds $7,500	2 years

- Where a person has been sentenced to imprisonment in default of payment of a fine, the magistrate may, notwithstanding the provisions of subsection (1), order that the sentence shall begin at the expiration of any term of imprisonment imposed for that offence on that person in addition to the fine: *Section 98(3);*
- Where a magistrate adjudges the defendant to be imprisoned and the defendant is then undergoing imprisonment upon conviction for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the officer to whom it is directed: *Section 99.*

Children *- The Child Justice Act, No. 23 of 2015,* read conjunctively with the *Child Justice Amendment Act, No. 4 of 2018*

- Except as provided for under this Act, no court in Antigua and Barbuda shall impose a sentence of imprisonment on a child unless:
  - The child was over the age of fourteen years of age at the time of commission of the offence: *Section 69(1)(a);*
  - The offence for which the child is convicted is an offence listed under Schedule III, or murder or treason: and *Section 69(1)(b);*
  - Substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include a previous failure to respond to alternative sentences, including sentences with a residential element and where the court imposing sentence considers that no other sentence is appropriate: *Section 69(1)(c);*
- Where a sentence of imprisonment is imposed on a child pursuant to subsection (1), that sentence shall be of a duration not exceeding three years: *Section 69(2);*
- Where a child fails to comply with a condition of a sentence imposed on him or her, the child may, in the prescribed manner be brought before the court for reconsideration of the original sentence which may, subject to subsections (1) and (2), include a sentence of imprisonment: *Section 69(3);*
- Where any court imposes a sentence of imprisonment on a child, the court shall announce the period of imprisonment in open court and the coming into effect of the term of imprisonment shall be antedated by the number of days that the child has spent in prison prior to the sentence being announced in that court: *Section 69(4);*

- Subject to subsection (2), a sentence of life imprisonment or capital punishment or any form of corporal punishment shall not be imposed on a child: *Section 72(1).*

The Magistrates Code of Procedure, Chap. 255, which must be read conjunctively with the *Magistrates Code of Procedure (Amendment) Acts, No 3. of 1993, No. 8 of 1994, No. 13 of 2004, No. 7 of 2005, No. 2 of 2014* and *No. 2 of 2018*

- No child convicted under the provisions of this Act or the Juvenile Act, shall be liable to be imprisoned or to pay a fine exceeding fifty dollars: *Section 101.*

BARBADOS

Sentencing guidelines - *The Penal System Reform (Amendment) Act, 2018-34*

- In sentencing an offender, the court shall take into account the following guidelines[44]:
  - The gravity of the offence and the need to hold the offender accountable for the harm done to the victim and the community by the commission of the offence: *Section 41(2)(a);*
  - Any written representation made by a spouse or relative of the deceased, in respect of murder or manslaughter and in any other case any written representation from the victim: *Section 41(2)(b);*
  - Ensuring that the gravity of the sentence is commensurate with the nature of the offence committed by the offender: *Section 41(2)(c);*
  - The need to deter the offender and others from committing similar offences: *Section 41(2)(d);*

    The manner in which the offender executed the offence and the nature and duration of the relationship between the offender and the victim: *Section 41(2)(e);*
  - The degree of culpability of the offender and the maximum penalty prescribed for the offence: *Section 41(2)(f);*
  - Any attempt on the part of the offender to make reparation to the victim or the victim's family: *Section 41(2)(g);*
  - The need for the rehabilitation of the offender and the need to promote a sense of responsibility on the part of the offender for the harm done to the victim: *Section 41(2)(h);*
  - The need for consistency in sentencing in respect of similar offences: and *Section 41(2)(i);*
  - The possibility of providing restitution for the harm done by the offender: *Section 41(2)(j).*

[44] Section 3 of the Penal System Reform (Amendment) Act, 2018-34 amends section 41 of the Penal System Reform Act, Cap. 139 by repealing and replacing it in its entirety.

Consideration of mitigating factors - *The Penal System Reform (Amendment) Act, 2018-34*

- Nothing in this Act prevents a court from mitigating an offender's sentence by taking into account such matters as, in the opinion of the court, are relevant considerations with respect to the mitigation of a sentence, including[45]:
  - The age of the offender: *Section 39(1)(a);*
  - The particular circumstances of the offender such as his social or economic circumstances: *Section 39(1)(b);*
  - Whether the offender pleaded guilty and the point at which the guilty plea was made: *Section 39(1)(c);*
  - The circumstances or facts of the offence and the degree of the offender's involvement in the offence: *Section 39(1)(d);*
  - Any attempt by the offender to make reparation for the offence: *Section 39(1)(e).*

Sentencing options in Barbados

Children/Young Persons[46] *- The Juvenile Offenders Act, Chap. 138,* as amended by the *Criminal Appeal (Amendment and Miscellaneous Provisions) Act, 2009 - 12*

- *Sections 8 and 9,* shall not render punishable for an offence any child who is not, in the opinion of the court, above the age of 11 years and of sufficient capacity to commit crime: *Section 7;*
- Where a child or young person charged with any offence is tried by any court and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other Act or otherwise enabling the court to deal with the case, the case should be dealt with, namely, whether:
  - By reprimanding and discharging the offender: or *Section 16(1)(a);*
  - By discharging the offender on his entering into a recognizance: or *Section 16(1)(b);*
  - By so discharging the offender and placing him under the supervision of a probation officer: or *Section 16(1)(c);*
  - By committing the offender to the care of a relative or other fit person: or *Section 16(1)(d);*
  - By sending the offender to a Reformatory and Industrial School: or *Section 16(1)(e);*
  - By ordering the offender to be whipped: or *Section 16(1)(f);*
  - By ordering the offender to pay a fine, damages or costs: or *Section 16(1)(g);*

[45] Section 2 of the Penal System Reform (Amendment) Act, 2018-34 amends section 39(1) of the Penal System Reform Act, Cap. 139 by deleting and replacing it in its entirety.

[46] Barbados- Juvenile Offenders Act, Cap. 138, as amended by the Criminal Appeal (Amendment and Miscellaneous Provisions) Act, 2009 – 12, section 2. "Child" means a person under the age of 14 years and "young person" means a person who is 14 years of age or upwards and under the age of 16 years.

- By ordering the parent or guardian of the offender to pay a fine, damages or costs: or *Section 16(1)(h);*
- By ordering the parent or guardian of the offender to give security for his good behaviour; or *Section 16(1)(i);*
- Where the offender is a young person, by sentencing him to imprisonment: or *Section 16(1)(j);*
- By dealing with the case in any other manner in which it may be legally dealt with: *Section 16(1)(k);*

- Nothing in this section shall be construed as authorising the court to deal with any case in any manner in which it could not deal with the case apart from this section: *Section 16(2).*

The Penal Reform Act, Chap. 139, read conjunctively with the *Penal System Reform (Amendment) Acts, 2010-10 and 2018-34*

Subject to subsection (3), the court shall not pass a custodial sentence on the offender unless it is of opinion:

- That the offence, or the combination of the offence and one other offence associated with the offence, was so serious that only such a sentence can be justified for the offence: or *Section 35(2)(a);*
- Where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from the offender: *Section 35(2)(b);*

- In **Leandro Pope v. R (Criminal Appeal No. 11 of 2007,** unreported decision of 25 February, 2010) at paragraph [14]: it was held that:

> *"Turning to the Penal System Reform Act, Sections 35 and 36, embody the principles of offence-seriousness and proportionality. In short, no person (including a young person) should be given a custodial sentence unless the circumstances make it absolutely necessary and, then, for no longer than is necessary. In its determination of an appropriate sentence, the court will take into account the offender's age and any guilty plea as mitigating factors."*

i. **Community service order -** *The Penal Reform Act, Chap. 139,* read conjunctively with the *Penal System Reform (Amendment) Acts, 2010-10 and 2018-34*

Eligibility for a community service order

- Where a person of 16 years of age or over is convicted of an offence punishable with imprisonment, the court by or before which that person is convicted may, subject to subsection (3), make an order (referred to in this Act as a "community service order") requiring the offender to perform unpaid work in accordance with this section and *Section 14: Section 13(1);*

- The reference in subsection (1), to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders: *Section 13(2).*

Procedure

- A court shall not make a community service order in respect of an offender unless:
  - After considering a written report by a probation officer in respect of the offender and the offender's circumstances (and, if the court thinks it necessary, after hearing a probation officer), the court is satisfied that the offender is a suitable person to perform work under such an order: and *Section 13(3)(a);*
  - The court is also satisfied that arrangements can be made in the area in which the offender lives, or will live,[47] for the offender to perform work under such an order and for that work to be properly supervised: and *Section 13(3)(b);*
  - The court has first explained to the offender the matters specified in subsection (4), and the offender has consented to the making of the order: *Section 13(3)(c);*
- The matters referred to in subsection (3)(c), are:
  - The purpose and effect of the order (and in particular the requirements specified in *Section 14*): and *Section 13(4)(a);*
  - The consequences that may follow under the Second Schedule if the offender fails to comply with any of those requirements: and *Section 13(4)(b);*
  - That the order may be reviewed by the court under that Schedule: *Section 13(4)(c);*
- The number of hours[48] that a person may be required to work under a community service order must be specified in the order and must not in the aggregate:
  - Be less than 80: or *Section 13(5)(a);*
  - Be more,
    (i) in the case of an offender aged 16, than 140: and *Section 13(5)(b)(i);*
    (ii) in any other case, than 240: *Section 13(5)(b)(ii);*
- Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders; but the total number of hours which are not concurrent must not exceed the maximum specified in *paras. (b) (i)* or *(ii),* of subsection (5): *Section 13(6);*

[47] Barbados- Penal System Reform Act, Cap. 139 read conjunctively with the Penal System Reform (Amendment) Acts 2010-10 and 2018-34, section 13(8). A community service order shall specify the area in which the offender lives or will live, and the court shall cause copies of the order to be sent to the Chief Probation Officer for delivery to the probation officer assigned to that area (hereinafter referred to as "the probation officer").

[48] Barbados- Penal System Reform Act, Cap. 139 read conjunctively with the Penal System Reform (Amendment) Acts 2010-10 and 2018-34, section 13(7). The Minister may by order amend the maximum number of hours for the time being specified in paragraph (b)(i) or (ii) of subsection (5).

- An offender in respect of whom a community service order is in force shall:
    - Keep in touch with the probation officer in accordance with such instructions as the offender may from time be given by that officer, and notify that officer of any change of address: and *Section 14(1)(a);*
    - Perform for the number of hours specified in the order such work at such times as the offender may be instructed by that officer: *Section 14(1)(b);*
- The work required to be performed under a community service order shall be performed during the period of 12 months beginning with the date of the order; but unless revoked, the order shall remain in force until the offender has worked under the order for the number of hours specified in the order: *Section 14(2);*
- The instructions given by the probation officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs, or with the requirements of any other community order to which the offender may be subject, and any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment: *Section 14(3).*

ii. **Suspended sentences -** *The Penal Reform Act, Chap. 139,* read conjunctively with the *Penal System Reform (Amendment) Acts, 2010-10* and *2018-34*

- A court which passes a sentence of imprisonment on an offender for a term of not more than three years for an offence may suspend the sentence by ordering that the sentence shall not take effect unless:
    - During a period specified in the order, being not less than 12 months nor more than three years from the date of the order (in this Act referred to as "the operational period"), the offender commits in Barbados another offence punishable with imprisonment for a period exceeding six months (hereafter in this section and *Sections 7 and 8*, referred to as a "subsequent offence"); and *Section 6(1)(a);*
    - Thereafter a court having power to do so orders under *Section 7,* that the original sentence shall take effect: *Section 6(1)(b);*
- An offence shall not be suspended under subsection (1), if it involved the use or illegal possession of, a firearm or imitation firearm: *Section 6(2);*
- A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of power to suspend such a sentence by an order under subsection (1): *Section 6(3);*
- A court which passes a suspended sentence on an offender for an offence shall not make a probation order in the offender's case in respect of another offence of which the offender is convicted by or before that court: *Section 6(4);*
- Where a court passes a suspended sentence on an offender in respect of an offence and also a term of imprisonment in respect of another offence, the court shall direct that the suspended sentence be concurrent with the term of imprisonment: *Section 6(5);*

- On passing a suspended sentence the court shall explain to the offender in ordinary language the offender's liability under *Section 7,* if the offender should commit a subsequent offence during the operational period: *Section 6(6);*
- Subject to subsection (3), where an offender is convicted of a subsequent offence committed during the operational period of a suspended sentence, the court by or before which the offender is convicted of the subsequent offence may order that the suspended sentence shall take effect with the original term unaltered; or the court may substitute a lesser term of imprisonment for the original term: *Section 7(1);*
- Where a court deals with an offender in respect of a suspended sentence passed by another court, the former court shall notify the latter court of the manner in which the offender was dealt with: *Section 7(2);*
- Where a Magistrate's Court convicts of an offence an offender in respect of whom a suspended sentence passed by the High Court is in operation, the magistrate's court shall forward to the Registrar of the Supreme Court a certificate signed by the magistrate and under the seal of the Magistrate's Court certifying that the offender has been convicted of a subsequent offence, together with such other particulars of the case as the magistrate may consider desirable; whereupon a judge of the High Court before whom the offender is brought may, without prejudice to the order of the magistrate with respect to the subsequent offence, order that the suspended sentence shall take effect either with the original term unaltered or with the substitution of a lesser term for the original term: *Section 7(3);*

iii. **Fines -** *The Magistrate's Courts Act, Chap. 116A,* read conjunctively with the *Magistrate's Courts (Amendment) Acts, 2016-15* and *2017-14*

- In fixing the amount of a fine, a magistrate shall take into consideration among other things the means of the person on whom the fine is imposed so far as they appear or are known to the court: *Section 63;*
- A person guilty of an offence under *Section 49(1),* shall be liable to imprisonment for a term of two years or a fine of $2500.00 or both: *Section 61(1);*
- Where in pursuance of *Section 49(2),* a magistrate proceeds to the summary trial of an information, then, if the accused is summarily convicted of the offence, the magistrate may impose on him in respect of that offence imprisonment for a term of two years or a fine[49] of $2000.00 or both: *Section 61(2);*
- Where under any enactment whether passed before or after the commencement of this Act a magistrate has power to sentence an offender to imprisonment for a period specified by the enactment, or to a fine of an amount specified by the enactment, then, the magistrate may sentence him to imprisonment for less than that period or, as the case may be, to a fine of less than that amount: *Section 62(1);*

[49] Barbados- Magistrate's Courts Act, Cap. 116A read conjunctively with the Magistrate's Courts (Amendment) Acts, 2016-15 and 2017-14, section 61(3). In subsection (2) "fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.

- Where under any such enactment an offender sentenced on summary conviction to imprisonment or a fine is required to enter into a recognisance with or without sureties to keep the peace or observe any other condition, the magistrate convicting him may dispense with or modify the requirement: *Section 62(2);*
- Where under any such enactment a magistrate has power to sentence an offender to imprisonment or other detention but not to a fine, then, the magistrate may, instead of sentencing him to imprisonment or other detention, impose a fine that:
  - For an offence triable either way, shall not exceed $2,500.00: and *Section 62(3)(a);*
  - For a summary offence, shall:
    (i) not exceed $1,000.00: and *Section 62(3)(b)(i);*
    (ii) not be of such an amount as would subject the offender, in default of payment of the fine, to a longer term of imprisonment or detention than the term to which he is liable on conviction of the offence: *Section 62(3)(b)(ii).*

Children/Young Persons *- The Magistrate's Courts Act, Chap. 116A,* read conjunctively with the *Magistrate's Courts (Amendment) Acts, 2016-15 and 2017-14*

- Where a person under 16 years of age is found guilty by a magistrate of an offence for which, apart from this section, the magistrate would have power to impose a fine of an amount exceeding $1,000.00, the amount of any fine imposed by the magistrate shall not exceed $1,000.00: *Section 64(1);*
- In relation to a person under the age of 14, subsection (1), shall have effect as if for the words "$1,000.00," in both the places where they occur, there were substituted the words "$500": *Section 64(2).*

The *Juvenile Offenders Act, Chap. 138,* as amended by the *Criminal Appeal (Amendment and Miscellaneous Provisions) Act, 2009 – 12*

- Where a child or young person is charged before any court with any offence for the commission of which a fine, damages or costs may be imposed and the court is of opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the court may, in any case, and shall, if the offender is a child, order that the fine, damages or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person: *Section 12(1).*

iv. **Probation orders -** *The Probation of Offenders Act, Chap. 146*

- Where any person is charged with an offence which is punishable on summary conviction and the court thinks that the charge is proved but is of opinion that, having regard to the circumstances, including the nature of the offence and the character

and home surroundings of the offender, it is expedient to release the offender on probation, the court may, subject to subsection (2):

- Convict the offender and make a probation order: or *Section 3(1)(a);*
- Without proceeding to conviction, make a probation order: *Section 3(1)(b);*

- Before making a probation order under subsection (1), the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence, he is liable to be sentenced and or to be convicted and sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order: *Section 3(2);*
- Where any person is convicted of an offence which is not punishable on summary conviction and the court is of opinion that, having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may, subject to subsection (2), in lieu of imposing a sentence of imprisonment make a probation order: *Section 4(1);*
- Before making a probation order under subsection (l), the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any respect to comply therewith or commits another offence, he is liable to be sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order: *Section 4(2).*

Procedure

- The probation order shall:
  - For such period not less than one year and not more than three years from the date of the order as may be specified therein: and *Section 5(1)(a);*
  - Require the probationer to submit during that period to the supervision of a probation officer: and *Section 5(1)(b);*
  - Contain such provisions as the court considers necessary for securing the supervision of the offender and such additional conditions as to residence and other matters as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences: *Section 5(1)(c);*
- Where a probation order contains a provision as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order: *Section 5(2);*
- The court by which a probation order is made shall furnish two copies of the order, one copy to be given to the probationer and the other to the probation officer under whose supervision he is placed: *Section 5(3);*

- Where it appears to a judge or any magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may, subject to subsection (2), issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest: *Section 8(1);*
- A magistrate shall not issue such a summons except on information and shall not issue such a warrant except on information in writing and on oath: *Section 8(2);*
- A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made: *Section 8(3);*
- Where a probationer is convicted by a magistrate of an offence committed while the probation order was in force, the magistrate may commit the probationer to custody or release him on bail, with or without sureties, until he can be brought or appear before the court by which the probation order was made: *Section 8(4);*
- Some other sections to notes include:
  - Appeals: *Section 7;*
  - Failure by probationer to comply with probation order: *Section 9;*
  - Amendment of probation orders: *Sections 12, 14;*
  - Disqualification and disability of the probationer: *Section 10;*
  - Discharge of probation orders: *Sections 13, 14;*
  - Transmission of documents when case is remitted to another court: *Section 11.*

v. **Conviction and discharge -** *The Penal Reform Act, Chap. 139,* read conjunctively with the *Penal System Reform (Amendment) Acts, 2010-10 and 2018-34*

- Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion, after having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may make an order discharging the offender: *Section 3(1);*
- Such an order may discharge the offender absolutely or, if the court thinks fit, may discharge the offender subject to the condition that the offender commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order; and in this Act an order of the latter kind is referred to as an "order for conditional discharge" and the period specified in an order for conditional discharge is referred to as "the period of conditional discharge": *Section 3(2);*
- Before making an order for conditional discharge the court shall explain to the offender in ordinary language that, if the offender commits another offence during the period of conditional discharge, the offender will be liable to be sentenced for the original offence: *Section 3(3);*
- Where, under the provisions of this Part, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, the order for conditional discharge ceases to have effect: *Section 3(4);*

- If it appears to a judge or a magistrate that a person in whose case an order for conditional discharge has been made has been convicted in Barbados of an offence committed during the period of conditional discharge and has been dealt with in respect of that offence, then, subject to subsection (2), the judge or magistrate may issue a summons requiring that person to appear at the time and place specified in the summons or may issue a warrant for that person's arrest: *Section 4(1);*
- A magistrate shall not issue such a summons except on information, and shall not issue such a warrant except on information in writing and on oath: *Section 4(2);*
- A summons or warrant issued under subsection (1), shall direct that the person to whom it relates appear or be brought before the court that made the order for conditional discharge: *Section 4(3);*
- If a person in whose case an order for conditional discharge has been made by the High Court is convicted in a Magistrate's Court of an offence committed during the period of conditional discharge, the magistrate may either commit the offender to custody, or may release the offender on bail, until the offender can be brought before the High Court; and if the magistrate does so, the magistrate shall send to the High Court a copy of the record of the conviction entered in the register of the Magistrate's Court, signed by the clerk of that court: *Section 4(4);*
- Where it is proved to the satisfaction of the court that made an order for conditional discharge that the offender in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with the offender, for the offence for which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by or before that court of that offence: *Section 4(5);*
- If a person in whose case an order for conditional discharge has been made by a Magistrate's Court:
    - Is convicted before the High Court of an offence committed during the period of conditional discharge: or *Section 4(6)(a);*
    - Is dealt with by the High Court for any such offence in respect of which the offender was committed for sentence to the High Court: *Section 4(6)(b);*

  the High Court may deal with the offender, for the offence for which the order was made, in any manner in which the Magistrate's Court could deal with the offender if it had just convicted the offender of that offence.

Children/Young Persons

- Nothing in *Sections 3* or *4:*
    - Confers any powers on any court in respect of a child or young person: or *Section 5(1)(a);*
    - Modifies or otherwise affects any powers conferred on any court by the Juvenile Offenders Act, in respect of a child or a young person: *Section 5(1)(b);*
- The expressions "child" and "young person" in subsection (1), have the meanings given to them by the *Juvenile Offenders Act: Section 5(2).*

vi. **Discharge with no record of conviction -** *The Penal Reform Act, Chap. 139,* read conjunctively with the *Penal System Reform (Amendment) Acts, 2010-10 and 2018-34*

- Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion, after having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may make an order discharging the offender: *Section 3(1);*
- Such an order may discharge the offender absolutely, in which case no conviction is recorded against the name of the offender, or, if the court thinks fit, may discharge the offender subject to the condition that the offender commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order; and in this Act an order of the latter kind is referred to as an "order for conditional discharge" and the period specified in an order for conditional discharge is referred to as "the period of conditional discharge": *Section 3(2);*

vii. **Compensation**

The Probation of Offenders Act, Chap. 146

- Where a person is placed by a probation order under the supervision of a probation officer, the court may without prejudice to its power of awarding costs against the offender, order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable, but not, in the case of an order made by a court of summary jurisdiction, exceeding in the aggregate twenty-four dollars or such greater sum as may be allowed by any enactment relating to the offence: *Section 6(1);*
- Where a court makes any such order for the payment of damages, compensation or costs, the order may be enforced:
  - In the case of an offence punishable on summary conviction, in the manner laid down in the *Magistrates Jurisdiction and Procedure Act, Chap. 116,* for enforcing the payment of a sum adjudged to be paid by conviction: *Section 6(2)(a);*
  - In any other case, in like manner as is provided in *Sections 73 and 74,* of the *Offences against the Person Act, Chap. 141,* in respect of an order for the payment of actual and necessary costs and expenses: *Section 6(2)(b).*

  The Magistrate's Courts Act, Chap. 116A, read conjunctively with the *Magistrate's Code of Procedure (Amendment) Acts, 2016-15* and *2017-14*
- Subject to *Section 74,* and subsections (2) and (3), where a magistrate has convicted an accused or made an order against a defendant, he may, in addition to the sentence or penalty, if any, imposed on such accused or defendant and to any costs ordered under *Section 166,* order the accused or defendant to pay to the informant or complainant or any other person such compensation[50] as to the magistrate may seem just and reasonable: *Section 72(1);*

[50] Barbados: Magistrate's Courts Act, Cap. 116A read conjunctively with the Magistrate's Courts (Amendment) Acts, 2016-15 and 2017-14, section 72(7). In this section and in sections 73 and 74"compensation order" means an order made by a magistrate requiring a person convicted of an offence to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence that is taken into consideration by the magistrate in determining sentence.

- The magistrate shall not award compensation in respect of damages for injury or loss suffered by the informant, complainant or that other person as a result of the offence or matter upon which the information or complaint was founded unless the informant or complainant or that other person consents: *Section 72(2);*
- The award of any such compensation mentioned in subsection (2), shall release the accused or defendant from all civil proceedings for the same cause: *Section 72(3);*
- The amount of any compensation ordered to be paid under subsection (1), shall be specified in the conviction or order, as the case may be: *Section 72(4);*
- Any compensation awarded on a complaint for a maintenance order or for the enforcement, variation, revocation, discharge or revival of such an order, against the person liable to make payments under the order shall be enforceable as an amount ordered to be paid by a maintenance order: *Section 72(6);*
- The compensation to be paid under a compensation order made by a magistrate in respect of any offence of which the magistrate has convicted the offender shall not exceed $5000.00; and the compensation or total compensation to be paid under a compensation order or compensation orders made by a magistrate in respect of any offence or offences taken into consideration in determining sentence shall not exceed the difference, if any, between the amount or total amount which under the preceding provisions of this section is the maximum for the offence or offences of which the offender has been convicted and the amount or total amounts, if any, which are in fact ordered to be paid in respect of that offence or those offences: *Section 74;*
- Subject to *Section 74,* the magistrate may, on convicting a person of an offence,[51] instead of or in addition to dealing with him in any other way, on application or otherwise make a compensation order requiring him to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence that is taken into consideration by him in determining sentence: *Section 73(1);*
- Compensation under subsection (1), shall be of such amount as the magistrate considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the accused or the prosecutor: *Section 73(2);*
- Where the magistrate considers:
    - That it would be appropriate both to impose a fine and to make a compensation order: but *Section 73(5)(a);*
    - That the offender has insufficient means to pay both an appropriate fine and appropriate compensation, the magistrate shall give preference to compensation though he may impose a fine as well: *Section 73(5)(b);*

[51] Barbados: Magistrate's Courts Act, Cap. 116A read conjunctively with the Magistrate's Courts (Amendment) Acts, 2016-15 and 2017-14, section 73(3) and 73 (4). In the case of an offence under the Theft Act, Cap. 155, when the property in question is recovered, any damage to the property occurring while it was out of the owner's possession shall be treated for the purposes of subsection (1) as having resulted from the offence, however and by whomsoever the damage was caused.
No compensation order shall be made in respect of any loss suffered by the dependants of a person in consequence of his death, and no such order shall be made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road except such damage is treated by subsection (3) as resulting from an offence under the Theft Act.

- In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the magistrate shall have regard to his means as far as they appear or are known to him: *Section 73(6).*

viii. **Imprisonment**

The Magistrate's Courts Act, Chap. 116A, read conjunctively with the *Magistrate's Courts (Amendment) Acts, 2016-15* and *2017-14*

- Without limiting *Section 69,* and subject to *Section 59,* and any other enactment, a magistrate shall not have power to impose imprisonment for a term of more than two years: *Section 58;*
- On summary conviction of any of the offences triable either way listed in the Second Schedule or in any enactment, a person shall be liable:
    - On a first conviction to a fine of $2,500.00 or to a term of imprisonment for two years or both: and *Section 59(1)(a);*
    - On a second or subsequent conviction to a fine of $5,000.00 or to a term of imprisonment for five years or both: *Section 59(1)(b);*
- Notwithstanding subsection (1):
    - A magistrate shall not have the power to impose imprisonment for an offence listed in the Second Schedule if the High Court would not have that power in the case of an adult convicted of it on indictment: *Section 59(2)(a);*
    - On summary conviction of an offence consisting in the incitement to commit an offence triable either way a person shall not be liable to any greater penalty than he would be liable to on summary conviction of the last-mentioned offence: and *Section 59(2)(b);*
    - On summary conviction of attempting to commit an offence triable either way a person shall not be liable to any greater penalty than he would be liable to on summary conviction of the completed offence: *Section 59(2)(b);*
- A magistrate imposing imprisonment on any person may order that the term of imprisonment shall commence at the expiration of any other term of imprisonment imposed by him or by any other magistrate or court, but when a magistrate imposes two or more terms of imprisonment to run consecutively, the aggregate of such terms shall not, subject to this section, exceed three years: *Section 69(1);*
- Where two or more of the terms imposed by the magistrate are imposed in respect of an offence triable either way that was tried summarily, the aggregate of the terms so imposed and any other terms imposed by the magistrate may exceed three years but shall not, subject to the following provisions of this section, exceed five years: *Section 69(2);*
- The limitations imposed by subsections (1) and (2), shall not operate to reduce the aggregate of the terms that the magistrate may impose in respect of any offences below the term which the magistrate has power to impose in respect of any one of those offences: *Section 69(3);*

- Where a person has been sentenced by a magistrate to imprisonment and a fine for the same offence, a period of imprisonment imposed for non-payment of the fine or for want of sufficient distress to satisfy the fine shall not be subject to the limitations imposed by subsections (1), (2) and (3): *Section 69(4);*
- For the purposes of this section, a term of imprisonment shall be deemed to be imposed in respect of an offence if it is imposed as a sentence or in default of payment of an amount adjudged to be paid by the conviction or for want of sufficient distress to satisfy such an amount: *Section 69(5);*
- Subject to the following provisions of this Schedule, the periods set out in the second column of the following Table shall be the maximum periods applicable respectively to the amounts set out opposite thereto, being amounts due at the time imprisonment is imposed: *Sixth Schedule (1);*

Where the amount of the sum of money adjudged to be paid:	**The period of imprisonment shall not exceed:**
for any sum not exceeding $25	1 month
exceeding $25 but not exceeding $100	6 weeks
exceeding $100 but not exceeding $500	4 months
exceeding $500 but not exceeding $750	6 months
exceeding $750 but not exceeding $1,000	9 months
exceeding $1,000 but not exceeding $1,500	12 months
exceeding $1,500 but not exceeding $2,000	15 months
exceeding $2,000	2 years

- Where the amount due at the time imprisonment is imposed is so much of a sum adjudged to be paid by a summary conviction as remains due after part payment, then subject to *para. 3,* the maximum period applicable to the amount shall be the period applicable to the whole sum reduced by such number of days as bears to the total number of days therein the same proportion as the part paid bears to the whole sum: *Sixth Schedule (2);*
- The maximum period applicable to a sum due under an order made on complaint shall be six weeks: but, in calculating the reduction required under *para. 2,* any fraction of a day shall be left out of account and the maximum period shall not be reduced to less than five days: *Sixth Schedule (3);*
- Where a defendant is detained or imprisoned under a warrant of commitment issued by a magistrate, the detention or imprisonment shall not operate to discharge the defendant from his liability to pay the amount in respect of which the warrant was issued: *Section 121.*

The Penal Reform Act, Chap. 139, read conjunctively with the *Penal System Reform (Amendment) Acts, 2010-10* and *2018-34*

- Nothing in subsection (2), prevents the court from passing a custodial sentence on an offender if the offender refuses to consent to a community sentence which is proposed by the court and requires that consent: *Section 35(3);*
- Where a court passes a custodial sentence, it is the court's duty:
  - In a case not falling within subsection (3), to state in open court that it is of the opinion that either or both of *paras. (a)* and *(b)*, of subsection (2), apply and why it is of that opinion: and *Section 35(4)(a);*
  - In any case, to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on the offender: *Section 35(4)(b);*
- A court shall cause a reason stated by it under subsection (4), to be specified in the warrant of commitment and to be entered in the record of the court: *Section 35(5).*

Length of custodial sentences

- The custodial sentence shall be:
  - For such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with the offence: or *Section 36(2)(a);*
  - Where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender: *Section 36(2)(b);*
- Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it, the court shall:
  - State in open court that it is of opinion that subsection (2)(b), applies and why it is of that opinion: and *Section 36(3)(a);*
  - Explain to the offender in open court and in ordinary language why the sentence is for such a term: *Section 36(3)(b);*
- A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3), as a custodial sentence for a term longer than any actual term: *Section 36(4).*

Procedural requirements for custodial sentences

- Subject to subsection (2), a court shall obtain and consider a presentence report before forming any such opinion as is mentioned in subsection (2), of *Sections 35* or *36: Section 37(1);*
- Where the offence or any other offence associated with it is triable only on indictment, subsection (1), does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report: *Section 37(2);*

- In forming any such opinion as is mentioned in subsection (2), of *Sections 35 or 36,* a court:
    - Shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to the court; and *Section 37(3)(a);*
    - In the case of any such opinion as is mentioned in *para. (b),* of that subsection, may take into account any information about the offender which is before the court: *Section 37(3)(b);*
- A custodial sentence which is passed in a case to which subsection (1), applies is not invalidated by the failure of a court to comply with that subsection but any court on an appeal against such a sentence:
    - Shall obtain a pre-sentence report if none was obtained by the court: and *Section 37(4)(a);*
    - Shall consider any such report obtained by it or by that court: *Section 37(4)(b).*

Children/Young Persons

The Juvenile Offenders Act, Chap. 138, as amended by the *Criminal Appeal (Amendment and Miscellaneous Provisions) Act, 2009 - 12*

- No child shall be sentenced to imprisonment: *Section 13(1);*
- No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way whether by probation, fine, corporal punishment, committal to a Reformatory and Industrial School or otherwise: *Section 13(2);*
- Notwithstanding anything in this Act to the contrary, where a child or young person is convicted of an attempt to murder or of manslaughter or of wounding with intent to do serious bodily harm, the court may sentence the offender to be detained for such period as may be specified in the sentence: *Section 15(1);*
- It shall be the duty of the Commissioner of Police to make arrangements for preventing, so far as practicable, a child or young person, while being detained, from associating with an adult, other than a relative, charged with an offence: *Section 5.*

The Juvenile Offenders Rules, 1993

- It shall be lawful for a probation officer to interview any child or young person who has been remanded into custody or who has been detained: *rule 5;*
- Whenever in the opinion of the magistrate a child or young person is in need of medical treatment such magistrate shall make application for such medical treatment for the child or young person and if such application is granted it shall be the duty of the probation officers to ensure that such child or young person attends for such treatment: *rule 6;*
- When a child or young person is to be brought, before any court in respect of an offence alleged to have been committed by him, the person bringing the child or young person before the court shall as soon as possible and in any event before the lodging of the complaint, notify the probation officer of the nature of the charge and furnish him with such further particulars in relation thereto as he may require: *rule 7.*

BELIZE

Sentencing guidelines - *The Penal System Reform (Alternative Sentences) Act, Chap. 102:01*

- The rehabilitation of the offender is one of the aims of sentencing, except where the penalty is death: *Section 31(2)(1);*
- The gravity of a punishment must be commensurate with the gravity of the offence: *Section 31(2)(2);*
- An offender must not be sentenced except for an offence of which the offender has been convicted or for another offence or other offences which the offender has asked the court to take into consideration in passing sentence: *Section 31(2)(3);*
- Where a fine is imposed, the court in fixing the amount of the fine must take into account, among other relevant considerations, the means of the offender so far as these are known to the court, regardless whether this will increase or reduce the amount of the fine: *Section 31(2)(4).*

Sentencing options in Belize

Children/ Young Persons[52]

Where a child or young person charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under this or any other Act or other law enabling the court to deal with the case, the case should be dealt with[53]:

- By dismissing the charge: or *Section 15(1)(a);*
- By discharging the offender on his entering into a recognizance: or *Section 15(1)(b);*
- By releasing the offender on probation: or *Section 15(1)(c);*
- By committing the offender to the care of a relative or other fit person: or *Section 15(1)(d);*
- By sending the offender to a certified institution: or *Section 15(1)(e);*
- By ordering the offender to pay a fine, damages or costs: or *Section 15(1)(f);*
- By ordering the parent or guardian of the offender to pay a fine, damages or costs: or *Section 15(1)(g);*
- By ordering the parent or guardian of the offender to give security for his good behaviour: or *Section 15(1)(h);*
- By committing the offender to custody in a place of detention provided under this Act: or *Section 15(1)(i);*
- Where the offender is a young person, by sentencing him to imprisonment: or *Section 15(1)(j);*
- By dealing with the case in any other manner in which it may be legally dealt with: *Section 15(1)(k);*

[52] Belize- Juvenile Offenders Act, Cap. 119, section 2. "Child" means a person under the age of sixteen years and "young person" means a person who is sixteen years of age or upwards and under the age of eighteen years.
[53] Belize: Juvenile Offenders Act. Cap. 119, section 15.

- Nothing in this section shall be construed as authorising the court to deal with any case in any manner in which it could not deal with the case apart from this section: *Section 15(2).*

i. **Community service order -** *The Penal System Reform (Alternative Sentences) Act, Chap. 102:01*

Eligibility for a community service order

- Subject to this section and to regulations made under *Section 24(1),* of this Act, a court which convicts any person of an offence may make in respect of him a community service order requiring him, during the life of the order, to render service for the benefit of the community or any section of the community for such number of hours as shall be specified in the order: *Section 12(1);*
- A community service order may be made against an offender:
  - In addition to any other sentence that the court imposes: *Section 12(2)(a);*
  - Instead of any other sentence that the court may impose, unless such other sentence is mandatory: or *Section 12(2)(b);*
  - In lieu of imprisonment for a default in the payment of maintenance money to a spouse or child pursuant to the *Families and Children's Act, Chap. 173: Section 12(2)(c);*
- A court shall not make a community service order against an offender:
  - Unless the offender consents to the making of such an order: *Section 12(3)(a);*
  - Unless the court is satisfied:
    - i after considering a report made by the department under *Section 4(a),* of this Act on the request of the court, and if the court thinks it necessary and desirable, after hearing the Community Rehabilitation Officer who prepared the report, that the offender is a suitable person to perform work under such an order: *Section 12(3)(b)(i);*
    - ii that provision can adequately be made for the offender to perform work under the order and to be supervised: *Section 12(3)(b)(ii);*
  - In respect of an offence specified in *Section 7(10),* of this Act: *Section 12(3)(c);*
  - Unless the offence falls in the categories of offences specified in Schedule I hereto: *Section 12(3)(d).*

Procedure

- Before making a community service order, the court shall explain to the offender, in ordinary language:
  - The purpose and effect of the order, and in particular the conditions and requirements that may be specified in it under *Section 14,* and the requirements of *Section 15(1)(b),* of this Act: *Section 13(a);*
  - The consequences which may follow under *Section 18,* of this Act if the offender fails to comply with any of those conditions and requirements or under *Section*

19, of the Act if he commits an offence during the life of the community service order: and *Section 13(b);*

- That the court has under *Section 20,* of this Act the power to review the order on application either of the offender or of the director: *Section 13(c);*

- The community service order shall be performed for a period not exceeding one year (12 calendar months), and in any one week during the life of the order, the offender shall not:
  - Work for more than eight hours a day: or *Section 14(1)(a);*
  - Work on a Saturday, a Sunday, or a public or bank holiday: *Section 14(1)(b);*
- A community service order shall remain in force against an offender until:
  - The offender has performed the work required under it for the number of hours specified in it: or *Section 17(a);*
  - The expiration of 12 months commencing from the date of the making of the order: or *Section 17(b);*
  - Where the order is extended under *Section 20(1)(a)(i),* of this Act, the expiration of the order as so extended: or *Section 17(c);*
  - The order is revoked under *Sections 18, 19* or *20,* of this Act: *Section 17(d);*

  whichever occurs first.
- The community service order shall contain such requirements and conditions to be complied with by the offender during the life of the order as the court may consider necessary for the supervision of the offender: *Section 14(2);*
- A court which makes a community service order:
  - Shall forthwith give a copy of the order to the offender and send a copy to the Director: *Section 15(1)(a);*
  - Shall specify in the order a place at which, and a time when and within which, the offender shall present himself for the purpose of enabling the administration of the order to commence: *Section 15(1)(b);*
- The director shall ensure that a copy of the order sent to him under subsection (1)(a), of this section is supplied to the offender's supervising Community Rehabilitation Officer: *Section 15(2);*
- Some others sections to note include:
  - Obligations of offenders under community service orders: *Section 16;*
  - Breach of *Section 16: Section 18;*
  - Commission of further offences: *Section 19;*
  - Variation and revocation of community service orders: *Sections 20, 21.*

ii. **Suspended sentences -** *The Penal System Reform (Alternative Sentences) Act, Chap. 102:01*

- A court which passes a sentence of imprisonment on an offender for a term of not more than three years (not being an offence for which a mandatory minimum sentence is imposed by law) for an offence may suspend the sentence by ordering that the sentence shall not take effect unless:

- During a period specified in the order, being not less than 12 months nor more than three years from the date of the order, (in this Act referred to as "the operational period") the offender commits in Belize another offence punishable with imprisonment for a period exceeding six months (hereafter in this section and *Sections 9* and *10,* of this Act, referred to as a "subsequent offence"): and *Section 8(1)(a);*

- Thereafter a court having power to do so orders under *Section 9,* that the original sentence shall take effect: *Section 8(1)(b);*

- A sentence for an offence specified in *Section 7(10),* of this Act, shall not be suspended and notwithstanding any Act or law to the contrary, a criminal court shall only suspend the sentences of offenders who have committed the offences specified in First Schedule hereto: *Section 8(2);*

- A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of power to suspend such a sentence by an order under subsection (1), of this section: *Section 8(3);*

- Where a court passes a suspended sentence on an offender in respect of an offence and also a term of imprisonment in respect of another offence, the court shall direct that the suspended sentence be concurrent with the term of imprisonment: *Section 8(4);*

- On passing a suspended sentence, the court shall explain to the offender in ordinary language, the offender's liability under *Section 9,* if the offender commits a subsequent offence during the operational period: *Section 8(5);*

- Subject to subsection (3), of this section, where an offender is convicted of a subsequent offence committed during the operational period of a suspended sentence, the court by or before which the offender is convicted of the subsequent offence may order that the suspended sentence shall take effect with the original term unaltered; or the court may substitute a lesser term of imprisonment for the original term: *Section 9(1);*

- Where a court deals with an offender in respect of a suspended sentence passed by another court, the first court shall notify the latter court of the manner in which the offender was dealt with: *Section 9(2);*

- Where a court referred to in *paras. (a)* or *(b),* of *Section 5,* convicts an offender of an offence in respect of which a suspended sentence passed by a court referred to in *paras. (c), (d)* or *(e)* of *Section 5,* of this Act is in operation, the first court shall forward to the Registrar of the latter court a certificate signed by the clerk of the first court and under the seal of that court certifying that the offender has been convicted of a subsequent offence, together with such other particulars of the case as the first

court may consider necessary; whereupon a judge of the latter court before whom the offender is brought may, without prejudice to the order of the first court with respect to the subsequent offence, order that the suspended sentence shall take effect either with the original term unaltered or with the substitution of a lesser term for the original term: *Section 9(3);*

- Some other sections to note include:
  - Discovery of further offence: *Section 10;*
  - Saving of existing powers: *Section 11.*

iii. **Fines -** *The Penal System Reform (Alternative Sentences) Act, Chap. 102:01*

- Where a fine is imposed, the court in fixing the amount of the fine must take into account, among other relevant considerations, the means of the offender so far as these are known to the court, regardless whether this will increase or reduce the amount of the fine: *Sections 31(2), (4).*

The Summary Jurisdiction Procedure Act, Chap. 99

- Were a person is convicted of any summary conviction offence for which the court, under any Act or other enactment for the time being in force, has authority to impose imprisonment and has not authority to impose a fine, the court, notwithstanding the provisions of any such Act or other enactment, may, if it thinks that the justice of the case will be better met by a fine than by imprisonment, impose on the offender a fine not exceeding two hundred and fifty dollars, and not being of such amount as will, under the provisions of this Act, subject the offender in default of payment of the fine to any greater term of imprisonment than that to which he is liable under the Act or other enactment authorising the imprisonment as aforesaid: *Section 54.*

Children/Young Persons - *The Juvenile Offenders Act, Chap. 119*

- Where a child or young person is charged before any court with any offence for the commission of which a fine, damages or costs may be imposed, and the court is of opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, damages or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person: *Section 10(1).*

iv. **Probation orders -** *The Probation of Offenders Act, Chap. 120*

Eligibility for a probation order

- Where any person is charged with an offence which is punishable on summary conviction, and the court thinks that the charge is proved but is of opinion that having regard to the circumstances, including the nature of the offence and the character

and home surroundings of the offender, it is expedient to release the offender on probation, the court may:

- Convict the offender and make a probation order: or *Section 3(1)(a);*
- Without proceeding to conviction, make a probation order: *Section 3(1)(b).*

Procedure

- Before making a probation order under subsection (1), the court shall explain to the offender in ordinary language the effect of the order and that if he fails in any way to comply therewith or commits another offence, he will be liable to be sentenced or to be convicted and sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order: *Section 3(2);*
- Where any person is convicted of an offence which is punishable on indictment, and the court is of opinion that, having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may in lieu of impose a sentence of imprisonment make a probation order: *Section 3(3);*
- Before making a probation order under subsection (3), the court shall explain to the offender in ordinary language the effect of the order and that if he fails in any respect to comply therewith or commits another offence, he will be liable to be sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order: *Section 3(4);*
- A probation order shall:
  - Have effect for such period not less than one year and not more than three years from the date of the order as may be specified therein: and *Section 4(1)(a);*
  - Require the probationer to submit during that period to the supervision of a community rehabilitation officer appointed or assigned to the district in which the probationer will reside after the making of the order: and *Section 4(1)(b);*
  - Contain such provisions as the court considers necessary for securing the supervision of the offender, and such additional conditions as to residence and other matters as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences: *Section 4(1)(c);*
- Where a probation order contains a provision as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order, and where any such provision requires the probationer to reside in an institution, the period for which the probationer is required so to reside shall not extend beyond 12 months from the date of the order, and the court shall forthwith give notice of the terms of the order to the director: *Section 4(2);*
- Where it appears to a judge or any magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may issue a

summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest: *Section 6(1);*

- A magistrate shall not issue such a summons except on information, and shall not issue such a warrant except on information in writing and on oath: *Section 6(2);*
- A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made: *Section 6(3);*
- Where a probationer is convicted by a magistrate of an offence committed while the probation order was in force the magistrate may commit the probationer to custody or release him on bail, with or without sureties, until he can be brought or appear before the court by which the probation order was made: *Section 6(4);*
- Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force, then:
    - If the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him of that offence and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence: or *Section 6(5)(a);*
    - If the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence: *Section 6(5)(b);*
- Where a probationer in respect of whom a probation order has been made by a magistrate is convicted before the Supreme Court of an offence committed while the probation order was in force, then:
    - If the probationer was not convicted of the original offence in respect of which the probation order was made, the Supreme Court may convict him of that offence and may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence: or *Section 6(6)(a);*
    - If the probationer was convicted of the original offence in respect of which the probation order was made, the Supreme Court may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence: *Section 6(6)(b);*
- Some other section to note include:
    - Failure by probationer to comply with probation order: *Section 7;*
    - Disqualification or disability of probationer: *Section 8;*
    - Amendment of probation orders: *Section 10;*
    - Discharge of probation orders: *Section 11;*
    - Transmission of documents when case is remitted to another court: *Section 9.*

v. **Conviction and discharge -** *The Penal System Reform (Alternative Sentences) Act, Chap. 102:01*

- Where a court by or before which a person is convicted of an offence, not being an offence for which a mandatory minimum sentence is fixed by law, is of the opinion that, having regard to the nature of the offence, the character of the offender, and other relevant circumstances, it is inexpedient to inflict a custodial sentence, the court may make an order discharging the offender: *Section 6(1);*
- An order made under subsection (1), of this section may discharge the offender absolutely or, if the court thinks fit, may discharge the offender subject to the condition that the offender does not commit an offence during a period specified in the order, which shall not exceed three years from the date of the making of the order, and in this Act an order of the latter kind is called an "order for conditional discharge" and the period specified in an order for conditional discharge is called "the period of conditional discharge": *Section 6(2);*
- Before making an order for conditional discharge the court:
  - May request the department to prepare a report referred to in *Section 4(a),* of this Act in respect of the offender: *Section 6(3)(a);*
  - Shall explain to the offender in ordinary language that, if the offender commits another offence during the period of conditional discharge, the offender will be liable to be sentenced for the original offence: *Section 6(3)(b);*
- Where, under the provisions of this section and *Section 7,* of this Act, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, the order for conditional discharge shall, from the date of the passing of sentence, stand discharged and cease to have effect: *Section 6(4);*
- If it appears to a court that a person in whose case an order for conditional discharge has been made has been convicted in Belize, of an offence committed during the period of conditional discharge, the court may issue a summons on information, or a warrant on information in writing and on oath, requiring that person to appear at the time and place specified in the summons or the warrant for that person's arrest: *Section 7(1);*
- A summons or warrant issued under subsection (1), of this section, shall direct that the person to whom it relates appear or be brought before the court that made the order for conditional discharge: *Section 7(2);*
- Where a person in whose case an order for conditional discharge has been made by the Criminal Division of the Supreme Court is convicted by a court referred to in *Sections 5(a)* or *(b),* of this Act of an offence committed during the period of conditional discharge, that court may either commit the offender to custody, or release the offender on bail, until the offender may be brought before the Criminal Division of the Supreme Court, and that court shall forthwith send to the Registrar of the Supreme Court a copy of the record of the conviction entered by that court, signed by the clerk of that court: *Section 7(3);*

- Where it is proved to the satisfaction of the court that made an order for conditional discharge that the offender in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with the offender, for the offence for which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by or before that court of that offence: *Section 7(4);*
- If a person in whose case an order for conditional discharge has been made by a court referred to in *Sections 5(a)* or *(b),* of this Act (hereinafter called the "first court") is convicted before a court referred to in *Sections 5(c), (d)* or *(e),* of the Act (hereinafter called the "latter court") of an offence committed during the period of conditional discharge, the latter court may deal with the offender, for the offence for which the order was made, in any manner in which the first court could deal with the offender if it had just convicted the offender of that offence: *Section 7(5);*
- For the purposes of *Section 6,* and this section, where an order for conditional discharge has been made on appeal, the order shall be treated as having been made by the court from which the appeal was brought: *Section 7(6);*
- Subject to subsection (8), of this section, the provisions of *Sections 5* and *6,* of this Act are without prejudice to any rule of law for the time being allowing any criminal court in Belize to discharge an offender: *Section 7(7).*

The Summary Jurisdiction Procedure Act, Chap. 99

- If on the hearing of any complaint it appears to the court that, although the complaint is proved, the offence was, in the particular circumstances of the case, of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment:
    - The court may, without proceeding to a conviction, dismiss the complaint and, if it thinks fit, order the defendant to pay such damages, not exceeding twenty-five dollars, and such costs of the proceedings, or either of them, as the court thinks reasonable, and the damages shall be payable to the person directed by the court: or *Section 59(a);*
    - The court may, upon convicting the defendant, discharge him conditionally on his giving security, with or without a surety or sureties to the satisfaction of the court, to appear for sentence when called upon or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of damages and costs, or either of them, which the court thinks reasonable: *Section 59(b).*

vi. **Discharge with no record of conviction -** *The Summary Jurisdiction Procedure Act, Chap. 99*

- If the court refuses to entertain or dismisses a complaint, the clerk shall enter the refusal or dismissal, with the grounds thereof, in the record book: *Section 138(2).*

vii. **Compensation -** *The Probation of Offenders Act, Chap. 120*

- Where a person is placed by a probation order under the supervision of a community rehabilitation officer, the court may without prejudice to its power of awarding costs against the offender order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable, but not in the case of an order made by a summary jurisdiction court exceeding in the aggregate one hundred dollars or such greater sum as may be allowed by any enactment relating to the offence: *Section 5(1);*
- Where a court makes any such order for the payment of damages or compensation, the order may be enforced in like manner as an order for the payment of costs by the offender, and where the court, in addition to making such an order for the payment of damages or compensation to any person orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs: *Section 5(2).*

The Summary Jurisdiction Procedure Act, Chap. 99

- The court may, in its discretion, on the application of the complainant, adjudge any person convicted before it of a summary conviction offence to make compensation, not exceeding one thousand dollars, to any person injured by the commission of the offence, and any compensation so awarded shall be regarded and dealt with in all respects as if it were recovered on a judgment of a district court under the *District Courts (Procedure) Act, Chap. 97: Section 12;*
- Where any person injured by the commission of a summary conviction offence accepts compensation for the injury under the order of a court, the acceptance of that compensation shall be a bar to any action for the same injury but, subject to the provisions of this section, no conviction shall otherwise affect the right of action of any person for damages arising from any injury to his person or property caused by the commission of a summary conviction offence: *Section 13.*

Children/Young Persons - *The Juvenile Offenders Act, Chap. 119*

- Where a child or young person is charged before any court with any offence for the commission of which a fine, damages or costs may be imposed, and the court is of opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, damages or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person: *Section 10(1).*

viii. **Imprisonment -** *The Penal System Reform (Alternative Sentences) Act, Chap. 102:01*

- This section applies where a person is convicted of an offence punishable with a custodial sentence[54] other than one fixed by law: *Section 28(1);*
- Subject to subsection (3), of this section, the court shall not pass a custodial sentence on the offender unless it is of the opinion:
  - That the offence was so serious that only such a sentence can be justified for the offence: or *Section 28(2)(a);*
  - Where the offence is a violent or sexual offence (as defined in Section 7, of this Act), that only such a sentence would be adequate to protect the public from serious harm from the offender: *Section 28(2)(b);*
- Nothing in subsection (2), of this section prevents the court from passing a custodial sentence on an offender if the offender refuses to consent to a community sentence which is proposed by the court and requires that consent: *Section 28(3);*
- Where a court passes a custodial sentence, it is the court's duty:
  - In a case not falling within subsection (3), of this section, to state in open court that it is of the opinion that either or both of *paras. (a)* and/or *(b),* of subsection (2), of this section apply and why it is of that opinion: and *Section 28(4)(a);*
  - In any case, to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on the offender: *Section 28(4)(b);*

  A court shall cause the reasons stated by it under subsection (4), to be specified in the warrant of commitment and to be entered in the record of the court.
- This section applies where a court passes a custodial sentence other than one fixed by law: *Section 29(1);*
- The custodial sentence shall be:
  - For such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence: or *Section 29(2)(a);*
  - Where the offence is a violent or sexual offence (as defined in *Section 7,* of this Act), for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender: *Section 29(2)(b);*
- Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, the court shall:
  - State in open court that it is of the opinion that subsection (2)(b), of this section applies and why it is of that opinion: and *Section 29(3)(a);*
  - Explain to the offender in open court and in ordinary language why the sentence is for such a term: *Section 29(3)(b).*

[54] See section 30 of the Penal System Reform (Alternative Sentences) Act, Cap. 102:01 which outlines the procedural requirements for custodial sentences.

The Summary Jurisdiction Procedure Act, Chap. 99

- Where upon a conviction a court does not order the payment of any fine, but directs that the defendant be imprisoned for his offence, or where an order is not for the payment of money but for the doing of some other act and directs that in case of the defendant's neglect or refusal to do such act he be imprisoned, and the defendant neglects or refuses to do such act, then in every such case any magistrate may issue a warrant of commitment under his hand requiring the police officer or police officers to whom it is directed, to take and convey such defendant to prison, and there to deliver him to the keeper thereof, and also such keeper to receive the defendant into the prison and there to imprison him for the time directed and appointed by the warrant of commitment: *Section 72(1);*
- In all such cases, where by such conviction or order any sum for costs is adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the magistrate thinks fit, be levied by distress warrant in manner aforesaid, and in default of distress the defendant may, if the magistrate thinks fit, be committed to prison in manner aforesaid, there to be imprisoned for a term not exceeding one month to commence at the expiration of the term of imprisonment he is then undergoing, unless such sum for costs, and all costs and charges of the said distress if the magistrate thinks fit so to order, are sooner paid: *Section 72(2);*
- Where a court adjudges any person to undergo a term of imprisonment for a summary conviction offence, and he is already undergoing, or has been at the same sitting of that court adjudged to undergo, imprisonment for another offence, the court may direct that that imprisonment shall commence at the expiration of the imprisonment which he is then undergoing, or has been so previously adjudged to undergo as aforesaid: *Section 15(1);*
- In this section the expression "imprisonment" includes imprisonment imposed by a court on any person with or without the option of a fine, or in respect of the non-payment of any sum of money or for failing to do or abstaining from doing any act or thing required to be done or left undone: *Section 15(2);*
- Where any person is convicted of a summary conviction offence punishable by imprisonment under any Act, the court may, in its discretion, adjudge him to undergo any less term of imprisonment than the term prescribed by that Act for the offence: *Section 14;*
- Where a magistrate upon any information or complaint adjudges the defendant to be imprisoned, and such defendant is then in prison undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall in every such case be forthwith delivered to the keeper of the prison to whom it is directed, and he shall under the authority of that warrant imprison the defendant in accordance with the directions therein: *Section 77;*
- Where any person is brought by a police officer to any prison to be imprisoned by virtue of a warrant of commitment, the police officer shall indorse on the warrant the day on which the person was arrested by virtue thereof and the imprisonment shall be computed from that day and inclusive thereof: *Section 73;*

- Subject in every case to the provisions of the statute on which the order is founded, the period of imprisonment, which is imposed by the court in respect of non-payment of any sum of money adjudged to be paid by an order shall be that period which, in the opinion of the court, will satisfy the justice of the case, that is to say, a period not exceeding that mentioned in the second column of the following scale in respect of the sum of money mentioned in the first column: *Section 55;*

Where the sum of money adjudged to be paid by an order	A period not exceeding:
does not exceed $2.50	7 days
exceeds $2.50 but does not exceed $5.00	14 days
exceeds $5.00 but does not exceed $25.00	1 month
exceeds $25.00 but does not exceed $125.00	2 months
exceeds $125.00 but does not exceed $250.00	3 months
exceeds $250.00	6 months

- Where a term of imprisonment is imposed by a court in respect of the non-payment of any sum of money adjudged to be paid by an order of a court, that term shall, on payment of a part of such sum to the clerk, be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days in the term as the sum paid bears to the sum adjudged to be paid: *Section 75(1);*
- In reckoning the number of days by which any term of imprisonment ought to be reduced under this section, the first day of imprisonment shall not be taken into account, and that in reckoning the sum which secures the reduction of a term of imprisonment fractions of a cent shall be omitted: *Section 75(2);*
- Where any person has been committed to prison by the court for non-payment of any sum of money adjudged to be paid by an order, he may pay or cause to be paid to the keeper of the prison the sum mentioned in the warrant of commitment, together with the amount of the costs, charges and expenses, if any, also mentioned therein, and the keeper shall receive those moneys and thereupon discharge him, unless he is in custody for some other matter: *Section 75(3);*
- Where any person has been committed to prison by the court for non-payment of any sum of money adjudged to be paid by an order, then on payment to the keeper of the prison of any sum in part satisfaction of the sum so adjudged to be paid, the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the sum for which he is so liable: *Section 75(4);*
- Wherever under subsection (4), a sum has been received in part satisfaction of a sum due from a prisoner in consequence of the conviction of the court, that sum shall be applied, firstly towards the payment in full or in part of any costs or damages or compensation ordered by the conviction of the court to be paid to the prosecutor and, secondly, towards the payment of the fine, if any, imposed on the prisoner: *Section 75(5);*

- The keeper of any prison who receives any sum under this section in payment in full or in part of any costs or damages or compensation ordered by the conviction of the court to be paid to the prosecutor shall forthwith transmit the sum to the clerk of the court in which the conviction took place, who shall pay it to the person entitled thereto: *Section 75(6).*

***Children/Young Persons** - The Juvenile Offenders Act, Chap. 119*

- Subject to *Section 12,* no child shall be sentenced to imprisonment: *Section 11(1);*
- No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way whether by probation, fine, committal to a place of detention, certified institution or otherwise: *Section 11(2);*
- A young person sentenced to imprisonment shall not be allowed to associate with adult prisoners: *Section 11(3);*
- Notwithstanding anything in this Act to the contrary:
    - Where a child of not less than ten years of age or a young person is convicted of any of the offences specified in subsection (2), of this section: or *Section 12(1)(a);*
    - In any other case, the court is satisfied that he qualifies for a custodial sentence as mentioned in subsection (3), below: *Section 12(1)(b);*

  the court may sentence the offender to imprisonment, and where such a sentence is passed, the child or young person shall, notwithstanding anything in the other provisions of this Act, be kept in prison or in such other secure place as the Minister responsible for juvenile offenders may direct, and whilst so detained shall be deemed to be in lawful custody;
- An offender qualifies for a custodial sentence within the meaning of subsection (1) above if:
    - He has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them: or *Section 12(3)(a);*
    - Only a custodial sentence would be adequate to protect the public from serious harm or damage from him: or *Section 12(3)(b);*
    - The nature, gravity or prevalence of the offence of which he has been convicted or found guilty was such that a noncustodial sentence would not be appropriate: *Section 12(3)(c);*
- The provisions of this Act shall be without prejudice to any other law which requires the imposition of mandatory minimum custodial or other sentences for certain offences: *Section 12(4);*
- Where a child or young person is convicted of an offence punishable, in the case of an adult, with imprisonment, or would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damage or costs, and the court considers that none of the other methods in which the case may legally be dealt with is suitable, the court may order that he be committed to custody in a place of detention for a period not exceeding six months: *Section 12(4).*

DOMINICA

Sentencing guidelines[55]

- In determining sentence, the court must have regard to any relevant principles stated in a practice direction issued under these Rules: *rule 8 (1);*
- The court must:
  - Ensure that all sentences are clearly expressed: *rule 8(2)(a);*
  - State the reasons for its arrival at the final sentence imposed: and *rule 8(2)(b);*
  - Be consistent with the relevant practice direction issued on sentencing principles: *rule 8(2)(c);*
- A sentencing guideline issued in relation to an offence must be applied in all criminal matters in the court: *rule 6(1);*
- In constructing a sentence, the court must:
  - Follow the steps identified in the relevant practice direction issued: and *rule 8(3)(a);*
  - Identify these steps to the offender in public before the sentence is passed: *rule 8(3)(b);*
- In determining whether a suspended sentence is appropriate the court must have regard to the principles as identified in the relevant practice direction issued in relation to the power of the court to suspend a sentence: *rule 8(4);*
- When sentencing a person below the age of 18, the court must have regard to the principles as identified in the relevant practice direction issued: *rule 8(5).*

Sentencing options in Dominica

i. **Community service order -** *The Criminal Justice Reform Act, Chap. 12:35,* read conjunctively with the *Criminal Justice (Reform) (Amendment) Act, 3 of 2013*

Eligibility for a community service order

- Where a person of or over 14 years of age is convicted of an offence punishable with imprisonment, the court before which he is convicted may, instead of dealing with him in any other way, make, with his consent, an order (hereinafter referred to as "a community service order") requiring him to perform unpaid work in accordance with the provisions of this section for such number of hours (being in the aggregate not less than 40 nor more than 240) as may be specified in the order[56]: *Section 10(1)(a);*
- A community service order shall not be made[57]:

[55] Dominica- Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, Statutory Instrument No. 3 of 2019, Rule 8 and Practice Directions 8A-8D.

[56] Section 4 of the Criminal Justice (Reform) (Amendment) Act 3 of 2013 amends section 10 (a) of the Criminal Justice Reform Act, Chap. 12:35.

[57] Section 4 of the Criminal Justice (Reform) (Amendment) Act 3 of 2013 amends section 10 (b) of the Criminal Justice Reform Act, Chap. 12:35 by deleting and replacing it in its entirety.

- Where the offence involved the use of or the illegal possession of a firearm: or *Section 10(1)(b)(i);*
- Where a sentence of imprisonment for the offence is fixed by law: *Section 10(1)(b)(ii).*

Procedure

- A court shall not make a community service order under subsection (1), in respect of any offender unless the court is satisfied:
  - That arrangements can be made in the area in which the offender resides, or will reside, for him to perform work under the order and for proper supervision of that work: and *Section (10)(2)(a);*
  - After considering a report by a probation officer in respect of the offender and his circumstances, and (if the court thinks it necessary) after hearing a probation officer, that the offender is a suitable person to perform work under such an order: *Section (10)(2)(b);*
- Where a court makes community service orders in respect of two or more offences of which the offender has been convicted, the court may direct that the periods of service shall be concurrent with or consecutive to those specified in any of those orders; but where the court directs that the periods of service shall be consecutive the aggregate of the periods of service shall not exceed 480 hours: *Section 10(3);*
- A community service order shall specify the area in which the offender will work and the order will be delivered to a probation officer carrying out duties in that area, hereinafter referred to as the relevant probation officer: *Section 10(4);*
- Subject to *Section 11B,* the work required to be performed under a community service order shall be performed during the 12-month period which shall begin at the date of the order, however, unless revoked, the order shall remain in force until the offender has worked for the number of hours specified in it : *Section 10A;*
- An offender in respect of whom a community service order is in force shall:
  - Report to the relevant probation officer and subsequently from time to time to notify him of any change of address: and *Section 10(5)(a);*
  - Perform for the number of hours specified in the order at such times as he may be instructed by the relevant probation officer: *Section 10(5)(b);*
- The instructions given by the relevant probation officer under this section shall, as far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the time, if any, at which he normally works or attends a school or other educational establishment: *Section 10(6);*
- Where a person in respect of whom a community service order is in force appears before a court, being a court of equal jurisdiction to or higher jurisdiction than the court that made the order, for sentencing in respect of an offence other than the offence in respect of which the order was made, that court may revoke the order and deal with the person, for the offence in respect of which the order was made in any manner in which he could have been dealt with for that offence by the court that made the order if that order had not been made : *Section 11A;*

- Where, on the application of a person in respect of whom a community service order is in force or on the application by the assigned probation officer, it appears to the court which made the order that it would, having regard to circumstances that have arisen since the order was made, be in the interest of justice to do so, the court may vary the period during which the order remains in force or revoke the order: *Section 11B(1);*
- Where the probation officer under whose supervision an officer is placed, is satisfied that the offender has complied with the requirements imposed on him under *Section 10(5),* the probation officer shall submit a report to that effect to:
    - In case of the High Court, the Registrar: or *Section 11D(1)(a);*
    - In the case of the Magistrate's Court, the magistrate: *Section 11D(1)(b);*
- On receipt of a report under subsection (1), the Registrar or Magistrate, shall record that the requirements of the community service order have been complied with and shall notify the offender: *Section 11D(2);*
- Some other sections to note:
    - Breach of requirement of community service order: *Section 11;*
    - Variation or revocation of order[60]: *Section 11B.*

ii. **Suspended sentences -** *The Criminal Justice Reform Act, Chap. 12:35,* read conjunctively with the *Criminal Justice (Reform) (Amendment) Act, 3 of 2013*

- A court which passes a sentence of imprisonment on any offender for a term of not more than three years for any offence, may order that the sentence shall not take effect unless, during a period specified in the order being not less than one year or more than three years from the date of the order (hereinafter referred to as the "operational period"), the offender commits in Dominica another offence punishable with imprisonment for a period exceeding six months (hereinafter in this section and *Sections 7* and *8,* referred to as a "subsequent offence") and thereafter a court having power to do so orders under *Section 7,* that the original sentence shall take effect: *Section 6(1);*
- Subsection (1), shall not take effect where:
    - A sentence of imprisonment for the offence is fixed by law: or *Section 6(2)(a);*
    - The person at the time of the of commission of the offence was in illegal possession of a firearm: *Section 6(2)(b);*
- A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by order under subsection (1): *Section 6(3);*
- A court which passes a suspended sentence shall not make a probation order in the offender's case in respect of another offence of which he is convicted before that court: *Section 6(4);*

[60] Section 6 of the Criminal Justice (Reform) (Amendment) Act 3 of 2013 amends the Criminal Justice Reform Act, Chap. 12:35 by inserting section 11B.

- Where a court passes a suspended sentence on an offender in respect of an offence and a term of imprisonment in respect of another offence, the court shall direct that the suspended sentence be concurrent with the term of imprisonment: *Section 6(5);*
- On passing a suspended sentence the court shall explain to the offender in ordinary language his liability under *Section 7,* if during the operational period he commits a subsequent offence punishable with imprisonment: *Section 6(6);*
- Subject to subsection (3), where an offender is convicted of a subsequent offence committed during the operational period of a suspended sentence, the court before which he is convicted for the subsequent offence may order that the suspended sentence shall take effect with the original terms unaltered or the court may substitute a lesser term of imprisonment for the original term: *Section 7(1);*
- Where a court deals with an offender in respect of a suspended sentence passed by another court, the court dealing with the offender shall notify the court which passed the subsequent sentence of the manner in which the offender was dealt with: *Section 7(2);*
- Where a Magistrate's Court deals with an offender in respect of whom a suspended sentence passed by a High Court is in operation:
    - The magistrate dealing with the offender for the subsequent offence shall forward to the Registrar of the High Court a certificate signed by him and under the seal of the court certifying that the offender has been convicted for a subsequent offence, together with such particulars of the case as the magistrate may consider desirable;
    - Whereupon a judge of the High Court before whom the offender is brought may, without prejudice to the order of the magistrate with respect to the subsequent offence, order that the suspended sentence take effect either with the original term unaltered or with the substitution of a lesser term for the original term: *Section 7(3);*
- Some other sections to note include:
    - Discovery of further offence: *Section 8;*
    - Suspended sentence supervision order: *Section 9;*
- In determining whether a suspended sentence is appropriate the court must have regard to the principles as identified in the relevant practice direction issued in relation to the power of the court to suspend a sentence[61]: *rule 8(4).*

iii. **Fines** - *The Magistrate Code of Procedure Act, Chap 4:20,* read conjunctively with *Magistrate Code of Procedure (Amendment) Acts, No. 25 of 1991, No. 20 of 1994, No. 16 of 1999, No. 7 of 2003* and *No. 10 of 2014*

- Where a magistrate has jurisdiction to hear and determine a criminal charge but no power to impose a fine or to impose any penalty is expressly provided, or where the power to impose a fine is provided but no amount is specified, the magistrate shall

[61] Dominica- Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, Statutory Instrument No. 3 of 2019.

have the power to impose a fine of such amount as he shall think fit not exceeding two thousand dollars: *Section 86(1);*

- Where a magistrate has power to impose a fine for a series of acts for each of which a maximum fine is expressly provided, the total fine imposed by the magistrate shall not exceed two thousand dollars: *Section 86(2);*
- An adult convicted under this Act is liable to a fine of one thousand dollars or to imprisonment for six months: *Section 92(2);*
- A magistrate by whose conviction any sum is adjudged[62] to be paid may do all or any of the following things, namely:
    - Order imprisonment in the first instance, unless the sum is paid forthwith: Section 100(a);
    - Allow time for the payment of the sum: *Section 100(b);*
    - Direct payment to be made of the sum by instalments: *Section 100(c);*
    - Direct that the person liable to pay the sum shall be at liberty to give to the satisfaction of that magistrate, or such person as may be specified by him, security with or without a surety or sureties for the payment of the sum or of any instalment thereof and the security may be given and enforced in the manner provided by this Act: *Section 100(d);*
    - Issue a warrant of distress for levying of the sum: *Section 100(e);*
    - Order imprisonment in default of sufficient distress or of the payment of any instalment: *Section 100(f);*
- Where a conviction adjudges a fine to be paid and the amount so adjudged is not paid forthwith the magistrate may issue his warrant of distress to be executed in the State for the levying of the same and the warrant shall be writing under the hand and seal of the magistrate: *Section 95;*
- Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment forthwith of the full amount of the fine or of such amount as remains unpaid: *Section 101;*
- A warrant committing a person to prison in respect of the non-payment of a sum adjudged to be paid by a conviction of a magistrate shall not be issued forthwith unless the magistrate is satisfied that the person is possessed of sufficient means to enable him to pay the sum forthwith, or unless, upon being asked by the magistrate whether he desires that time should be allowed for payment, he does not express any such desire, or unless the magistrate for any other special reason expressly directs that no time shall be allowed: *Section 104(1)(a);*

[62] Dominica- Magistrate's Code of Procedure Act, Chap. 4:20 read conjunctively with Magistrate Code of Procedure (Amendment) Acts, No. 25 of 1991, No. 20 of 1994, No. 16 of 1999, No. 7 of 2003 and No. 10 of 2014, section 104 (3). The expression "sum adjudged to be paid by a conviction" includes any costs adjudged to be paid by the conviction of which the amount is ascertained by the conviction,

- Where any such person desires to be allowed time for payment the magistrate in deciding what time shall be allowed shall consider any representation made by him, but the time allowed shall not be less than seven clear days; but if before the expiration of the time allowed the person convicted informs the magistrate that he prefers immediate committal to awaiting the expiration of the time allowed, the magistrate may if he thinks fit forthwith issue a warrant committing him to prison: *Section 104(1)(b);*
- In all cases where time is not allowed for payment, the reasons of the magistrate for the immediate committal shall be stated in the warrant of commitment: *Section 104(1)(c);*
- Where time has been allowed for the payment of a sum adjudged to be paid by a conviction or order of a magistrate, the magistrate may allow further time, or he may direct payment by instalments of the sum so adjudged to be paid: *Section 104(2);*
- Some other sections to note include:
    - Mode of payment by instalments: *Section 102;*
    - Where a fine is imposed, the magistrate may issue a warrant of distress within the State: *Section 95;*
    - Execution to cease on payment of amount leviable: *Section 96.*

The Criminal Justice (Reform) Act, Chap. 12:35, read conjunctively with the *Criminal Justice (Reform) (Amendment) Act, No. 3 of 2013*

- Where any fine has been imposed by a court, the court at the time when the fine is imposed or at any time thereafter may:
    - Allow time for payment of the fine: or *Section 4(1)(a);*
    - Direct that the fine be paid by instalments: or *Section 4(1)(b);*
    - Extend the time allowed for the payment of the fine or for the payment of any instalment thereof, and the person liable to pay the fine may be required, if the court thinks fit, to enter into recognizance with or without surety to the satisfaction of the court for the due payment thereof: *Section 4(1)(c).*

Children/ Young Persons

- No child[63] convicted under this Act shall be liable to be imprisoned or to pay a fine exceeding one hundred dollars[64]: *Section 90;*
- A young person[65] convicted under this Act is liable to a fine of five hundred dollars or imprisonment for three months: *Section 92(1).*

[63] Dominica- Magistrate's Code of Procedure Act, Chap. 4:20 read conjunctively with Magistrate Code of Procedure (Amendment) Acts, No. 25 of 1991, No. 20 of 1994, No. 16 of 1999, No. 7 of 2003 and No. 10 of 2014, section 1. "Child" means a person in the opinion of the Magistrate before whom he is brought is under the age of fourteen years and of sufficient age and capacity to commit a crime.

[64] Dominica- Criminal Justice (Reform) Act, Chap. 12:35, read conjunctively with the Criminal Justice (Reform) (Amendment) Act 3 of 2013, section 91 directs that the Magistrate may order fine, etc. to be paid by parent or guardian.

[65] Dominica- Magistrate's Code of Procedure Act, Chap. 4:20 read conjunctively with Magistrate Code of Procedure (Amendment) Acts, No. 25 of 1991, No. 20 of 1994, No. 16 of 1999, No. 7 of 2003 and No. 10 of 2014, section 1. "Young person" means a person who in the opinion of the Magistrate before whom he is brought is of the age of fourteen years and under the age of eighteen years.

iv. **Probation orders -** *The Probation of Offenders Act, Chap. 12:33*

Eligibility for a probation order

- Where any person is charged with an offence which is punishable on summary conviction and the court thinks that the charge is proved but is of opinion that having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may:
  - Convict the offender and make a probation order: or *Section 3(1)(a);*
  - Without proceeding to conviction, make a probation order: *Section 3(1)(b);*

  but before making a probation order the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence, he will be liable to be sentenced or to be convicted and sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order;
- Where any person is convicted of an offence which is not punishable on summary conviction, and the court is of the opinion that, having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may, in lieu of imposing a sentence of imprisonment, make a probation order; but before making a probation order the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any respect to comply therewith or commits another offence, he will be liable to be sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order: *Section 3(2).*

Procedure

- A probation order shall have effect for such period not less than one year and not more than three years from the date of the order as may be specified therein, and shall require the probationer to submit during that period to the supervision of a probation officer appointed for assigned to the district in which the probationer will reside after the making of the order, and shall contain such provisions as the court considers necessary for securing the supervision of the offender, and such additional conditions as to residence and other matters as the court, having regard to the circumstance of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences: *Section 4(1);*
- Where a probation order contains a provision as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order, and where any such provision requires the probationer to reside in an institution, the period for which the probationer is required so to reside shall not extend beyond twelve months from the date of the order, and the court shall forthwith give notice of the terms of the order to the Chief Welfare Officer: *Section 4(2);*

- The court by which the probation order is made shall furnish two copies of the order, one copy to be given to the probationer and the other to the probation officer under whose supervision he is placed: *Section 4(3);*
- If appears to a judge or any magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest; but a magistrate shall not issue such a summons except on information in writing and on oath: *Section 6(1);*
- A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made: *Section 6(2);*
- Where a probationer is convicted by a magistrate of an offence committed while the probation order was in force, the magistrate may commit the probationer to custody or release him on bail, with or without sureties, until he can be brought or appear before the mourt by which the probation order was made: *Section 6(3);*
- Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force then:
    - If the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him of that offence and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence: or *Section 6(4)(a);*
    - If the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer has just been convicted before that court of that offence: *Section 6(4)(b);*
- Some other sections to note include:
    - Failure by probationer to comply with probation order: *Section 7;*
    - Probation order: disqualification or disability: *Section 8;*
    - Amendment of probation orders: *Section 10;*
    - Discharge of probation orders: *Sections 11,12;*
    - Transmission of documents when case is remitted to another court: *Section 9.*

v. **Conviction and discharge -** *The Probation of Offenders Act, Chap. 12:33*

- Where any person is charged with an offence which is punishable on summary conviction and the court thinks that the charge is proved but is of opinion that having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may:
    - Convict the offender and make a probation order: or *Section 3(1)(a);*

- Without proceeding to conviction, make a probation order: *Section 3(1)(b);*

but before making a probation order the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence, he will be liable to be sentenced or to be convicted and sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order.

vi. **Discharge with no record of conviction -** *The Probation of Offenders Act, Chap. 12:33*

- Where any person is charged with an offence which is punishable on summary conviction and the court thinks that the charge is proved but is of opinion that having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may:
  - Convict the offender and make a probation order: or *Section 3(1)(a);*
  - Without proceeding to conviction, make a probation order: *Section 3(1)(b);*

but before making a probation order the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence, he will be liable to be sentenced or to be convicted and sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order.

Children/Young Persons - *The Magistrate Code of Procedure Act, Chap. 4:20,* read conjunctively with *Magistrate Code of Procedure (Amendment) Acts, No. 25 of 1991, No. 20 of 1994, No. 16 of 1999, No. 7 of 2003* and *No. 10 of 2014*

- Where a child or young person is convicted as mentioned in Sections 92(1) and 93, the magistrate if he thinks it inexpedient to inflict any punishment may discharge the child or young person so convicted: *Section 94.*

vii. **Compensation -** *The Probation of Offenders Act, Chap. 12:33*

- Where a person is placed by a probation order under the supervision of a probation officer, the court may without prejudice to its power of awarding costs against the offender order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable, but not exceeding in the case of a court of summary jurisdiction two hundred and fifty dollars or a sum greater than that allowed by any written law relating to the offence: *Section 5(1);*
- Where a court makes any such order for the payment of damages or compensation as aforesaid, the order may be enforced in like manner as an order for the payment of costs by the offender, and where the court, in addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay

to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs: *Section 5(2).*

The Magistrate Code of Procedure Act, Chap. 4:20, read conjunctively with *Magistrate Code of Procedure (Amendment) Acts, No. 25 of 1991, No. 20 of 1994, No. 16 of 1999, No. 7 of 2003* and *No. 10 of 2014*

- Any person who is convicted of an offence in a Magistrate's Court may be ordered by the court to make compensation to any person who was injured or who suffered loss by his offence; but the court shall make such an order only with the consent of the party injured or the party who has suffered loss as a result of the commission of the offence: *Section 109(1);*
- Any sum so adjudged may be recovered by such process including imprisonment in default of payment, not exceeding six months, as the court may direct: *Section 109(2);*
- The payment of such compensation shall be a bar to any further action for the same injury or loss: *Section 109(3).*

viii. **Imprisonment -** *The Magistrate Code of Procedure Act, Chap. 4:20,* read conjunctively with *Magistrate Code of Procedure (Amendment) Acts, No. 25 of 1991, No. 20 of 1994, No. 16 of 1999, No. 7 of 2003* and *No. 10 of 2014*

- Where a magistrate convicts a person and orders him to be imprisoned without the option of a fine, he shall by his warrant commit him to prison there to be imprisoned for the period mentioned in the warrant: *Section 87;*
- A magistrate shall not by cumulative sentences of imprisonment (other than for default of finding sureties) to take effect in succession in respect of several assaults committed on the same occasion inflict on any imprisonment for the whole exceeding six months: *Section 88;*
- Where a magistrate adjudges the defendant to be imprisoned and the defendant is then undergoing imprisonment upon conviction for any other offence the warrant of commitment for the subsequent offence shall be forthwith delivered to the officer to whom it is directed and the magistrate issuing it may if he thinks fit award and order therein that the imprisonment for the subsequent offence shall commence at the expiration of the period of imprisonment to which the prisoner was previously sentenced: *Section 89;*
- The period of imprisonment imposed by a magistrate under this or any other Act in respect of the non-payment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum or in respect of the default of payment of any instalment of such sum shall be such period as in his opinion will satisfy the justice of the case, but shall not in any case exceed the maximum fixed by the following scale: *Section 105;*

Where the amount of the sum or sums of money adjudged to be paid	The said periods shall not exceed
does not exceed $25.00	14 days
exceeds $25.00 but does not exceed $50.00	30 days
exceeds $50.00 but does not exceed $250.00	2 months
exceeds $250.00 but does not exceed $1,000.00	4 months
exceeds $1,000.00	6 months

Children/ Young Persons

- No child convicted under this Act shall be liable to be imprisoned or to pay a fine exceeding one hundred dollars: *Section 90;*
- Where a child is charged with any offence for the commission of which a fine, damage or costs may be imposed and the magistrate is of opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the magistrate shall order that the fine, damages or costs awarded be paid by the parent or guardian of the child instead of by the child, unless the magistrate is satisfied that the parent or guardian cannot be found or that the parent or guardian has not conduced to the commission of the offence by neglecting to exercise due care of the child: *Section 91(1);*
- An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard: *Section 91(2);*
- Any sums imposed and ordered to be paid by a parent or guardian under this section may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian for the offence with which the child was charged: *Section 91(3);*
- A young person convicted under this Act is liable to a fine of five hundred dollars or imprisonment for three months: *Section 92(1).*

Civil Jurisdiction

- A person making default in complying with the order of a magistrate other than for the payment of money for the space of ten days may, if it is not otherwise provided in the Act on which the order is based upon application to a magistrate and on proof of such default, be ordered to pay a sum not exceeding fifty dollars for everyday during which he is in default, or to be imprisoned until he has remedied his default, and any sum so ordered to be paid shall be recoverable summary as a civil debt: *Section 134;*
- No person shall for non-compliance with the requisition of the magistrate whether made by one or more orders to do or to abstain from doing any particular act or thing be liable to be imprisoned for a period or periods amounting in the aggregate to more than two months or to the payment of any sums exceeding in the aggregate one thousand dollars: *Section 135.*

The Criminal Justice Reform Act, Chap. 12:35, read conjunctively with the *Criminal Justice (Reform) (Amendment) Act, 3 of 2013*

- Where a court passes a sentence of imprisonment on an offender for a period not exceeding three months, or where a convicted person is required to serve a sentence of such description and duration in lieu of payment of a fine, and the court is satisfied:
    - On application made before it by or on behalf of the convicted person of the existence of the conditions set out in subsection (2): and *Section 13(1)(a);*
    - On a report from the Superintendent of Prisons that satisfactory arrangements exist for the sentence to be served in the manner applied for: *Section 13(1)(b);*

  it may be ordered that the sentence be served at stated periods.[66]
- The conditions required for the purpose of subsection (1), shall be that:
    - The convicted person was in employment at the time of the commission of the offence or that he is or was in employment at the time of conviction: *Section 13(2)(a);*
    - The convicted person would continue to be in such employment but for such conviction and the obligation to serve the sentence of imprisonment: *Section 13(2)(b);*
    - The discontinuance from such employment would cause hardship to his dependants: and *Section 13(2)(c);*
    - The convicted person consents to serve the sentence of imprisonment in the manner ordered by the court: *Section 13(2)(d);*
- When any such convicted person has failed to serve any stated portion of his sentence, the Superintendent of Prisons may, on application made by way of summons, so inform the court which sentenced such person under subsection (1), and the court may thereupon, after hearing the convicted person, revoke the order for imprisonment at stated periods and substitute therefore a continuous sentence not exceeding the unserved portion of the sentence originally passed: *Section 13(5).*

GRENADA

Sentencing guidelines[67]

- In 2019, the Eastern Caribbean Supreme Court implemented Sentencing Guidelines Rules and Practice Directions which are applicable to Grenada. These Rules guide and explain the process of determining sentences.

[66] Dominica- Criminal Justice Reform Act, Chap. 12:35 read conjunctively with the Criminal Justice (Reform) (Amendment) Act 3 of 2013, section 13(4). A stated period for the purposes of this section shall be at the discretion of the Court but shall not be less that twenty-four hours of continuous duration for any one week.

[67] ECSC Sentencing Guidelines Rules 2019- Practice Directions 8A- 8D.

Sentencing options in Grenada

Children[68] *- The Juvenile Justice Act, No. 24 of 2012*

- Where the provisions of this Act regarding sentencing options, conflict with those provided for pursuant to any other relevant enactment, the sentencing options under this Act shall prevail: *Section 52(2);*
- The following punishments may be inflicted under this Code[69]:
  - Death;
  - Imprisonment, including detention in an Industrial School as defined in *Section 3,* of this Ordinance;
  - Flogging;
  - Whipping;
  - Fine;
  - Payment of compensation.

i. **Community service order -** *The Prison (Extra-Mural Sentences) Act, Chap. 253*

Eligibility for a community service order

- Notwithstanding any law to the contrary any of the following persons, namely:
  - A person sentenced by a court to imprisonment for a term not exceeding six months: *Section 3(1)(a);*
  - A woman convicted of an offence which in the opinion of the court is not a grave offence: *Section 3(1)(b);*
  - A person liable to be committed to prison for non-payment of a fine or of a sum of money ordered to be paid which fine or sum of money does not exceed two hundred and fifty dollars: *Section 3(1)(c);*

  may be ordered by the court on the advice of the Commissioner of Prisons, and with his or her own consent, at the time of passing sentence, to be employed, in lieu of imprisonment, on public work outside the prison under the supervision and control of a public body as hereinafter provided;
- Any person serving a term of imprisonment not exceeding six months may, with his or her own consent, be ordered by the Commissioner of Prisons to be employed, in lieu of serving the remainder of the sentence in prison, on public work outside the prison under the supervision and control of a public body as hereinafter provided: *Section 3(2).*

[68] Grenada- Juvenile Justice Act, Chap 24, section 2. "Child" means a person under the age of eighteen.
See also ECSC Sentencing Guidelines Rules 2019- Practice Direction 8D, No. 1 of 2019
[69] Grenada- Criminal Code Chap 72A, section 70.

Procedure

- Every person shall be employed on a daily task which shall be such as can normally be completed in the usual working day and at the usual working hours as the Commissioner of Prisons shall direct and while not so employed shall not be subject to any prison rules: *Section 3(3);*
- Every person employed on such labour as aforesaid shall be required to report daily during the term of his or her sentence to the Commissioner of Prisons or to such persons as he or she shall nominate and at such time and place as he or she shall direct: *Section 3(4);*
- If any such person fails to present himself or herself at the appointed time and place or absents himself or herself from his or her task without permission, or works or conducts himself or herself in a manner which the Commissioner of Prisons shall consider unsatisfactory, the Commissioner may forthwith order that such person shall undergo the confinement to which he or she is liable, subject nevertheless to a deduction of the number of days on which he or she has completed his or her daily task, and he or she shall thereupon be committed to prison accordingly: *Section 3(5).*

The Prison (Extra-Mural Sentences) Regulations

- An offender may be assigned by the Commissioner to public work under the supervision and control of a public body and be ordered to perform duties normally carried out by that body: *regulation 2;*
- The public body to whom an offender is assigned shall provide the offender with free food or, if free food is not provided, he or she shall be paid an allowance of three dollars daily in lieu of free food: *regulation 3;*
- If an offender is employed on an extra-mural sentence for non-payment of a debt, he or she shall be paid a wage for a normal working day, but one-half of each such wage shall be deducted, and credited towards the payment of the debt, by the Commissioner of Prisons: *regulation 4;*
- An offender employed on an extra-mural sentence shall be entitled to the same remission of sentence as a prisoner serving his or her sentence in custody: *regulation 5;*
- An offender employed on an extra-mural sentence shall, at the time of commencing the employment, notify his or her place of residence to the officer-in-charge of the police station in the district in which he or she resides; any change of residence shall be similarly notified: *regulation 6;*
- If the Commissioner of Prisons is satisfied that an offender has contravened *Section 3(5),* of the Act, he or she may, by written direction addressed to the Chief of Police, require that the offender be delivered to the prison at Richmond Hill, and the Chief of Police shall act accordingly: *regulation 7.*

Children *- The Juvenile Justice Act, No. 24 of 2012*

- The court may impose as a requirement in relation to a penalty for an offence that the child is sentenced to imprisonment for an initial period and thereafter is required to serve the remainder of the sentence providing a service in the community: *Section 55(1);*
- A sentence which allows a child to remain in the community and which may be imposed pursuant to this Act includes performance of some service without remuneration for the benefit of the community under the supervision or control of a specified person or institution identified by the court for a maximum period of two hundred and fifty hours and which shall be completed in one year: *Section 55(2)(e);*
- Before a child from the age of 12 to 14 is sentenced pursuant to subsection (2)(e), due consideration must be given to the age, development and compulsory school attendance of the child: *Section 55(3).*

ii. **Suspended sentences**

Children *- The Juvenile Justice Act, No. 24 of 2012*

- The passing of any sentence may be postponed, with or without one or more of the conditions referred to in subsection (3), for a period not exceeding three years: *Section 62(1);*
- The whole or any part of any sentence may be suspended, with or without one or more conditions referred to in subsection (3), for a period not exceeding five years: *Section 62(2);*
- The conditions referred to in subsections (1) and (2), may be any condition appropriate to the circumstances of the child which is in keeping with the principles of this Act and which promotes the reintegration of the child into his or her community or society and may include:
    - Restitution, compensation or symbolic compensation: *Section 62(3)(a);*
    - An apology: *Section 62(3)(b);*
    - The obligation not to commit a further offence of a similar nature: *Section 62(3)(c);*
    - Good behaviour: *Section 62(3)(d);*
    - Regular school attendance for a specified period: *Section 62(3)(e);*
    - Attendance at a specified time and place of a family group conference: *Section 62(3)(f);*
    - Placement under the supervision of a probation officer: *Section 62(3)(g);*
    - A requirement that the child shall appear before the court on a date or dates to be determined by the court for a periodic progress report: and *Section 62(3)(h);*
    - Referral to any diversion option referred to in *Sections 37 (2)(d), (e), (f), (g), (h), (i), (j) or (k): Section 62(3)(i);*

- Where the court has postponed the passing of a sentence pursuant to subsection (1), on one or more conditions, the court may request the probation officer concerned to submit regular reports indicating the compliance of the child with the conditions referred to in this section: *Section 62(4);*
- The conviction of a child in respect of whom passing of a sentence has been postponed shall be expunged from any record if the child has met all the conditions imposed or at the expiration of the period in question, as the case may be: *Section 62(5);*
- In determining whether a suspended sentence is appropriate the court must have regard to the principles as identified in the relevant practice direction issued in relation to the power of the court to suspend a sentence.[70]

iii. **Fines**

Power to impose fine

The Criminal Code, Chap. 72A

- A fine may be imposed under this Code as a form of punishment: *Section 70(5);*
- The court before which a person is convicted may, according to the circumstances of the case and subject to the provisions of this Code with respect to flogging and whipping, substitute for a punishment assigned by this Code a different punishment, as follows:
    - In the case of manslaughter or of any misdemeanour, the court may substitute a fine, which in the case of a summary offence shall not exceed two thousand dollars: *Section 78(1).*

Payment of fine

The Criminal Procedure Code, Chap. 72B

- Notwithstanding anything in Title VIII of this Code, the following provisions shall have effect, that is to say:
    - A warrant committing a person to prison in respect of non-payment of a sum adjudged to be paid by a conviction shall not be issued forthwith unless the court which passed the sentence is satisfied that he or she is possessed of sufficient means to enable him or her to pay the sum forthwith, or unless, upon being asked by the court whether he or she desires that time should be allowed for payment, he or she does not express any such desire, or fails to satisfy the court that he or she has a fixed abode within its jurisdiction, or unless the court for any other special reason expressly directs that no time shall be allowed: *Section 92(1);*
    - Where any such person desires to be allowed time for payment, the court in deciding what time shall be allowed shall consider any representation made by him or her, but the time allowed shall not be less than seven clear days:

[70] ECSC Sentencing Guidelines Rules 2019 - Practice Direction 8C, No. 3 of 2019

Provided that if before the expiration of the time allowed the person convicted surrenders himself or herself to the court and states that he or she prefers immediate committal to awaiting the expiration of the time allowed, the court may, if it thinks fit, forthwith issue a warrant committing him or her to prison: *Section 92(2);*

- In all cases where time is not allowed for payment, the reasons of the court for the immediate committal shall be stated in the warrant of commitment: *Section 92(3);*

- It shall be lawful for the Governor to remit, in whole or in part, any sum of money which may be imposed as a fine on any convicted offender, and as costs, charges and expenses in connection with such fine, although the money may be in whole or in part payable into the Treasury for the use of the State or to some party other than the Crown; and to extend the royal mercy to any person who may be imprisoned for non-payment of any sum of money so imposed, although the same may be, in whole or in part, payable into the Treasury for the use of the State or to some party other than the Crown: *Section 64(1);*
- Where application is made to the court to issue a warrant of commitment against a person for non-payment of any sum of money adjudged to be paid by an order, the court may, if it thinks fit, postpone the issue of the warrant until such time and on such conditions, if any, as to the court may seem just: *Section 41.*

iv. **Probation orders -** *The Probation Act, Chap. 256*

Eligibility for a probation order

- Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him or her, make a probation order:

  Provided that, before making a probation order, the court shall explain to the offender in ordinary language the effect of the order and that, if he or she fails in any aspect to comply therewith or commits another offence, he or she will be liable to be sentenced for the original offence; where the offender is fourteen years of age or over the court shall not make a probation order unless he or she expresses his or her willingness to comply with the requirements of the order: *Section 3;*

- A court may, on making a probation order, if it thinks it expedient for the purpose of the reformation of the offender, allow any person who consents to do so to give security for the good behaviour of the offender: *Section 6.*

Procedure

- A probation order shall have effect for such period not less than one year and not more than three years from the date of the order as shall be specified therein, and shall require the probationer to submit during that period to the supervision of a probation officer appointed for or assigned to the district, which shall be named in the order, in which the probationer will reside during the probation period, and

shall contain such requirements as the court considers necessary for securing the supervision of the offender, and such additional requirements as to residence, and other matters (including submission by the probationer to medical treatment) as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences:

Provided that, without prejudice to the power of the court to make an order under *Section 5(1),* the payment of sums by way of damages for injury or compensation for loss shall not be included among the requirements of a probation order: *Section 4(1);*

- Before making a probation order containing a requirement as to residence the court shall consider the home surroundings of the offender; and where the order requires the offender to reside in an institution:
  - The institution shall be an institution which is subject to inspection by a Ministry or Department of the Government: *Section 4(2)(a);*
  - The name of the institution and the period for which he or she is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the order: *Section 4(2)(b);*
  - The court shall forthwith give notice of the terms of the order to the Governor-General: *Section 4(2)(c);*
- The court by which a probation order is made shall forthwith give a copy of the order to the probationer, to the probation officer under whose supervision he or she is placed, and to the person in charge of any institution in which the probationer is required by order to reside; and the court shall, except where it is itself the supervising court, send to the court for the district named in the order in which the probationer will reside during the probation period a copy of the order, together with such documents and information relating to the case as it considers likely to be of assistance to the supervising court: *Section 4(3);*
- If it appears to a judge or magistrate that a probationer has been convicted by a court in any part of Grenada of an offence committed during the probation period and has been dealt with in respect of that offence, he or she may issue a summons requiring the probationer to appear at any place and time specified therein or may issue a warrant for his or her arrest:

  Provided that a magistrate shall not issue such a summons or warrant, except on information in writing and on oath: *Section 8(1);*
- A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made, or before the supervising court:

  Provided that if a warrant is issued requiring him or her to be brought before the High Court, and he or she cannot forthwith be brought before that court because that court is not being held, the warrant shall have effect as if it directed him or her to be brought before a Magistrate's Court for the place in the district where he or she is arrested; and the magistrate's court shall commit him or her to custody or release him or her on bail (with or without sureties) until he or she can be brought or appear before the High Court: *Section 8(2);*

- If a person in whose case a probation order has been made by the High Court is convicted and dealt with by a Magistrate's Court in respect of an offence committed during the probation period, the Magistrate's Court may commit him or her to custody or release him or her on bail (with or without sureties) until he or she can be brought or appear before the court by which the order was made; and if it does so the Magistrate's Court shall send to the High Court a copy of the minute or memorandum of the conviction entered in the court register signed by the magistrate together with such other particulars of the case as may be desirable: *Section 8(3)*;
- Where it is proved to the satisfaction of the court by which a probation order was made, or, if the order was made by a Magistrate's Court, to the satisfaction of that court or the supervising court, that the person in whose case that order was made has been convicted and dealt with in respect of an offence committed during the probation period, the court may deal with him or her, for the offence for which the order was made, in any manner in which the court could deal with him or her if he or she had just been convicted by or before that court of that offence: *Section 8(4);*
- If a person in whose case a probation order has been made by a Magistrate's Court is convicted before the High Court of an offence committed during the probation period, or is dealt with by the High Court for an offence so committed in respect of which he or she was committed for sentence to that court, the High Court may deal with him or her, for the offence for which the order was made, in any manner in which the Magistrate's Court could deal with him or her if it had just convicted him or her of that offence: *Section 8(5);*
- If a person in whose case a probation order has been made by a Magistrate's Court is convicted by another Magistrate's Court of an offence committed during the probation period, that court may, with the consent of the court which made the order or of the supervising court, deal with him or her, for the offence for which the order was made, in any manner in which the court could deal with him or her if it had just convicted him or her of that offence: *Section 8(6);*
- Subject as hereinafter provided, a conviction of an offence for which an order is made under this Part placing the offender on probation shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act:

  Provided that where an offender, being not less than 17 years of age at the time of his or her conviction of an offence for which he or she is placed on probation, is subsequently sentenced[71] under this Part for that offence, the provisions of this subsection shall cease to apply to the conviction: *Section 9(1);*

[71] Grenada- Probation Act, Chap. 256, sections 9 (2) & (3). Without prejudice to the foregoing provisions of this section, the conviction of an offender who is placed on probation shall in any event be discharged for the purposes of any enactment which imposes a disqualification or disability upon convicted persons, or authorises or requires the imposition of any disqualification or disability.
The foregoing provisions of this section shall not affect:
- any right of such offender as aforesaid to appeal against his or her conviction, or to rely thereon in bar or any subsequent proceedings for the same offence;
- the revesting or restoration of any property in consequence of the conviction of any such offender.

- Some other sections to note include:
  - Breach of requirement of probation order: *Section 7;*
  - Amendment of probation order: *Sections 10, 13, 14;*
  - Discharge of probation order: *Sections 12, 14;*
  - Review of probation order: *Section 11.*

v. **Conviction and discharge** - *The Criminal Procedure Code, Chap. 72B*

- If, upon the hearing of any complaint, it appears to the court that, although the offence charged is proved, it was in the circumstances of the case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment, the court may, without proceeding to a conviction, discharge the accused, and may, if the court thinks fit, order him or her to pay such damages, not exceeding forty-eight dollars, and such costs of the proceeding, or either of them, as the court thinks reasonable, and to such person as the court may direct: *Section 61;*
- Where the accused, having been convicted of the offence with which he or she was charged, has paid the sum of money adjudged to be paid by the order, or has been discharged therefrom by the Crown, or has undergone imprisonment for non-payment thereof or imprisonment adjudged in the first instance, or both, or has been discharged from his or her conviction in manner aforesaid he or she shall be released from all other criminal proceedings for the same matter:

  Provided that nothing in this section shall affect the liability of any person in respect of any continuing or recurring offence: *Section 45.*

vi. **Discharge with no record of conviction** - *The Criminal Procedure Code, Chap. 72B*

- If, upon the hearing of any complaint, it appears to the court that, although the offence charged is proved, it was in the circumstances of the case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment, the court may, without proceeding to a conviction, discharge the accused, and may, if the court thinks fit, order him or her to pay such damages, not exceeding forty-eight dollars, and such costs of the proceeding, or either of them, as the court thinks reasonable, and to such person as the court may direct: *Section 61.*

Children - *The Juvenile Justice Act, No. 24 of 2012*

- The conviction of a child in respect of whom passing of a sentence has been postponed shall be expunged from any record if the child has met all the conditions imposed or at the expiration of the period in question, as the case may be: *Section 62(5).*

vii. **Compensation -** *The Criminal Code, Chap. 72A*

- An order for payment of compensation may be inflicted under this Code as a form of punishment: *Section 70(2);*
- Any person who is convicted of a summary offence punishable under this Code may be adjudged by the court to make compensation, not exceeding five thousand dollars, to any person injured by his offence: *Section 71(2);*
- Any such compensation may be either in addition to or in substitution for any other punishment: *Section 71(3);*
- Where any person, injured by any assault punishable under this Code by a magistrate, receives compensation for the injury under order of the court, or where the offender, having been ordered to make the compensation or to pay a fine or penalty, suffers imprisonment for non-payment thereof, or where any person, charged with assault before a magistrate, receives a certificate of an order of dismissal, the receipt of the compensation or the undergoing of the penalty or the receipt of such certificate, as the case may be, shall be a bar to any action or proceeding for the same injury: *Section 72;*
- In other cases in which compensation is awarded by order under this Code, to the extent of the amount duly paid under such order, any claim of the person injured or of his representatives for damages sustained by reason of the crime shall be deemed to have been satisfied; but the order for payment of compensation shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order: *Section 72.*

The Criminal Code Procedure, Chap. 72B

- Whenever an order is made against any person charged with a summary offence, or an accused person is convicted of an indictable offence, the court may, in addition to any sentence it may pass on him or her, order the person to pay such a sum for costs as the court shall fix, and as may appear to it just and reasonable: *Section 32;*
- Whenever a complaint is dismissed, the court may order that the complainant shall pay to the defendant such costs as the court shall deem just and reasonable, and, if the court is of the opinion that the complaint was frivolous or vexatious, it may also order that the complainant shall pay to the defendant a sum, not exceeding nine dollars and sixty cents, as compensation[72] for any trouble or expense to which the defendant may have been put by reason of such complaint, in addition to his or her costs: *Section 33.*

[72] Grenada- Criminal Code Procedure, Cap. 72B, section 61. If, upon the hearing of any complaint, it appears to the Court that, although the offence charged is proved, it was in the circumstances of the case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment, the Court may, without proceeding to a conviction, discharge the accused, and may, if the Court thinks fit, order him or her to pay such damages, not exceeding forty-eight dollars, and such costs of the proceeding, or either of them, as the Court thinks reasonable, and to such person as the Court may direct.

The Probation Act, Chap. 256

- A court, on making a probation order, may, without prejudice to its power of awarding costs against him or her, order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable, but, in the case of an order made by a magistrate's court the damages and compensation together shall not exceed five hundred dollars or such greater sum as may be allowed by any enactment other than this section: *Section 5(1);*
- An order for payment of damages or compensation as aforesaid may be enforced in like manner as an order for the payment of costs by the offender; and where the court, in addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay costs to that person, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs: *Section 5(2);*
- A fine imposed under this section in respect of a failure to comply with the requirements of a probation order:
    - Shall be deemed for the purpose of any enactment to be a sum adjudged to be paid by a conviction: *Section 7(5)(a);*
    - Shall be taken into account in fixing any subsequent sentence passed upon the probationer under the provisions of this section or of *Section 8: Section 7(5)(b).*

Children *- The Juvenile Justice Act, No. 24 of 2012*

- The court convicting a child of an offence for which a fine or imprisonment is stated by law as the penalty, may impose any one of the following penalties in place of that fine or imprisonment:
    - Symbolic compensation[73] to a specified person or institution: *Section 63(1)(a);*
    - Payment of compensation not exceeding five thousand dollars to a specified person or institution if the child or his or her family is able to make that payment: *Section 63(1)(b);*
    - An obligation on the child to provide a service or benefit or to pay compensation to a specified organisation identified by the child or by the court, if there is no identifiable person to whom restitution or compensation could be made: *Section 63(1)(c);*
    - Any other sentence as stated in this Act, except imprisonment: *Section 63(1)(d).*

[73] Grenada- Juvenile Justice Act, No. 24 of 2012, section 63(2). In this section "symbolic compensation" means the giving of an object owned, made or bought by a child to a person, or group of persons or an institution as compensation for the harm caused by the child.

viii. **Imprisonment -** *The Criminal Procedure Code, Chap. 72B*

- Whenever an order is made against any person for the payment of a sum of money, and he or she is liable to be imprisoned for a certain term, unless the sum shall be sooner paid, if he or she does not pay it either forthwith or at the time specified in the order, as the case may be, the court may issue its warrant of commitment, requiring the process server to whom the same is directed, to take and convey the person to prison and there deliver him or her to the gaoler, and requiring the gaoler to receive him or her into the prison, and there imprison him or her, with or without hard labour, as the case may be, for such time as may be directed by the warrant, unless the sum of money, and also all other costs, charges and expenses, shall be sooner paid: *Section 40;*
- Where any person is brought by a process server to the prison to be imprisoned by virtue of a warrant of commitment, the process server shall endorse thereon the day on which the person was arrested by virtue thereon, and the imprisonment shall be computed from that day and inclusive thereof: *Section 42.*

The Criminal Code, Chap. 72A

- A term of imprisonment, including detention in an Industrial School as defined in *Section 3,* of this Ordinance, may be inflicted under this Code as a form of punishment: *Section 70(2);*
- Where a person, having been convicted of crime, is again convicted of crime, he or she shall be liable to increased punishment in the cases and manner provided in Part I of the Table annexed to this section and the notes thereto: *Section 79(1);*

  Part I of the Table annexed outlines that upon summary conviction for a similar crime previously convicted of; the person so convicted shall be liable to imprisonment for twice the maximum of imprisonment which might otherwise be inflicted.

Children - *The Juvenile Justice Act, No. 24 of 2012*

- A sentence of imprisonment shall be used as a sentence of last resort and the sentence shall not be imposed unless:
  - The child was over the age of 12 at the time of commission of the offence; and *Section 61(1)(a);*
  - Substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include conviction of an offence referred to in Schedule III or a previous failure to respond to alternative sentences, including sentences with a residential element: *Section 61(1)(b);*
- A sentence of imprisonment shall not be imposed on a child:
  - In respect of an offence referred to in Schedule I: or *Section 61(2)(a);*
  - As an alternative to any other sentence specified in this Act: *Section 61(2)(b);*
- If a child fails to comply with a condition of a sentence imposed on him or her, the child may, in the prescribed manner be brought before the court for reconsideration

of the original sentence which may, subject to subsections (1) and (2), include a sentence of imprisonment: *Section 61(3);*

- If the court imposes a sentence of imprisonment, the court shall announce the term of imprisonment in open court and the coming into effect of the term of imprisonment shall be antedated by the number of days that the child has spent in prison prior to the sentence being announced in the court: *Section 61(4).*

GUYANA

Sentencing guidelines

The decision in the case **Linton Pompey v DPP [2020] CCJ 7 (AJ) GY,** connotes the position on sentencing guidelines for Guyana. It was held that:

> *"There is another area in which judges require guidance. We referenced it in the first paragraph of this judgment. Guyana's trial judges would be better served if they were guided by appropriate guidelines that suggest various sentencing ranges for the most prevalent crimes. Several States throughout the Caribbean Community have established such guidelines. It is a good practice. In his judgment, Justice Jamadar has helpfully referenced the Jamaica and Trinidad and Tobago publications.*
>
> *An apex Court may weigh in on principles that would underlie the exercise of judicial discretion or a judge's application of reasonable sentencing guidelines to particular facts. But populating, or fleshing out, those principles with reference to the months and years in prison a convicted person should serve, is an exercise best undertaken by the judicial branch of the particular State in which the crime is committed and the sentence is to be served. The local Court of Appeal may do so, or the Head of the Judiciary may establish a committee to assist her in developing and publishing appropriate sentencing guidelines."*

Children *- The Juvenile Justice Act, No. 8 of 2018*[74]

- The court or a person performing any function pursuant to the provisions of this Act shall be guided by the following principles:
  - The juvenile justice system is intended to:
    (i) further the well-being of juveniles, therefore the best interest of the child shall be the paramount consideration when making decisions: and *Section 3(a)(i);*

[74] See Part II of the Juvenile Justice Act, No. 8 of 2018 which sets out the principles and objectives of diversion. Diversion means the diversion of a juvenile away from the formal court procedures to informal procedures and includes restorative measures under the Act used to deal with a juvenile alleged to have committed an offence.

(ii) Encourage and facilitate juveniles having a meaningful life in the community by rehabilitation, education, reintegration, and proportionate and appropriate accountability to victims and society: *Section 3(a)(ii);*

- The juvenile justice system shall:
  (i) be separate from that for adults: *Section 3(b)(i)*
  (ii) emphasize rehabilitation, education and reintegration: *Section 3(b)(ii);*
  (iii) ensure that a juvenile is subject to meaningful consequences proportionate to the offence and circumstances, recognizing the juvenile's greater dependency and reduced level of maturity: *Section 3(b)(iii);*
  (iv) provide procedural protection to ensure that juveniles are treated fairly and humanely and their rights are protected: *Section 3(b)(iv);*
  (v) provide timely intervention that reinforces the link between the offending behaviour and its consequences: *Section 3(b)(v);*
  (vi) inform and involve parents of juveniles of and in measures or proceedings: and *Section 3(b)(vi);*
  (vii) ensure victims are provided with information about the proceedings and are given an opportunity to participate and be heard and wherever possible contribute to the rehabilitation and reintegration of the juveniles: *Section 3(b)(vii);*
- Application of measures taken against juveniles who commit offences shall:
  (i) reinforce respect for societal values: *Section 3(c)(i);*
  (ii) ensure fair and proportionable accountability: *Section 3(c)(ii);*
  (iii) encourage the repair of harm done to victims and the community: *Section 3(c)(iii);*
  (iv) where appropriate, involve the parents, the extended family, the community and social or other agencies in the juvenile's rehabilitation, education and reintegration, and be prompt given a juvenile's perception of time: *Section 3(c)(iv);*
  (v) respect gender, ethnic and cultural differences and respond to the needs of juveniles with special requirements: and *Section 3(c)(vi);*
  (vi) resort to detention as a measure of last resort: *Section 3(c)(vii);*

- Some other Parts of the Act to note include:
  - Part VII which deals with the procedure for reviewing sentences;
  - Part VIII which provides for custody, supervision and rehabilitation of an offender.

<u>Sentencing options in Guyana</u>

According to *Section 12*, of the *Summary Jurisdiction (Offences) Act, Chapter 8:02,* the following punishments may be inflicted under this Act, namely:

- Fine;
- Payment of compensation for injury done;
- Whipping;
- Flogging;
- Imprisonment.

Children *- The Juvenile Justice Act, No. 8 of 2018*

- Subject to *Section 44,* when a court finds a juvenile guilty of an offence and is ordering a sentence, the court shall make any one or more of the following orders that are not inconsistent with each other on such terms and conditions that the court deems necessary:
  - Reprimand the juvenile: *Section 43(a);*
  - Order the juvenile be discharged: *Section 43(b);*
  - Require the juvenile to report to and be supervised by the Chief Probation Officer: *Section 43(c);*
  - Commit the juvenile to the care of a relative or other adult: *Section 43(d);*
  - If the juvenile is employed, order the juvenile to pay a fine: *Section 43(e);*
  - Order the parent of the juvenile to pay a fine: *Section 43(f);*
  - If the juvenile is employed, order the juvenile to pay compensation for any loss or damage suffered or injury sustained arising from the commission of the offence, but no order shall be made for general damages: *Section 43(g);*
  - Order the juvenile to make restitution of any property obtained as a result of the commission of the offence: *Section 43(h);*
  - Order the juvenile to perform community service and to report to and be supervised by a probation officer or a person designated by the court: *Section 43(i);*
  - Place the juvenile on probation in accordance with *Sections 45* and *46,* for a specified period not exceeding two years: *Section 43(j);*
  - Make a custody and supervision order, ordering that a period be served in custody in an open residential facility, and that a second period which is one half as long as the first, be served under supervision in the community subject to conditions, the total of the periods not exceeding two years from the date of the coming into force of the order: *Section 43(k);*
  - Make a deferred custody and supervision order that is for a specified period not exceeding six months, subject to any conditions set out in *Sections 45* and *46:* or *Section 43(l);*
  - Order that the juvenile complies with any other reasonable and ancillary conditions that the court considers appropriate: *Section 43(m);*

- When a court orders a sentence, it shall record reasons for the sentence and shall, on request, give or cause to be given a copy of the sentence and the reasons to the juvenile, the juvenile's counsel, a parent of the juvenile or an adult assisting the juvenile, the Director of Juvenile Justice and the Chief Probation Officer: *Section 56;*
- A sentence comes into force on the date on which it is ordered but the court may order that any terms and conditions of the sentence are to be complied with on any later date that the court specifies: *Section 50;*
- Some other sections to note include:
  - Consecutive sentences: *Section 51;*
  - Duration of sentences imposed at the same time: *Section 52;*
  - Duration of sentences imposed at different times: *Section 53;*
  - Sentence continues when juvenile becomes an adult: *Section 54;*
  - Supervision inoperative when additional custodial sentence ordered: *Section 55.*

i. **Community service orders -** *The Extra-Mural Work Act, Chap. 11:02*

Eligibility for a community service order

- Where a person:
  - Has been convicted of an offence for which he is liable to be sentenced to imprisonment: or *Section 3(1)(a);*
  - Is liable to be committed to prison for failure to pay a fine or debt: *Section 3(1)(b);*

  and the court is of the opinion that, if this Act had not been passed, he would have been adequately punished by imprisonment for a period not exceeding six months but that, having regard to his character, the nature and seriousness of the offence or the circumstances of his failure to pay (as the case may be) and all other circumstances of the case, it is inexpedient so to sentence or to commit him, notwithstanding any provisions contained in any other Act, the court may, in lieu thereof and subject to and in accordance with this Act, make an order requiring him to be employed on public work[75] for such period not exceeding six months and for such number of hours each day (excluding public holidays as are specified in the order).

Procedure

- Where the court has reason to doubt whether any such person is physically fit for employment on public work, the court:
  - May cause him to be medically examined: *Section 3(2)(a);*

[75] Guyana- Extra-Mural Work Regulations (Reg. 8/1998), regulation 2. Public work includes any work on State or Government land or any other property belonging to, or rented or leased to, the State; or with the permission of a local government authority, on any land or any other property belonging to, or rented or leased to, the local government authority.

- Shall not make an extra-mural work order unless it is shown to the satisfaction of the court that he is so fit: and *Section 3(2)(b);*
- Shall specify in the extra-mural work order if such an order is made, any public work for which the court is not satisfied he is physically fit: *Section 3(2)(c);*

- The number of hours each day during which the offender shall be required to be employed under the last preceding subsection shall not exceed three, exclusive of any intervals prescribed for meals, refreshment or rest and shall, if the offender is gainfully occupied in employment, occupy only that part of the offender's time which would represent leisure hours: *Section 3(3);*
- The court shall before making extra-mural work order, explain to the person concerned in ordinary language the effect of the order and the effect of failure to comply therewith and shall not make the order unless he expresses his willingness to comply with the requirements thereof: *Section 3(4);*
- Subject to any regulations made under this Act and the terms of the extra-mural work order, an offender shall, during the period of the extra-mural work order, report daily at such times and places as the Commissioner may specify, to the Commissioner or any other member of the Police Force appointed by him for that purpose: *Section 4(1);*
- An offender shall each day be employed on a daily task, set by the person to whom, under the preceding subsection, he is required to report, which shall be such as can, in the opinion of that person, be completed by the offender, having regard to his physical capacity, during the number of hours specified in the order: *Section 4(2);*
- If an offender is gainfully occupied in employment, the time at which he is ordered to report daily under subsection (1), shall be such as not to interfere with such employment: *Section 4(3);*
- Some other sections to note include:
  - Injury to Offender while on public work: *Section 5;*
  - Breach of requirement of extra-mural order: *Section 6.*

Children *- The Juvenile Justice Act, No. 8 of 2018*

- An order shall not be made under *Section 44(i),* to perform community service unless the court is satisfied that:
  - The order does not interfere with the normal hours of work or education of the juvenile: *Section 48(1)(a);*
  - Those services can be completed in 240 hours or less and within 12 months after the date of the order: *Section 48(1)(b);*
  - The community service to be performed is part of a programme that is approved by the Director of Juvenile Justice: and *Section 48(1)(c);*
  - The organisation for whom the community service is to be performed has agreed to its performance: *Section 48(1)(d);*

- A court may, on application by or on behalf of the juvenile in respect of whom a sentence has been ordered under *Sections 43(g), (h)* or *(i),* allow further time for the completion of the sentence subject to any conditions it deems appropriate: *Section 48(2);*
- A court that makes an order under *Sections 43(g), (h), (i)* or *(j),* or any order subject to the conditions under *Sections 45* and *46,* shall:
    - Cause the order to be read by or to the juvenile: *Section 49(1)(a);*
    - Explain or cause to be explained to the juvenile the purpose and effect of the order, and confirm that the juvenile understands it: and *Section 49(1)(b);*
    - Cause a copy of the order to be given to the juvenile, to any parent of the juvenile or adult assisting the juvenile at the sentencing and the Chief Probation Officer;
- After the order has been read and explained under subsection (1), the juvenile shall endorse on the order an acknowledgement by signature or mark that the juvenile has received a copy of the order and that it was explained: *Section 49(2);*
- The failure of the juvenile to endorse the order or of the juvenile or the juvenile's parent or the adult assisting the juvenile to receive a copy of the order does not affect the validity of the order: *Section 49(3);*
- An order made under *Sections 43(g), (h), (i)* or *(j),* comes into force:
    - On the date on which it is made: or *Section 49(4)(a);*
    - If a juvenile receives a sentence that includes a period of continuous custody and supervision, at the end of the period of custody and supervision unless the juvenile or the juvenile's parent or adult assisting the juvenile is able to comply with the said order before the end of such custody or supervision: *Section 49(4)(b).*

ii. **Suspended sentences -** *The Criminal Law Reform Act, Chap. 11:05*

- Subject to the other provisions of this section, and *Section 10,* where any court passes on any person a sentence of imprisonment for a term of not more than two years for an offence, it may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year or more than two years from the date of the order, such person commits in Guyana another offence punishable with imprisonment and thereafter a court having the power to do so orders under *Section 4,* that the original sentence shall take effect with or without variation of its terms: *Section 3(1);*
- A court shall not, on passing a sentence of imprisonment on any person for an offence, make an order under subsection (1), if it is proved that he has been previously convicted for any offence for which a sentence of imprisonment has been passed on him: *Section 3(2);*
- A court shall, before it makes an order under subsection (1), in respect of a person convicted by or before it, ascertain whether that person has been previously convicted of any offence for which a sentence of imprisonment has been passed on him and for that purpose may, where it becomes necessary, defer the passing of sentence on him: *Section 3(3);*

- Where a written law does not prescribed a mandatory sentence of imprisonment for an offence, a court shall not deal with any person convicted of the offence by means of a suspended sentence unless it appears to the court that the case is one in which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under subsection (1): *Section 3(4);*
- Where a person is convicted by or before a court upon two or more counts or two or more charges of offences, tried jointly, and the court is of the view that the sentence of imprisonment proposed to be imposed on the person for any one or more of such counts or charges of offences should not be suspended, the court shall not deal with the person by means of a suspended sentence in respect of the other or any of the other counts or charges of offences so jointly tried: *Section 3(5);*
- A court, passing a suspended sentence on any person in respect of one offence, shall not make a probation order in the same case in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court: *Section 3(6);*
- A court shall, on passing a suspended sentence on any person, explain to him in ordinary language his liability under *Section 4,* if during the operational period of that sentence he commits an offence punishable with imprisonment: *Section 3(7);*
- Save as otherwise provided in subsection (9), for the purposes of all written laws a suspended sentence passed on any person, whether or not it has taken effect under *Section 4(1),* shall be treated as a sentence of imprisonment passed on the date of the order of suspended sentence: *Section 3(8);*
- A suspended sentence passed on any person which has not taken effect under *Section 4(1),* shall not be treated as a sentence of imprisonment for the purposes of any written law which provides for disqualification for, or loss of, any office (not being an office created by the Constitution) or forfeiture of pension, of any person sentenced to imprisonment; and where it has been ordered under *Section 4,* that the suspended sentence passed on any person shall take effect, for the purposes of any such written law the person shall be treated as having been convicted and sentenced to imprisonment on the ordinary date on which the period allowed for making an appeal against an order under that section expires or, if such an appeal is made, the date on which it is finally disposed of by confirming the order that the suspended sentence shall take effect, whether with or without variation, or it is abandoned or fails for prosecution: *Section 3(9);*
- Some other sections to note include:
    - Method of dealing with person on conviction of further offence during operational period: *Section 4;*
    - Procedure where court convicting of further offence does not deal with suspended sentence: *Section 5;*
    - Suspended sentence supervision order: *Section 6;*
    - Breach requirement of supervision order: *Section 7;*
    - Exemption: *Section 10.*

iii. **Fines** - *The Summary Jurisdiction (Procedure) Act, Chap. 10:02*

- Where a person is convicted of any summary conviction offence for which the court, under any enactment for the time being in force under any enactment for the time being in force, has authority to impose imprisonment and has not authority to impose a fine, the court, notwithstanding any such Act or other enactment, may if it thinks that the justice of the case will be better met by a fine than by imprisonment, impose on the offender a fine not exceeding eighty thousand dollars, and not being of such amount as will, under this Act, subject the offender in default of payment of the fine to any greater term of imprisonment than that to which he is liable under the Act or other enactment authorising the imprisonment as aforesaid: *Section 37;*
- The court by whose order any sum of money is adjudged to be paid may, if it thinks fits, do all or any of the following things:
  - Allow time for payment of the sum: or *Section 44(1)(a);*
  - Direct payment of the sum to be made by instalments: or *Section 44(1)(b);*
  - Direct that the person liable to pay the sum shall be at liberty to give, to the satisfaction of the court, security, either with or without a surety or sureties, for the payment thereof or of any instalment thereof: *Section 44(1)(c);*
- Where a sum of money is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in the payment of all the instalments then remaining unpaid: *Section 44(2);*
- Where time has been allowed for the payment of a sum adjudged to be paid by a conviction or order of a court of summary jurisdiction, further time may, subject to any provisions of this Act, on an application by or on behalf of the offender, be allowed by the court, or such court may, subject as aforesaid, direct payment by instalments of the sum so adjudged to be paid: *Section 45.*

The Summary Jurisdiction (Magistrates) Money Regulations (Reg. 4/3/1937, 1/6/1931, 22/119137, 18/1960, 17/1963)

- Entries of all fines imposed, licences received, and recognisances entreated, and other payments to the State, ordered by the magistrate, shall be entered by the magistrate and clerk in separate books, which shall be open to inspection by the Accountant General, or by any officer authorized by him in writing, or by an audit officer: *regulation 3(1);*
- In every case where the fine has not been paid at the time fines are imposed, the magistrate shall note the reason for such non-payment against the entry of the fine in his fine book, and the limit within which such fine is to be paid: *regulation 3(2);*
- The magistrate shall every month compare with his fine book, the return forwarded to him by the prison authorities in order that he may ascertain if all prisoners committed to prison by him in default of payment of fines have been duly lodged in prison: *regulation 3(3).*

The Summary Jurisdiction (Offences) Act, Chap 8:02

- The court may, in its discretion, on the application of the complainant adjudge any person convicted before it of a summary conviction offence to make compensation, exceeding forty-nine thousand dollars but not exceeding one hundred thousand dollars, to any person who suffers any injury (including loss of or damage to his property) as a result of the commission of the offence; and any sum so adjudged shall be regarded and dealt with in all respects as if it were a sum awarded by a judgement of the court under the *Summary Jurisdiction (Petty Debt) Act:*

  Provided that where the conviction is in respect of an offence committed prior to the coming into operation of this section the compensation awarded shall not exceed that amount which the court could have awarded at the time of the commission of the offence: *Section 13.*

Children *- The Juvenile Justice Act, No. 8 of 2018*

Subject to *Section 44,* when a court finds a juvenile guilty of an offence and is ordering a sentence, the court shall make any one or more of the following orders that are not inconsistent with each other on such terms and conditions that the court deems necessary:

- If the juvenile is employed, order the juvenile to pay a fine: *Section 43(e);*
- Order the parent of the juvenile to pay a fine: *Section 43(f).*

iv. **Probation orders** - *The Probation of Offenders Act, Chap. 11:04*

Eligibility for a probation order

- Where any person is charged with an offence which is punishable on summary conviction, and the court thinks that the charge is proved but is of opinion that having regard to the circumstances, including the nature of the offence and the character and home surrounding of the offender, it is expedient to release the offender on probation, the court may:
  - Where the offender is not a juvenile, convict the offender, and make a probation order: or *Section 4(1)(a);*
  - Without proceeding to conviction, make a probation order: *Section 4(1)(b);*

  Provided that before making a probation order the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence he will be liable to be sentenced or be convicted and sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the order;
- Where any person is convicted of an offence which is not punishable on summary conviction, and the court is of opinion that, having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may in lieu of imposing a sentence of imprisonment, make a probation order:

  Provided that before making a probation order the court shall explain to the offender

in ordinary language the effect of the order and that, if he fails in any respect to comply therewith or commits another offence he will be liable to be sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the order: *Section 4(2).*

Procedure

- A probation order shall have effect for such period not less than one year and not more than three years from the date of the order as may be specified therein, and shall require the probationer to submit during that period to the supervision of a probation officer appointed for or assigned to the magisterial district in which the probationer will reside after the making of the order, and shall contain such provisions as the court considers necessary for securing the supervision of the offender, and such additional conditions as to residence and other matters (including submission by the probationer to medical treatment) as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences:

  Provided that (without prejudice to the power of the court to make an order under *Section 7(1)*), the payment of sums by way of damages for injury or compensation for loss shall not be included among the requirements of a probation order: *Section 5(1);*

- Where a probation order contains a provision as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order when any such provision requires the probationer to reside in an institution, the period for which the probationer is required so to reside shall not extend beyond twelve months from the date of the order, and the court shall forthwith give notice of the terms of the order to the Minister: *Section 5(2);*
- The court by which a probation order is made shall furnish two copies of the order, one copy to be given to the probationer and the other to the probation office under whose supervision he is placed: *Section 5(3);*
- If it appears to a judge or any magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest:

  Provided that a magistrate shall not issue such a summons except on information, and shall not issue such a warrant except on information in writing and on oath: *Section 8(1);*

- A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made: *Section 8(2);*
- Where a probationer is found guilty by, or admits his guilt before, a magistrate of an offence committed while the probation order was in force, the magistrate may commit the probationer to custody or release him on bail, with or without sureties, until he can be brought or appear before the court by which the probation order was made: *Section 8(3);*

- Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been found guilty, or has admitted before a court his guilt, of an offence while the probation order was in force then:
    - If the probationer was not convicted of the original offence in respect of which the probation order was made, the court may in the case of a juvenile, pass any sentence which it could pass if the probationer had just been found guilty before that court of that offence and in any other case, may proceed to conviction and pass any sentence as aforesaid: or *Section 8(4)(a);*
    - If the probationer was convicted of the original sentence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before the court of that offence: *Section 8(4)(b);*
- Some other sections to note include:
    - Failure of the probationer to comply with probation order: *Section 9;*
    - Probation order, disqualification or disability: *Section 10;*
    - Amendment of probation orders: *Sections 12, 14;*
    - Discharge of probation orders: *Sections13, 14.*

Children *- The Juvenile Justice Act, No. 8 of 2018*

- The court shall prescribe as conditions of any probation or supervision order, that the juvenile shall keep the peace and be of good behaviour: *Section 45;*
- A court may prescribe, as conditions of any probation or supervision order, that a juvenile do one or more of the following:
    - Report to and be under the supervision of the Chief Probation Officer or a person designated by the court: *Section 46(a);*
    - Notify the Chief Probation Officer or person designated by the court of any change of address or any change in the juvenile's place of employment, education or training: *Section 46(b);*
    - Remain within the territorial jurisdiction of Guyana, unless the juvenile obtains the permission of the court to leave the jurisdiction: *Section 46(c);*
    - make reasonable efforts to obtain and maintain suitable employment; *Section 46 (d)*
    - Attend school or any other place of learning, training or recreation that is appropriate, if the court is satisfied that a suitable programme for the juvenile is available there: *Section 46(d);*
    - Reside with a parent, or any other adult who is willing to provide for the care and maintenance of the juvenile: *Section 46(e);*
    - Reside at a place that the Chief Probation Officer may specify: *Section 46(f);*
    - Advise the Chief Probation Officer or the person designated by the court immediately of any change:

(i) in the juvenile's address: or *Section 46(h)(i);*

(ii) in the juvenile's family or financial situation, that may reasonably be expected to affect the juvenile's ability to comply with the conditions of the sentence: and *Section 46(h)(ii);*

(iii) comply with any other conditions set out in the order: *Section 46(h)(iii).*

v. **Conviction and discharge -** *The Probation of Offenders Act, Chap. 11:04*

- Where any person is charged with an offence which is punishable on summary conviction, and the court thinks that the charge is proved but is of opinion that having regard to the circumstances, including the nature of the offence and the character and home surrounding of the offender, it is expedient to release the offender on probation, the court may:
  - Where the offender is not a juvenile, convict the offender, and make a probation order: or *Section 4(1)(a);*
  - Without proceeding to conviction, make a probation order: *Section 4(1)(b);*

  Provided that before making a probation order the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence he will be liable to be sentenced or be convicted and sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the order.

Children - *The Juvenile Justice Act No. 8 of 2018*

- When a court reviews a sentence ordered, it may, after giving the juvenile, a parent of or adult assisting the juvenile, the Director of Public Prosecutions, the Director of Juvenile Justice and the Chief Probation Officer an opportunity to be heard:
  - Confirm the sentence: *Section 63(12)(a);*
  - Terminate the sentence and discharge the juvenile from any further obligation to comply with the sentence: or *Section 63(12)(b);*
  - Vary the sentence or order any new sentence under *Section 43,* other than a committal to custody, for any period of time, not exceeding the remainder of the period of the earlier sentence: *Section 63(12)(c);*
- If a juvenile is found guilty of an offence, and a court directs under *Section 43(b),* that the juvenile be discharged absolutely, or the sentence has ceased to have effect, the juvenile is deemed not to have been found guilty of the offence except that:
  - The juvenile may plead autrefois convict in respect of any subsequent charge relating to the offence: *Section 70(1)(a);*
  - A court may consider the finding of guilt in considering an application for bail or in considering what other sentence to order for any other offence: and *Section 70(1)(b);*
  - A Parole Board may consider the finding of guilt in considering an application for conditional release or pardon: *Section 70(1)(c).*

vi. **Discharge with no record of conviction -** *The Summary Jurisdiction (Procedure) Act, Chap. 10:02*

- If, on hearing of any complaint, it appears to the court that, although the complaint is proved, the offence was, in particular circumstances of the case, of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment:
  - The court may, without proceeding to a conviction, dismiss the complaint and, if it thinks fit, order the defendant to pay such damages, not exceeding ten dollars, and such costs of the proceedings, or either of them, as the court thinks reasonable, and the damages shall be payable to the person directed by the court: or *Section 42(a);*
  - The court may, upon convicting the defendant, discharge him conditionally on his giving security, with or without a surety or sureties, to appear for sentence when called upon or to be of good behaviour, and either without payment of damages and costs, or either of them, the court thinks reasonable: *Section 42(b).*

Children - *The Juvenile Justice Act, No. 8 of 2018*

- If a juvenile is found guilty of an offence, and a court directs under *Section 43(b),* that the juvenile be discharged absolutely, or the sentence has ceased to have effect, the juvenile is deemed not to have been found guilty of the offence except that:
  - The juvenile may plead autrefois convict in respect of any subsequent charge relating to the offence: *Section 70(1)(a);*
  - A court may consider the finding of guilt in considering an application for bail or in considering what other sentence to order for any other offence: and *Section 70(1)(b);*
  - A Parole Board may consider the finding of guilt in considering an application for conditional release or pardon: *Section 70(1)(c);*
- Where a juvenile is found guilty of an offence under any law the finding of guilt shall not be recorded as a conviction: *Section 42.*

vii. **Compensation -** *The Summary Jurisdiction (Offences), Chap. 8:02*

- The court may, in its discretion, on the application of the complainant adjudge any person convicted before it of a summary conviction offence to make compensation, exceeding forty-nine thousand dollars but not exceeding one hundred thousand dollars, to any person who suffers any injury (including loss of or damage to his property) as a result of the commission of the offence; and any sum so adjudged shall be regarded and dealt with in all respects as if it were a sum awarded by a judgement of the court;
- *Summary Jurisdiction (Petty Debt) Act:*

  Provided that where the conviction is in respect of an offence committed prior to the coming into operation of this section the compensation awarded shall not exceed that amount which the court could have awarded at the time of the commission of the offence: *Section 14;*

- Where any person who suffers any injury as aforesaid as a result of the commission of a summary conviction offence receives compensation for the injury under the order of the court, the receipt of that compensation shall be a bar to any action for the same injury: *Section 15.*

The Probation of offenders Act, Chap. 10:04

- Where a person is placed on a probation order under the supervision of a probation officer, the court may, without prejudice to its power of awarding costs against the offender, order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable, but not, in the case of an order made by a court of summary jurisdiction, exceeding in the aggregate seven thousand eight hundred dollars or such greater sum as may be allowed by any enactment relating to the offence:

  Provided that in the case of a juvenile the order for the payment of such damages or such compensation for loss shall be made against the parent or guardian: *Section 7(1);*

- Where a court makes any such order for the payment of damages or compensation as aforesaid, the order may be enforced in like manner as an order for the payment of costs by the offender, and where the court, in addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment: *Section 7(2).*

Children *- The Juvenile Justice Act, No. 8 of 2018*

- An order shall not be made under *Sections 43(g)* or *(h),* unless the court has secured the consent of the person to be compensated: *Section 47(1);*
- The court may consider any representations made by the person who would be compensated or to whom restitution or payment would be made: *Section 47(2);*
- The court shall cause notice of the terms of the order to be given to the person who is to be compensated or to whom restitution or payment is to be made: *Section 47(3).*

viii. **Imprisonment** *- The Summary Jurisdiction (Offences) Act, Chap. 8:02*

- Where any person is convicted of a summary conviction offence punishable by imprisonment, under this Act, the court may, in its discretion, adjudge him to undergo any less term of imprisonment than the term prescribed by this Act for the offence: *Section 17;*
- Where the court adjudges any person to undergo a term of imprisonment for a summary conviction offence, and he is already undergoing, or has been at the same sitting of the court adjudged to undergo imprisonment for another offence, the court may direct that that imprisonment shall commence at the expiration of the imprisonment which he is then undergoing, or has been so previously adjudged to undergo as aforesaid: *Section 18(1);*

- In this section the expression 'imprisonment' shall include cases where imprisonment is imposed by a court on any person with or without the option of a fine or in respect to non-payment of any sum of money or for failing to do or abstaining from doing any act or thing required to be done or left undone: *Section 18(2).*

The Summary Jurisdiction (Procedure) Act, Chap. 10:02

- Subject in every case to the provisions of the written law on which the order is founded, the period of imprisonment, whether with or without hard labour, which is imposed by the court in respect of the non-payment of any sum of money adjudged to be paid by an order shall be that period which, in the opinion of the court, will satisfy the justice of the case, and be according to the following scales: *Section 38;*

Where the sum of money adjudged to be paid adjudged by an order	The period shall not exceed
does not exceed $10,000	20 days
exceeds $10,000 but does not exceed $15,000	42 days
exceeds $15,000 but does not exceed $30,000	12 weeks
exceeds $30,000 but does not exceed not exceed $50,000	6 months
exceeds $50,000 but does not exceed $70,000	10 months
exceeds $70,000	18 months

Children *- The Juvenile Justice Act, No. 8 of 2018.*

- A child or juvenile shall not be sentenced to imprisonment: *Section 41.*

JAMAICA

Suggested sentencing format *- Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts, 2017, Appendix C.*

[1] Introduction

[Nature of the offence for which the offender was indicted and any other relevant information]

[2] The plea

[3] The relevant facts

[If there was a contested trial, refer briefly to the evidence called]

[If there was a plea of guilty, refer to the summary of facts or the agreed basis of plea]

[4] The law

[Statutory provisions: e.g. relevant minimum/maximum sentence provisions, mandatory disqualification, etc.]

[Common law: previous sentencing decisions, established sentencing ranges]

[Applicable sentencing guidelines]

[5] Reports and other written documents provided to the court

[Social enquiry reports]

[Forensic psychiatric reports]

[Medical reports]

[Testimonials, etc.]

[6] Plea in mitigation

[7] The normal range

[8] The starting point

[9] Mitigating and Aggravating factors

[10] Pronounce sentence

[Explain the sentence to the offender and ensure that it is properly recorded]

[If in writing, hand down sentencing remarks]

Sentencing guidelines

The *"Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts"* represent the conceptualization and realization of an important tool geared towards achieving consistency in judicial approach to sentencing. The guidelines outline relevant considerations relating to the purposes and principles of sentencing. The sentencing table which has been established offers guidance in respect of the normal range of sentences and the appropriate starting point for a vast number of offences which are dealt with in the Circuit Courts and the Gun Courts. It is expected that a similar table will be developed in respect of offences triable in the Parish Courts in due course.

Sentencing options in Jamaica

Childre[76]*- The Child Care and Protection Act, No. 11 of 2004*

- Where a child has been found guilty of any offence before a Children's Court, that court may, subject to the provisions of this Act, make an order:
    - Dismissing the case: *Section 76(1)(a);*
    - For probation under the *Probation of Offenders Act: Section 76(1)(b);*

[76] Jamaica- Child Care and Protection Act, No. 11 of 2004, section 2: "child" means a person under the age of eighteen years. Child Care and Protection Act, No. 11 of 2004, section 63: It shall be conclusively presumed that no child under the age of twelve years can be guilty of an offence.

- Placing the child, either in addition to or without making any other order under this section for a specified period not exceeding three years, under the supervision of a probation and after-care officer or some other person to be selected for the purpose by the Minister: *Section 76(1)(c);*
- Committing the child to the care of any fit person, whether a relative or not, who is willing to undertake the care of the child: *Section 76(1)(d);*
- In accordance with subsection (7), if the child's parent or guardian consents to the making of the order: *Section 76(1)(e);*
- Sending the child to a juvenile correctional centre: *Section 76(1)(f);*
- Ordering the parent or guardian of the child to pay a fine, damages or costs: *Section 76(1)(g);*
- Ordering the parent or guardian of the child to enter into a recognizance for the good behaviour of such offender: *Section 76(1)(h).*

i. **Community service order -** *The Criminal Justice (Reform) Act, No. 7 of 1978*

Eligibility for a community service order

- Where a person of or over 18 years of age is convicted of an offence punishable with imprisonment, the court before which he is convicted may, instead of dealing with him in any other way, make, with his consent, an order (hereinafter referred to as "a community service order") requiring him to perform unpaid work in accordance with the provisions of this section for such number of hours (being in the aggregate not less than forty nor more than three hundred and sixty) as may be specified in the order:

  Provided that a community service order shall not be made where the offence involved:

  - Murder: *Section 10(1)(a);*
  - The use of, or the illegal possession of, a firearm: or *Section 10(1)(b);*
  - The use of a weapon referred to in the First Schedule, an imitation firearm or the possession of an imitation firearm in circumstances which constitute an offence under *Section 25,* of the *Firearms Act: Section 10(1)(c);*
- A court shall not make a community service order under subsection (1), in respect of any offender unless the court is satisfied:
  - That arrangements can be made in the area in which the offender resides, or will reside, for him to perform work under such order and for proper supervision of that work: and *Section 10(2)(a);*
  - After considering a report by a probation officer in respect of the offender and his circumstances and (if the court thinks it necessary) after hearing a probation officer, that the offender is a suitable person to perform work under such an order: *Section 10(2)(b).*

Procedure

- A community service order shall specify the area in which the offender resides or will reside and the court shall cause copies of the order to he delivered to a probation officer carrying out duties in that area, hereinafter referred to as the relevant probation officer: *Section 10(4);*
- An offender in respect of whom a community service order is in force shall:
  - Report to the relevant probation officer and subsequently from time to time notify him of any change of address: and *Section 10(5)(a);*
  - Perform for the number of hours specified in the order at such times as he may be instructed by the relevant probation officer: *Section 10(5)(b);*
- Where a court makes community service orders in respect of two or more offences of which the offender has been convicted, the court may direct that the periods of service shall be concurrent with or consecutive to those specified in any other of those orders:

  Provided that where the court directs that the periods of service shall be consecutive the aggregate of such periods of service shall not exceed four hundred and eighty hours: *Section 10(3);*
- The instructions given by the relevant probation officer under this section shall as far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment: *Section 10(6);*
- If at any time during which an order was made under *Sections 10, 12, 13, 14, 15* or *16,* is in force in respect of an offender, it appears on information to a Justice of the Peace that the offender has failed to comply with any of the requirements of the order, the Justice of the Peace may:
  - Where the order was made by a Petty Sessions court:
    (i) issue a summons requiring the offender to appear before the court by which the order was made at a time specified in the summons: or *Section 11(1)(a)(i);*
    (ii) if the information is in writing and on oath issue warrant for his arrest: or *Section 11(1)(a)(ii);*
  - Where the order was made by a Resident Magistrate's Court or a Circuit Court:
    (i) issue a summons requiring the offender to appear before the Resident Magistrate's Court by which the order was made (or in the case an order made by a Circuit Court, before a Resident Magistrate's Court for the parish in which that order was made) at a time specified in the summons: or *Section 11(1)(b)(i);*
    (ii) if the information is in writing and on oath, issue a warrant for his arrest: *Section 11(1)(b)(ii);*

- Where the order was made by a Petty Sessions Court or a Resident Magistrate's Court, the justice or the resident magistrate, as the case may be, may act in accordance with subsection (3), upon proof to his satisfaction that the offender has failed without reasonable excuse to comply with any of the requirements of the order: *Section 11(2);*
- The justice or resident magistrate may:
  - Without prejudice to the continuance of the order, impose on the offender a fine not exceeding two thousand dollars: or *Section 11(3)(a);*
  - Revoke the order and deal with the offender for the offence in respect of which the order was made in any other manner in which he could have been dealt with for the offence by a Petty Sessions Court or a Resident Magistrate's Court, as the case may be, if the order had not been made: *Section 11(3)(b);*
- Where the order was made by a Circuit Court, the resident magistrate shall, upon proof to his satisfaction that the offender has failed without reasonable excuse to comply with any of the requirements of the order, forward to the Registrar of the Supreme Court a certificate signed by the resident magistrate and under the seal of the Resident Magistrate's Court, specifying the details of such failure together with such particulars of the case as may be desirable: *Section 11(4);*
- A certificate purporting to be so signed and sealed shall be admissible as evidence of the failure; whereupon a judge of the Circuit Court before whom the offender is brought may:
  - Without prejudice to the continuance of the order, impose on the offender a fine not exceeding four thousand dollars: or *Section 11(5)(a);*
  - Revoke the order and deal with the offender for the offence in respect of which the order was made in any other manner in which he could have been dealt with for that offence by a Circuit Court, if the order had not been made: *Section 11(5)(b).*

ii. **Suspended sentences -** *The Criminal Justice (Reform) Act, No. 7 of 1978*

- A court which passes a sentence of imprisonment on any offender for a term of not more than three years for any offence, may order that the sentence shall not take effect unless:
  - During a period specified in the order, being not less than one year or more than three years from the date of the order (hereinafter referred to as the "operational period"), the offender commits in Jamaica another offence punishable with imprisonment for a period exceeding six months (hereafter in this section and *Sections 7* and *8,* referred to as a "subsequent offence") and
  - Thereafter a court having power to do so orders under *Section 7,* that the original sentence shall take effect:

  Provided that the above provisions of this subsection shall not apply where the offence involved the use, or the illegal possession of, a weapon referred to in the First Schedule, a firearm or imitation firearm: *Section 6(1);*

- A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under subsection (1): *Section 6(2);*
- A court which passes a suspended sentence on any offender for an offence shall not make a probation order in the offender's case in respect of another offence of which he is convicted before that court: *Section 6(3);*
- Where a court passes a suspended sentence on an offender in respect of an offence and a term of imprisonment in respect of another offence the court shall direct that the suspended sentence be concurrent with the term of imprisonment: *Section 6(4);*
- On passing a suspended sentence the court shall explain to the offender in ordinary language his liability under *Section 7,* if during the operational period he commits a subsequent offence punishable with imprisonment: *Section 6(5);*
- Subject to subsection (3), where an offender is convicted of a subsequent offence committed during the operational period of a suspended sentence, the court before which he is convicted for the subsequent offence may order that the suspended sentence shall take effect with the original term unaltered or the court may substitute a lesser term of imprisonment for the original term: *Section 7(1);*
- Where a court deals with an offender in respect of a suspended sentence passed by another court, the court dealing with the offender shall notify the court which passed the suspended sentence of the manner in which the offender was dealt with: *Section 7(2);*
- Where a Resident Magistrate's Court deals with an offender in respect of whom a suspended sentence passed by a Circuit Court is in operation, the resident magistrate dealing with the offender for the subsequent offence, shall forward to the Registrar of the Supreme Court a certificate signed by him and under the seal of the court certifying that the offender has been convicted for a subsequent offence, together with such other particulars of the case as the resident magistrate may consider desirable; whereupon a judge of the Supreme Court before whom the offender is brought may, without prejudice to the order of the resident magistrate with respect to the subsequent offence, order that the suspended sentence shall take effect with the original term unaltered or with the substitution of a lesser term for the original term: *Section 7(3);*
- Some other section to note include:
    - Discovery of further offence: *Section 8;*
    - Suspended sentence supervision order: *Section 9.*

iii. **Fines -** *The Criminal Justice (Reform) Act, No. 7 of 1978*

<u>Power of the magistrate to impose a fine</u>

- Where a Circuit Court is empowered to impose a sentence of imprisonment (other than where the offence is murder) the court may, in addition to or in lieu of such sentence of imprisonment, impose a fine and order that in default of payment

forthwith of such fine, the person on whom such fine is imposed shall suffer such imprisonment as may be ordered by the court: *Section 4(1).*

Payment of fine

- Where any fine has been imposed by a Circuit Court, the court at the time when such fine is imposed or at any time thereafter may:
  - Allow time for payment of the fine: or *Section 4(2)(a);*
  - Direct that the fine be paid by instalments: or *Section 4(2)(b);*
  - Extend the time allowed for the payment of the fine or for the payment of any instalment thereof, and the person liable to pay the fine may be required, if the court thinks fit, to enter into recognizance with or without surety to the satisfaction of the court for the due payment thereof: *Section 4(2)(c);*
- Where any fine is directed to be paid by instalments, the person liable to pay the fine shall, on making default in the payment of any instalment thereof, be liable to be imprisoned for such proportion of the full term passed upon him in default of payment of the fine, as the sum remaining unpaid by him bears to the fine imposed upon him:

  Provided that the court may, if it thinks fit, instead of sentencing such person to imprisonment, deal with him in any other manner prescribed by law: *Section 4(3).*

The Judicature (Resident Magistrates) Act, Chap. 179, read conjunctively with *Judicature (Resident Magistrates) (Amendment and Change of Name) Act, 2016*

- The offender, on conviction, shall be liable to the same punishment as for such offences he is now or hereafter may be liable to:

  Provided, that no court shall award a sentence of more than three years' imprisonment, with or without hard labour, and a fine of one million dollars, where the conviction is for any offence referred to in this section other than an offence specified in *Section 13,* of the *Larceny Act,* in relation to which a court may award a sentence not exceeding four years' imprisonment or an offence specified in *Section 37,* of the *Larceny Act,* or in *Section 4(2)(a),* of the *Forgery Act,* or an offence of uttering any document under *Section 9,* of the *Forgery Act,* the forgoing of which is an offence under the said *Section 4(2)(a),* in relation to which a court may award a sentence not exceeding five years' imprisonment, and where a magistrate is only empowered, in respect of any such offence, to impose a sentence of imprisonment, he may impose a fine not exceeding one million dollars in lieu of imprisonment, if in the circumstances of any case he thinks fit so to do: *Section 268(2);*
- When a person is, for an offence referred to in this section, sentenced to pay a fine, the court may direct that if he fails to pay the fine at the time appointed for the payment thereof, he shall suffer imprisonment till the fine is paid. Such imprisonment shall be in addition to the imprisonment (if any) to which he is sentenced for his offence and, at the discretion of the court, may be:

- With or without hard labour, as in the case of the sentence of imprisonment: and *Section 268(3)(a);*
- For a period not exceeding:
  (i) one-fourth of the maximum period of the imprisonment which the court has power to impose for that offence: or *Section 268(3)(b)(i);*
  (ii) six months: *Section 268(3)(b)(ii);*

whichever is the lesser.

- Where jurisdiction is given to any court to impose a fine, and no express provision is made as to the mode of enforcing payment of the same, payment may be enforced by the magistrate ordering that in default of payment forthwith of such fine the person on whom such fine is imposed shall suffer imprisonment, with or without hard labour, for a period not exceeding six months: *Section 195(1);*
- Where any fine has been imposed, the court, at the time when such fine is imposed or at any time thereafter, may:
  - Allow time for the payment of the fine: or *Section 195(2)(a);*
  - Direct that the fine be paid by instalments: or *Section 195(2)(b);*
  - Extend the time allowed for the payment of the fine or for the payment of any instalment thereof, and the person liable to pay the fine may be required, if the court thinks fit, to enter into recognizances, with or without surety, to the satisfaction of the court for the due payment thereof: *Section 195(2)(c);*
- Where any fine is directed to be paid by instalments, the person liable to pay the fine shall, on making default in the payment of any instalment thereof, be liable to be imprisoned for such proportion of the ful1 term passed upon him in default of payment of the fine, as the sum remaining unpaid by him bears to the fine imposed upon him: *Section 195(3).*

Children *- The Child Care and Protection Act, No. 11 of 2004*

- Any sums ordered under this section to be paid by a parent or guardian may be recovered by distress or imprisonment, and, in default of such recovery, such parent or guardian may be imprisoned with or without hard labour as if he had been convicted of the offence in respect of which the child was charged:

  Provided that in determining the sentence to be imposed under this subsection, the court shall take into account the impact of such sentence on any child of the person to be sentenced: *Section 76(3).*

iv. **Probation orders -** *The Probation of Offenders Act, Chap. 310*

Eligibility for a probation order

- Where any person is charged with an offence which is punishable on summary conviction, and the court thinks that the charge is proved but is of opinion that having regard to the circumstances, including the nature of the offence and the character

and home surroundings of the offender, it is expedient to release the offender on probation, the court may:

- Convict the offender and make a probation order: or *Section 5(1)(a);*
- Without proceeding to conviction, make a probation order;

Provided that before making a probation order the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence, he will be liable to be sentenced or to be convicted and sentenced for the original offence, and if the offender is not less than 14 years of age the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order: *Section 5(1)(b);*

- Where any person is convicted of an offence which is not punishable on summary conviction, and the court is of opinion that, having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may in lieu of imposing a sentence of imprisonment, make a probation order:

  Provided that before making a probation order the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any respect to comply therewith or commits another offence, he will be liable to be sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order: *Section 5(2).*

Procedure

- A probation order shall have effect for such period not less than one year and not more than three years from the date of the order as may be specified therein, and shall require the probationer to submit during that period to the supervision of a probation and after-care officer appointed for or assigned to the parish in which the probationer will reside after the making of the order, and shall contain such requirements as the court considers necessary for securing the supervision of the offender, and such additional requirements as to residence and other matters (including submission by the probationer to medical treatment) as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences:

  Provided that (without prejudice to the power of the court to make an order under subsection (1), of *Section 7*) the payment of sums by way of damages for injury or compensation for loss shall not be included among the requirements of a probation order: *Section 6(1);*

- Where a probation order contains a requirement as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order, and where by any such order the probationer is required to reside in an institution, the institution shall be one which is subject to inspection by an inspector and a Government department and the period for which the probationer is required so to reside shall not extend beyond 24 months from the date of the order: *Section 6(2)*;

- The court by which a probation order is made shall:
    - Furnish two copies of the order, one copy to be given to the probationer and the other to the probation office for the parish in which the probationer is to be supervised: *Section 6(3)(a);*
    - In any case where the place specified in the order (at which the probationer is to reside) is situated within another parish, transmit to the court for such parish all the documents and information relating to the case, and thereupon the last mentioned court shall be deemed to be the court by which the probation order was made unless or until such order is varied in accordance with the provisions of subsection (3), of *Section 12: Section 6(3)(b);*
- If it appears to a judge or any magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest:

  Provided that a magistrate shall not issue such a summons or warrant except on information in writing and on oath: *Section 8(1);*
- A magistrate may issue a summons or warrant under subsection (1), notwithstanding that the probation order was made by the Supreme Court: *Section 8(2);*
- A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made:

  Provided that if a warrant is issued requiring him to be brought before the Supreme Court and he cannot forthwith be brought before that court because that court is not sitting, the warrant shall have effect as if it permitted him to be brought before a Resident Magistrate's Court for the parish where he is arrested; and the Resident Magistrate's Court shall commit him to custody or release him on bail in accordance with the *Bail Act* (with or without sureties), until he can be brought or appear before the Supreme Court: *Section 8(3);*
- Where a probationer is convicted by a magistrate of an offence committed while the probation order was in force, the magistrate may commit the probationer to custody or release him on bail, in accordance with the *Bail Act,* with or without sureties, until he can be brought or appear before the court by which the probation order was made: *Section 8(4);*
- Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force, then:
    - If the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him of that offence and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence: or *Section 8(5)(a);*
    - If the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence: *Section 8(5)(b);*

- Where a probationer in respect of whom a probation order has been made by a magistrate is convicted before the Supreme Court of an offence committed while the probation order was in force, then:
    - If the probationer was not convicted of the original offence in respect of which the probation order was made, the Supreme Court may convict him of that offence and may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence: or *Section 8(6)(a);*
    - If the probationer was convicted of the original offence in respect of which the probation order was made, the Supreme Court may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence: *Section 8(6)(b);*
- A probationer who is required by the probation order to submit to treatment for his mental condition, shall not for the purpose of this section be treated as having failed to comply with that requirement on the ground that he has refused to undergo any surgical, electrical or other treatment if in the opinion of the court his refusal was reasonable, having regard to all the circumstances: *Section 8(7);*
- Some other sections to note include:
    - Failure by probationer to comply with probation order: *Section 9;*
    - Probation order; disqualification or disability: *Section 10;*
    - Transmission of documents when case is remitted to another court: *Section 11;*
    - Amendment of probation orders: *Sections 12, 14;*
    - Discharge of probationers: *Sections 13, 14.*

Children *- The Child Care and Protection Act, No. 11 of 2004*

- Where a child has been placed under the supervision of a probation and after-care officer or any other person, that officer or person:
    - Shall, while the order remains in force, visit, advise and befriend the child and when appropriate, endeavour to find suitable employment for the child: and *Section 80(1)(a);*
    - May, if it appears necessary in the child's interest so to do, at any time while the order remains in force and the child is under the age of eighteen years, bring the child before a Children's Court: *Section 80(1)(b);*
- The Children's Court before which a child is brought under subsection (1), may, if thinks it desirable in the child's interest, order the child to be sent to a juvenile correctional centre or commit the child to the care of a fit person, whether a relative or not, who is willing to undertake the care of that child: *Section 80(2);*
- Where the court before which any person is bound by his recognizance or in respect of whom a probation order is made under the Probation of Offenders Act, is a Children's Court, the attainment by that person of the age of 18 years shall not deprive that court of jurisdiction to enforce his attendance and deal with him in respect of any failure to observe the conditions of his recognizance or of jurisdiction to vary or discharge the recognizance: *Section 80(3).*

v. **Conviction**[77] **and discharge** - *The Probation of Offenders Act, Chap. 310*

- Subject to the provisions of subsections (3) and (4), in any case where a court might make a probation order under *para. (a),* of subsection (1), of *Section 5,* or under subsection (2), of *Section 5,* if the court is of opinion that it is expedient to release the offender on probation and that by reason of the special circumstances of the case no useful purpose would be served by placing the offender under the supervision of a probation and aftercare officer, the court may convict the offender and make an order discharging the offender conditionally upon his entering into a recognizance, with or without surety, to be of good behaviour and to appear for sentence when called upon at any time during such period not exceeding three years as may be specified in the recognizance: *Section 15(1);*
- Before making any order under this section the court shall explain to the offender in ordinary language the effect of the recognizance into which he is to be required to enter and that if he fails in any respect to comply therewith or commits another offence, he will be liable in the case of an offender who is required to enter into a recognizance under subsection (2), to be convicted and sentenced for the original offence and in the case of an offender who is required to enter into a recognizance under subsection (1), to be sentenced for the original offence and in either case, his recognizance will be liable to be entreated: *Section 15(3);*
- No order shall be made under this section unless the offender if he is not less than 14 years of age expresses his willingness to comply with the conditions of the recognizance into which he is required by such order to enter: *Section 15(4).*

vi. **Discharge with no record of conviction** - *The Probation of Offenders Act, Chap. 310*

- Subject to the provisions of subsections (3) and (4), in any case where a court might make a probation order (under *para. (b)*, of subsection (1), of *Section 5*), if the court is satisfied that it is expedient to release the offender on probation and that by reason of the special circumstances of the case no useful purpose would be served by placing the offender under the supervision of a probation and after-care officer, the court may, without proceeding to conviction, make an order discharging the offender conditionally by upon his entering into a recognizance, with or without a surety, to be of good behaviour and to appear for conviction and sentence when called upon at any time during such period not exceeding three years as may be specified in the recognizance: *Section 15(2);*

[77] Jamaica- The Criminal Records (Rehabilitation of Offenders) Act, No. 18 of 1988, section 3 (1). Subject to the provisions of this Act, a person who (whether before or after the 30th day of September, 1988) has been convicted of an offence to which this section applies shall, at the expiration of the appropriate rehabilitation period, be treated as a rehabilitated person in respect of the conviction for that offence and, for the purposes of this Act, the conviction shall be treated as a spent conviction.
Jamaica- The Criminal Records (Rehabilitation of Offenders) Act, No. 18 of 1988, section 25. A rehabilitated person shall, in relation to any expunged conviction for all purposes in law, be deemed to be a person who has never been charged with, prosecuted for convicted of or sentenced for, the offence to which that conviction relates.

- Before making any order under this section the court shall explain to the offender in ordinary language the effect of the recognizance into which he is to be required to enter and that if he fails in any respect to comply therewith or commits another offence, he will be liable in the case of an offender who is required to enter into a recognizance under subsection (2), to be convicted and sentenced for the original offence and in the case of an offender who is required to enter into a recognizance under subsection (1), to be sentenced for the original offence and in either case, his recognizance will be liable to be entreated: *Section 15(3);*
- No order shall be made under this section unless the offender if he is not less than 14 years of age expresses his willingness to comply with the conditions of the recognizance into which he is required by such order to enter: *Section 15(4).*

vii. **Compensation -** *The Probation of Offenders Act, Chap. 310*

- Where a person is placed by a probation order under the supervision of a probation and after-care officer, the court may, without prejudice to its powers of awarding costs against the offender, order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable, but not, in the case of an order made by a court of summary jurisdiction, exceeding in the aggregate two hundred dollars or such greater sum as may be allowed by any enactment relating to the offence: *Section 7(1);*
- Where a court makes any such order for the payment of damages or compensation as aforesaid, the order may be enforced in like manner as an order for the payment of costs by the offender, and where the court, in addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs: *Section 7.*

viii. **Imprisonment**

The Judicature (Resident Magistrates) Act, Chap 179, read conjunctively with *Judicature (Resident Magistrates) (Amendment and Change of Name) Act, 2016*

- The offender, on conviction, shall be liable to the same punishment as for such offences he is now or hereafter may be liable to:

  Provided, that no court shall award a sentence of more than three years' imprisonment, with or without hard labour, and a fine of one million dollars, where the conviction is for any offence referred to in this section other than an offence specified in *Section 13,* of the *Larceny Act,* in relation to which a court may award a sentence not exceeding four years' imprisonment or an offence specified in *Section 37,* of the *Larceny Act,* or in *Section 4(2)(a),* of the *Forgery Act,* or an offence of uttering any document under *Section 9,* of the *Forgery Act,* the forgoing of which is an offence under the said *Section 4(2)(a),* in relation to which a court may award a sentence not exceeding five years' imprisonment, and where a magistrate is only empowered, in respect of any such

offence, to impose a sentence of imprisonment, he may impose a fine not exceeding one million dollars in lieu of imprisonment, if in the circumstances of any case he thinks fit so to do: *Section 268(2);*

- When a person is, for an offence referred to in this section, sentenced to pay a fine, the court may direct that if he fails to pay the fine at the time appointed for the payment thereof, he shall suffer imprisonment till the fine is paid. Such imprisonment shall be in addition to the imprisonment (if any) to which he is sentenced for his offence and, at the discretion of the court, may be:
  - With or without hard labour, as in the case of the sentence of imprisonment: and *Section 268(3)(a);*
  - For a period not exceeding:
    (i) one-fourth of the maximum period of the imprisonment which the court has power to impose for that offence: or *Section 268(3)(b)(i);*
    (ii) six months: *Section 268(3)(b)(ii);*

  whichever is the lesser.

The Criminal Justice (Plea Negotiations and Agreements) Acts, No. 34 of 2005 and *30 of 2010*

- The maximum sentence of imprisonment which may be imposed in relation to any offence to which the accused has pleaded guilty shall, notwithstanding any other provision to the contrary, be two-thirds of the prescribed maximum penalty by which the offence would otherwise be punishable: *Section 15(2);*
- Where the offence is punishable by life imprisonment then, notwithstanding any other provision to the contrary, the maximum sentence which may be imposed in relation to any such offence shall be 15 years: *Section 15(3);*
- Where the offence is punishable by a prescribed minimum penalty, the judge or resident magistrate may, notwithstanding any other provision to the contrary, impose sentence without regard to the prescribed minimum penalty: *Section 15(4);*
- The fact that the Act states that the section prescribes imprisonment as the penalty does not necessarily mean that imprisonment is mandatory. See the case of insofar as it addresses the issue of sentencing options. The magistrate may impose other forms of punishment in lieu of imprisonment where a person who is 18 years or older is convicted in any court. If the court however concludes that no alternative method exists for dealing with the offender based on the circumstance of the case and imposes a sentence of imprisonment, it should write its reasons for doing so.[78]

[78] Dwayne Strachan v R [2016] JMCA Crim 16.

Children *- The Child Care and Protection Act, No. 11 of 2004*

- Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed, he was under the age of 18 years, but in place thereof such person shall be liable to be imprisoned for life: *Section 78(1);*
- A person sentenced under subsection (1), shall, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place including, save in the case of a child who has not attained the age of 14 years, an adult correctional centre, and under such conditions as the Minister may direct, and, while so detained, shall be deemed to be in legal custody: *Section 78(2);*
- Notwithstanding the provisions of the Parole Act, on sentencing any child under subsection (I), the court may specify a period which that child should serve before becoming eligible for parole: *Section 78(3);*
- A child shall not be sentenced to imprisonment, whether with or without hard labour, for any offence, or be committed to an adult correctional centre in default of payment of any fine, damages or costs: *Section 78(4);*
- Where a child under the age of 14 years is convicted of an offence specified in the Fourth Schedule and the court is of opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence the child to be detained for such period, not exceeding 25 years, as the court may determine: *Section 78(5);*
- Where a sentence referred to in subsection (5), has been passed the child shall, during that period and notwithstanding anything in the other provisions of this Act, be liable to be detained in such place (including an adult correctional centre) and on such conditions as the Minister may direct and, while so detained, shall be deemed to be in legal custody: *Section 78(6);*

MONTSERRAT

Sentencing guidelines[79]

- According to the *Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019, and S.R.O. 31 of 2019,* in sentencing for an offence for which a guideline has been issued, the court must apply the relevant sentencing guideline and sentence, unless to do so would not be in the interests of justice.

Sentencing options in Montserrat

Children/Young Persons[80]

- If a juvenile is found guilty of an offence before a Juvenile Court, (which for the purposes of this section shall be deemed to be an inferior court of summary jurisdiction within the meaning of the *Probation of Offenders Act*), the Juvenile Court

[79] ECSC Sentencing Guidelines Rules 2019- Practice Directions 8A- 8D.

[80] Montserrat- Juvenile Act, Cap 2.11, section 2: "Child" means a person under the age of fourteen years and "young person" means a person who has attained the age of fourteen years and is under the age of sixteen years.

may, in addition to or in substitution for any powers conferred by law for dealing with a person found guilty of such offence, make an order[81]:

- Dismissing the case: *Section 9(1)(a);*
- Under the *Probation of Offenders Act: Section 9(1)(b);*
- Placing the offender, either in addition to or without making any other order under this section, for a specified period not exceeding three years, under the supervision of a probation officer: *Section 9(1)(c);*
- Committing the offender to the care of any fit person, whether a relative or not, who is willing to undertake the care of him: or *Section 9(1)(d);*
- Ordering the parent or guardian of the offender to enter into a recognizance for the good behaviour of such offender: *Section 9(1)(e);*

- Consent of any person to undertake the care of a juvenile in pursuance of an order made under subsection (1)(d) shall be proved in such manner as the court considers sufficient to bind him: *Section 9(2).*

i. **Community service orders -** *The Community Service Order, Chap. 4.15*

Eligibility for a community service order

- Where a person is before the court for sentencing after being convicted of an offence punishable by imprisonment other than an offence the sentence for which is fixed by law the court may, instead of imposing a penalty of imprisonment, and whether or not it imposes any fine also make an order requiring the person to perform community service work for a number of hours not exceeding the number of hours determined on the basis of 32 hours for one month: *Section 3(1);*
- Where a court, in respect of a person convicted of an offence makes a community service order in respect of the offence, the court may in addition impose any other punishment which it may impose under the law other than imprisonment: *Section 3(2);*
- A court may not make a community service order in respect of a person unless the person informs the court of his willingness to perform community service as an alternative to imprisonment and the court:
  - Is satisfied after considering reports from an assigned officer that the person is a suitable person to perform community service work under such order; and *Section 4(a);*
  - Is satisfied that suitable community service work is available: *Section 4(b).*

Procedure

- Where a court makes a community service order, it shall also specify in the order the total number of hours work required to be performed and the number of hours work required to be performed on days when work is assigned: *Section 5(1);*

[81] Montserrat- Juvenile Act, Cap 2.11, section 9.

- A person in respect of whom a community service order is made will not be required to work on Sundays, public holidays and such other days as he is certified by a medical officer to be unfit to do physical work or on such days when performance of physical work is inconsistent with the religious persuasion to which he belongs: *Section 5(2);*
- The Magistrate's Court shall be the supervising court in respect of community service orders whether or not such orders are made by the Magistrate's Court: *Section 5(3);*
- Where a court makes a community service order, it shall specify in the order:
    - A place at which and the assigned officer to whom the person subject to the order shall present himself, for the purpose of enabling the administration of the order to be commenced: *Section 6(a);*
    - A period within which the person in respect of whom the order is made shall so present himself: and *Section 6(b);*
    - Conditions subject to which the community service order is made as the court may deem it appropriate: *Section 6(c);*
- A community service order shall remain in force until:
    - The person in respect of whom the order is made has performed community service work in accordance with any requirement made by or under this Act in respect of the order for the number of hours specified in the order: or *Section 11(a);*
    - The order is revoked: *Section 11(b);*

  whichever first occurs.
- Where a court proposes to make a community service order it shall, before making the order, explain or cause to be explained to the person in respect of whom it is proposed to make the order, in language readily to be understood by him:
    - The purpose and effect of the proposed order: *Section 7(a);*
    - The consequences that may follow if he fails to comply with the proposed order or any requirement made by or under this Act or the regulations in respect of the proposed order: and *Section 7(b);*
    - That the proposed order may be amended or revoked: *Section 7(c);*
- Where a person in respect of whom a community service order is in force appears before a court, being a court of equal jurisdiction to or higher jurisdiction than the court that made the order, for sentencing in respect of an offence other than the offence in respect of which the order was made, that court may revoke the order and deal with the person, for the offence in respect of which the order was made in any manner in which he could have been dealt with for that offence by the court that made the order as if that order had not been made: *Section 13;*
- Some other sections to note include:
    - Obligations of persons in respect of whom orders are in force: *Section 9;*
    - Breach of requirement as to community service order: *Section 15;*
    - Variation of the order: *Section 12.*

ii. **Suspended sentences -** *The Magistrate's Court Act, Chap. 2.02*

- Where power is given by any law in force in Montserrat for the court to require any person to do or abstain from doing any act or thing other than the payment of money and no mode is prescribed for the enforcing of such requisition, the court may exercise such power by an order and may annex thereto any conditions as to time or mode of action as may seem just and may suspend or rescind such order on such undertaking being given or condition being performed as may seem just and may make such arrangements for carrying such power into effect as may seem expedient: *Section 107(1);*
- In determining whether a suspended sentence is appropriate the court must have regard to the principles as identified in the relevant practice direction issued in relation to the power of the court to suspend a sentence.[82]

iii. **Fines -** *The Criminal Procedure Code, Chap. 4.01*

- Whenever under provisions of any law the court, on summary conviction of any person for an offence, has power to pass a sentence of imprisonment or to impose a fine, unless in the context a contrary intention appears, such provisions shall be construed as fixing the maximum penalty and shall confer a power to pass any sentence not exceeding the term of imprisonment or the amount of the fine prescribed for that offence: *Section 230(1);*
- Where it is provided by any law that an offence shall be punishable on summary conviction by a term of imprisonment and the court is not given the option of imposing a fine, the court may, nevertheless, impose a fine of $1,000.00 instead of a term of imprisonment, in a case in which the offender has not previously been convicted of the same offence:

  Provided that the amount of the fine so imposed does not subject the offender, in default of payment, to any longer term of imprisonment than to which he would otherwise have been liable for the offence of which he has been convicted: *Section 230(2);*
- Subject to this section, the Magistrate's Court, on recording a conviction by which any sum (including any costs) is adjudged to be paid, may do all or any of the following things:
  - Order imprisonment in the first instance unless such sum be paid forthwith: *Section 233(1)(a);*
  - Allow time for the payment of the said sum: *Section 233(1)(b);*
  - Direct payment to be made of the said sum by instalments: *Section 233(1)(c);*
  - Issue a warrant of distress for the levying of the said sum: *Section 233(1)(d);*
  - Order imprisonment in default or sufficient distress or of the payment of any instalment: *Section 233(1)(e);*

[82] ECSC Sentencing Guidelines Rules 2019- Practice Direction 8C- No. 1 of 2019

- The Magistrate's Court shall not exercise its powers under *para. (a),* unless it is satisfied that the convicted person has the means to pay forthwith and refuses so to do, or does not desire time to pay or that there are special reasons, to be recorded in the warrant of commitment, why the Magistrate's Court should not allow time for payment: *Section 233(2);*
- Subject to the express provisions of any other law, a sentence of imprisonment imposed by the Magistrate's Court for non-payment of a sum to which this section refers shall not exceed six months: *Section 233(3).*

The Magistrate's Court Act, Chap 2.02

- Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment forthwith of the full amount of the fine or of such amount as remains unpaid: *Section 40.*

Children/Young Persons *- The Magistrate's Court Act, Chap 2.02*

- Where a child is charged with any offence for the commission of which a fine, damages or costs may be imposed and the magistrate or a Juvenile Court is of opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the magistrate or a Juvenile Court shall order that the fine, damages or costs awarded be paid by the parent or guardian of the child instead of by the child, unless the magistrate or a Juvenile Court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child: *Section 31(1);*
- An order under this section may be made against a parent or guardian who, having been summoned to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard: *Section 31(2);*
- Any sums imposed and ordered to be paid by a parent or guardian under this section may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged: *Section 31(3);*
- Notwithstanding any provisions of this or any other Act, a young person convicted by the Magistrate's Court or by a Juvenile Court shall not be sentenced to imprisonment for a term exceeding three months or to pay a fine exceeding $200: *Section 32.*

iv. Probation - *The Probation of Offenders Act, Chap. 4.05*

Eligibility for a probation order

- Where any person is charged before an inferior court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental

condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either:

- Dismissing the information or charge: or *Section 3(1)(a);*
- Discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order: *Section 3(1)(b);*

- Where any person has been convicted on indictment of any offence punishable with imprisonment, and the court is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, in lieu of imposing a sentence of imprisonment, make an order discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding three years, as may be specified in the order: *Section 3(2)*.

Procedure

- A recognizance ordered to be entered into under this Act shall, if the court so orders, contain a condition that the offender be under the supervision of an assigned officer named in the probation order, during the period specified in the probation order and any other condition for securing the supervision as may be specified in the probation order: *Section 4(1);*
- A recognizance under this Act may contain such additional conditions with respect to residence, abstention from intoxicating liquor, and any other matters, as the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences: *Section 4(2);*
- The court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he is required to observe: *Section 4(3);*
- If the court before which an offender is bound by his recognizance under this Act to appear for conviction or sentence, or any inferior court of summary jurisdiction is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties (if any) requiring him or them to attend at such court and at such time as may be specified in the summons: *Section 8(1);*

- The offender, when apprehended, shall, if not brought forthwith before the court before which he is bound by his recognizance to appear for conviction or sentence, be brought before an inferior court of summary jurisdiction: *Section 8(2);*
- The court before which an offender on apprehension is brought, or before which he appears in pursuance of such summons as aforesaid, may, if it is not the court before which he is bound by his recognizance to appear for conviction or sentence, remand him to prison or on bail until he can be brought before the last-mentioned court: *Section 8(3);*
- A court before which a person is bound by his recognizance to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his recognizance, may forthwith, without further proof of his guilt, convict and sentence him for the original offence: *Section 8(4).*

***Children/ Young Persons** - The Juveniles Act, Chap 2.11*

- Where a juvenile has been placed under the supervision of a probation officer, that officer shall, while the order remains in force, visit, advise and befriend him and, when necessary, endeavour to find him suitable employment, and may, if it appears necessary in his interest so to do, at any time while the order remains in force and the juvenile is under the age of sixteen years, bring him before a Juvenile Court, and that court may, if it thinks it is desirable in his interest so to do, commit the juvenile to the care of a fit person, whether a relative or not, who is willing to undertake the care of him: *Section 10(1);*
- Where a person is bound by his recognizances before a Juvenile Court or that court makes an order under the Probation of Offenders Act, in respect of a juvenile, the attainment by that person of the age of sixteen years shall not deprive the court of jurisdiction to enforce his attendance and deal with him in respect of any failure to observe the conditions of his recognizance, or of jurisdiction to vary or discharge the recognizance: *Section 10(2).*

v. **Conviction and discharge -** *The Probation of Offenders Act, Chap 4.05*

- Where any person is charged before an inferior court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either:
  - Dismissing the information or charge: or *Section 3(1)(a);*
  - Discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order: *Section 3(1)(b).*

Children/ Young Persons[83] *- The Magistrate's Court Act, Chap. 2.02*

- Where a child or young person is convicted by the Magistrate's Court or a Juvenile Court, the magistrate, if he thinks it inexpedient to inflict any punishment, may discharge the accused: *Section 34.*

vi. **Discharge with no record of conviction -** *The Probation of Offenders Act, Chap. 4.05*

- Where any person is charged before an inferior court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either:
  - Dismissing the information or charge: or *Section 3(1)(a);*
  - Discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order: *Section 3(1)(b).*

vii. **Compensation -** *The Probation of Offenders Act, Chap. 4.05*

- The court may, in addition to any such order, order the offender to pay such damages for injury or compensation for loss (as the court considers appropriate, within the limits of the court's jurisdiction, or if a higher limit is fixed by any enactment relating to the offence, that higher limit) and to pay such costs of the proceedings as the court thinks reasonable: *Section 3(3);*
- An order for the payment of damages or compensation as aforesaid may be enforced in like manner as an order for the payment of costs by the offender; and where the court, in addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs: *Section 3(4);*
- Where an order under this section is made by an inferior court of summary jurisdiction, the order shall, for the purpose of revesting or restoring stolen property, and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery, have the like effect as a conviction: *Section 3(5).*

[83] Montserrat- Magistrate's Court Act, Cap. 2.02, section 2. Young person means a person who in the opinion of the Magistrate is of the age of fourteen years and under the age of sixteen years.

The Magistrate's Court Act, Chap. 2.02

- Upon the summary conviction of any person for an offence, upon the application of any other person who suffered loss or injury as a result of that offence, the magistrate may award any sum, not exceeding $10,000.00, by way of satisfaction or compensation for such loss or injury, and the amount so awarded shall be deemed to be a judgment debt payable by the person so convicted to the person to whom it is so awarded, and if not sooner paid, may be enforced by distress: *Section 27(1)*;
- When any person has paid the whole amount of any award made against him under subsection (1), he shall be released from all further civil proceedings against him for the same cause: *Section 27(2)*.

viii. **Imprisonment -** *The Criminal Procedure Code, Chap. 4.01*

- The Magistrate's Court may in a case pass sentences as follows:
  - In the case where the law creating the offence stipulates a sentence, the sentence permitted to be imposed by the law for the offence: *Section 230(5)(a);*
  - In any case not falling within the terms of *para. (a),* imprisonment for a term of six months or a fine of $5,000.00: *Section 230(5)(b);*
- The Magistrate's Court may pass any lawful sentence combining any of those sentences which it is authorised by law to pass: *Section 230(6);*
- In determining the extent of a Magistrate's Court's jurisdiction under this Code to pass a sentence of imprisonment, the Magistrate's Court is deemed to have jurisdiction to pass the full sentence of imprisonment permitted under this section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation: *Section 230(7);*
- When a person is convicted at one trial of two or more distinct offences the Magistrate's Court may sentence him, to several punishments prescribed for the offences which the magistrate's court is competent to impose: *Section 231(1);*
- The punishments, when consisting of imprisonment, are to commence one after the expiration of the other, unless the Magistrate's Court directs that the sentences shall run concurrently: *Section 231(2);*
- In the case of consecutive sentences, it is not be necessary for the Magistrate's Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which is permitted to impose on conviction of a single offence, to send the offender for trial before the High Court: *Section 231(3);*
- However, the aggregate punishment shall not exceed twice the amount of punishment which the Magistrate's Court is competent to impose in the exercise of its ordinary jurisdiction: *Section 231(4).*

The Magistrate's Court Act, Chap. 2.02

- The period of imprisonment imposed by the magistrate under this or any other Act in respect of the non-payment of any sum of money adjudged to be paid on a conviction or in respect of the default of a sufficient distress to satisfy any such sum, or in respect of the default of payment of any instalment of such sum, shall, not-withstanding any enactment to the contrary, be such period as in his opinion will satisfy the justice of the case, but shall not in any case exceed the maximum fixed by the following scale: *Section 43;*

Where the amount of the sum or sums of money adjudged to be paid	The said period shall not exceed
does not exceed $100	7 days
exceeds $100 but does not exceed $500	14 days
exceeds $500 but does not exceed $1,000	30 days
exceeds $1,000 but does not exceed $2,000	2 months
exceeds $2,000 but does not exceed $3,000	3 months
over $3000.00	6 months

- Some other sections to note include:
  - On part payment term of imprisonment to be reduced: *Section 44;*
  - Defendant who pays after commitment to be discharged: *Section 39.*

Children/Young Person

- Notwithstanding any provisions of this or any other Act, a young person convicted by the Magistrate's Court or by a Juvenile Court shall not be sentenced to imprisonment for a term exceeding three months or to pay a fine exceeding $200.00: *Section 32.*

ST. KITTS AND NEVIS

Sentencing guidelines[84]

In 2019, the Eastern Caribbean Supreme Court implemented Sentencing Guidelines Rules for St. Kitts and Nevis. These Rules apply to all criminal proceedings conducted in the court for which sentencing guidelines have been issued. Further, in determining sentence the court must have regard to any relevant principles stated in a practice direction issued under these rules.

[84] St. Kitts and Nevis - Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules No. 26 of 2019 and Practice Directions 8A - 8D 2019

Sentencing options in St. Kitts and Nevis

Children/Young Persons[85]

- Where a child or young person is brought before a Juvenile Court it shall be the duty of the court to explain to him or her in simple language the substance of the alleged offence: *rule 2(1);*
- After explaining the substance of the alleged offence, the courts shall ask the child or young person whether he or she admits the offence: *rule 2(2);*
- If the child or young person does not admit the offence the court shall then hear the evidence of the witnesses in support thereof: *rule 2(3);*
- At the close of the evidence in chief of each such witness the court shall ask the child or young person, or if it sees fit the child's parent or guardian, whether he or she wishes to put any questions to the witness: *rule 2(4);*
- If the child or young person instead of asking questions wishes to make a statement he or she shall be allowed to do so: *rule 2(5);*
- It shall be the duty of the court to put to the witnesses such questions as appear to be necessary, and the court may put to the child or young person such questions as may be necessary to explain anything in the statement of the child or young person: *rule 2(6);*
- If it appears to the court that a prima facie case is made out, the evidence of any witnesses for the defence shall be heard, and the child or young person shall be allowed to give evidence or to make any statement: *rule 2(7);*
- If the child or young person admits the offence or the court is satisfied that it is proved, he or she shall then be asked if he or she desires to say anything in extenuation or mitigation of the penalty or otherwise, before deciding how to deal with him or her, the court shall obtain such information as to his or her general conduct, home surroundings, school record, and medical history, as may enable it to deal with the case in the best interests of the child or young person and may put to him or her any question arising out of such information, and for the purpose of obtaining such information or for special medical examination or observation the court may from time to time remand the child or young person on bail or in custody: *rule 2(8);*
- If the child or young person admits the offence or the court is satisfied that it is proved and the court decides that a remand is necessary for purposes of enquiry or observation, the court may cause an entry to be made in the court register that the charge is proved and that the child or young person has been remanded: *rule 2(9);*
- The court before which a child or young person so remanded is brought may without further proof of the commission of the offence make any order in respect of the child or young person which could have been made by the court which so remanded the child or young person: *rule 2(10).*

[85] St. Kitts and Nevis- Juvenile Courts Procedure Rules S.R.O. 17/1949
St. Kitts and Nevis- Magistrate's Code of Procedure Act, Chap. 3.17, section 2. "Child" means a person who, in the opinion of the Magistrate before whom he or she is brought, is under fourteen years and of sufficient age and capacity to commit crime; and "young person" means a person who, in the opinion of the Magistrate before whom he or she is brought, is fourteen years and under eighteen years.

i. **Community service order -** *The Alternative Sentencing Powers Act, Chap. 3.20*

Eligibility for a community service order

- Where a person of 16 years of age or over is convicted of an offence punishable with imprisonment, the court by or before which that person is convicted may, subject to subsection (2), make an order hereafter referred to as a community service order, requiring the offender to perform unpaid work in accordance with this section and *Section 23: Section 22(1);*
- A court shall not make a community service order in respect of an offender except where:
  - After considering a written report by a probation officer in respect of the offender and the offender's circumstances; and after hearing a probation officer, the court is satisfied that the offender is a suitable person to perform work under the order: *Section 23(1)(a);*
  - The court is satisfied that arrangements can be made in the area in which the offender lives, or will live, for the offender to perform work under the order and for that work to be properly supervised: and *Section 23(1)(b);*
  - The court has first explained to the offender the matters specified in subsection (2), and the offender has consented to the making of the order[86]: *Section 23(1)(c).*

Procedure

- The number of hours that a person may be required to work under a community service order shall be specified in the order and shall not in the aggregate:
  - Be less than 80 hours: or *Section 24(1)(a);*
  - Be more than:
    (i) 140 hours, in the case of an offender aged 16 and below 16: and *Section 24 (1)(b)(i);*
    (ii) 240 hours, in any other case: *Section 24(1)(b)(ii);*
- Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by the court, the court may direct that the hours of work specified in any of those orders shall be concurrent or cumulative; but the total number of hours which are not concurrent shall not exceed the maximum specified in *para. (b),* of subsection (1): *Section 24(2);*
- A community service order shall specify the area in which the offender lives or will live, and the court shall cause copies of the order to be sent to the Chief Probation Officer for delivery to the probation officer assigned to that area: *Section 25;*

[86] St. Kitts and Nevis - Alternative Sentencing Powers Act, Cap. 3.20, section 23(2). The matters the Magistrate must explain to the offender before the offender may consent to the making of a community service order are:
- the purpose and effect of the order, and in particular, the requirements specified in section 23(1);
- the consequences that may follow under the provisions of the Second Schedule if the offender fails to comply with any of those requirements; and
- that the order may be reviewed by the court under the provisions of the Second Schedule.

- An offender in respect of whom a community service order is in force shall:

- Keep in touch with the probation officer in accordance with such instructions as the offender may from time to time be given by that officer, and notify that officer of any change of address: and *Section 26(1)(a);*

- Perform for the number of hours specified in the order such work at such times as the offender may be instructed by that officer: *Section 26(1)(b);*

- The work required to be performed under a community service order shall be performed during the period of 12 months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under the order for the number of hours specified in the order: *Section 26(2);*

- The instructions given by the probation officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs, or with the requirements of any other community order to which the offender may be subject, and any interference with the times, if any, at which the offender normally work or attends a school or other educational establishment: *Section 26(3);*

- It was held in the **Director of Public Prosecutions v Elvis Richardson SKNHCR 2013/0030,** the court assessed the mitigating and aggravating factors in a case where the defendant was charged with causing death to an elderly man by dangerous driving and noticed that though the defendant was culpable, the defendant changed is life after being convicted within his earlier years and was found to be stable and structured within society. Thus, among other sentencing options the defendant received 150 hours community service as a Traffic Crossing Warden.

Children *- The Child Justice Act, Chap. 4.15*

- The court may impose as a requirement in relation to a penalty for an offence that the child is sentenced to imprisonment for an initial period and thereafter is required to serve the remainder of the sentence providing a service in the community: *Section 57(1);*

- A sentence which allows a child to remain in the community and which may be imposed pursuant to this Act includes:

    - Any of the options referred to in *Sections 39(3)(a), (b), (c), (d)* or *(e): Section 57(2)(a);*

    - Placement under a supervision and guidance order in the prescribed form for a period not exceeding three years: *Section 57(2)(b);*

    - In cases that warrant such specialised intervention, referral to counselling or therapy in conjunction with any of the options listed in this section for a period of time as the court considers fit: *Section 57(2)(c);*

    - Where the child is over the age of compulsory school attendance, and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose, for a period not exceeding one year and for no more than 35 hours per week: *Section 57(2)(d);*

- Performance of some service without remuneration for the benefit of the community under the supervision or control of a specified person or institution identified by the court for a maximum period of 250 hours and which shall be completed in one year: and *Section 57(2)(e);*
- Any other sentence, subject to *Section 63,* which is appropriate to the circumstances of the child and in keeping with the principles of this Act and which, if it includes a period of time, shall not exceed 12 months: *Section 57(2)(f);*

- Before a child from the age of 12 to 14 is sentenced pursuant to subsection (2)(e), due consideration shall be given to the age, development and compulsory school attendance of the child: *Section 57(3).*

ii. **Suspended sentences -** *The Alternative Sentencing Powers Act, Chap. 3.20*

- A court which passes a sentence of imprisonment on an offender for a term of not exceeding three years for an offence may suspend the sentence by ordering that the sentence shall not take effect unless:
  - During a period specified in the order, being of not less than 12 months and not more than three years from the date of the order, in this Act referred to as the operational period, the offender commits in the Federation another offence punishable with imprisonment for a period exceeding six months hereafter referred to as a "subsequent offence": and *Section 6(1)(a);*
  - Thereafter a court having power to do so order pursuant to *Section 7,* that the original sentence shall take effect: *Section 6(1)(b);*
- A magistrate or a judge shall not give a suspended sentence under subsection (1), if the offence involved the use, or the illegal possession of, a firearm or imitation firearm: *Section 6(2);*
- A court shall not give a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of power to suspend such a sentence by an order under subsection (1): *Section 6(3);*
- A court which passes a suspended sentence on an offender a for an offence shall not make a probation order in the offender's case in respect of another offence of which the offender is convicted by that court: *Section 7(1);*
- Where a court passes a suspended sentence on an offender in respect of an offence and also a term of imprisonment in respect of another offence, the court shall direct that the suspended sentence be concurrent with the term of imprisonment: *Section 7(2);*
- On passing a suspended sentence, the court shall explain to the offender in ordinary language, the offender's liability under *Section 7,* if the offender should commit a subsequent offence during the operational period: *Section 8;*

- Subject to subsection (3), where an offender is convicted of a subsequent offence committed during the operational period of a suspended sentence, the court by which the offender is convicted of the subsequent offence may order that the suspended sentence shall take effect with the original term unaltered, or the court may substitute a lesser term of imprisonment for the original term: *Section 9(1);*
- Where a court deals with an offender in respect of a suspected sentence passed by another court, the former court shall notify the latter court of the manner in which the offender was dealt with: *Section 9(2);*
- Where a Magistrate's Court convicts an offender of an offence and that offender is under a suspended sentence passed by the High Court, the Magistrate's Court shall forward to the Registrar of the High Court a certificate signed by the magistrate and under seal of the Magistrate's Court certifying that the offender has been convicted of a subsequent offender, together with such other particulars of the case as the magistrate may consider desirable; whereupon a judge of the High Court before whom the offender is brought may, without prejudice to the order of the magistrate with respect to the subsequent offence, order that the suspended sentence shall take effect either with the original term unaltered or with the substitution of a lesser term for the original term: *Section 9(3);*
- Where a person has been convicted by or before a court of a subsequent offence committed during the operational period of a suspended sentence and that court was not at the time aware of the suspended sentence or of some feature affecting the operation of that sentence, any court may, on receipt of information relating to that suspended sentence or that feature and the conviction of the subsequent offence, issue a summons requiring that person to appear at the place and time specified in the summons or may issue a warrant for that person's arrest: *Section 10(1);*
- A summons or warrant issued under subsection (1), shall direct that the person appear or be brought before the court by which the person was convicted in respect of the subsequent offence and, upon that person so appearing or being so brought, the court shall proceed to exercise its powers under *Section 9* in respect of the suspended sentence: *Section 10(2);*
- Some other sections to note include:
    - Partly suspended sentences are dealt with under *Section 11;*
    - Restoration of partly suspended sentence: *Section 12.*

Children - *The Child Justice Act, Chap. 4.15*

- The court may impose a sentence of correctional supervision for a period not exceeding three years on a child over the age of 14 years: *Section 60(1);*
- The whole or any part of the sentence imposed pursuant to subsection (1), may be postponed or suspended, with or without conditions referred to in *Section 64(3): Section 60(2);*

- The passing of any sentence may be postponed, with or without one or more of the conditions referred to in subsection (3), for a period not exceeding three years: *Section 64(1);*
- The whole or any part of any sentence may be suspended, with or without one or more conditions referred to in subsection (3), for a period not exceeding five years: *Section 64(2);*
- The conditions referred to in subsections (1) and (2), may be any condition appropriate to the circumstances of the child which are in keeping with the principles of this Act and which promotes the reintegration of the child into his or her community or society and may include:
    - Restitution, compensation or symbolic compensation: *Section 64(3)(a);*
    - An apology: *Section 64(3)(b);*
    - The obligation not to commit a further offence of a similar nature: *Section 64(3)(c);*
    - Good behaviour: *Section 64(3)(d);*
    - Regular school attendance for a specified period: *Section 64(3)(e);*
    - Attendance at a specified time and place of a family group conference: S*ection 64(3)(f);*
    - Placement under the supervision of a probation officer: *Section 64(3)(g);*
    - A requirement that the child shall appear before the court on a date or dates to be determined by the court for a periodic progress report: and *Section 64(3)(h);*
    - Referral to any diversion option referred to in *Sections 44(2)(d), (e), (f), (g), (h), (i), (j)* or *(k): Section 64(3)(i);*
- Where the court has postponed the passing of a sentence pursuant to subsection (1), on one or more conditions, the court may request the probation officer concerned to submit regular reports indicating the compliance of the child with the conditions referred to in this section: *Section 64(4);*
- The conviction of a child in respect of whom passing of a sentence has been postponed shall be expunged from any record if the child has met all the conditions imposed or at the expiration of the period in question, as the case may be: *Section 64(5).*

iii. **Fines -** *The Criminal Procedure Act, Chap. 4.06*

- Subject to the provisions of this section, where a fine is imposed by the court an order may be made in accordance with the provisions of this section:
    - Allowing time for the payment of the amount of the fine: *Section 97(1)(a);*
    - Directing payment of the said amount by instalments of such amounts and on such dates respectively as may be specified in the order: *Section 97(1)(b);*
    - Fixing a term of imprisonment which the person liable to make the payment is to undergo if any sum which he or she is liable to pay is not duly paid or recovered:

- Provided that any term of imprisonment fixed under this subsection in default of payment of a fine shall not exceed 12 months: *Section 97(1)(c);*

- Any order made under this section providing for any such matters as are mentioned in *para. (a)* or *para. (b),* of the foregoing subsection may be made by the court upon application in writing to the Registrar of the court and may amend any previous order made under this section so far as it provides for those matters:

  Provided that no application shall be made under this subsection after the refusal of a previous application made thereunder: *Section 97(2);*

- Where any person liable for the payment of a fine to which this section applies is sentenced by the court to, or is serving or otherwise liable to serve, a term of imprisonment, the court may order that any term of imprisonment fixed under *para. (c),* of subsection (1), shall not begin to run until after the end of the first-mentioned term of imprisonment: *Section 97(3).*

The Magistrate's Code of Procedure Act, Chap. 3.17, read conjunctively with the *Magistrate's Code of Procedure (Amendment) Acts, No. 4 of 2018 and No. 2 of 2019*

- In all cases where a magistrate has jurisdiction to inflict imprisonment, he or she may order the imprisonment to be without hard labour, and reduce the prescribed period thereof or do either of such acts: *Section 98(1);*

- Where the magistrate has jurisdiction to impose a fine, if it be in respect of a first offence, he or she may reduce the prescribed amount thereof: *Section 98(2);*

- Where the magistrate is authorised to inflict imprisonment and has not the option of imposing a fine he or she may impose a fine not exceeding twenty-five thousand dollars:

  Provided that the amount of the fine so inflicted will not subject the offender in default of payment to any greater term of imprisonment than that to which he or she would have been otherwise liable: *Section 98(3);*

- Where, in case either of fine or imprisonment, there is prescribed a requirement for the offender to enter into his or her recognisances and to find sureties for keeping the peace and observing some other condition or to do any of such things, the magistrate may dispense with any such requirement or any part thereof:

  Provided that this section shall not apply to any proceedings taken under any Act relating to the Crown's regular or auxiliary forces:

  Provided also that this section shall not authorise a magistrate to reduce the amount of a fine where the Act prescribing such amount carries into effect a treaty, convention, or agreement with a foreign state and such treaty, convention, or agreement stipulates for a fine of a minimum amount:

  Provided further that this section shall not authorise a magistrate to reduce the amount of a fine or the period of imprisonment made mandatory by the *Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Chap. 9.08,* or the *Firearms Act, Chap. 19.05: Section 98(4);*

- A magistrate by whose conviction any sum is adjudged to be paid may do all or any of the following things, namely:
    - Order imprisonment in the first instance, unless such sum be paid forthwith: *Section 112(a);*
    - Allow time for the payment of the said sum: *Section 112(b);*
    - Direct payment to be made of the said sum by instalments: *Section 112(c);*
    - Direct that the person liable to pay the said sum shall be at liberty to give to the satisfaction of that magistrate, or such person as may be specified by him or her, security with or without a surety or sureties for the payment of the said sum or of any instalment thereof and such security may be given and enforced in manner provided by this Act: *Section 112(d);*
    - Issue a warrant of distress for the levying of the said sums: *Section 112(e);*
    - Order imprisonment in default of sufficient distress or of the payment of any instalment: *Section 112(f);*
- Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment forthwith of the full amount of the fine or of such amount as remains unpaid: *Section 113;*
- Where the person desires to be allowed time for payment, the magistrate in deciding what time shall be allowed shall consider any representation made by the person, but the time allowed shall not be less than seven clear days:

  Provided that if before the expiration of the time allowed the person convicted informs the magistrate that he or she prefers immediate committal to awaiting the expiration of the time allowed, the magistrate may if he or she thinks fit forthwith issue a warrant committing him or her to prison: *Section 116(2);*
- Where time has been allowed for the payment of a sum adjudged to be paid by a conviction or order of a magistrate, the magistrate may allow further time or he or she may direct payment by instalments of the sum so adjudged to be paid: *Section 116(4);*
- Some other sections to not include:
    - Mode of payment by instalments: *Section 114;*
    - Postponement of issue of warrant of distress or commitment: *Section 115;*
    - Power of magistrate to order attachment of debts due to person sentenced to pay a fine: *Section 119;*
    - Where more than one person is ordered to pay a sum equal to the damage done: *Section 120.*

Children/Young Person - *The Magistrate's Code of Procedure Act, Chap. 3.17,* read conjunctively with the *Magistrate's Code of Procedure (Amendment) Acts, No. 4 of 2018 and No. 2 of 2019*

- No child in respect of whom a finding of guilt is made under the provisions of this Act or the *Child Justice Act, Chap. 4.15,* shall be liable to be imprisoned or to pay a fine exceeding fifty dollars: *Section 102;*

- Where a child is charged with any offence for the commission of which a fine, damages or costs may be imposed and the magistrate or Juvenile Court is of opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the magistrate or Juvenile Court shall order that the fine, damages or costs awarded be paid by the parent or guardian of the child instead of by the child, unless the magistrate or Juvenile Court is satisfied that the parent or guardian cannot be found or that he or she has not conduced to the commission of the offence by neglecting to exercise due care of the child: *Section 103(1);*
- An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard: *Section 103(2);*
- Any sums imposed and ordered to be paid by a parent or guardian under this section may be recovered from him or her by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged: *Section 103(3);*
- A young person, in respect of whom a finding of guilt is made under this Act, shall be liable to be imprisoned without hard labour for a period not exceeding three months or to pay a fine not exceeding three hundred dollars: *Section 104(1).*

iv. **Probation order -** *The Probation of Offenders Act, Chap. 4.27*

Eligibility for a probation order

- Where any person is charged before an inferior court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of the opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, either with or without proceeding to conviction, make an order either:
    - Dismissing the information or charge: or *Section 2(1)(a);*
    - Discharging the offender conditionally on his or her entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order: *Section 2(1)(b).*

Procedure

- A recognizance ordered to be entered into under this Act shall, if the court so orders, contain a condition that the offender be under the supervision of such person as may be named in the order (in this Act referred to as the supervisor) during the period specified in the order and such other conditions for securing such supervision as may be specified in the order, and an order requiring the insertion of such conditions as

aforesaid in the recognizance is in this Act referred to as a probation order: *Section 3(1);*

- A recognizance under this Act may contain such additional conditions with respect to residence, abstention from intoxicating liquor, and any other matters, as the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences: *Section 3(2);*
- The court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he or she is required to observe: *Section 3(3);*
- The court before which any person is bound by a recognizance under this Act to appear for conviction and sentence or for sentence:
    - May, at any time, if it appears to it, upon the application of the supervisor, that it is expedient that the terms or conditions of the recognizance should be varied, summon the person bound by the recognizance to appear before it, and, if he or she fails to show cause why such variation should not be made, vary the terms of the recognizance by extending or diminishing the duration thereof (so, however, that it shall not exceed three years from the date of the original order) or by altering the conditions thereof or by inserting additional conditions: or *Section 6(a);*
    - May, on application being made by the supervisor, and on being satisfied that the conduct of the person bound by the recognizance has been such as to make it unnecessary that he or she any longer be under supervision, discharge the recognizance: *Section 6(b);*
- If the court before which an offender is bound by his or her recognizance under this Act to appear for conviction or sentence, or any inferior court of summary jurisdiction is satisfied by information on oath that the offender has failed to observe any of the conditions of his or her recognizance, it may issue a warrant for his or her apprehension, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his or her sureties, (if any) requiring him or her or them to attend at such court and at such time as may be specified in the summons: *Section 7(1);*
- The offender, when apprehended, shall, if not brought forthwith before the court before which he or she is bound by his or her recognizance to appear for conviction or sentence, be brought before an inferior court of summary jurisdiction: *Section 7(2);*
- The court before which an offender on apprehension is brought, or before which he or she appears in pursuance of such summons as aforesaid, may, if it is not the court before which he or she is bound by his or her recognizance to appear for conviction or sentence, remand him or her to prison or grant bail until he or she can be brought before the last-mentioned court: *Section 7(3);*

- A court before which a person is bound by his or her recognizance to appear for conviction and sentence, on being satisfied that he or she has failed to observe any condition of his or her recognizance, may forthwith, without further proof of his or her guilt, convict and sentence him or her for the original offence: *Section 7(4)*.

v. **Conviction and discharge -** *The Alternative Sentencing Act, Chap. 3.20*

- Where a court by which a person is convicted of an offence (not being an offence the sentence for which is fixed by laws) is of the opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that:
  - It is not inexpedient to inflict punishment: and *Section 3(1)(a);*
  - A probation order is not appropriate: *Section 3(1)(b);*

  the court may make an order discharging the offender;
- An order made under subsection (1), may discharge the offender absolutely or, if the court thinks fit, may discharge the offender subject to the condition that the offender does not commit an offence during such period, not exceeding three years from the date of the order, as may be specified in the order: *Section 3(2);*
- Before making an order for conditional discharge the court shall explain to the offender in ordinary language that, if the offender commits another offence during the period of conditional discharge, the offender shall be liable to be sentenced for the original offence: *Section 3(3);*
- Before making an order for conditional discharge the court shall explain to the offender in ordinary language that, if the offender commits another offence during the period of conditional discharge, the offender shall be liable to be sentenced for the original offence: *Section 3(4);*
- Where, under the provisions of this Part, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, the order for conditional discharge shall cease to have effect: *Section 3(5);*
- If it appears to a judge or a magistrate that a person in whose case an order for conditional discharge has been made has been convicted in the Federation of St. Christopher and Nevis of an offence committed during the period of conditional discharge, and has been dealt with in respect of that offence, then, subject to subsection (2), the judge or magistrate may issue a summons requiring that person to appear at the time and place specified in the summons or may issue a warrant for that person's arrest: *Section 4(1);*
- While acting under subsection (1), a magistrate shall not issue a summons or a warrant except on information given in writing and on oath: *Section 4(2);*
- A summons or warrant issued under subsection (1), shall direct that the person to whom it relates appears or be brought before the court that made the order for conditional discharge: *Section 4(3);*

- If a person in whose case an order for conditional discharge has been made by the High Court is convicted in a Magistrate's Court of an offence committed during the period of conditional discharge, the magistrate may commit the offender to custody, or may release the offender on bail, until such a time as the offender can be brought before the High Court: *Section 4(4);*
- Where the magistrate acts under subsection (4), the magistrate shall send to the High Court a copy of the record of the conviction entered in the register of the Magistrate's Court and signed by the clerk of that court: *Section 4(5);*
- Where it is proved to the satisfaction of the court that made an order for conditional discharge that the offender in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with the offender, for the offence for which the order was made, as if the offender had just been convicted before that court of that offence: *Section 4(6);*
- If a person in whose case an order for a conditional discharge has been made by a Magistrate's Court:
    - Is convicted before the High Court of an offence committed during the period of conditional discharge: or *Section 4(7)(a);*
    - Is dealt with by the High Court for any such offence in respect of which the offender was committed for sentence to the High Court: *Section 4(7)(b);*

  then the High Court may deal with the offender, for the offence for which the order was made, in any manner in which the Magistrate's Court could have dealt with the offender if it had just convicted the offender of that offence.

Children/Young Persons *- The Alternative Sentencing Act, Chap. 3.20*

- Nothing in *Sections 3* or *4:*
    - Confers any powers on any court in respect of a child or young person[87]: or *Section 5(1)(a);*
    - Modifies or otherwise affects any powers conferred on any court by the Juvenile Act, in respect of a child or a young person: *Section 5(1)(b).*

The Magistrate's Code of Procedure Act, Chap. 3.17, read conjunctively with the *Magistrate's Code of Procedure (Amendment) Acts, No. 4 of 2018 and No. 2 of 2019*

Where a child or young person in respect of whom a finding of guilt is made as provided in the preceding sections mentioned the magistrate if he or she thinks it inexpedient to inflict any punishment may discharge the accused: *Section 106(1).*

[87] St. Kitts and Nevis- Alternative Sentencing Powers Act, Cap. 3.20, section 5(2). The expressions "child" and "young person" in subsection (1) have the meanings given to them by the Juvenile Act, Cap. 4.15.

vi. **Discharge with no record of conviction**[88]

The Magistrate's Code of Procedure Act, Chap. 3.17, read conjunctively with the *Magistrate's Code of Procedure (Amendment) Acts, No. 4 of 2018 and No. 2 of 2019*

- The magistrate shall then consider the whole matter and determine the same, and shall either dismiss the charge or convict the defendant: *Section 89;*
- If the magistrate dismisses the case upon the merits he or she may, when required to do so, make an order of dismissal and give the defendant a certificate thereof which shall without further proof be a bar to any subsequent charge for the same matter against the same party: *Section 91.*

The Magistrate's Code of Procedure Rules - Section 249, contained in the Third Schedule of the *Magistrate Code of Procedure Act, Chap 3.17*

- When a magistrate dismisses an information or charge or binds over an offender under the *Probation of Offenders Act, Chap. 4.27,* the minute of adjudication entered in the register shall be "Dismissed [Bound over] P.O. Act": *rule 5.*

vii. **Compensation -** *The Probation of Offenders Act, Chap. 4.27*

- The High Court may, when making an order under subsection (2), order the offender to pay such damages or compensation and costs as it thinks reasonable: *Section 2(3);*
- A Magistrate's Court may, when making an order under subsection (1), order the offender to pay damages or compensation not exceeding one hundred dollars and costs: *Section 2(4);*
- An order for the payment of damages or compensation as aforesaid may be enforced in like manner as an order for the payment of costs by the offender; and where the court, in addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs: *Section 2(5);*
- Where an order under this section is made by an inferior court of summary jurisdiction, the order shall, for the purpose of revesting or restoring stolen property, and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery, have the like effect as a conviction: *Section 2(6).*

The Alternative Sentencing Act, Chap. 3.20

- A court by which a person of 16 years of age or above is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law), may make a compensation order against the offender for the benefit of the victim, who has suffered:

[88] St. Kitts and Nevis- Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.25 provides for certain criminal offences to be spent and be expunged from the police criminal records if the person becomes a rehabilitated person within the meaning of this Act.

- Injury: *Section 33(1)(a);*
- Financial loss: *Section 33(1)(b);*
- Loss of property: or *Section 33(1)(c);*
- Any other damage: *Section 33(1)(d);*

as a result of the offence and any other offences taken into consideration.

- Where any of the circumstances under *paras. (a), (b), (c)* and *(d),* of subsection (1), are existent, and the court does not make a compensation order, the court shall give its reason in writing for not making the order: *Section 33(2).*

The Magistrate's Code of Procedure Rules - Section 249, contained in the Third Schedule of the *Magistrate Code of Procedure Act, Chap. 3.17*

- In any case where, under *Section 113,* of the Act, a part of any sum adjudged to be paid by a conviction of a magistrate has been received by a person authorised to receive it and paid over in accordance with the said section of the Act into the Treasury or to the magistrate or to his or her clerk, the clerk shall apply that sum, firstly towards the payment in full or in part of any costs which the magistrate may have ordered by the conviction to be paid to the prosecutor or complainant; secondly towards the payment in full or in part of any damages or compensation which the magistrate may have ordered by the conviction to be paid to the prosecutor or complainant; and thirdly in the manner in which *Section 245,* of the Act directs that the fine shall be applied; and in any case where, under the said section, a part of any sum of money adjudged to be paid by an order of a magistrate has been received by a person authorised to receive it, and paid over in accordance with that section, the clerk shall apply that sum as directed by the order: *rule 9.*

***Children** - The Child Justice Act, Chap. 415*

- The court convicting a child of an offence for which a fine or imprisonment is stated by law as the penalty, may impose any one of the following penalties in place of that fine or imprisonment:
  - Symbolic compensation[89] to a specified person or institution: *Section 65(1)(a);*
  - Payment of compensation not exceeding five thousand dollars to a specified person or institution if the child or his or her family is able to make that payment: *Section 65(1)(b);*
  - An obligation on the child to provide a service or benefit or to pay compensation to a specified organisation identified by the child or by the court, if there is no identifiable person to whom restitution or compensation could be made: or *Section 65(1)(c);*
  - Any other sentence as stated in this Act, except imprisonment: *Section 65(1)(d).*

[89] St. Kitts and Nevis - Child Justice Act, Cap. 4.15, section 65(2). In this section "symbolic compensation" means the giving of an object owned, made or bought by a child to a person, or group of persons or an institution as compensation for the harm caused by the child.

viii. **Imprisonment**[90]

The Magistrate's Code of Procedure Act, Chap. 3.17, read conjunctively with the *Magistrate's Code of Procedure (Amendment) Acts, No. 4 of 2018* and *No. 2 of 2019*

- In all cases where a magistrate has jurisdiction to inflict imprisonment, he or she may order the imprisonment to be without hard labour, and reduce the prescribed period thereof or do either of such acts: *Section 98(1);*
- Where a magistrate convicts a person and orders that person to be imprisoned without the option of a fine the magistrate shall by warrant commit that person to prison there to be imprisoned for the period mentioned in the warrant: *Section 99.*
- Where a sentence of imprisonment for a summary offence is passed on any person the magistrate may order that the sentence shall commence at the expiration of any other term of imprisonment to which that person has been previously sentenced, so, however, that where two or more sentences of a magistrate are ordered to run consecutively the aggregate term of imprisonment shall not exceed six months, unless such sentences include at least:
    - Two sentences for indictable offences dealt with summarily by consent: or *Section 100(1)(a);*
    - A sentence for an offence for which the magistrate was empowered to order a term of imprisonment of more than six months, in which case the aggregate term of imprisonment shall not exceed 12 months: *Section 100(1)(b);*
- In subsection (1), "sentence of imprisonment" includes cases where imprisonment is imposed on any person either with or without the option of a fine, or in respect of non-payment of any sum of money, or for failing to do or abstaining from doing any act or thing required to be done or left undone: *Section 100(2);*
- Where a person has been sentenced to imprisonment in default of payment of a fine, the magistrate may, notwithstanding the provisions of subsection (1), order that the sentence shall begin at the expiration of any term of imprisonment imposed for that offence on that person in addition to the fine: *Section 100(3);*
- Where a magistrate adjudges the defendant to be imprisoned and the defendant is then undergoing imprisonment upon conviction for any other offence the warrant of commitment for the subsequent offence shall be forthwith delivered to the officer to whom it is directed: *Section 101;*

[90] St. Kitts and Nevis- Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.24 read conjunctively with Records (Rehabilitation of Offenders) (Amendment) Act No. 7 of 2020, section 4(1). Subject to the provisions of this Act, where a person is convicted of a criminal offence, whether before or after the coming into force of this Act, and that person is not, since his or her conviction, been convicted of any other offence during the relevant rehabilitation period, that person shall be treated as a rehabilitated person in respect of the offence of which he or she was convicted, and the offence shall be treated as spent. Section 17: A rehabilitated person shall, in relation to any expunged conviction, for all purposes in law, be deemed to be a person who has never been charged with, prosecuted for, convicted of or sentenced for, the offence to which that conviction relates.

- A warrant committing a person to prison in respect of the non-payment of a sum adjudged to be paid by a conviction[91] of a magistrate shall not be issued forthwith unless the magistrate is satisfied that such person is possessed of sufficient means to enable him or her to pay the sum forthwith, or unless, upon being asked by the magistrate whether he or she desires that time should be allowed for payment, he or she does not express any such desire, or fails to satisfy the magistrate that he or she has a fixed abode within the magistrate's district, or unless the magistrate for any other special reason expressly directs that no time shall be allowed: *Section 116(1);*
- In all cases where time is not allowed for payment, the reasons of the magistrate for the immediate committal shall be stated in the warrant of commitment: *Section 116(3);*
- The period of imprisonment imposed by a magistrate under this or any other Act in respect of the non-payment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum or in respect of the default of payment of any instalment of such sum shall notwithstanding any enactment to the contrary in any past Act be such period as in his or her opinion will satisfy the justice of the case, but shall not in any case exceed the maximum fixed by the following scale and may be either with or without hard labour in the discretion of the magistrate: *Section 117;*

Where the amount of the sum or sums of money adjudged to be paid	The said period shall not exceed
Does not exceed $10.00	14 days
Exceeds $10.00 but does not exceed $50.00	30 days
Exceeds $50.00 but does not exceeds $100.00	2 months
Exceeds $100.00 but does not exceeds $250.00	3 months
Exceeds $250.00 but does not exceed $500.00	6 months
Exceeds $500.00	12 months

- Where it becomes necessary to issue a warrant for committing a person to prison for non-payment of a sum adjudged to be paid by a conviction, or for default of sufficient distress to satisfy the sum, and it appears to the magistrate that, either by payment of part of the sum, whether in the shape of instalments or otherwise, or by the net proceeds of the distress, the amount of the sum so adjudged has been reduced, the magistrate shall, by warrant of commitment, revoke the term of imprisonment to which the defendant is liable under the conviction, and order the defendant to be imprisoned for such less period as in the magistrate's opinion will satisfy the justice of the case: *Section 118;*
- No person shall, for non-compliance with the requisition of the magistrate whether made by one or more orders to do or to abstain from doing any particular act or

[91] St. Kitts and Nevis - Magistrate's Code of Procedure Act, Cap. 3.17, section 116(5). The expression "sum adjudged to be paid by a conviction" includes any costs adjudged to be paid by the conviction of which the amount is ascertained by such conviction.

thing, be liable to be imprisoned for a period or periods amounting in the aggregate to more than two months or to the payment of any sums exceeding in the aggregate five hundred dollars: *Section 159;*

- In **Browne v R KN 2000 HC 28,** the appellant had been convicted of murder whilst still a youth. He had accordingly been sentenced to be detained 'during [the Governor-General's] pleasure; and if so, sentenced he shall be liable to be detained in such place and under such conditions as the Administrator in Council may direct and, while so detained, be deemed to be in legal custody.' It was held that it was inconsistent with the doctrine of the separation of powers, that a person sentenced to be detained during the Governor General's pleasure, should have the length of sentence decided by the Governor, who is part of the executive not the judiciary. The term 'during pleasure' is to be 'not a once and for all assessment that is made at the time that the defendant is first before the court after his conviction.' The unconstitutionality could be repaired by ensuring that the decision was made by a court.

  With respect to the issue of life imprisonment, the Privy Council briefly addressed the character and reasoning for imposing a detention of indeterminate length on children under 18 years old. It found that such a sentence was not a life sentence, but was a discretionary sentence because its main feature is its indeterminate duration. According to the Privy Council Lordships, the policy behind imposing such sentences on children is to maintain flexibility and enable the duration of a child's detention to take into account the child's welfare, the desirability of reintegrating the child into society and the child's developing maturity through his or her young life. Though **Browne** is an indictable High Court matter, the application of the conditions of a probation order is highly instructive to the Magistrates' Courts.

Children

The Magistrate's Code of Procedure Act, Chap. 3.17, read conjunctively with the *Magistrate's Code of Procedure (Amendment) Acts, No. 4 of 2018* and *No. 2 of 2019*

- No child in respect of whom a finding of guilt is made under the provisions of this Act or the *Child Justice Act, Chap. 4.15,* shall be liable to be imprisoned or to pay a fine exceeding fifty dollars: *Section 102.*

ST. LUCIA

Sentencing guidelines[92]

In 2019, the Eastern Caribbean Supreme Court implemented the Sentencing Guidelines Rules applicable to St. Lucia. These Rules apply to all criminal proceedings conducted in the court for which sentencing guidelines have been issued. In sentencing for an offence for which a guideline has been issued, the court must apply the relevant sentencing guideline and sentence, unless to do so would not be in the interests of justice. Note that where the provisions of a practice direction or a practice guide conflict with these Rules, these Rules prevail.

[92] Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, Statutory Instrument, No. 129 of 2019 and Practice Directions 8A-8D.

General judicial guidelines

- These guidelines as outlined in the *Criminal Code, Chap. 3.01,* are as follows:
  - The rehabilitation of the offender is one of the aims of sentencing: *Section 1102(2)(a);*
  - The gravity of a punishment must be commensurate with the gravity of the offence: *Section 1102(2)(b);*
  - An offender shall only not be sentenced for an offence of which the offender has been convicted or for another offence or other offences which the offender has asked the court to take into consideration in passing sentence: *Section 1102(2)(c);*
  - Where a fine is imposed, the court in fixing the amount of the fine must take into account, among other relevant considerations, the means of the offender so far as these are known to the court, regardless of whether this will increase or reduce the amount of the fine: *Section 1102(2)(d);*

Sentencing options in St. Lucia

The main legislation is the *Criminal Code, Chap. 3.01.* For the purpose of detailing sentencing options for St. Lucia within this chapter, the *Criminal Code, Chap. 3.01, revised edition 2014,* will be utilised.

i. **Community service order -** *The Criminal Code, Chap. 3.01*

Eligibility for a community service order

- Despite any enactment to the contrary, any of the following persons namely:
  - Any person sentenced by a court to imprisonment for a term not exceeding 12 months: *Section 1174(a);*
  - A female convicted and sentenced to imprisonment for an offence which in the opinion of the court is not a grave offence: *Section 1174(b);*
  - Any person liable to be committed to the correctional facility for nonpayment of a fine or of a sum of money ordered to be paid in respect of any maintenance, affiliation, small debt proceedings, or by a summary court: *Section 1174(c);*

  may be ordered by the court, on the advice of the Director of Correctional Services, either at the time of or after the passing of sentence, to be employed, in lieu of imprisonment, in public work outside the correctional facility under the supervision and control of a public authority.

Procedure

- Every person referred to in *Section 1174,* shall be employed on a daily task which shall be such as can normally be completed in the usual working day and at the usual working hours and shall be eligible to receive when so employed the normal correctional facility ration and while not so employed, shall not be subject to any correctional facility rules: *Section 1175(1);*

- Every person employed on such work shall be required to report daily during the term of his or her sentence to the Director of Correctional Services, or to the person as he or she shall nominate: *Section 1175(2);*
- Every order made by the court under *Section 1174,* shall specify:
  - The date of commencement of the extra-mural sentence: *Section 1175(3)(a);*
  - The time and place at which the person sentenced must report daily: *Section 1175(3)(b);*
- If any person fails to present himself or herself at the appointed time and place or absents himself or herself from his or her task without permission or works or conducts himself or herself in a manner which the Director of Correctional Services considers unsatisfactory, the Director of Correctional Services shall immediately report the fact to the court: *Section 1176(1);*
- On receipt of such report, the court shall cause the person to be brought before it and shall inquire into the facts reported: *Section 1176(2);*
- Upon such inquiry the court may either:
  - Order that the person serve his or her sentence in a correctional facility, due allowance being made for the number of days on which he or she has completed his or her daily task, and he or she shall be committed to the correctional facility accordingly: or *Section 1176(3)(a);*
  - Confirm or vary the terms of the order made under *Section 1173,* with respect to the person and order that the person continues to be employed on a daily task in accordance with the order as confirmed or varied by the court: *Section 1176(3)(b);*
- Widely used within the courts, magistrates must ensure that a community service order is the best option for a case. In the **Queen v Ortis St. Rose SLUCRD2012/1938,** where the maximum penalty prescribed for having sexual intercourse with a minor is 15 years the court however inter alia sentenced the offender to 60 hours community service, probation for six months and receive counselling on the rights of young girls in matters of sexual intercourse.

Children[93] - *The Child Justice Act, No. 9 of 2018*

- A community-based sentence includes:
  - A level two diversion option under *paras. (a), (b), (c), (d)* or *(e),* of *S*chedule 4: *Section 55(1)(a);*
  - Placement under a supervision and guidance order in the prescribed form for a period not exceeding three years: *Section 55(1)(b);*
  - In cases that warrant the specialized intervention, referral to counselling or therapy in conjunction with an option under *para. (a),* for a period of time as the court considers necessary: *Section 55(1)(c);*

[93] St. Lucia- Child Justice Act, No. 9 of 2018, section 2. "Child" means a person under the age of eighteen years.

- If the child is over the compulsory school age, and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose, for a period not exceeding 12 months and for no more than 35 hours per week: *Section 55(1)(d);*
- Performance of community service work under the supervision or control of a specified person or institution identified by the court for a maximum period of 250 hours and which must be completed in 12 months: *Section 55(1)(e);*
- Committing the child to the care of a fit person, whether a relative or not, who consents to undertake the care of the child: *Section 55(1)(f);*
- Ordering the parent of the child to enter into recognizance for the good behaviour of the child: and *Section 55(1)(g);*
- Any other sentence, subject to *Section 54,* which is appropriate to the circumstances of the child and which, if it includes a period of time, shall not exceed 12 months: *Section 55(1)(h);*

- The consent of a person to undertake the care of a child under an order made under subsection (1)(f), shall be provided in a manner the court determines sufficient: *Section 55(2);*
- Before a child from the age of 12 years to 14 years is sentenced under subsection (1)(e), the court shall consider the age, development and compulsory school attendance of the child: *Section 55(3).*

ii. **Suspended sentences -** *The Criminal Code, Chap. 3.01*

- A court which passes a sentence of imprisonment on an offender for a term of not more than three years for an offence, may suspend the sentence by ordering that the sentence shall not take effect unless:
  - During a period specified in the order, being not less than 12 months nor more than three years from the date of the order, (in this Sub-Part referred to as "the operational period") the offender commits in St. Lucia another offence punishable with imprisonment for a period exceeding six months (hereafter in this section and *Sections 1185* and *1186,* referred to as "subsequent offence"): and *Section 1184(1)(a);*
  - Thereafter, a court having power to do so, orders under *Section 1185,* that the original sentence shall take effect: *Section 1184(1)(b);*
- A sentence shall not be suspended under subsection (1), if the offence involved the illegal use or possession of a firearm or the offence was in furtherance of drug trafficking or other drug related offence: *Section 1184(2);*
- A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of power to suspend such a sentence by an order under subsection (1): *Section 1184(3);*

- A court which passes a suspended sentence on an offender for an offence shall not make a probation order in the offender's case in respect of another offence of which the offender is convicted by or before the court: *Section 1184(4);*
- Where a court passes a suspended sentence on an offender in respect of an offence and also a term of imprisonment in respect of another offence, the court shall direct that the suspended sentence be concurrent with the term of imprisonment: *Section 1184(5);*
- On passing a suspended sentence, the court shall explain to the offender in ordinary language the offender's liability under *Section 1185,* should the offender commit a subsequent offence during the operational period: *Section 1184(6);*
- Subject to subsection (3), where an offender is convicted of a subsequent offence committed during the operational period of a suspended sentence, the court by or before which the offender is convicted of the subsequent offence may order that the suspended sentence shall take effect with the original term unaltered, or the court may substitute a lesser term of imprisonment for the original term: *Section 1185(1);*
- Where a court deals with an offender in respect of a suspended sentence passed by another court, the former court shall notify the latter court of the manner in which the offender was dealt with: *Section 1185(2);*
- Where an offender in respect of whom a suspended sentence passed by the High Court is in operation is convicted of an offence by a magistrate's court, the magistrate's court shall forward to the Registrar of the High Court a certificate signed by the magistrate and under the seal of the Magistrate's Court certifying that the offender has been convicted of a subsequent offence, together with such other particulars of the case as the magistrate may consider desirable: *Section 1185(3);*
- On receipt of the certificate, a judge of the High Court before whom the offender is brought may, without prejudice to the order of the magistrate with respect to the subsequent offence, order that the suspended sentence shall take effect with the original term unaltered or with the substitution of a lesser term for the original term: *Section 1185(4);*
- Where a person has been convicted by, or before a court, of a subsequent offence committed during the operational period of a suspended sentence, but that court was not at the time aware of the suspended sentence or of some feature affecting the operation of that sentence, any court may, on receipt of information relating to that suspended sentence, or that feature, as well as the conviction of the subsequent offence, issue a summons requiring that person to appear at the place and time specified in the summons, or may issue a warrant for that person's arrest: *Section 1186(1);*
- A summons or warrant issued under subsection (1), shall direct that the person appear, or be brought before the court by or before which the person was convicted in respect of the subsequent offence and, upon that person so appearing or being so brought, the court shall proceed to exercise its powers under *Section 1185,* in respect of the suspended sentence: *Section 1186(2).*

Children *- The Child Justice Act, No. 9 of 2018*

- The court may impose a sentence of correctional supervision for a period not exceeding three years on a child over the age of 14 years: *Section 60(1);*
- The whole or part of a sentence imposed under subsection (1), may be postponed or suspended, without conditions under *Section 61(3): Section 60(2);*
- The conditions under subsections (1) and (2), may be a condition appropriate to the circumstances of the child and which promotes the reintegration of the child into his or her community or society and may include:
    - Restitution, compensation or symbolic compensation: *Section 60(3)(a);*
    - An apology: *Section 60(3)(b);*
    - The obligation not to commit a further offence of a similar nature: *Section 60(3)(c)*
    - Good behaviour: *Section 60(3)(d);*
    - Regular school attendance for a specified period: *Section 60(3)(e);*
    - Attendance at a specified time, date and place of a family group conference: *Section 60(3)(f);*
    - Placement under the supervision of a specified person: *Section 60(3)(g);*
    - A requirement that the child shall appear before the court on a date or dates to be determined by the court for a periodic progress report: and *Section 60(3)(h);*
    - Referral to a level one diversion option under *Schedules 4(d), (e), (f), (g), (h), (i), (j)* or *(k): Section 60(3)(i);*
- If the court has postponed the passing of a sentence under subsection (1), on one or more of the conditions under subsection (3), the court may request the person under subsection (3)(g), to submit regular reports indicating the compliance of the child with the conditions imposed under this section: *Section 60(4);*
- Notwithstanding *Section 78,* the conviction of a child in respect to whom imposition of a sentence is postponed shall be expunged from any record if the child has met all the conditions imposed or at the expiration of the period in question: *Section 60(5).*

iii. **Fines -** *The Criminal Code, Chap. 3.01*

Power to impose fine

- Subject to the provisions of this Code or any other enactment relating to any offence, a court may not sentence the person convicted before it of an offence punishable by penalty or fine, to any less penalty or fine, than the mandatory minimum penalty or fine prescribed by this Code, or such other enactment for such offence: *Section 1195;*
- In fixing the amount of a fine, a court of summary jurisdiction shall take into consideration, among other things, the means of the person on whom the fine is imposed so far as they appear or are known to the court: *Section 1200.*

Payment of fine

- The court, by whose order any sum of money is adjudged to be paid, may exercise all or any of the following powers, namely:
  - Allow reasonable time for payment of the sum: *Section 1190(1)(a);*
  - Direct payment of the sum to be made by reasonable instalments: *Section 1190(1)(b);*
  - Direct that the person liable to pay the sum may give, to the satisfaction of the court security, with or without a surety or sureties, for the payment of the sum or of any instalment thereof, and such security may be given and enforced in the manner provided in subsection (2): *Section 1190(1)(c);*
  - Order a garnishee of the person's income: *Section 1190(1)(d);*
  - Use any other power which the court thinks fit to ensure payment of the sum adjudged: *Section 1190(1)(e);*
- Where time has been allowed by the court for the payment of the sum adjudged to be paid by the offender on an application by, or on behalf of the offender, the court shall allow further time for the payment of the sum by instalments: *Section 1191;*
- A District Court on adjudging a person to pay a sum of money upon a conviction shall, subject to subsection (2), allow him or her at least seven days to pay the sum or the first instalment of the sum if he or she is to pay by instalments: *Section 1201(1);*
- If the offender fails to pay the sum at the time of his or her conviction and:
  - When asked by the court whether he or she wishes to have time for payment does not ask for time: *Section 1201(2)(a);*
  - He or she fails to satisfy the court that he or she has a fixed abode: or *Section 1201(2)(b);*
  - There is some other special circumstance appearing to the court to justify his or her immediate committal: *Section 1201(2)(c);*

  the court may issue a warrant of commitment under this Sub-Part and if it does so, shall state in the warrant the reasons for not allowing the offender time to pay;
- The judge or magistrate may, unless the person satisfies him or her that he or she does not intend to leave the State, rescind so much of the order as allows time for payment or for payment by instalments, and issue such warrant of commitment or other process as might have been issued at the hearing but for the order allowing time for payment or payment by instalments: *Section 1203(2).*

iv. **Probation order -** *The Criminal Code, Chap. 3.01*

Eligibility for a probation order[94]

[94] St. Lucia - Criminal Code Cap 3:01, section 1156 (1) provides that "probation order" means an order made under section 1157 placing a person under the supervision of a probation order. "probationer" means a person under supervision by virtue of a probation order. "probation officer" means a person appointed as a probation officer under this Sub-Part, and, in relation to a probationer, means the person responsible for his or her supervision.

- Subject to subsection (2), where a court by which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion that having regard to the circumstances including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him or her, make a probation order:*Section 1157(1);*
- The court shall, before making a probation order, explain to the offender in ordinary language the effect of the order and that, if he or she fails in any respect to comply with the order or commits another offence, he or she will be liable to be sentenced for the original offence; and if the offender is not less than 14 years of age the court shall not make the probation order unless he or she expresses his or her willingness to comply with the conditions of the order: *Section 1157(2).*

Procedure

- A probation order shall have effect for such period not less than one year from the date of the order as may be specified in the order and shall require the probationer to:
  - Submit during that period to the supervision of a probation officer appointed for, or assigned to the district specified in the order, in which the probationer will reside during the probation period: and *Section 1158(1)(a);*
  - Shall contain such conditions as the court considers necessary for securing the supervision of the offender: and *Section 1158(1)(b);*
  - Such additional conditions as to residence: and *Section 1158(1)(c);*
  - Other matters (including submission by the probationer to medical treatment) as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences: *Section 1158(1)(d);*
- Before making a probation order containing a condition as to residence, the court shall consider the home surroundings of the offender; and where the order requires the offender to reside in an institution:
  - The institution shall be an institution which is subject to inspection by a Government department: *Section 1158(3)(a);*
  - The name of the institution and the period for which he or she is so required to reside shall, be specified in the order, and such period shall not extend beyond 12 months from the date of the order: and *Section 1158(3)(b);*
  - The court shall forthwith give notice of the terms of the order to an administrator: *Section 1158(3)(c);*
- The court by which a probation order is made shall forthwith give a copy of the order to the probationer, the probation officer under whose supervision he or she is placed, and the person in charge of any institution in which the probationer is required by the order to reside: *Section 1158(4);*
- The court shall, except where it is itself the supervising court,[95] send to the district named in the order in which the probationer will reside during the probation period,

[95] St. Lucia - Criminal Code, Cap. 3:01, section 1156 (1) provides that "supervising Court" means the district court of the district named in the probation order in which the probationer resides or will reside.

a copy of the order together with such documents and information relating to the case as it considers likely to be of assistance to the supervising court: *Section 1158(5);*

- Subject to the provisions of this section, a conviction of an offence for which an order is made under this Sub-Part, placing the offender on probation shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the provisions of this Sub-Part: *Section 1163(1);*
- Where an offender, who is not less than 16 years of age at the time of his or her conviction for an offence for which he or she is placed on probation, is subsequently sentenced under this Sub-Part for that offence, the provisions of subsection (1), shall cease to apply to the conviction: *Section 1163(2);*
- Without prejudice to subsection (1), the conviction of an offender who is placed on probation shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability: *Section 1163(3);*
- The provisions of subsections (1), (2) and (3), of this section shall not affect:
    - Any right of an offender to appeal against his or her conviction, or to rely on the conviction as a bar to any subsequent proceedings for the same offence: *Section 1163(4)(a)*;
    - The revesting or restoration of any property in consequence of the conviction of any such offender: *Section 1163(4)(b);*
- Subject to subsection (2), if it appears to a judge or magistrate that a probationer has been convicted of an offence committed during the probation period and has been dealt with in respect of that offence, he or she may issue a summons requiring the probationer to appear at the place and time specified in the summons or may issue a warrant for his or her arrest: *Section 1162(1);*
- A magistrate shall not issue such summons or warrant, except upon information in writing and on oath: *Section 1162(2);*
- A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made, or before the supervising court: *Section 1162(3);*
- Where a warrant is issued requiring the probationer to be brought before the High Court, if he or she cannot forthwith be brought before the court because the court is not sitting, the warrant shall have effect as if it directed him or her to be brought before the magistrate of the district where he or she is arrested, and the magistrate shall commit him or her to custody or release him or her on bail (with or without sureties) until he or she can be brought or appear before the High Court: *Section 1162(4);*
- Where it is proved to the satisfaction of the court by which a probation order was made, or to the satisfaction of the supervising court, that the person in whose case that order was made has been convicted and dealt with in respect of an offence committed during the probation period, the court may deal with him or her as if he or she had been convicted by that court of that offence: *Section 1162(6);*

- If a person in respect of whom a probation order has been made by a district court is convicted before the High Court of an offence committed during the probation period, or is dealt with by the High Court for an offence so committed in respect of which he or she was committed for sentence to the High Court, the High Court may deal with him or her for the offence for which the order was made in any manner in which the district court could deal with him or her if it had convicted him or her of that offence: *Section 1162(7);*
- If a person in respect of whom a probation order has been made by a district court is convicted by another district court of any offence committed during the probation period, the court may, with the consent of the court which made the order or of the supervising court, deal with him or her, for the offence for which the order was made, in any manner in which the court could deal with him or her if it had convicted him or her of that offence: *Section 1162(8);*
- Where the supervising court proposes to amend a probation order under *Section 1162,* otherwise than on the application of the probationer, it shall summon the probationer to appear before it; and if the probationer is not less than 12 years of age, the supervising court shall not amend a probation order unless the probationer expresses his or her willingness to comply with the conditions of the order as amended: *Section 1167(1);*
- This section does not apply to an order cancelling a condition of the probation order or reducing the period of any requirement, or substituting a new district for the district originally named in the probation order: *Section 1167(2);*
- Some other sections to note include:
  - Review of Probation Order: *Section 1165:*
  - Discharge of Probation Order: *Sections 1166, 1168;*
  - Amendment of Probation Order: *Sections 1164, 1168.*

v. **Conviction and discharge -** *The Criminal Code, Chap. 3.01*

- Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may make an order discharging the offender: *Section 1182(1);*
- Such an order may discharge the offender absolutely or, if the court thinks fit, may discharge the offender subject to the condition that the offender commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order; and in this Sub-Part an order of the latter is referred to as an "order for conditional discharge" and the period specified in the order for conditional discharge is referred to as "the period of conditional discharge": *Section 1182(2);*
- Before making an order for conditional discharge the court shall explain to the offender in ordinary language that, if the offender commits another offence during the period of conditional discharge, the offender will be liable to be sentenced for the original offence: *Section 1182(3);*

- Where, under the provisions of this Sub-Part, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, the order for conditional discharge ceases to have effect: *Section 1182(4);*
- The Minister may, by order, amend subsection (2), by substituting, for the maximum period specified in that subsection as originally enacted or as previously amended under this subsection, such period as may be specified in the order: *Section 1182(5);*
- If it appears to a judge or a magistrate that a person in whose case an order for conditional discharge has been made, has been convicted in St. Lucia of an offence committed during the period of conditional discharge and has been dealt with in respect of that offence, then, subject to subsection (2), the judge or magistrate may issue a summons requiring that person to appear at the time and place specified in the summons, or may issue a warrant for that person's arrest: *Section 1183(1);*
- A magistrate shall not issue such a summons except on information, and shall not issue such a warrant except on information in writing and on oath: *Section 1183(2);*
- A summons or warrant issued under subsection (1), shall direct that the person to whom it relates appear or be brought before the court that made the order for conditional discharge: *Section 1183(3);*
- If a person in whose case an order for conditional discharge has been made by the High Court is convicted in a Magistrate's Court of an offence committed during the period of conditional discharge, the magistrate may either commit the offender to custody, or may release the offender on bail, until the offender can be brought before the High Court; and if the magistrate does so, the magistrate shall send to the High Court a copy of the record of the conviction entered in the register of the Magistrate's Court, signed by the clerk of that court: *Section 1183(4);*
- Where it is proved to the satisfaction of the court that made an order for conditional discharge that the offender in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with the offender, for the offence for which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted of that offence by or before that court: *Section 1183(5);*
- If a person in whose case an order for conditional discharge has been made by a Magistrate's Court:
    - Is convicted before the High Court of an offence committed during the period of "conditional discharge": or *Section 1183(6)(a);*
    - Is dealt with by the High Court for any such offence in respect of which the offender was committed for sentence to the High Court, the High Court may deal with the offender, for the offence for which the order was made, in any manner in which the magistrate's court could deal with the offender if it had just convicted the offender of that offence: *Section 1183(6)(b).*

vi. **Discharge with no record of conviction** - *The Criminal Code, Chap. 3.01*

- Upon the conclusion of the hearing, the court shall, either immediately or at an adjourned sitting of the court, give its decision on the case, by either dismissing the complaint or making such order as the justice of the case requires against the defendant: *Section 710;*
- When a complaint is dismissed, the court may, upon being required by or on behalf of the defendant, at any time within six months after such dismissal, make a formal order of dismissal and give to the defendant a certificate of the order: *Section 712(1);*
- Such certificate shall, upon production and, without further proof, be a bar to any subsequent complaint for the same matter against the defendant: *Section 712(2);*
- When an order is made against the defendant, a concise minute or memorandum of the order shall immediately be entered by an officer of the court in a book kept for that purpose: *Section 714;*

vii. **Compensation** - *The Criminal Code, Chap. 3.01*

- Without prejudice to the power of the court to make an order under *Section 1159(1),* the payment of sums by way of damages for injury or compensation for loss shall not be included among the conditions of a probation order: *Section 1158(2);*
- A court, on making a probation order, may, without prejudice to its power of awarding costs against him or her, order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable; but in the case of an order made by a district court the damages and compensation together shall not exceed $100 except where such greater sum is allowed by any other enactment: *Section 1159(1);*
- Where the court, in addition to making an order for the payment of damages or compensation to the person, orders the offender to pay to that person any costs, the order for the payment of damages or compensation and the order for the payment of costs may be enforced as if they constituted a single order for the payment of costs: *Section 1159(3);*
- The sum allowed for costs, or costs and compensation, shall, in every case, be specified in the order or order of dismissal, and shall be recoverable in the same manner as any fine or sum of money adjudged to be paid by such order is recoverable: *Section 1206 (1);*
- Where there is no fine or sum of money to be recovered by the order, such costs, or costs and compensation, shall be recoverable in the same manner as any fine or sum of money adjudged to be paid by an order of the court is recoverable, as the court may direct: *Section 1206(2);*
- An order for the payment of damages or compensation may be enforced in like manner as an order for the payment of costs by the offender: *Section 1159(2);*
- Where any person who is injured by any offence punishable under this Code, or under any other enactment, receives compensation for such injury under the order of the court, or where the offender, having been ordered to make such compensation, suffers imprisonment for non-payment of such compensation, the receipt of such compensation or the undergoing of such imprisonment, as the case may be, shall be a bar to any action for the same injury: *Section 1207.*

Children *- The Child Justice Act, No. 9 of 2018*

- The court convicting a child of an offence for which a fine or imprisonment is stated by law as the penalty, may impose any one of the following penalties in the place of that fine or imprisonment:
    - Symbolic compensation to a specified person or institution: *Section 63(a);*
    - Payment of compensation not exceeding five thousand dollars to a specified person or institution if the child or his or her family is able to make that payment: *Section 63(b);*
    - An obligation on the child to provide a service or benefit or to pay compensation to a specified organization identified by the child or by the court, if there is no identifiable person to whom restitution or compensation could be made: or *Section 63(c);*
    - Another sentence under this Act, except imprisonment: *Section 63(d).*

viii. **Imprisonment** *- The Criminal Code, Chap. 3.01*

Restrictions on the imposition of custodial sentences

- This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law: *Section 1096(1);*
- Subject to subsection (3), the court shall not pass a custodial sentence on the offender unless it is of the opinion:
    - That the offence, or the combination of the offence and one other offence associated with the offence, was so serious that only such a sentence can be justified for the offence: or *Section 1096(2)(a);*
    - Where the offence is of a violent or sexual nature, that only such a sentence would be adequate to protect the public from serious harm from the offender: *Section 1096(2)(a);*
- Nothing in subsection (2), prevents the court from passing a custodial sentence on an offender if the offender refuses to consent to a community sentence which is proposed by the court and requires that consent: *Section 1096(3);*
- Where a court passes a custodial sentence, it is the court's duty:
    - In a case not falling within subsection (3), to state in open court that it is of the opinion that either or both of subsections (2)(a) and (2)(b), apply and why it is of that opinion: and *Section 1096(4)(a);*
    - In any case, to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on the offender: *Section 1096(4)(b);*
- A court shall cause a reason stated by it under subsection (4), to be specified in the warrant of commitment and to be entered in the record of the court: *Section 1096(5).*

Length of custodial sentences

- The custodial sentence shall be:
    - For any term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with the offence: or *Section 1097(2)(a);*
    - Where the offence is of a violent or sexual nature, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender: *Section 1097(2)(b);*
- Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it, the court shall:
    - State in open court that it is of the opinion that subsection (2)(b), applies and why it is of that opinion: and *Section 1097(3)(a);*
    - Explain to the offender in open court and in ordinary language why the sentence is for such a term: *Section 1097(3)(b);*
- A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3), as a custodial sentence for a term longer than any actual term: *Section 1097(4).*

Procedural requirements for custodial sentences

- Subject to subsection (2), a court shall obtain and consider a pre-sentence report[96] before forming any such opinion as is mentioned in subsection (2), of either *Section 1096,* or *Section 1097: Section 1098(1);*
- Where the offence or any other offence associated with it is triable only on indictment, subsection (1), does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report: *Section 1098(2);*
- In forming any such opinion as is mentioned in subsection (2), of either *Section 1096,* or *Section 1097,* a court:
    - Shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to the court: and *Section 1098(3)(a);*
    - In the case of any such opinion as is mentioned in *para. (b),* of that subsection, may take into account any information about the offender which is before the court: *Section 1098(3)(b);*
- A custodial sentence which is passed in a case to which subsection (1), applies is not invalidated by the failure of the court passing sentence to comply with that subsection but any court, on an appeal against such a sentence:

[96] St. Lucia - Criminal Code, Cap. 3.01, section 1098(5). In this Sub-Part "pre-sentence report" means a report in writing which is made by a probation officer with a view to assisting the Court in determining the most suitable method of dealing with an offender.

- Shall obtain a pre-sentence report if none was obtained by the court passing sentence: and *Section 1098(4)(a);*
- Shall consider any such report obtained by it or by the court passing sentence: *Section 1098(4)(b);*

- A sentence of imprisonment upon a summary conviction takes effect from the date the offender is taken into custody upon his or her conviction: *Section 1125;*
- When any person is brought by any police officer to a correctional facility to be imprisoned by virtue of a commitment, the police officer shall endorse on the commitment the day on which that person was arrested, and the imprisonment shall be computed as from that day: *Section 1126;*
- An inmate who escapes from lawful custody while undergoing a sentence of imprisonment is liable upon recapture to undergo the punishment which he or she was undergoing at the time of his or her escape and in addition for a further term equal to the period during which he or she was absent from the correctional facility after the escape and before the expiration of the term of his or her original sentence whether or not at the time of his or her recapture the term of the original sentence, has expired: *Section 1127;*
- Subject in every case to the provisions of the enactment under which any order is made, the term of imprisonment, which a court may impose in respect of the non-payment of any sum of money adjudged to be paid by any such order, shall be such as, in the opinion of the court, will satisfy the justice of the case and shall be in accordance with the following scale, that is to: *Section 1202;*

Where the sum of money adjudged to be paid by an order	The period shall not exceed:
does not exceed $250	1 month
exceeds $250 but does not exceed $500	2 months
exceeds $500 but does not exceed $600	3 months
exceeds $600	6 months

- Some other sections to note include:
  - Imprisonment for non-payment of fine, etc. and discharge of person imprisoned on payment of fine: *Sections 1199, 1255;*
  - Reduction of imprisonment on part payment: *Section 1128;*
  - Termination of imprisonment on payment or levy: *Section 1129;*
  - Commitment implied on pronouncement of sentence: *Section 1130.*

Children *- The Child Justice Act, No. 9 of 2018*

- A sentence of life imprisonment, capital punishment or any form of corporal punishment shall not be imposed on a child: *Section 50(1);*
- A court shall not pronounce or record a sentence of capital punishment against a child: *Section 50(1);*

- A child who is sentenced to attend a secure residential facility shall not be detained in a correctional facility or in police custody pending designation of the place where the sentence is to be: *Section 50(1);*
- If a child fails to comply with a condition of a sentence imposed on him or her, the child may, in the prescribed manner, be brought before the court for reconsideration of the original sentence which may include a sentence of imprisonment: *Section 62(1);*
- If the court imposes a sentence of imprisonment under subsection (1), the court shall announce the term of imprisonment in open court and the coming into effect of the term of imprisonment shall be antedated by the number of days that the child has spent in a correctional facility prior to the sentence being announced in the court: *Section 62(2).*

ST. VINCENT AND THE GRENADINES

Sentencing guidelines[97]

In 2019, the Eastern Caribbean Supreme Court implemented Sentencing Guidelines Rules applicable to St. Vincent and the Grenadines. These Sentencing Guidelines are intended to guide them in the process of determining and explaining sentences.

General punishment for offences - *The Criminal Code, Chap. 171*

- Where in any law no punishment is specially provided for any offence it shall be punishable with imprisonment for one year and with a fine of one thousand dollars: *Section 36(1);*
- Nothing in subsection (1), shall be taken to limit the amount of the fine which may be imposed in addition to, or in lieu of, a sentence of imprisonment where the term of imprisonment to which a person is liable is stated in relation to any offence: *Section 36(2).*

Sentencing options in St. Vincent and the Grenadines

- Subject to the provisions of this Code and of any other law in force relating to the jurisdiction of particular courts, the following kinds of punishment may be imposed by a court on persons convicted of offences[98]:
  - Death;
  - Imprisonment;
  - Fine;
  - Payment of compensation;
  - Giving security to keep the peace and be of good behaviour or to come up for judgement;

[97] ECSC Sentencing Guidelines Rules 2019 - Practice Directions 8A- 8D.
[98] St. Vincent and the Grenadines- Criminal Code, Cap. 171, section 23.

- Probation under the Probation of Offenders Act;
- Forfeiture of articles involved in the offence;
- Costs;
- In the case of a male person of any age, corporal punishment in accordance with the provisions of the *Corporal Punishment of Juveniles Act;*
- A supervision order under *Section 20,* of the *Criminal Procedure Code;*
- Any other punishment expressly provided for by any law for the time being in force.

i. **Community service order -** *The Child Justice Act, No. 29 of 2019*

- The court may impose a requirement in relation to a penalty for an offence that the child is sentenced to imprisonment for an initial period and thereafter is required to serve the remainder of the sentence providing service in the community: *Section 56(1);*
- A sentence which allows a child to remain in the community and which may be imposed pursuant to this Act includes:
  - Any of the options referred to *Sections 41(3)(a), (b), (c), (d)* or *(e): Section 56(2)(a);*
  - Placement under a supervision and guidance order in the prescribed form for a period not exceeding three years: *Section 56(2)(b);*
  - In cases that warrant such specialized intervention, referral to counselling or therapy in conjunction with any of the options listed in this section for a period of time as the court considers fit: *Section 56(2)(c);*
  - Where the child is within the age of compulsory school attendance and is not attending formal schooling, compulsory attendance at a specified center or for place for technical, vocational and educational purpose until the child has attained the age of seventeen years: *Section 56(2)(d);*
  - Where the child is over the age of compulsory school attendance, and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified technical, vocational and educational purpose, for a period not exceeding one year and for no more than 35 hours per week: *Section 56(2)(e);*
  - Performance of some services without remuneration for the benefit of the community under the supervision or control of a specified person or institution identified by the court for a maximum period of 250 hours and which shall be completed in one year: and *Section 56(2)(f);*
  - Any other sentence, subject to Section 62, which is appropriate to the circumstances of the child and in keeping with the principles of this Act and which, if it includes a period of time, shall not exceed 12 months: *Section 56(2)(g);*
- Before a child aged 12 years and older but under the age of fourteen is sentenced pursuant to subsection (2)(f), due consideration must be given to the age, development and compulsory school attendance of the child: *Section 56(3).*

ii. **Suspended sentences -** *The Criminal Code, Chap. 171*

- A court which passes a sentence of imprisonment on any offender for a term of not more than three years for any offence, may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year nor more than three years from the date of the order (hereinafter referred to as the "operational period"), the offender commits in St. Vincent and the Grenadines another offence punishable with imprisonment for a period exceeding six months (hereinafter in this section and *Section 31,* referred to as a "subsequent offence") and thereafter a court having power to so do orders under *Section 31,* that the original sentence shall take effect: *Section 30(1);*
- The provisions of subsection (1), shall not apply where:

- A sentence of imprisonment for such an offence is fixed by law: or *Section 30(2)(a);*
- The person at the time of commission of the offence was in illegal possession of a firearm: *Section 30(2)(b);*

- A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under subsection (1): *Section 30(3);*
- A court which passes a suspended sentence on an offender for an offence shall not make a probation order in the offender's case in respect of another offence of which he is convicted before that court at the same time: *Section 30(4);*
- On passing a suspended sentence, the court shall explain to the offender, in ordinary language, his liability under Section 31, if during the operational period he commits a subsequent offence: *Section 30(5);*
- Subject to subsection (3), when an offender is convicted of a subsequent offence committed during the operational period of a suspended sentence, the court before which he is convicted for the subsequent offence may order that the suspended sentence shall take effect with the original term unaltered or may substitute a lesser term of imprisonment for the original term: *Section 31(1)*;
- When a court deals with an offender in respect of a suspended sentence passed by another court, the court dealing with the offender shall notify the court which passed the suspended sentence of the manner in which the offender was dealt with: *Section 31(2);*
- When a Magistrate's Court deals with an offender in respect of whom a suspended sentence passed by the High Court is in operation, the court shall forward to the High Court a certificate signed by the magistrate that the offender has been convicted of a subsequent offence together with such other particulars of the offence as the magistrate considers desirable. The High Court may order the offender to be brought before it and may, without prejudice to the order of the court with respect to the subsequent offence, order that the suspended sentence shall take effect with the original term unaltered or with the substitution of a lesser term for the original term:

Section 31(3);

- Unless the court orders otherwise, a suspended sentence which is brought into effect shall commence on the expiration of the term of imprisonment passed in respect of the subsequent offence or, if a sentence of imprisonment is not passed in respect of the subsequent offence, forthwith: *Section 31(4);*
- It was held in the **Commissioner of Police v Jamal Grant MCRAP 2009/025,** that the law requires that the court passing the suspended sentence explain to the respondent in ordinary language his liability to serve the sentence if he is subsequently convicted during the operational period of the sentence. The consent of the respondent is not required in order to suspend the sentence.

Children *- The Child Justice Act, No. 29 of 2019*[99]

- The passing of any sentence may be suspended, with or without one or more conditions referred to in subsection (3), for a period not exceeding three years: *Section 63(1);*
- The whole or any part of any sentence may be suspended, with or without one or more conditions referred to in subsection (3), for a period not exceeding three years: *Section 63(2);*
- The conditions under subsections (1) and (2), may be a condition appropriate to the circumstances of the child and which promotes the reintegration of the child into his or her community or society and may include:
    - Restitution, compensation or symbolic compensation: *Section 63(3)(a);*
    - An apology: *Section 63(3)(b);*
    - The obligation not to commit a further offence of a similar nature: *Section 63(3)(c);*
    - Good behaviour: *Section 63(3)(d);*
    - Regular school attendance for a specified period: *Section 63(3)(e);*
    - Attendance at a specified time, date and place of a family group conference: *Section 63(3)(f);*
    - Placement under the supervision of a specified person: *Section 63(3)(g);*
    - A requirement that the child shall appear before the court on a date or dates to be determined by the court for a periodic progress report: and *Section 63(3)(h);*
    - Referral to a level one diversion option under *Schedules 4(d), (e), (f), (g), (h), (i), (j)* or *(k): Section 63(3)(i);*
- Where the court has postponed the passing of a sentence pursuant to subsection (1), on one or more conditions, the court may request the designated officer concerned to submit regular reports indicating the compliance of the child with the conditions referred to in this section: *Section 63(4).*

[99] St. Vincent and the Grenadines - Child Justice Act, No. 29 of 2019, section 2. "Child" means a person under the age of sixteen.

iii. **Fines -** *The Criminal Procedure Code, Chap. 172*

- Subject to the provisions of subsections (3) to (5), a Magistrate's Court shall not pass:
  - A sentence of imprisonment for more than seven years: *Section 17(2)(a);*
  - A fine of more than twenty thousand dollars: *Section 17(2)(b);*
- Notwithstanding anything in subsection (2), where any law:
  - Provides the term of imprisonment which may be imposed for an offence on summary conviction: *Section 17(3)(a);*
  - Provides the amount of fine which may be imposed for an offence on summary conviction: or *Section 17(3)(b);*
  - Provides both the term of imprisonment and the fine which may be imposed on summary conviction: *Section 17(3)(c);*

  then a magistrate's court may impose such fine or such sentence of imprisonment, or both, notwithstanding that such fine or imprisonment exceeds the limits laid down in subsection (2);
- Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass: *Section 17(4).*

The Criminal Code, Chap. 171

- Where a fine is imposed under any written law (including this Code) then, in the absence of express provisions relating to such fine in such law, the following provisions shall apply:
  - Where no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited but shall not be excessive: *Section 26(1)(a);*
  - in the case of an offence punishable by a fine and a term of imprisonment (whether specifically or by virtue of the provisions of *Section 25(2),* the imposition of a fine or a term of imprisonment or both shall be in the discretion of the court: *Section 26(1)(b);*
  - In the case of an offence in which the offender is sentenced to a fine, whether with or without imprisonment, the court in passing sentence may, in its discretion:
    (i) direct that in default of payment of the fine the offender shall suffer imprisonment for a term not exceeding the maximum term specified in *Section 29*, in relation to that fine: such imprisonment shall be in addition to and consecutive with any other imprisonment to which he may have been sentenced or to which he may be liable under commutation of sentence: and *Section 26(1)(c)(i);*
    (ii) issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale:

Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such person has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons, to be recorded in writing by the court, it considers it necessary to do so: *Section 26(1)(c)(ii);*

- When any fine has been imposed by a court, the court at the time when the fine is imposed or at any time thereafter may:
  - Allow time for the payment of the fine: *Section 26(2)(a);*
  - Direct that the fine be paid by instalments of such amounts and at such intervals as it thinks fit: *Section 26(2)(b);*
  - Extend the time allowed for the payment of the fine or for the payment of any instalment: *Section 26(2)(c);*
  - Vary any order made under this subsection: *Section 26(2)(d);*
- When any fine is directed to be paid by instalments, and the person liable to pay the fine makes default in the payment of any instalment or any part thereof, the whole amount of the fine outstanding shall become payable forthwith and the person shall be liable to be imprisoned for such proportion of the full term passed on him in default of payment of the fine or such term as he is liable to serve under subsection (4), as the sum remaining unpaid by him bears to the fine imposed upon him: *Section 26(3);*
- When a court has not made a direction under subsection (1)(c)(i), the term of imprisonment to be served in default of payment shall be the maximum term provided in *Section 29,* in relation to that fine: *Section 26(4).*

Children *- The Child Justice Act, No. 29 of 2019*

- The court convicting a child of an offence for which a fine or imprisonment is stated by law as the penalty, may impose any one of the following penalties in place of that fine or imprisonment:
  - Symbolic compensation to a specified person or institution: *Section 64(a);*
  - Payment of compensation not exceeding five thousand dollars to a specified person or institution if the child or his or her family is able to make that payment: *Section 64(b);*
  - An obligation on the child to provide a service or benefit or to pay compensation to a specified organization identified by the child or by the court, if there is no identifiable person to whom restitution or compensation could be made: or *Section 64(c);*
  - Any other sentence as stated in this Act, except imprisonment: *Section 64(d).*

The Criminal Code Chap. 171

- When a child is convicted of any offence and a fine, costs or compensation, or all or any combination thereof, is imposed, the court shall order that the fine, costs or compensation shall be paid by the parents or guardian of the child unless it is satisfied that the parent or guardian has not conduced to the commission of the offence by neglecting to exercise due care of the child: *Section 26(5);*

- An order under subsection (5), may be made against a parent or guardian who, having received notice to attend, has failed to attend but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity to be heard: *Section 26(6);*
- Any sum ordered to be paid by a parent or guardian under subsection (5), may be recovered by distress or imprisonment: *Section 26(7).*

iv. **Probation orders -** *The Probation of Offender Act, Chap. 179*

Eligibility for probation orders

- Where any person is charged before a summary court with any offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged; or the trivial nature of the offence; or the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to make a conviction, make an order either:
  - Dismissing the complaint or charge: or *Section 3(1)(a);*
  - Discharging the offender conditionally on entering into a recognizance, with or without sureties, to be of good behaviour and time during such period, not exceeding one year, as may be specified in the order: *Section 3(1)(b).*

Procedure

- A recognizance ordered to be entered into under this Act shall, if the court so order, contain a condition that the offender be under the supervision of such personas may be named in the order during the period specified in the order, and such other conditions for securing such supervision as may be specified in the order, and an order requiring the insertion of such conditions as aforesaid in the recognisance is in the Act referred to as a probation order: *Section 4(1);*
- A recognizance under this Act may contain such additional conditions as the court may, having regard to the particular circumstances of the case, order to be inserted therein with respect to all or any of the following matters:
  - For prohibiting the offender from associating with thieves and other undesirable persons, or from frequenting undesirable places: *Section 4(2)(a);*
  - As to abstention from intoxicating liquor, where the offence was drunkenness or an offence committed under the influence of drink: *Section 4(2)(b);*
  - For prohibiting the offender from changing his place of residence from one district to another without first notifying the court before which he is bound by his recognisance to appear for conviction or sentence: *Section 4(2)(c);*
  - Generally, for securing that the offender should lead an honest and industrious life: *Section 4(2)(d);*

- The court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he is required to observe: *Section 4(3).*

v. **Conviction and discharge -** *The Probation of Offender Act, Chap. 179*

- Where any person is charged before a summary court with any offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged; or the trivial nature of the offence; or the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to make a conviction, make an order either:
  - Dismissing the complaint or charge: or *Section 3(1)(a);*
  - Discharging the offender conditionally on entering into a recognisance, with or without sureties, to be of good behaviour and time during such period, not exceeding one year, as may be specified in the order: *Section 3(1)(b).*

vi. **Discharge with no record of conviction -** *The Probation of Offender Act, Chap. 179*

- Where any person is charged before a summary court with any offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged; or the trivial nature of the offence; or the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to make a conviction, make an order either:
  - Dismissing the complaint or charge: or *Section 3(1)(a);*
  - Discharging the offender conditionally on entering into a recognizance, with or without sureties, to be of good behaviour and time during such period, not exceeding one year, as may be specified in the order: *Section 3(1)(b).*

vii. **Compensation -** *The Criminal Code, Chap. 171*

- A court may order any person convicted of an offence to make compensation to any person injured, in person or property, by his offence. An order of compensation may be in addition to any other punishment: *Section 27(1);*
- A court may order any person convicted of an offence to pay the costs of and incidental to the prosecution of such offence or any part thereof. An order for payment of costs may be in addition to any other punishment: *Section 27(2);*
- Nothing in this section shall preclude any person who, or whose property, has been injured by the act or omission of another from bringing an action in respect of such injury but if he shall so do the court, in making an award, shall take into account any compensation that may have been paid by virtue of an order under subsection (1): *Section 27(3);*

- A court which makes an order under *Section 27,* shall have the same powers in respect of default of payment of compensation and costs as it has in default of payment of a fine, and the provisions of *Sections 26(1)(c), (2)* and *(3),* shall apply to compensation and costs as they apply to fines. Terms of imprisonment in default of payment of fines, compensation and costs shall be served consecutively to each other: *Section 28.*

viii. **Imprisonment -** *The Criminal Procedure Code, Chap. 172*

- Subject to the provisions of subsections (3) to (5), a Magistrate's Court shall not pass:
  - A sentence of imprisonment for more than seven years: *Section 17(2)(a);*
  - A fine of more than twenty thousand dollars: *Section 17(2)(b);*
- Notwithstanding anything in subsection (2), where any law:
  - Provides the term of imprisonment which may be imposed for an offence on summary conviction: *Section 17(3)(a);*
  - Provides the amount of fine which may be imposed for an offence on summary conviction: or *Section 17(3)(b);*
  - Provides both the term of imprisonment and the fine which may be imposed on summary conviction: *Section 17(3)(c);*

  then a Magistrate's Court may impose such fine or such sentence of imprisonment, or both, notwithstanding that such fine or imprisonment exceeds the limits laid down in subsection (2);
- Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass: *Section 17(4);*
- In determining the extent of a court's jurisdiction to pass a sentence of imprisonment, the court shall have jurisdiction to pass the full sentence of imprisonment permitted under this section in addition to any term of imprisonment which may be ordered in default of payment of a fine, costs or compensation: *Section 17(5);*
- Subject to subsection (2), when a person is convicted at one trial of two or more offences, the court may sentence him for such offences to the several punishments prescribed therefor which such court is competent to impose. Such punishments when consisting of terms of imprisonment shall commence one after the other unless the court directs that the sentences shall run concurrently: *Section 18(1);*
- Notwithstanding anything contained in subsection (1), the aggregate imprisonment imposed by a Magistrate's Court, excluding imprisonment in default of payment of a fine, costs or compensation, at one trial shall not exceed fourteen years nor the aggregate fine of thirty thousand dollars: *Section 18(2).*

The Criminal Code, Chap. 171

- A person liable to imprisonment for life or any other period may be sentenced to a shorter term, except in the case of imprisonment passed under *Section 24(3): Section 25(1);*

- A person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment: *Section 25(2);*
- Every sentence of imprisonment shall be served in accordance with the Prisons Act: *Section 25(3);*
- In the absence of any express provision in any law relating thereto, the term of imprisonment which may be ordered by a court in default of payment of a fine, costs or compensation or of any sum which the offender has been ordered to pay under any other law under which he has been convicted, shall be such term as, in the opinion of the court, will satisfy the justice of the case but shall not exceed the maximum fixed by the following scale: *Section 29(1);*

Amount	Maximum Period
not exceeding $20	14 days
exceeding $20 but not exceeding $50	28 days
exceeding $50 but not exceeding $100	90 days
exceeding $100 but not exceeding $500	180 days
exceeding $500	1 year

- Imprisonment in default of the payment of any sum payable in respect of a fine, costs or compensation shall terminate immediately the fine, costs or compensation is paid or levied by process of law; and in a case where part of the amount is paid or levied the term of imprisonment shall be reduced in proportion to the amount so paid: *Section 29(2).*

Children

- A sentence of imprisonment shall not be imposed unless:
  - The child was fourteen years or older at the time of commission of the offence: and *Section 61(1)(a);*
  - Substantial and compelling reasons exist for imposing a sentencing of imprisonment, which may include conviction of an offence referred to in Schedule 3, or a previous failure to respond to alternative sentences including sentences with a residential element: *Section 61(1)(b);*
- A sentence of imprisonment shall not be imposed shall not be imposed on a child:
  - In respect of an offence referred to in Schedule 1: or *Section 61(2)(a);*
  - As an alternative to any other sentence specified in this Act: *Section 61(2)(b).*

TRINIDAD AND TOBAGO

Sentencing guidelines

The Trinidad and Tobago Sentencing Handbook 2016, contains an amalgamation of the cases from the previously published version, spanning 1990–2009, and cases from 2010–2016. The 2016 edition of the Sentencing Handbook includes a revised selection of criminal offences to reflect their prevalence and impact on our society. The publication also includes new categories of information for each offence, including date of case, date of offence, date of dentence, plea, time spent in custody and the current maximum penalty (as of June 2017) for each offence.

Sentencing options of Trinidad and Tobago

i. **Community service order -** *Community Service Orders Act, Chap. 13:06*

Eligibility for a community service order

- Where a person of or over 16 years of age is convicted of an offence (in this Act referred to as "the offender") and is to be sentenced for a period of imprisonment of 12 months or less, including a sentence of imprisonment imposed in default of payment of a fine, the court by or before which he is to be sentenced may pass the sentence but may order the operation of the whole or part of the sentence to be suspended for a period not exceeding two years and may then make a community service order requiring him to perform unpaid work in accordance with the provisions of this Act: *Section 3(1);*
- As offence referred to in subsection (1), shall be construed without regard to any prohibition or restriction imposed by or under any other enactment on the imprisonment or detention of young offenders: *Section 3(2);*
- This Act shall not apply to a person convicted of an offence or an attempt to commit an offence listed in the Schedule to this Act: *Section 3(3);*

Procedure

- The number of hours which a person may be required to work under a community service order shall be specified in the order and shall be the aggregate of not less than 40 hours and not more than 240 hours as may be specified in the order: *Section 4;*
- Before making a community service order the court shall explain to the offender in ordinary language:
    - The purpose, effect and requirements of the order: *Section 9(a);*
    - The consequences which may follow if he fails to comply with any of the requirements of this Act: and *Section 9(b);*
    - That the court has the power under *Section 20,* to review the order on the application of either the probation officer or the offender: *Section 9(c);*
- The court upon making a community service order shall forthwith give copies of the

order to the probation officer and to the offender: *Section 10(1);*

- The court shall, except where it is itself the Magistrate's Court acting for the magisterial district specified in the order, send to the Clerk of the Peace for the magisterial district specified in the order a copy of the order, together with such documents and information relating to the case as it considers likely to be of assistance to the court of the magisterial district to which the order has been sent in the exercise of the court's functions in relation to the order: *Section 10(2);*
- Subject to *Section 23,* the work required to be performed under a community service order shall be performed during the twelve-month period which shall begin at the date of the order, however, unless revoked, the order shall remain in force until the offender has worked for the number of hours specified in it: *Section 12;*
- An offender against whom a community service order is in force shall:
    - Report to a probation officer in accordance with such instructions as he may be given by the probation officer and notify the officer of any change of address: and *Section 11(1)(a);*
    - Perform for the number of hours specified in the order such work specified in the order at such times as he may be instructed by the probation officer: *Section 11(1)(b);*
- The instructions given by the probation officer shall, so far as practicable, be such as to avoid conflict with the offender's religious beliefs, and any interference with the times, if any, at which he normally works or attends an educational institution: *Section 11(2);*
- Where a court makes community service orders in respect of two or more offences of which the offender has been convicted, the court may direct that the hours of work specified in any of those orders shall be concurrent with or in addition to those specified in any other of those orders, but that the total number of hours which are to run consecutively shall not exceed the maximum specified in *Section 4: Section 5;*
- Without prejudice to *Sections 18* and *19,* an offender who is convicted of a further offence while a community service order is in force with respect to him shall not on that account be liable to be dealt with under *Sections 14* or *15,* as though he had failed to comply with any of the requirements of the order: *Section 18;*
- Some other sections to note include:
    - Breach of requirements of order: *Section 13;*
    - Power of Magistrate's Court where offender fails to comply with requirements of order: *Section 14;*
    - Variation or revocation by Magistrate's Court: *Section 20;*
    - Revocation following custodial: *Section 21;*
    - Amendment of order by reason of change of residence: *Section 22;*
    - Record of completion of community service: *Section 25.*

Community service regulations

- Only hours worked by an offender shall count towards the satisfaction of the order: *regulation 8;*
- No more than 21 but no less than five hours of work per week shall be required from an offender: *regulation 9;*
- An offender shall begin the performance of work under an order no later than ten working days following the imposition of the order: *regulation 10;*

- Notwithstanding *para. (1),* where an officer determines that:
  - Suitable tasks cannot be found for the offender: *regulation 10(2)(a);*
  - Illness or other exceptional circumstances prevent the offender from beginning work: *regulation 10(2)(b);*

  commencement of work may be delayed;
- Where the offender is a female the officer shall be a female: *regulation 13;*
- Some other regulations to note include:
  - Information for offenders: *regulation 3;*
  - Selection of work: *regulation 4;*
  - Application for work: *regulation 5;*
  - Officer to keep records: *regulation 6;*
  - Recording and reporting of time worked: *regulation 7;*
  - Reporting to work site: *regulation 11.*

Children *- The Children Act, Chap. 46:01*[100]

- Where a child charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall take into consideration the provisions of any written law enabling the court to deal with the case and the court may:
  - Dismiss the charge: *Section 59(2)(a);*
  - Discharge the offender on his entering into a recognizance: *Section 59(2)(b);*
  - Discharge the offender and place him under the supervision of a probation officer: *Section 59(2)(c);*
  - Place the offender in the care of a fit relative or other fit person: *Section 59(2)(d);*
  - Commit the offender to a Community Residence appropriate to the age of the child: *Section 59(2)(e);*

[100] Trinidad and Tobago - Children Act, Chap. 46:01, section 3: "Child" means a person under the age of eighteen years.

- Order the offender to pay a fine, damages, and costs: *Section 59(2)(f);*
- Order the parent or guardian of the offender or person with responsibility for the offender to pay a fine, damages and costs: *Section 59(2)(e);*
- Order the parent or guardian of the offender or person with responsibility for the offender to give security for his good behaviour: *Section 59(2)(h);*
- Make a supervision order as described in *Section 25K,* of the Children's Authority Act: *Section 59(2)(i);*
- Order that the offender be deemed in need of care and protection and referred to the Authority, which shall investigate and seek any appropriate order of the court with jurisdiction in family matters or the Juvenile Court: *Section 59(2)(j);*
- Make an order for counselling, any other rehabilitative intervention or treatment or for psychological evaluation and resultant assistance: *Section 59(2)(k);*
- Make an order for community service: *Section 59(2)(l);*
- Order that no conviction be recorded: *Section 59(2)(m);*
- Order that the proceedings be sealed and not divulged without an order of the court: and *Section 59(2)(n);*
- Make any other order as the court deems fit: *Section 59(2)(o).*[101]

ii. **Suspended sentences -** *The Community Service Orders Act, Chap. 13:06*

- Where a person of or over 16 years of age is convicted of an offence (in this Act referred to as "the offender") and is to be sentenced for a period of imprisonment of 12 months or less, including a sentence of imprisonment imposed in default of payment of a fine, the court by or before which he is to be sentenced may pass the sentence but may order the operation of the whole or part of the sentence to be suspended for a period not exceeding two years and may then make a community service order requiring him to perform unpaid work in accordance with the provisions of this Act: *Section 3(1).*

iii. ***Fines -*** *The Summary Offences Act, Chap. 11:02*

- All offences under this Act may be prosecuted, and all penalties, fines, awards of compensation, and costs incurred may be imposed or recovered, in the manner provided by the *Summary Courts Act: Section 126.*

The Summary Courts Act, Chap. 4.20

Power of the magistrate to impose fine

- Where a court has authority under any Act, whether past or future, to impose imprisonment for an offence punishable on summary conviction and has not

[101] Trinidad and Tobago: Children Act, Chap. 46:01, section 60 outlines the restrictions on punishment of children and substitution of custody in place of detention for imprisonment.

authority to impose a fine for that offence, the court, when adjudicating on such offence, may, notwithstanding, if the court thinks that the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding two thousand dollars. However, the alternative term of imprisonment in default of payment of the fine shall not be a greater term than that to which the defendant is liable under the Act authorising the said imprisonment: *Section 69(1);*

- Where a person is convicted summarily of an offence against a written law and no penalty for the offence is prescribed, or a fine is prescribed as the penalty but no maximum is specified in that or any other written law, the person convicted is liable to a fine of five hundred dollars: *Section 69(3).*

Payment of fine

- The court in fixing the amount of any fine to be imposed on an offender shall take into consideration, amongst other things, the means of the offender so far as they appear or are known to the court; and where a fine is imposed, the payment of the court fees and other fees payable in the case up to and including conviction shall not be taken into consideration in fixing the amount of the fine or be imposed in addition to the fine, but the amount of the fine, or of such part thereof as may be paid or recovered, shall be applied as follows:
    - In the first place, in the repayment to the complainant of any court or other fees paid by him: *Section 70(a);*
    - In the second place, in the payment of any court or other fees not already paid by the complainant: *Section 70(b);*
    - The balance (if any) remaining after the abovementioned payments have been made shall be paid to the fund or person to which the fine is directed to be paid by the written laws relating to the offence in respect of which the fine was imposed, or, if there is no such fund or person, then to the fund into which the court or other fees are paid: *Section 70(c);*
- The court by whose conviction or order any sum of money is adjudged to be paid may direct that no time shall be allowed for the payment of the said sum and issue forthwith a warrant committing to prison the person liable to pay the said sum, or the court may instead do all or any of the following things:
    - Allow time for payment of the said sum: *Section 78(1)(a);*
    - Direct payment of the said sum to be made by instalments: *Section 78(1)(b)*;
    - Direct that the person liable to pay the said sum shall be at liberty to give, to the satisfaction of the court, security, either with or without a surety or sureties, for the payment of the said sum or of any instalment thereof: *Section 78(1)(c);*
- If before the expiration of the time allowed the person convicted surrenders himself to the court having jurisdiction to issue a warrant of commitment in respect of the non-payment of such sum as mentioned above, and states that he prefers immediate committal to awaiting the expiration of the time allowed, the court may if it thinks fit forthwith issue a warrant committing him to prison: *Section 78(2);*

- Where a person so allowed time for payment as mentioned above appears to the court to be not less than 16 nor more than 21 years of age, the court may, if it thinks fit, and subject to any rules made under this Act, order that he be placed under the supervision of such person as may be appointed by the court until the sum adjudged to be paid is paid, and in such case, before issuing a warrant in respect of non-payment of the sum, the court shall consider any report which may be made by the person so appointed as to the conduct and means of the person under his supervision: *Section 78(3);*
- Where a sum of money is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in the payment of all the instalments then remaining unpaid: *Section 78(4);*
- Where time has been allowed for the payment of a sum adjudged to be paid by a conviction or order, further time may, subject to any rules made under this Act, on an application by or on behalf of the person liable to pay such sum, be allowed by a court having jurisdiction to issue a warrant of commitment in respect of the non-payment of such sum as mentioned above, or such court may, subject as mentioned above, direct payment by instalments of the sum so adjudged to be paid: *Section 79;*
- Where a person has been adjudged to pay a sum by a conviction or order of a Summary Court, or in proceedings for enforcing an order in any matter of affiliation, or an order which under weekly sums are made payable towards the maintenance of a wife, the court may order him to be searched, and any money found on him on apprehension, or when so searched, or which may be found on him when taken to prison in default of payment of the sum so adjudged to be paid, may, unless the court otherwise directs, be applied towards the payment of the sum so adjudged to be paid, and the surplus, if any, shall be returned to him. However, the money shall not be so applied if the court is satisfied that the money does not belong to the person on whom it was found, or that the loss of the money will be more injurious to his family than his imprisonment: *Section 80.*

The Community Service Orders Act, Chap. 13:06

- A fine imposed under *Sections 14(1)(a)* or *15(1)(a),* shall be deemed for the purposes of any enactment to be a sum adjudged to be paid on conviction: *Section 16.*

The Probation of Offenders Act, Chap. 13:51

- Where a court has under subsection (4)(a), imposed a fine on the probationer, then, on any subsequent sentence being passed upon the probationer under Section 9, or this section, the imposition of the fine shall be taken into account in fixing the amount of the sentence: *Section 10(5).*

Children - *The Children Act, Chap. 46:01*

- Where a child is charged with an offence, the commission of which attracts a fine, damages, or costs, and is brought before a court, and the court is of the opinion that the case would be best met by the imposition of a fine, damages, or costs, whether

with or without any other punishment, the court may, in any case where the offender is a child, order the parent, guardian or person with responsibility for the child to pay the fine, damages, or costs awarded unless the court is satisfied that:

- The parent, guardian or person with responsibility for the child cannot be found: or *Section 56(1)(a);*
- The parent, guardian or person with responsibility for the child has not contributed to the commission of the offence by neglecting to exercise due care of the child: *Section 56(1)(b).*

iv. **Probation orders -** *The Probation of Offenders Act, Chap. 13:51*

Eligibility for probation orders

- Subject to subsection (3), where any person is charged before a Summary Court with an offence which is punishable by such court, and the court thinks that the charge is proved but is of opinion that, having regard to the character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may:
  - Convict the offender and make a probation order: or *Section 3(1)(a);*
  - Without proceeding to conviction, make a probation order: *Section 3(1)(b).*

Procedure

The Probation of Offenders Act, Chap. 13:51

- Before making a probation order under subsections (1) or (2), the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence, he will be liable:
  - In the case of subsection (1), to be fined or to be sentenced or convicted and sentenced for the original offence: and *Section 3(3)(a);*
  - In the case of subsection (2), to be sentenced for the original offence: *Section 3(3)(b);*
- A probation order shall have effect for such period not less than one year and not more than three years from the date of the order as may be specified therein, and shall require the probationer to submit during that period to the supervision of a welfare officer (probation) appointed to serve in the courts of Trinidad and Tobago, and shall contain such provisions as the court considers necessary for securing the supervision of the offender, and such additional conditions as to residence and other matters as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences: *Section 4(1);*
- Where a probation order contains a provision as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order and, where any such provision requires the probationer to reside in an institution, the

period for which the probationer is required so to reside shall not extend beyond 12 months from the date of the order, and the court shall forthwith give notice of the terms of the order to the Chief Probation Officer: *Section 4(2);*

- The court by which a probation order is made shall furnish two copies of the order, one copy to be given to the probationer and the other to the welfare officer (probation) under whose supervision he is placed: *Section 4(3)*.

The Community Service Orders Act, Chap. 13:06

A court shall not make a community service order under this Act unless the offender consents, and the court is satisfied:

- After considering a report by a probation officer about the offender and his circumstances and, if the court thinks it necessary, hearing the probation officer, that the offender is a suitable person to perform work under such an order: and *Section 6(a);*
- Suitable arrangements can be made for him to do so: *Section 6(b);*

- If it appears to a court that a probationer has been convicted of an offence committed while the probation order was in force, it may issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest, but a court shall not issue the summons except on information, and shall not issue the warrant except on information in writing and on oath: *Section 9(1);*
- A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made: *Section 9(2);*
- Where a probationer is convicted by a Summary Court of an offence committed while the probation order was in force, the court may commit the probationer to custody or release him on bail, with or without sureties, until he can be brought or appear before the court by which the probation order was made: *Section 9(3);*
- Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force then:
  - If the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him of that offence and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence: or *Section 9(4)(a);*
  - If the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence: *Section 9(4)(b);*
  - Where a person under the age of eighteen years is placed by a probation order under the supervision of a welfare officer (probation), the court may order such person to attend at a Probation Training Centre, established or approved

under this or any other Act, for the purpose of being given under supervision appropriate occupation and instruction, on such occasions and at such times to be specified in the order as will avoid interference as far as is practicable with his working hours: *Section 5;*

- Some other sections to note include:
  - Failure by probationer to comply with probation order: *Section 10;*
  - Probation order; disqualification or disability: *Section 11;*
  - Transmission of documents when case is remitted to another court: *Section 12;*
  - Amendment of probation orders: *Sections 13, 15;*
  - Discharge of probation orders: *Sections 14, 15.*

Children *- The Children Act, Chap. 46:01*

- Where under the provisions of this Part an order is made for the child to be brought to the attention of the Authority and for the referral of the child to the court with jurisdiction in family matters, the court may, in addition to such order, make an order under the *Probation of Offenders Act,* that the child be placed under the supervision of a probation officer provided that the recognizance into which the child, if not charged with an offence is required to enter, shall bind him to appear and submit to the further order of the court: *Section 62.*

v. **Conviction and discharge** *- The Summary Courts Act, Chap. 4.20*

- Where any person is charged before a court with an offence punishable by the court, and the court thinks that the charge is proved, but is of opinion that having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, the court may, without proceeding to conviction, make an order either:
  - Dismissing the complaint or charge: or *Section 71(1)(a);*
  - Discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order: *Section 71(1)(b);*
- If the court, before which an offender is bound by his recognizance under this section to appear for conviction or sentence, or any court is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties (if any) requiring him or them to attend at such court and at such time as may be specified in the summons: *Section 71(4);*

- The offender, when apprehended, shall, if not brought forthwith before the court before which he is bound by his recognizance to appear for conviction or sentence, be brought before another court: *Section 71(5);*
- The court before which an offender on apprehension if brought, or before which he appears in pursuance of a summons as mentioned above, may, if it is not the court before which he is bound by his recognizance to appear for conviction or sentence, remand him to custody or on bail until he can be brought before the last-mentioned court: *Section 71(6);*
- An offender so remanded to custody may be committed during remand to any prison to which the court having power to convict or sentence him has power to commit prisoners: *Section 71(7);*
- A court before which a person is bound by his recognizance to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his recognizance, may forthwith, without further proof of his guilt, convict and sentence him for the original offence or, if the case was one in which the court in the first instance might, under *Section 43,* of the Children Act, have ordered the offender to be sent to an Industrial School, and the offender is still apparently under the age of 16 years, make such an order: *Section 71(8).*

vi. **Discharge with no record of conviction -** *The Community Service Orders Act, Chap. 13:06*

- Where an offender who has no previous conviction receives notification of his fulfilment of the requirements of the community service order enforced against him, the court may, upon application by the offender, make an order declaring the record of conviction against him null and void: *Section 26(1);*
- Subsection (1), shall not apply to an offender in respect of whom an order under subsection (1), has already been made: *Section 26(2).*

Children *- The Children Act, Chap. 46:01*

- Where a child is convicted of an offence which is punishable, in the case of a person eighteen years of age or over, by imprisonment; or would be liable to be imprisoned, in the case of a person 18 years of age or over, in default of payment of any fine, damages or costs, the court may order that no conviction be recorded: *Section 60(2)(v).*

vii. **Compensation -** *The Summary Courts Act, Chap. 4.20*

- The court may, in addition to any such order, order the offender to pay such damages for injury or compensation for loss as the court may think reasonable, but not exceeding in the aggregate one thousand dollars or such greater sum as may be allowed by any written law relating to the offence, and to pay such costs of the proceedings as the court thinks reasonable: *Section 71(2);*
- Such an order shall for the purpose of revesting or restoring stolen property and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery, have the effect as a conviction: *Section 71(3).*

The Probation of Offenders Act, Chap. 13:51

- Where a person is placed by a probation order under the supervision of a welfare officer (probation), the court may order the offender to pay such damages for injury or compensation for loss as the court may think reasonable, but not, in the case of an order made by a Summary Court, exceeding in the aggregate one hundred and fifty dollars or such greater sum as may be allowed by any written law relating to the offence, and to pay such costs of the proceedings as the court thinks reasonable: *Section 7(1);*
- Where a court makes any such order for the payment of damages or compensation as mentioned above, the order may be enforced in like manner as an order for the payment of costs by the offender, and where the court, in addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs: *Section 7(2);*
- Where a court has made an order for the payment of costs or damages or compensation as mentioned above, and part or the whole of such sums awarded as costs or as damages or compensation remains unpaid on the termination of the period specified in the order, the court may, if it is satisfied that the probationer has made every reasonable effort to pay, remit or rescind the order for such sums as remain unpaid, but no remission or rescission shall be made without a report being submitted to the court by the welfare officer (probation), responsible for the supervision of the probationer: *Section 7(3).*

The Criminal Procedure Act, Chap. 12:02

- 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: *Section 53(1);*
- 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: *Section 53(2);*

- 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: Section 54.*

viii. **Imprisonment -** *The Summary Offences Act, Chap. 4:20*

- Where, by any written law, the court is empowered to impose a penalty for a summary offence, or where under this Act or any other written law a sum enforceable as a civil debt is adjudged by the court to be paid, it may, in the absence of express provision to the contrary in the same or any other written law, order a defendant who is convicted of such offence, in default of payment of the sum of money adjudged to be paid by the order, either forthwith or at the time specified in the order, as the case may be, to be imprisoned in accordance with the scale set forth in this section: *Section 68(1);*
- Subject in every case to the provisions of the Act on which the order is founded, the period of imprisonment, whether with or without hard labour, which is imposed by the court in respect of the non-payment of any sum of money adjudged to be paid by an order shall be such period as, in the opinion of the court, will satisfy the justice of the case, but shall not exceed the maximum fixed in the following scale: *Section 68(2);*

Where the sum of money adjudged to be paid by an order	The period shall not exceed
does not exceed $40	14 days
exceeds $40 but does not exceed $200	30 days
exceeds $200 but does not exceed $1,000	3 months
exceeds $1,000 but does not exceed $2,000	4 months
exceeds $2,000 but does not exceed $5,000	9 months
exceeds $5,000 but does not exceed $25,000	3 years
exceeds $25,000	5 years

- The maximum period of imprisonment applicable to a sum of any amount enforceable as a civil debt shall be six weeks: *Section 68(3);*
- Where a court has authority under any Act, whether past or future, to impose imprisonment, either peremptorily or in default of payment of any pecuniary penalty, for an offence punishable on summary conviction, the court may, in the absence of express provision to the contrary, order the offender to be imprisoned for any term not exceeding the term prescribed, as the court shall think fit: *Section 69(2);*

- A court imposing a term of imprisonment on a person may order that the term of imprisonment shall commence on the expiration of any other term of imprisonment imposed by that court or any other court: *Section 72(1);*
- Where a court imposes two or more terms of imprisonment to run consecutively, the aggregate of such terms shall not exceed ten years: *Section 72(2);*
- Where a court has sentenced a person to imprisonment and a fine for the same offence and a period of imprisonment is imposed for the non-payment of the fine, or for want of sufficient distress to satisfy the fine, the aggregate of the terms so imposed shall not exceed ten years: *Section 72(3);*
- For the purpose of this section, a term of imprisonment is deemed to be imposed in respect of an offence if it is imposed:
    - As a sentence: *Section 72(4)(a);*
    - In default of a payment of a sum adjudged to be paid upon conviction: or *Section 72(4)(b);*
    - For want of sufficient distress to satisfy such a sum: *Section 72(4)(c);*
- A magistrate derives his power to impose imprisonment by the maximum amount stipulated in the relevant summary offences legislation.[102] The maximum sentence for each offence is also set out in the respective summary offences legislation. Life imprisonment sentences are attached to most capital offences and imposed with hard labour; it is imposed on those who are considered as a menace to society.[103] Where an indictable offence is tried summarily, imprisonment is frequently utilised;
- These life imprisonment sentences however do not exceed 15 years[104] but in each sentence, a specific time is set out before which the convict can be released. This is so based on the Prison Rules, which stipulate that each prisoner's case comes up for review every four years which dictates that a defendant is almost automatically earns a remission of one third of his sentence unless his conduct is so poor, he forfeits it.

Children

The child must have been over the age of 12 at the time of the commission of the offence and must be substantial and compelling reasons for doing so. Alternative measures must be taken for the rehabilitation of the child as stated in the relevant. However, where there are substantial and compelling reasons for imposing a sentence of imprisonment the court may do so.

Where the child is tried by the court and the court is satisfied of the guilt the court may deal with the case accordingly based on the options available in the Children's Act, after taking into consideration the provisions of any law enabling it to do so.[105]

[102] Derek Parke v The Commissioner of Police Magisterial Appeal No. 1 of 2003
[103] The Queen v Rudy Monelle ANU HCR 15 of 2007
[104] Edwin Farfan v The State Cr App No 34 of 1980
[105] Trinidad and Tobago - Children Act, Chap. 46:01, section 59 (2).

CHAPTER 13

COMMITTAL PROCEEDINGS

A committal proceeding or preliminary enquiry is a procedural mechanism that precedes a trial on indictment. The old-style preliminary enquiry is held by a magistrate who conducts an oral hearing as an examining or enquiring magistrate to determine whether the evidence before him establishes a prima facie case that the defendant has committed an indictable offence to be tried by a jury. Alternatively, in some jurisdictions, where all the evidence before the court consists of written statements, the magistrate may commit the accused for trial with or without consideration of the evidence.

Does a magistrate have the power to exclude evidence?

In **R v Horsham JJ ex p Bukhari (1982) 74 Cr App R 291,** it was held that the duty of an examining magistrate, in respect of evidence, is to accept and consider any admissible evidence that is put before him. Therefore, he has no power to exercise any discretion to reject such evidence.

In **Director of Public Prosecutions v. The Deputy Chief Magistrate His Worship Mr. Mark Wellington, Civil Appeal No. 2 of 2008,** the Court of Appeal concluded that:

> *"the effect of the authorities seems to be that a magistrate's function is to allow legally admissible evidence and he has no discretion to exclude such evidence. The test of admissibility is relevance, that is to say, is it directly or indirectly probative of the offences charged." It was further stated that "where evidence is, on the face of it legally irrelevant and inadmissible it is both proper and desirable that the magistrate should rule on such matters and thus make clear that he is excluding such evidence from his determination as to whether there is a case to answer."*

In **Director of Public Prosecutions v Magistrate Her Worship Cardenas-Ragoonanan Application No. P 014 of 2015,** the Court of Appeal of Trinidad and Tobago held that while the magistrate was entitled to rule on the admissibility of the evidence; in ruling to exclude the evidence she arrived at the wrong conclusion. The magistrate excluded relevant evidence and therefore exceeded her jurisdiction by doing so. In this case the magistrate appeared to consider that the evidence was likely to be more prejudicial than probative and for that reason choose not to hear it. However, this was the wrong approach since

> *"the evidence she purported to exclude fell to be admitted as an exception to the general rule in Makin*[1] *(and ultimately Noor Mohammed).*[2] *Secondly to the extent that she was entitled to rule on its relevance, she could only*

[1] Makin v Attorney General for New South Wales [1894] AC 57
[2] Noor Mohammed v The King [1949] AC 182, 192

have done so after hearing the evidence. If, after hearing the evidence, the magistrate concludes that it is irrelevant and therefore inadmissible, then as a trained attorney-at-law, the magistrate is expected to disregard such evidence and still come to a fair and objective conclusion. But in order to decide on its admissibility the evidence must first be heard. The magistrate cannot properly decide on its relevance if she chooses not to hear the evidence at all."

Types of committal procedures

1. Old style preliminary enquiry

Guyana** (except for Sexual Offences), **St. Vincent and the Grenadines.

- The prosecution shall call a witness or witnesses who shall give evidence only in the presence of the accused and the accused may cross-examine such witness or witnesses;[3]
- The evidence given by each witness shall be taken down in writing in the form of a deposition and as nearly as possible to the witness's own words.[4]

  (i) In **St. Vincent and the Grenadines,** *Section 143(1),* of the *Criminal Procedure Code, Chap. 172,* states that notwithstanding anything contained in *Section 142,* in committal proceedings a written statement by any person shall, if the conditions mentioned in subsection (2), are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person: *Section 143(1).*

  The conditions referred to in subsection (1), are:

  - The statement purports to be signed by the person who made it: *Section 143(2)(a);*
  - The statement contains a declaration by that person 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: *Section 143(2)(b);*
  - Before the statement is tendered in evidence a copy of the statement is given by the party proposing to tender it, to each of the other parties to the proceedings: and *Section 143(2)(c);*
  - None of the parties before the statement is tendered in evidence at the committal proceedings, objects to the statement being so tendered under this section: *Section 143(2)(d).*

[3] Guyana: Criminal Law (Procedure) Act Cap 10:01, revised edition 2012, sections 64(1), (2);
St. Vincent and the Grenadines: Criminal Procedure Code CAP 172, sections 142(1), (2).
[4] Guyana: Criminal Law (Procedure) Act Cap 10:01, revised edition 2012, section 64(3).
St. Vincent and the Grenadines: Criminal Procedure Code CAP 172, sections 142(1).

The Criminal Procedure Code, Chap. 172, Section 143(7), states that a statement admitted under the provisions of this section shall be a deposition for the purposes of this Code:

Provided that a person whose statement has been read shall not be required to be bound over to give evidence in the High Court: *Section 143(7).*

(ii) In **Guyana,** *Section 68,* of the *Criminal Law (Procedure) Act, Chap. 10:01, revised edition 2012,* where any person able to give material evidence in respect of an indictable offence is from illness unable to attend at the place where the magistrate usually sits, the magistrate of the district within which that person is shall have power to take his deposition at the place where he is, notwithstanding that the offence was not committed in the district of that magistrate.

- Before the accused is called upon for his defence, the deposition of each of the prosecution witness/es should be read over to the witness/es and both the witness/es and the magistrate should sign same[5];
- After the completion of the examination of the witnesses for the prosecution, the magistrate may either dismiss the charge, and if the accused is in custody make an order for his release, or he may call upon the accused for his defence. Where the magistrate is of the opinion that a prima facie case is established, he shall address the accused in words to the following effect[6]: *"Do you wish to say anything in answer to the charge? You are not obliged to say anything 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;"*
- *Section 146(2),* of **St. Vincent and the Grenadines'** *Criminal Procedure Code, Chap. 172,* further provides that the magistrate shall state to the accused that has nothing to hope from any promise of favour and nothing to fear from any threat that may have been held out to him to make any admission or confession of his guilt, but whatever he says then, may be given in evidence at his trial notwithstanding such promise or threat[7];
- Whatever the accused then says in response to the above shall be taken down in writing and read over to him and when the accused declares it is the truth, it shall be signed or attested by the magistrate that the statement was taken in his presence and kept with the depositions of the witnesses and shall be transmitted with them as hereinafter mentioned[8];

[5] Guyana: Criminal Law (Procedure) Act Cap 10:01, revised edition, section 64(4). In Guyana the reading and the signing of the deposition should take place in the presence of the witness, accused and magistrate. Section 64(5) states that any witness who refuses, to sign his deposition may be committed by the magistrate holding the inquiry by a warrant to prison, there to be kept until after the trial, or until the witness signs his deposition before a magistrate.
St. Vincent and the Grenadines: Criminal Procedure Code CAP 172, sections 142(8).

[6] Guyana- Criminal Law (Procedure) Act Cap 10:01, revised edition 2012, section 65(1).
St. Vincent and the Grenadines- Criminal Procedure Code CAP 172, section 146(1).

[7] St. Kitts and Nevis: Magistrate's Code of Procedure Act Cap. 3.17, Form 9 (Statement of the Accused)

[8] Guyana: Criminal Law (Procedure) Act Cap 10:01, revised edition, section 65(2). The section provides that the accused person shall also sign this record if he so will.
St. Vincent and the Grenadines: Criminal Procedure Code CAP 172, section 146(4). This section allows for the attestation by the magistrate. The accused may sign such record, but if he refuses to do so the magistrate shall add a note of his refusal and the record may be used as if he signed it.

- After the proceedings above are completed the magistrate shall allow the accused to call any witnesses in his defence, if he wishes to call any witnesses. The evidence shall be taken in the same manner and form as that of the witnesses for the prosecution and if duly taken, read over, and signed, shall be deemed to be depositions[9];
- At the end of hearing the evidence for the accused or any witnesses he may produce, the magistrate may either discharge the accused if he is of the opinion that a sufficient case against him is not made out or where a sufficient case is made out, he shall commit the accused for trial for the indictable offence in the next sitting of the High Court[10];
- Where the accused is committed for trial, the magistrate holding the preliminary enquiry or committal proceedings is entitled to bind by recognizance the prosecutor and all witnesses whose deposition has been taken or giving evidence to:
    - Appear in the High Court or Circuit Court, as the case may be;
    - Prosecute, or to prosecute and give evidence, as the case may be[11];
- Any witness who refuses without reasonable excuse to enter into the recognizance as aforesaid, may be committed to prison by warrant of the magistrate holding the inquiry, there to be kept there safely until after the trial of the accused or until the witness enters into the recognizance before a magistrate.[12] If the accused is subsequently discharged the witness shall also be discharged;
- The accused is entitled to a copy of the depositions upon which he has been committed before the first sitting of the court.[13] In **St. Kitts and Nevis,** the accused can only obtain the same after payment of a reasonable sum not exceeding the rate of four cents for each folio of 100 words;
- On committing an accused to trial the magistrate may order the accused to be committed to prison, unless bail is granted[14];

[9] Guyana: Criminal Law (Procedure) Act Cap 10:01, revised edition, sections 66(1), (2);
St. Vincent and the Grenadines: Criminal Procedure Code CAP 172, sections 148(1), (2).
[10] Guyana: Criminal Law (Procedure) Act Cap 10:01, revised edition 2012, section 69; In Guyana, the magistrate may make the decision to commit or discharge the accused after the close of the prosecution's case. If the magistrate decides to discharge the accused, any recognisance taken in respect of the charge shall become void.
St. Vincent and the Grenadines: Criminal Procedure Code CAP 172, section 149.
[11] Guyana: Criminal Law (Procedure) Act Cap 10:01, revised edition, section 74(1);
St. Vincent and the Grenadines- Criminal Procedure Code CAP 172, section 151.
[12] Guyana- Criminal Law (Procedure) Act Cap 10:01, revised edition, section 74(4);
St. Vincent and the Grenadines- Criminal Procedure Code CAP 172, section 152.
[13] Guyana: Criminal Law (Procedure) Act Cap 10:01, revised edition, section 73;
St. Vincent and the Grenadines- Criminal Procedure Code CAP 172, section 153.
[14] Guyana: Criminal Law (Procedure) Act Cap 10:01, revised edition, sections 84-86;
St. Vincent and the Grenadines- Criminal Procedure Code CAP 172, section 150(1)

- In **St. Vincent and the Grenadines,** after the magistrate has committed the accused, the magistrate shall then say to the accused:

  > *"I must warn you that you may not be permitted to give evidence of an alibi or to call witnesses in support of an alibi unless you have either given particulars to me now of the alibi and of the witnesses, or have given such particulars and names to this court within seven days from today."*

  or words to the like effect. If it shall appear to the court that the accused may not understand the meaning of the word "alibi" the court shall explain it to him: *Section 150(2) - Criminal Procedure Code, Chap. 172;*

- Soon after the committal of the accused by the magistrate, the following documents should be transmitted from the magistrate to the Registrar[15]:
  - The information or complaint (if any);
  - The depositions of the witnesses and the documentary exhibits attached thereto;
  - The statement of the accused person;
  - The recognizances entered into.

According to *Section 75(2),* of Guyana's *Criminal Law (Procedure) Act, Chap. 10:01, revised edition 2012,* and *Section 159,* of St. Vincent and the Grenadines' *Criminal Procedure Code, Chap. 172,* a copy and an authenticated copy (respectively) of these documents shall also be transmitted to the Director of Public Prosecutions.

2. Paper committal

Paper committal is a simplified form of committal procedure created by statute that allows for the shortening of the otherwise lengthy oral hearing procedure of the old-style preliminary enquiry. This procedure allows for the committal of a defendant based on admissible statements and documentary evidence such as:

- Written statements and the documents or other exhibits referred to therein;
- Depositions and the documents or other exhibits referred to therein;
- Other admissible statements and documents.

[15] Guyana: Criminal Law (Procedure) Act Cap 10:01, revised edition, section 75(1);
St. Vincent and the Grenadines- Criminal Procedure Code CAP 172, section 159. Any depositions being transmitted must be an authenticated copy.

3. Voluntary Bill of Indictment

A Voluntary Bill of Indictment is a procedure that permits the prosecution to seek the permission of a High Court judge to prefer an indictment without a committal.[16] This permission may be given by the judge's direction or in writing. The judge may do so only if there is sufficient evidence supporting the charge contained in the draft bill of indictment:

- In **Jamaica, St. Lucia** and **Trinidad and Tobago,** such permission need not be obtained from a High Court judge and the direction or consent of the Director of Public Prosecutions or Deputy Director of Public Prosecution or any person authorized on that behalf is adequate for an indictment to be preferred;

- A Voluntary Bill of Indictment may be sought:
  - After a discharge on a preliminary enquiry or committal proceeding. In such case the prosecution should file with its application the proceedings at the magistrate's court so as to allow the judge to properly consider the evidence and the basis of the magistrate's decision;
  - Where no preliminary enquiry or committal proceedings have occurred. According to Seetahal,[17] *"...different considerations apply. For example, witness statements will be served on the defence and the court. In such a case it is only reasonable that the defence should be notified of the voluntary bill."*

Brooks v DPP (1994) 44 WIR 332, PC held that:

- The Director of Public Prosecutions did not have to give prior notice to the accused that he was considering a voluntary bill of indictment. However, in

[16] Barbados: Criminal Procedure Act CAP 127, section 4(1), (2);
Belize: Indictable Procedure Act CAP 96, revised edition 2011, section 43(2)(i). DPP may apply for warrant for arrest and committal for trial of accused.
Dominica: Criminal Law and Procedure Act Chap. 12:01, section 17(3) The law officer may apply for warrant for arrest and committal for trial of accused.
Grenada: Criminal Procedure Code CAP 72B, section 105 It shall be lawful for Attorney General to issue a warrant for arrest and committal for trial of accused.
Guyana- Criminal Law Procedure Act Cap 10:01, revised edition 2012, section 72(2). The DDP may remit the case for committal.
Jamaica: The Criminal Justice (Administration) Act, L.N. 11/2010, section 2(2). DPP may prefer indictment against the defendant.
Montserrat: Criminal Procedure Code CAP. 4.01.
St. Lucia: Criminal Code Cap. 3.01, revised section 2005, section 808. The DDP may order committal of the accused.
St. Kitts and Nevis: Magistrate's Code of Procedure Act CAP, 3.17, section 75.
St. Vincent and the Grenadines- Criminal Procedure Code CAP 172, section 162. A Bill of Indictment may be preferred by consent.
Trinidad and Tobago: Indictable Offences (Committal Proceedings) Act No. 14 of 2014, section 26(1). DPP may apply for warrant for arrest and committal for trial of accused.
Indictable Offences (Preliminary Enquiry) Act Chap. 12:01, sections 23 (5) – (7). DPP may apply for warrant for arrest and committal for trial of accused.

[17] Seetahal S., Dana: Commonwealth Caribbean Criminal Practice and Procedure. (4th ed.) 2014 Routledge

exceptional circumstances, such as where a committal proceeding was not held previously, the judge has a residual discretion to require that notice to the defendant is given;

- Where the voluntary bill of indictment is provided for under statute, it does not amount to an abuse of process even where the examining magistrate had a full committal hearing before discharging the accused. Once due regard was given to the magistrate's decision, if the evidence before the judge justifies the charge, a bill of indictment may be granted.

Committal without consideration of the evidence

ANGUILLA[18]

The guiding legislation is the *Magistrate Code of Procedure Act, R.S.A. c. M5*. For the purpose for detailing the laws for Anguilla in this Chapter, the *Magistrate Code of Procedure Act, R.S.A. c. M5, revised edition 2014,* will be utilised. However, this must be read conjunctively with the *Magistrate Code of Procedure (Amendment) Acts, No. 32/2020* and the *Magistrate's Code of Procedure Rules, R.R.A. M5-1.*

- This section applies to committal proceedings where the accused has counsel acting for him in the case (whether present in court or not) and where the court has been informed that all the evidence for the prosecution is in the form of written statements, copies of which have been given to the accused: *Section 86(1);*
- The court inquiring into an offence in committal proceedings to which this section applies shall cause the charge to be written down, if this has not already been done, and read to the accused and shall then ascertain whether he wishes to:
  - Object to any of the prosecution statements being tendered in evidence: *Section 86(2)(a);*
  - Give evidence himself or call witnesses: or *Section 86(2)(b);*
  - Submit that the prosecution statements disclose insufficient evidence to put him on trial by jury for the offence with which he is charged: *Section 86(2)(c);*
- If the court is satisfied that the accused or each of the accused, as the case may be, does not wish to take any of the steps mentioned in *paras. (2)(a), (b)* and *(c),* and determines, after receiving any written statements tendered by the prosecution and the defence under Division 2, to commit the accused for trial without consideration of the evidence, the court shall proceed in accordance with subsection (4), and in any other case shall proceed in accordance with *Section 56: Section 86(3);*

[18] See the Criminal Procedure (Committal for Sentence) Act, R.S.A. c. C155 detailing the procedure where the accused confesses guilt preliminary enquiry.

- The court shall then say to the accused:

> *"You will be committed for trial by jury but I must warn you that at that trial you may not be permitted to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You or your solicitor may give those particulars now to this court or at any time in the next 7 days to the Attorney General."*

or words to that effect, but the court shall not be required to give this warning in any case where it appears to the court that, having regard to the nature of the offence with which the accused is charged, it is unnecessary to do so: *Section 86(4).*

Belize, Dominica, and Guyana (offences under the Guyana *Sexual Offences Act, Chap. 8:03*).

- On holding a preliminary enquiry, a magistrate may, where all the evidence before the court comprises of written statements tendered to the court (in accordance with the admissibility of written statements as evidence) with or without exhibits, commit a defendant for trial of the offence charged without consideration of the contents of those statements.[19]

  (i) In **Guyana,** the following evidence of the prosecution and defence shall be admissible for the purposes of a paper committal:

  - Written statements which satisfy the requirements of *para. 6;*
  - The documents or other exhibits (if any) referred to in the written statements;
  - Depositions taken pursuant to *para. 2,* and which satisfy the requirements of *para. 7;*
  - The documents or other exhibits (if any) referred to in the depositions;
  - Statements which satisfy the requirements of *para. 8;*
  - Documents which satisfy the requirements of *para. 9. First Schedule para. 5(3) - Sexual Offences Act, Chap. 8:03.*

  (ii) In **Belize,** *Section 35(3),* of the *Indictable Procedure Act, Chap. 96,* revised edition 2011, states that the following evidence falls within subsection:

  - Written statements complying with *Section 36;*

    The documents or other exhibits (if any) referred to in such statements;
  - Depositions complying with *Section 37;*

    The documents or other exhibits (if any) referred to in such depositions;
  - Statements complying with *Section 38*;
  - Documents falling within *Section 39;*

[19] Belize- Indictable Procedure Act CAP 96, revised edition 2011, section 33(1);
Dominica- Criminal Procedure (Preliminary Inquiries) (Amendment) Act 1 of 2004, section 2(1);
Guyana- Sexual Offences Act Cap 8:03, revised edition 2012, First Schedule paragraph 13(2). In Guyana, such committal shall take place if the magistrate is satisfied that the accused or, as the case may be, each of the accused does not wish to make a submission that there is insufficient evidence to put the accused on trial for the offence charged.

- A magistrate should not commit a defendant for trial without consideration of the contents of the statements where:
    - The magistrate is satisfied on a submission by counsel for the defendant or defendant that the statements do not disclose enough evidence to put the defendant on trial by jury for the offence[20];
    - The defendant or one of the defendants is not represented by a counsel (except for **Belize**)[21];
- A written statement by a person may be admissible in evidence to the same extent as oral evidence by that person if [22]:
    - The statement is signed by the maker of it;
    - The statement contains a declaration by the maker to the effect that it is true to the best of his knowledge and belief and that he made same 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;
    - A copy of the statement is given by the party proposing to tender it to the other party or parties to the inquiry a specified amount of days before the statement is tendered in evidence (**Belize**: 14 days; **Dominica**: 2 days; **Grenada**: 2 days; **Guyana**: 7 days);
- Some other conditions that apply to a written statement tendered in evidence include:
    - If the maker of the statement is under the age of 18 it shall give his age[23];
    - If the maker of the statement cannot read it, it shall be read to him prior to him signing it and a declaration by the person who so read the statement to the effect that it was so read shall accompany it[24];
    - If the statement refers to any other document as an exhibit, the copy given to any other party to the inquiry 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 thereof[25];

[20] Belize- Indictable Procedure Act CAP 96, revised edition 2011, section 33(1);
Dominica- Criminal Procedure (Preliminary Inquiries) (Amendment) Act 1 of 2004, section 2(2)(b);
Guyana- Sexual Offences Act Cap 8:03, revised edition 2012, First Schedule paragraph 13(1), (2)
[21] Dominica- Criminal Procedure (Preliminary Inquiries) (Amendment) Act 1 of 2004, section 2(2)(a)
Guyana- Sexual Offences Act Cap 8:03, revised edition 2012, First Schedule paragraph 13(2)
[22] Belize- Indictable Procedure Act CAP 96, revised edition 2011, section 36(2);
Dominica- Criminal Procedure (Preliminary Inquiries) Act 14 of 1995, section 3(1);
Guyana- Sexual Offences Act Cap 8:03, revised edition 2012, First Schedule paragraphs 6(1)(a)-(c).
[23] Belize- Indictable Procedure Act CAP 96, revised edition, 2011, section 36(3)(a);
Dominica- Criminal Procedure (Preliminary Inquiries) Act 14 of 1995, section 3(2)(a);
Guyana- Sexual Offences Act Cap 8:03, revised edition 2012, First Schedule paragraph 6(1)(d)
[24] Belize- Indictable Procedure Act CAP 96, revised edition 2011, section 36(3)(b);
Dominica- Criminal Procedure (Preliminary Inquiries) Act 14 of 1995, section 3(2)(b);
Guyana- Sexual Offences Act Cap 8:03, revised edition 2012, First Schedule paragraph 6(1)(e)
[25] Belize: Indictable Procedure Act CAP 96, revised edition 2011, section 36(3)(c);
Dominica- Criminal Procedure (Preliminary Inquiries) Act 14 of 1995, section 3(2)(c);
Guyana- Sexual Offences Act Cap 8:03, revised edition 2012. First Schedule paragraph 6(1)(f)

- Although a written statement made by a person may be admissible in a preliminary enquiry, the court before the preliminary enquiry is held may, on its own motion or may on the application of any party to the inquiry, require the maker of the statement to attend before the court and give evidence (applies to **Dominica** and **Grenada**)[26];
- The magistrate has the power to direct that a statement admitted in evidence be read aloud at the hearing or an account be given orally of so much of any statement that is not read aloud[27];
- A document or object referred to as an exhibit and thereby identified in a written statement tendered in evidence shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement[28];
- The magistrate shall affix his signature at the end of each page of each written statement admitted in evidence and at the end in such form as to show that the signature is meant to authenticate each separate statement[29];

- In **Belize,** in every case where the examining magistrate commits the accused for trial under this Act, he shall say to the accused[30]:

  > *"I must warn you that you may not be permitted at your trial to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You may give those particulars now to this court or to the prosecutor not later than seven days from the end of these committal proceedings."*

  or words to that effect and, if it appears to the court that the accused may not understand the meaning of the term "alibi", the court shall explain it to him:

  Provided that the court shall not be required to give this warning in any case where it appears to the court that, having regard to the nature of the offence with which the accused is charged, it is unnecessary to do so.

[26] Dominica- Criminal Procedure (Preliminary Inquiries) Act 14 of 1995, section 3(3);
[27] Belize- Indictable Procedure Act CAP 96, revised edition 2011, section 36(4);
Dominica- Criminal Procedure (Preliminary Inquiries) Act 14 of 1995, section 3(4);
Guyana- Sexual Offences Act Cap 8:03, revised edition 2012, First Schedule paragraph 6(2)
[28] Belize- Indictable Procedure Act CAP 96, revised edition 2011, section 36(5);
Dominica- Criminal Procedure (Preliminary Inquiries) Act 14 of 1995, section 3(5);
Guyana- Sexual Offences Act Cap 8:03, revised edition, 2012, First Schedule paragraph 6(3)
[29] Belize- Indictable Procedure Act CAP 96, revised edition 2011, section 42;
Dominica- Criminal Procedure (Preliminary Inquiries) Act 14 of 1995, section 3(6);
[30] Belize: Indictable Procedure Act CAP 96, revised edition 2011, section 44.

Committal after consideration of the evidence

ANGUILLA

The guiding legislation is the *Magistrate Code of Procedure Act, R.S.A. c. M5,* which is to be read conjunctively with the *Magistrate Code of Procedure (Amendment) Acts, No. 32/2020* and the *Magistrate's Code of Procedure Rules, R.R.A. M5-1.*

Procedure at preliminary inquiries

- If the prosecutor indicates that an offence triable either way is to be tried on indictment, *Section 45,* and *Sections 47* to *50,* do not apply and the magistrate shall proceed to inquire into the complaint as examining magistrate: *Section 46;*
- When the accused appears or is brought before the magistrate, the magistrate, except where otherwise provided in this Act, shall take the evidence upon oath of the witnesses called in support of the charge offered on the part of the prosecution: *Section 54;*
- The evidence of every witness shall be given in the presence of the accused and he or his counsel or solicitor shall be entitled to cross-examine the witness upon all facts relevant to the charge, but not, except with leave of the court, upon matter relevant only as affecting his credit: *Section 55;*
- As each witness gives his evidence, the material part of it shall be taken down in writing by the magistrate in narrative form, or, if and so far as the magistrate may think fit, in the form of question and answer, but, if the magistrate is from any cause unable to take down the evidence in writing, the evidence shall be taken down in writing by the clerk of the court under the magistrate's direction: *Section 56(1);*
- The evidence of a witness so taken down shall be read over to the witness and shall be signed by him and by the magistrate, and the evidence so taken down and read over and signed as aforesaid is deemed to be a deposition: *Section 56(2);*
- The magistrate shall in all cases, other than criminal cases to which *Section 56,* applies, take notes in writing of the evidence, or of so much thereof as is material, in a book to be kept for that purpose, and the book shall be signed by the magistrate at the conclusion of each day's proceedings but, if the magistrate is from any cause unable to take the notes, they shall be taken by the clerk of the court under the magistrate's direction: *Section 57;*
- When the examination of all the witnesses for the prosecution is completed, the magistrate may either dismiss the charge and, if the accused is in custody, make an order for his release or he may call upon the accused for his defence as hereinafter provided: *Section 58;*
- Notwithstanding anything to the contrary in any other law, where the magistrate in conducting a preliminary inquiry is satisfied that all or any portion of the evidence to be produced by the prosecution consists of written statements with or without exhibits, the magistrate shall ascertain whether the accused wishes to:

- Object to any of the written statements being tendered in evidence: or S*ection 76(1)(a);*
- Submit that the written statements disclose insufficient evidence to put him on trial by jury for the offence with which he is charged: *Section 76(1)(b);*
- If the magistrate is satisfied, after hearing any objection or submission made pursuant to *paras. (1)(a)* or *(b),* that all or any portion of the evidence to be produced by the prosecution consists of written statements that satisfy the conditions mentioned in *Section 77,* with or without exhibits, the magistrate may take those written statements as evidence for the prosecution and, subject to the provisions of this division, make his determination, having regard to those written statements and any oral evidence given, whether or not to commit the accused person for trial before the High Court: *Section 76(2);*

- If the magistrate shall not dismiss the charge, he shall say to the accused these words or words to the like effect:

> *"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to do so 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. And I give you clearly to understand that you have nothing to hope from any promise of favour and nothing to fear from any threat that may have been held out to you to induce you to make any admission or confession of your guilt, but whatever you now say may be given in evidence on your trial notwithstanding such promise or threat."*

  and whatever the prisoner then says in answer thereto shall be taken down in writing and read over to him and shall be signed by the magistrate and kept with the depositions of the witnesses and shall be transmitted with them as hereinafter mentioned, but nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession or other statement made at any time by the person accused or charged that by law would be admissible in evidence against him: *Section 59;*

- After calling upon the accused for his defence, the magistrate shall say to the accused:

> *"I must warn you that, if this court should commit you for trial, you may not be permitted at the trial to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You may give those particulars now to this court or to the Attorney General not later than 7 days after the end of these committal proceedings."*

  or words to that effect and, if it appears to the court that the accused may not understand the meaning of the term "alibi," the court shall explain it to him, but the court is not required to give this warning in any case where it appears to the court that, having regard to the nature of the offence with which the accused is charged, it is unnecessary to do so: *Section 60(1)*;

- When he has committed the accused for trial, the magistrate shall record in writing the fact that the warning under subsection (1), was given: *Section 60(2);*
- The accused or his counsel or solicitor may then show cause why the magistrate should not commit him for trial and may call witnesses in his defence and their evidence shall be taken in the same manner and form as that of the witnesses for the prosecution and if duly taken, read over, and signed, are deemed to be depositions: *Section 61.*

Committal for trial

- When the accused has been heard and his witnesses (if any) examined, the magistrate shall either:
  - Dismiss the charge and if the accused is in custody make an order for his release: or *Section 62(a);*
  - Shall commit him for trial before the High Court that shall next be held after the committal: *Section 62(b);*

  but, if the day of committal is so near the day for the holding of the High Court that in the opinion of the magistrate it would not be practicable for the case to be tried by the High Court as aforesaid, it shall be lawful for him to commit the accused to the High Court next following such High Court as aforesaid.

Proceedings subsequent to committal

- Subject to *Section 64,* the magistrate may, upon committing any accused person for trial, bind by recognizance as hereinafter prescribed the prosecutor and all witnesses giving evidence to appear in the High Court before which the accused person is to be tried then and there to prosecute, or to prosecute and give evidence or to give evidence, as the case may be: *Section 63(1);*
- The magistrate shall, except where it is otherwise provided in this Act, cause the several recognizances so taken together with the written information (if any), the depositions, the statement of the accused and the recognizances of bail (if any) to be forthwith delivered to the Registrar: *Section 63(2);*
- Notwithstanding subsections (1) or (2), if any witness refuses to enter into or acknowledge such recognizance, the magistrate by his warrant may commit him to prison where he is to be safely kept until after the trial of the accused person, unless in the meantime the witness duly enters into the recognizance before the magistrate: *Section 63(3);*
- Where, at any time after the 13th October, 2000, a person is committed for trial before the High Court, and it appears to the magistrate holding the preliminary inquiry, after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has been examined before the magistrate, is unnecessary by reason of anything contained in any statement by the accused person, or of the evidence of the witness being merely of a formal nature, the magistrate shall:

- If the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him: *Section 64(1)(a);*
- If the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally upon notice given to him: and *Section 64(1)(b);*
- Shall transmit to the High Court a statement in writing of the names, addresses and occupations of the witnesses who are, or are to be treated as having been, bound over to attend the trial conditionally: *Section 64(1)(c);*

- Where a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Attorney General or the person committed for the trial may give notice, at any time before the opening of the sessions of the High Court, to the committing magistrate and at any time thereafter to the Registrar of the High Court that he desires the witness to attend the trial, and the magistrate or Registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his recognizance: *Section 64(2)*;
- The magistrate shall, on committing the accused person for trial, inform him of his right to require the attendance at the trial of any such witness and of the steps which he must take for the purposes of enforcing such attendance: *Section 64(3);*
- Any documents or articles produced in evidence before the magistrate by any witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this section and marked as exhibits shall, unless in any particular case the magistrate otherwise orders, be retained by the magistrate and forwarded with the depositions to the Registrar of the High Court: *Section 64(4)*;
- When the magistrate has committed the accused person for trial he shall, unless he admits such person to bail, as hereinafter provided, commit him by his warrant to the prison to which he may by law be committed, where he is to be safely kept until delivered in due course of law: *Section 65;*
- At any time after all the witnesses have been examined and before the first sitting of the High Court to which the accused is committed for trial, the accused may require, and shall be entitled to have, from the officer having custody of the depositions on which he has been committed, copies of those depositions on payment of a reasonable sum for the same not exceeding the rate of four cents for each folio of 100 words: *Section 74.*

ANTIGUA AND BARBUDA

The guiding legislation is the *Magistrate's Code of Procedure Act, Chap. 255.* However, this Act must be read conjunctively with the *Magistrate's Code of Procedure (Amendment) Acts, No. 3 of 1993, No. 8 of 1994, No. 13 of 2004, No. 7 of 2005 No. 2 of 2014* and *No. 2 of 2018:*

- All committal proceedings in respect of public prosecutions shall be instituted under the direction of the Director of Public Prosecutions[31]: *Section 42A(1);*

[31] Section 7 of the Magistrate's Code of Procedure (Amendment) Act No. 13 of 2004 amends the Magistrate's Code of Procedure Act CAP 255 by inserting sections 42A and 42B after section 42. Subsequently, section 2 and 3 of the Magistrate's Code of Procedure (Amendment) Act No. 7 of 2005 amends sections 42A & B of the Magistrate's Code of Procedure Act CAP 255.

- Committal proceedings shall be commenced by the filing of one or more written statements of witnesses in support of the charge; and a list of exhibits, if there are any exhibits which the prosecutor intends to produce in connection with the proceedings: *Sections 42A(2)(a),(b);*
- The prosecutor shall as soon as practicable cause the documents filed under subsection (2), to be served on the accused person: *Section 42A(3);*
- After the documents under *Section 42A(1),* have been served on the accused person and within such period as may be specified by a magistrate:
    - The accused may, in reply, file his own statement and any statement of his witnesses and a list of exhibits, if there are any exhibits which the accused person intends to produce in connection with the proceedings;
    - But failure by the accused person to file any documents or the lack of any such documents shall not, in itself, affect the power of the magistrate to proceed with and conclude the committal proceedings or to take any other action permitted by this Act: *Section 42B(1);*
- The court shall cause the reply filed under subsection (1), to be served on the prosecutor[32]: *Section 42B(2);*
- A magistrate holding committal proceedings may commit an accused person for trial by jury on a charge of an indictable offence if he is satisfied that either the charge supported by the evidence in the documents filed under *Section 42A(1),* alone or in conjunction with any documents filed under *Section 42B(1)*, establish or are likely to establish the indictable offence charged or an indictable offence of a like kind which is not otherwise within his jurisdiction to deal with summarily[33]: *Section 42C;*
- In committal proceedings a written statement by any person shall, if the conditions mentioned in subsection (2), are satisfied, be admissible as evidence to the like effect as oral evidence to the like effect by that person: *Section 71(1);*

  The following are the conditions referred to in subsection (1):
    - The statement purports to be signed by the person who made it: *Section 71(1)(a);*
    - The statement contains a declaration by that person 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 willingly stated in it anything which he knew to be false or did not believe to be true: and *Section 71(1)(b);*
    - 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[34]: *Section 71(1)(c);*

[32] Section 7 of the Magistrate's Code of Procedure (Amendment) Act No. 13 of 2004 amends the Magistrate's Code of Procedure Act CAP 255 by inserting sections 42A and 42B after section 42. Subsequently, section 2 and 3 of the Magistrate's Code of Procedure (Amendment) Act No. 7 of 2005 amends sections 42A & B of the Magistrate's Code of Procedure Act CAP 255.

[33] Section 7 of the Magistrate's Code of Procedure (Amendment) Act No. 13 of 2004 amends the Magistrate's Code of Procedure Act CAP 255 by inserting section 42C.

[34] Section 21 of the Magistrate's Code of Procedure (Amendment) Act No. 13 of 2004 amended section 71 of the Magistrate's Code of Procedure Act CAP 255.

- The magistrate may, on an application by the prosecution or the accused person, allow either of them to file documents additional to the documents referred to in *Sections 42A(1)* or *42B(1),* respectively, within such period as may be specified by the magistrate; and such documents shall be served on the other party and be treated in the same manner as the documents referred to in those sections[35]: *Section 71(3);*
    - Unless the magistrate commits the accused for trial under *Section 42C,* or the magistrate otherwise directs, so much of any statement as is admitted shall, be read aloud at the hearing, and if the magistrate directs, an oral account shall be given of so much of any statement as is not read aloud: *Section 71(4);*
    - Any document or object referred to as an exhibit and identified in a written statement tendered in evidence shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement: *Section 71(5);*
- The exhibits mentioned in the list produced by
    - The prosecutor pursuant to *Section 42A(2);*
    - The accused pursuant to *Section 42B;*

  shall at the hearing of the committal proceedings be duly marked and delivered into custody of the clerk to the magistrate, who shall retain them in safe custody under the direction of the magistrate and to be delivered to the High Court at the trial of the accused[36]: *Section 42D;*
- Where a person is charged with an indictable offence, the magistrate may during committal proceedings, from time to time adjourn the case and remand the accused person[37]: *Section 50;*
- At the conclusion of the committal proceedings, the magistrate may, subject to subsection (2), make any of the following orders:
    - Dismiss the charge and, if the accused person is in custody, make an order for his release: *Section 58(1)(a);*
    - Commit the accused person for trial by jury: *Section 58(1)(b);*
    - Commit the accused person to the High Court for sentencing, where the accused person indicates his intention to plead guilty to the charge: or *Section 58(1)(c);*
    - Make any other order in relation to the case, the charge or the accused person as provided for in this Act or any other law[38]: *Section 58(1)(d);*

[35] Section 21 of the Magistrate's Code of Procedure (Amendment) Act No. 13 of 2004 amends section 71 of the Magistrate's Code of Procedure Act CAP 255 by repealing subsection (3) and substituting a new subsection (3).
[36] Section 4 of the Magistrate's Code of Procedure (Amendment) Act No. 7 of 2005 amends the Magistrate's Code of Procedure Act CAP 255 by inserting section 42D.
[37] Section 15 of the Magistrate's Code of Procedure (Amendment) Act No. 13 of 2004 amends section 50 of the Magistrate's Code of Procedure Act CAP 255 by repealing it and substituting a new subsection 50.
[38] Section 17 of the Magistrate's Code of Procedure (Amendment) Act No. 13 of 2004 and section 8 of the Magistrate's Code of Procedure (Amendment) Act No. 2 of 2014 amends section 58 (1) of the Magistrate's Code of Procedure Act CAP 255.

Before making an order under subsection (1), the magistrate shall, on an application, give the prosecution or the accused person, as the case may be, an opportunity to show cause, by way of submission only, why the order should not be made[39]: *Section 58(2);*

- When the magistrate has committed the accused person for trial he shall, unless he shall admit such person to bail, as hereinafter provided, commit him by his warrant to the prison which he may by law be committed, to be there safely kept until delivered in due course of law: *Section 60;*
- At the conclusion of the committal proceedings and before the first sitting of the court to which the accused is committed for trial, the accused may require and shall be entitled to have from the officer having the custody of the same, copies of the depositions on which he has been committed on paying of a reasonable sum for the same not exceeding the rate of four cents for each folio of 100 words[40]: *Section 69.*

BELIZE

The guiding legislation is the *Indictable Procedure Act, Chap 96.* For the purpose of detailing the law on committal proceedings for Belize in this chapter, the *Indictable Procedure Act, Chap. 96, of the Laws of Belize (Revised Edition) 2011,* will be utilised. However, this must be read conjunctively with the *Indictable Procedure (Amendment) Act, No. 23 of 2017*.

- The examining magistrate may in his discretion:
  - Adjourn the hearing of the inquiry from time to time and remand the accused person, if required, until the next date fixed for the inquiry: *Section 32(1)(a);*
  - Order that no person other than the officers of the summary jurisdiction court, the persons engaged in the prosecution, and the accused person, and his attorney-at-law, if any, shall have access to or remain in the room or building in which the inquiry is being held, which shall not be deemed to be an open court, if it appears to him that the ends of justice will be best served by so doing: and *Section 32(1)(b);*
  - Regulate the course of the inquiry in any way appearing to him desirable and not inconsistent with this Act or any other law for the time being in force: *Section 32(1)(c);*
- A preliminary inquiry shall be held in the presence of the accused unless:
  - The accused so conducts himself as to render the continuance of the proceedings in his presence impracticable and the magistrate has ordered him to be removed: or *Section 32(2)(a);*
  - The accused is unable to be present for reasons of health but is represented by counsel and has consented to the preliminary inquiry being held or continued in his absence: *Section 32(2)(b);*

[39] Section 17 of the Magistrate's Code of Procedure (Amendment) Act No. 13 of 2004 amends section 58 (2) of the Magistrate's Code of Procedure Act CAP 255 by repealing it and substituting a new subsection 58 (2).
[40] Section 19 of the Magistrate's Code of Procedure (Amendment) Act No. 13 of 2004 amended section 69 of the Magistrate's Code of Procedure Act CAP 255.

- At least 14 days before the commencement of the preliminary inquiry the prosecutor shall give to the examining magistrate as well as to the accused, as far as practicable, copies of all written statements and depositions which the prosecutor wishes to tender in evidence at the inquiry: *Section 32(3).*

Committal for trial without consideration of evidence

- An examining magistrate shall, if satisfied that all the evidence for the prosecution is in the form of written statements, copies of which have been given to the accused at least fourteen days before the date of the inquiry, commit the accused for trial for the offence or offences with which he is charged, without consideration of the contents of those statements unless the accused or one of the accused, as the case may be, has requested the court to consider a submission that the statements disclose insufficient evidence to put that accused on trial for that offence or offences: *Section 33(1);*
- If the examining magistrate decides to commit the accused for trial under this section, he shall:
    - Give the accused person the warning as to alibi, in accordance with *Section 44,* below: *Section 33(2)(a);*
    - Append the following certificate to the committal bundle - "committed for trial without consideration of evidence pursuant to *Section 33,* of the *Indictable Procedure Act": Section 33(2)(b);*
    - Commit the accused for trial at the next practicable sitting of the Supreme Court in the district in which the committal proceedings are held: and *Section 33(2)(c);*
    - Make all ancillary and consequential orders regarding the attendance of the accused and the witnesses at the trial: *Section 33(2)(d)*;
- The warrant of commitment for trial under this Act shall be in the form set out in the Second Schedule: *Section 33(3).*

Committal for trial after the consideration of evidence by written statements only

- An examining magistrate, having ascertained that the accused or his legal representative wishes the court to consider a submission that there is insufficient evidence to put the accused on trial for the offence or offences with which he is charged, shall permit the prosecutor to make an opening address to the court, if he so wishes, before any evidence is tendered: *Section 34(1);*
- After such opening address, if any, the examining magistrate shall cause evidence to be tendered in accordance with *Sections 35, 36, 37, 38, 39, 40, 41* and *42,* below, that is to say by being read out loud, except where the court otherwise directs or to the extent that it directs that an oral account be given of any of the evidence: *Section 34(2);*
- The evidence tendered by the prosecution at the inquiry shall be in the form of documentary evidence only and it shall not be necessary to call any witnesses, and if any witnesses are called, they shall not be cross-examined: *Section 34(3)*;

- The examining magistrate may review any exhibits produced before the court and may take possession of them: *Section 34(4);*
- After the evidence has been tendered by the prosecutor, the examining magistrate shall hear any submission which the accused may wish to make as to whether there is sufficient evidence to put him on trial for any indictable offence, but the accused shall not be entitled to give any evidence on his own behalf at the inquiry or to call any witnesses: *Section 34(5);*
- The examining magistrate shall permit the prosecutor to make a submission in reply to any submission made by the accused in pursuance of subsection (5): *Section 34(6);*
- After hearing submissions from both sides, the examining magistrate shall:
    - Commit the accused for trial at the next practicable session of the Supreme Court for the district in which the inquiry is held, if he is of the opinion that there is sufficient evidence to put the accused on trial for the offence or offences with which he is charged or for any other indictable offence which is disclosed in the evidence tendered to the court: *Section 34(7)(a);*
    - Discharge the accused if the examining magistrate is not of the said opinion, and the accused is in custody for no other cause than the offence under inquiry. *Section 34(7)(b);*
- In every case where the examining magistrate decides to commit the accused for trial, he shall:
    - Cause the charge to be written down, if this has not already been done, and, if the accused is not represented by counsel, shall read the charge to him and explain it in ordinary language: *Section 34(8)(a);*
    - Give the accused the warning as to alibi in accordance with *Section 44:* and *Section 34(8)(b);*
    - Make all ancillary and consequential orders for the attendance of the accused and the witnesses at the trial: *Section 34(8)(c);*
- For the purpose of *Section 35,* a written statement complies with this section if:
    - The conditions falling within subsection (2), are met: and *Section 36 (1)(a);*
    - Such of the conditions falling within subsection (3), as apply are met: *Section 36(1)(b);*
- The conditions falling within this subsection are that:
    - The statement purports to be signed by the person who made it: *Section 36(2)(a);*
    - The statement contains a declaration by that person 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: *Section 36(2)(b);*
    - Before the statement is tendered in evidence a copy of the statement is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings: *Section 36(2)(c);*

- The conditions falling within this subsection are that:
    - If the statement is made by a person under 18 years old, it gives his age: *Section 36(3)(a);*
    - If it is made by a person who cannot read it, it is read to him before he signs it and is accompanied by a declaration by the person who so read the statement to the effect that it was so read: *Section 36(3)(b);*
    - If it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2)(c), is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it: *Section 36(3)(c);*
- So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud: *Section 36(4);*
- Any document or other object referred to as an exhibit and identified in a statement admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement: *Section 36(5);*
- Subsection (2), applies where a magistrate is satisfied that:
    - Any person in Belize is likely to be able to make on behalf of the prosecutor a written statement containing material evidence, or produce on behalf of the prosecutor a document or other exhibit likely to be material evidence, for the purposes of proceedings before a Magistrate's Court inquiring into an offence as examining magistrate: *Section 41(1)(a);*
    - The person will not voluntarily make the statement or produce the document or other exhibit: *Section 41(1)(b);*
- In such a case the magistrate shall issue a summons directed to that person requiring him to attend before a magistrate at the time and place appointed in the summons to have his evidence taken as a deposition or to produce the document or other exhibit: *Section 41(2);*
- If a magistrate is satisfied by evidence on oath of the matters mentioned in subsection (1), above, and also that it is probable that a summons under subsection (2), would not procure the result required by it, the magistrate may instead of issuing a summons issue a warrant to arrest the person concerned and bring him before a magistrate at the time and place specified in the warrant: *Section 41(3);*
- All statements, depositions and documents tendered in evidence at the inquiry by virtue of *Sections 35* to *40,* shall be authenticated by the examining magistrate by subscribing his signature thereon: *Section 42(1);*
- The examining magistrate shall cause all exhibits referred to in the statements of witnesses and tendered in evidence by the prosecution to be inventorised and labelled, or otherwise marked, so that they may be identified at the trial: *Section 42(2);*

- In every case where the examining magistrate commits the accused for trial under this Act, he shall say to the accused:

> *"I must warn you that you may not be permitted at your trial to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You may give those particulars now to this court or to the prosecutor not later than seven days from the end of these committal proceedings."*

or words to that effect and, if it appears to the court that the accused may not understand the meaning of the term "alibi", the court shall explain it to him:

Provided that the court shall not be required to give this warning in any case where it appears to the court that, having regard to the nature of the offence with which the accused is charged, it is unnecessary to do so: *Section 44.*

Committal for trial

- A person committed for trial, whether bailed or not, shall be entitled, at any reasonable time before the trial, to have copies of the depositions and of his own statement, if any, from the clerk of the examining magistrate or, if the documents relating to the inquiry have been transmitted by the examining magistrate as hereinafter provided, from the Registrar, on payment of a reasonable sum not exceeding three cents for each folio: *Section 46;*
- Where an accused person is committed for trial the examining magistrate shall:
  - Commit the accused in custody or remand him on bail (if the offence be bailable by him) to appear for trial at the Supreme Court: and *Section 47(1)(a);*
  - Cause a notice to be delivered to every witness whose statement or deposition has been tendered in evidence at the inquiry informing him of the day on which the sitting of the court will commence, and requiring him to appear at the court on such day to give evidence: *Section 47(1)(b);*
- Every witness to whom a notice has been delivered in pursuance of subsection (1) (b), who fails to attend at the court on the day specified in the notice, shall, without prejudice to the power of the court to issue a warrant for his arrest, be guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months: *Section 47(2).*

Proceedings subsequent to committal of accused person

- As soon as may be after the committal of the accused person, the examining magistrate shall transmit to the Registrar:
  - The original information, depositions of the witnesses, documentary exhibits thereto, and any recognizances entered into: and *Section 49(1)(a);*

- A certified copy of all the documents mentioned in *para. (a),* of this subsection for the use of the trial judge: *Section 49(1)(b);*

and he shall also transmit to the Director of Public Prosecutions a true copy of all the said documents, and in case of a capital offence provide a true copy of the said documents for each accused person;

- All exhibits, other than documentary exhibits, shall, unless the magistrate otherwise directs, be taken charge of by the police, who shall produce them at the trial: *Section 49(2);*
- If, after an accused person has been committed, the examining magistrate is satisfied on application or otherwise that the statement of any person who is able to give relevant evidence should be recorded, the magistrate may proceed to record the statement of such person, and if that person is able to attend, the magistrate shall have the same powers of compelling the attendance of a witness at a preliminary inquiry: *Section 50(1).*

GRENADA

The guiding legislation is the *Criminal Procedure Code, Chapter 72B.*

Discretionary powers of magistrate with respect to mode of holding inquiry

- The magistrate holding a preliminary inquiry may, in his or her discretion:
  - Give or refuse permission to the prosecutor, or his or her counsel, to address him or her in support of the charge, either by way of opening or summing up the case, or by way of reply upon any evidence which may be produced by the accused: *Section 101(a);*
  - Receive further evidence on the part of the prosecutor, after hearing any evidence given on behalf of the accused: *Section 101(b);*
  - Adjourn the hearing on the inquiry from time to time and change the place of hearing, if, from the absence of a witness, the inability of a witness who is ill to attend at the place where the magistrate usually sits, or any other reasonable cause, it appears desirable to do so, and may, from time to time, remand the accused if required:

    Provided that no remand shall be for more than 21 days, the day following that on which the remand is made being counted as the first day: *Section 101(c);*
  - Order that no person, other than the officers of the court, the persons engaged in the prosecution, and the accused and his or her counsel, if any, shall have access to or remain in the room or building in which the inquiry is held, if it appears to him or her that the ends of justice will be best answered by so doing: and *Section 101(d);*
  - Regulate the course of the inquiry in any way which may appear to him or her desirable, and which is not inconsistent with the provisions of this Code or of any other statute for the time being in force: *Section 101(e).*

Proceedings at preliminary inquiry

- When the accused is before a magistrate at a preliminary inquiry, the magistrate shall take the evidence of the witnesses called on the part of the prosecution: *Section 102(1);*
- The evidence of every witness shall be given in the presence of the accused; and the accused, or his or her counsel, shall be entitled to cross-examine each witness: *Section 102(2);*
- The evidence of every witness shall be taken down in writing by the magistrate in a legible hand, and on one side only of the paper, in the form of a deposition, and as nearly as possible in the witness' own words: *Section 102(3);*
- The deposition shall, at some time before the accused is called on for his or her defence, be read over to and signed by the witness and the magistrate; the accused, the witness and the magistrate being all present together at the time of the reading and signing: *Section 102(4);*
- Any witness who refuses, without reasonable excuse, to sign his or her deposition, may be committed by the magistrate holding the inquiry by a warrant to prison, there to be kept until after the trial, or until the witness signs his or her deposition before a magistrate:

  Provided that, if the accused person is afterwards discharged, any magistrate may order any such witness to be discharged: *Section 102(5);*
- The signature of the magistrate may be either at the end of the deposition of each witness, or at the end of several or of all the depositions, in such a form as to show that the signature is meant to authenticate each separate deposition: *Section 102(6);*
- After the examination of the witnesses on the part of the prosecution has been completed, and the depositions have been signed as aforesaid, the magistrate shall, unless he or she discharges the accused, address him or her in these words, or to the like effect:

  > *"Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing, and may be given in evidence against you at your trial": Section 103(1);*
- Whatever the accused then says in answer thereto shall be taken down in writing, as nearly as possible in the accused person's own words, and shall be signed by him or her, if he or she will, and by the magistrate, and kept with the depositions of the witnesses, and may, without further proof, be given in evidence at the trial: *Section 103(2);*
- The magistrate shall then ask the accused if he or she wishes to call any witnesses. Every witness called by him or her who testifies to any fact relevant to the case shall be heard, and his or her deposition shall be taken, signed and given in evidence in the same manner as the deposition of a witness for the prosecution: *Section 104(1);*

- If the accused calls no witnesses the magistrate shall state that fact on the depositions: *Section 104(2).*

Committing the accused for trial

- If, upon the whole of the evidence, the magistrate thinks that a sufficient case is made out to put the accused on his or her trial, he or she shall commit him or her for trial to the next sitting of the court:

  Provided always that if the court be then sitting, the magistrate may, with the consent of the accused, commit him or her for trial forthwith: *Section 106;*

- Every person who has been committed for trial, whether he or she is bailed or not, shall be entitled, at any reasonable time before the trial, to have copies of the depositions and of his or her own statement, if any, from the officer who has the custody thereof: *Section 107;*

- When any person is committed for trial, the magistrate holding the preliminary inquiry shall bind over every witness for the prosecution whose deposition has been taken, and every witness for the defence whose evidence is, in his or her opinion, material, to give evidence at the trial of the accused person before the court: *Section 108(1);*

- Whenever it appears to a magistrate that any person able to give material evidence either for or against the accused in respect of any indictable offence, is so dangerously ill, that it is not practicable to take his or her evidence according to the usual course of law, the magistrate, if he or she thinks fit, or any Justice of the Peace so authorised by any such magistrate, may take his or her deposition, first giving the prosecutor and the accused such reasonable notice as the case admits, that he or she intends to take it, specifying the time and place, and stating that the prosecutor and the accused will be at liberty to attend and cross-examine such person. Copies of the deposition shall be transmitted by the magistrate or by the Justice of the Peace, as the case may be, to the Registrar, and to the prosecutor and accused, or to the places of abode of the prosecutor and accused: *Section 109(1);*

- If the accused is in prison, the magistrate, by order in writing, may direct the gaoler to convey him or her to the place and at the time notified, and the gaoler shall convey him or her accordingly: *Section 109(2);*

- The recognizance may be either at the foot of the deposition or separate therefrom, and shall be acknowledged by the person entering into it, and be subscribed by the magistrate before whom it is acknowledged: *Section 108(2);*

- Any witness who, without reasonable excuse, refuses to enter into the recognizance may be committed by the magistrate by a warrant to the prison, there to be kept until after the trial or until the witness enters into such a recognizance as aforesaid before a magistrate:

  Provided that, if the accused is afterwards discharged, any magistrate may order the witness to be forthwith discharged: *Section 108(3).*

Proceedings subsequent to committal

- The magistrate shall as soon as may be after the committal of the accused, send to the Registrar the information, if any, the depositions of the witnesses, the documentary exhibits thereto, the statement of the accused, and all the recognizances entered into: *Section 110(1);*
- A copy of all such documents shall at the same time be transmitted by the magistrate to the Registrar, who shall immediately on receipt thereof transmit the same to the Attorney-General: *Section 110(2);*
- All exhibits, other than documentary exhibits, shall, unless the magistrate otherwise directs, be taken charge of by the police, and shall be produced by them at the trial: *Section 110(3);*
- After any person has been committed for trial, proof upon oath may be given, either by the prosecutor or the accused person, that any person who has not been examined as a witness is able to give evidence tending to prove either the guilt or the innocence of the accused: *Section 111(1);*
- Such proof shall, if practicable, be given before the magistrate by whom the accused was committed, and, if not so practicable, then before some other magistrate, and shall be taken in the form of a deposition: *Section 111(2);*
- The magistrate shall, if he or she is satisfied by the proof that it is for the interests of justice that the examination should take place, appoint a time and place for the examination of the person intended to be examined, and if the person is able to attend, the magistrate shall have the same powers for compelling his or her attendance as he or she has for compelling the attendance of witnesses at the preliminary inquiry: *Section 111(3)*.

GUYANA

The guiding legislation is the *Criminal Law (Procedure) Act, Chap. 10:01.* For the purpose of detailing the law on committal proceedings for Guyana in this chapter, the *Criminal Law (Procedure) Act, Chap. 10:01, revised edition 2012,* will be utilised.

- If, upon the whole of the evidence, the magistrate is of the opinion that a sufficient case is made out to put the accused person upon his trial for any indictable offence he shall, subject to *Section 9,* commit him for trial to the next practicable sitting of the court for the country in which the inquiry is held: *Section 71;*
- The magistrate holding a preliminary inquiry into an indictable offence may admit as evidence on the part of the prosecutor or the accused any statements, documents, writings, and other articles tendered to the court in the absence of the witness and cause them to be inventorised and labelled, or otherwise marked as exhibits: *Section 71A(1);*
- Notwithstanding anything contained in any written law but subject to *Section 9,* if the magistrate is of the opinion that a prima facie case is made out to put the accused

upon trial for any indictable offence on a consideration of the statements, documents, writings and other articles admitted as evidence on the part of the prosecutor or the accused, he may commit the accused person for trial for the offence: *Section 71A(2);*

- The magistrate shall not commit an accused for trial for the offence:
    - Where he is not represented by an attorney-at-law;
    - Where he is represented by an attorney-at-law, if the attorney-at-law requests the court to consider that the submission that the statements disclose insufficient evidence to put the accused on trial for the offence: *Section 71A(3);*
- Where on consideration of any statements, documents, writings and other articles and on consideration of any submissions made on behalf of the accused person, the magistrate is of opinion that a prima facie case is not made out to put the accused person upon his trial for any indictable offence, he may discharge him and in that case any recognizance taken in respect of the charge shall become void: *Section 71A(4);*
- In addition to any statements, documents, writings and other articles tendered to the court that may be admissible as evidence under this section, the magistrate:
    - May on his own motion or on an application by any party to the proceedings, require any witness to attend before him and give evidence: and *Section 71A(5)(a);*
    - Shall allow any party to the proceedings to cross-examine the witness: *Section 71A(5)(b);*

  and the evidence shall be considered for the purposes of this section to ascertain whether the prosecution has made out a prima facie case;
- It shall be the duty of the magistrate holding any preliminary inquiry to make or cause to be made any local inspection the circumstances of the case require; and, in any case of any serious injury to person, to cause the body of the person injured to be examined by some duly qualified medical practitioner, if one can be had, and, if not, then by the most competent person that can be obtained, if one can be had, if not, then by the deposition of the medical practitioner or other person shall afterwards, if necessary, be taken: *Section 61(1);*
- Every medical practitioner or other person aforesaid who refuses or neglects, without reasonable excuse, to comply with any order or direction of a magistrate given under this section shall be liable to a fine of nine thousand seven hundred and fifty dollars: *Section 61(2);*
- A magistrate holding a preliminary inquiry may, in his discretion:
    - Give or refuse permission to the prosecutor to address him in support of the charge, either by way of opening or summing up the case, or by way of reply upon any evidence produced by the accused person: *Section 62(a);*
    - Receive further evidence on the part of the prosecutor, after hearing any evidence given on behalf of the accused person: *Section 62(b);*
    - Adjourn the hearing of the inquiry from time to time and change the place of hearing, if, from the absence of the witness, the inability of the witness

who is ill to attend at the place where the magistrate usually sits, or any other reasonable cause, it appears desirable to do so, and may remand the accused person if required, but the remand shall not be for more than eight days, the day following that on which the remand is made being counted as the first day: *Section 62(c);*

- Order that no person, other than the officers of the Magistrate's Court, the persons engaged in the prosecution, and the accused person and his counsel (if any), shall have access to or remain in the room or building in which the inquiry is being (which shall not be deemed an open court) if it appears to him that the ends of justice will be best answered by so doing: and *Section 62(d);*
- Regulate the course of the inquiry in any way appearing to him desirable and not inconsistent with this Act or any other written law for the time being in force: *Section 62(e)*.

At the preliminary inquiry

- When an accused person is before a magistrate holding a preliminary inquiry, the magistrate shall take the evidence of the witnesses on the part of the prosecutor: *Section 64(1);*
- The evidence of those witnesses shall be given in the presence of the accused person; and the accused person is entitled to cross-examine them: *Section 64(2);*
- The evidence of each witness shall be taken down in writing in the form of a deposition, and as nearly as possible in the witness's own words: *Section 64(3);*
- The deposition shall, at some time before the accused person is called on for his defence, be read over to and signed by the witness and the magistrate; the accused person, the witness and the magistrate being all present together at the time of the reading and signing: *Section 64(4);*
- Any witness who refuses, without reasonable excuse, to sign his deposition may be committed by the magistrate holding the inquiry by a warrant to prison, there to be kept until after the trial, or until the witness signs his deposition before a magistrate:

  Provided that, if the accused person is afterwards discharged, any magistrate may order the witness to be discharged: *Section 64(5);*
- The signature of the magistrate shall be at the end of the deposition for each witness, in such form as to show that it is meant to authenticate the deposition: *Section 64(6);*
- After the examination of the witnesses called on the part of the prosecutor has been completed, and after the depositions have been signed as aforesaid, the magistrate, if of the opinion that the evidence has established a prima facie case against the accused, shall address him in these words, or to the like effect:

  > *"Do you wish to say anything in answer to the charge? You are not obliged to say anything 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": Section 65(1);*

- Whatever the accused person then says in answer thereto shall be taken down in writing, as nearly as possible in the accused's own words, and shall be signed by the accused person, if he will, and by the magistrate, and kept with the depositions of the witnesses and dealt with as hereinafter mentioned: *Section 65(2);*
- After the proceedings required by the preceding section are completed, the magistrate shall ask the accused person if he wishes to call any witnesses: *Section 66(1);*
- Every witness called by the accused person who testifies to any relevant to any fact relevant to the case shall be heard, and his deposition shall be taken, signed, and authenticated in the same manner as the deposition of a witness for the prosecution: *Section 66(2);*
- The magistrate shall cause all writings and other articles exhibited by the witnesses, or any of them, to be inventorised and labelled, or otherwise marked, in the presence of the person producing them, so that they may be identified at the trial: *Section 67;*
- Where any person able to give material evidence in respect of an indictable offence is from illness unable to attend at the place where the magistrate usually sits, the magistrate of the district within which such person is shall take his deposition at the place where he is, notwithstanding that the offence was not committed in the district of that magistrate: *Section 68(1);*
- Every person committed for trial, whether bailed or not, shall not be entitled, at any reasonable time before the trail, to have copies of the depositions and of his own statement (if any) from the clerk of the magistrate's court, or, if the documents relating to the inquiry have been transmitted by the magistrate as hereinafter provided, from the Registrar: *Section 73;*
- When an accused person is being committed for trial, the magistrate holding the preliminary inquiry shall bind over every witness for the prosecution whose deposition has been taken, and every witness for the defence whose evidence is, in his opinion material, to give evidence at the trial of the accused person before the court: *Section 74(1);*
- Every recognizance so entered into shall specify the forename and surname of the person entering into it, his occupation or profession (if any), the place of his residence, and the name and number (if any) of any street in which it is: *Section 74(2);*
- The recognizance may be either at the foot of the deposition or separate therefrom, and shall be acknowledged by the person entering into it and subscribed by the magistrate before whom it is acknowledged: *Section 74(3);*
- Any witness who refuses without reasonable excuse to enter into the recognizance may be committed to prison by the warrant of the magistrate holding the inquiry, there to be kept until after the trial, or until the witness enters into the recognizance before a magistrate:

  Provided that, if the accused person is afterwards discharged, any magistrate may order the witness to be discharged: *Section 74(4);*
- On binding over a witness, the magistrate shall deliver or cause to be delivered to him

a notice in writing informing him of the day on which the sitting of the court will commence, and of the manner in which he can ascertain the day fixed for the trial of the cause: *Section 74(5);*

- The following documents shall, as soon as may be after committal of the accused person, be transmitted by the magistrate to the Registrar, that is to say, the original information (if any), depositions of the witnesses, the documentary exhibits thereto, the statement of the accused person, and the recognizances entered into: *Section 75(1);*
- A copy of those documents shall at the same time be transmitted by the magistrate to the Director of Public Prosecutions: *Section 75(2);*
- All exhibits, other than documentary exhibits, shall, unless the magistrate otherwise directs, be taken charge of by the police, who shall produce them at the trial: *Section 75(3);*
- Other sections to note include:
    - Restriction on publication of report of preliminary inquiry: *Section 63;*
    - Proceedings in camera: *Section 63A.*

Sexual Offences

In **Guyana**, there is a separate committal process for persons charged with sexual offences. The guiding legislation in relation to sexual offences is the *Sexual Offences Act, Chap. 8:03.* For the purpose of detailing the law on committal proceedings for sexual offences for Guyana in this chapter, the First Schedule in the *Sexual Offences Act, Chap. 8:03, revised edition 2012,* will be utilised.

Procedure for committal or discharge on consideration of the evidence

- Where:

    The accused or one of the accused does not have an attorney-at-law acting for the accused in the case: or *para. 14(1)(a);*

    - The attorney-at-law of the accused or one of the accused, as the case may be, has requested the court to consider a submission that there is insufficient evidence to put the accused on trial by jury for the offence charged;

    the magistrate shall consider all the evidence tendered and the submissions made under subparagraph (2), and then determine whether, in the magistrate's opinion, there is sufficient evidence to commit the accused for trial or discharge to accused if the magistrate is of the opinion that there insufficient evidence;
- Where the condition under subparagraphs (1)(a) or (b), exists, the magistrate shall follow the following procedure:
    - The magistrate may permit the prosecutor to make an opening address to the court, if the prosecutor so wishes, before any evidence is tendered: *para. 14(2)(a);*

- After the prosecutor's opening address, if any, the magistrate shall cause the evidence to be tendered in accordance with *paras. 6(2), 7(2), 8(2)* and *9(3),* that is to say by being read out aloud, except where the court otherwise directs or to the extent that it directs that a summary or description shall be given of so much of any statement as is not read aloud: *para. 14(2)(b);*
- The court may view any exhibits produced before the court and may take possession of them: *para. 14(2)(c);*
- After the evidence has been tendered the court shall hear any submission which the accused may wish to make as to whether there is insufficient evidence to put the accused on trial by jury for any indictable offence under this Act: *para. 14(2)(d);*
- The court shall permit the prosecutor to make a submission in reply to any submission made by the accused or where the accused has not made any submission but the magistrate is nevertheless minded not to commit the accused for trial: *para. 14(2)(e).*

Countries with new committal proceedings legislation and transitional provision allowing the use of older legislation in certain instances

BARBADOS

The guiding legislation is the *Magistrate's Courts Act, Chap. 116A.* For the purpose of detailing the law on committal proceedings for Barbados in this chapter, the *Magistrate's Courts Act, Chap. 116A,* will be utilised. However, this Act must be read conjunctively with the *Magistrate's Courts (Amendment) Acts, 2016-15* and *2017-14;* and the *Magistrate's Courts (Criminal Procedure Rules) 2001.*

Procedure for committal proceedings for indictable offences as introduced in the Magistrate's Courts (Amendment) Act, No. 15 of 2016, Section 14, of the *Magistrate's Courts (Amendment) Act, No. 15 of 2016,* provides that:

- Subject to subsection (2), this Act shall apply to committal proceedings for indictable offences committed after the commencement date;
- From the commencement date, committal proceedings for an existing charge shall only be conducted in accordance with the provisions of this Act where at or after the commencement date the committal proceedings for the existing charge has not commenced;
- An accused person for whom committal proceedings have commenced prior to the commencement date may, in respect of an existing charge, make an application to the examining magistrate for those committal proceedings to be continued in accordance with the provisions of this Act;
- Where an application under subsection (3), is granted by the examining magistrate any written statements made prior to the commencement date shall be treated as

written statements which were made in accordance with *Sections 17A, 18A* or *18B,* as the case may be;

- Where the accused person does not make a written submission in accordance with subsection (3), the provisions of this Act shall not apply to the committal proceedings in respect of that accused person.

General nature of committal proceedings[41]

- An examining magistrate shall sit in open court while presiding over committal proceedings, to consider whether a prima facie case has been established for the committal of a person accused of an indictable offence for the trial of that offence by the High Court, except where[42]:
  - An enactment contains an express provision to the contrary;
  - It appears to him that in respect of the whole or any part of the committal proceedings that the ends of justice would not be served by his sitting in open court;
- Committal proceedings and any determination made in committal proceedings by an examining magistrate shall be given in the presence of the accused person, but the examining magistrate may allow the committal proceedings to proceed or be completed in the absence of the accused person if:
  - He considers that by reason of the disorderly conduct of the accused person before him it is not practicable for the evidence to be given in the presence of that accused person;
  - He considers it necessary for the purposes of receiving oral evidence in a matter to which *Section 133,* applies;
  - The accused person cannot be present for reasons of health, but is represented by an attorney-at-law and has consented in writing to the evidence being given in his absence: *Section 17(1).*

Evidence in committal proceedings

Subject to *Section 18B,* for the purposes of committal proceedings, evidence with or without exhibits, before an examining magistrate shall consist of written statements, whether for the prosecution or the defence, and these written statements shall be admissible as evidence in the same manner as oral evidence given by a person where the written statement:

- Is prepared from a statement which was recorded, whether in writing or by electronic means, a member of the Royal Barbados Police Force or an attorney-at-law[43]: *Section 17A(1)(a);*

[41] Barbados- Magistrate's Courts (Amendment) Act, No. 15 of 2016, section 2 deletes the definition of committal proceedings in the Magistrate's Court Act, Cap. 116A. The substituted definition is as follows: 'committal proceedings" means proceedings held before an examining magistrate to consider whether a prima facie case has been established for the committal of a person accused of an indictable offence for the trial of that offence by the High Court.

[42] Section 3 of the Magistrate's Courts (Amendment) Act, No. 15 of 2016 deletes the deletes and replaces section 17 of the Magistrate's Court Act, Cap. 116A

[43] Section 4 of the Magistrate's Courts (Amendment) Act No. 15 of 2016 amends the Magistrate's Courts Act CAP 116A by inserting section 17A. Magistrate's Courts (Amendment) Act, No. 14 of 2017 further amends section 17A.

- Purports to be signed by the person who made it: *Section 17A(1)(b);*
- Contains a declaration or statement by the person who made it, stating that the written statement is true to the best of his knowledge and belief: and *Section 17A(1)(c);*
- Contains a declaration by the person who made it stating that he made the written 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: *Section 17A(1)(d);*

- Where a written statement to which subsection (1), applies:
  - Is made by a person under the age of 18, it shall state or give the age of that person: *Section 17A(2)(a);*
  - Is made by the accused person, it shall contain a declaration or statement stating that he made the written statement knowing that, if it were tendered in evidence, he may be liable to be committed for prosecution by the High Court: *Section 17A(2)(b)*;
  - Is made by a person who cannot read, it shall be read to him before he signs it, and that written statement shall be accompanied by a declaration by the person who read the written statement, and that declaration shall state that the written statement was read to the person who made the written statement: or *Section 17A(2)(c);*
  - Makes reference to any other document as an exhibit, the copy of the written statement given to the examining magistrate or to any other party to the proceedings under subsection (3), must 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 thereof: *Section 17A(2)(d);*
- Before a written statement tendered in evidence in accordance with subsection (1), is used in committal proceedings; an examining magistrate shall ensure that:
  - A copy of the written statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the committal proceedings: and *Section 17A(3)(a);*
  - None of the other parties object to the written statement being tendered in evidence under this section: *Section 17A(3)(b);*
- Any document or 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 written statement: *Section 17A(4);*
- Notwithstanding subsection (1), nothing shall prevent the accused person or his attorney-at-law from making a submission to the examining magistrate that the evidence is not sufficient to commit the accused person to the High Court for the trial of the alleged indictable offence, and if any such submission is made, the same shall be taken into consideration by the examining magistrate for the purposes of *Section 19*, and where a person is not represented by an attorney-at-law the examining magistrate shall inform the accused of his right under this subsection: *Section 17A(5);*

- A person whose written statement is tendered in evidence under this section shall be treated for the purposes of *Section 30,* as a witness who has been examined by the examining magistrate: *Section 17A(8);*
- The examining magistrate presiding over committal proceedings shall sign:
  - Every written statement tendered to the court or deposition made by the court: and *Section 18D(a);*
  - Every document tendered as an exhibit: *Section 18D(b);*
- Notwithstanding *Section 17A,* an examining magistrate may:
  - After considering the written statements: *Section 18A(1)(a);*
  - On application by the accused person: *Section 18A(1)(b);*
  - On application by any other party to the committal proceedings: or *Section 18A(1)(c);*
  - Upon hearing a submission by the accused made in accordance with *Section 18B,* or otherwise: *Section 18A(1)(d);*

  authorise or require the giving or taking of oral evidence at the committal proceedings from any person other than the accused, whether or not a written statement from that person has been tendered in evidence, if he is satisfied that oral evidence from that person is necessary in the circumstances of the case in order for a determination to be made for the purposes of *Section 19;*
- Where any person, other than the accused person, gives oral evidence in committal proceedings before an examining magistrate that oral evidence, given under oath, may be subject to cross-examination: *Section 18A(2);*
- Oral evidence given under this section shall be recorded, whether in writing or by electronic means, and the depositions prepared from the oral evidence shall be read over to the person giving the oral evidence and signed by him and signed by the examining magistrate: *Section 18A(3);*
- Where an examining magistrate pursuant to subsection (1), needs to hear oral evidence from any person he may issue a summons or a warrant, as the case may be, to cause that person to attend before him to give oral evidence in the committal proceedings: *Section 18A(6);*
- An accused person may at his option:
  - Tender in evidence his own written statement: *Section 18B(1)(a);*
  - Elect to make an unsworn statement: *Section 18B(1)(b);*
  - Give oral evidence: or *Section 18B(1)(c);*
  - Remain silent: *Section 18B(1)(d);*
- Where an accused person elects to give oral evidence pursuant to subsection (1), the magistrate shall, before taking that oral evidence, caution the accused person in the words set out in *rule 22(2),* of the *Magistrate's Courts (Criminal Procedure) Rules, 2001 (S.I. 2001 No. 98)* or words to like effect: *Section 18B(2);*

> *"You will have an opportunity to give evidence on oath before me and to call witnesses. But first I am going to ask you whether you wish to say anything in answer to the charge. You need not say anything unless you wish to do so. Anything you say will be taken down and may be given in evidence at your trial. You should take no notice of any promise or threat which any person may have made to persuade you to say anything": rule 22(2) - Magistrate's Courts (Criminal Procedure) Rules, 2001, revised edition 2007;*

- Oral evidence given by the accused person pursuant to subsection (1), shall be:
  - Recorded, whether in writing or by electronic means: *Section 18B(3)(a);*
  - Read over to the accused person: *Section 18B(3)(b);*
  - Signed by the accused person and signed by the examining magistrate: *Section 18B(3)(c);*
  - Kept with the written statements, or depositions, if any, of the witnesses: and *Section 18B(3)(d);*
  - Transmitted in accordance with *Section 23,* to the Director of Public Prosecutions: *Section 18B(3)(e);*

  and may, upon trial of the accused person, be admitted in evidence without further proof thereof;
- Where the accused person elects not to give oral evidence or not to tender a written statement, he or his attorney-at-law shall, at the commencement of the proceedings, notify the examining magistrate, the prosecution and any other party to the committal proceedings, whether in writing or otherwise, of this election: *Section 18B(4);*
- For the purposes of committal proceedings, the prosecution shall make available to all other parties to a committal proceedings copies of the written statements or any other documents which are intended for consideration at the committal proceedings for the offence: *Section 18C(1);*
- For the purposes of committal proceedings, the accused person may make available to the prosecution or to any other party to a committal proceeding such written statements or other documents as the accused person intends to use for consideration at the committal proceedings for the offence: *Section 18C(2);*
- Subject to subsection (4), written statements or other documents referred to in subsections (1) or (2), shall be served on a party referred to in subsections (1) or (2), not less than 7 clear days before the sitting of the examining magistrate at the committal proceedings, or any adjournment thereof, for which those written statements or documents are to be considered: *Section 18C(3);*
- An examining magistrate may:
  - In his discretion as regards any written statement or document to be considered in committal proceedings, vary the time stated or given by subsection (3): or *Section 18C(4)(a);*
  - On the application of any party to the committal proceedings, where he is satisfied that the party making the application has not had adequate time

to consider the written statements or documents, adjourn the committal proceedings for such a period of time as he considers appropriate in the circumstances: *Section 18C(4)(b);*

- Where the examination of the witnesses called on behalf of the prosecution has been completed, and before any presentation by the accused person, where he so elects, the examining magistrate shall address the accused person in the words set out in rule 22(4), of the *Magistrates' Courts (Criminal Procedure) Rules, 2001 (S.I. 2001 No. 98)* or with words of like effect: *Section 18F(1);*

  > *"I must warn you that if I commit you for trial you may not be permitted at that trial to give evidence of an alibi or to call witnesses in support of an alibi unless you give this court particulars of the alibi and of the witnesses. You may give those particulars now or to the prosecutor not later than 7 days from the end of these committal proceedings."- rule 22(4)- Magistrate's Courts (Criminal Procedure) Rules, 2001, revised edition 2007;*

- The examining magistrate shall not be required to give the warning in subsection (1), in any case where it appears to him, having regard to the nature of the offence with which the accused person is charged, that it is unnecessary to do so: *Section 18F(2);*

- Where the examining magistrate has given the accused person the warning required by subsection (1), the examining magistrate shall explain the provisions of *Section 18G,* to the accused and where the accused person seeks leave to file the notice of the defence of an alibi in accordance with *Section 18G,* the examining magistrate shall ensure that the accused person understands the meaning of the terms "seven clear days" and "alibi", as well as the provisions of *Section 18G(2): Section 18F(3);*

- An accused person who intends to proffer an alibi as his defence at the trial of the offence shall give notice of the defence of an alibi at the committal proceedings for that offence, and where the accused person does not give notice of the defence of an alibi, he shall not be permitted to raise that defence at the trial for that offence: *Section 18G(1);*

- A notice of the defence of an alibi referred to in subsection (1), shall include:

  - The name and address of the witness, or, if the name or address is not known to the accused at the time, he gives the notice any information in his possession which might be of material assistance in finding the witness: and *Section 18G(2)(a);*

  - Details of the alibi, such as the date, time, location, and specific information showing that the accused person was at a place or number of places at the time of the commission of the offence: *Section 18G(2)(b);*

- Without prejudice to subsection (1), accused person may with leave from the examining magistrate file notice of the defence of an alibi within seven clear days from the end of the committal proceedings, and where the accused person is granted leave to file a notice of the defence of an alibi, that notice of the defence of an alibi shall be forwarded to:

- The examining magistrate: and *Section 18G(3)(a);*
- The Director of Public Prosecutions: *Section 18G(3)(b);*

- An examining magistrate shall, after the examination and consideration of the written or oral statements, including any written or oral statement of the accused person, as well as any exhibits or any other evidence presented to him, make a determination in respect of the committal proceedings and he may[44]:
  - Where he is of the opinion, that there is sufficient evidence to put the accused person on trial by jury for an indictable offence, commit the accused person for trial at the next sitting of the High Court: or *Section 19(1)(a);*
  - Where he is of the opinion, that there is insufficient evidence to put the accused person on trial by jury for an indictable offence, and the accused is in custody for no other cause than the offence under his consideration, discharge him: *Section 19(1)(b);*
- Subject to *Section 5,* of the *Bail Act, Chap. 122A,* an examining magistrate may commit an accused person for trial:
  - By committing him to custody, to be safely kept until delivered by due course of law for trial: or *Section 19(2)(a);*
  - By granting him bail and directing him to appear before the High Court for trial but where his release on bail is conditional on his providing one or more sureties, the examining magistrate shall:
    (i) in accordance with *Section 14,* of the *Bail Act, Chap. 122A,* fix the amount in which a surety is to be bound with a view to his entering into his recognizance in accordance with subsections (2), (3), (4) and (5), of *Section 14,* of the *Bail Act, Chap. 122A:* and *Section 19(2)(b)(i);*
    (ii) commit the accused to custody in accordance with *para. (a),* until the conditions of his bail are met: *Section 19(2)(b)(ii);*
- An examining magistrate who commits an accused person for trial or sentence shall, within 14 clear days after the end of the committal proceedings, transmit to the Director of Public Prosecutions and the Registrar the written statements, depositions or exhibits tendered under *Sections 17A, 18A* or *18B,* in addition to any other relevant or prescribed documents[45]: *Section 23;*
- The examining magistrate shall bind each witness whose written statements were tendered in committal proceedings, whether or not that person was examined before him, other than the accused person and any witness merely to the character of the accused, by a recognizance to attend and give evidence before the High Court and he shall bind the prosecutor by a recognizance to prosecute the accused before that court: *Section 30(1);*

[44] Section 6 of the Magistrate's Courts (Amendment) Act No. 15 of 2016 amends the Magistrate's Courts Act CAP 116A by deleting and replacing section 19 in its entirety.
[45] Section 9 of the Magistrate's Courts (Amendment) Act No. 15 of 2016 amends the Magistrate's Courts Act CAP 116A by deleting and replacing section 23 in its entirety.

- Where it appears to the examining magistrate, after taking into account any representations made by the accused person or prosecutor, that the attendance at the High Court of any witness examined before him is unnecessary by reason of any written statement or statement by the accused person or of the accused person having admitted before the examining magistrate the truth of the charge or of the evidence of the witness being merely formal, the examining magistrate shall:
    - If the witness has not already been bound over, bind him over to attend the High Court conditionally, that is to say, on notice being given to him and not otherwise: *Section 30(2)(a);*
    - If the witness has already been bound over, direct that he shall be treated as having been bound over to attend the trial conditionally as aforesaid: *Section 30(2)(b);*
- An examining magistrate on committing any accused person for trial shall inform him of his right to require the attendance at the trial of any witness bound over, or treated as bound over conditionally, and of the steps that he must take for enforcing the attendance: *Section 30(3);*
- Where any witness. on being required to enter into a recognizance under this section, refuses to do so, the examining magistrate may commit him to custody until after the trial of the accused person or until he sooner enters into the recognizance; but where the examining magistrate does not commit the accused person for trial or sentence, he shall release the witness": *Section 30(4);*
- Where under *Sections 52(3)* or *(7),* a magistrate having begun to inquire into an information as an examining magistrate proceeds to try the information summarily then subject to *Sections 17A, 18A, 18B* and *133(3),* any evidence already given before the magistrate as written statements or otherwise shall be deemed to have been given in and for the purposes of the summary trial"[46]: *Section 55.*

Committal for sentence

- Except where the charge is one of high treason, treason or murder, where an accused person in any written or oral statement made to the examining magistrate says or admits that he is guilty of the charge, then the examining magistrate shall commit him for sentence, and, as the case may be, subsections (2) and (3), of *Section 19,* shall apply"[47]: *Section 21;*
- Some other sections to note:
    - Witness statements and the trial of the accused: *Section 18E;*
    - Bail and the accused person after the committal proceedings[48]: *Section 20;*

[46] Section 11 of the Magistrate's Courts (Amendment) Act No. 15 of 2016 amends the Magistrate's Courts Act CAP 116A by deleting and replacing section 55 in its entirety.
[47] Section 8 of the Magistrate's Courts (Amendment) Act No. 15 of 2016 amends the Magistrate's Courts Act CAP 116A by deleting and replacing section 21 in its entirety.
[48] Section 7 of the Magistrate's Courts (Amendment) Act No. 15 of 2016 amends the Magistrate's Courts Act CAP 116A by deleting and replacing section 20 in its entirety.

- *Section 12,* of the *Magistrate's Courts (Amendment) Act, No. 15 of 2016,* which repealed *Section 132,* of the *Magistrate's Courts Act, Chap. 116A;*
- *Section 13,* of the *Magistrate's Courts (Amendment) Act, No. 15 of 2016,* which amends *Section 136,* the *Magistrate's Courts Act, Chap. 116A,* by deleting the words "under *Section 132,*" where they appear and substituting the words "under *Sections 17A* or *18B.*"

BARBADOS

The procedure before the *Magistrate's Courts (Amendment) Act, No. 2016-15.*

The guiding legislation is the *Magistrate's Courts Act, Chap. 116A,* and the *Magistrate's Court (Criminal Procedure Rules) 2001.* For the purpose of detailing the law on committal proceedings for Barbados under this heading, the *Magistrate's Courts Act, Chap. 116A,* and the *Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007,* will be utilised.

Committal on consideration of evidence

- Committal proceedings shall be held without undue delay: *rule 19 - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- An examining magistrate may, in his discretion,
  - Change the place of hearing if *rule 20(a):*
    (i) the absence of a witness is due to the inability of the witness who is too ill to attend at the place where the magistrate usually sits: or *rule 20(b)(i);*
    (ii) for any other reasonable cause, it appears desirable to do so: *rule 20(b)(ii);*

    and may remand the accused person if necessary; but the remand shall not be more than eight days, the day following that on which the remand is made being counted as the first day;
  - Receive further evidence on the part of the prosecutor after hearing any evidence given on behalf of the accused person: and *rule 20(c);*
  - Regulate the course of the enquiry in any way appearing to him desirable and not inconsistent with the provisions of the Act or of any other Act for the time being in force: *rule 20(d);*
- An examining magistrate shall sit in open court except where any enactment contains an express provision to the contrary and where it appears to him as respects to the whole or any part of the committal proceedings that the ends of justice would not be served by his sitting in open court: *Section 17(1) - Magistrate's Courts Act, Chap. 116A;*
- Subject to subsection (3), and *Section 133,* evidence given before an examining magistrate shall be given in the presence of the accused, and the defence shall be at liberty to put questions to any witness at the inquiry: *Section 17(2) - Magistrate's Courts Act, Chap. 116A;*

- An examining magistrate may allow evidence to be given before him in the absence of the accused if:
    - He considers that by reason of his disorderly conduct before him it is not practicable for the evidence to be given in his presence: or *Section 17(3)(a) - Magistrate's Courts Act, Chap. 116A;*
    - The accused cannot be present for reasons of health, but is represented by an attorney-at-law and has consented in writing to the evidence being given in his absence: *Section 17(3)(b) - Magistrate's Courts Act, Chap. 116A*[49]*;*
- A magistrate inquiring into an offence shall as examining magistrate shall cause the evidence of each witness, including the evidence of the accused, but not including any witness of the accused merely to his character, to be put into writing; and, as soon as may be after the examination of the witness, shall cause his deposition to be read to him in the presence and hearing of the accused and shall require the witness to sign the deposition[50]: *rule 21(2) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- The depositions shall be authenticated by a certificate signed by the examining magistrate: *rule 21(4) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- Where the accused is not represented by an attorney-at-law, before a statement made in writing by or taken in writing from a child is received under *Section 133(1),* of the Act, the magistrate shall cause the effect of that provision to be explained to the accused in ordinary language and, if the defence does not object to the application of that provision, shall inform him that he may ask questions about the circumstances in which the statement was made or taken: *rule 21(5) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- Where it appears to an examining magistrate that the conditions mentioned in subsection (2), are satisfied, a written statement by any person is admissible as evidence to the like extent as oral evidence to the like effect by that person: *Section 132(1) - Magistrate's Courts Act, Chap. 116A;*
- The conditions that must be satisfied for the purposes of subsection (1), are:
    - The statement purports to be signed by the person who made it: *Section 132(2)(a) - Magistrate's Courts Act, Chap. 116A;*
    - The statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief, and that he made the statement

[49] Barbados - Magistrate's Courts (Criminal Procedure) Rules, 2001 revised edition 2007, rule 21(3). Where the evidence has been given in the absence of the accused under section 17(3) of the Act, it shall be recorded on the deposition of the witness; and the deposition need not be read in the presence and hearing of the accused.

[50] Barbados - Magistrate's Courts (Criminal Procedure) Rules, 2001 revised edition 2007, rule 21(3). Where the evidence has been given in the absence of the accused under section 17(3) of the Act, it shall be recorded on the deposition of the witness and the deposition need not be read in the presence and hearing of the accused.

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: *Section 132(2)(b) - Magistrate's Courts Act, Chap. 116A;*

- 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 *Section 132(2)(c) - Magistrate's Courts Act, Chap. 116A;*
- None of the other parties, before the statement is tendered in evidence at the enquiry, objects to the statement being so tendered under this section: *Section 132(2)(d) - Magistrate's Courts Act, Chap. 116A;*

- *Paras. (a), (b)* and *(c),* of this subsection shall apply to any written statement tendered in evidence:
  - If the statement is made by a person under the age of 18, it shall give the age of that person: *Section 132(3)(a) - Magistrate's Courts Act, Chap. 116A;*
  - If it is made by a person who cannot read, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read: and *Section 132(3)(b) - Magistrate's Courts Act, Chap. 116A;*
  - If it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2)(c), must 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 thereof: *Section 132(3)(c) - Magistrate's Courts Act, Chap. 116A;*
- Notwithstanding that a written statement made by any person may be admissible under this section at an enquiry, the examining magistrate may, on his own motion or on the application of any party to the proceedings, require that person to attend before him and give evidence: *Section 132(4) - Magistrate's Courts Act, Chap. 116A;*
- So much of any statement admitted as is admitted in evidence under this section shall, unless the magistrate commits the accused for trial under *Section 20,* 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: *Section 132(5) - Magistrate's Courts Act, Chap. 116A;*
- Any document or 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: *Section 132(6) - Magistrate's Courts Act, Chap. 116A;*
- A person whose written statement is tendered in evidence under this section shall be treated for the purposes of Section 30, as a witness who has been examined by the magistrate: *Section 132(9) - Magistrate's Courts Act, Chap. 116A;*
- When a copy of a statement to which *para. (1),* refers is given to or served on any party to the proceedings, a copy of the statement and of any exhibit that accompanied it shall be given to the clerk of the court as soon as practicable thereafter; and where

a copy of any such statement is given or served by or on behalf of the prosecutor, the accused shall be given notice of his right to object to the statement being tendered in evidence: *rule 34(2) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*

- Written statements tendered in evidence under *Section 132,* of the Act before an examining magistrate shall be authenticated by a certificate signed by him in the Form 12: *rule 34(8) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- After the evidence for the prosecution including any statements tendered under *Section 132,* of the Act, and after hearing any submission, the magistrate shall, unless he decides not to commit for trial, cause the charge to written down if this has not already been done, and if the accused is not represented by an attorney-at-law, the magistrate shall read the charge to him and explain it in ordinary language: *rule 22(1) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- After complying with *para. (1),* the magistrate shall ask the accused whether he wishes to say anything in answer to the charge and, if he is not represented by an attorney-at-law, shall before asking the questions say the following words to him or words to the following effect:

  > *"You will have an opportunity to give evidence on oath before me and to call witnesses. But first I am going to ask you whether you wish to say anything in answer to the charge. You need not say anything unless you wish to do so. Anything you say will be taken down and may be given in evidence at your trial. You should take no notice of any promise or threat which any person may have made to persuade you to say anything": rule 22(2) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*

- Whatever the accused says in answer to the charge shall be put into writing, read over to him and signed by the examining magistrate and also, if the accused wishes, by him: *rule 22(3) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- After *para. (3),* has been complied with, the magistrate shall say to the accused the following words or words to the following effect:

  > *"I must warn you that if I commit you for trial you may not be permitted at that trial to give evidence of an alibi or to call witnesses in support of an alibi unless you give this court particulars of the alibi and of the witnesses. You may give those particulars now or to the prosecutor not later than 7 days from the end of these committal proceedings": rule 22(4) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*

- Where if it appears to the magistrate that the accused may not understand the meaning of the term "alibi", he shall explain it to him; but the magistrate shall not be required to give this warning in any case where it appears to him that, having regard to the nature of the offence with which the accused is charged, it is unnecessary to do so: *rule 22(5) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*

- After complying with the requirements of *rule 22,* relating to the statement of the accused, and whether or not he has made a statement in answer to the charge, the magistrate shall give him an opportunity to give evidence himself and to call witnesses; *rule 23(1) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- Where the accused is represented by an attorney-at-law, his attorney-at-law shall be heard on his behalf, either before or after the evidence for the defence is taken, at his discretion, and may, if the accused gives evidence himself and calls witnesses, be heard on his behalf with the leave of the magistrate both before and after the evidence is taken; but, where the magistrate gives leave to the attorney-at-law for the accused to be heard after, as well as before the evidence is taken, the attorney-at-law for the prosecution shall be entitled to be heard immediately before the attorney-at-law for the accused is heard for the second time: *rule 23(2) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- Where the magistrate determines to commit the accused for trial in respect of a charge that differs from that which was read to him in accordance with the provisions of *rule 22(1),* the magistrate shall cause the new charge to be read to him: *rule23(3) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- The magistrate shall cause all writings and other articles exhibited by the witnesses to be inventoried and labelled or otherwise marked in the presence of the person producing them, so that they may be identified at the trial: *rule 27 - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- Subject to the provisions of this and any other enactment relating to the summary trial of indictable offences, where a magistrate inquiring into an offence as an examining magistrate is of opinion, on consideration of the evidence and of any statement of the accused, that there is sufficient evidence to put the accused upon trial by jury for any indictable offence, the magistrate shall commit him for trial to the next sitting of the High Court; and if he is not of that opinion, he shall, if he is in custody for no other cause than the offence under inquiry, discharge him: *Section 19 - Magistrate's Courts Act, Chap. 116A;*
- Except where the charge is one of high treason, treason or murder, where an accused person in any statement by him to the magistrate says or admits that he is guilty of the charge, then the magistrate shall commit him for sentence and subsections (3) and (4), of Section 20, shall apply: *Section 21 - Magistrate's Courts Act, Chap. 116A;*
- Subject to *Section 5*, of the *Bail Act, Chap. 122A,* a magistrate may commit a person for trial:
    - In custody, that is to say, by committing him to custody, there to be safely kept until delivered by due course of law: or *Section 20(3)(a) - Magistrate's Courts Act, Chap. 116A;*
    - On bail by directing him to appear before the High Court for trial: *Section 20(3)(b) - Magistrate's Courts Act, Chap. 116A;*

  and where his release on bail is conditional on him providing one or more sureties

and, in accordance with *Section 14,* of the *Bail Act, Chap. 122A,* the magistrate fixes the amount in which a surety is to be bound with a view to his entering into his recognizance subsequently in accordance with subsections (3), (4) and (5), of that section, the magistrate shall in the meantime commit the accused to custody in accordance with *para. (a);*

- Where the magistrate has committed a person to custody in accordance with *para. (a),* of subsection (3), then if that person is in custody for no other cause, the magistrate may, at any time before the first sitting of the High Court at which he is to be tried, grant him bail in accordance with the *Bail Act, Chap. 122A,* subject to a duty to appear before the High Court for trial: *Section 20(4) - Magistrate's Courts Act, Chap. 116A;*
- A magistrate shall not commit any person to a prison, a reformatory school or other place of detention, except by a warrant of commitment: *rule 42 - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- Except as provided by subsections (2) and (6), it shall not be lawful to publish a written report, or to broadcast a report, of any committal proceedings containing any matter other than that permitted by subsection (2): *Section 22(1) - Magistrate's Courts Act, Chap. 116A;*
- It shall not be unlawful under this section to publish or broadcast a report of committal proceedings containing the following:
    - The identity of the court and the name of the examining magistrate;
    - The offence or offences, or a summary of them, with which the accused is or are charged;
    - The names of the attorneys-at-law engaged in the proceedings;
    - Any decision of the magistrate to commit the accused or any of the accused for trial, and any decision of the magistrate on the disposal of the case of any accused not committed;
    - Where the magistrate commits the accused or any of the accused for trial, the charge or charges, or a summary of them, on which he is committed;
    - Where the committal proceedings are adjourned, the date and place to which they are adjourned;
    - Any arrangements as to bail on committal or adjournment: *Section 22(2) - Magistrate's Courts Act, Chap. 116A;*
- As soon as practicable after the committal of any person for trial, the clerk of the court that committed him shall send the documents listed in sub-paragraphs (a) to (k), and one copy of the documents to the Registrar, and two copies to the Director of Public Prosecutions:
    - The information, if it is in writing;
    - The depositions and written statements tendered in evidence, together with a certificate in the Form 11 authenticating the depositions and statements;
    - All statements made by the accused before the magistrate;

- A list of the names, addresses and occupations of the witnesses who have been bound over;
- Any recognizance entered into by any person as surety for the accused, together with a statement of any enlargement thereof under *Section 219,* of the Act;
- A list of the documents and articles produced in evidence before the magistrate or treated as so produced;
- Such of the documents and articles referred to in sub-paragraph (f), as have been retained by the magistrate;
- If the committal was under *Section 20,* of the Act, a statement to that effect;
- A certificate showing whether the accused was informed at the committal proceedings of the requirements of *Section 158,* of the *Evidence Act,* in respect of alibis, and a record of any particulars given by him to the magistrate under that section;
- The certificate of the magistrate as to costs of prosecution;
- If any person under the age of 16 is concerned in the committal proceedings, a statement whether the magistrate has given a direction under *Section 3(6),* of the *Juvenile Offenders Act,* that prohibits the publication of certain matters in newspapers: *rule 30(1) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*

- All exhibits, other than documentary exhibits, shall, unless the magistrate otherwise directs, be taken charge of by the police, who shall produce them at the trial: *rule 30(3) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- At any time after the receipt of the prescribed documents and before the sitting of the court to which the accused person has been committed for trial, the Director of Public Prosecutions may, if he thinks fit, remit the case to the magistrate with directions to re-open the enquiry for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with any other directions he thinks proper: *Section 26(1) - Magistrate's Courts Act, Chap. 116A;*
- Subject to any express directions given by the Director of Public Prosecutions, the effect of the remission to the magistrate shall be that the enquiry shall be re-opened and dealt with in all respects as if the accused person had not been committed for trial[51]; *Section 26(2) - Magistrate's Courts Act, Chap. 116A*;
- Where after the receipt of the prescribed documents the Director of Public Prosecutions is of opinion that the accused person should not have been committed for trial or for sentence but and the case should have been dismissed or, where the offence is by law triable summarily, that it should have been dealt with summarily,

[51] Barbados- Magistrate's Courts Act, CAP 116A, section 28 (1). Any directions given by the Director of Public Prosecutions under section 26 or 27 shall be in writing signed by him and shall be followed by the magistrate

the Director of Public Prosecutions may if he thinks fit refer back the case to the magistrate with directions to deal with it accordingly[52]: *Section 27 - Magistrate's Courts Act, Chap. 116A;*

- The examining magistrate shall bind each witness examined before him, other than the accused and any witness of his merely to his character, by a recognizance to attend and give evidence before the High Court and he shall bind the prosecutor by a recognizance to prosecute the accused before that court[53]: *Section 30(1) - Magistrate's Courts Act, Chap. 116A;*
- Where any witness, on being required, to enter into a recognizance under this section, refuses to do so, the magistrate may commit him to custody until after the trial of the accused or until he sooner enters into the recognizance; but where the magistrate does not commit the accused for trial or sentence, he shall release the witness: *Section 30(4) - Magistrate's Courts Act, Chap. 116A;*
- Where it appears to the magistrate, after taking into account any representations made by the accused or prosecutor, that the attendance at the High Court of any witness examined before him is unnecessary by reason of any statement by the accused or of the accused having admitted before the magistrate the truth of the charge or of the evidence of the witness being merely formal, the magistrate shall:
    - If the witness has not already been bound over, bind him over to attend the High Court conditionally, that is to say, on notice being given to him and not otherwise[54];
    - If the witness has already been bound over, direct that he shall be treated as having been bound over to attend the trial conditionally as aforesaid: *Section 30(2) - Magistrate's Courts Act, Chap. 116A;*
- The person in custody of the depositions on which any person has been committed for trial shall, as soon as is practicable, supply copies of the depositions to the accused free of charge: *rule 31(1) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007.*

[52] Barbados- Magistrate's Courts Act, CAP 116A, section 28 (1). Any directions given by the Director of Public Prosecutions under section 26 or 27 shall be in writing signed by him and shall be followed by the magistrate. Section 28(3): At the request in writing of the Director of Public Prosecutions, the Registrar shall return to the magistrate the original documents originally transmitted to him by the magistrate (Magistrate's Courts Act, CAP 116A section 28(3)

[53] Barbados- Magistrate's Courts Act, CAP 116A, section 30 (3). A magistrate on committing any person for trial shall inform him of his right to require the attendance at the trial of any witness bound over, or treated as bound over, conditionally as aforesaid and of the steps that he must take for enforcing the attendance.

[54] Barbados: Magistrate's Court (Criminal Procedure Rules) 2001 revised edition 2007, Rule 25(1). The recognizance of a witness under section 30(1) of the Act shall be in the Form 9, and shall be made as soon as practicable after the accused has been committed for trial; but where, at the conclusion of the examination of a witness, the magistrate determines that the witness shall be bound over conditionally, he shall be bound over immediately after the deposition has been signed.

Committal without consideration of the evidence

- Where a magistrate inquiring into an offence as examining magistrate is satisfied that all the evidence before him, whether for the prosecution or the defence, consists of written statements tendered under *Section 132,* with or without exhibits, he may commit the accused for trial for the offence without considering the contents of those statements, unless
    - The accused or one of the accused is not represented by an attorney-at-law;
    - The 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;

  and *Section 19,* shall not apply to require a committal for trial on consideration of the evidence: *Section 20(1) - Magistrate's Courts Act, Chap. 116A;*
- A magistrate enquiring into an offence in committal proceedings to which this rule applies shall cause the charge to be written down, if this has not already been done, and read to the accused and shall then ascertain whether the accused wishes to:
    - Object to any of the prosecution statements being tendered in evidence;
    - Give evidence himself or call witnesses;
    - Submit that the prosecution statements disclose insufficient evidence to put him on trial by jury for the offence with which he is charged: *rules 24(2)(a), (b), (c) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- Where the magistrate is satisfied that the accused or each of the accused, as the case may be, does not wish to take any of the steps mentioned in sub-paragraphs (a) to (c); of *para. (2),* and he determines, after receiving any written statements tendered by the prosecution and the defence under *Section 132,* of the Act, to commit the accused for trial without consideration of the evidence, the magistrate shall proceed in accordance with *rule 21: rule 24(3) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- After complying with *para. (3),* the magistrate shall say the following words to the accused, or words to the following effect:

> *"You will be committed for trial by jury but I must warn you that at that trial you may not be permitted to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You may give those particulars now or at any time in the next 7 days to the prosecutor"*[55]*: rule 24(4) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*

[55] Barbados: Magistrate's Court (Criminal Procedure Rules) 2001 revised edition 2007, Rule 24(6). Where the magistrate has given to the accused the warning required by paragraph (4), the clerk of the court shall give him written notice, in the Form 8, of the provisions of section 158 of the Evidence Act in respect of the giving of notice of particulars of an alibi to the prosecutor.

- Subject to *Section 5,* of the *Bail Act, Chap. 122A,* a magistrate may commit a person for trial:
    - In custody, that is to say, by committing him to custody, there to be safely kept until delivered by due course of law;
    - On bail by directing him to appear before the High Court for trial,

  and where his release on bail is conditional on his providing one or more sureties and, in accordance with *Section 14,* of the *Bail Act, Chap. 122A,* the magistrate fixes the amount in which a surety is to be bound with a view to his entering into his recognizance subsequently in accordance with subsections (3), (4) and (5), of that section, the magistrate shall in the meantime commit the accused to custody in accordance with with *para. (a): Section 20(3) - Magistrate's Courts Act, Chap. 116A;*
- Where the magistrate has committed a person to custody in accordance with *para. (a),* of subsection (3), then if that person is in custody for no other cause, the magistrate may, at any time before the first sitting of the High Court at which he is to be tried, grant him bail in accordance with the *Bail Act, Chap. 122A,* subject to a duty to appear before the High Court for trial: *Section 20(4) - Magistrate's Courts Act, Chap. 116A;*
- As soon as practicable after the committal of any person for trial the clerk of the court that committed him shall send the documents listed in sub-paragraphs (a) to (k), and one copy of the documents to the Registrar, and two copies to the Director of Public Prosecutions:
    - The information, if it is in writing;
    - The depositions and written statements tendered in evidence, together with a certificate in the Form 11 authenticating the depositions and statements;
    - All statements made by the accused before the magistrate;
    - A list of the names, addresses and occupations of the witnesses who have been bound over;
    - Any recognizance entered into by any person as surety for the accused, together with a statement of any enlargement thereof under *Section 219* of the Act;
    - A list of the documents and articles produced in evidence before the magistrate or treated as so produced;
    - Such of the documents and articles referred to in sub-paragraph (f), as have been retained by the magistrate;
    - If the committal was under *Section 20,* of the Act, a statement to that effect;
    - A certificate showing whether the accused was informed at the committal proceedings of the requirements of *Section 158*, of the *Evidence Act,* in respect of alibis, and a record of any particulars given by him to the magistrate under that section;
    - The certificate of the magistrate as to costs of prosecution;
    - If any person under the age of 16 is concerned in the committal proceedings, a statement whether the magistrate has given a direction under *Section 3(6),* of

the *Juvenile Offenders Act,* that prohibits the publication of certain matters in newspapers: *rule 30(1) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*

- All exhibits, other than documentary exhibits, shall, unless the magistrate otherwise directs, be taken charge of by the police, who shall produce them at the trial: *rule 30(3) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007;*
- The person having custody of the depositions on which any person has been committed for trial shall, as soon as is practicable, supply copies of the depositions to the accused free of charge: *rule 31(1) - Magistrate's Court (Criminal Procedure Rules) 2001, revised edition 2007.*

JAMAICA

The guiding legislation is the *Committal Proceedings Act, No. 24 of 2013.*

- 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 thereto (in this Act referred to as "committal proceedings") shall be conducted in accordance with this Act: *Section 3(1);*
- Committal proceedings under this Act shall be conducted with respect to an existing charge in lieu of any preliminary examination with respect thereto, where:
  - As at the commencement date, a preliminary examination has not already commenced;
  - Notwithstanding the commencement of a preliminary examination prior to the commencement date, the preliminary examination is incomplete as at the date and the accused person elects to have the proceedings conducted by way of committal proceedings under this Act: *Section 21(1);*
- Subject to *Section 3,* 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:
  - All the evidence tendered (whether for the prosecution or the defence) in respect of the defence) in respect of the offence consists of written statements with or without exhibits: and *Section 3(2)(a);*
  - That those statements comply with the requirements of *Section 6: Section 3(2) (b);*

  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;*
- Nothing in subsection (2), shall prevent the 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 submissions is made, the resident magistrate shall take into consideration in determining whether or not to commit the accused for trial: *Section 3(3);*

- Where the accused 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 the evidence: *Section 3(4);*
- 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: Section 4(1);*
- 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 authorising the reception of unsworn statements, any oral evidence given shall be under oath shall be subject to cross-examination: *Section 4(2);*
- 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: *Section 4(3);*
- Where a resident magistrate is to hear oral evidence from any person pursuant to subsection (1), he may issue a summons or a warrant, as the case may require, to cause that person to attend and give oral evidence in the committal proceedings: *Section 4(6);*
- An accused person may at his option tender in evidence his own written statement; elect to make an unsworn statement; give oral evidence; or remain silent: *Sections 5(1)(a), (b), (c), (d);*
- 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: *Section 5(2);*
- The caution in accordance with the *First Schedule* of the *Committal Proceedings Act, No. 24 of 2013,* is:

  > *"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;"*

- Any oral statement given by the accused pursuant to this section shall be:
  - Recorded (whether in writing or by electronic means): *Section 5(3)(a);*
  - Read over to the accused: *Section 5(3)(b);*
  - Signed by the accused and the resident magistrate: *Section 5(3)(c);*

- Kept with the written statements and depositions (if any) of the witnesses: and *Section 5(3)(d);*
- Transmitted in accordance with *Section 10,* to the Director of Public Prosecutions: *Section 5(3)(e);*

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

- 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: *Section 6(1);*
- The conditions referred to in subsection (1), are as follows:
  - 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 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 within the absence of special assistance or equipment, the statement may be communicated in any other effective manner: *Section 6(2)(a);*

  - 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 *Section 6(2)(b)(i);*
    (ii) the senior member of the Jamaica Constabulary Force: *Section 6(2)(b)(ii);*
  - 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 14 years, 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: *Sections 6(2)(c);*
  - Copies of the statement have been served on the parties to the proceedings in accordance with *Section 8: Section 6(2)(d);*
  - The following provisions shall also have effect in relation to any written statement tendered in evidence under this section:
    (i) the statement shall state whether it is made by a person who has attained the age of 18 years, and if it is made by a person under the age of 18 years, it shall state the age of that person: *Section 6(3)(a);*
    (ii) if the statement is made by a person under the age of 14 years, then, subject to the provisions of the *Child Care and Protection Act,* specified

in subsection (4), the resident magistrate shall receive evidence[56] in the manner specified in *para. (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 party to the proceedings, in order that the resident magistrate may determine:

(i) whether the child understands the nature of an oath: and *Section 6(3)(b)(i);*

(ii) if the child does 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: *Section 6 (3)(b)(ii);*

- 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: *Section 6(3)(d);*
- 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: *Section 6(3)(e);*
- 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 *Section 6(3)(f)(i);*

  (ii) such information as may be necessary shall be given in order to enable any other party to the proceedings to inspect that and to obtain a copy thereof: and *Section 6(3)(f)(ii);*

- 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: *Section 6(3)(g);*

- 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 committal proceedings unless:
  - Subject to *para. (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 *Section 6(5)(a);*

[56] Jamaica- Committal Proceedings Act 2013, section 6 (3) (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.

- In the case of an exhibit cannot be conveniently produced in court; the parties have been served with notice of the location of the exhibit: *Section 6(5)(b);*

- Where a resident magistrate, having examined all the evidence before him in any committal proceedings:
  - 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 *Section 7(a);*
  - Is satisfied that the evidence against the accused is sufficient to establish a 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: *Section 7(b);*
- For the purposes of committal proceedings, the 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 in the committal proceedings in respect of the offence charged: *Section 8(1);*
- 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: *Section 8(2);*
- A resident magistrate may, in his discretion, as regards any statement or document to be considered in committal proceedings, vary the time prescribed in subsection (2); however, 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: *Section 8(3);*
- Each 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: *Section 9;*
- Where a resident magistrate has committed an accused for trial for an indictable offence pursuant to *Section 7,* the resident magistrate shall transmit forthwith 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;
  - Any recognizance entered into: *Section 10(1);*

- The written statements, dispositions 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: *Section 10(3);*
- 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 member as the Commissioner of Police may designate for the purpose, shall take charge of all other exhibits and shall produce then at the trial of the accused: *Section 10(2);*
- 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 which the accused is to be tried: *Section 12(1).*

Proceedings before the commencement of the *Committal Proceedings Act, 2013.*

JAMAICA

The Committal Proceedings Act, 2013, contains a transitional clause for preliminary examinations which commenced prior to, and were incomplete at the commencement date of the new Act: As regards in existing charge respect to which a preliminary examination has commenced prior to the commencement date and is incomplete as at that date, if the accused person does not elect to have the proceedings conducted by way of committal proceedings under this Act, this Act (other than this section) shall not apply to that existing charge and the preliminary examination shall continue to its conclusion in accordance with the law in operation immediately prior to the commencement date: *Section 21(3).*

For the earlier preliminary examination procedure, the guiding legislation is the *Justices of the Peace Jurisdiction Act, Chap. 188.*

- In all cases where:
  - Any person shall appear or be brought before any justice or justices charged with any indictable offence committed within this island;
  - Whether such person appear voluntarily upon summons;
  - Have been apprehended with or without warrant;
  - Be in custody for the same, or any other offence;

  such justice or justices before he or they shall commit such accused person to prison for trial, or before he or they shall grant him bail in accordance with the *Bail Act,*

  - Shall in the presence of such accused person who shall be at liberty to put questions to any witness produced against him: *Section 34;*
  - Take the statement (according to Form (19) in the First Schedule), on oath or affirmation of those who shall know the facts and circumstances of the case: and *Section 34;*

- Shall put the same into writing; and such depositions shall be read over to, and signed respectively by, the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same; and the justice or justices before whom any such witness shall appear to be examined as aforesaid shall, before such witness is examined, administer to such witness the usual oath or affirmation, which such justice or justices shall have full power and authority to do: *Section 34;*

and if upon the trial of the person so accused as first aforesaid:

- It shall be proved by the oath or affirmation of any credible witness that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel, or is absent from this Island or is not of competent understanding to give evidence by reason of his being insane: and *Section 34;*
- If also it be proved that such deposition was taken in the presence of the person so accused, and that he, or his counsel or solicitor had a full opportunity of cross-examining the witness: *Section 34;*

then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not, in fact, signed by the justice purporting to sign the same:

Provided, that no deposition of a person absent from the island or insane shall be read in evidence under the powers of this section, save with the consent of the court before which the trial takes place: *Section 34;*

- The room or building in which such justice or justices shall take such examinations and statement as aforesaid shall not be deemed an open court for that purpose; and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to, or be or remain in, such room or building without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be best answered by so doing: *Section 35;*
- After the examinations of all the witnesses on the part of the prosecution as aforesaid shall have completed, the justice, or one of the justices by or before whom such examination shall have been so completed as aforesaid shall, without requiring the attendance of the witnesses, read, or cause to be read, to the accused the depositions taken against him, and shall say to him these words, or words to the like effect:

> *"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial": Section 36;*

and whatever the prisoner shall then say in answer thereto shall be:

- Taken down in writing (according to Form (20) in the First Schedule);
- Read over to him;
- Signed by the said justice or justices;

- Kept with the depositions of the witnesses;
- Transmitted with them as hereinafter mentioned;
- Afterwards, upon the trial of the said accused person, the same may if necessary be given in evidence against him, without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not in fact sign the same: *Section 36;*

Provided always, that the said justice or justices, before such accused person shall make any statement, shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been holden out to him to induce him to make any admission or confession of his guilt; but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat[57]: *Section 36;*

- In all cases where any person shall appear or be brought before any justice, charged with any indictable offence, such justice, before he shall commit such accused person for trial, or grant him bail in accordance with the *Bail Act:*
  - Shall immediately after obeying the directions of *Section 36*, ask such accused person whether he desires to call any witnesses: and *Section 37;*
  - If the accused person shall call any witnesses, such justice shall, in the presence of such accused person, take the statement, on oath or affirmation, both examination and cross-examination, of those who shall be so called as witnesses by such accused person in the same way that the statements of the witnesses for the prosecution are taken: and *Section 37;*
  - Such depositions of such witnesses shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice taking the same, and transmitted in due course of law in the same way as the depositions of the witnesses for the prosecution are read over, signed, and transmitted: *Section 37;*

  and such witnesses, not being witnesses merely to the character of the accused, as shall, in the opinion of the justice, give evidence in any way material to the case, shall be bound by recognizance to appear and give evidence at the said trial; and all the enactments in force relating to the depositions of witnesses for the prosecution shall extend and be applicable to the depositions of witnesses hereby directed to be taken: *Section 37;*
- It shall be lawful for the justice or justices before whom such witnesses shall be examined as aforesaid to bind by recognizance (in the Form (21)(a) of the First Schedule), the prosecutor and every such witness to appear at the next Circuit Court at which the accused is:
  - To be tried, then and there to prosecute;
  - To prosecute and give evidence;

[57] Jamaica- Justices of the Peace Jurisdiction Act Cap. 188, section 36. Provided nevertheless, that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission, or confession, or other statement of the person accused or charged, made at any time which by Law would be admissible as evidence against such person.

- To give evidence, as the case may be, against the party accused;

which said recognizance shall particularly specify the profession, art, mystery, or trade of every such person entering into, or acknowledging the same, together with his Christian and surname, and the parish in which he resides; and the said recognizance, being duly acknowledged by the person so entering into the same:

- Shall be subscribed by the justice or justices before whom the same shall be acknowledged: and *Section 38;*
- A notice thereof (in the Form (21)(6) of the First Schedule), signed by the said justice or justices, shall at the same time be given to the person bound thereby: and *Section 38;*
- The several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the recognizance of bail (if any) in every such case shall be delivered by the said justice or justices;
- He or they shall cause the same to be delivered to the Director of Public Prosecutions and he to the proper officer of the court in which the trial is to be had, before or at the opening of the said court, on the first day of the sitting thereof, or at such other time as the judge who is to preside in such court at the said trial shall order and appoint: *Section 38;*

Provided always, that if any such witness shall refuse to enter into, or acknowledge such recognizance as aforesaid, it shall be lawful for such justice or justices, by his or their warrant (in the Form (22)(a) of the First Schedule), to commit him to prison there to be imprisoned and safely kept until after the trial of such accused party, unless, in prosecutor and every such witness to appear at the next Circuit: *Section 38;*

Provided nevertheless, that if afterwards, from want of sufficient evidence in that behalf, or other cause, the justice or justices, before whom such accused party shall have been brought shall not commit him, or hold him to bail, for the offence with which he is charged, it shall be lawful for such justice or justices, or any other justice or justices of the same parish, by his or their order in that behalf (in the Form (22) (b) of the First Schedule), to order first and direct the superintendent or other head officer of such prison where such witness shall be so in custody, to discharge him from the same; and such superintendent or other head officer shall thereupon forthwith discharge him accordingly: *Section 38;*

- If, from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination, or further examination, of the witnesses for any time, it shall be lawful to and for the justice or justices before whom the accused shall appear or be brought, by his or their warrant (in the Form (23) (a) First Schedule), from time to time to remand the party accused, for such time as by such justice or justices in their discretion shall be deemed to be reasonable, not exceeding eight clear days, to prison: *Section 39(1);*
- In any case in which it becomes necessary to defer the examination or further examination of an accused party, and the justice or justices before whom such accused party appears or is brought or are willing that such accused party, instead of being detained in custody until the day to be appointed for the examination or further

examination, should be granted bail in accordance with the *Bail Act,* it shall be lawful for the said justice or justices to defer the examination or further examination of the party accused for such time, not exceeding fourteen clear days, as to the said justice or justices may in their discretion be deemed reasonable: *Section 39(2);*

- If the remand be for a time not exceeding three clear days, it shall be lawful for such justice or justices verbally to order the constable or other person in whose custody such party accused may then be, or any other constable or person to be named by the said justice or justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same or such other justice or justices as shall be there acting at the time appointed for continuing such examination: *Section 39(3);*

  Provided always, that any such justice or justices may order such accused party to be brought before him or them, or before any other justice or justices of the peace, for the same parish, at any time before the expiration of the time for which such accused party shall be so remanded; and the superintendent or other head officer in whose custody he shall then be shall duly obey such order: *Section 39(3);*

  Provided also, that instead of detaining the accused party in custody during the period for which he shall be so remanded, any one justice before whom such accused party shall so appear or be brought as aforesaid may grant him bail in accordance with the *Bail Act: Section 39(3);*

- Whenever a person shall appear, or shall be brought before a justice or justices in the parish wherein such justice or justices shall have jurisdiction, charged with an offence alleged to have been committed by him in any parish within this island, wherein such justice or justices shall not have jurisdiction, it shall be lawful for such justice or justices, and he and they are hereby required:

  - To examine committed, such witnesses, and receive such evidence in proof of such charge as shall be produced before him or them within his or their jurisdiction: and *Section 40;*
  - If, in his or their opinion, such testimony and evidence shall be sufficient proof of the charge made against such accused party, such justice or justices shall thereupon commit him to prison, or shall grant him bail in accordance with the *Bail Act,* and shall bind over the prosecutor (if he has appeared before him or them) and the witnesses by the recognizance accordingly, as in hereinbefore mentioned: *Section 40;*

  but if such testimony and evidence shall not, in the opinion of such justice or justices, be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such justice or justices shall bind over such witnesses as he shall have examined, by recognizance, to give evidence as hereinbefore is mentioned; and such justice or justices shall by warrant (according to Form (24) in the First Schedule), under his or their hand or hands:

  - Order such accused party to be taken before some justice or justices in and for the parish where the offence is alleged to have been committed;

- Shall, at the same time, deliver the information and complaint, and also the depositions and recognizances so taken by him or them to the constable or other officer who shall have the execution of such last-mentioned warrant, to be by him delivered to the justice or justices before whom he shall take the accused, in obedience to the said warrant: and *Section 40;*
- Which said depositions and recognizances shall be deemed to be taken in the case, and shall be treated, to all intents and purposes, as if they had been taken by or before the said last-mentioned justice or justices: and *Section 40;*
- Shall, together with such depositions and recognizances as such last-mentioned justice or justices shall take in the matter of such charge against the said accused party, be transmitted to the Director of Public Prosecutions and by him to the clerk of the court where the said accused party is to be tried, in the manner and at the time hereinbefore mentioned, if such accused party shall be committed for trial upon the said charge, or shall be granted bail[58]: *Section 40;*

- Where any person shall appear or be brought before a justice charged with:
  - Any felony;
  - Any assault with intent to commit any felony;
  - Any attempt to commit any felony;
  - Obtaining or attempting to obtain property by false pretences;
  - A misdemeanour in receiving property stolen or obtained by false pretences;
  - Perjury, or subornation of perjury;
  - Concealment of the birth of a child;
  - Wilful or indecent exposure of the person;
  - Riot;
  - Assault in pursuance of a conspiracy to raise wages;
  - Assault upon a peace officer in the execution of his duty, or upon any person acting in his aid;
  - Neglect or breach of duty as a peace officer;
  - Any misdemeanour for the prosecution of which the costs may be allowed out of the public funds of this island;

  such justice may, in his discretion:

  - Grant bail to such person in accordance with the *Bail Act;* and thereupon such justice shall take the recognizance (in the Form (25)(a) or (25)(b) of the First Schedule, as the case may be), of the said accused person and his surety or sureties conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not

[58] Jamaica- Justices of the Peace Jurisdiction Act Cap. 188, section 40. Provided always, that if such last-mentioned Justice or Justices shall not think the evidence against such accused party sufficient to put him upon his trial and shall discharge him without holding him to bail, every such recognizance so taken by the said first-mentioned Justice or Justices as aforesaid shall be null and void.

depart the court without leave; and in all cases where a person charged with any indictable offence shall be committed to prison to take his trial for the same, it shall be lawful at any time afterwards and before the first day of the sitting of the court at which he is to be tried, or before the day to which such court may be adjourned, for the justice or justices who shall have signed the warrant for his commitment, in his or their discretion, to grant him bail in manner aforesaid: *Section 41;*

- Or if such committing justice or justices shall be of opinion that for any of the offences hereinbefore mentioned the said accused person ought to be granted bail, he or they shall, in such cases, and in all other cases of misdemeanours, certify (in the Form (25)(c) of the First Schedule), on the back of the warrant of commitment his or their consent to such accused party being bailed, stating also the amount of bail which ought to be required, and it shall be lawful for any justice attending or being at the prison where such accused party shall be in custody, on production of such certificate, to grant him bail in manner aforesaid: *Section 41;*
- Or if it shall be inconvenient for the surety or sureties in such a case to attend at such prison to join with such accused person in the recognizance of bail, then such committing justice or justices may make a duplicate of such certificate (according to the Form (25)(d) of the First Schedule), and, upon the same being produced to any justice for the same parish, it shall be lawful for such last-mentioned justice to take the recognizance of the surety or sureties in conformity with such certificate; and upon such recognizance being transmitted to the keeper of such prison, and produced, together with the certificate on the warrant of commitment as aforesaid, to any justice attending or being at such prison, it shall be lawful for such last-mentioned justice thereupon to take the recognizance of such accused party, and to order him to be discharged out of custody as to that commitment, as hereinafter mentioned: and *Section 41;*
- Where any person shall be charged before any Justice with any indictable misdemeanour other than those hereinbefore mentioned, such justice after taking the examinations in writing as aforesaid, instead of committing him to prison for such offence, shall grant him bail in manner aforesaid: or *Section 41;*
- If he has been committed to prison, and shall apply to any one of the visiting justices of such prison, or to any other justice for the same parish, before the first day of the sitting of the court at which he is to be tried, or before the day to which such court may be adjourned, to be granted bail, such justice shall accordingly grant him bail in manner aforesaid: and *Section 41;*
- In all cases where such accused person in custody shall be granted bail by a justice other than the committing justice or justices as aforesaid, such justice so granting him bail shall forthwith transmit the recognizance or recognizances of bail to the committing justice or justices, or one of them, to be by him or them transmitted with the examinations, to the proper officer: *Section 41;*

  Provided nevertheless, that no justice or justices shall grant bail to any person for treason nor shall such person: *Section 41;*

- When all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the Justice or Justices the present shall be:
    - Of the opinion that it is sufficient to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order the accused party, if in custody, to be discharged as to the information then under inquiry: or *Section 43;*
    - But if, in the opinion of such justice or justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of guilt of such accused party, then such justice or justices shall by his or their warrant (according to Form (26)(a) in the First Schedule), commit him to prison to be there safely kept until he shall be thence delivered by due course of law, or grant him bail as hereinbefore mentioned: *Section 43;*
- At any time after all the examinations aforesaid shall have been completed, and before the first day of the sitting of the Circuit Court at which any person so committed to prison or admitted to bail as aforesaid is to be tried, such person may require, and shall be entitled to have, of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding at the rate of five dollars for each folio of 160 words: *Section 45.*

TRINIDAD AND TOBAGO

Committal on consideration of written statements: 'Paper Committal'

Committal Proceedings under the *Indictable Offences (Committal Proceedings) Act, No. 14 of 2014.*

- Committal proceedings shall be commenced by filing and tendering into evidence by the prosecutor in the Magistrates' Court of:
    - One or more statements of witnesses in support of the charge: *Section 14(2)(a);*
    - A copy of any documentary exhibit: and *Section 14(2)(b);*
    - A list of exhibits, if there are any exhibits which the prosecutor intends to produce in connection with the proceedings: *Section 14(2)(c);*
- The prosecutor shall, without delay, cause copies of the statements, documentary exhibits and the list of exhibits filed under subsection (2), to be served on the accused person or his legal representative: *Section 14(3);*
- Where the accused or his legal representative has been served in accordance with *Section 14(3),* he may in reply, within such period as may be specified by the magistrate, file:
    - A statement of any evidence that he wishes to give on his own behalf at his trial: *Section 15(1)(a);*

- Any statement of his witnesses: *Section 15(1)(b);*
- A copy of all documentary exhibits and a list of exhibits, if there are any exhibits which the accused person intends to produce in connection with the proceedings: and *Section 15(1)(c);*
- A notice of alibi, if any, in accordance with *Section 21: Section 15(1)(d);*

- The magistrate shall, without delay, cause a copy of any reply filed under subsection (1), to be served on the prosecutor: *Section 15(3);*
- Notwithstanding subsection (3), where the accused person is legally represented, his legal representative shall, without delay, serve a copy of any reply filed under subsection (1), on the prosecutor: *Section 15(4);*

  Failure by the accused person to file any statement, documentary exhibits or a list of exhibits within the time specified by the magistrate shall not affect the power of the magistrate to proceed with and conclude the committal proceedings or to take any other action permitted by this Act: *Section 15(2);*
- A magistrate holding committal proceedings may commit an accused person for trial before the High Court on a charge for an indictable offence where he is of the opinion, on consideration of all the evidence filed under *Section 14(2),* alone or in conjunction with any evidence filed under *Section 15(1),* that there is sufficient evidence to put the accused person on trial for any indictable offence: *Section 16;*
- Before making an order under *Section 24,* the magistrate shall, on the application of either side and by way of submission orally or in writing, give the prosecutor or the accused person, as the case may be, an opportunity to show cause why the order should not be made: *Section 17;*
- In respect of an adjournment in committal proceedings:
  - A magistrate may adjourn committal proceedings in the interest of justice and the adjournment shall be made to a certain date and place: *Section 18(1);*
  - Upon an adjournment under this section, the magistrate may grant bail to the accused person or remand him to custody: *Section 18(2);*
  - Unless the person remanded and the prosecutor consents, an adjournment shall not be for longer than 28 clear days: *Section 18(3);*
  - Where a magistrate is satisfied that an accused person who has been remanded is, by reason of illness, accident or other sufficient cause, unable to appear personally before the magistrate on the adjourned date, the magistrate may, in the absence of the accused person, order him to be further remanded for such time as may be considered reasonable: *Section 18(4);*
- In committal proceedings, a statement by any person filed under *Sections 14* and *15,* shall, if the conditions in subsection (2), are satisfied, be admissible as evidence to the like effect as if oral evidence had been given by the person: *Section 19(1);*
- The following conditions shall be satisfied for a statement to be admissible under subsection (1):
  - The statement purports to be signed by the person who made it: *Section 19(2)(a);*

- Except in the case of a child under 14 years of age, the statement was sworn a Justice of the Peace and is authenticated by a certificate and signed by him: and *Section 19(2)(b);*
- The statement contains a declaration by that person 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 willingly stated in it anything which he knew to be false or did not believe to be true: *Section 19(2)(c);*

- Where a statement is made by a person under 18 years of age it shall:
  - Be recorded in the presence of an adult of his choice: and *Section 19(3)(a);*
  - State his age and that an adult of his choice was present with him when it was made: *Section 19(3)(b);*
- Notwithstanding *Section 19,* of the *Children Act,* where a statement is made by a child under 14 years of age, such statement shall be supported by a statement from a probation officer, child psychiatrist or any other person qualified to make an assessment of the child to assist the court to determine whether the child is possessed of sufficient intelligence to justify the reception of his statement as evidence and understands the duty of speaking the truth and the consequences of not speaking the truth: *Section 19(4);*
- Where a statement is made by a person who cannot read, the statement shall be:
  - Recorded on his behalf and read aloud to him or otherwise effectively communicated to him before he signs it or makes his mark thereon: and *Section 19(5)(a);*
  - Accompanied by a declaration that states that it has been read aloud to him or effectively communicated to him and he has signed or made his mark thereon: *Section 19(5)(b)*;
- Where a statement is made by a person who cannot write, the statement shall be:
  - Recorded on his behalf and read aloud to him or otherwise effectively communicated to him before he signs it or makes his mark thereon: and *Section 19(6)(a);*
  - Accompanied by a declaration that states that it has been read aloud to him and translated to him and he has signed or made his mark thereon: *Section 19(6)(b);*
- Where a statement is made by a person who does not speak English, his statement shall be taken through an interpreter and shall be:
  - Recorded on his behalf, read aloud and translated to him in English before he signs it or makes his mark thereon: and *Section 19(7)(a);*
  - Accompanied by a declaration that states that it has been read aloud and translated to him and he has signed or made his mark thereon: *Section 19(7)(b);*
- Any document or object referred to as an exhibit and identified in a statement tendered in evidence under *Sections 14* and *15,* shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement: *Section 19(8);*

- For the purposes of subsections (5), (6) and (7), the person who:
  - Records and reads the statement aloud to the person who cannot read or write under subsections (5) or (6) respectively: or *Section 19(9)(a);*
  - Records, reads and translates the statement to the person who requires an interpreter under *Section (7): Section 19(9)(b);*

  shall sign a declaration that the person under subsections (5), (6), or (7), understood what was written, confirmed that it was true, and that the statement reflected what he would have said orally;
- The exhibits which are produced to the magistrate by:
  - The prosecutor pursuant to *Section 14(2)(b):* or *Section 20(1)(a);*
  - He accused pursuant to *Section 15(1): Section 20(1)(b);*

  shall, at the hearing of the committal proceedings, be duly marked;
- Documentary exhibits shall be delivered into the custody of the Clerk of the Peace who shall retain them in safe custody under the direction of the magistrate, unless the magistrate otherwise directs: *Section 20(2);*
- All other exhibits other than those referred to in subsection (2), shall, on the direction of the magistrate to be taken charge of by the police or another appropriate body and shall be produced by them or it at trial: *Section 20(3);*
- Where an accused person intends to rely on an alibi in his defence to the charge, he is required, must in addition to any statements he may file under *Section 15,* to file a notice of alibi at the commencement of committal proceedings after he has been served documents by the prosecutor: *Section 21(1);*
- On trial on indictment, the accused person shall not, without leave of the court, adduce evidence in support of an alibi, unless he has given notice as required under subsection (1): *Section 21(2);*
- A magistrate, on application by the prosecutor or the accused person, may permit either of them to file further evidence within such period as may be specified by the magistrate: *Section 22(1);*
- Further evidence filed under subsection (1), shall be:
  - Served on the other party: and *Section 22(2)(a);*
  - Treated - in the same manner as documents originally filed under *Sections 14(2)* and *15(1): Section 22(2)(b);*
- All statements filed, documentary exhibits and the list of exhibits admitted as evidence shall be signed and stamped by the magistrate presiding over the committal proceedings: *Section 23;*
- At the conclusion of tendering of all the evidence and hearing of any submissions if any, under Part III, the magistrate may make any of the following orders:
  - Commit the accused person for trial in the High Court: *Section 24(a);*
  - Discharge the accused person and, if he is in custody, make an order for his release: or *Section 24(b);*

- Make any other order in relation to the case, the charge or the accused person as provided for in this Act or under any other written law: *Section 24(c);*

- Where the magistrate makes an order under *Section 24(a),* he may commit the accused person for trial:
  - In custody, that is to say, by committing him to prison there to be safely kept until delivered in due course of law: or *Section 25(1)(a);*
  - On bail in accordance with the provisions of the Bail Act, and direct him to appear before the High Court for trial: *Section 25(1)(b);*

- After the committal proceedings have been concluded and the warrant of commitment for trial has been issued, the magistrate shall, no later than three months from the conclusion of the committal proceedings, transmit to the Director of Public Prosecutions the complaint, the statements of the witnesses, both for the prosecution and defence, the documentary exhibits and lists of exhibits thereto, the statement, if any, of the accused person and the warrant of commitment for trial: *Section 29(1);*

- Subject to this Act, the complaint, statements and other documents and documentary exhibits received from a magistrate by the Director of Public Prosecutions and referred to in subsection (1), shall be kept by the Director of Public Prosecutions, until the indictment, if any, to which they relate is filed, and shall then be transmitted to the Registrar of the Supreme Court, who shall keep them and produce them to the court at the trial of the accused person: *Section 29(2);*

- In committal proceedings, except when the charge is one of treason or murder, if an accused person who is represented by an attorney-at-law informs the magistrate that he is guilty of the charge, the magistrate:
  - Shall say to him the following words, or words to the like effect:

    "Do you wish the witnesses to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence, instead of being committed for trial": and Section 34(a);
  - May commit him for sentence before the High Court in accordance with *Section 35(2): Section 34(b);*

- Where the accused person, in answer to the question referred to in *Section 34,* states that he does not wish the witnesses to appear to give evidence against him, his statement of guilt and his answer shall be taken down in writing and read to him and shall be signed by the magistrate, the accused person and his attorney-at-law and shall be kept with the statements of the witnesses: *Section 35(1);*

- In any such case as mentioned in this section, the magistrate shall, instead of committing the accused person for trial, order him to be committed for sentence before the High Court, and in the meantime, the magistrate shall, by his warrant, commit the accused person to prison to be there safely kept until the sittings of that court, or until he is admitted to bail or delivered by due course of law: *Section 35(2);*

- The magistrate shall, as soon as is practicable after the committal for sentence of the accused person, transmit to the Director of Public Prosecutions the record or

the proceedings in the manner required by *Section 29,* and the Director of Public Prosecutions shall prefer and file in the High Court an indictment against the accused person committed for sentence within four months of the committal for sentence: *Section 35(4);*

- If an accused person who is committed for trial or sentencing is granted bail, the recognizance of bail shall be taken in writing either from the accused person and one or more sureties or from the accused person alone, in the discretion of the magistrate, according to the *Bail Act,* and shall be signed by the accused person and his surety or sureties, if any: *Section 36(1);*

- No person shall print, publish, cause or procure to be printed or published, in relation to any committal proceedings under this Act, any particulars other than the following:

    - The name, address and occupation of the accused person and any witnesses: *Section 45(1)(a);*
    - A concise statement of the charge: and *Section 45(1)(b);*
    - Submissions on any point of law arising in the course of the enquiry, and the decision of the magistrate thereon: *Section 45(1)(c);*

  unless the court directs otherwise[59];

- Nothing in this section shall apply to the printing or reproduction by any other method of any pleading, transcript of evidence or other documents for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the magistrate: *Section 45(2);*

- Where an accused has been discharged under *Section 24,* and additional material evidence of a material nature in support of the offence becomes available, the Director of Public Prosecutions may refer the case back to the magistrate with directions to reopen the committal proceedings for the purpose of taking further evidence, and with such other directions as he may think proper: *Section 26(5).*

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For the purpose of detailing the law on committal proceedings for Trinidad and Tobago under items *(a), (b)* and *(c),* the *Indictable Offences (Preliminary Enquiry) Chap. 12:01,* will be utilised. However, this Act must be read conjunctively with the *Miscellaneous Amendments (No. 2) Act, 2020.*

[59] Trinidad and Tobago: Indictable Offences (Committal Proceedings) No 14 of 2014, section 45(3). A person who acts in contravention of this section is liable on summary conviction in respect of each offence to a fine of one hundred and fifty thousand dollars and to imprisonment for two years.

Old style preliminary enquiry[60]

- When an accused person is before a magistrate holding a preliminary enquiry, the magistrate shall take or cause to be taken in writing, or have recorded, the evidence of the witnesses on the part of the prosecution apart from each other: *Section 16(1);*
- If the evidence is being taken in writing, the following shall apply:
- The evidence of each such witness shall be taken down in the form of a deposition: *Section 16(3)(a);*
    - Such deposition shall be read over to the witness and shall be signed by the witness and the magistrate; 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: *Section 16(3)(b);*
    - 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 he signs his deposition before a magistrate, but if the accused is afterwards discharged, any magistrate may order any such witness to be discharged: and *Section 16(3)(c);*
    - 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: *Section 16(3)(d);*
- 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: Section 16(4);*
- The evidence of each 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: *Section 16(5);*
- Where the examination of the witnesses called on behalf of the prosecution has been completed but before compliance with *Section 17(2),* the magistrate shall address the accused person in the following words or words to the like effect:

[60] Trinidad and Tobago: Indictable Offences (Committal Proceedings) No 14 of 2014, section 49(1). Notwithstanding section 48:

- the Indictable Offences (Preliminary Enquiry) Act shall continue to apply to preliminary enquiries where proceedings have begun before the Magistrates' Court prior to the coming into force of this Act; and
- section 39 of the Indictable Offences (Preliminary Enquiry) Act shall continue to apply to any trial where the preliminary enquiry was conducted under the Indictable Offences (Preliminary Enquiry) Act prior to the commencement of this Act.

> *"I must warn you that if this court should commit you for trial you may not be permitted at that trial to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses in support thereof. You may give those particulars now to this court or in writing to the Director of Public Prosecutions not later than ten days from the end of these committal proceedings": Section 16A(1);*

- If it appears to the magistrate that the accused person does not understand the meaning of the term "alibi," the magistrate shall explain it to him: *Section 16A(2);*
- The magistrate shall not be required to give this warning in any case where it appears to him that, having regard to the nature of the offence with which the accused is charged, it is unnecessary to do so: *Section 16A(3);*
- Where the magistrate has given the accused the warning required by subsection (1), the Clerk of the Peace shall give to him written notice of the provisions of *Section 16B: Section 16A(4);*
- 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, admissible[61] as evidence to the like extent as oral evidence to the like effect by that witness: *Section 16C(1);*
- The conditions referred to in subsection (1) are that:
    - The statement purports to be signed by the witness who made it: *Section 16C(3)(a);*
    - The statement was sworn before a Justice of the Peace and shall be authenticated by a certificate signed by him: *Section 16C(3)(b);*
    - 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: *Section 16C(3)(c);*
    - 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 *Section 16C(3)(d);*
    - 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[62]: *Section 16C(3)(e);*

[61] Trinidad and Tobago- Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 23C. A written statement admitted in evidence under section 16C is deemed to be a deposition within the meaning of section 16(3).

[62] Trinidad and Tobago: Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 23C, section 16C (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).

- 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: *Section 16(C)(2);*
- The following provisions shall also have effect in relation to any written statement admitted in evidence under this section, that is to say:
    - 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: *Section 16(C)(4)(a);*
    - 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: *Section 16(C)(4)(b);*
    - 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: *Section 16(C)(4)(c);*
    - 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 *Section 16(C)(4)(d);*
    - 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: *Section 16(C)(4)(e);*
- 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: *Section 16(C)(6);*
- 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: *Section 16(C)(7);*
- *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 *paras. (b)* and *(c),* thereof were omitted: *Section 16(C)(8);*
- Where the written statements to be tendered in evidence are given by the prosecution and accepted by the accused and his attorney-at-law,[63] the accused is not entitled

[63] Trinidad and Tobago- Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 16C (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.

thereafter to object to a preliminary enquiry in accordance with *Sections 23A* or *23B,* and the magistrate shall proceed to conduct the enquiry in accordance with *Sections 23A* or *23B: Section 16(C)(9);*

- 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: *Section 16D(1);*
- 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[64]: *Section 16D(2);*
- 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: *Section 16D(5);*
- 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: *Section 16D(6);*
- 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 given by or on behalf of the party who has tendered the evidence: *Section 16D(7);*
- 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 *Sections 23A* or *23B: Section 16D(8);*
- Notwithstanding this section, an accused person is entitled to submit to the magistrate that any part of a statement is inadmissible in evidence: *Section 16D(9);*
- 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:

[64] Trinidad and Tobago- Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 16D (3). Where a statement is to be admitted in evidence under section 16C (1), and the Magistrate is of the opinion that part of it is inadmissible there shall be written against that part the words "treated as inadmissible" together with the signature of the Magistrate.
Section 16D (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.

"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": Section 17(1);

- 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 *Section 16,* and:
    - 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 *Section 17(2)(a);*
    - 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: *Section 17(2)(b);*
- Where pursuant to subsection (1), a magistrate informs an accused person of his entitlement and the accused person:
    - Chooses to remain silent:
    - 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,[65] if he will, and the magistrate,[66] and such statement or transcript of the recording shall be kept with the depositions: *Section 17(3);*
- 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 17(7);*
- 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: *Section 18(1);*
- 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:

[65] Trinidad and Tobago- Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 17(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.

[66] Trinidad and Tobago- Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 17(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.

- The request;
- The response, if any, of the accused person to the request,

and the statement shall be read to and signed by the accused person,[67] if he will, and the magistrate, and such statement or transcript of the recording shall be kept with the depositions: *Section 18(2);*

- The magistrate shall cause all writings and other articles exhibited by the witnesses, or any of them, to be inventoried and labelled, or otherwise marked, in the presence of the person producing them, so that they may be identified at the trial: *Section 19;*
- Where any person is capable of giving material evidence in respect of an indictable offence is, from illness, unable to attend at the place where the magistrate usually sits, a magistrate shall have power to take the deposition of the person at the place where the person is: *Section 20(1);*
- Every deposition taken under this section shall be forwarded to the magistrate by whom the preliminary enquiry into the indictable offence is being, or has been, held, if the deposition was taken by some other magistrate, and the deposition shall, subject to *Section 40(2),* be treated in all respects in the same way, and shall be considered for all purposes as a deposition taken upon the preliminary enquiry: *Section 20(4);*
- The magistrate holding the preliminary enquiry shall bind over:
  - Every witness for the prosecution whose deposition has been taken;
  - Every witness for the defence not being merely a witness to the character of the accused whose evidence is, in his opinion, material, to give evidence at the trial of the accused person before the court: *Section 21(1);*
- Any witness who refuses, without reasonable excuse, to enter into such recognizance 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 enters into such recognizance before a magistrate; but if the accused person is afterwards discharged, any magistrate may order any such witness to be discharged: *Section 21(4);*
- Where a person charged before a magistrate with an indictable offence is committed for trial and it appears to the magistrate, after taking into account anything which may be said by the accused or the prosecutor that the attendance at trial of a witness who has been examined before him is unnecessary because of:
  - Anything contained in any statement by the accused: or *Section 21(5)(a);*
  - The accused having pleaded guilty to the charge: or *Section 21(5)(b);*
  - The evidence of the witness being merely of a formal in nature: *Section 21(5)(c);*

  then the magistrate shall:

[67] Trinidad and Tobago - Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 18(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

- If the witness has not already been bound over, bind him over to attend the trial conditionally upon notice being given to him and not otherwise: or *Section 21(5)(c)(i);*
- If the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally: *Section 21(5)(c)(ii);*

and transmit with the depositions a statement in writing of the names, addresses and occupations of the witnesses who are or who are to be treated as having been bound over to attend the trial conditionally;

- Where a magistrate is, during a preliminary enquiry, in doubt as to any matter arising during the enquiry, he may grant bail to the accused person or commit him to prison according to the provisions hereinafter contained, until he has consulted, and received the opinion of, the Director of Public Prosecutions in the matter: *Section 22;*
- When all the witnesses on the part of the prosecutor and of the accused person, if any, have been heard, the magistrate shall, if, upon the whole of the evidence, he is of the opinion that no prima facie case of any indictable offence is made out, discharge him; and in such case any recognizance taken in respect of the charge becomes void: *Section 23(1);*
- Where the magistrate is of the opinion, on consideration of the evidence and of any statement of the accused, that there is sufficient evidence to put the accused on trial for any indictable offence, the magistrate shall commit the accused for trial:
  - In custody, that is to say, by committing him to prison there to be safely kept until delivered in due course of law: or *Section 23(2)(a);*
  - On bail in accordance with the provisions of the *Bail Act,*[68] that is to say, by directing the accused to appear before the High Court for trial: *Section 23(2)(b);*

  and where his release on bail is conditioned on his providing a surety and, in accordance with *Section 16,* of the *Bail Act,* the magistrate fixes the amount in which the surety is to be bound with a view to his entering into his recognizance subsequently, the magistrate shall, in the meantime, commit the accused to custody in accordance with *para. (a),* of this subsection;
- Where an accused person has not been put upon his trial for any offence disclosed by the evidence taken at a preliminary enquiry and additional evidence of a material nature in support of any such offence becomes available, a further enquiry may be held in the like manner and with the like consequences as if it were an original preliminary enquiry; *Section 23(9);*
- Every person committed for trial, whether bailed or not shall be entitled, at any reasonable time before the trial, to have copies of the depositions and of his own

[68] Trinidad and Tobago - Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 23(4). Nothing herein shall be construed to prevent the Magistrate from granting bail to the accused person if the offence charged is of a bailable nature.

statement (if any) from the clerk of the Magistrate's Court, or, if the documents relating to the inquiry have been transmitted by the magistrate as hereinafter provided, from the Registrar: *Section 24;*

- A magistrate conducting a preliminary enquiry in accordance with *Section 16,* or under *Sections 23A* or *23B,* 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, or call upon the maker of a written statement to furnish him with additional evidence, as the case may be: *Section 24C;*
- After the preliminary enquiry has been concluded and the warrant of commitment for trial has been made out, the magistrate shall, without delay, transmit to the Director of Public Prosecutions the complaint, the depositions of the witnesses, the documentary exhibits thereto, the evidence (if any) of the accused person, the warrant of commitment for trial, and the recognizances entered into. All exhibits, other than documentary exhibits, shall, unless the magistrate otherwise directs, be taken charge of by the police and shall be produced by them at the trial[69]: *Section 25(1);*
- In a preliminary enquiry except when the charge is for treason or murder if an accused person who is represented by an attorney informs the magistrate that he is guilty of the charge the magistrate may commit him for sentence before the High Court in accordance with *Section 27C(2): Section 27A;*
- In any such case as mentioned in this section the magistrate shall, instead of committing the accused for trial, order him to be committed for sentence before the High Court, and in the meantime, the magistrate shall, by his warrant, commit the accused to prison to be there safely kept until the sitting of the High Court, or until he is admitted to bail or delivered by due course of law: *Section 27C(2);*
- Except where the offence is one of treason or murder, if, after being informed of his rights under *Section 17,* an accused person instead of giving evidence upon oath says or admits that he is guilty of the charge, then the magistrate shall further say to him the words following, or words to the like effect:

  > *"Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence, instead of being committed for trial": Section 27B;*

- Where the accused, in answer to the question referred to in *Section 27A,* states that he does not wish the witnesses again to appear to give evidence against him, his statement shall be taken down in writing and read to him and shall be signed by the magistrate and by the accused, if he will, and shall be kept with the depositions of the witnesses. The witnesses may thereupon be bound over conditionally in the manner provided by *Section 21(5): Section 27C(1);*

[69] Trinidad and Tobago - Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 25(1). After the preliminary enquiry has been concluded and the warrant of commitment for trial has been made out, the Magistrate shall, without delay, transmit to the Director of Public Prosecutions the complaint, the depositions of the witnesses, the documentary exhibits thereto, the evidence (if any) of the accused person, the warrant of commitment for trial, and the recognisances entered into. All exhibits, other than documentary exhibits, shall, unless the Magistrate otherwise directs, be taken charge of by the Police and shall be produced by them at the trial.

- No person shall print or publish or cause or procure to be printed or published, in relation to any preliminary enquiry under this Act, any particulars other than the following[70]:
    - The names, addresses and occupations of the accused person and the witnesses: *Section 41(1)(a);*
    - A concise statement of the charge; and the defence in support of which evidence has been given: *Section 41(1)(b);*
    - Submissions on any point of law arising in the course of the enquiry, and the decision of the magistrate thereon: *Section 41(1)(c);*
- Nothing in this section shall apply to the printing or reproduction by any other method of any pleading, transcript of evidence or other documents for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the magistrate: *Section 41(2);*
- Notwithstanding *Sections 26(1)* and *(2),* but subject to *Section 26(3),* where the original deposition or part thereof, or any document mentioned in that section is lost or destroyed, a copy of the deposition or part thereof, or of the document, duly certified by the Clerk of the Peace of the magisterial district in which the preliminary enquiry was held, or by the examining magistrate shall be regarded as the original deposition or document as the case may be and dealt with as such for purposes of this Act: *Section 26A;*
- At any time after the receipt of the depositions and other documents mentioned in *Sections 25* or *26A,* and before the indictment is filed, the Director of Public Prosecutions may, if he thinks fit, refer back the case to the magistrate with directions[71] to re-open the enquiry for the purpose of taking further evidence, and with such other directions to re-open the enquiry for the purpose of taking further evidence, and with such other directions as he may think proper. Where a case is referred back as herein provided, the enquiry shall be re-opened, and the case shall be dealt with in all respects as if the accused person had not been committed for trial: *Section 27(1);*
- All persons committed to prison under this Act shall be committed to the Port-of-Spain Prison, or to such other prison within the district in which they have been committed as may have been appointed by the President: *Section 38.*

[70] Trinidad and Tobago- Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 41(3). A person who acts in contravention of this section is liable on summary conviction in respect of each offence to a fine of two thousand dollars or to imprisonment for four months.

[71] Trinidad and Tobago - Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 27(3). Any directions given by the Director of Public Prosecutions under this section shall be in writing signed by him, and shall be complied with by the Magistrate:
Provided that the Director of Public Prosecutions may at any time add to, alter, or revoke any such directions.

a) ***Committal without consideration of the written statements***

- A magistrate holding a preliminary enquiry shall, satisfied that all the evidence before the court, whether for the prosecution or the accused, 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: *Section 23A(1);*
- Subsection (1), shall not apply where the:
  - Accused or one of the accused is not represented by an attorney-at-law: or *Section 23A(2)(a);*
  - 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: *Section 23A(2)(b);*
- Where a magistrate commits an accused without consideration of the contents of the written statements he shall:
  - Give an alibi warning, addressing the accused in the following words or words to the like effect:

    > *"I must warn you that if this court should commit you for trial you may not be permitted at that trial to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses in support thereof. You may give those particulars now to this court or in writing to the Director of Public Prosecutions not later than ten days from the end of these committal proceedings: Section 16A(1);*

  If it appears to the magistrate that the accused may not understand the meaning of the term "alibi," he shall explain it to him: *Section 16A(2)*;
  - Comply with *Sections 17, 17A* and *23(2): Section 23A(4);*
- Where a magistrate holding a preliminary enquiry admits written statements of a person under *Sections 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: *Section 23D;*
- Every person committed for trial, whether bailed or not shall be entitled, at any reasonable time before the trial, to have copies of the depositions and of his own statement (if any) from the clerk of the Magistrate's Court, or, if the documents relating to the inquiry have been transmitted by the magistrate as hereinafter provided, from the Registrar: *Section 24;*
- The provisions of this Act relating to the commitment for trial and to bail of an accused person shall apply where a magistrate commits an accused person under *Section 23A* or *23B: Section 24A;*
- A magistrate conducting a preliminary enquiry in accordance with *Section 16,* or under *Sections 23A* or *23B,* 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, or call upon the maker of a written statement to furnish him with additional evidence, as the case may be: *Section 24C;*

- After the preliminary enquiry has been concluded and the warrant of commitment for trial has been made out, the magistrate shall, without delay, transmit to the Director of Public Prosecutions the complaint, the depositions of the witnesses, the documentary exhibits thereto, the evidence, (if any) of the accused person and the warrant of commitment for trial, and the recognizances entered into. All exhibits, other than documentary exhibits, shall, unless the magistrate otherwise directs, be taken charge of by the police and shall be produced by them at the trial: *Section 25(1);*
- At any time after the receipt of the depositions and other documents mentioned in *Sections 25* or *26A,* and before the indictment is filed, the Director of Public Prosecutions may, if he thinks fit, refer back the case to the magistrate with directions[72] to re-open the enquiry for the purpose of taking further evidence, and with such other directions as he may think proper. Where a case is referred back as herein provided, the enquiry shall be re-opened, and the case shall be dealt with in all respects as if the accused person had not been committed for trial: *Section 27(1);*
- All persons committed to prison under this Act shall be committed to the Port-of-Spain Prison, or to such other prison within the district in which they have been committed as may have been appointed by the President: *Section 38.*

b) ***Committal with consideration of written statements***

Committal Proceedings under the *Indictable Offences (Preliminary Enquiry) Chap. 12:01.*

- A magistrate, holding a preliminary enquiry, who does not commit an accused person under *Section 23A,* and having ascertained that the:
  - Accused has no attorney-at-law acting for him in the enquiry: *Section 23B(1)(a);*
  - 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 *Section 23B(1)(b);*
  - Accused or his attorney-at-law wishes to cross-examine any of the witnesses for the prosecution: *Section 23B(1)(c);*

  shall permit the prosecutor to tender to the court any statement that is in compliance with *Section 16C;*
- After the prosecution tenders any statement as provided for under subsection (1), the magistrate shall admit the written statements in accordance with *Section 16C(1),*

[72] Trinidad and Tobago- Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 27(3). Any directions given by the Director of Public Prosecutions under this section shall be in writing signed by him, and shall be complied with by the Magistrate: Provided that the Director of Public Prosecutions may at any time add to, alter, or revoke any such directions.

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: *Section 23B(2);*

- The magistrate may view any exhibits produced before him and may take possession of them: *Section 23B(3);*
- 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: *Section 23B(4);*
- Where a magistrate holding a preliminary enquiry admits written statements of a person under *Sections 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: *Section 23D;*
- The magistrate shall permit the prosecutor to make a submission:
    - In reply to any submission made by the accused or his attorney-at-law in pursuance of subsection (4): or *Section 23B(5)(a);*
    - 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: *Section 23B(5)(b);*
- After hearing any submission made in pursuance of subsections (4) or (5), the magistrate shall, unless he discharges the accused person, comply with *Sections 16A, 17, 17A* and *23(2),* with appropriate modification of the language of the sections in relation to the relevant circumstances: *Section 23B(6);*
- The provisions of this Act relating to the commitment for trial and to bail of an accused person shall apply where a magistrate commits an accused person under *Sections 23A* or *23B: Section 24A;*
- A magistrate conducting a preliminary enquiry in accordance with *Section 16,* or under *Sections 23A* or *23B*, 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, or call upon the maker of a written statement to furnish him with additional evidence, as the case may be: *Section 24C;*
- After the preliminary enquiry has been concluded and the warrant of commitment for trial has been made out, the magistrate shall, without delay, transmit to the Director of Public Prosecutions the complaint, the depositions of the witnesses, the documentary exhibits thereto, the evidence, (if any) of the accused person, and the warrant of commitment for trial, and the recognizances entered into. All exhibits, other than documentary exhibits, shall, unless the magistrate otherwise directs, be taken charge of by the police and shall be produced by them at the trial: *Section 25(1);*
- At any time after the receipt of the depositions and other documents mentioned in *Sections 25* or *26A,* and before the indictment is filed, the Director of Public

Prosecutions may, if he thinks fit, refer back the case to the magistrate with directions[73] to re-open the enquiry for the purpose of taking further evidence, and with such other directions as he may think proper. Where a case is referred back as herein provided, the enquiry shall be re-opened, and the case shall be dealt with in all respects as if the accused person had not been committed for trial: *Section 27(1);*

- All persons committed to prison under this Act shall be committed to the Port-of-Spain Prison, or to such other prison within the district in which they have been committed as may have been appointed by the President: *Section 38.*

c) ***Pre -trial procedure for indictable offences***

Committal Proceedings under the *Indictable Offences (Pre-Trial Procedure) Bill No. 12 of 2017.*

The Bill, introduced into Parliament on the February 23, 2017, is aimed at treating with delays in the criminal justice system by abolishing preliminary enquiries (which are sometimes called committal proceedings) and would make provision for a pre-trial mechanism in respect of indictable offences and ancillary matters.

- The Bill will repeal:
  - *The Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01;*
  - *The Administration of Justice (Indictable Proceedings) Act No. 20 of 2011;*
  - *The Indictable Offences (Committal Proceedings) Act No. 14 of 2014;*
- The Bill is non-retroactive in nature. Therefore, notwithstanding the repeal of the *Indictable Offences (Preliminary Enquiry) Act, Chap 12:01,* this Act shall continue to apply to preliminary enquiries where:
  - Proceedings have begun before the Magistrates' Court prior to the coming into force of the *Indictable Offences (Pre-trial Procedure), Act:*
  - The preliminary enquiry was conducted prior to the commencement of the *Indictable Offences (Pre-Trial Procedure) Act;*
- Under *Section 14,* of the Bill, the obligation of the magistrate to transfer documents to the Director of Public Prosecutions under *Section 25(1),* of the *Indictable Offences (Preliminary Enquiry) Act,* now shifts to the police. This removes the entire preliminary enquiry process provided for within the *Indictable Offences (Preliminary Enquiry) Act, Chap 12:01. Clause 14* states:

  Wherever any charge has been brought against any person for an indictable offence, the police shall submit to the Director of Public Prosecution:
  - The complaint: *Section 14(a);*
  - Any statements of witnesses in support of the charge: and *Section 14(b);*

[73] Trinidad and Tobago- Indictable Offences (Preliminary Enquiry) Chap. 12:01, section 27(3). Any directions given by the Director of Public Prosecutions under this section shall be in writing signed by him, and shall be complied with by the Magistrate: Provided that the Director of Public Prosecutions may at any time add to, alter, or revoke any such directions.

- Any document exhibit which might be produced in evidence by the prosecution at trial: and *Section 14(c);*
- A list of exhibits, if there are any exhibits, which might be produced in evidence by the prosecutor at the trial: *Section 14(d);*

- Under *Section 15,* of the Bill, the Director of Public Prosecutions shall, within three months of receiving documents pursuant to *Section 14,* or within such further period as a magistrate may, on application, permit, cause a copy of the complaint and of the statements which he intends to produce in evidence at trial to be served on the accused person or his attorney-at-law: *Section 15;*
- *Section 16,* provides that an accused or his legal representative may, within three months of being served under *Section 15,* or within such further period as a magistrate may, on application, permit, in reply, serve on the Director of Public Prosecutions:
  - A statement of any evidence that the accused person wishes to give on his own behalf at his trial: *Section 16(a);*
  - Any statements of witnesses in support of the defence: *Section 16(b);*
  - Any documentary exhibits which he intends to produce in evidence at the trial: *Section 16(c);*
  - A list of exhibits, if there are any exhibits, which he intends to produce in evidence at the trial: and *Section 16(d);*
  - A notice of alibi, if any, in accordance with *Section 19: Section 16(e);*
- *Section 17,* provides for the recording of statements by different categories of persons.

  A statement served under *Sections 15* or *16,* shall, if the conditions in subsection (2), are satisfied, be admissible as evidence to the like effect as if oral evidence had been given by the person: *Section 17(1);*
  - The following conditions shall be satisfied for a statement to be admissible under subsection (1):
    (i) the statement purports to be signed by the person who made it: *Section 17(2)(a);*
    (ii) except in the case of a child under ten years of age, the statement was sworn before a justice and is authenticated by a certificate signed by him: and *Section 17(2)(b);*
    (iii) the statement contains a declaration by that person 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 willingly stated in it anything which he knew to be false or did not believe to be true: *Section 17(2)(c);*
  - Where a statement is made by a person under 18 years of age it shall:
    (iv) be recorded in the presence of an adult of his choice: and *Section 17(3)(a);*
    (v) state his age and that an adult of his choice was present with him when it was made: *Section 17(3)(b);*

- Where a statement is made by a person who cannot read, the statement shall be:
  (vi) recorded on his behalf and read aloud to him or otherwise effectively communicated to him before he signs it or makes his mark thereon: and *Section 17(5)(a);*
  (vii) accompanied by a declaration that states that it has been read aloud to him or effectively communicated to him and he has signed or made his mark thereon: *Section 17(5)(b);*
- Where a statement is made by a person who cannot write, the statement shall be:
  (viii) recorded on his behalf and read aloud to him or otherwise effectively communicated to him before he signs it or makes his mark thereon: and *Section 17(6)(a);*
  (ix) accompanied by a declaration that states that it has been read aloud and translated to him and he has signed or made his mark thereon: *Section 17(6)(b);*
- Where a statement is made by a person who does not speak English his statement shall be taken through an interpreter and shall be:
  (x) recorded on his behalf, read aloud and translated to him in English before he signs it or makes his mark thereon: and *Section 17(7)(a);*
  (xi) accompanied by a declaration that states that it has been read aloud and translated to him and he has signed or made his mark thereon: *Section 17(7)(b);*

- *Section 22,* states that:
  - A person who is charged with an indictable offence may be indicted for any offence for which he was charged or for any offence which, in the opinion of the Director of Public Prosecutions, is disclosed by the documents or evidence submitted to the Director of Public Prosecution: *Section 22(1);*
  - Where the Director of Public Prosecution does not prefer an indictment against an accused person within 12 months after the expiration of the period specified in *Section 16,* or within such further period as a magistrate may, on application, permit, the accused may apply to a judge for a discharge and the judge may discharge the accused if, having considered the reason for the delay in preferring an indictment, he is satisfied that in all the circumstances of the case it would be just to do so: *Section 22(2);*
- *Section 25,* provides that where an accused person has been indicted for any offence disclosed by the evidence submitted to the Director of Public Prosecutions and additional evidence of a material nature in support of the offence becomes available, the new evidence may, with notice to the accused person and the leave of the court, be given as fresh evidence at the trial: *Section 25;*
- *Section 27,* states that except when the charge is one of treason or murder, if an accused person who is represented by an attorney-at-law informs the magistrate that he is guilty of the charge, the magistrate:

- Shall say to him the following words, or words to the like effect:

  "Do you wish the witnesses to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence": and Section 27(a);

- May commit him for sentence before the court in accordance with *Section 28(2): Section 27(b);*

- *Section 35,* directs that all persons committed to prison under this Act shall be committed to any prison to be determined by the Commissioner of Prisons: *Section 35;*

- *Section 36,* provides that:

  - The Director of Public Prosecutions shall, at least 14 days before the date fixed for trial, give notice to the Registrar of the names of the witnesses whom he desires to attend at the trial of the accused person at the court: *Section 36(1);*

  - The Registrar shall, on receipt of a notice under subsection (1), subpoena the witnesses in accordance with the procedure set out in *Section 17,* of the *Criminal Procedure Act: Section 36(2);*

  - The accused person may also give notice to the Registrar of the names of witnesses whom he desires to attend at trial and the Registrar shall subpoena such witnesses in like manner as for the prosecution: *Section 36(3);*

- *Section 38,* stipulates that no person shall print, publish, cause or procure to be printed or published, in relation to any charge for an indictable offence, any particulars other than the following:

  - The name, address and occupation of the accused person and any witnesses: and *Section 38(1);*

  - A concise statement of the charge: *Section 38(2);*

  unless the court or magistrate directs otherwise.

ST. KITTS AND NEVIS

The guiding legislation is the *Magistrates Code of Procedure Act.* For the purpose of detailing the law on Committal Proceedings for St. Kitts and Nevis in this chapter, the *Magistrate Code of Procedure Act, Chapter 3.17* will be used. However, this must be read conjunctively with the *Magistrate Code of Procedure (Amendment) Acts, No. 4 of 2018 and No. 2 of 2019.*

The *Magistrate Code of Procedure (Amendment) Act, No. 4 of 2018,* amended *Part IV,* of the *Magistrate Code of Procedure Act, Chap. 3.17,* by substituting the title "Preliminary Inquiries" to "Committal Proceedings." The Amendment Act repeals *Sections 55, 56, 57, 58, 59, 60* and *61,* of the Act. *The Amendment Act* also significantly amends S*ections 47, 49, 50, 51, 52, 53, 54, 62, 48* and further inserts *Sections 47A, 48A, 48B, 48C, 48D, 50A, 73A,* and *73B*. However, these changes shall not apply to proceedings which were commenced before the coming into force of this Act, unless no evidence has been taken in the proceedings; or where the evidence has been taken, the accused opts to have his case determined in accordance with the provisions of this Act.

- Where any charge is brought against any person for an offence which is not triable summarily, committal proceedings shall be held as provided in this Act: *Section 48;*
- Committal proceedings in respect of public prosecutions shall be instituted under the direction of the Director of Public Prosecutions and shall be commenced by the filing of:
    - One or more written statements of witnesses in support of the charge: *Section 48A(1)(a);*
    - A list of exhibits, if there are any exhibits which the prosecution intends to produce in connection with the proceedings: *Section 48(1)(b);*
- The Director of Public Prosecutions shall, as soon as practicable, cause the documents which are filed under the provisions of subsection (1), to be served on the accused person: *Section 48A(2);*
- After the documents referred to in *Section 48A(1),* have been served on the accused person and within such period as may be specified by the magistrate, the accused person may, in reply, file:
    - His or her own statement, and any statement of his or her own witnesses: and *Section 48B(1)(a);*
    - A list of exhibits, if there are any exhibits which the accused person intends to introduce in connection with the proceedings: *Section 48B(1)(b);*
- The failure by the accused person to file the documents referred to in subsection (1), of this section or the absence of such documents shall not, in itself, affect the power of the magistrate to proceed with and conclude the committal proceedings or to take any other action permitted by this Act: *Section 48B(2);*
- The court shall cause the documents filed by the accused person in accordance with the provisions of subsection (1), of this section in reply to the charges made against him or her to be served on the Director of Public Prosecutions: *Section 48B(3);*
- A magistrate who is holding committal proceedings may commit an accused person for trial by jury on a charge of an indictable offence if the magistrate is satisfied that either the charge supported by the evidence contained in the documents filed pursuant to the provisions of *Section 48A(1)*, alone or in conjunction with evidence contained in the documents filed pursuant to the provisions of *Section 48B(1),* establish or is likely to establish the indictable offence charged or an indictable office of a like kind which is otherwise within the magistrate's jurisdiction to deal with summarily: *Section 48C;*
- The exhibits produced by the prosecution pursuant to the provisions of *Section 48A(1)(b),* or by the accused person pursuant to the provisions of *Section 48B(1),* shall, at the hearing of the committal proceedings be duly marked and delivered into the custody of the clerk to the magistrate, who shall keep them in safe custody under the direction of the magistrate, and to be delivered to the High Court at the trial of the accused person": *Section 48D;*

- In any committal proceedings, a written statement by any person shall, if the conditions specified in subsection (2), of this section are satisfied, be admissible as evidence to the like effect as oral evidence to the like effect by that person: *Section 73A(1);*
- The conditions referred to in subsection (1), of this section are:
    - The statement purports to be signed by the person who made it: *Section 73A(2)(a);*
    - The statement contains a declaration by that person to the effect.
        (i) that it is true to the best of his or her knowledge and belief: *Section 73A(2)(b)(i);*
        (ii) that he or she made the statement knowing that if the statement were tendered in evidence, he or she would be liable to prosecution if he or she willingly stated in the statement anything which he or she knew to be false or did not believe to be true: and *Section 73A(2)(b)(ii);*
    - Before the statement is tendered in evidence, a copy of the statement is given, by or on behalf of the party proposing to tender the statement in evidence, to each of the other parties to the proceedings: *Section 73A 2)(c);*
- The magistrate may, upon application by the prosecution or the accused person, allow either party to file other documents in addition to the documents referred to in *Sections 42A(1)* or *42B(1),* respectively, within such period as may be specified by the magistrate: *Section 73A(3);*
- The additional documents referred to in subsection (3), of this section shall be served on the other party and be treated in the same manner as the documents referred to in those sections: *Section 73A(4);*
- Any part of a statement which is admitted in evidence under this section shall, unless the magistrate otherwise commits the accused for trial under the provisions of *Section 42C,* 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 the statement which is not read aloud: *Section 73A(5);*
- Any object or document 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: *Section 73A(6);*
- Subject to the provisions of subsection (2), the magistrate may, at the conclusion of the committal proceedings, make any of the following orders:
    - Dismiss the charge and, if the accused person is in custody, make an order for his or her release: *Section 62(1)(a);*
    - Commit the accused person for trial by jury: or *Section 62(1)(b);*
    - Make any other order in relation to the case, charge the accused as provided for in this Act or any other law: *Section 62(1)(c);*

- Upon application by the prosecution or the accused, the magistrate shall, before making an order under the provisions of subsection (1), give the prosecution or the accused, as the case may be, an opportunity to show cause, by way of submission only, why the order should not be made: *Section 62(2).*

Committal proceedings pursuant to a sufficiency hearing

ST. LUCIA

The guiding legislation is the *Criminal Procedure Rules 2015.*

Where a defendant has been arrested for an indictable offence in St. Lucia, an initial hearing of the complaint is conducted by a magistrate designated by the presiding judge.[74] At this hearing, the magistrate is mainly responsible for scheduling a date for a sufficiency hearing amongst other things, and has no jurisdiction to determine whether the evidence of the prosecution discloses a prima facie case sufficient to commit the defendant to trial before a judge and jury. This function is specifically performed by the judge or master at the sufficiency hearing whereby only documentary evidence, such as the complaint, police investigation reports and victim and witness statements, as submitted by the prosecution is considered.[75]

The *Criminal Procedure Rules 2015* states:

- The date of the initial hearing of the complaint shall be the summons return date or a date as soon as possible after arrest unless the defendant unless has not been granted bail in which case, the initial hearing shall be within 96 hours of the arrest: *rule 10.1;*
- An initial in the summary matter shall include:
  - Verifying the defendant's identity and contact information, unless verified previously at an orientation session: *rule 6.7(1)(a);*
  - Verifying the Notice of Acting, if the defendant is represented: *rule 6.7(1)(b);*
  - Reading the charges to the defendant: *rule 6.7(1)(c);*
  - Explaining the defendant's rights: *rule 6.7(1)(d);*
  - Explaining the plea process and taking of the plea: *rule 6.7(1)(e);*
  - Considering bail: *rule 6.7(1)(f);*
  - Hearing and reviewing any applications made by the prosecution or the defendant: and *rule 6.7(1)(g);*
  - Notifying the defendant of the next court date at which his or her appearance is required: *rule 6.7(1)(h);*
- An initial hearing in indictable matters shall include all the items in *rule 6.7(1),* except that a magistrate shall not accept a plea to an indictable offence and shall forward the case to be dealt with by a judge or master: *rule 6.8(1);*

[74] St. Lucia: Criminal Procedure Rules 2015, Rule 6.6.
[75] St. Lucia: Criminal Procedure Rules 2015, Rule 10.3

- At an initial hearing in an indictable matter, the magistrate shall make a Scheduling Order fixing dates:
    - For the sufficiency hearing: *rule 6.8(2)(a);*
    - By which the defendant must retain an attorney-at-law or seek the appointment of an attorney-at-law at the expense of the State[76]: *rule 6.8(2)(b);*
    - By which the defendant's application for an appointment of an atorney-at-law must be determined: and *rule 6.8(2)(c);*
    - By which the attorney-at-law, whether retained or appointed, must file a Notice of Acting with the court, if a Notice of Acting has not been filed: *rule 6.8(2)(d);*
- At the initial hearing, the magistrate shall inform the defendant of:
    - The offence charged by reading or causing the charge to be read to the defendant in a language that he or she understands: *rule 6.9(1)(a);*
    - The right to bail, if any: *rule 6.9(1)(b);*
    - The right to retain legal representation, including the right to request an adjournment to retain legal representation: *rule 6.9(1)(c);*
    - The right to have legal representation appointed at the expense of the State for certain indictable offences: *rule 6.9(1)(d);*
    - The right to remain silent, except as to plea and the right to know that any statement made may be used against him or her: *rule 6.9(1)(e);*
    - The right to enter a plea to the charges[77]: *rule 6.9(1)(f);*
    - The right to trial, if a not guilty plea is entered: and *rule 6.9(1)(g);*
    - The right to an interpreter, if necessary: *rule 6.9(1)(h).*

MONTSERRAT

The guiding legislation is the *Criminal Procedure Code Chap. 4.01.*

Where a defendant has been arrested for an indictable offence in Montserrat, an ***initial hearing*** of the complaint is conducted by a magistrate. At this hearing, the magistrate is mainly responsible for scheduling a date for a ***sufficiency hearing*** amongst other things.

- The initial hearing shall commence on the return date of the summons or warrant or when the accused first appears before the magistrate after having been arrested without warrant and shall continue on the date to which the magistrate adjourns the hearing from time to time: *Section 67(1);*
- If the defendant has not been granted bailed, the initial hearing shall take place within 72 hours of arrest: *Section 67(2);*

[76] St. Lucia: Criminal Procedure Rules 2015, Rule 6.8(4) provides that nothing in this Rule shall be construed as preventing a defendant from retaining legal representation at a subsequent stage of the proceedings.
[77] St. Lucia: At an initial hearing in an indictable matter shall include all the items in rule 6.7(1), except that a magistrate shall not accept a plea to an indictable offence and shall forward the case to be dealt with by a judge or master.

- At the initial hearing the magistrate shall:
    - Verify the defendant's identity and contact information: *Section 67(3)(a);*
    - Record the name and contact information for the defendant's counsel if the defendant is represented by counsel and record counsel's appearance: *Section 67(3)(b);*
    - Read the charges to the defendant or cause the charge to be read to the defendant in a language that he or she understands: *Section 67(3)(c);*
    - Explain to the defendant the rights set out in *Section 68: Section 67(3)(d);*
    - Consider bail in accordance with Part 7: *Section 67(3)(e);*
    - Hear and review any applications made by the prosecution or the defendant: *Section 67(3)(f);*
    - Make a scheduling order filing dates:
        (i) for the sufficiency hearing in the High Court: *Section 67(3)(g)(i);*
        (ii) by which the defendant must retain counsel or seek the appointment of counsel at the expense of the Crown: *Section 67(3)(g)(ii);*
        (iii) by which the defendant's application for appointment of counsel must be determined: and *Section 67(3)(g)(iii);*
        (iv) by which counsel, whether retained or appointed, must file notice of appearance with the magistrate's court, if a notice of appearance has not been filed: *Section 67(3)(g)(iv);*
- At the end of the initial hearing, the magistrate shall send the case to the High Court in the manner set out in the rules of the court: *Section 67(4);*
- Nothing in this paragraph shall be construed as preventing a defendant from retaining counsel at a subsequent stage of proceedings: *Section 67(5);*
- Scheduling orders made at the initial hearing are to be served on the prosecution, the defendant, counsel for the defendant, and the Director of Public Prosecutions: *Section 67(6);*
- The defendant's rights referred to in *Section 67(3)(d),* are:
    - The right to bail, if any: *Section 68(a);*
    - The right to retain counsel, including the right to request an adjournment to retain counsel: *Section 68(b);*
    - The right to have counsel appointed at the expense of the Crown where the defendant has been charged with murder: *Section 68(c);*
    - The right to disclosure by the prosecution before trial in accordance with *Part 11: Section 68(d);*
    - The right to remain silent, except as to plea and the right to know that any statement made by him or her may be used against him or her: *Section 68(e);*
    - The right to enter a plea to the charges: *Section 68(f);*
    - The right to trial, if a not guilty plea is entered: and *Section 68(g);*
    - The right, in circumstances stated in clause 144(3), to an interpreter: *Section 68(h).*

CHAPTER 14

ABUSE OF PROCESS

The court has an overriding duty to ensure that justice is done, and possesses an inherent power arising from that duty to stay or stop any proceedings where the court reasonably believes that continued prosecution of the case would constitute an abuse of the court's process.

In **Connelly v DPP [1964] AC 1254,** the House of Lords stated that a court possesses general powers which can be used to safeguard itself from abuse of its process and protect a defendant from an unfair prosecution. In **Connelly,** an abuse of process was described as *"something so unfair and wrong that the court should not allow the prosecutor to proceed with what is in all other respects a regular proceeding."*[1]

The ultimate aim of this discretionary power is to ensure that a fair trial is had by both parties. In **R v Sang (1980) AC 402,** the principle was explained thus: *"the fairness of a trial ... is not all one-sided; it requires that those who are undoubtedly guilty should be convicted as well as that those about whose guilt there is any reasonable doubt should be acquitted."*[2]

What are the basic principles?

There are predominantly two instances[3] in which the court has power to stop a prosecution for abuse of its process:

- Where the circumstances are such that it will be impossible for the accused to have a fair trial;
- Where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case.

In **Warren et al v AG of the Bailiwick of Jersey (2011) UKPC,** the Privy Council emphasized that these categories are different and require separate consideration. In the former category, the court is alert to safeguarding the interests of the defendant, and where the defendant cannot receive a fair trial due to an unjustifiable delay on the prosecution's part, the court will stay the proceedings.

The delay in prosecuting the case can arise in charging or trying the defendant. In **Dularie Peters v The State Cr. App. No. 34 of 2008,** the Court of Appeal of Trinidad and Tobago stated that a court should not grant a stay of prosecution for the purpose of punishing the State for its *"deleteriousness".* The prosecutorial fault itself cannot justify a stay and the prejudicial effect on the fairness of the trial must still be determined. This approach was supported by **Tan v Cameron [1992] 2 AC 205.**

[1] Hui Chi-Ming v R [1992] 1 A.C. 34, PC
[2] (1980) AC 402 at 437
[3] R v Maxwell 92010) UKSC 48 at [13]

In the latter category, the court is concerned with maintaining the integrity of the criminal justice system, therefore, where the prosecution has misused or manipulated the court's process or acted unfairly so as to deprive a defendant the court's protection, a stay will be granted.

This will be done where the court believes that in all circumstances, a trial will be contrary to the court's sense of fairness and propriety or will undermine the confidence of the public in the criminal justice system or discredit it.[4]

Right to a fair trial

The right to a fair trial is enshrined in the various constitutions with the only notable exception being Trinidad and Tobago.[5] The protection of the law requires that the hearing be held within a "reasonable time," though it is not always possible or practical to specify a time frame applicable to all cases. What is reasonable depends on all the relevant circumstances including the length of the delay, the reasons given by the prosecution to justify the delay, the efforts made by the defendant to assert his rights, any prejudice to the defendant as a result of the delay, and the consequences faced in the event of an adverse determination in proceedings.

In Trinidad and Tobago, the absence of an express constitutional clause means that when issues of fairness arise in criminal cases due to a delay in proceedings (excluding cases cases involving the death penalty), the common law principles apply.[6] The principles differ for death penalty cases.[7]

Delay

Delay might be excused in certain circumstances where there are cogent and convincing explanations for it: **Lovell v The Queen BB 2016 CCJ 6.**

Where the defendant alleges delay, he bears the burden of proof to show that he has been prejudiced in the presentation of his case as a result of the delay: **Attorney General's Reference (No. 1 of 1990) (1992) 95Cr App R 296.**

[4] Bennet v Horseferry Road Magistrate's Court ex p Bennet (1993) 3 All ER 138; R v Latif and Shahzad (1996) 2 Cr App R 92, HL

[5] Anguilla - Constitution 2009, section 10(1)
Antigua and Barbuda - Constitution 1981, section 6
Barbados - Constitution 1966, section 18(1)
Belize - Constitution 1981, section 5(3)
Dominica - Constitution of The Commonwealth of Dominica 1978, sections 8(8)
Grenada - The Constitution 1973, section 4(5)
Guyana - The Constitution of the Co-operative Republic of Guyana Cap. 1:01, section 144(13)
Jamaica - The Constitution 1962, sections 16(2)
Montserrat - Constitution 2010, section 7(1)
St Kitts and Nevis - Constitution of St. Christopher and Nevis 1983, section 5(5);
St Lucia - Constitution of Saint Lucia Cap. 1.01, section 8,
St Vincent and the Grenadines - Constitution 1979, section 8(1),

[6] Maraj - Narinesingh v A. G (2010) 77 WIR 470; DPP v Tokai (1996) 48 WIR 376 (UKPC); Sookermany v DPP (1996) 48 WIR 346 CA

[7] Boodram v The State (2001) 59 WIR 493 (UKPC)

Where the discretion to stay proceedings is exercised, the court must consider:

- The complexity of the case;
- The conduct of the defendant;
- The manner in which the case has been dealt with by the prosecution and the courts: **Tan v Cameron (1993) 2 All ER 493.**

In **Tan,** the Privy Council fully endorsed the judgement given in **A-G's Reference No. 1 of 1990,** and highlighted that even where it is established that the prosecution is at fault, thereby causing prejudice to the defendant, a court is still required to consider whether the situation that was created by the delay was such as to make it unfair for the defendant to be held accountable.

Where there an unwarranted number of amendments are sought to be made to an information, complaint or charge, a magistrate must determine whether there would be prejudice to the accused such as to amount to an abuse if he grants an amendment and proceed with the matter.

The purpose of laying an information or preferring a complaint within the 6-month limitation period is to ensure that there is no unnecessary delay in the disposal of the matters within the Magistrates' Courts.[8]

The magistrate must be mindful of the 6-month limitation period and consider whether the amendment was being sought on the last possible day so as to frustrate the proceedings. Where a magistrate is hesitant to grant an amendment, it is proper to investigate the charges to determine whether the amendment is necessary or is vexatious and frivolous.

Where the matter was not filed within a reasonable time, the court must note whether the lapse within the reasonable time requirement has been violated deliberately: **Dyer v Watson [2004] 1 AC 379; Gregory Lett v The Commissioner of Police & the Attorney General GDA HCV201/0234.**

In **Gregory Lett,** the court, in deciding whether to order a permanent stay of 4 cases on the grounds of delay and abuse of process in the Magistrate's Court, applied the principles set out in **Dyer v Watson,** to wit, that if the length of delay gives the court grounds for real concern, the court must go on to consider the detailed circumstances including any justification put forward. In such cases, relevant circumstances for consideration include the nature and complexity of the case: the more complex and involved the case, the longer it will take to prepare. In **Gregory Lett,** the court noted that the charges which were related to possession and trafficking were not intricate or complex, and the claimant's conduct in the matter in no way assisted in the delayed proceedings.

How is unreasonable delay determined?

In **Gibson v The Attorney General of Barbados (2010) 76 WIR 137; BB 2010 CCJ 3 (AJ),** the Caribbean Court of Justice stated that determination of unreasonable delay must be made on a case-by-case basis. A finding of unreasonable delay cannot not be reached by applying a mathematical formula. However, the mere lapse of time would give rise to the presumption, rebuttable by the state, that there had been undue delay.

[8] R v Newcastle upon Tyne Justices, ex p. John Bryce (Contractors) Ltd [1976] 2 All ER 611

In such cases, the court ought to take into consideration, in addition to the length of the delay, the complexity of the case, the reasons offered for the delay and the conduct of both the accused and the state: *"the concept of 'reasonable time' is elastic and whether delay in having a criminal trial commence is unreasonable or not depends upon a variety of factors which makes it problematic for a court to pronounce rigid timelines."*[9]

Consequences of delay

In **Boolell v. State of Mauritius [2006] U.K.P.C. 46; [2004] 2 A.C. 72; Attorney General's Reference (No. 2 of 2001),** the Privy Council issued the following guidelines with respect to the hearing of matters in a reasonable time:

- If a criminal case is not heard and completed within a reasonable time, that will itself constitute a breach of the constitution, whether or not the defendant has been prejudiced by the delay;
- An appropriate remedy should be afforded for such breach, but the hearing should not be stayed or a conviction quashed on account of *delay alone,* unless the hearing was unfair, in which case it is unfair to try the defendant at all.

Remedies when delay occasions an abuse of process

In **Melanie Tapper v the DPP [2012] UKPC 26,** the Privy Council was asked to consider the appropriate remedy on appeal for a breach of constitutional right to a fair trial. Charges were brought jointly against Ms. Tapper and Mr. Mckenzie in 1997 for offences allegedly committed between 1994-5. The trial in the Magistrates Court, was due to begin in January, 1998, however due to several intervening factors, did not get underway until January, 2000. Thereafter, the case for the prosecution was not closed until December, 2002. In 2003, the appellant was convicted on count 11 and was sentenced. She was granted bail pending appeal. Notices of appeal against conviction and sentence were lodged by both defendants. The record of the case, with the magistrate's notes of evidence was not received by the Court of Appeal until 9 August, 2007, over four years late (In breach of the 14 day requirement under *Section 299* of the *Judicature (Resident Magistrates) Act*). The appeal was eventually heard between March and April, 2008 and a decision handed down in 2009.

The Privy Council opined that the appellant's proposition that quashing the conviction was the "normal remedy" had been rejected in contemporary cases: **Taito v The Queen [2002] UKPC 15.**

The significance of the decision in **Melanie Tapper,** is that the law as stated in the **Attorney General's Reference *(No. 2 of 2001) [2004] 2 AC 72*** and **Boolell v The State [2006] UKPC 46,** namely that extreme delay will not justify the quashing of a conviction that is otherwise sound, represents the law of Jamaica and by extension the Commonwealth Caribbean.

[9] Jack v The Queen BB 2009 CA 1

In **Gibson,** the Caribbean Court of Justice had to weigh the competing interests of the public and the accused and apply the principles of proportionality, thereby taking into consideration all the circumstances of the case. The Caribbean Court of Justice stated that the following remedies may be available:

- **Stay of proceedings -** The permanent stay or dismissal of a charge could not be regarded as the normal remedy in cases where an unreasonable delay existed but it was still possible to have a fair trial;[10]
- **Reduction in sentence -** Where there is delay in hearing of an appeal for which no blame can be accorded to the appellant, and the delay is such that amounts to a violation of his right to have his criminal charge determined within a reasonable time, generally the most suitable redress is a reduction of sentence[11]; This was applied in **Gibson,** by the Caribbean Court of Justice, which held that following a conviction, the formulating a remedy for extreme delay would necessitate consideration of a reduction of sentence;
- **Award of damages -** The award of damages is not automatic and depending on the circumstances of the case, it may be a suitable remedy for breach of the right to be tried within a reasonable time. Damages may be considered suitable where the accused was tried and acquitted or his conviction was quashed. However, where there is a possibility that the accused may still be tried and convicted for the offence for which he is charged, it may offend against the public conscience that such award be afforded to the accused.

In **Hawkesworth, Gaskin and Scantlebury v Superintendent of Prisons BB 2012 HC 22,** a matter involving extradition proceedings which were ongoing for over 8 years and in which the defendant's most recent application was for habeas corpus seeking bail, the High Court stated that although there had been delay in resolving the case, some of the delay was occasioned by the fugitive exercising his rights *"including an application in the High Court for judicial review which was appealed to this court and to the CCJ which dismissed the appeal on procedural grounds."* Accordingly, the application for bail was refused by the High Court on the basis that the delay was not as a result of special circumstances which required the court to exercise its discretion. The court in **Hawkesworth,** adopted the principles in the Australian case of **United Mexican States v. Cabal [2001] HCA 60, 209 CLR. 165,** which stated that where the defendant exercises his right to appeal against the order of committal, this was not such a special event as to constitute special circumstances.

In **Singh v Harrychan GY 2016 CCJ 4 (AJ),** the Caribbean Court of Justice considered that nine years had elapsed since the incident (September, 2007) leading to the charge, conviction (November, 2010) and the appeal by the appellant. The offence in question was demanding with menace, which the court considered a simple offence, in respect of which such a lengthy lapse

[10] 2010 CCJ 3 (AJ) at [141] Section 24(1) of the Constitution afforded the court flexibility, power and a wide discretion in fashioning a remedy that was just and effective taking into account the public interest and the rights and freedoms of others. No conceivable remedy, including a permanent stay or dismissal, ought to be removed from the range of measures at the disposal of the court if the relief in question would prove to be appropriate.

[11] Archbold Criminal Pleading, Evidence and Practice 201, 7-143

in time was inexcusable. The respondent on being convicted for three years by the Magistrate's Court filed his notice of appeal four days later and was placed on bail pending the appeal. However, it took three years for the magistrate to submit the memorandum of reasons to the clerk. After this it took some 17 months after the submission of the memorandum for the clerk to issue the notice of readiness of proceedings to the appellant's attorney.

The Caribbean Court of Justice remitted the matter to the Court of Appeal for hearing and ordered that in light of the time that had passed, the respondent be afforded the opportunity to have his appeal fully heard in the Court of Appeal on its merits despite the technical errors. It further identified issues of merit that warranted appellate review including the merits of the conviction itself, the sentence imposed by the learned magistrate and whether it was excessive, and the impact of the delay on the respondent's constitutional right to a fair hearing within a reasonable time. The Court of Appeal was also directed to consider the extensive delay in the processing of the case and the resulting impact on the appellant's conviction and sentence.

Appeals are not determined by magistrates, however magistrates should note their duty to submit the memorandum of reasons for decision in a timely manner to facilitate the better administration of justice and the prevention of inordinate delay.

In **R v Ogle 1968 WIR 439,** the High Court of Guyana grappled with the issue of delay in a criminal trial. There was a delay of three years between the magistrate's committal of the accused and the trial. The prosecution was faced with the further difficulty of having to utilise the depositions as evidence due to the absence of witnesses, which itself was a result of the delay in bringing on the trial. It was held that the delay was excessive. Furthermore, the depositions would be required to be read as an alternative to oral evidence, (which the judge did not allow) and the prosecution did not offer any other evidence. Consequently, the court acquitted the accused.

In **Sandiford v The Director of Public Prosecutions 1979 28 WIR 152,** the High Court of Guyana emphasized the importance of trial within a reasonable time. The case dealt with a delay of 14 months between arrest and commencement of preliminary inquiry.

Attorney General's Reference (No. 2 of 2001) [2004] 2 AC 72:

a) If, through the action or inaction of a public authority, a criminal charge is not determined at a hearing within a reasonable time, there is necessarily a breach of the defendant's fair trial rights;

b) For such breach there must be afforded such remedy as may be just and appropriate;

c) The appropriate remedy will depend on the nature of the breach and all the circumstances, including particularly the stage of the proceedings at which the breach is established;

d) If the breach is established before the hearing, the appropriate remedy may be a public acknowledgement of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the defendant is in custody, his release on bail;

e) It will not be appropriate to stay or dismiss the proceedings unless: (a) there can no longer be a fair hearing or (b) it would otherwise be unfair to try the defendant. The power to stay will only be applied in extremely exceptional circumstances[12];

[12] Grant (Steven) v R [2010] JMCA Crim 77

f) The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances[13];

g) If the breach of the reasonable time requirement is established retrospectively, after there has been a hearing, the appropriate remedy may be a public acknowledgement of the breach, a reduction in the penalty imposed on a convicted defendant or the payment of compensation to an acquitted defendant. Unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all, it will not be appropriate to quash any conviction.[14]

It is essential that the defendant be afforded a trial within a reasonable time: **Patrick Bailey v The Attorney General of St. Vincent and the Grenadines and the Director of Public Prosecution VC Suit No. 79 of 1999.** The High Court cautioned that judges must *"forever be vigilant lest failure to detect the subtlety that sometimes slowly undermines the process of justice."*

However, the passage of time or a delay in obtaining evidence after an offence has been committed may not be considered unfair to the defendants, unless the delay is inordinate: **Chance et al v. The Superintendent of Prisons et al VC 2009 HC 38.**

Prejudice to the accused

In **Grant (Steven) v R [2010] JMCA Crim 77,** the Jamaican Court of Appeal, cited with approval the decision in Barker v Wingo [1972] 407 US 514, and noted that prejudice was to be assessed by considering the specific interests of the defendant which a speedy trial was intended to protect:

- To prevent oppressive pre-trial incarceration;
- To minimize anxiety and concern of the accused;
- To limit the possibility that the defence will be impaired.

Of these three objectives, the court attached greatest importance to the third, namely limiting impairment of the defence, since the inability of a defendant to adequately prepare his case inevitably skews the fairness of the system. Examples of prejudice which could be suffered as a result are the death or disappearance of crucial witnesses during the delay, and a reduction in the ability of witnesses to accurately recall past events.

Misuse and manipulation of process by the prosecution

The court may stop the proceedings for abuse of process in circumstances where the continued prosecution of the case offends the court's sense of justice and propriety. This inherent power is based on the principle that a court which is endowed with a particular jurisdiction has

[13] Ibid applying Bell v D.P.P & Anor (1985) 22 JLR 268

[14] The category of cases in which it may be unfair to try a defendant of course includes cases of bad faith, unlawfulness and executive manipulation of the kind classically illustrated by R v Horseferry Road Magistrates' Court, Ex p Bennett [1994] 1 AC 42. See also Boolell v The State [2006] UKPC 46

powers necessary to enable it to perform its functions effectively (inherent powers) within that jurisdiction. In **Connelly v DPP [1964] AC 1254,** Lord Morris of Borth-y-Gest said that this inherent jurisdiction is necessary for a court *"to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process."*

Behaviour of the executive

In **Bennett v Horseferry Road Magistrates' Court ex p Bennett (1993) 3 All ER 138, HL,** it was stated that even if a fair trial is possible, the court is still entitled to stay the trial if to continue to prosecute the case in the particular circumstances would be offensive to the court's sense of justice.

In that case the defendant was physically abducted from one jurisdiction and brought to another jurisdiction so he could be arrested. There was evidence demonstrating that the prosecuting authorities were willing participants in the plot to abduct the defendant. The House of Lords, after reversing the decision of the Divisional Court, held that the rule of law was superior to the public's interest of having a crime prosecuted, and in so prosecuting, the rule of law had to be maintained.

The method used to bring the defendant into the jurisdiction was in contravention of international law, his rights under the law of the state from which he was abducted, and disregarded the extradition procedures available to secure the defendant's attendance. Following **Bennett,** the English Court of Appeal in **Beckford (1996) 1 Cr App R 94,** stated that it was important for the court to consider whether in the particular circumstances of each case it would be unfair to try the defendant.

This principle was also applied in **R v Mullen (1999) 2 Cr App R 143,** but the Court of Appeal stressed that there may exist cases in which the gravity of the crime is so extensive as compared to the nature of the particular abuse of process, that it would not be an improper exercise of judicial discretion to allow the prosecution to proceed.

In **R v Latif and Shahzad (1996) 2 Cr App R 92, HL,** the House of Lords concluded that in the particular circumstances of that case the public interest of ensuring that those who are charged with committing serious crimes are tried took precedence. However, unlike **Bennett,** the defendants were not forcefully abducted and brought to another jurisdiction. The defendant willingly came to the jurisdiction to traffic heroine in accordance with a premeditated plan. The House of Lords held that in absence of exceptional factors e.g. forcible abduction, then a stay of prosecution for abuse of process would not be granted to the defendant.

In **R v Looseley; Attorney General's Reference (No 3 of 2000) [2002] 1 Cr. App. R. 29,** the House of Lords provided the following guidance:

- It is unacceptable for the state to lure its citizens into committing acts that are illegal and then seek to prosecute them for committing the same;
- The courts have the right to use their inherent power to stay proceedings so as to ensure that executive agents of the state are discouraged from misusing their powers;
- A guide to identifying the limits of acceptable police conduct is to take into consideration whether, in the specific circumstances, the police did no more than present the defendant with an unsatisfactory chance to commit a crime (each case will determined on its facts);

- Where the court has to deal with illegal conduct by the police or prosecutors, which is so serious to the extent that it threatens to undermine the rule of law, the court will more likely consider itself bound to stop the case.

i) Repeat prosecution for the same offence

The constitutions of the various Commonwealth Caribbean countries expressly state that a person should not be tried twice for the same offence.[15] In the Trinidadian case of **Charles, Carter and Carter v The State (1999) 54 WIR 455, PC,** the Privy Council held that in the particular circumstances of that case, it was a manipulation or misuse of the court's process by the prosecution to seek to have the defendant prosecuted for a third time in respect of the same offence[16] and to do so was oppressive and unjust to the defendant. The offence had occurred some nine years prior. On the first prosecution the defendant was convicted but on appeal the conviction was quashed. On the second prosecution the jury had failed to agree. The Privy Council stated that it might be contrary to the principle of due process that, the prosecution after failing twice, should continue to try to secure a conviction.

This case also highlighted the treatment of delay with respect to abuse of process. The Privy Council described the delay as disturbing and unacceptable, and the assistance *"which might have been reasonably expected from the prosecution and the court to counter the difficulties caused by the delay had not been forthcoming."*

The situations in which a court may hold that the prosecution has misused or manipulated its process are not fixed. There must be evidence that there was actual misuse or manipulation of the court's process.[17]

ii) Where the prosecution promises not to prosecute

R v Townsend and Others (1997) 2 Cr App R 540, instructs that not every breach of a promise to prosecute gives rise to an abuse of process. However, if the prosecution or its agents makes an expressed or implied promise to the defendant not to prosecute him and subsequently reneges on same, the court may regard this as an abuse of process if the defendant was induced to act on the promise to his detriment, and the defendant suffers serious prejudice.

In **R v Croydon JJ ex p Dean (1993) 3 All ER 129,** the applicant was a 17-year-old who was arrested by the police during the course of a murder investigation. He made certain admissions that he did acts intended to impede the apprehension of another person. He was subsequently released on the basis that he would be a prosecution's witness and would not be charged. He complied with the agreement and provided a statement to the police and assisted them otherwise, however he was later charged with the offence and committed to trial in breach of the promise made by the police. On his application to have the proceedings stayed, the court

[15] Barbados - The Constitution 1966, section 18(5)
Guyana - The Constitution of the Co-operative Republic of Guyana Cap. 1:01, section 144(5)
St. Vincent and the Grenadines - The Constitution 1979, section 8(5)
[16] Heron v DPP (2000) 61 WIR 319 (Jamaica) in which the DPP had discontinued a charge of murder where previously 3 juries had failed to agree. When the prosecution attempted to pursue a fourth trial on unchanged facts, it amounted to oppressive conduct on the prosecutions part.
[17] Seetahal, D. "Commonwealth Caribbean Criminal Practice and Procedure", 4th edition, page 24

held that the prosecution of a person who was given a representation that they would not be prosecuted amounts to an abuse of process, particularly considering this applicant's age.

iii) Repeat committal proceedings

Where an accused is discharged in a committal proceeding/preliminary enquiry, it is not synonymous with an acquittal since there was no final adjudication in the matter. A preliminary enquiry is not a trial and does not determine the guilt or innocence of an accused. Therefore, the prosecution or the Director of Public Prosecutions may be able to lay fresh information regarding the same incident.

In **R v Manchester City Stipendiary Magistrate ex p Snelson (1978) 2 All ER 62,** the matter was initially brought to trial in which the prosecution did not offer any evidence, leading to a discharge. The prosecution subsequently commenced fresh committal proceedings shortly after on the same facts for the same offence. It was held that the magistrate had jurisdiction to entertain fresh committal proceedings provided that the prosecution did not abuse this by bringing repeated committal proceedings which, may be vexatious and this amounts to an abuse of process.[18]

In respect of committal proceedings, the Director of Public Prosecutions has the power to remit a case to be re-opened for inquiry although it has already been committed for sentence.[19] This provision seems to provide a legal justification for an accused to be subjected to repeated committal proceedings at the discretion of the prosecution.

In **R v Horsham JJ ex p Reeves (1980) 75 Cr App R 236,** after a successful no-case submission was upheld at trial and defendant was discharged, the court held that the laying of fresh information for committal would in the circumstances be considered vexatious and oppressive.

Timing of the application

Normally, abuse of the process is raised as a preliminary issue. However, it may be raised at any stage of the proceedings.

In **R v Smolinsky [2004] 2 Cr App R 40,** the Court of Appeal of England and Wales advised that the best time to make an application for a stay for abuse of process on the ground of delay would be after the presentation of prosecution's evidence so that the court would be in a better position to decide whether to try the defendant would be unfair.

Abuse of process in the Magistrates' Courts

In **Bennett v Horseferry Road Magistrates' Court et al [1993] 3 All ER 138, HL,** the House of Lords confirmed that magistrates, in exercising both their summary jurisdiction and in committal proceedings may exercise control over their proceedings to prevent abuse of their

[18] Cadogan v R (1963) 6 WIR 292 CA (Trinidad and Tobago)

[19] Barbados - Magistrate's Court Act Cap. 116A, section 27
Guyana - Criminal Law Procedure Act, Cap. 10:01, section 77
St. Vincent and the Grenadines - Criminal Procedure Code Act, Cap. 172, section 160

process. This power is, limited to matters relating to the fairness of the trial of the particular defendant before them, and matters such as delay and unfair manipulation of the court's process. Cases that do not fall into this narrow category should be considered by the High Court with its wider jurisdiction for upholding the rule of law.

This dicta was affirmed in Belize in **The Queen v Calman Hall and Tiffarah Tench Claim No. 292 of 2014 (Delivered February 23rd 2015),** and a similar line of reasoning was pursued in Dominica in **Henry Liu and Feng Huang v The AG of the Commonwealth of Dominica, The Director of Public Prosecutions and the Comptroller of Customs HCVAP 2006/001,** where the Court of Appeal after reviewing the authorities opined that any court has an inherent power to prevent the misuse of its procedure. The misuse may be of such a nature that it would be unfair to a party seeking justice, or the use of the procedure may be such as to bring the administration of justice into disrepute.

Magistrates' inherent power to stay proceedings for an abuse of process

Historically, it was disputed whether magistrate's possessed inherent power to stay a prosecution for abuse of process because their jurisdiction is created by statute. In **Mills v Cooper [1967] 2 QB, Parker LJ,** had opined that every court had a right to decline to hear proceedings on the ground that they were oppressive. Since then, there has been a gradual acceptance that both the Magistrates' Court and High Court could safeguard their processes from abuse.

Mills was followed by **R v Brentford JJ ex p Wong [1981] 1 QB 445,** in which the Divisional Court declined to make an order for prohibition as the Magistrates' Court had ample power to deal with a matter that went to their jurisdiction. Despite this development, it remained unclear how the power should be used.

Subsequently, in **R v Canterbury and St Augustine JJ ex p Klisiak [1982] QB 398,** it was held that the power should be utilised very sparingly and only if it would be a blatant injustice to do otherwise.

Finally, in **Bennett v Horseferry Road Magistrates' Court ex p Bennett [1993] 3 All ER 138,** the House of Lords confirmed that magistrates, in exercising their summary jurisdictions and in committal proceedings, have power to exercise control over their proceedings through an abuse of process jurisdiction. The power is limited only to matters relating to the fairness of the trial, such as delay and unfair manipulation of the court's process relating to a particular defendant before them.

Summary of circumstances in which a court may grant a stay on the grounds of an abuse of process[20]

- There was unjustifiable delay in bringing charges or trying the case: **Shaheed Mohammed v AG of Trinidad and Tobago CV 2016-1052;**

[20] Boodram Anne Marie v The State (2001) 59 WIR 493; PC Jones v Whalley [2007] 1 AC 63; The State v. Davanan Latchman HCA No. 101 of 2006; Dularie Peters v. The State Cr. App. No. 34 of 2008; R v TBF [2011] EWCA Crim 726; Spiers v Ruddy [2008] 2 WLR 608; The State v Forde H.C.28/2008

- The applicant must show he suffered prejudice as a result of the delay. A stay will be refused if a fair trial is still possible: **R v Latif and Shahzad [1996] 2 Cr App R 92 HL;**
- A stay will be granted on the ground of delay in exceptional circumstances: **AG's Ref No 2 of 2001; Charles and Carter v The State (1999) 54 WIR 455;**
- Even where there is a constitutional right to be tried within a reasonable time a stay on the grounds of delay will still be granted in exceptional circumstances;
- A stay may be granted where the prosecution has manipulated or misused the court's process, or otherwise acted unfairly thus depriving the defendant of the protection of the law: **Bennett v Horseferry Road Magistrates' Court ex p Bennett (1993) 3 All ER 138, HL;**
- The prosecution of the accused on multiple occasions may constitute an abuse of process where the accused can show he suffered prejudice and where he can provide evidence that there was a manipulation of the court's process: **Charles and Carter and Bowe v R (2001) 58 WIR 1 PC;**
- Laying of charges shortly before the expiration of the limitation period may be an abuse of process;
- It has been held to be an abuse of process where further charges were laid for different offences on the same facts: **Nandlal v The State (1995) 49 WIR 412;**
- The court may grant a stay where the prosecution reneges on a promise not to prosecute. A stay may be justified when the prosecution tries to renege on a previous offer of amnesty: **AG v Phillip (1994) 45 WIR 456;**
- Repeat committal proceedings after a successful no-case submission at trial may amount to an abuse of process: **Cadogan v R (1963) 6 WIR 292;**
- Where the applicant can show that the conduct of the police is so improper so as to bring the administration of justice into disrepute, a stay may be granted: **R v Loosely [2001] 4 All ER 897 HL; Abdul Kadir, Kareem Ibrahim v The Commissioner of Prisons CV 3062 & 2063 of 2007; Barry Barrington v AG of Trinidad and Tobago CV 2015-03519.**

Abuse of process equally applicable to either party to proceedings

In **Director of Public Prosecution v Senior Resident Magistrate for the Corporate Area [2012] JMC Full 3,** at the heart of the complaint before the Jamaican Supreme Court was whether a subpoena was issued for an improper or ulterior purpose or purposes. It was not sought for the bona fide purpose of obtaining relevant evidence. Its issuance therefore constituted an abuse of the process of the court.

In the Dominican case of **Henry Liu and Feng Huang v The AG of the Commonwealth of Dominica, The Director of Public Prosecutions and the Comptroller of Customs HCVAP 2006/001 (Delivered September 22nd 2008),** the court agreed with the settled position that an abuse can exist where the prosecution has manipulated or misused the process of the court or taken advantage of a technicality or where on a balance of probability the accused has been or will be prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution.

In Jamaica, the position is no different as was evident in the case of **Thomas v R (2011) JMCA Crim 49.** In that case, one of the issues on appeal was whether the fair trial of the appellant was compromised by the improper conduct of the prosecution in putting to the defence witness an allegation of criminal conduct, namely, that she was paid to give evidence, while adducing no evidence to substantiate the allegation. Further, whether a miscarriage of justice may have occurred and whether the learned judge erred in permitting the said allegation to be made without any intervention on her part.

This case involved a trial in the Supreme Court before a jury however some of the principles therein are nonetheless applicable to Magistrates and Parish Court judges. The Court of Appeal was of the view that the questions for determination was whether the conduct of counsel for the prosecution undermined the integrity of the trial so as to amount to injustice to the appellant and whether the learned judge had failed to exert authority and properly control the proceedings resulting in the trial being unfair.

The principles of general applicability are as follows:

(a) It was a cardinal rule of law that every accused person who is brought before the court is presumed innocent and that this presumption of innocence remained throughout the trial until the evidence adduced points to his guilt beyond a reasonable doubt;

(b) Persons charged with the responsibility of marshalling evidence for the prosecution as well as the trial judge must at all times ensure that the conduct of the trial is beyond reproach;

(c) In light of the trial process being adversarial, the trial cannot always proceed flawlessly, however, procedural breaches, where they do occur, will not always result in harm so serious as to imperil the fairness of a conviction;

(d) Where the occurrences of breach are substantially prejudicial and an appellate court is of the view that great harm was occasioned to an appellant, a conviction will be quashed as unsafe[21];

(e) To safeguard the fairness of any trial, a number of rules have been developed to ensure that the proceedings however closely contested are conducted in a manner which is orderly and fair, namely:

- The duty of prosecuting counsel is not to obtain a conviction at all costs but to act as a minister of justice;
- While the duty of counsel may require a strong and direct challenge to the evidence of a witness, and strong criticism may properly be made of a witness or defendant so long as that criticism is based on evidence. There can never be any justification for bullying, intimidation, personal vilification or insult;

[21] Randall v R (2002) 60 W.I.R. 103 applied

- It is the responsibility of the judge to ensure that the proceedings are conducted in an orderly and proper manner which is fair to both prosecution and defence. He must neither be nor appear to be partisan. If counsel begins to misbehave, he must at once exert his authority to require the observance of acceptable standards of conduct.

Insofar as these requirements were not been observed, the Court of Appeal concluded that the breaches were sufficient to render the trial unfair. The appeal was allowed and a new trial ordered.

Can a magistrate proceed to dismiss a matter on grounds of abuse where he has already stated a case for the supreme court and awaits an answer?

In the **Queen v Calman Hall et al Claim No. 292 of 2014 Belize (Delivered February 23rd 2015),** the court concluded that at that time (the time of the Chief Magistrate's dismissal of the charge), since the decision on the question referred to the Supreme Court remained outstanding, the Chief Magistrate had no jurisdiction to dispose of the proceedings, as she was constrained to dispose of the matter only in furtherance of *Section 20(5), of the Constitution.* The only option available to the Chief Magistrate at the time was to temporarily stay the proceedings, pending the completion of the question which she had referred to the Supreme Court under *Section 20(3), of the Constitution.*

In **Henry Liu and Feng Huang,** the Court of Appeal adopted a definition of abuse of process which included instances where *"he prosecution has manipulated or misused the process of the court or taken advantage of a technicality or where on a balance of probability the accused has been or will be prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution."*[22]

In all matters within the magistrates' purview, he or she must protect the court's process from abuse which can directly affect fairness of the trial for the accused or the litigant. In **Bennett v Horseferry Road Magistrates' Court and Another 1993] 3LRC 94,** the court settled the conflicting views regarding whether magistrates possessed the power to exercise a stay of proceedings due to an abuse of process. The court stated that where a magistrate is exercising his or her power through its summary jurisdiction or its power as an examining magistrate (for example, within an extradition hearing or a preliminary inquiry) such magistrate has the power to exercise control over their proceedings through an abuse of process jurisdiction in relation to matters directly affecting the fairness of the trial of the particular accused with whom they were dealing, such as delay or unfair manipulation of court procedures. Where a magistrate orders a stay of proceedings due to an abuse of process by the prosecution, this should not be done to exercise any disciplinary function over the prosecution, but rather to ensure the accused is not unwarranted pressured or receives an imbalanced trial.

When the case has been stated to the Supreme Court, the magistrate's duty is confined wholly to mitigating the possibility of an abuse of process. The magistrates' powers do not extend to supervisory prerogatives and upholding the rule of law which are exercised solely by the justices in the High Court.

[22] Hui Chi Ming v R [1991] 3 All ER 897

Thus, magistrates have jurisdiction in respect of abuse of process applications for the following:

- Abuse complaints directed at the propriety or fairness of the trial process or procedure;
- Abuse complaints concerning *mala fides* of the prosecution, or investigations into whether the prosecution had been instituted oppressively or unfairly;
- Delay;
- In cases of alleged unfair manipulation of court procedures.

Magistrates do not have jurisdiction in instances of an abuse of process by the police, prosecution authorities or governmental officials pursuant to ulterior motives or wrongful purposes in violation of international law and for fundamental human rights.[23]

The minimum requirements for a fair trial

Magistrates are responsible for preliminary inquiries, all summary offences, road traffic offences and extradition hearings. To ensure a fair trial, magistrates should be mindful of the following non-exhaustive list of guidelines:

- The defendant should understand the proceedings and the charge being read to him or her proceedings. The magistrate must be satisfied that the defendant where the defendant has given a guilty plea, know that he or she was wrong by the act or omission of the offence;
- The defendant must understand what defences or remedies are available to him or her where applicable;
- The defendant should have a reasonable opportunity to make relevant representations if he or she wishes;
- The magistrate must ensure the defendant has the opportunity to be represented and record where the defendant has refused representation.

[23] David Young, Mark Summers QC, David Corker 'Abuse of Process in Criminal Proceedings' 4th Edition, Bloomsbury Professional Limited, 2014 Pg. 388

CHAPTER 15

ROAD TRAFFIC OFFENCES

The principal laws relating to road traffic are to be found in statues enacted by Parliament.[1] The statues are designed so that driving is regulated in a way that attempts to improve the safety of all road users. In attempting to apply road traffic laws it is of fundamental importance to have a notable understanding of the key terms and concepts that are used to create various offences.[2] Accepted meanings can be found in the definition section of the Acts or under the section specific to a particular offence.

Court with jurisdiction for Road Traffic Offences

Road traffic law is administered by the criminal courts, generally magisterial in nature unless the offence is one on indictment or triable either way. As a branch of criminal law, basic principles of criminal liability apply to road traffic offences just as they do to all other criminal offences. So, for example, there must be an actus reus and (if appropriate) mens rea.[3] Defences such as automatism or duress of circumstances can be used to defend road traffic charges in the same way that they can be used to defend any other criminal charges.[4]

Who is liable for a Road Traffic Offence?

Generally, the owner of a vehicle or the person driving at the time of the commission of a road traffic offence shall be liable. The owner is usually the person registered with the Licensing Authority respective to each territory. In most cases, who is a 'driver' of a particular vehicle will be perfectly obvious. Whether or not a driver of the vehicle is actually in the act of driving is a question of fact to be determined according to the circumstances of the case. Much will, of course, depend on the extent to which the said 'driver' had control over the vehicle, its speed

[1] Antigua and Barbuda- Vehicles and Road Traffic Act Cap 460
Anguilla- Vehicles and Road Traffic Act, R.S.A. c. V10
Barbados- Road Traffic Act, CAP 295
Belize- Motor Vehicles and Road Traffic Act, CAP 230
Dominica- Vehicles and Road Traffic Act, Chap 46:50
Grenada- Road Traffic Act CAP 289A
Guyana- Motor Vehicles and Road Traffic Act Cap 51:02
Jamaica- Road Traffic Act, 2018
Montserrat- Road Traffic Act Chapter 7.06
St. Lucia- Motor Vehicles and Road Traffic Act Cap. 8:01
St. Kitts and Nevis- Motor Vehicles & Road Traffic Act Cap 15:06
St. Vincent and the Grenadines- Motor Vehicles and Road Traffic Act, CAP 483
Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50

[2] Simon Cooper and Michael Orme 'Road Traffic Law (Blackstone's Practical Policing)' (Oxford University Press 2009) 2nd edition pg. 2

[3] The following cases are all authorities for the proposition that where the word "allows" appears in a statutory offence mens rea is an essential ingredient of the offence:
R. v. Hoadley (1864) G.L.T. (N.S.) 827
Hardcastle v. Bielby [1892] 1 Q.B. 709
Massey v. Morriss (1894) 2 Q.B. 412

[4] Simon Cooper and Michael Orme 'Road Traffic Law (Blackstone's Practical Policing)' (Oxford University Press 2009) 2nd edition, pg. 10

and direction. It should be noted however, that the word 'driver' can extend to cover someone who is not actually sitting in the driver's seat and in full control of the vehicle. It may include, for example, a passenger who leans over to steer the vehicle while someone else, sitting in the driver's seat operates the pedals.[5] The provisions of various Road Traffic Acts in the region also accrue liability to any person who:

- 'Uses,' 'attempts' to use or drive, or is 'in charge' of a motor vehicle used in the commission of a road traffic offence;
- 'Causes' or 'permits' an act which is an offence under the respective road traffic legislation.[6]

Fixed penalty

Fixed penalty offences are contained in each State's legislation. It is common that a person suspected of committing a fixed penalty offence would be:

- Issued a fixed penalty or citation notice, (which must give suffice particulars of the circumstances alleged to constitute the offence);
- Given an opportunity to pay the fine without the risk of ever being found guilty in court proceedings.[7]

Payment of the fine discharges any liability to conviction for the stated offence.[8]

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[5] Tyler v Whatmore [1976] RTR 83

[6] Simon Cooper and Michael Orme 'Road Traffic Law (Blackstone's Practical Policing)' (Oxford University Press 2009) 2nd edition, pgs. 10-13 go on further to define these terms in the following manner:

- "In charge"- A person may be regarded as being 'in charge' of a vehicle (i.e. has some 'control' over it) if one of two things can be shown:
  - if the defendant owns the vehicle or there is evidence that the defendant has recently driven the vehicle, the defendant is in charge of it unless he can demonstrate that there was no likelihood of 'control' being resumed during the relevant time; or
  - if the defendant is neither the owner, nor is there evidence of his having recently driven the vehicle, the prosecution must show the defendant has voluntary control of the vehicle or intents to have such 'control in the immediate future.

  Establishing control or future intention to exercise control is a matter of evidence. Factors such as the location of the keys (were they in the defendant's possession?) and whether or not the defendant was trying to enter the vehicle are important indicators of control and intention to take control.
- "Uses"- A person who 'uses' a vehicle has some element of control or management over it, but this need not be control in the sense of driving it as a vehicle may be used without being driven.
- "Causing"- A person "causes" by making some form of contribution to the commission of the relevant offence. It is not generally possible to "cause" unless there is knowledge of the relevant circumstances
- "Permitting"- The concept of permitting requires that the defendant gives permission to do something. Therefore, it will be necessary to demonstrate that the person permitting had knowledge of the unlawful use of the vehicle. Permitting may often overlap with 'causing' but lacks the necessary degree of authority or direction that "cause" suggests. Permitting is a much more passive concept than causing.

[7] Claim No. CV 2016- 03811- Lisa Patricia Brown v The Attorney General of Trinidad and Tobago. The Claimant allegedly committed two fixed penalty offences contained in the first schedule of the Motor Vehicle and Road Traffic (Enforcement and Administration) Act, Chapter 48:52 . The police officer having the option to either issue a fixed penalty notice or a summons under the Summary Court Act Chapter 4:20, was not in possession of a ticket book due to shortages and thus issued summons in respect of the offences. It was held that it would hardly be right for a citizen to be placed in a disadvantaged position because of the inefficiency of the Police Service in ensuring that Police Stations are properly equipped with the relevant material. The Claimant was treated differently from other comparators in such circumstances who would have been issued a fixed penalty notice; and the impugned police practice was in breach of Section 4 of the constitution. Judgment was in favor of the Claimant.

[8] Right Honorable Lord Justice Hooper & David C. Ormerod 'Blackstone's Criminal Practice' (Oxford University Press 2012) revised edition, pg. 1129

Offences which a magistrate has jurisdiction to try

The provisions under Road Traffic Acts and Regulations respective to each territory, create requirements to:

- Give name and information as to the identity of driver, etc., in certain cases;
- Stop in the case of an accident;
- Be the holder of a valid driver's license whilst driving a motor vehicle;
- Wear a seatbelt whilst driving or as a passenger in the front seat of a motor vehicle;
- Obtain permission for racing speed trials;
- Drive within the prescribed speed limit for a particular area or road.

Failure to satisfy these obligations result in the driver being guilty of an offence under the respective legislation for same; and sentencing in accordance with the penalty for the offence or otherwise as the magistrate thinks fit.

Some other offences which a magistrate has jurisdiction include:

1. Drivers under the influence of alcohol or drugs

   Any person who, drives or attempts to drive or when in charge of a motor vehicle on a road, is under the influence of drink or a drug in excess of the prescribed limit is guilty of offence. Any person suspected of committing this offence may be required[9] to submit specimens of breath, blood and/or urine under the guidance of the legislation, for either one or more of the following: a breath test, breath analysis or laboratory test.

   The Honorable Judge Goldstein,[10] emphasized that:

   > *"The specifics of the field sobriety test are set out in the regulations. Failure to comply thereto, gives a police officer reasonable grounds to demand that the person provide samples to a qualified breath technician using an approved instrument (and to make an arrest). In that sense, a field sobriety test is no different from the use of an approved screening device."*

   If a police officer makes an arrest, the person may be subsequently charged for the offence of failure to provide a specimen of breath without reasonable excuse, or otherwise as the respective legislation directs.[11] Where a specimen submitted in

[9] R v. O'Boyle [1973] R.T.R. 445. In this case the constable said to the appellant: "I intend to give you a breath test." The appellant contended that a condition precedent for his arrest had not taken place in that the constable had not "required" him to take the breath test, as was stipulated by the legislation. Roskill LJ dismissed the appeal and stated:
"In the view of this court the precise word 'require' does not have to be used before the provisions of the statute can be said to be properly complied with. There is no set formula. So long as the language used can fairly be said to be capable of amounting to a requirement then it is a question for the jury in each case whether the statutory need for the requirement of a specimen of breath for a breath test has been satisfied."

[10] R v. Tran [2015] ONSC 4688 at paragraph 19

[11] Collin Partap v Stephen Williams (Ag. Commissioner of Police) Mag. App. Np. P065 of 2016

compliance or at a later time proves that the person was driving under the influence of drink or a drug, a charge will be laid in respect of the offence.

2. Careless driving

Under the relevant legislation for each territory, any person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road commits an offence. The offence of careless driving requires proof of negligence. The driver of a vehicle on the road owes a duty of care to other road users and pedestrians. Thus, the prosecution must necessarily fail unless lack of due care is established.[12]

The Honourable Mr. Justice R. Rahim in the case of **CV 01911 Angela Mitchell v Leon Brown and others,** said in his judgment at *para. 38,* that:

> *"The duty is to take reasonable care*[13] *to avoid causing damage to persons, vehicles or property of any kind on or adjoining the road.*[14] *The standard of care which road-users must exercise is that of the reasonable road-user. The reasonable driver is not entitled to assume that other road-users will exercise the appropriate degree of care, and if their conduct is within the realm of foreseeability, they will be liable for injury: Common Law Series: The Law of Tort. Chapter 13, paras 13.53."*

A person's driving is not necessarily careless merely because it constitutes some other driving offence. While the speed at which a vehicle is driven, the degree of a driver's alcohol consumption or observation of road regulations such as wearing a seat belt[15] are often relevant factors, it does not necessarily follow that the defendant is guilty of careless driving merely because he is exceeding a speed limit, consumed alcohol or breached some road regulation. However, in determining liability for careless driving, it should be noted that where a person driving falls short of the standard expected from the 'competent and careful driver,' not only is it not a defence to show that he was doing his level best but also it is not a defence for him to show that it was in fact impossible for him to do any better. In truth, the 'competent and careful driver' is not the average driver but a mean standard.[16]

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[12] David C. Ormerod, Karl Laird, Brian Hogan, John Cyril Smith 'Smith and Hogan's Criminal Law' (Oxford University Press 2015) 14th edition pg. 1277

[13] CV 01911 Angela Mitchell v Leon Brown and others: "Reasonable care in this context connotes the observation of traffic rules and regulations. Failure to comply with these rules and regulations is a matter to be taken into account in deciding whether there was negligence: Charlesworth & Percy on Negligence (supra) Chapter 10, paragraph 10-127."

[14] David C. Ormerod, Karl Laird, Brian Hogan, John Cyril Smith 'Smith and Hogan's Criminal Law' (Oxford University Press 2015) 14th edition pg. 1278. Careless driving is a conduct crime and not a result crime, consequently it may be committed though no one is affected by the careless driving in question.

[15] Claim No. SKBHCR 2013/0025- The Director of Public Prosecutions v Kimo Liburd. In this case, the authority of R v Powell [2011] 2 Cr App R (S) 41, was cited where Court of Appeal was not impressed with the argument that the fact that the passenger was boisterous and not wearing a seatbelt should be regarded as mitigatory factors. At paragraph 16 of its judgement the court observed as follows: "It is said on his behalf that he was driving in difficult conditions, with a boisterous passenger. If that is so, it cannot, in our judgment, amount to mitigation for his admitted careless driving. Nor does the fact that his passenger was not wearing a seatbelt. If anything, those were surely factors that urged greater caution in a motorist than might normally have been required."

[16] David C. Ormerod, Karl Laird, Brian Hogan, John Cyril Smith 'Smith and Hogan's Criminal Law' (Oxford University Press 2015) 14th edition pgs. 1277

3. Reckless or dangerous driving

Any person who drives a motor vehicle on any road recklessly,[17] or at a speed or in a manner which is dangerous to the public is guilty of an offence. Driving may be dangerous either because of the poor quality of the defendant's driving or alternatively, because of the inherently poor condition of the defendant's vehicle.[18]

In **Regina v Ruan Roberts 2018,**[19] the court said:

> *"...The test for whether driving is dangerous is that the driving must fall far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous, meaning it creates the danger of serious injury or serious damage. There is a public interest in safety on the roads. Sentences for this menace should deter. Folk must know that dangerous driving is a serious offence, easily avoided by paying full attention to the road and showing consideration for other road users."*

In **Criminal Appeal No. 7 of 2003-Egbert Hanley v Director of Public Prosecutions,** the learned trial judge said this:

> *"In order to justify a conviction on dangerous driving there must be not only a situation which objectively was dangerous but there must also have been some fault on the part of the driver causing that situation. "Fault indicates a failure of falling below the care or skill of a competent and experienced driver in relation to the manner of the driving and to the relevant circumstances of the case including the nature, condition and use of the road and the amount of traffic which was actually at the time or which might reasonably be expected to be on the road. Such fault will often be proved adequately by inference from the facts of the situation."*
>
> *"Dangerous driving requires proof that the manner of driving was dangerous to the public. If a man adopts a manner of driving which you ... think was dangerous to the other road users in all the circumstances, then on the issue of guilt it matters not whether he was deliberately reckless, careless or momentarily inattentive or even doing his incompetent best."*

The court in **The Director of Public Prosecutions v Elvis Richardson,**[20] relied on the case **R v Cooksley et al [2003] Crim. 996,** where the English Court of Appeal made the point that:

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[17] R v G [2003] 4 All ER 765- Lord Bingham stated that a person acts 'recklessly' with respect to:
(i) a circumstance when he is aware of a risk that exists or will exist;
(ii) a result when he is aware of a risk that will occur; and it is, in the circumstances known to him, unreasonable to take the risk.

Criminal Appeal No. 3 of 2006-Thelbert Edwards v The Queen relied on Lord Diplock's definition of recklessness in R v Lawrence [1981] 1 All ER 974 where he said that recklessness in the context of reckless driving as including "the heedlessness of the presence of a risk as well as disregard of a recognised risk".

[18] Simon Cooper and Michael Orme 'Road Traffic Law (Blackstone's Practical Policing)' (Oxford University Press 2009) 2nd edition, pg. 21

[19] Case ANUHCR2016/0148

[20] Claim No. SKBHCR 2013/0030

> *"Although the offence is one which does not require an intention to drive dangerously or an intention to injure... it will usually be obvious to the offender that the driving was dangerous and he therefore deserves to be punished accordingly."*

Offences which a magistrate does not have jurisdiction to try

Magistrates do not have jurisdiction to try offences on indictment unless given such power under some legislation to try indictable offences summarily.[21] However, they shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence.

At this stage, a magistrate makes no findings on guilt. The magistrate's role is to see, taking the prosecution case at its highest, if there is a prima facie case made out of any indictable offence. The magistrate has to be careful to not rule out evidence of which there may be fair argument on whether it is admissible. The magistrate's function is essentially to filter out those clear cases where there is no case to answer. A magistrate at the preliminary inquiry is required to take:

- Depositions from witnesses and then to consider all of the evidence contained in the depositions;
- Any submissions which are made and to decide if there is sufficient evidence that any indictable offence has been committed before making a committal order.[22]

Some of these offences include:

1. Causing death by reckless driving or dangerous driving

   A person may either be charged with causing death by reckless driving or dangerous driving or alternatively, manslaughter. The case of **Brown v The Queen (Jamaica) PC [2005] UKPC 18,** delineated the guidance that a trial judge should give the jury in summing up, which should be tailored or adapted to meet the requirements of the particular case. This may also applicable for a magistrate to take into account when making a determination as to committal. A judge should direct that proof of "reckless driving" requires the jury to be satisfied:

   - That the defendant was in fact driving the vehicle in such a manner as to create an obvious and serious risk of causing physical injury to some other person who might happen to be using the road or of doing substantial damage to property;
   - That in driving in that manner the defendant had recognized that there was some risk of causing such injury or damage and had nevertheless gone on to take the risk.

[21] Guyana - Summary Jurisdiction (Procedure) Act, CAP 10:02, Section 61(1) Gives the magistrate jurisdiction to try a case of death by dangerous driving. This section allows indictable matters under the First Schedule to be tried summarily.

[22] CV. 2015-00266, Ramgarib, Sanjeev v Her Worship Magistrate Rehanna Hosein - In this case the applicant claimed that he is entitled to reasons for the respondent's decision to commit him to the High Court for the offence of causing death by dangerous driving. It was held that there was no duty to provide reasons in the circumstances of this case.

The Privy Council explained that manslaughter in this context requires, first, proof of recklessness in the driving of a motor vehicle, plus an extra element of turpitude. That extra element is that the risk of death being caused by the manner of the defendant's driving must in fact be very high. The jury should be told specifically that it is open to them to convict the defendant of causing death by reckless driving if they are not satisfied that the risk of death being caused was sufficiently high.

It is for the jury to decide whether the risk created by the manner in which the vehicle was being driven was both obvious and serious and, in deciding this, they may apply the standard which from their experience and observation would be observed by the ordinary and prudent motorist.

If satisfied that an obvious and serious risk was created by the manner of the defendant's driving, the jury must, in order to reach a finding of recklessness, find that he appreciated the existence of the risk; but they are entitled to infer that he was in that state of mind, though regard must be given to any explanation he gives as to his state of mind which displaces the inference.

2. Taking vehicles without consent of owner (on indictment)

   This offence is created under road traffic legislation respective to each territory and is usually adjudicated (on indictment) in the High Court or Supreme Court. However, in Montserrat, this offence is triable summarily or on indictment in a Parish Court or an indictment in the Supreme Court.

ANGUILLA

The main legislation or "principal Act" is the *Vehicles and Road Traffic Act, Chap. V10.* For the purpose of detailing road traffic legislation within this chapter for Anguilla, the Vehicles and *Road Traffic Act, Chap. V10, Revised Edition 2014,* is utilised. This Act must be read in conjunction with the *Vehicles and Road Traffic Regulations, V10-6.*

Fixed penalty

- Notwithstanding any provision of this Act or any other law, where a member of the Police Force finds a person on any occasion and has reason to believe that on that occasion he is committing or has committed an offence to which this section applies, he may give him the prescribed notice in writing offering the opportunity of the discharge of any liability to conviction of that offence by payment of a fixed penalty under this section, and no person is then liable to be convicted of that offence if the fixed penalty is paid in accordance with this section before:
  - The expiration of 21 days following the date of the notice or such longer period (if any) as may be specified therein: or *Section 94(1)(a);*
  - Before the date on which proceedings are begun: *Section 94(1)(b),* whichever event last occurs;

- A notice under subsection (1), shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information thereof and shall state also the period during which, by virtue of subsection (3), proceedings will not be taken for the offence, the amount of the fixed penalty as prescribed in Schedule 3, and the address at which the fixed penalty may be paid: *Section 94(6);*
- Where a constable finds a vehicle on an occasion and has reason to believe that on that occasion there is being, or has been committed in respect of it, an offence to which this section applies, he may proceed under this section as if he had found a person reasonably believed by him to be committing the offence, and for that purpose a notice affixed to the vehicle is deemed to be given to the person liable for that offence: *Section 94(7);*
- A notice affixed to a vehicle under subsection (7), shall not be removed or interfered with except by or under the authority of the driver or person in charge of the vehicle or the person liable for the offence in question: *Section 94(8);*

  Punishment: Any person contravening this subsection is liable on summary conviction to a fine of $100.00: *Section 94(8);*
- Where a person is given a notice under this section in respect of an offence, proceedings shall not be taken against any person for that offence by any constable or other authority until the end of the 21 days following the date of the notice or such longer period (if any) as may have been specified therein: *Section 94(3);*
- Notwithstanding subsection (1), where a notice is given under this subsection to a person who is not ordinarily resident in Anguilla, the period within which the fixed penalty may be paid as specified in the notice shall be either the period ending on the day before the person is due to leave Anguilla or seven days following the date of the notice, whichever is the shorter period: *Section 94(2).*

Fixed penalty offences are listed in Schedule 3. Some of these include:

- Offences against orders made by the Traffic Commissioner under *Section 81;*
- Offences against the Vehicles and Road Traffic Regulations;
- Offences against *Sections 10, 30(3), 47, 60, 61 or 65;*
- Offences against *Section 16;*
- Offences against *Section 50:*
  i. up to 10 mph over speed limit;
  ii. 10 to 20 mph over speed limit;
  iii. more than 20 mph over speed limit.
- Offences against the *Sound Amplification (Restriction) Act, R.S.A. c. S50.*

- However, *Section 67,* provides that the particulars of every conviction for an offence under this Act including the name of the offender, and the number of his licence, if

any, shall be furnished by the clerk or other officer of the court in which the conviction is recorded to the Comptroller of Inland Revenue who shall enter the particulars in a book to be called the Drivers' Offences Book: *Section 67.*

Offences for which a magistrate has jurisdiction

1. Speeding - *Section 50*

   - No person shall drive a motor vehicle of such class or description as is specified in Schedule 2, at a speed greater than the speed therein specified as the maximum speed at which a vehicle of that class or description may be driven on a particular class of road: *Section 50(1);*

     Punishment: Any person who acts in contravention of this subsection is guilty of an offence and is liable on summary conviction to a fine of $1,000.00: *Section 50(1);*

   - A person charged under this section with the offence of driving a motor vehicle of such class or description on a road at a speed greater than the maximum speed allowed in the case of a vehicle of that class or description travelling on a road of that class shall not be liable to be convicted of the offence solely on the evidence of one witness to the effect that in the opinion of the witness the person charged was driving the vehicle at such greater speed: *Section 50(2);*

   - Any person, being the owner of a motor vehicle, who aids, abets, counsels or procures any person who is employed by him to drive the motor vehicle on a road to commit an offence under this section is guilty of an offence: *Section 50(3);*

     Punishment: Liable on summary conviction to a fine of $1,000.00: *Section 50(3).*

2. Drivers under influence of liquor or drugs - *Section 51*

   - Any person who, when driving or attempting to drive, or when in charge of, a motor vehicle on a road is under the influence of drink or drug to such an extent as to be incapable of having proper control of the vehicle, is guilty of an offence: *Section 51(1);*

     Punishment: First conviction - Liable on summary conviction to a fine of $10,000.00 or to imprisonment for a term of four months, and in the case of a second or subsequent conviction either to a fine of $20,000.00 or to imprisonment for a term of six months or to both: *Section 51(1);*

     Disqualification: A person convicted of an offence under this section shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of 12 months from the date of the conviction and, if there is an appeal against the conviction, from the date on which the conviction is upheld for holding or obtaining a driver's licence, and, on a second conviction for a like offence, he shall be permanently disqualified from holding or obtaining a driver's licence: *Section 51(2);*

- Any member of the Police Force may arrest without warrant any person committing an offence under this section: *Section 51(3).*

3. Reckless or dangerous driving - *Section 53*

   - Any person who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the road, and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road commits an offence: *Section 53(1);*

     Punishment: Liable on conviction to imprisonment for a term of three years or to a fine or to both: *Section 53(1);*

     Disqualification: A person convicted of an offence under this section shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driver's licence for a period of six months from the date of the conviction or, if there is an appeal against such conviction, from the date on which the conviction is upheld and, on a third conviction for a like offence, he shall be permanently disqualified from holding or obtaining a driver's licence: *Section 53(2).*

4. Careless driving - *Section 54*

   - If any person drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road, he is guilty of an offence: *Section 54;*

     Punishment: Liable on summary conviction to a fine of $4,800.00: *Section 54;*

     Disqualification: Liable on a second or subsequent conviction for a like offence to be disqualified from holding or obtaining a driver's licence for such period as the court shall think fit: *Section 54.*

Power to proceed on charge for careless driving on hearing charge under Section 54

- Where a person is charged summarily before the magistrate with an offence under *Section 53,* and the magistrate is of the opinion that the offence is not proved, then at any time during the hearing or immediately thereafter, the magistrate may, without prejudice to any other powers possessed by him, direct or allow a charge for an offence under *Section 54,* to be preferred forthwith against the defendant and may thereupon proceed with that charge: *Section 57;*
- The procedure that shall be followed for the above include:
  - But the defendant or his solicitor or counsel shall be informed of the new charge and be given an opportunity, whether by way of cross-examining any witness whose evidence has already been given against the defendant or otherwise, of answering the new charge;
  - The magistrate shall adjourn the hearing: *Section 57.*

Warning of intended prosecution

- Where a person is prosecuted for an offence under this Part relating respectively to the maximum speed at which motor vehicles may be driven, to reckless or dangerous driving, and to careless driving, he shall not be convicted unless:
  - He was warned at the time the offence was committed that the question of prosecuting him for an offence under one or other of those provisions would be taken into consideration: *Section 58(1)(a);*
  - Within 14 days of the commission of the offence a summons for the offence was served on him: or *Section 58(1)(b);*
  - Within 14 days a notice of the intended prosecution, specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on or sent by registered post to him or to the person registered as the owner of the vehicle at the time of the commission of the offence: *Section 58(1)(c);*
- Failure to comply with the requirements of subsection (1), shall not be a bar to the conviction of the accused in any case where the court is satisfied that:
  - Neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent: or *Section 58(2)(a);*
  - The accused by his own conduct contributed to the failure: *Section 58(2)(b);*
- The requirements of subsection (1), are in every case deemed to have been complied with unless the contrary is proved: *Section 58(3).*

5. Duty to give name and address and to stop: Power of arrest - *Section 59*
   - If the driver of a motor vehicle who is alleged to have committed an offence under the foregoing provisions of this Act as to reckless or dangerous driving or careless driving refuses, on being required by any person having reasonable grounds for so requiring, to give his name and address, or gives a false name and address, he is guilty of an offence: *Section 59(1);*

     Punishment: Liable on summary conviction to a fine of $1,000.00: *Section 59(1);*
   - Any member of the Police Force may arrest without warrant the driver of any motor vehicle who within his view commits any offence under this Act as to reckless or dangerous driving or careless driving or racing on a road, unless the driver either gives his name and address or produces his driver's licence for examination: *Section 59(2);*
   - Any person driving a motor vehicle on a road shall stop the vehicle on being so required by any member of the Police Force in uniform and, if he fails so to do, he is guilty of an offence: *Section 59(3);*

     Punishment: Liable on summary conviction to a penalty of $1,000.00: *Section 59(3).*

6. Racing speed trials - *Section 55*

   - Any person who promotes or takes part in a race or trial of speed between motor vehicles on a road is guilty of an offence: *Section 55(1);*

     Punishment: Liable on summary conviction to a fine of $10,000.00 or to imprisonment for a term of four months or to both: *Section 55(1);*

     Disqualification: A person convicted of an offence under this section shall, unless the court for special reason thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driver's licence for a period of 12 months from the date of the conviction or, if there is an appeal against the conviction, from the date on which the conviction is upheld: *Section 55(2).*

7. Taking vehicles without consent of owner

   - Any person who uses any motor or other vehicle without the consent of the owner or other lawful authority is guilty of an offence: *Section 66(1);*

     Punishment: Liable on summary conviction to a fine of $1,000.00: *Section 66(1);*

   - Notwithstanding subsection (1), the person shall not be convicted under this section if he proves:

     - That he had good reason to believe, and did in fact believe, that the owner of the vehicle would, had he been present, have consented to the vehicle being used in the manner in which it was used: or *Section 66(2)(a);*
     - That he had reasonable cause to believe and did in fact believe that he had lawful authority to use the vehicle: *Section 66(2)(b);*

   - If any person is convicted under this section, the magistrate may, if he thinks fit, either in addition to or without inflicting any punishment, order that the person convicted pay to the owner of the vehicle either or both of the following sums:

     - Such sum as, in the opinion of the magistrate, would have been charged if the vehicle had been hired by the person convicted: *Section 66(3)(a);*
     - Such sum as, in the opinion of the magistrate, represents fair compensation for any damage done to the vehicle: *Section 66(3)(b);*

     and payment of such sum shall be enforced in the manner provided by the *Magistrate's Code of Procedure Act,* for the enforcing of the payment of a fine or order made on complaint;

   - Any member of the Police Force may arrest without warrant any person reasonably suspected by him of having committed an offence under this section: *Section 66(5).*

Duty to stop in case of accident

- If in any case, owing to the presence of a motor vehicle on a road, an accident occurs whereby damage or injury is caused to any person, vehicle or animal,[23] the driver of the motor vehicle shall stop and, if required so to do by any person having reasonable grounds for so requiring, give his name and address and also the name and address of the owner and the identification marks of the vehicle: *Section 62(1);*
- If in the case of any such accident the driver of the motor vehicle for any reason does not give his name and address to any such person, he shall report the accident at a police station or to a member of the Police Force as soon as reasonably practicable and in any case within 24 hours of the occurrence thereof: *Section 62(2);*

  Punishment: A person who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine of $500.00 or to imprisonment for three months or to both: *Section 62(4).*

8. Driving without a valid driver's licence - *Section 30*

- Save as in this section provided, no person shall drive a motor vehicle on any road unless he is the holder of a driver's licence and no person shall employ any other person to drive a motor vehicle on any road unless the person so employed is the holder of a chauffeur's licence, and if any person acts in contravention of this section he is guilty of an offence: *Section 30(1);*

  Punishment: Liable on summary conviction to a fine of $1,000.00: *Section 30(1);*
- If the offender has been previously refused a driver's licence or is disqualified for holding or obtaining such a licence, he may be arrested forthwith without a warrant, and he is liable to summary conviction: *Section 30(2);*

  Punishment: Liable on summary conviction to imprisonment for a term of six months or to a fine of $20,000.00: *Section 30(2).*

General provision on disqualification

- The court before which a person is convicted of any offence in connection with the driving of a motor vehicle may, in addition to any other penalty provided for such offence, and shall, where so required by this Act, order that the offender be disqualified for a stated period or permanently from holding or obtaining a driver's licence either generally or limited to the driving of a motor vehicle of any particular class or description, and, if the offender holds a driver's licence, the court shall endorse upon the licence particulars of the conviction: *Section 79(1);*
- A person who by virtue of an order of a court under this section is disqualified

[23] Anguilla - Vehicles & Road Traffic Act Chapter V10 Revised Edition 2014, section 62(3). In this section the expression "animal" means any horse, cattle, ass, mule, sheep or goat

from holding or obtaining a driver's licence may appeal against the order in the same manner as against a conviction, and the court may, if it thinks fit, suspend the operation of the order pending the appeal: *Section 79(4).*

Temporary suspension of licence pending determination of charges

- If and when any person is charged with manslaughter arising out of the use of any motor vehicle or with contravening *Sections 51, 52* or *53,* the Traffic Commissioner may require the Comptroller of Inland Revenue to suspend the driver's licence of the person so charged pending the determination of the charge, and the Comptroller of Inland Revenue shall suspend[24] such licence, when so required by the Traffic Commissioner: *Section 80(1).*

Provisions as to endorsements

- An order that the particulars of any conviction or of any disqualification be endorsed on any driver's licence held by the offender shall, whether the offender is at the time the holder of the licence or not, operate as an order that any licence he may then hold or may subsequently obtain shall be so endorsed until he becomes entitled under this section to have a licence issued to him free from endorsement: *Section 82(1).*

Offences which a magistrate does not have jurisdiction to try

The magistrate does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Causing death by reckless or by dangerous driving: *Section 52;*
- Taking vehicles without consent of owner (on indictment): *Section 66.*

ANTIGUA AND BARBUDA

The main legislation or "principal Act" is the *Vehicles and Road Traffic Act, Chap. 460.* This Act must be read in conjunction with *Vehicles and Road Traffic (Amendment) Acts, No. 15 of 1995, No. 14 of 2000, No. 7 of 2009, No. 4 of 2011, No. 13 of 2012* and *No. 18 of 2018, and Statutory Rules and Orders, No. 20 of 2012.*

[24] Anguilla- Vehicles & Road Traffic Act Chapter V10 Revised Edition 2014, section 80(3). A licence suspended by virtue of this section shall during the period of suspension be of no effect.

Fixed penalty

These penalties are specified in the *Vehicles and Road Traffic (Enforcement and Administration) Act, Chap. 461,* which must be read in conjunction with the *Vehicles and Road Traffic (Enforcement and Administration) (Amendment) Act, No. 14 of 2019*[25]:

- Where a police officer has reason to believe that an offence has been or is being committed, it shall be lawful for him to give to the driver a notice charging him with the commission of such offence, and notifying him that a complaint will be made against him in respect thereof, and requiring him either to pay the fixed penalty within the time specified in the notice or to appear at the court specified in the notice on the day and at the hour stated therein to answer the said complaint: *Section 3(1);*
- Subject to this section, where a police officer finds a vehicle on any occasion and has reason to believe that an offence is being or has been committed in respect of that vehicle, the police officer may affix a notice to any part of the vehicle where the notice may easily be seen; and a notice so affixed shall for the purposes of this Act be deemed to have been given to the person liable for the offence, and notwithstanding any law to the contrary, the owner of such vehicle shall for the purposes of the proceedings instituted by the notice, be presumed to be the person liable for the offence: *Section 3(2);*
- The police officer shall send to the magistrate for the Magisterial District in which the offence is alleged to have been committed, a duplicate of the notice, which duplicate shall be deemed to be a complaint laid before the magistrate and a summons issued by the magistrate for the purposes of the *Magistrate's Code of Procedure Act: Section 3(4);*
- The time within which the fixed penalty is payable shall be 10 days from the date of the notice, and where payment reaches the clerk of the magistrate after that time, it shall not be receivable and shall be returned to the sender: *Section 5(2);*
- The fixed penalty for an offence shall be the amount specified in the third column of the Schedule for that offence: *Section 6;*
- Where the fixed penalty is not paid within the time specified in the notice, proceedings in respect of the offence specified in the notice shall proceed in the manner prescribed by the *Magistrate's Code of Procedure Act: Section 9;*
- Some offences specified in the Schedule include:
    - Using a motor vehicle or trailer without proper identification plate;
    - Motor vehicle being used when identification mark not legible;
    - Not applying brakes and stopping engine on quitting a motor vehicle;
    - Failing to keep a motor vehicle on the left of the road without sufficient cause.

[25] Sections 4 & 5 of the Vehicles and Road Traffic (Enforcement and Administration) (Amendment), Act 2019 amends sections 11 & 12 of the Vehicles and Road Traffic (Enforcement and Administration) Act Cap 461 in the following manner:

- by repealing the word "Governor-General" and substituting the word "Minister.
- by repealing subsection 11(1) (b) and substituting "remove any offence from the Schedule, and in particular he may alter the fixed penalty for any offence or prescribe a new fixed penalty in an amount not exceeding five hundred dollars."

Offences for which a magistrate has jurisdiction

Vehicles and Road Traffic Act, Chap. 460

1. Driving in excess of the speed limit - *Section 53*

    - No person shall drive a motor vehicle of such class or description as is specified in the Second Schedule, at a speed greater than the speed therein specified as the maximum speed at which a vehicle of that class or description may be driven on a road or any portion thereof within the limits of the city of St. John's or which is declared to be within a speed limit area in the manner hereinafter provided or otherwise than as specified in the said Schedule: *Section 53(1);* Any person who acts in contravention of the provisions of this subsection shall be guilty of an offence: *Section 53(1);*
    - A person charged under this section with the offence of driving a motor vehicle of such class or description on a road at a speed greater than the maximum speed allowed in the case of a vehicle of that class or description travelling on a road as defined in subsection (1), shall not be liable to be convicted of the offence solely on the evidence of one witness to the effect that in the opinion of the witness the person charged was driving the vehicle at such greater speed: *Section 53(2);*
    - Any person being the owner of a motor vehicle, who aids, abets, counsels or procures any person who is employed by him to drive such motor vehicle on such a road to commit an offence under this section shall be guilty of an offence: *Section 53(3);*

      Punishment: Any person who drives a motor vehicle on a road at a speed exceeding a speed limit prescribed by or under this section; or is guilty of an offence under subsection (3), is liable on conviction to a fine of one thousand dollars or to imprisonment for a term of six months: *Section 53(7);*

      Disqualification: First offence - Upon conviction, a person may be disqualified from holding or obtaining a driver's licence for a period not exceeding 12 months. Where a person is convicted for a second or subsequent offence under this section, the court shall, in addition to such penalty, disqualify such person from holding or obtaining a driver's licence for such period as it may, in the circumstances, consider appropriate: *Section 53(7)*.

2. Reckless or dangerous driving - *Section 55*

    - Any person who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the actual amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road is guilty of an offence: *Section 55(1);*

Punishment: Liable on summary conviction, for a first offence to a penalty of twenty-five hundred dollars and to imprisonment for six months and for a second and every subsequent offence, to a penalty of five thousand dollars and to imprisonment for a term of 12 months: *Section 55(1)(a);*

Disqualification: A person convicted of an offence under this section shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified for holding or obtaining a driver's licence for a period of six months from the date of the conviction and on a third conviction for a like offence he shall be permanently disqualified for holding or obtaining a driver's licence: *Section 55(2);*

- *Costs*[26]: In addition to any penalty imposed under this section, a person who is convicted of reckless or dangerous driving and who in so doing damages or causes damage to any public or private property, may be ordered to pay the cost of replacing or restoring said public or private property: *Section 55(3).*

3. Drivers under the influence of liquor or drugs - *Section 54*[27]

- A person who when driving or attempting to drive, or when in charge of, a motor vehicle on a road is under the influence of alcohol or drug[28] to such an extent as to be incapable of having proper control of the vehicle, or is stopped by the police officer and is found over the prescribed limit by a mandatory test is liable to summary conviction: *Section 54(1);*

  Punishment: Liable on summary conviction for a first offence to a penalty not exceeding ten thousand dollars or imprisonment for up to three years, and on conviction for a second and every subsequent offence to a penalty not exceeding fifteen thousand dollars or to imprisonment for up to five years: *Sections 54(1)(a),(b);*

  Disqualification: A person convicted of:

  - Two consecutive offences under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of three years from the date of the conviction from holding or obtaining a driver's licence: *Section 54(2)(a);*
  - A third conviction for a like offence, shall be permanently disqualified from holding or obtaining a driver's licence: *Section 54(2)(b).*

[26] Section 5 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends section 55 of the Vehicles and Road Traffic Act Cap. 460 by inserting subsection 55(3) after subsection 55(2).

[27] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends section 54 of the Vehicles and Road Traffic Act Cap. 460 by repealing it in its entirety and substituting the following sections:
- a new section 54; and
- sections 54A to 54F.

[28] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 54F (1) which provides: "drug" includes any intoxicant other than alcohol.

Breath test[29]

- Where a police officer has reasonable cause to suspect:
    - That a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has alcohol in his breath or blood exceeding the prescribed limit[30] or is in breach of *Section 54: Section 54A(1)(a);*
    - That a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with alcohol in his breath or blood exceeding the prescribed limit and that the person still has alcohol in his breath or blood: or *Section 54A(1)(b);*
    - That a person has been driving, attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed an offence against this Act whilst the vehicle was in motion, he may, subject to subsection (4),[31] require him to provide a specimen of breath[32] for a breath test[33] at or near the place where the requirement is made: *Section 54A(1)(c);*

[29] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 54F (1) which provides: "breath test" means a test for the purpose of obtaining an indication of the proportion of alcohol in the person's breath carried out by means of a device approved for the purpose of such a test by the Minister, under section 54A(9).

[30] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 54F (1) which provides: "the prescribed limit" means in respect of breath alcohol concentration, thirty-five microgrammes of alcohol in one hundred millilitres of breath or such other proportion as may be prescribed; and blood alcohol concentration, eighty milligrammes of alcohol in one hundred millilitres of blood, or such other proportion as may be prescribed.

[31] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 54A (4) which provides: Where a person referred to in subsection (3) is at a hospital as a patient, he may be required by a police officer to give a specimen of breath at the hospital but no such requirement may be made unless the medical practitioner in charge of his case:

- is given prior notice of the proposal to make the requirement; and
- does not object to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

[32] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 54F (2) which provides: in section 54A to providing a specimen of breath shall be construed as references to providing a specimen thereof in sufficient quantity to enable a breath test to be carried out."

[33] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 54A (3) which provides: A police officer arriving at the scene of an accident involving a motor vehicle on a road may require the driver or drivers involved in the accident to provide a specimen of breath for a breath test:

- where the police officer has reasonable cause to believe that the driver was driving the vehicle or attempting to drive the vehicle;
- where the police officer has reasonable cause to believe that the driver has consumed alcohol in a quantity that the proportion of the alcohol in his breath or blood exceeds the prescribed limit at the time of the accident;
- subject to subsection (4) either at or near the place where the accident occurred; and
- subject to subsection (4) at a police station within reasonable proximity to the place where the accident occurred.

- No requirement may be made by virtue of *paras. (b)* or *(c),* of subsection (1), unless it is made as soon as reasonably practicable after the commission of the offence: *Section 54A(2);*

  Punishment: Where a person, without reasonable excuse, fails to provide a specimen of breath under subsections (1), (3), (4) or (8), he commits an offence and shall be liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for up to three years: *Section 54A(5);*

- A police officer may arrest without warrant any person who, as a consequence of a breath test, is found to have a proportion of alcohol in his breath exceeding the prescribed limit but no such arrest may be made while the person is at a hospital as a patient: *Section 54A(6);*

- Where a person required by a police officer under subsections (1), (3), (4) or (8), to provide a specimen of breath for a breath test fails to do so and the police officer has reasonable cause to suspect that the person has alcohol in his breath or blood above the prescribed limit, the police officer may, without prejudice to *Sections 54(3)* and *54A(5)*, arrest the person without a warrant but no such arrest may be made if the person is at a hospital as a patient: *Section 54A(7);*

- A person arrested under subsection (7), *Sections 54(3)* or *54A(5),* shall, while at a police station, be given an opportunity to provide a specimen of breath for a breath test at the police station: *Section 54A(8).*

Breath analysis[34]

- Subject to subsections (2) and (3), where:
  - Any person required by a police officer under *Section 54A,* to undergo a breath test fails to undergo that test: or *Section 54B(1)(a);*
  - In consequence of a breath test carried out under *Section 54A,* it is indicated that there may be present in that person's breath, a concentration of alcohol in excess of the prescribed limit, the police officer may require that person to submit, in accordance with the directions of the police officer, to a breath analysis[35] and on any such requirement, warn him that a failure to so submit may render him liable to prosecution: *Section 54B(1)(b);*

[34] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 54F (1) which provides: "breath analysis" means the quantitative measuring of the proportion of alcohol in a person's breath, carried out by means of a device prescribed for the purpose by the Minister, under section 54B (13)

[35] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 54B (3) which provides: For the purpose of the breath analysis:

- a person must provide two separate specimens of breath for analysis;
- such specimens must be provided in accordance with the directions of the police officer referred to in subsection (2);
- there must be an interval of not less than two minutes and not more than ten minutes between the provision of specimens; and

- A police officer shall not require any person to undergo a breath test or to submit to a breath analysis:
    - If the person has been admitted to hospital for medical treatment and the medical practitioner in immediate charge of his treatment has not been notified of the intention to make the requisition, or objects on the ground that compliance therewith would be prejudicial to the proper care or treatment of that person: *Section 54B(4)(a);*
    - If it appears to the police officer that it would, by reason of injuries sustained by the person, be dangerous to that person's medical condition to undergo a breath test or submit to a breath analysis: or *Section 54B(4)(b);*
    - At that person's usual place of abode: *Section 54B(4)(c);*
- Notwithstanding subsection (4)(c), a person may be required to submit to a breath test at that person's usual place of abode:
    - If the police officer has reasonable cause to believe that:
        i. the person was involved in an accident on a road or other public place within the preceding two hours resulting in death or serious injury: and *Section 54B(5)(a)(i);*
        ii. at the time when the accident occurred, the person had an alcohol level in his breath exceeding the prescribed limit: and *Section 54B(5)(a)(ii);*
    - If it was not feasible for a police officer to require the person to submit to a breath test at the scene of the accident: *Section 54B(5)(b);*
- Any person who:
    - Upon being required under subsection (1), to submit to a breath analysis fails to do so in accordance with the directions of a member of the Royal Police of Antigua and Barbuda: or *Section 54B(6)(a);*
    - Wilfully does anything to alter the concentration of alcohol in his breath

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- the reading from the specimen that indicates the lower concentration of alcohol in the person's breath shall be taken to be the result of the breath analysis.

Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 54B (8) which provides: Within one hour after a person has submitted to a breath analysis, the police officer operating the breath analyzing instrument shall deliver to that person, a statement in writing signed by that police officer specifying:

- the concentration of alcohol determined by the analysis to be present in that person's breath and expressed in microgrammes of alcohol in one hundred millilitres of breath; and
- the time of day and the day on which the breath analysis was completed

or blood between the time of the event referred to in *Section 54A,* in respect of which he has been required to undergo a breath test and the time when he undergoes that test or, if he is required to submit to a breath analysis, the time when he submits to that analysis, commits an offence: *Section 54B(6)(b);*

Punishment: Liable in the case of a first conviction, to a fine not exceeding ten thousand dollars or to imprisonment for up to three years; and in the case of a second or subsequent conviction, to a fine not exceeding fifteen thousand dollars or to imprisonment for up to five years: *Sections 54B(6)(c),(d).*

Considerations of evidence in relation to breath analysis that shall be taken by a magistrate in proceedings for an offence under Section 54

- In proceedings for an offence under *Sections 54A, 54B* or *54D:*
  - Evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analysing instrument operated by the police officer authorised in that behalf under subsection (2): and *Section 54B(9)(a);*
  - The concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the breath of the accused at the time of the occurrence of the event mentioned in *Section 70B(1)(a),* unless the accused proves that the concentration of alcohol in his breath at the time did not exceed the prescribed limit: *Section 54B(9)(b);*
- In proceedings for an offence under this section, a certificate purporting to be signed by a police officer certifying that:
  - He is authorised by the Minister to whom responsibility for national security has been assigned to operate breath analysing instruments: *Section 54B(10)(a);*
  - A person named therein submitted to a breath analysis: *Section 54B(10)(b);*
  - The apparatus used by him to make the breath analysis was a breath analysing instrument approved by the Minister: *Section 54B(10)(c);*
  - The analysis was made on the date and completed at the time stated in the certificate: *Section 54B(10)(d);*
  - A concentration of alcohol determined by the breath analysing instrument and expressed in microgrammes of alcohol in one hundred millilitres of breath was present in the breath of that person on the date and at the time stated in the certificate: and *Section 54B(10)(e);*
  - A statement in writing required by subsection (8), was delivered in accordance with that subsection, shall be prima facie evidence of the particulars certified in and by the certificate: *Section 54B(10)(f);*

- In proceedings for an offence under this section, a certificate purporting to be signed by the Minister responsible for national security that the police officer named therein is authorized to operate breath analysing instruments, shall be prima facie evidence of the particulars certified in and by the certificate: *Section 54B(11);*
- In any proceedings for an offence under this section, evidence of the condition of a breath analyzing instrument or the manner in which it was operated shall not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced: *Section 54B(12).*

Laboratory test[36]

- Subject to subsections (2) and (3), in the course of an investigation as to whether a person has committed an offence under *Section 54,* a police officer may require a person under investigation to provide a specimen of blood for a laboratory test if the person is unable, by reason of his physical condition, to provide a specimen of breath for a breath test: *Section 54C(1);*
- For the purposes of this section and *Sections 54, 54D* and *54E,* where any person is required to provide a specimen of blood, such specimen shall be taken only:
  - With the consent of that person: *Section 54C(5)(a);*
  - At a hospital; and laboratory test: *Section 54C(5)(b);*
  - By a medical practitioner or qualified laboratory technician: *Section 54C(5)(c);*
- A person shall not be required to provide a specimen of blood for a laboratory test under subsection (1), if he is at a hospital as a patient and the medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that the requirement to provide such specimen could be prejudicial to the proper care or treatment of that person: *Section 54C(2);*
- A police officer shall not require a person to submit a specimen of blood for a blood analysis once a breath analysis has been carried out in respect of that person and the result is available: *Section 54C(3).*

Refusal to consent to taking of or providing specimen

- Any person who is under investigation in relation to an offence under *Section 54,* and who refuses to provide a sample of blood for a blood test when required to do so under *Section 54C(1),* commits an offence: *Section 54D(1);*

  Punishment: Liable in the case of a first conviction, to a fine not exceeding ten thousand dollars or to imprisonment for up to three years; and in the case of a second or subsequent conviction, to a fine not exceeding fifteen thousand, dollars or to imprisonment for up to five years: *Sections 54D(1)(a),(b);*

[36] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 54F (1) which provides: "laboratory test" means the analysis of a specimen provided for the purpose

- A person shall not be treated as failing to provide a specimen of blood if he is unable to do so for the reasons set out in *Section 54C(2):* and *Section 54D(2).*

Evidence for proceedings for an offence under Sections 54 or 54A[37]

- For the purposes of any proceedings for an offence under *Section 54,* a certificate signed by an authorised analyst, certifying the proportion of alcohol found in a specimen identified by the certificate shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the analyst: *Section 54E(1);*
- For the purposes of any proceedings for an offence under *Section 54,* a certificate purporting to be signed by the medical practitioner that he took a specimen of blood from a person with that person's consent shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the medical practitioner: *Section 54E(2);*
- Subsections (1) and (2), shall not apply to a certificate tendered on behalf of the prosecution:
    - Unless a copy has been served personally on the accused or on his attorney-at-law or by prepaid registered post not less than seven days before the hearing or trial: or *Section 54E(3)(a);*
    - If the accused, not less than seven days before the hearing or trial, or within such further time as the court may in the circumstances of the case allow, has served notice on the prosecution requiring the attendance at the hearing or trial of the person by whom the certificate was signed: *Section 54E(3)(b);*
- Where, in proceedings for an offence under *Section 54,* the accused, at the time a specimen of blood was taken from or provided by him in accordance with this Act, asked to be supplied with such a specimen, evidence of the proportion of alcohol found in the specimen shall not be admissible on behalf of the prosecution unless:
    - The specimen is either one of two taken or provided on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken or provided: and *Section 54E(4)(a);*
    - The other specimen or part was supplied to the accused: *Section 54E(4)(b).*

4. Careless driving - *Section 56*[38]

- If any person drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road by:
  - Holding and using a hand-held mobile device[39]: *Section 56(1)(a);*
  - Engaging in any other like activity that can cause a distraction[40]: *Section 56(1)(b);*

  he commits an offence and shall be liable to summary conviction;

  Punishment and disqualification: Liable on summary conviction for a first offence to a fine of one thousand dollars and to disqualification from holding or obtaining a driver's licence for three months, and for a second and every subsequent offence to a penalty of twenty-five hundred dollars and to disqualification from holding or obtaining a driver's licence for one year: *Sections 56(1)(a),(b).*

Bars to conviction for offences in respect of maximum speed, reckless or dangerous driving and careless driving

- Where a person is prosecuted for an offence under any of the provisions of this Part relating respectively to the maximum speed at which motor vehicles may be driven, to reckless or dangerous driving and careless driving, he shall not be convicted unless either:
  - He was warned at the time the offence was committed that the question of prosecuting him for an offence under someone or other of the provisions aforesaid would be taken into consideration: or *Section 61(a);*
  - Within 14 days of the commission of the offence a summons for the offence was served on him: or *Section 61(b);*
  - Within the said 14 days a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or to the person registered as the owner of the vehicle at the time of the commission of the offence: *Section 61(c);*

[38] Section 6 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends section 56 of the Vehicles and Road Traffic Act Cap. 460 by repealing it in its entirety and substituting a new section 56.

[39] Section 2 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting the following definition: "mobile device" means a mobile telephone or any other device, other than a two-way radio, which performs an interactive communication function by transmitting and receiving data.

[40] Section 6 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by substituting section 56 (2) which provides: For the purposes of section 56, "distraction" means something that prevents someone from concentrating or applying due care and attention whilst driving a motor vehicle on a road."

Provided that:

- Failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that:
  - Neither the name and address of the accused nor for the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for notice to be served or sent as aforesaid: or *Section 61(c)(i)(a);*
  - The accused by his own conduct contributed to the failure: *Section 61(c)(i)(b);*
- The requirements of this section shall in every case be deemed to have been complied with unless the contrary is proved: *Section 61(c)(ii).*

Power to proceed on a charge for careless driving on hearing a charge under Section 55 (reckless or dangerous driving)

- Where, a person is charged summarily before a magistrate with an offence under *Section 55,* (which relates to reckless or dangerous driving) and the magistrate is of the opinion that the offence is not proved, then at any time during the hearing or immediately thereafter, the magistrate may, without prejudice to any other powers possessed by him, direct or allow a charge for an offence under *Section 56,* (which relates to careless driving) to be preferred forthwith against the defendant and may thereupon proceed with the charge: *Section 60;*
- The procedure that shall be followed for the above include:
  - The defendant or his solicitor or counsel shall be informed of the new charge and be given the opportunity, whether by way of cross-examining any witness whose evidence has already been given against the defendant or otherwise, of answering the new charge;
  - The magistrate shall, if he considers that the defendant is prejudiced in his defence by reason of the new charge being preferred, adjourn the hearing: *Section 60.*

5. Racing speed trials - *Section 58*[41]

- Any person who promotes or takes part in a race or trial of speed between motor vehicles on a road shall be liable to summary conviction: *Section 58(1);*

  Punishment: Liable on summary conviction to a penalty of twenty-five hundred dollars and to imprisonment for 12 months: *Section 58(1);*

  Disqualification: A person convicted of an offence under this section shall, unless the court for a special reason thinks fit to order otherwise and without prejudice to the

[41] Section 7 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends section 58 of the Vehicles and Road Traffic Act Cap. 460 by inserting subsections 58(3), (4), (5) and (6) after subsection 58(2).

power of the court to order a longer period of disqualification, be disqualified for holding or obtaining a driver's licence for a period of 12 months from the date of the conviction: *Section 58(2);*

Discretion: Notwithstanding anything contained in *Section 58,* the Traffic Commissioner may, authorise the holding on a public road of trials of speed of any class or description, subject to such conditions as he may consider necessary: *Section 58(3);*

- Without limiting or affecting the operation of subsection (l), the Traffic Commissioner may, give such directions with respect to the movement of, or the route to be followed by, vehicular traffic, during such period, as may be necessary or expedient to prevent or mitigate congestion or obstruction of traffic, or danger to or from traffic in consequence of the holding of a trial of speed authorised under subsection (3), including direction that any road or part of a road specified in the direction shall be closed during that period to vehicles or to vehicles of a class or description so specified: *Section 58(4);*
- *Application for permission for trials of speed:* The promoter[42] of a trial of speed on any public road shall, not less than 28 days before the day on which the trial is to be held, or, if it is to be held on more than one day, the day on which the trial is to begin, apply to the Traffic Commissioner in writing for permission to hold the trial and any such application must contain the following particulars:
    - On which and the times during which the trial is to: *Section 58(6)(a);*
    - The description and the route to be followed by the competitors and the name of, or a description sufficient to identify any public road on which the trial or any part thereof is to take place: *Section 58(6)(b);*
    - Particulars of any place where the trial is to start or where it is to finish: *Section 58(6)(c);*
    - The maximum number of motor vehicles that will be permitted to take part in the trial: *Section 58(6)(d);*
    - Sufficient particulars to show what arrangements will be made for marshalling, assisting or supervising the competitors; and *Section 58(6)(e);*
    - Such particulars of the rules or arrangements governing the trial as may be sufficient to show that the proposed trial is a speed trial: *Section 58(6)(f).*

[42] Section 7 of the Vehicles and Road Traffic (Amendment) Act, 2018 amends the Vehicles and Road Traffic Act Cap. 460 by inserting section 58(6)(2) which provides: In this section, "promoter" means the person who organises or arranges or is responsible for the organisation or arrangement of a speed trial.".

6. Duty to stop - *Section 62(3)*

   - Any person driving a motor vehicle on a road shall stop the vehicle on being so required by a police officer in uniform, and if he fails so to do, he shall be liable to summary conviction: *Section 62(3);*

     Punishment: Liable on summary conviction to a penalty of five hundred dollars: *Section 62(3).*

7. Duty to give name and information - *Sections 62(1),(2)*

   - If the driver of a motor vehicle who it is alleged to have committed an offence under the foregoing provisions of this Act as to reckless or dangerous driving or careless driving refuses, on being required by any person having reasonable grounds for so requiring, to give his name and address, or gives a false name and address, he shall be guilty of an offence: *Section 62(1);*
   - Any police officer may arrest without warrant the driver of any motor vehicle who within his view commits any offence under the provisions of this Act as to reckless or dangerous driving or careless driving or racing on a road, unless the driver either gives his name and address or produces his driver's licence for examination: *Section 62(2);*

     Punishment: Any person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on summary conviction to a penalty of five thousand dollars or to a term of imprisonment not exceeding 12 months: *Section 90.*[43]

8. Taking vehicles without consent of owner - *Section 67*

   - If any person uses any motor or other vehicle without the consent of the owner or other lawful authority, he shall be guilty of an offence[44]: *Section 67(1);*

     Punishment: If any person is convicted under this section the magistrate may, if he thinks fit, either in addition to or without inflicting any punishment, order the person convicted to pay to the owner of the motor vehicle either or both of the following sums, namely:

[43] Section 14 of the Vehicles and Road Traffic (Amendment) Act, 1995 amends the penalty in section 90 of the Vehicles and Road Traffic Act Cap. 460.

[44] Antigua and Barbuda- Vehicles and Road Traffic Act Cap. 460, section 67 (4). Any police officer may arrest without warrant any person reasonably suspected by him of having committed an offence under this section.
Antigua and Barbuda- Vehicles and Road Traffic Act Cap. 460, section 67 (1)(a), (b). Provided that the person shall not be convicted under this section if he proves either:

- that he had good reason to believe, and did in fact believe, that the owner of the vehicle would, had he been present, have consented to the vehicle being used in the manner in which it was used; or
- that he had reasonable cause to believe and did in fact believe that he had lawful authority to use the vehicle.

- Such sum as, in the opinion of the magistrate, would have been charged if the vehicle had been hired by the person convicted;
- Such sum as, in the opinion of the magistrate, represents fair compensation for any damage done to the vehicle;

and payment of such sum shall be enforced in the manner provided by the *Magistrate's Code of Procedure Act,* for the enforcing of the payment of a fine or order made on complaint: *Section 67(2).*

9. Driving without a licence - *Section 29A*[45]

- For the purposes of this section "valid licence" includes a valid driver's licence, valid learner's permit or valid public service vehicle driver's permit: *Section 29A(1);*
- A person shall not drive a vehicle on any road unless he is the holder of a valid licence: *Section 29A(1);*

  Punishment: A person who contravenes subsection (2), commits and offence and is liable on summary conviction to imprisonment for two years and a fine of five thousand dollars": *Section 29A(3).*

10. Driving without a seatbelt - *Vehicles and Road Traffic (Seat Belt) Regulations, 1998*

- No person shall drive or ride in the front passenger of a motor vehicle unless he is wearing a seat belt in accordance with the Regulations[46]: *regulation 3;*

  Punishment: Any person who contravenes the provisions of these Regulations commits an offence and is liable on summary conviction to a fine not exceeding $5,000.00 or to imprisonment for a term not exceeding 12 months, or both: *regulation 11.*

General provision on disqualification

- The court before which a person is convicted, disqualification for offences of any offence in connection with the driving of a motor vehicle may, in addition to any other penalty provided for such offence, and shall, where so required by the provisions of this

[45] Section 29 of the Vehicles and Road Traffic (Amendment) Act, 2000 amends section 30 of the Vehicles and Road Traffic Act Cap. 460 by repealing it in its entirety. The Vehicles and Road Traffic (Amendment) Act, 2012 amends the Vehicles and Road Traffic Act Cap. 460 by inserting the section 29A after section 29.

[46] Antigua and Barbuda- Vehicles and Road Traffic (Seat Belt) Regulations, 1998, regulation 5(1). Regelation 3 shall not apply to a person:

- driving or riding in an ambulance, fire truck, police motor vehicle or army motor vehicle;
- driving or riding in a tractor, agricultural motor vehicle or other heavy goods motor vehicle;
- who can produce a medical certificate to the effect that it is inadvisable on medical grounds for him to wear a seat belt;
- with a physical defect or disability where it is not possible to equip the motor vehicle with a disabled person's seat belt and the person holds a certificate to that effect from the Traffic Commissioner;
- driving or riding in the front passenger seat of motor vehicle in circumstances where it would be unreasonable to expect the person to wear a seat belt.

Act, order that the offender be disqualified for a stated period or permanently from holding or obtaining a driver's licence either generally or limited to the driving of a motor vehicle of any particular class or description; and if the offender holds a driver's licence the court shall endorse upon the licence particulars of the conviction: *Section 69(1);*

- A person who by virtue of an order of a court under this section is disqualified for holding or obtaining a driver's licence may appeal against the order in the same manner as against a conviction, and the court may, if it thinks fit, pending the appeal, suspend the operation of the order: *Section 69(4).*

Provision as to endorsement[47]

- An order that the particulars of any conviction or of any disqualification be endorsed on any driver's licence held by the offender shall, whether the offender is at the time the holder of the licence or not, operate as an order that any licence he may then hold or may subsequently obtain shall be so endorsed until he becomes entitled under the provisions of this section to have a licence issued to him free from endorsement: *Section 72(1);*
- Where an order is made requiring any driver's licence held by an offender to be endorsed, then:
    - If the offender is at the time the holder of a driver's licence, he shall, if so required by the court, produce the licence within five days or such longer time as the court may determine for the purpose of endorsement: and *Section 72(2)(a);*
    - If he is not then the holder of a driver's licence, but subsequently obtains a licence, he shall within five days after so obtaining the licence produce it to the court for the purpose of endorsement: *Section 72(1)(b);*

  and if he fails so to do, shall be guilty of an offence; and if the licence is not produced for the purpose of endorsement within such time as aforesaid, it shall be suspended from the expiration of such time until it is produced for the purpose of endorsement.

<u>Offences which a magistrate does not have jurisdiction to try</u>

The magistrate does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Causing death by reckless or dangerous driving of motor vehicles: *Section 57;*
- Reckless or dangerous driving (on indictment): *Section 55.*

[47] Section 21 of the Vehicles and Road Traffic (Amendment) Act, 2000 amends section 72 of the Vehicles and Road Traffic Act Cap. 460.

BARBADOS

The main legislation or "principal Act" is the *Road Traffic Act, Chap. 295.* For the purpose of detailing road traffic legislation within this chapter for Barbados, the *Road Traffic Act, Chap. 230, Cumulative Edition 2008,* is utilised. This Act must be read in conjunction with the *Road Traffic (Amendment) Acts, No. 26 of 2009, No. 26 of 2017 and No. 31 of 2018.*

Fixed penalty

- A member of the Police Force or a Traffic Warden may serve on a person who commits an offence under this section, notice in such form as the Minister approves offering him an opportunity of discharging any liability that would arise out of a conviction for that offence by payment of a fixed penalty under this section; and the person is, upon payment of the fixed penalty before the expiration of a period of 21 days from the date of the notice or such longer period as is specified therein, or before the date on which proceedings are begun, whichever is the later, exempt from any prosecution for such offence: *Section 121(3);*
- A notice referred to in subsection (3), may be served personally on the person in charge of the vehicle if he is present, or, if he is not present, by affixing it to the vehicle: *Section 121(7);*
- Payment of a fixed penalty under this section shall be made to the clerk of the magistrate's court as stated in the notice given pursuant to subsection (3), and an amount paid by way of fixed penalty in respect of any offence is to be treated for the purpose of this section as if it were a fine imposed on summary conviction for that offence; and in any proceedings a certificate that payment of a fixed penalty was or was not made to the clerk of the magistrate's court by the date specified in the certificate is, if the certificate purports to be signed by such clerk, prima facie evidence of the facts stated therein: *Section 121(6).*

Some fixed penalty offences, committed in respect of a vehicle by reason of that vehicle: *Section 121(1):*

- Having been left or parked on a road at night without lights or reflectors;
- Having been left in a parking place, there having been a failure to pay a charge made in respect of such vehicle at such parking place;
- Having been used in contravention of a traffic sign, road signal or light signal;
- Carrying more passengers than it is licensed to carry;
- Having its number plates obscured;
- Not having a registration card affixed to the vehicle;
- Being driven with unauthorised lights;
- Being driven without functioning obligatory lamps;
- Using a limited trade licence for the purpose other than a specified purpose.

Demerit points

- Where a person has been convicted under this Act or the regulations of an offence set out in Column 2, of the Sixth Schedule, the Licensing Authority shall record in respect of that person the number of demerit points set out opposite that offence in Column 3, of that Schedule: *Section 79(1).*
- Some offences set out in the Sixth Schedule include:
  - Not reporting an accident involving injury (7 points);
  - Not stopping after an accident (7 points);
  - Driving without due care (4 points);
  - Exceeding speed limit (by 50 or more k.p.h.) (7 points);
  - Exceeding speed limit (by 40 or more k.p.h.) (6 points);
  - Failing to obey stop sign (6 points);
  - Failing to obey a light signal (6 points).

Offences for which a magistrate has jurisdiction

1. Reckless or dangerous driving - *Section 82*
   - Any person who drives a motor vehicle on a road recklessly, or at a speed, or in a manner dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic that is actually on the road at the time or might reasonably be expected to be on the road at the time, is guilty of an offence;

     Punishment: Liable on summary conviction, in the case of a first conviction, to a fine of $1,000.00 or imprisonment for a term of 12 months or both. In the case of a second subsequent conviction, to a fine of $2,500.00 or to imprisonment for a term not exceeding two years or both: *Sections 82(1)(a),(b);*

     Endorsement: The court shall order particulars of the conviction under this section or *Section 85,* to be endorsed on the driving licence held by the person convicted: *Section 82(2);*

     Disqualification: A person convicted of an offence under subsection (1), shall, unless the court orders otherwise, having regard to the lapse of time since the date of the previous or last previous conviction, or any other special reason, be disqualified, for such period as the court orders from the date of the conviction, from holding or obtaining a driving licence: *Section 82(3);*
   - Where a person is charged with an offence under *Sections 81, 82* or *85,* the court may order the suspension of the driving licence or the learner's permit of that person pending the determination of the charge: *Section 98(1);*
   - A driving licence or learner's permit suspended under subsection (1), shall, upon being suspended, be surrendered by the holder thereof to the court before which he is charged: *Section 98(2);*

- Any person who contravenes subsection (2), is guilty of an offence and is liable on summary conviction to a fine of $500.00, or to imprisonment for a term of three months, or both: *Section 98(3);*
- In **Howard (Randolph) v R [2004] 67 WIR 28,** it was highlighted that the statutory offences do not require an intention to drive dangerously or an intention to injure. *"They require conduct on the part of the offender that falls below a standard of driving expected of a competent and careful driver."* However, in the instance where death results from the dangerous driving, the intention of Parliament is clear that the heavier sentence of imprisonment should apply;
- In **Clarke v Commissioner of Police BB [1997] CA 20,** the Court of Appeal stated that driving fast and driving dangerously is not synonymous, although it seems to be the practice to charge dangerous driving as an alternative to driving in excess of the speed limit whenever the latter charge is made. In this case the appellant admitted to driving in excess of the speed limit. The appellant was also charged with the offence of driving dangerously which was alleged to have been committed shortly after midnight when the road was clear of traffic. The court stated that if there were any specific dangers created by the appellant, it was expected that the prosecutor would have told the court about it, which was not the case. The appellant should have been allowed to change his plea to not guilty in the circumstances of the case. The Court of Appeal allowed this ground of appeal.

2. Driving without due care and attention - *Section 83*

- A person who drives a motor vehicle on a road without due care and attention or reasonable consideration for other persons using the road is guilty of an offence: *Section 83(1);*

  Punishment: Liable on summary conviction to a fine of $500.00 or to imprisonment for a term of six months, or both: *Section 83(1);*

  Disqualification: A person convicted of an offence under subsection (1), may be disqualified from holding or obtaining a driving licence for a period of 12 months: *Section 83(2);*
- In **Hill v Farmer BB [1964] HC 8,** the appellant was found guilty of driving without due care and attention. She argued that she took her eyes of the road momentarily to see to her child's safety in the rear seat, that she acted involuntarily and was therefore not legally culpable. The court supported the Magistrate's Court reason for its decision, and dismissed the appeal. It was state that test of dangerous driving or careless driving is an objective one and that the inattention caused by a movement in the car, which results in a careless movement of the driver is not excusable. A reasonable parent should expect a restless child, and a *"driver of ordinary skill ignores the chatter and movement of his passengers.";*

- Reference was made to **R. v Evans (Frankis Tilney), [1963] 47 Cr. App. R.62,** which gave guidance on determining whether a person was guilty of driving without due care and attention.[48] It was stated that it had to be decided whether or not what the accused did was dangerous to the public that is dangerous to other road users. In the event that it was, even if the dangerous driving was caused by slight negligence, the slightest negligence on the driver's part; he is guilty of the offence of driving to the danger of the public. This does not mean that slight negligence that does not result in dangerous driving is criminal, but *"it does mean that if viewed objectively the manner of driving was dangerous or careless then the fact that the negligence was slight due to momentary inattention which in turn was a voluntary act then a criminal offence has been committed."*

3. Driving, attempting to drive or being in charge of motor vehicle while under the influence of drink or drug - *Section 85*[49]

    - No person shall drive, attempt to drive or be in charge of a motor vehicle on a road or in any other public place while that person:
        - Is under the influence of drink or a drug[50] to such an extent as to be incapable of having proper control of the motor vehicle; or *Section 85(1)(a);*
        - Has consumed alcohol in such a quantity that the proportion in his breath or blood exceeds the prescribed limit[51]: *Section 85(1)(b);*

          Punishment: A person who contravenes subsection (1), is guilty of an offence and is liable on summary conviction in the case of a first conviction, to a fine of $5,000.00 or to imprisonment for a term of two years, or both. In the case of a second or subsequent conviction, to a fine of $10,000.00 or to imprisonment for a term of five years, or both: *Section 85(2);*

[48] The guidance that the trial judge gave the jury in his summing up is applicable for a magistrate to take into account when making a determination.

[49] Section 14 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by repealing section 85 and,
- substituting a new section 85; and
- inserting sections 85A to 85I immediately after section 85.

[50] Section 15 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 85I which provides: "drug" includes any intoxicant other than alcohol.

[51] Section 15 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 85I which provides: "prescribed limit" means, as the case may require
- 35 microgrammes of alcohol in 100 millilitres of breath;
- 80 milligrammes of alcohol in 100 millilitres of blood; or
- 107 milligrammes of alcohol in 100 millilitres of urine,

or such other proportion as may be prescribed by regulations made by the Minister.

Disqualification: A person convicted of this offence under this section, unless the court for any special reason thinks fit to order otherwise, shall:

- In the case of a first conviction, be disqualified from holding or obtaining a driving licence from the date of the conviction for a period 12 months: *Section 85(3)(a);*
- In the case of a second conviction, be disqualified from holding or obtaining a driving licence from the date of the conviction for a period of five years: and *Section 85(3)(b);*
- In the case of a subsequent conviction, be permanently disqualified from holding or obtaining a driving licence: *Section 85(3)(c);*

- Where a person is charged an offence under *Sections 81, 82* or *85,* the court may order the suspension of the driving licence or the learner's permit of that person pending the determination of the charge: *Section 98(1);*
- A driving licence or learner's permit suspended under subsection (1), shall, upon being suspended, be surrendered by the holder thereof to the court before which he is charged: *Section 98(2);*
- Any person who contravenes subsection (2), is guilty of an offence and is liable on summary conviction to a fine of $500.00, or to imprisonment for a term of years months, or both: *Section 98(3).*

Breath Test[52]

- Where a member of the Police Force in uniform has reasonable cause to suspect that:
  - A person driving or in charge of a motor vehicle on a road or other public place has alcohol in his breath in excess of the prescribed limit: *Section 85B(1)(a);*
  - A person has been driving or attempting to drive or has been in charge of a motor vehicle on a road or other public place with alcohol in his breath in excess of the prescribed limit and the person still has alcohol in his breath: or *Section 85B(1)(b);*
  - A person driving or in charge of a motor vehicle on a road or other public place committed a traffic offence while the vehicle was in motion, *Section 85B(1)(c),* the member of the Police Force may, subject to *Section 85G,* require that person to provide a specimen of breath for a breath test;

[52] Section 15 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 85I which provides: "breath test" means a preliminary test for the purpose of obtaining, by means of a device approved by the Minister under section 85A, an indication of whether the proportion of alcohol in a person's breath exceeds the prescribed limit.
Section 15 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 85A which provides: The Minister may, by order, approve the devices to be used for:
- the purpose of obtaining an indication of alcohol in a person's breath; and
- the quantitative measuring of the proportion of alcohol in a person's breath.

- The specimen of breath shall be provided at the place where the requirement is made or at the police station nearest to that place, as soon as is reasonably practicable after the member of the Police Force makes the requirement: *Section 85B(2);*
- The member of the Police Force shall warn every person who is required to provide a specimen in accordance with this section that a failure to do so may render that person liable to prosecution: *Section 85B(3);*
- A person who, without reasonable excuse, fails to provide a specimen of breath when required to do so is guilty of an offence: *Section 85B(4);*

  Punishment: Liable on summary conviction to a fine of $1,000.00 or to imprisonment for a term of six months or to both: *Section 85B(4).*

Breath Analysis[53]

- Subject to *Section 85G,* where the result of a breath test carried out in accordance with *Section 85B,* indicates that there may be present in a person's breath, a proportion of alcohol that is in excess of the prescribed limit, a member of the Police Force in uniform may require that person to provide two specimens of breath for analysis: *Section 85C(1);*
- The specimens of breath shall be provided at the place where the requirement is made or at the police station nearest to that place, as soon as is reasonably practicable after the member of the Police Force makes the requirement: *Section 85C(2);*
- Where two specimens of breath are provided for analysis, they shall be suitable if:
  - Each specimen is sufficient to enable the analysis to be carried out: *Section 85C(3)(a);*
  - Each specimen is provided in such a way as to enable the objective of the analysis to be satisfactorily achieved: and *Section 85C(3)(b);*
  - There is an interval of not less than two minutes and not more than 10 minutes between the provision of specimens: *Section 85C(3)(c);*
- The reading from the specimen which indicates the lower proportion of alcohol in the person's breath shall be considered to be the result of the breath analysis: *Section 85C(4);*
- The member of the Police Force shall warn every person who is required to provide the specimens in accordance with this section that a failure to do so may render that person liable to prosecution: *Section 85C(5);*
- A person who, without reasonable excuse, fails to provide two specimens of breath when required to do so is guilty of an offence: *Section 85C(6);*

[53] Section 15 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 85I which provides: "breath analysis" means the quantitative measuring of the proportion of alcohol in a person's breath carried out by means of a device approved by the Minister under section 85A.

Punishment: Liable on summary conviction to a fine of $1,000.00 or to imprisonment for a term of six months or to both: *Section 85C(6).*

Duty to provide a written statement

- A member of the Police Force shall, as soon as is practicable after completing a breath analysis in accordance with *Section 85C,* provide the person who provided the specimens of breath with a written statement which shall include the following:
    - The date, time and place at which the specimen was taken: *Section 85D (1)(a);*
    - The proportion of alcohol in the person's breath as indicated by the device referred to in *Section 85A(a):* and *Section 85D(1)(b);*
    - The proportion of alcohol determined by the analysis to be present in that person's breath expressed in microgrammes of alcohol in one hundred millilitres of breath: *Section 85D(1)(c).*
- The statement referred to in subsection (1), shall be signed by the member of the Police Force: *Section 85D(2).*

Laboratory test[54]

- During the course of an investigation to determine whether a person contravened *Section 85,* a member of the Police Force in uniform may require the person to provide a specimen of blood or urine[55] for a laboratory test if:
    - A device of the type referred to in *Section 85A,* is not available or it is, for any other reason, not practicable to use such device: or *Section 85E(1)(a);*
    - The member of the Police Force has reasonable cause to believe that, for medical reasons, the person is unable to provide a specimen of breath: *Section 85E(1)(b);*

  but he shall not make the requirement where a breath analysis has been carried out in accordance with *Section 85C,* and the result of that analysis is available;

[54] Section 15 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 85I which provides: "laboratory test" means the analysis of a specimen of blood or urine taken by a medical practitioner for the purpose of indicating:
- the presence of a drug in a person's blood or urine; or
- whether the proportion of alcohol in a person's blood or urine has exceeded the prescribed limit.

[55] Section 15 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 85E (2) which provides: A specimen of blood or urine shall only be taken if:
- the person providing the specimen consents to the specimen being taken; and
- the specimen is taken at a medical clinic, polyclinic or hospital by a medical practitioner.

Section 15 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 85E (5) which provides: The member of the Police Force shall warn every person who is required to provide a specimen in accordance with this section that a failure to do so may render that person liable to prosecution.

- The question whether it shall be a specimen of blood or a specimen of urine shall be decided by the member of the Police Force making the requirement, except where a medical practitioner has expressed a professional opinion that one type of specimen cannot or should not be taken, in which case the other type of specimen shall be taken: *Section 85E(3);*
- The specimen of blood or urine shall be provided as soon as is reasonably practicable after the member of the Police Force makes the requirement: *Section 85E(4);*
- A person who, without reasonable excuse, fails to provide a specimen of blood or urine when required to do so is guilty of an offence: *Section 85E(6);*

  Punishment: Liable on summary conviction to a fine of $1,000.00 or to imprisonment for a term of six months or to both: *Section 85E(6).*

Accident resulting in serious injury or death

- Notwithstanding *Section 85E(1),* where an accident involving a motor vehicle on a road or in any other public place results in serious injury or death, a member of the Police Force in uniform shall, subject to *Section 85G,* require any person driving or in charge of a motor vehicle involved in the accident to provide a specimen of blood or urine[56] for a laboratory test: *Section 85F(1);*
- The member of the Police Force shall determine whether a specimen of blood or a specimen of urine is required, except where a medical practitioner has expressed a professional opinion that one type of specimen cannot or should not be taken, in which case the other type of specimen shall be taken: *Section 85F(2);*
- A person who, without reasonable excuse, fails to provide a specimen when required to do so pursuant to this section is guilty of an offence: *Section 85F(5);*

  Punishment: Liable on summary conviction to a fine of $1,000.00 or to imprisonment for a term of six months or to both: *Section 85F(5).*

Protection for hospital patients

- A person who is at a hospital as a patient shall not be required to provide a specimen of breath for a breath test or a specimen of blood or urine for a laboratory test, unless the medical practitioner in charge of his case has been notified[57] of the requirement: *Section 85G(1).*

[56] Section 15 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 85F (3) which provides: The specimen of blood or urine shall:

- be provided as soon as is reasonably practicable after the member of the Police Force makes the requirement; and
- be taken at a medical clinic, polyclinic or hospital by a medical practitioner.

Section 15 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 85F(4) which provides: The member of the Police Force shall warn every person who is required to provide a specimen under this section that a failure to provide the specimen may render that person liable to prosecution.

Arrest of persons affected by a drug or alcohol

- A member of the Police Force may arrest, without a warrant, a person who is driving or in charge of a motor vehicle on a public road or in any other public place where:
  - The results of a breath test indicate that the proportion of alcohol in that person's breath exceeds the prescribed limit: or *Section 85H(1)(a);*
  - That person failed to provide a specimen of breath for a breath test when required to do so and the member of the Police Force has reasonable cause to suspect that the person is under the influence of drink or a drug: *Section 85H(1)(b);*

  but a member of the Police Force shall not arrest a person who is at a hospital as a patient;
- Where a member of the Police Force exercises his power of arrest under subsection (1)(b), he shall:
  - Consult a medical practitioner to determine whether the person's ability to drive is impaired by reason of drink or a drug as soon as is reasonably practicable after the arrest: and *Section 85H(2)(a);*
  - Act on the advice of the medical practitioner: *Section 85H(2)(b).*

4. Maximum speed - *Section 84*[58]

- A person who drives a motor vehicle of a class or description specified in the regulations at a speed greater than the speed specified in the regulations or in an order made under subsection (4), as being the maximum speed for a vehicle of that class or description on the road on which it is being is driven is guilty of an offence[59]: *Section 84(1);*
- Any person, whether as registered owner or the temporary possessor under a hiring agreement, who aids, abets, counsels or procures a person who is employed by him to drive a motor vehicle on a road to commit an offence under this section is guilty of an offence: *Section 84(3);*
- *Punishment:* Liable on summary conviction to a fine of $1,000.00 or to imprisonment for a term of 12 months, or both: *Section 84(1)* and *Section 84(3),* respectively;
- In **Commissioner of Police v Beckles BB 1989 DC 4,** on appeal it was held that where the respondent was found to be speeding in the eyes of one witness, a Police Sargeant; this opinion evidence was corroborated by the readings of the radar speed meter which was properly tested prior to the commencement of the speed check. Therefore, the prosecution had established its case against the defence and the magistrate should have convicted the defendant.

[58] Section 13 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting section 84A immediately after section 84 which provides for the speed limit in construction zones.

[59] Barbados- Road Traffic Act Cap. 295, Cumulative Edition 2008, section 84(2). A person charged with an offence under this section is not to be convicted on the evidence of only 1 witness to the effect that in the opinion of that witness the person charged was driving the vehicle at a speed in contravention of subsection (1).

Bars to conviction under Sections 83 and 84

- Subject to subsection (2), a person is not to be convicted of an offence under *Sections 83* or *84,* unless:
  - He was warned at the time the offence was committed that the question of prosecuting him for an offence under the relevant section would be taken into consideration: *Section 86(1)(a);*
  - Within 14 days from the commission of the offence a summons for the offence was served on him: or *Section 86(1)(b);*
  - Within 14 days of the commission of the offence a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on him or on the person in whose name the vehicle was registered as being the owner thereof at the time of the commission of the offence: *Section 86(1)(c);*
- Failure to comply with subsection (1), is not a bar to the conviction of the accused in any case where the court is satisfied that:
  - The name and address of the accused or the name and address of the registered owner of the vehicle could not with reasonable diligence have been ascertained in time for a summons to have been served on or sent to the accused or owner of the vehicle: or *Section 86(2)(a);*
  - The accused by his own conduct contributed to the failure to comply with those subsections: *Section 86(2)(b).*

5. Use of motor vehicle without consent of the owner - *Section 87*
   - A person who takes and drives away a motor vehicle without the consent of the owner or other lawful authority, or knowing a motor vehicle to have been so taken, drives it or allows himself to be carried in or on it without the consent of the owner or other lawful authority, is guilty of an offence[60]: *Section 87(1);*

     Punishment: Liable on summary conviction, to a fine of $1,000.00 or to imprisonment for a term not exceeding six months, or both: *Section 87(1)(b);*
   - Where a person is convicted under this section, the court may, in addition to any punishment it imposes, or without imposing any punishment, order the person convicted to pay to the owner of the motor vehicle:

[60] Barbados - Road Traffic Act CAP 295, Cumulative Edition 2008, section 87(2). It is a defence to a charge brought under subsection (1) if the accused establishes that he reasonably believed that:
- he had lawful authority to drive away the motor vehicle; or
- the owner would, in the circumstances of the case, have given his consent if such consent had been requested.

Barbados - Road Traffic Act CAP 295, Cumulative Edition 2008, section 87(4). A member of the Police Force may arrest without a warrant any person reasonably suspected by him of having committed, or of attempting to commit, an offence under this section.

- Such amount as in the opinion of the court would have been charged if the motor vehicle had been hired by the person convicted: or *Section 87(5)(a);*
- Such amount as in the opinion of the court would represent fair compensation for any damage done to the motor vehicle, or both: *Section 87(5)(b).*

6. Unlawful interference with motor vehicle - *Section 88*

   - Any person who, without the permission of the owner, gets on or into a motor vehicle or attempts to manipulate any of the levers, the starter, brakes, controls or machinery of a motor vehicle, or in any way interferes with or damages a motor vehicle while that vehicle is on a road or parking place is guilty of an offence: *Section 88*;

     Punishment: Liable on summary conviction to a fine not exceeding $100.00 or to imprisonment for a term not exceeding one month, or both[61]: *Section 88.*

7. Leaving vehicle in dangerous position - *Section 89*

   - No person in charge of a vehicle shall cause or permit that vehicle or any trailer drawn thereby to remain stationary on any road in such a position, in such condition or in such circumstances, as to be likely to cause danger or obstruction to other traffic using the road: *Section 89(1);*
   - A person in charge of a motor vehicle or trailer referred to in subsection (1), shall take requisite steps to indicate its presence and position on the road, by lighting or otherwise, and take immediate steps to have it removed[62] as near as possible to the left hand side of the road: *Section 89(2);*

     Punishment: Any person in charge of a vehicle who contravenes subsections (1) or (2), is guilty of an offence and is liable on summary conviction to a fine of $200.00 or to imprisonment for three months, or both . In addition, the expenses incurred in removing a vehicle are recoverable as a debt due to the Crown in civil proceedings before a magistrate for District "A". This is notwithstanding that the amount sought to be recovered exceeds the normal monetary limit on the jurisdiction of the Magistrates' Courts: *Section 89(8);*
   - In **Howard v Commissioner of Police BB 1965 CA1,** it was highlighted that when an offence refers to the word *"allow,"* then mens rea is an essential ingredient of the offence that needs to be satisfied.[63] It is accepted that the

[61] Barbados- Road Traffic Act CAP 295, Cumulative Edition 2008, section 88. Note that a person is not to be convicted under this subsection where that motor vehicle is obstructing his vehicle or that of any other person.

[62] Barbados- Road Traffic Act CAP 295, Cumulative Edition 2008, section 89(6). Any person removing a vehicle under this section may do so by towing or driving the vehicle or in such other manner as he considers necessary, and may take such measures in relation to the vehicle as are necessary to enable him to remove such vehicle.

[63] See also the following authorities which establishes that an offence which refers to the word allow requires mens rea to be present. Some of these include:
R. v. Hoadley (1864) G.L.T. (N.S.) 827
Hardcastle v. Bielby [1892] 1 Q.B. 709
Massey v. Morriss (1894) 2 Q.B. 412. This case establishes that where the provision creating the offence refers to the word 'allow', mens rea is necessary to satisfy that provision.

mens rea may be either the *"intention to do the act or bring about the consequence or (in some crimes) recklessness as to that consequence."* In one situation where a consequence is deemed to be have been intended by the accused, although not desired, is where the consequence is foreseen as substantially certain. This is *"where a person can reasonably foresee that if he does a certain act certain consequence will follow."*

The Court of Appeal stated that a reasonable man ought to have foreseen that parking a vehicle close to the traffic lights on a public highway at 4 pm would certainly hinder the flow of traffic and would cause an obstruction of the highway. The appellant's appeal was dismissed.

8. Duty of person in charge of vehicle involved in accident on a road - *Section 90*

- Any person riding, driving or in charge of any vehicle of any description shall, if an accident occurs by reason of the presence of such vehicle on a road,
  - Immediately stop: *Section 90(1)(a);*
  - Give to any person interested in the accident:
    i. his name and address: *Section 90(1)(b)(i);*
    ii. the name and address of the owner of the vehicle: *Section 90(1)(b)(ii);*
    iii. the registration number of the vehicle: *Section 90(1)(b)(iii);*
    iv. tThe name of the insurance company with which the vehicle is insured: and *Section 90(1)(b)(iv);*
    v. the names of all persons present in the vehicle at the time of the accident: and *Section 90(1)(b)(v);*
  - Report the accident at a police station as soon as reasonably practicable, but before the expiration of a period of 24 hours after its occurrence[64]: *Section 90(1)(c).*

Punishment: Any person who contravenes or fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine of $250.00 or to imprisonment for a term of three months, or both: *Section 90(3).*

9. Wearing of seat belts compulsory - *Section 36D*

- Every person travelling in a motor vehicle referred to in *Section 36B(1),* shall wear a seat belt whilst that motor vehicle is in motion, or the engine of the motor vehicle is turned on: *Section 36D(1);*
- Every driver and front seat passenger of a public service vehicle shall wear a seat belt whilst the motor vehicle is in motion, or the engine of the motor vehicle is turned on: *Section 36D(2)*[65]*;*

[64] Barbados - Road Traffic Act CAP 295, Cumulative Edition 2008, section 90(2). Paragraph (c) does not apply if a report was made, at the time and place of the accident, to a member of the Police Force.

Punishment: Any person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of $500.00 or to imprisonment for a term of six months or to both: *Section 36D(5);*

- However, a driver and any person travelling in any motor vehicle referred to in *Sections 36D(1),(2) or (3),* shall not be convicted of an offence under this Part if the person is the holder of a valid certificate signed by a qualified medical practitioner registered to practise in Barbados to the effect that it is inadvisable on medical grounds for that person to wear a seat belt: *Section 36E (1);*
- Furthermore, a driver of a motor vehicle referred to in *Section 36D,* shall not be convicted of an offence under *Section 36D(5),* if he was at the material time reversing the motor vehicle: *Section 36E(3).*

10. Driving without a licence - *Section 61*[66]

- Subject to *Section 63,* no person shall drive a motor vehicle of any class or description on a road unless he is the holder of a valid driving licence authorising him to drive a motor vehicle of that class or description: *Section 61(1)*;
- No person shall employ or permit any person to drive a motor vehicle of any class or description on a road unless the person he employs or permits to drive such motor vehicle is the holder of a valid driving licence authorising him to drive a motor vehicle of that class or description: *Section 61(2);*

  Punishment: Any person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of $1,000.00 or to imprisonment for a term of 12 months, or both: *Section 61(3).*

Provision as to endorsement

- Any person who is convicted of an offence in connection with the driving of a motor vehicle shall, if he holds a driving licence, produce it within such time as the court directs for the purpose of endorsement thereon of the particulars of the conviction: *Section 95(1);*

  Punishment: Any person who contravenes or fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine of $500 or to imprisonment for a term of three months, or both: *Section 95(1).*

[65] Barbados - Road Traffic Act, CAP 295, Cumulative Edition 2008, section 36D (3). Every driver of a motor omnibus, tour coach or motor tractor shall wear a seat belt whilst the motor omnibus, tour coach or motor tractor is in motion or the engine is turned on.
Barbados - Road Traffic Act, CAP 295, Cumulative Edition 2008, section 36D (4). A seat belt shall not be worn by more than one person at a time.

[66] Section 8 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act Cap. 295 by inserting immediately before the words "driving licence" the word "valid"

General provision on disqualification and suspension

- Any court before which a person is convicted of any offence in connection with the driving of a motor vehicle may:
  - If the person convicted holds a driving licence:
    i. suspend the licence for such time as the court thinks fit: *Section 94(1)(a)(i);*
    ii. cancel the licence and disqualify the person convicted from obtaining another licence for a stated period: or *Section 94(1)(a)(ii);*
    iii. endorse upon the licence particulars of any order the court makes under this section, together with the particulars of the conviction: *Section 94(1)(a)(ii).*
  - If the person convicted does not hold a driving licence, declare him disqualified from obtaining a licence for such period as the court thinks fit: *Section 94(1)(b);*
- Any disqualification imposed pursuant to subsection (1), may, at the discretion of the court, be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed: *Section 94(2).*

Offences which a magistrate does not have jurisdiction to try

The magistrate does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Forgery etc. of certificates (on indictment) - *Section 57;*
- Causing death by reckless or dangerous driving - *Section 81;*
- Use of motor vehicle without consent of owner (on indictment) - *Section 87.*

BELIZE

The main legislation or "principal act" is the *Motor Vehicles and Road Traffic Act, Chap. 230.* For the purpose of detailing road traffic legislation within this chapter for Belize, the *Motor Vehicles and Road Traffic Act, Chap. 230, Revised Edition 2000,* is utilised. This Act must be read in conjunction with the *Motor Vehicles and Road Traffic (Amendment) Act, No. 22 of 2018.*

Fixed penalty

Fixed penalty offences are governed by the *Motor Vehicle and Road Traffic (Violation Tickets) Regulations 2003, Statutory Instrument No 180 of 2003.*

- Subject to these Regulations, the following persons are authorized to issue traffic violation tickets, namely:

- A member of a Belize Police Department: *regulation 3(1)(a);*
- A traffic warden: *regulation 3(1)(b);*
- A transport officer and motor vehicle inspector and examiners appointed under the *Motor Vehicles and Road Traffic Act: regulation 3(1)(c);*
- Any other fit and proper person whom the Minister may, on recommendations of the Commissioner of Transport or the City Administrator of Belize City, appoints for the purpose of issuing traffic violation tickets: and *regulation 3(1)(d);*
- An authorised Justice of the Peace: *regulation 3(1)(e);*

- A traffic violation ticket may be issued by any of the persons specified in sub-regulation (1), above where a traffic offence is alleged to have, or suspected of having been committed: *regulation 3(2);*
- A traffic violation ticket shall be affixed to the windscreen or some other conspicuous part of the vehicle to which the traffic offence relates or it may be issued directly to the person committing the traffic offence[67]: *regulation 3(3);*
- Any person who refuses to receive a traffic violation ticket from a person specified in subregulation (1), or refuses to give his name and address, or gives a false name or address commits and offence: *regulation 3(4);*

  Punishment: Liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding one month or to both such fine and period of imprisonment: *regulation 3(4);*
- For violations which occur in areas falling outside the limits of Belize City, the fine stated on the traffic violation ticket shall be paid[68] at any office of the department within 15 calendar days of the date of issue of the ticket, failing which the fine shall be increased at the rate of five dollars for every day the fine remains unpaid: *regulation 6(1);*
- For violations falling within the limits of Belize City, the fine stated on the ticket shall be paid at any office of the Department of Traffic of the Belize City Council within 15 calendar days of the date of issue of the ticket, failing which the fine shall be increased at the rate of five dollars for every day the fine remains unpaid[69]: *regulation 6(2).*

[67] Belize - Motor Vehicle and Road Traffic (Violation Tickets) Regulations 2003; Statutory Instrument No 180 of 2003, regulation 11. Every person who without lawful cause removes or defaces or causes to be removed or defaced a traffic violation ticket affixed to a vehicle in accordance with these Regulations, commits an offence and shall be liable on summary conviction to a fine not exceeding three hundred dollars or to imprisonment for a period not exceeding two months, or to both such fine and period of imprisonment.

[68] Belize- Motor Vehicle and Road Traffic (Violation Tickets) Regulations 2003; Statutory Instrument No 180 of 2003, regulation 8. Every person paying a fine in respect of a traffic violation ticket shall deliver the duplicate copy of the ticket to the person collecting the fine at the places referred to in Regulation 6 above.

[69] Belize- Motor Vehicle and Road Traffic (Violation Tickets) Regulations 2003; Statutory Instrument No 180 of 2003, regulation 6(3). Where the fine stated on the traffic violation ticket remains unpaid for a period of thirty (30) calendar days from the date of issue of the ticket, the ticket shall automatically operate as a summons, and the person to whom the ticket was issued shall on the day specified in the summons for him to appear in court (which day shall be not less than seven calendar days and not more than fourteen calendar days from the expiry of the 30-day period referred to above) be required to appear at the summary jurisdiction court in the judicial district, on that date, and during the time, specified on the face of the ticket

Some offences listed in the Second Schedule - *Regulation 14* include:

- Failing to obey traffic lights;
- Illegal parking;
- Unsecured load;
- Improper overtaking (right-side);
- Improper overtaking (speeding abreast);
- Failing to produce drivers' licence;
- Driving under the influence.

Offences which a magistrate has jurisdiction to try

Motor Vehicles and Road Traffic Act, Chap. 230, Revised Edition 2000:

- Unless otherwise expressly provided, all offences under Parts I to IV inclusive and Parts VI to VIII inclusive may be prosecuted, and all penalties incurred may be imposed or recovered, on summary conviction: *Section 103(4).*

1. Driving in excess of speed - *Section 73*

   - No person shall drive a motor vehicle of such class or description as the Minister may by order from time to time specify at a speed greater than the speed specified in the order as the maximum speed in relation to a vehicle of that class or description and on a road described in the order: *Section 73(1);*
   - Any person who aids, abets, counsels, or procures any person who is employed by him to drive a motor vehicle on a road, whether as registered owner or as a temporary possessor of the use of a motor vehicle under a hiring agreement, to commit an offence under this section commits an offence: *Section 73(4);*
   - A person charged under this section with the offence of driving a motor vehicle of such class or description on such a road at a speed greater than the maximum speed allowed in the case of a vehicle of that class or description, shall not be liable to be convicted of the offence solely on the evidence of one witness to the effect that in the opinion of the witness the person charged was driving the vehicle at such greater speed: *Section 73(3);*

     Punishment: Any person who acts in contravention of this section commits an offence and is liable to a fine not exceeding two hundred and fifty dollars: *Section 73(2);*

     Disqualification: Any person who acts in contravention of this section commits an offence and shall be disqualified from holding or obtaining a driving licence for such period as the court thinks fit: *Section 73(2).*

2. Driving or being in charge when under the influence of drugs or drink - *Section 74*

   - Any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive[70] through drink or drugs[71] commits an offence[72]: *Section 74(1);*

     Punishment: First conviction - Liable on summary conviction to a fine which shall not be less than five hundred dollars, or to imprisonment for one year or to both. In the case of a second or subsequent conviction, to a fine which shall not be less than one thousand dollars but which may extend to five thousand dollars or to imprisonment for two years, or to both such fine and term of imprisonment: *Section 74(1);*

     Disqualification: First conviction - A person convicted of an offence under this section may be disqualified for a period of twelve months from the date of the conviction from holding or obtaining a Belize driving licence. In the case of a second or subsequent conviction for a like offence he shall be permanently disqualified from holding or obtaining a Belize driving licence: *Section 74(7);*

   - Without prejudice to subsection (1), above, a person who, when in charge of motor vehicle which is on a road or other public place, is unfit to drive through drink or drugs commits an offence[73]: *Section 74(2);*

     Punishment: Liable on summary conviction to a fine of five hundred dollars or to imprisonment for six months, or to both such fine and term of imprisonment: *Section 74(2).*

3. Driving or being in charge with alcohol concentration above the prescribed limit - *Section 75*

   - If a person:
     - Drives or attempts to drive a motor vehicle on a road or other public place: or *Section 75(1)(a);*
     - Is in charge of a motor vehicle on a road or other public place: *Section 75(1)(b);*

[70] Belize - Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 74(4). For the purposes of this section, a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.

[71] Belize - Motor Vehicles and Road Traffic Act, CAP 230, section 81(2) provides that "drug" includes any intoxicant other than alcohol.

[72] Belize - Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 74(5). A police officer may arrest a person without warrant if he has reasonable cause to suspect that the person is or has been committing an offence under this section.
Belize - Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 74(6). For the purpose of arresting a person under the power conferred by subsection (5) above, a police officer may enter any place where that person is or where the police officer, with reasonable cause, suspects him to be.

[73] Belize - Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 74(3). For the purpose of subsection (2) above, a person shall be deemed not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs. But in determining whether there was such a likelihood the court may disregard any injury to him or any damage to the vehicle.

after consuming so much alcohol that the proportion of it in his blood or urine exceeds the prescribed limit,[74] he commits an offence.[75]

Punishment: A person who commits an offence:

- Under subsection (1)(a), above shall be liable on summary conviction to the same penalties as prescribed in subsection (1), of *Section 74: Section 75(3);*
- Under subsection (1)(b), above shall be liable on summary conviction to the same penalties as prescribed in subsection (2), of *Section 74: Section 75(3);*

Disqualification: A person convicted of an offence under this section shall be liable to disqualification for holding or obtaining a Belize driving licence in the same manner and for the same periods as prescribed in subsection (7), of *Section 74: Section 75(4).*

Requirement to go to police station or hospital

- Where a police officer in uniform has reasonable cause to suspect:
  - That a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has alcohol in his body or has committed a traffic offence[76] whilst the vehicle was in motion: or *Section 76(1)(a);*
  - That a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with alcohol in his body and that person still has alcohol in his body: or *Section 76(1)(b);*
  - That a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed a traffic offence whilst the vehicle was in motion: *Section 76(1)(c);*

  he may, subject to *Section 78,* below, require him to accompany him to a police station or a hospital for providing specimens of blood or urine for analysis[77];

[74] Belize- Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 81 (2). The prescribed limit means, as the case may require:
- 80 milligrammes of alcohol in 100 milliliters of blood; or
- 107 milligrammes of alcohol in 100 milliliters of urine,

or such other proportion as may be prescribed by regulations made by the Minister.

[75] Belize- Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 75 (2). It is a defence for a person charged with an offence under subsection (1) (b) above to prove that at the time he is alleged to have committed the offence, the circumstances were such that there was no likelihood that of his driving the vehicle whilst the proportion of alcohol in his blood or urine remained likely to exceed the prescribed limit; but in determining whether there was such a likelihood the court may disregard any injury to him or any damage to the vehicle.

[76] Belize- Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 76 (4). In this section, "traffic offence" means an offence under any provisions of this Act or the regulations made thereunder, or an offence under section 108 of the Criminal Code caused through a motor vehicle.

[77] Belize - Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 76 (2). If an accident occurs owing to the presence of a motor vehicle on a road or other public place, a police officer may require any person whom he has reasonable cause to believe was driving or attempting to drive or who was in charge of the vehicle at the time of the accident to accompany him to a police station or a hospital for providing specimens of blood and urine for analysis, but subject to section 78 below

- A person who, without reasonable excuse, fails or refuses to accompany the police officer to a police station or hospital in pursuance of this section commits an offence: *Section 76(3);*

  Punishment: Liable on summary conviction to a fine of five hundred dollars or to imprisonment for six months or to both: *Section 76(3);*

  Disqualification: A person who commits an offence under this section shall be disqualified for holding or obtaining a Belize driving licence for a period of 12 months from the date of conviction, unless the court for special reason thinks fit to order otherwise: *Section 76(3).*

Provisions of specimens for analysis

- In the course of an investigation, whether a person has committed an offence under *Sections 74,* or *75,* of this Act, a police officer may, subject to the following provisions of this section and *Section 78,* below, require him to provide a specimen of blood or urine for a laboratory testing[78]: *Section 77(1);*
- A requirement under this section to provide a specimen of blood can only be made at a police station or at a hospital unless in presence of a registered medical practitioner and unless adequate facilities exist for the taking of such a specimen: *Section 77(2);*
- If the provision of a specimen is required in pursuance of this section, the question whether it is to be a specimen of blood or a specimen of urine shall be decided by the police officer making the requirement, except that is a registered medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken, the specimen shall be a specimen of urine: *Section 77(3);*
- A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine: *Section 77(4);*
- A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section commits an offence: *Section 77(5);*

  Punishment: Liable on summary conviction to a fine of five hundred dollars or to imprisonment for six months or to both: *Section 77(5);*

  Disqualification: A person who commits an offence under this section shall be disqualified for holding or obtaining a Belize driving licence for a period of twelve months from the date of conviction: *Section 77(5).*

[78] Belize - Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 77(6). On requiring any person to provide a specimen in pursuance of this section a police officer shall warn him that a failure to provide it may render him liable to prosecution.

Protection for hospital patients

- While a person is at a hospital as a patient, he shall not be required to provide a specimen for a laboratory test unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement,[79] and:
    - If the requirement is then made it shall be for the provision of a specimen at the hospital: but *Section 78(1)(a);*
    - If the medical practitioner objects on the ground specified in subsection (2), below the requirement shall not be made: *Section 78(1)(b).*

Evidence that the magistrate may take into account for offences under Sections 74 and 75

The following provision apply with respect to proceedings for an offence under *Sections 74* or *75,* of this Act:

- Evidence of the proportion of alcohol or any drug in a specimen of blood or urine provided by the accused shall, in all cases, be taken into account, and it shall be assumed that the proportion of alcohol in the accused's blood or urine at the time of the alleged offence was not less than in the specimen: *Sections 79(1),(2);*
- If the proceedings are for an offence under *Section 75,* of this Act, or for an offence under *Section 74,* of this Act in a case where the accused is alleged to have been unfit through drink, the assumption should not be made if the accused proves:
    - That he consumed alcohol after he had ceased to drive, attempt to drive or be in charge of a motor vehicle on a road or other public place and before he provided the specimen: and *Section 79(2)(a);*
    - That had he not done so, the proportion of alcohol in his blood or urine would not have exceeded the prescribed limit and, if the proceedings are for an offence under *Section 74,* of this Act, would not have been such as to impair his ability to drive properly: *Section 79(2)(b);*
- Evidence of the proportion of alcohol or a drug in a specimen of blood or urine may, subject to subsections (5) and (6), below, be given by the production of a document or documents purporting to be a certificate signed by an authorised analyst[80] as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate: *Section 79(3);*

[79] Belize- Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 78 (2). The ground on which the medical practitioner may object is that the requirement for the provision of a specimen or the warning required under section 77 (6) above, would be prejudicial to the proper care and treatment of the patient.

[80] Belize- Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 79 (6). In this section "authorised analyst "means the government analytical chemist or any other person authorised by the Minister to make analysis for the purposes of this section.

- A specimen of blood shall be disregarded unless it was taken from the accused with his consent by a registered medical practitioner; but, evidence that a specimen of blood was so taken may be given by the production of a document purporting to certify that fact and to be signed by a registered medical practitioner: *Section 79(4);*
- Where, at the time a specimen of blood or urine was provided by the accused, he asked to be supplied with such a specimen, evidence of the proportion of alcohol or any other drug found in the specimen is not admissible on behalf of the prosecution unless:
    - The specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided: and *Section 79(5)(a);*
    - The other part was supplied to accused: *Section 79(5)(b).*

Detention of persons affected by alcohol or a drug

- A person required to provide a specimen of blood or urine may thereafter be detained at the police station until it appears to a police officer that, were that person then driving or attempting to drive a motor vehicle on a road, he would not be committing an offence under *Section 74* or *75,* of this Act, but:
    - A person shall not be detained in pursuance to this section if it appears to a police officer that there is no likelihood of his driving or attempting to drive whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his blood or urine exceeds the prescribed limit: and *Section 80(a);*
    - A police officer shall consult a registered medical practitioner on any question arising under this section whether a person's ability to drive properly is or might be impaired through drugs and shall act on the medical practitioner's advice: *Section 80(b).*

4. Reckless driving - *Section 82*

- Any person who drives a motor vehicle on the road recklessly, or at a speed, or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, commits an offence[81]: *Section 82(1);*

[81] Belize- Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 82 (3). Any police officer may arrest without warrant the driver of any motor vehicle who commits an offence under this section within his view, if he refuses to give his name and address or if the police officer has reason to believe that the name or address so given is false, or if the motor vehicle does not bear an identification plate.

Punishment: First conviction- Liable on summary conviction to a fine of two hundred and fifty dollars or to imprisonment for six months, or to both. In the case of a second or subsequent conviction, either to a fine of five hundred dollars or to such imprisonment as aforesaid, or to both such fine and term of imprisonment: *Section 82(1);*

Disqualification: A person convicted of an offence under this section may be disqualified from holding or obtaining a Belize driving licence for such period as the court thinks fit subject to the following provisions:

- After the first offence, the period or disqualification shall not exceed six months: *Section 82(2)(a);*
- After the second offence the period shall not exceed two years: and *Section 82(2)(b);*
- After the third offence, the disqualification may be permanent: *Section 82(2)(c);*

- In **Pilgrim v Perez PC 107 Supreme Court Appeal No. 5 of 1980,** the Supreme Court stated that the learned magistrate had correctly set out the law regarding fault so as to constitute dangerous driving. *"In order to justify a conviction, there must not only have been a situation which viewed objectively was dangerous, but also some fault on the part of the driver causing that situation... fault involves a failure, a falling below the standard of care or skill of a competent and experienced driver."* Therefore, insofar as the appellant had attempted to overtake the complainant's vehicle on a swing bridge leading to the accident and subsequent charge, the court was satisfied that the magistrate, having looked at all the circumstances of the case, had been correct to find that the appellant had been reckless and that there was therefore no merit in the appeal. It was therefore dismissed.

Power to proceed on charge for careless driving on hearing of charges under Sections 74, 75 or 82

- Where a person is charged summarily before a magistrate with an offence under *Sections 74, 75,* or *82,* and the magistrate is of the opinion that the offence is not proved, then, at any time during the hearing or immediately thereafter, the magistrate may, without prejudice to any other powers possessed by him, direct or allow a charge for an offence under *Section 83,* to be preferred forthwith against the defendant and may thereupon proceed with that charge: *Section 90;*
- The procedure that shall be followed for the above include:
  - The defendant or his attorney or counsel shall be informed of the new charge and be given an opportunity whether by way of cross-examining any witness whose evidence has already been given against the defendant or otherwise of answering the new charge;
  - The magistrate shall, if he considers that the defendant is prejudiced in his defence by reason of the new charge being preferred, adjourn the hearing: *Section 90.*

5. Careless driving - *Section 83*

- Any person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road commits an offence: *Section 83(1);*

  Punishment: Liable to a fine of one hundred dollars: *Section 83(1);*

  Disqualification: A person who commits an offence under this section is liable to be disqualified on a:

  - First conviction for holding or obtaining a Belize driving licence for such period as the court shall think fit: *Section 83(1);*
  - Second or subsequent conviction for an offence under this section, the period of disqualification shall, unless the court for special reasons thinks fit to order otherwise, be not less than one month: *Section 83(2).*

Bars to conviction in relation to maximum speed at which motor vehicle may be driven, reckless of dangerous driving or careless driving

- Where a person is prosecuted for an offence under any of the preceding sections relating respectively to the maximum speed at which motor vehicles may be driven reckless or dangerous driving, and to careless driving, he shall not be convicted unless either:
  - He was warned on the day the offence was committed that the question of prosecuting him for an offence under someone or other of the sections aforesaid would be taken into consideration: or *Section 84(1)(a);*
  - Within 14 days of the commission of the offence a summons for the offence was served on him: or *Section 84(1)(b);*
  - Within the said 14 days a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served or sent by registered post to him or to the person registered as the owner of the vehicle at the time of the commission of the offence: *Section 84(1)(c);*
- Failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that:
  - Neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid: or *Section 84(2)(a);*
  - The accused by his own conduct contributed to the failure: *Section 84(2)(b);*
- The requirements of this section shall in every case be deemed to have been complied with unless and until the contrary is proved: *Section 84(3).*

6. Taking vehicle without the consent of the owner - *Section 85*

   - Subject to subsection (2), any person who uses a vehicle without the consent of the owner or other lawful authority commits an offence : *Section 85(1);*
   - A person shall not be convicted under this section if he proves either:
     - That he had good reason to believe, and did in fact believe, that the owner of the vehicle would, had he been present, have consented to the vehicle being used in the manner in which it was used: or *Section 85(2)(a);*
     - That he had reasonable cause to believe and did in fact believe, that he had lawful authority to use the vehicle: S*ection 85(2)(b);*

   Punishment: If any person is convicted under this section, the magistrate may, if he thinks fit, either in addition to or without inflicting any punishment, order that the person convicted to pay to the owner of the vehicle either or both of the following sums, namely:

   - Such sum as, in the opinion of the magistrate, would have been charged if the vehicle had been hired by the person convicted: *Section 85(3)(a);*
   - Such sum as, in the opinion of the magistrate, represents fair compensation for any damage done to for the use of the vehicle: *Section 85(3)(b).*

7. Duty to stop, give aid, and report in case of accident - *Section 89*

   - Where, owing to the presence of a vehicle on a road, an accident occurs whereby injury or damage is caused to any person, animal or property, the driver of the vehicle shall immediately stop and:
   - If any person has been injured in the accident, the driver shall render such aid, and if the person wishes to be taken to a hospital or to a doctor, or is unconscious, convey or cause to be conveyed the injured person without delay to the nearest hospital or to a doctor: *Section 89(1)(a);*
   - If requested by the injured person or by the owner of the damaged animal or property or some person on such owner's behalf, the driver shall give his name and address and particulars of his driving licence and the name and address of the owner of the vehicle: *Section 89(1)(b);*

[82] Belize- Criminal Code Cap 101, Revised Edition 2000, as amended by Criminal Code (Amendment) Act, 2017, section 151 provides for the offence of taking motor vehicle or other conveyance without authority (on indictment).

[83] Belize- Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 85 (2). Any police officer may arrest without a warrant any person suspected by him of having committed an offence under this section.

[84] Belize- Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 89 (2). In this section, "animal" means any horse, cattle, ass, mule, sheep, pig, goat or dog.

- Unless a report is made by the driver at the time and place of the accident to a member of the Police Department, the person riding in, driving or in charge of the vehicle shall proceed with all proper despatch to the nearest police station or police constable in uniform and shall report the accident, and shall give his name and address and the name and address of the owner of the vehicle and the names of any persons in the vehicle at the time of the accident: *Section 89(1)(c);*

  Punishment: A person who fails to comply with or otherwise contravenes this section commits an offence: *Section 89(3).*

8. Driving without a driver's licence - *Section 29*

   - Except as provided in this section, no person shall drive a motor vehicle on a road unless he is the holder of a Belize driving licence, and no person shall employ any person to drive a motor vehicle on a road unless the person so employed is the holder of a Belize driving licence, and if any person acts in contravention of this provision, he commits an offence: *Section 29(1);*

     Punishment: Liable on summary conviction to a fine not exceeding two hundred and fifty dollars: *Section 29(1).*

General provision as to disqualification and endorsement

- *Disqualification:* The court before which a person is convicted of any offence in connection with the driving of a motor vehicle may, in addition to any other penalty provided for such offence, order that the offender be disqualified for a stated period or permanently from obtaining a driving licence either generally or limited to the driving of a motor vehicle of any particular class or description and when an order of disqualification is made such licence shall be forfeited and returned to the department[85]: *Section 91;*
- *Endorsement:* If the offender holds a driving licence the court shall unless for special reasons it thinks fit to order otherwise, endorse upon the licence particulars of the conviction and penalty[86]: *Section 91*;
- *Appeal:* A person who by virtue of an order of a court under Section 91 is disqualified from holding or obtaining a driving licence may appeal against the order in the same manner as against a conviction, and the court may, if it thinks fit, pending the appeal, suspend the operation of the order: *Section 92.*

<u>Offences which a magistrate does not have jurisdiction to try</u>

The magistrate does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Use of motor vehicle without consent of owner (on indictment): *Section 85(4).*

[85] Belize- Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 96 provides for the temporary suspension of licence pending determination of charges.

[86] Belize- Motor Vehicles and Road Traffic Act, CAP 230, Revised Edition 2000, section 93 provides for the production of driving licence for endorsement.

DOMINICA

The main legislation or "principal act" is the *Vehicles and Road Traffic Act, Chap. 46:50.* This Act must be read in conjunction with *Vehicles and Road Traffic (Amendment) Acts, No. 10 of 1994, No. 7 of 1995 and No. 23 of 2013.*

Fixed penalty

- Where a member of the Police Force has reason to believe that an offence[87] has been or is being committed, it shall be lawful for him to give to the driver a notice[88] charging him with the commission of the offence, and notifying him that a complaint will be made against him in respect thereof and requiring him either to pay the fixed penalty within the time specified in the notice or to appear at the court specified in the notice on the day at the hour stated therein to answer the complaint: *Section 102(1);*
- Subject to this section, where a member of the Police Force finds a vehicle and has reason to believe that an offence is being or has been committed in respect of that vehicle, the member of the Police Force may affix a notice to any part of the vehicle where the notice may easily be seen[89]: *Section 102(2);*
- The member of the Police Force shall send a duplicate of the notice to the Chief Magistrate and the duplicate shall be deemed to be a complaint laid before the magistrate: *Section 102(5);*
- Where a notice has been given under *Section 102,* the driver or the registered owner of the vehicle, as the case may be, may pay the fixed penalty in accordance with the notice: *Section 104(1);*
- The time within which a fixed penalty is payable is 14 days from the date of the notice, and where payment reaches the clerk of the Magistrate's Court after that time it shall be returned to the sender: *Section 104(2);*
- Where the fixed penalty is not paid within the time specified in the notice, proceedings in respect of the offence specified in the notice shall proceed in the manner prescribed by the *Magistrate's Code of Procedure Act: Section 108;*
- Some of these offences listed in the Fourth Schedule include[90]:

[87] Dominica- Vehicles and Road Traffic Act, Chap 46:50, section 101 provides that "offence" means an offence listed in the Fourth Schedule, being an offence created by or under the enactments specified therein.

[88] Dominica- Vehicles and Road Traffic Act, Chap 46:50, section 101 provides that "notice" means a document in the form set out in the Third Schedule offering the opportunity for the discharge of any liability to conviction for the offence specified therein by payment of a fixed penalty in accordance with this Part.

[89] Dominica- Vehicles and Road Traffic Act, Chap 46:50, section 102(3). A notice affixed under subsection (2) shall for the purposes of this Act be deemed to have been given to the person liable for the offence, and notwithstanding any law to the contrary, the registered owner of a vehicle, shall for the purposes of the proceedings instituted by the notice, be presumed to be the person liable for the offence.
Dominica- Vehicles and Road Traffic Act, Chap 46:50, section 102(4). Where a member of the Police Force intends to proceed under subsection (1) or (2), the notice shall be given or affixed on the occasion when he had reason to believe that the offence was committed.

[90] See the Motor Vehicles and Road Traffic Regulations, Cap 200.

- Using a motor vehicle which is not equipped with an efficient braking system;
- Failing to comply with a no entry sign;
- Failing to keep a motor vehicle on the left side of the road without sufficient cause;
- Stopping a motor vehicle within fifteen feet of any corner;
- Driver allowing motor vehicle to carry more persons that it is licenced to carry.

Demerit points

- Where a person has been convicted under this Act or the Regulations for an offence set out in column 2, of the Second Schedule, the Licensing Authority shall record in respect of that person the number of demerit points set out opposite that offence in column 3, of that Schedule: *Section 49(1);*
- Some of the offences carrying demerit points include:
  - Not reporting an accident involving injury (7 points);
  - Not stopping after an accident (7 points);
  - Driving without due care (4 points);
  - Driving without reasonable consideration (4 points);
  - Dangerous driving (7 points);
  - Exceeding speed limit (by 20 or more m.p.h.) (7 points).

Offences for which a magistrate has jurisdiction to try

1. Reckless or dangerous driving - *Section 52*
   - Any person who drives a motor vehicle on the road recklessly, or at a speed, or in a manner dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the road, and the amount of traffic that is actually on the road at the time or might reasonably be expected to be on the road at that time, commits an offence and is liable to summary conviction: *Section 52(1);*

     Punishment: Liable on summary conviction in the case of a first conviction, to a fine of two thousand dollars and to imprisonment for 12 months. In the case of a second or subsequent conviction, to a fine of three thousand, five hundred dollars and to imprisonment for two years: *Sections 52(1)(a),(b);*

     Endorsement: The court shall order the particulars of any conviction under this section or *Section 55,* to be endorsed on any driving licence held by the person convicted: *Section 52(2);*

     Disqualification: A person convicted of an offence under subsection (1)(b), shall, unless the court orders otherwise, having regard to the lapse of time since the date of the previous or last conviction or for any special reason, be disqualified, for any period as the court orders from the date of the conviction, from holding or obtaining a driving licence: *Section 52(3);*

- Where, upon the trial of a person for an offence under *Section 52,* the court is of the opinion that the offence is not proved, then, without prejudice to any other power the court possesses, it may at any time during the hearing or immediately thereafter:
    - Grant permission for a charge for an offence under *Section 53,* to be preferred: or *Section 90(1)(a);*
    - Allow the charge to be preferred forthwith against the accused and, subject to subsection (2), may thereupon proceed with the charge: *Section 90(1)(b);*
- The procedure that shall be followed for the above include:
    - In any case referred to in subsection (1), the accused or his solicitor or counsel shall be informed of the new charge and shall be given an opportunity, whether by way of cross-examination of any witness whose evidence has already been given against the accused or otherwise, of answering the new charge;
    - The court may adjourn the hearing if it considers that the accused is prejudiced in his defence by reason of the new charge being so preferred: *Section 90(2);*
- In **Thomas v Blanchard DM [1967] HC 15,** the appellant was charged with the offence of dangerous driving. After hearing the evidence and an unsworn statement from the appellant, he was found guilty of careless driving. On appeal counsel argued that the magistrate had no power under the *Motor Vehicles and Road Traffic Ordinance* (as it then was) to convict for careless driving unless he followed the procedure laid down in *Section 57,* (presently *Section 90* as detailed above), which he did. The appeal was allowed since the High Court was unable to find from the record that the procedure had been followed and therefore the conviction was quashed.

2. Driving without due care and attention - *Section 53*

- A person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road commits an offence and is liable to summary conviction: *Section 53(1);*

  Punishment: Liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months: *Section 53(1);*

  Disqualification: A person convicted for an offence under subsection (1), may be disqualified from holding or obtaining a driving licence for a period of 12 months: *Section 53(2).*

3. Driving in excess of speed limit - *Section 54*

- A person who drives a motor vehicle of a class or description specified in the Regulations at a speed greater than the speed specified in the Regulations or in an order made under subsection (4), as being the maximum speed for a vehicle

of that class or description on the road on which it is being driven, commits an offence and liable to summary conviction: *Section 54(1);*

Punishment: Liable on summary conviction to a fine of one thousand dollars and to imprisonment for twelve months: *Section 54(1);*

- A person charged with an offence under this section may not be convicted on the evidence of only one witness to the effect that in the opinion of that witness the person charged was driving the vehicle at a speed in contravention of subsection (1): *Section 54(2);*
- Any person, whether the registered owner or temporary possessor under a hiring agreement, who aids, abets, counsels or procures a person who is employed by him to drive a motor vehicle on a road to commit an offence under this section commits an offence and is liable to summary conviction: *Section 54(3);*

  Punishment: Liable on summary conviction to a fine of one thousand dollars and to imprisonment for 12 months: *Section 54(3).*

Bars to conviction under Sections 53 and 54

- Subject to subsection (2), a person may not be convicted of an offence under *Sections 53* or *54* unless:
  - He was warned at the time the offence was committed that the question of prosecuting him for an offence under the relevant section would be considered: *Section 69(1)(a);*
  - Within 14 days of the commission of the offence a summons in respect of the offence was served on him: or *Section 69(1)(b);*
  - Within 14 days of the commission of the offence a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or on the person in whose name the vehicle was registered at the time of the commission of the offence[91]: *Section 69(1)(c);*
- Failure to comply with subsection (1), is not a bar to the conviction of the accused in any case where the court is satisfied that:
  - The name and address of the accused or the name and address of the registered owner of the motor vehicle was not ascertained in time for the summons or notice to have been served on or sent the accused or the owner of the motor vehicle: or *Section 69(2)(a);*
  - The accused by his own conduct contributed to the failure to comply with that subsection: *Section 69(2)(b);*
- The requirements of subsection (1), shall in every case be deemed to have been complied with unless and until the contrary is proved: *Section 69(3).*

[91] Section 5 of the Vehicles and Road Traffic (Amendment) Act, 1995 amends section 69 of the Vehicles and Road Traffic Act, Chap 46:50.

4. Driving, attempting to drive or being in charge of a motor vehicle while under the influence of drink or drugs - *Section 55*

    - Any person who drives, attempts to drive, or is in charge of a motor vehicle on a road while under the influence of drink or a drug to such an extent as to be incapable of having proper control[92] of the vehicle commits an offence[93]: *Section 55(1);*

      Punishment: Liable on summary conviction to a fine of two thousand dollars and to imprisonment for twelve months in the case of a first conviction; and to a fine of three thousand, five hundred dollars and to imprisonment for two years in the case of a second or subsequent conviction: *Sections 55(1)(a),(b);*

      Disqualification: A person convicted of an offence under this section shall, unless the court for any special reason thinks fit to order otherwise, be disqualified from the date of the conviction for a period of not less than one year nor more than five years from holding or obtaining a driving licence: *Section 55(2)*[94]*;*

      Endorsement: The court shall order the particulars of any conviction under this section or *Section 55,* to be endorsed on any driving licence held by the person convicted: *Section 52(2).*

Evidence on charge of unfitness to drive under Section 55

In any proceeding for an offence under *Section 55:*

- The court shall, subject to *Section 60(4),* have regard to any evidence which may be given of the proportion or quantity of alcohol or any drug which was contained in the blood or present in the body of the accused, as ascertained by analysis of a specimen of blood taken from him with his consent by a medical practitioner, or of urine provided by him, at any material time: and *Section 57(1);*
- If it is proved that the accused, when so requested by a member of the Police Force at any such time, refused to consent to the taking of or to provide a specimen for analysis, his refusal may, unless reasonable cause therefor is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence, with respect to his condition at that time[95]: *Section 57(1).*

[92] Dominica - Vehicles and Road Traffic Act, Chap 46:50, section 55(4). For the purposes of this section a person is unfit to drive if his ability to drive properly is for the time being impaired.

[93] Dominica - Vehicles and Road Traffic Act, Chap 46:50, section 55(5). Any member of the Police Force may arrest without warrant any person whom he suspects on reasonable grounds of committing an offence under this section.

[94] Dominica - Vehicles and Road Traffic Act, Chap 46:50, section 55(3). Where there is an appeal against a conviction under this section, a period of disqualification runs from the date of conviction but if the appeal is allowed the disqualification shall immediately cease.

[95] Dominica - Vehicles and Road Traffic Act, Chap 46:50, section 57(2). A person shall not be treated for the purposes of subsection (1) as refusing to provide a specimen unless:

- he is first requested to provide a specimen of blood, but refuses to do so;
- he is then requested to provide two specimens of urine within one hour of the request, but fails to provide them within the hour or refuses at any time within the hour to provide them; and
- he is again requested to provide a specimen of blood, but refuses to do so.

Dominica -Vehicles and Road Traffic Act, Chap 46:50, section 57(3). The specimen of urine first taken in pursuance of a request under subsection (2)(b) shall be disregarded for the purposes of subsection (1).

5. Driving, attempting to drive or being in charge of a vehicle while being over the prescribed limit - *Section 56*

    - If a person drives, or attempts to drive, or is in charge of a motor vehicle on a road, having consumed alcohol in such a quantity that the proportion thereof in his blood, as ascertained from a laboratory test for which he subsequently provides a specimen under *Section 59,* exceeds the prescribed limit[96] at the time he provides the specimen, he commits an offence and is liable to summary conviction: *Section 56(1);*
    - A person shall not be convicted under this section of being in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as there was any probability of his having alcohol in his body in a proportion exceeding the prescribed limit[97]: *Section 56(2);*

      Punishment: Liable on summary conviction to a fine of two thousand dollars and to imprisonment for twelve months in the case of a first conviction; and to a fine of three thousand, five hundred dollars and to imprisonment for two years in the case of a second or subsequent conviction: *Section 56(1).*

Evidence which is admissible in proof of the charges under Sections 55 or 56

- For the purposes of any proceedings for an offence under Sections 55 or 56, a certificate signed by an authorised analyst, and certifying:
    - The proportion of alcohol or any drug found in a specimen identified by the certificate: and *Section 60(1)(a);*
    - For the purposes only of proceedings for an offence under *Section 55,* in the case of a specimen of urine, the proportion of alcohol or of that drug in the specimen: *Section 60(1)(b);*

  shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the analyst;
- For the purposes of any proceedings for an offence under *Sections 55* or *56,* a certificate purporting to be signed by a medical practitioner that he took a specimen of blood from a person with his consent shall, subject to subsection (3), be evidence of the matter so certified and of the qualifications of the medical practitioner: *Section 60(2);*

[96] Dominica - Vehicles and Road Traffic Act, Chap 46:50, section 62(1) provides that "prescribed limit" means eighty milligrammes of alcohol in one hundred millilitres of blood or such other proportion as may be prescribed. Dominica- Vehicles and Road Traffic Act, Chap 46:50, section 62(4). For the purposes of section 56 and this section, one hundred and seven milligrammes of alcohol in one hundred millilitres of urine shall be treated as equivalent to eighty milligrammes of alcohol in one hundred millilitres of blood, and the power conferred by subsection (1) to prescribe some other proportion of alcohol in the blood shall include power to prescribe a proportion of alcohol in urine which is to be treated as equivalent to the prescribed proportion of alcohol in the blood.

[97] Dominica - Vehicles and Road Traffic Act, Chap 46:50, section 56(3). In determining for the purposes of subsection (2) the likelihood of a person driving a motor vehicle when he is injured or the vehicle is damaged, the Court may disregard the fact that he had been injured or that the vehicle had been damaged.

- Subsections (1) and (2), shall not apply to a certificate tendered on behalf of the prosecution unless a copy has been served personally on the accused not less than seven days before the hearing or trial, nor if the accused, not less than three days before the commencement of the hearing or trial, or within such further time as the court may in special circumstances allow, has served notice on the prosecution requiring the attendance at the hearing or trial of the person by whom the certificate was signed: *Section 60(3);*
- Where, in proceedings for an offence under *Sections 55* or *56*, it appears that the accused, at the time a specimen of blood or urine was taken from or provided by him, asked to be supplied with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen shall not be admissible on behalf of the prosecution unless:
    - The specimen is either one of two taken or provided on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken or provided: and *Section 60(4)(a);*
    - The other specimen or part was supplied to the accused: *Section 60(4)(b);*
- A member of the Police Force requesting any person to consent to the taking of or to provide a specimen of blood or urine for analysis shall offer to supply to him, in a suitable container, part of the specimen or, in the case of a specimen of blood which it is not practicable to divide, another specimen which he may consent to have taken: *Section 60(5).*

Breath Test[98]

- A member of the Police Force in uniform may require any person driving or attempting to drive a motor vehicle on a road to provide a specimen of breath[99] for a breath test there or nearby, if the member of the Police Force has reasonable cause:
    - To suspect him of having alcohol in his body: or *Section 58(1)(a);*
    - To suspect him of having committed a traffic offence while the vehicle was in motion: *Section 58(1)(b);*

  but no requirement may be made by virtue of *para. (b),* unless it is made as soon as reasonably practicable after the commission of the traffic offence;
- If an accident involving the presence of a motor vehicle on a road occurs, a member of the Police Force, on proper identification may require any person whom he has reasonable cause to believe was driving or attempting to drive the vehicle at the time of the accident to provide a specimen of breath for a breath test either:

[98] Dominica - Vehicles and Road Traffic Act, Chap 46:50, section 62(1) provides that "breath test" means a test for the purpose of obtaining an indication of the proportion of alcohol in a person's blood carried out by means of a device of a type approved for the purpose of such a test by the Minister, on a specimen of breath provided by that person.

[99] Dominica - Vehicles and Road Traffic Act, Chap 46:50, section 62(3). References in sections 58,59 and 61 to providing a specimen of breath for a breath test are references to providing a specimen thereof in sufficient quantity to enable that test to be carried out.

- Near the place where the requirement is made: *Section 58(2)(a);*
- If the member of the Police Force thinks fit at a police station specified by him: or *Section 58(2)(b);*
- While that person is at a hospital as a patient: *Section 58(2)(c);*

but a person shall not be required to provide a specimen while at a hospital as a patient if the medical practitioner in immediate charge of his case is not first notified of the proposal to require the test or the medical practitioner objects to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient;

- A person who, without reasonable excuse, fails to provide a specimen of breath for a breath test under subsections (1) or (2), commits an offence and is liable to summary conviction: *Section 58(3);*

  Punishment: Liable on summary conviction to a fine of five hundred dollars and to imprisonment for six months: *Section 58(3);*

  Endorsement: The court shall order that the particulars of any conviction under this section or *Section 58,* to be endorsed on any driving licence held by the person convicted: *Section 59(3);*

- If it appears to a member of the Police Force in consequence of a breath test carried out by him on any person under subsections (1) or (2), that the device by means of which the test is carried out indicates that the proportion of alcohol in that person's blood exceeds the prescribed limit, the member of the Police Force may arrest that person without warrant except while that person is at a hospital as a patient: *Section 58(4);*

- If a person required by a member of the Police Force under subsections (1) or (2), to provide a specimen of breath for a breath test fails to do so and the member of the Police Force has reasonable cause to suspect him of having alcohol in his body the member of the Police Force may arrest him[100] without warrant except while he is at a hospital as a patient[101]: *Section 58(5).*

Laboratory test[102]

- A person arrested who has been arrested under *Sections 55(5),* or *58,* shall, while at a police station, be required by a member of the Police Force to provide a specimen for a laboratory test (which may be a specimen of blood or of urine), if he has previously been given an opportunity to provide a specimen of breath for a breath test at that station under *Section 58(7),* and either:

[100] Dominica- Vehicles and Road Traffic Act, Chap 46:50, section 58(7). A person arrested under this section or under section 55(5), shall, while at a police station, be given an opportunity to provide a specimen of breath for a breath test to be taken there.

[101] Dominica- Vehicles and Road Traffic Act, Chap 46:50, section 58(6). Subsections (4) and (5) shall not be construed as prejudicing the provisions of section 55(5).

[102] Dominica-Vehicles and Road Traffic Act, Chap 46:50, section 62(1) provides that "laboratory test" means the analysis of a specimen provided for the purpose.

- It appears to a member of the Police Force in consequence of the breath test that the device by means of which the test is carried out indicates that the proportion of alcohol in his blood exceeds the prescribed limit: or *Section 59(1)(a);*
- That person had been required, whether at a hospital or elsewhere, to provide a specimen of breath for a breath test, but failed to do so and a member of the Police Force has reasonable cause to suspect him of having alcohol in his body: *Section 59(1)(b);*

but a person shall not be required to provide a specimen for a laboratory test under this subsection if the medical practitioner:

- In immediate charge of his case is not first notified of the proposal to require the test;
- Objects to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient;

- A person who, without reasonable excuse, fails to provide a specimen for a laboratory test in pursuance of a requirement under this section commits an offence: *Section 59(2);*
- A person shall not be treated for the purposes of subsection (2), as failing to provide a specimen unless:
  - He is first requested to provide a specimen of blood but refuses to do so: *Section 59(5)(a);*
  - He is then requested to provide two specimens of urine within one hour of the request, but fails to provide them within the hour or refuses at any time within the hour to provide them[103]: and *Section 59(5)(b);*
  - He is again requested to provide a specimen of blood but refuses to do so: *Section 59(5)(c);*

  Punishment: Liable in case of a first conviction, to a fine of five hundred dollars and to imprisonment for three months; or in the case of a second or subsequent conviction, to a fine of one thousand dollars and to imprisonment for six months: *Sections 59(2)(a),(b);*

  Endorsement: The court shall order particulars of any conviction under this section or *Section 58,* to be endorsed on any driving licence held by the person convicted: *Section 59(3).*[104]

[103] Dominica- Vehicles and Road Traffic Act, Chap 46:50, section 59(6). The specimen of urine first taken in pursuance of a request under section (5)(b) shall be disregarded for the purposes section 56.

[104] Dominica - Vehicles and Road Traffic Act, Chap 46:50, section 59(4). Nothing in the foregoing provisions of this section shall affect the provisions of section 57(1).

6. Using motor vehicle without the consent of the owner - *Section 63*

   - A person who takes and drives away a motor vehicle without the consent of its owner or other lawful authority or, knowing such motor vehicle to be so taken, drives it or allows himself to be carried in or on it without the consent of its owner or other lawful authority, commits an offence[105]: *Section 63(1);*

     Punishment: Liable on summary conviction to a fine of one thousand dollars and to imprisonment for nine months: *Section 63(1)(b);*

   - It is a defence to a charge brought under subsection (1), if the accused establishes that at the time he committed the act in respect of which he is charged he reasonably believed:

     - He had lawful authority to drive away the motor vehicle: *Section 63(2)(a);*
     - The owner would, in the circumstances of the case, have given his consent if his consent had been requested: or *Section 63(2)(b);*
     - The vehicle was being driven with the consent of its owner or other lawful authority: *Section 63(2)(c);*

   - Where a person is convicted under this section the court may, in addition to any punishment it imposes, or without imposing any punishment, order the person convicted to pay to the owner of the motor vehicle: *Section 63(5)(a):*

     - An amount as in the opinion of the court would have been charged if the motor vehicle had been hired by the person convicted;
     - An amount as in the opinion of the court represents fair compensation for any damage done to the motor vehicle, or both: *Section 63(5)(b).*

7. Failure to give certain information - *Section 116*

   - A driver or conductor of a motor vehicle who commits any offence under this Act and refuses to give his name and address on being required to do so by a member of the Police Force; or gives a false name or address, commits an offence: *Sections 116(a),(b);*

     Punishment: Liable on summary conviction to a fine of $500.00 and to imprisonment for 12 months: *Section 116.*

Duty of person in charge of vehicle involved in accident on a road

- A person riding, driving or in charge of any vehicle of any description shall if, owing to the presence of the vehicle on a road, an accident occurs whereby personal injury is caused to any person or damage is caused to any vehicle:

  - Immediately stop: *Section 80(1)(a);*
  - If required to do so by any person having reasonable grounds for so requiring, give:

[105] Dominica - Vehicles and Road Traffic Act, Chap 46:50, section 63(4). A member of the Police Force may arrest without a warrant any person reasonably suspected by him of having committed, or of attempting to commit, an offence under this section.

(i) his name and address: *Section 80(1)(b)(i);*

(ii) the name and address of the owner of the vehicle: *Section 80(1)(b)(ii);*

(iii) the registration number of the vehicle: *Section 80(1)(b)(iii);*

(iv) the name of the insurance company with which the owner of the vehicle is insured: and *Section 80(1)(b)(iv);*

(v) the names of all persons in the vehicle at the time of the accident: and *Section 80(1)(b)(v);*

- Report the accident at a police station as soon as reasonably practicable but before the expiration of a period of twenty-four hours after its occurrence: *Section 80(1)(c);*

- Subsection (1)(c), does not apply if a report is made, at the time and place of the accident, to a member of the Police Force: *Section 80(2);*

  Punishment: Any person who contravenes or fails to comply with this section commits an offence and is liable on summary conviction to a fine of five hundred dollars and to imprisonment for one month: *Section 80(3)*.

8. Driving without a licence - *Section 30*

   - Subject to *Section 32,* no person shall not drive a motor vehicle of any class or description on a road unless he is the holder of a valid driving licence[106] authorizing him to drive a motor vehicle of that class or description: *Section 30(1);*
   - No person shall employ or permit any person to drive a motor vehicle of any class or description on a road unless the person he employs or permits to drive the motor vehicle is the holder of a valid driving licence authorizing him to drive a motor vehicle of that class or description: *Section 30(2);*
   - A valid driving permit issued by another member state of the Organisation of Eastern Caribbean States is a valid driving licence for the purposes of this Act[107]: *Section 49A(1);*

     Punishment: Any person who contravenes this section commits an offence and is liable on summary conviction to a fine of one thousand dollars and to imprisonment for 12 months: *Section 30(3)*.

[106] Section 3 of the Vehicles and Road Traffic (Amendment) Act, 1995 amends the Vehicles and Road Traffic Act, Chap 46:50

[107] Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2013 amends the Vehicles and Road Traffic Act, Chap 46:50 by inserting section 49A to provide for the recognition of OECS driving permits.
Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2013 amends the Vehicles and Road Traffic Act, Chap 46:50 by inserting section 49A(2) which provides: A driving permit recognised under subsection (1) only authorises the person in respect of whom the permit is issued to drive a motor vehicle of the class specified in the permit.
Section 4 of the Vehicles and Road Traffic (Amendment) Act, 2013 amends the Vehicles and Road Traffic Act, Chap 46:50 by inserting section 49A (3) which provides: In this section "driving permit" means a permit that is issued in a Member State of the Organisation of Eastern Caribbean States by the counterpart authority of the Licensing Authority and which is the equivalent of a driving licence issued under this Act.".

General provision as to disqualification

- The court before which a person is convicted of any offence in connection with the driving of a motor vehicle may in addition to any other penalty provided for that offence, order that the offender be disqualified for a stated period or permanently from obtaining a driving licence either generally or limited to the driving of a motor vehicle of any particular class: *Section 91(1);*
- Where the offender holds a driving licence the court shall require him to produce the licence and endorse upon the licence particulars of any order the court makes under this section together with the particulars of the conviction: *Section 91(1);*
- A person who by virtue of an order of a court under this section is disqualified from holding or obtaining a driving licence may appeal against the order in the same manner as against a conviction, and the court may, if it thinks fit pending the appeal, suspend the operation of the order: *Section 91(5).*

General provision as to endorsement

- Any person who is convicted of an offence in connection with the driving of a motor vehicle shall, if he holds a driving licence, produce it within such time as the court directs for the purpose of endorsement thereon of the particulars of the conviction: *Section 92(1);*
- Any person who contravenes or fails to comply with this section commits an offence: *Section 92(2);*

  Punishment: Liable on summary conviction to a fine of five hundred dollars and to imprisonment for three months.

Offences which a magistrate does not have jurisdiction to try

The magistrate does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Causing death by reckless or dangerous driving - *Section 51;*
- Using motor vehicle without consent of the owner (on indictment) - *Section 63.*

GRENADA

The main or "principal act" is the *Road Traffic Act, Chap. 289A.* For the purpose of detailing road traffic legislation within this chapter for Grenada, the *Road Traffic Act, Chap. 289A, Cumulative Edition 2007,* comprising of amendments from *Act No. 37 of 1993 to Act No. 11 of 2007,* is utilised. This Act must be read in conjunction with the *Road Traffic (Amendment) Acts, No. 18 of 2015* and *No. 21 of 2017.*

Fixed penalty

- Where a member of the Police Force of or above such rank as may from time to time be prescribed by the Commissioner of Police has reason to believe that an offence to which this Part relates has been or is being committed with or in respect of a motor vehicle, it shall be lawful for him or her to give to the driver of that vehicle a notice[108] charging him or her with the commission of such offence, and notifying him or her that a complaint will be made against him or her in respect thereof and requiring him or her either to pay the fixed penalty within the time specified in the notice or to appear at the court specified in the notice on the day and at the hour stated therein to answer the complaint:
    - Provided that no more than one offence may be charged in any such notice;
    - Provided further that no more than one notice may be given in respect of a vehicle regarding any one same set of circumstances: *Section 98(1);*
- Subject to this section, where a member of the Police Force or above such rank as may from time to time be prescribed by the Commissioner of Police has reason to believe that an offence to which this Part relates is being or has been committed with or in respect of a motor vehicle, he or she may affix the notice,[109] referred to in subsection (1), to any part of the vehicle where the notice may be easily seen: *Section 98(2);*
- A notice affixed under subsection (2), shall for the purposes of this Act be deemed to have been given to the person liable for the offence, and notwithstanding any law to the contrary, the registered owner of a vehicle shall, for the purposes of the proceedings instituted by the notice, be presumed to be the person liable for the offence: *Section 98(3);*
- Where a member of the Police Force of or above such rank as may from time to time be prescribed by the Commissioner of Police intends to proceed under subsections (1) or (2), the notice referred to in those subsections shall be given or affixed on the occasion when he or she considered that he or she had reason to believe that the offence was committed: *Section 98(4);*
- The member of the Police Force of or above such rank as may from time to time be prescribed by the Commissioner of Police proceeding under this section shall send a duplicate of the notice referred to in subsections (1) and (2), to the magistrate of

[108] Grenada- Road Traffic Act CAP 289A, Cumulative Edition 2007, section 98(9). Where an offence to which this section applies has been or is being committed by any person, a member of the Police Force, within the contemplation of this section, in making a determination as to whether to issue a notice under subsection (1) to the person alleged to have committed the offence or to proceed by way of summons before a court of summary jurisdiction, shall have regard to any or all of the following:
- the nature of the offence;
- the frequency with which the offence is committed generally;
- the circumstances under which the offence was committed;
- the conduct of the person who is alleged to have committed the offence;
- the public interest.

[109] Grenada- Road Traffic Act CAP 289A, Cumulative Edition 2007, section 98(7). The reference in subsection (2) to the affixing of a notice to any part of a vehicle includes putting the notice inside the vehicle wherever possible.

the district in which the offence is alleged to have been committed, and the duplicate shall be deemed to be a complaint laid before the magistrate:

- Provided that no such reminder need be served on or sent to the driver or owner of the vehicle concerned where the notice was served personally upon the said driver or owner as the case may be: *Section 98(5);*

- The member of the Police Force of or above such rank as may from time to time be prescribed by the Commissioner of Police proceeding under this section shall serve upon or send to both the driver and the owner of the vehicle concerned a written reminder in such form as may hereby be prescribed by the Commissioner of Police stating that the notice referred to in this section was affixed to the vehicle under this section. The reminder shall be served or sent within seven days of the notice being affixed to a vehicle. Evidence that such reminder was left at or posted to the last known residential address of the driver and the owner shall suffice to show that such reminder was served or sent:

  - Provided that no such reminder need be served on or sent to the driver or owner of the vehicle concerned where the notice was served personally upon the said driver or owner as the case may be: *Section 98(6);*

- The time within which a fixed penalty is payable is 31 days from the date of the notice, and where payment reaches the clerk of the Magistrate's Court after that time it shall be returned to the sender: *Section 100(2);*

- Where a fixed penalty is not paid within the time specified in the notice to which *Section 98,* refers, being the time within which it should be paid in accordance with *Section 100(2),* proceedings in respect of the offence specified in the notice shall thereafter proceed in the manner prescribed by the *Criminal Procedure Code, Chap. 2*[110]: *Section 104(1);*

- Some of these offences include:

  - Reckless or dangerous driving;
  - Careless driving;
  - Speeding;
  - Drunken driving;
  - Using a wireless communication device to view, send or compose an electronic message while driving or having charge of a vehicle[111];
  - Causing obstruction at a crossing.[112]

[110] Grenada - Road Traffic Act CAP 289A, Cumulative Edition 2007, section 104(2). No such proceedings as referred to in subsection (1) shall be instituted unless the member of the Police Force proceeding under section 98 serves upon or sends to both the driver and the owner of the vehicle concerned the written reminder referred to in section 98(6).

[111] Section 7 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting a new section 77B to provide for prohibition on driving while holding or using a hand-held mobile device.
Section 8 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A further by inserting the offences itemised as 27A, B and C after Item 27 within the Third Schedule.

[112] See the Motor Vehicles and Road Traffic Regulations, section 81 amended by SRO 15 of 1964, SRO 52 of 1968, SRO 11 of 1971, SRO 20 of 1972, SRO 1 of 1983, SRO 4 of 1985, SRO 6 of 2011.

Demerit points

- Where a person has been convicted under this Act or the regulations[113] for an offence listed in the first column of the Third Schedule, being an offence created by or under the enactment specified in the second column of that Schedule the Licensing Authority shall record in respect of that person the number of demerit points set out opposite that offence in the third column of that Schedule: *Section 50(1).*
- Some of these includes:
  - Reckless or dangerous driving (8 points);
  - Careless driving (4 points);
  - Speeding (4 points);
  - Drunken driving (8 points);
  - Drinking alcohol while driving (3 points);
  - Failing to stop after an accident (6 points);
  - Holding or using a hand-held mobile device while driving or having charge of a public; service vehicle on any road (4 points).[114]

Offences which a magistrate has jurisdiction to try

1. Reckless driving - *Section 56*
   - Any person who drives a motor vehicle on a road recklessly, or at a speed or in a manner dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the road and the amount of traffic that was actually on the road at that time or might reasonably be expected to be on the road at the time, commits an offence and is liable to summary conviction: *Section 56(1);*

     Punishment: Liable on summary in the case of a first conviction, to a fine of two thousand dollars or to imprisonment for twelve months, or to both such fine and imprisonment. In the case of a second or subsequent conviction, to a fine of three thousand, five hundred dollars or to imprisonment for two years, or to both such fine and imprisonment: *Section 56(1);*

     Endorsement: The court shall order particulars of any conviction under this section or *Section 62,* to be endorsed on any driving licence held by the person convicted: *Section 56(2);*

     Disqualification: Where a person is convicted of an offence under this section: on the first conviction he or she may be disqualified by the court from holding or obtaining a driving licence for such period not exceeding six months from the date of the conviction as the court may order: *Section 56(3)(a);*

[113] A reference to a regulation in the Road Traffic Act CAP 289A Cumulative Edition 2007, is to a regulation in the Motor Vehicle and Road Traffic Regulations made under Chapter 201 of the Revised Laws of Grenada, 1990.
[114] Section 7 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting a new section 77B to provide for prohibition on driving while holding or using a hand-held mobile device.
Section 8 of the Road Traffic (Amendment) Act, 2017amends the Road Traffic Act CAP 289A further by inserting the offences itemised as 27A to 27C after Item 27 within the Third Schedule.

- On the second conviction he or she shall be disqualified by the court from holding or obtaining a driving licence for such period being not less than six months and not more than three years from the date of the conviction as the court orders: *Section 56(3)(b);*
- On the third or any subsequent conviction he or she shall be disqualified by the court from holding or obtaining a driving licence for such period being not less than five years from the date of the conviction as the court orders: *Section 56(3)(c);*

- A member of the Police Force may arrest, without warrant, the driver of any motor vehicle who, within the view of that member of the Police Force, commits an offence under this section if:
  - The driver refuses to give his or her name and address when requested to do so: *Section 56(4)(a);*
  - The member of the Police Force has reason to believe that the name or address given is false: or *Section 56(4)(b);*
  - The motor vehicle does not bear a registration number plate: *Section 56(4)(c).*

2. Careless driving: Driving without due care and attention - *Section 57*

- Any person who drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road, commits an offence: *Section 57(1);*

  Punishment: Liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months, or both such fine and imprisonment: *Section 57(1);*

  Disqualification: On a second or subsequent conviction for an offence under subsection (1), a person may be disqualified by the court from holding or obtaining a driving licence, for such period as the court orders from the date of the conviction: *Section 57(2);*
- For the avoidance of doubt, it is hereby provided that a person drives a motor vehicle without reasonable consideration for other persons using the road if, inter alia, he or she:
  - So drives the vehicle on a road that he or she deliberately and maliciously splashes dirt or water on pedestrians when he or she could reasonably have avoided doing so: or *Section 57(3)(a);*
  - Drives the vehicle on a road when that vehicle is so loaded that it spills its load on the road so that the spillage constitutes a danger to other users of the road: *Section 57(3)(b).*

Bars to conviction under Sections 56, 57, 58 and 62

- Subject to subsection (2), a person may not be convicted of an offence under *Sections 56,57,58,* or *62,* unless:
    - He or she was warned at the time the offence was committed that the question of prosecuting him or her for an offence under the relevant section would be taken considered: *Section 69(1)(a);*
    - Within 14 days of the commission of the offence a summons in respect of the offence was served on him or her: *Section 69(1)(b);*
    - Within 14 days of the commission of the offence a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or her or the person in whose name the vehicle was registered at the time of the commission of the offence: or *Section 69(1)(c);*
    - He was given a notice under Part VIII in respect of the offence and he or she did not pay the fixed penalty relating thereto in accordance with the requirements of the said Part VIII: *Section 69(1)(d);*
- Failure to comply with subsection (1), shall not be a bar to the conviction of the accused in any case where the court is satisfied that:
    - Neither the name and address of the accused nor the name and address of the registered owner of the motor vehicle could with reasonable diligence have been ascertained in time for a summons or notice to have been served on or sent as aforesaid to the accused or the owner of the motor vehicle: or *Section 69(2)(a);*
    - The accused by his or her own conduct contributed to the failure to comply with that subsection: *Section 69(2)(b);*
- The requirements of this section shall in every case be deemed to have been complied with unless and until the contrary is proved: *Section 69(3).*

3. Speeding - *Section 58*

- A person who drives a motor vehicle of a class or description specified in the Fourth Schedule at a speed greater than the speed specified in the Fourth Schedule or in an order made under *Section 59(1),* as being the maximum speed for a vehicle of that class or description on the road on which it is being driven, commits an offence: *Section 58(1);*
- Subject to subsection (4), a person charged with an offence under this section may not be liable to be convicted of the offence on the evidence of only one witness to the effect that in the opinion of that witness the person charged was driving the vehicle at a speed in contravention of subsection (1): *Section 58(2);*

Punishment: Liable on summary conviction to a fine of one thousand dollars or to imprisonment for 12 months, or to both such fine and imprisonment: *Section 58(1);*

- Any person who aids, abets, counsels, or procures another person, whether or not this latter person is employed by the former person to drive a motor vehicle on a road, to commit an offence under this section commits an offence: *Section 58(3);*

  Punishment: Liable on summary conviction to a fine of one thousand dollars or to imprisonment for twelve months, or to both such fine and imprisonment: *Section 58(3);*

- In a prosecution under this section, evidence deriving from the use of radars and speed guns and such other scientific devices as may be prescribed by the Minister may be admitted by the court if the court is satisfied that such device was in proper working condition at the relevant time: *Section 58(4);*

- Where a person is prosecuted under this section and evidence is admitted by the court under this subsection a person may be convicted of the offence on such evidence and the evidence of only one witness to the effect that in the opinion of that witness the person charged was driving the vehicle at a speed in contravention of subsection (1): *Section 58(4).*

4. Drunken driving: Driving under the influence of drink or drug - *Section 62*[115]

   - Any person who drives, attempts to drive, or is in charge of, a motor vehicle on a road while under the influence of alcoholic liquor or a drug to such an extent as to be unfit to drive[116] or to be incapable of having proper control of the vehicle commits an offence[117]: *Section 62(1);*

     Punishment: Liable on summary conviction to a fine of five thousand dollars or to imprisonment for twelve months, or to both such fine and imprisonment in the case of the first conviction; and to a fine of ten thousand dollars or to imprisonment for two years or to both such fine and imprisonment in the case of a second or subsequent conviction: *Sections 62(1)(a), (b);*

     Disqualification: A person convicted for an offence under this section shall, unless the court for any special reason thinks fit to order otherwise, be disqualified by the court from the date of the conviction for a period of not less than one year from holding or obtaining a driving licence: *Section 62(2):*

     - Provided that on a second conviction under this section, a person shall be disqualified by the court from the date of the conviction for a period of not less than five years from holding or obtaining a driving licence: *Section 62(2);*

[115] Section 4 of the Road Traffic (Amendment) Act, 2017 amended section 62 of the Road Traffic Act CAP 289A.
[116] Grenada- Road Traffic Act CAP 289A, section 62(3). For the purposes of this section a person is unfit to drive if his or her ability to drive properly is for the time being impaired.
[117] Grenada- Road Traffic Act CAP 289A, Cumulative Edition 2007, section 62(4). Any member of the Police Force may arrest without warrant any person whom he or she suspects on reasonable grounds of committing an offence under this section.

- Any member of the Police Force may arrest without warrant any person whom he or she suspects on reasonable grounds of committing an offence under this section: *Section 62(4);*
- Without prejudice to the generality of subsection (1), a person who has consumed alcohol in such a quantity that the proportion thereof in his or her breath or blood exceeds the prescribed limit[118] is unfit to drive a vehicle: *Section 62(5).*[119]

5. Drinking alcohol while driving - *Section 62A*
    - Any person who drinks, or attempts to drink, any alcoholic beverage while driving a motor vehicle on a road commits an offence: *Section 62A;*

      Punishment: Liable on summary conviction to a fine of five hundred dollars: *Section 62A.*

Testing for alcohol[120]

- Where a member of the Police Force has reasonable cause to suspect:
    - That a person driving or attempting to drive or in charge of a motor vehicle on a road has alcohol in his or her breath or blood exceeding the prescribed limit: *Section 62B(1)(a);*
    - That a person has been driving or attempting to drive or been in charge of a motor vehicle on a road, with alcohol in his or her breath or blood exceeding the prescribed limit and that the person still has alcohol in his or her breath or blood: or *Section 62B(1)(b);*
    - That a person has been driving, attempting to drive or been in charge of a motor vehicle on a road and has committed an offence against this Act while the vehicle was in motion, that member may require the person to provide a specimen for a breath or blood test to determine the quantity of alcohol in his or her breath or blood: *Section 62B(1)(c);*
- Where an accident occurs involving a motor vehicle on a road and a member of the Police Force on arriving at the place of the accident has reasonable cause to believe that, at the time of the accident, any person involved in the accident was under the influence of alcohol, the member may require the person to provide a specimen[121] for a breath or blood test: *Section 62B(2);*

[118] Section 4 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62(6) which provides that "the prescribed limit" means:
- in the case of breath, seventy microgrammes of alcohol in one hundred millilitres of breath; or
- in the case of blood, one sixty milligrammes of alcohol in one hundred millilitres of blood,

or any other proportion as may be prescribed by regulations.

[119] Section 4 of the Road Traffic (Amendment) Act, 2017 amend section 62 of the Road Traffic Act CAP 289A by inserting subsection 62(5) after subsection 62(4).

[120] Section 5 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62B, C & D relating to testing for alcohol after section 62A.

[121] Section 5 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62B (8) which provides: For the purposes of this section:
- a requirement under subsection (1), (2) or (7) to provide a specimen is satisfied only if the specimen is of a sufficient quantity to enable the breath or blood test to be carried out; and

- No requirement may be made by virtue of *paras. (b)* or *(c),* of subsection (1), or subsection (2):
    - Unless it is made as soon as reasonably practicable after the occurrence of the accident or the commission of the offence: and *Section 62B(3)(a);*
    - In the case of a person who is at a hospital as a patient, unless the medical practitioner in charge of his or her case:
        i is given prior notice of the proposal to make the requirement: and *Section 62B(3)(b)(i);*
        ii does not object to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient: *Section 62B(3)(b)(ii);*
- A person who without reasonable excuse, refuses to provide a specimen under subsections (1), (2) or (7); or wilfully does anything to alter the concentration of alcohol in his or her breath or blood between the time of the event and the time when he or she undergoes that test, commits an offence[122]: *Sections 62B(4)(a),(b);*

  Punishment: Liable in the case of a first conviction, to a fine of five thousand dollars and to imprisonment for twelve months. In the case of a second or subsequent conviction, to a fine of ten thousand dollars and to imprisonment for two years: *Sections 62B(4)(c), (d);*
- A member of the Police Force may, without prejudice to *Section 62(4),* arrest a person without a warrant, if:
    - The person is found to have in his or her breath or blood a proportion of alcohol exceeding the prescribed limit: *Section 62B(6)(a);*
    - The person is required to provide a specimen for a breath or blood test in accordance with subsections (1) or (2), and refuses to do so: and *Section 62B(6)(b);*
    - The member has reasonable cause to suspect that the person has alcohol in his or her breath or blood exceeding the prescribed limit: *Section 62B(6)(c);*

  but no such arrest may be made if the person is at a hospital as a patient;
- The results of any breath or blood test carried out in accordance with this section shall be admissible as evidence for the purposes of any proceedings, pursuant to any enactment: *Section 62B(10).*

- where any person is required to provide a specimen of blood, such specimen shall be taken only:
  (i) with the consent of that person;
  (ii) at a hospital; and
  (iii) by a medical practitioner, or laboratory technician registered under the Health Practitioners Act, Chapter 132A.

[122] Section 5 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62B(5) which provides: It shall be a defence to a prosecution for an offence under subsection (4) (a) if the accused satisfies the Court that he or she was unable on medical grounds at the time required to do so, to undergo the breath or blood test.
Section 5 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62B(7) which provides: A person arrested under subsection (6) or section 62 (4) shall, while at a police station, be given an opportunity to provide a specimen for a breath or blood test.

Testing for controlled drugs[123]

- Where a member of the Police Force has reasonable cause to suspect that a person:
  - Driving or attempting to drive or in charge of a motor vehicle on a road is under the influence of a controlled drug: *Section 62C(1)(a);*
  - Has been driving or attempting to drive or been in charge of a motor vehicle on a road, while under the influence of a controlled drug: *Section 62C(1)(b);*
  - Has been driving, attempting to drive or been in charge of a motor vehicle on a road and has committed an offence against this Act while the vehicle was in motion: *Section 62C(1)(c);*

  that member may require the person to provide a specimen for a urine or blood test to determine the presence of a controlled drug in his or her urine or blood;
- Where an accident occurs involving a motor vehicle on a road and a member of the Police Force on arriving at the place of the accident has reasonable cause to believe that, at the time of the accident, any person involved in the accident was under the influence of a controlled drug, the member may require the person to provide a specimen[124] for a urine or blood test: *Section 62C(2);*
- No requirement may be made by virtue of *paras. (b)* or *(c),* of subsection (1), or subsection (2):
  - Unless it is made as soon as reasonably practicable after the occurrence of the accident or the commission of the offence; and *Section 62C(3)(a);*
  - In the case of a person who is at a hospital as a patient, unless the medical practitioner in charge of his or her case:
    i. is given prior notice of the proposal to make the requirement: and *Section 62C(b)(a)(i);*
    ii. does not object to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient: *Section 62C(b)(a)(ii);*
- A person who without reasonable excuse, refuses to provide a specimen under subsections (1), (2) or (7); or wilfully does anything to alter the concentration of a controlled drug in his or her urine or blood between the time of the event and the time when he or she undergoes that test, commits an offence[125]: *Sections 62C(4)(a),(b);*

[123] Section 5 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62B, C & D relating to testing for alcohol after section 62A.

[124] Section 5 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62C (8) which provides: For the purposes of this section:

- a requirement under subsection (1), (2) or (7) to provide a specimen is satisfied only if the specimen is of a sufficient quantity to enable the urine or blood test to be carried out; and
- where any person is required to provide a specimen of blood, such specimen shall be taken only:

(i) with the consent of that person;
(ii) at a hospital; and
(iii) by a medical practitioner, or laboratory technician registered under the Health Practitioners Act, Chapter 132A.

[125] Section 5 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62C(5) which provides: It shall be a defence to a prosecution for an offence under subsection (4) (a) if the

Punishment: Liable in the case of a first conviction, to a fine of five thousand dollars and to imprisonment for twelve months. In the case of a second or subsequent conviction, to a fine of ten thousand dollars and to imprisonment for two years: *Sections 62C(4)(c), (d);*

- A member of the Police Force may, without prejudice to *Section 62(4)*, arrest a person without a warrant, if:
    - The person is found to have in his or her urine or blood a controlled drug: *Section 62C(6)(a);*
    - The person is required to provide a specimen for a urine or blood test in accordance with subsection (1) or (2), and refuses to do so: and *Section 62C(6)(b);*
    - The member has reasonable cause to suspect that the person has a controlled drug in his or her urine or blood: *Section 62C(6)(c);*

  but no such arrest may be made if the person is at a hospital as a patient;
- The results of any urine or blood test carried out in accordance with this section shall be admissible as evidence for the purposes of any proceedings, pursuant to any enactment: *Section 62C(10);*
- Without prejudice to subsection (1), for the purposes of *Sections 62B* and *62C,* a breath or urine test may be carried out by a member of the Police Force[126] authorised under subsection (3):
    - At or near the place where the requirement is made if facilities for the specimens to be taken are available and it is practicable to conduct the analysis there: or *Section 62D(2)(a);*
    - At a police station, as the member may direct: *Section 62D(2)(b).*

accused satisfies the Court that he or she was unable on medical grounds at the time required to do so, to undergo the urine or blood test.
Section 5 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62C(7) which provides: A person arrested under subsection (6) or section 62 (4) shall, while at a police station, be given an opportunity to provide a specimen for a urine or blood test.

[126] Section 5 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62D(3) which provides: The Minister with responsibility for national security may in writing authorise that the member of the Police Force named therein is authorised to carry out a breath test or urine test.
Section 5 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 62D(4) which provides: Within a reasonable time after receiving the specimen of breath or urine, an authorised member of the Police Force conducting a breath or urine test shall deliver to that person, a statement in writing, specifying:
- in the case of a breath test, the concentration of alcohol determined by the breath test to be present in that person's breath;
- in the case of urine test, a determination as to whether a controlled drug was present in that person's urine; and (c) the time of day and the day on which the breath or urine test was completed, as the case may be, and signed by the member.

Considerations of evidence in relation to testing alcohol or controlled drugs that shall be taken by a magistrate in proceedings for an offence under this Act

- In proceedings for an offence under this Act or any other enactment, a certificate purporting to be signed by a member of the Police Force certifying:
  - That he or she is authorised, by the Minister responsible for national security, to conduct a breath or urine test using a device approved in accordance with *Sections 62B(9),* or *62C(9),* as the case may be: *Section 62D(5)(a);*
  - That a person named therein submitted to a breath or urine test, as the case may be: *Section 62D(5)(b);*
  - That the analysis was made on the date and completed at the time stated in the certificate: *Section 62D(5)(c);*
  - In the case of a breath test, the concentration of alcohol determined by the device as present in the breath of that person on the date and at the time stated in the certificate: *Section 62D(5)(d);*
  - In the case of a urine test, that the controlled drug was present in the urine of that person on the date and at the time stated in the certificate: and *Section 62D(5)(e);*
  - That a statement in writing required by subsection (4), was delivered in accordance with that subsection: *Section 62D(5)(f);*

  shall be prima facie evidence of the particulars certified in and by the certificate;
- In proceedings for an offence under this Act or any other enactment, a certificate purporting to be signed by the Minister responsible for national security that the member of the Police Force named therein is authorised to conduct a breath or urine test using a device approved in accordance with *Sections 62B(9),* or *62C(9),* shall be prima facie evidence of the particulars certified in and by the certificate: *Section 62D(6).*

6. Using vehicle without consent of the owner - *Section 63*
   - A person who uses or takes and drives away or attempts to use or take and drive away a motor vehicle without the consent of its owner or other lawful authority or, knowing a motor vehicle to have been so taken, uses it or drives it or allows himself or herself to be carried in or on it without the consent of its owner or other lawful authority, commits an offence[127]: *Section 63(1);*

     Punishment: Liable on summary conviction, to a fine of one thousand dollars or to imprisonment for nine months, or to both such fine and imprisonment: *Section 63(1)(b);*

[127] Grenada- Road Traffic Act CAP 289A, Cumulative Edition 2007, section 63(4). A member of the Police Force may arrest without a warrant any person reasonably suspected by him or her of having committed, or of attempting to commit, an offence under this section.

- It is a defence to a charge brought under subsection (1), for the accused to establish that at the time he or she committed the act in respect of which he or she is charged he or she reasonably believed:
    - He or she had lawful authority to use or drive away the motor vehicle: *Section 63(2)(a);*
    - The owner would, in the circumstances of the case, have given his or her consent if his or her consent had been requested: or *Section 63(2)(b);*
    - The vehicle was being driven with the consent of its owner or other lawful authority: *Section 63(2)(c);*
- Where a person is convicted under this section the court may, in addition to any punishment it imposes, or without imposing any punishment, order the person convicted to pay[128] to the owner of the motor vehicle:
    - An amount as in the opinion of the court would have been charged if the motor vehicle had been hired by the person convicted: *Section 63(5)(a);*
    - An amount as in the opinion of the court represents fair compensation for any damage done to the motor vehicle: or *Section 63(5)(b)*;
    - Both the amounts referred to in *paras. (a)* and *(b),* of this subsection: *Section 63(5)(c).*

<u>Power to proceed on charge of careless driving on hearing of charge of dangerous driving or drunken driving</u>

- Where, upon the trial of a person for an offence under *Sections 55, 56* or *62,* the court is of the opinion that the offence is not proved, then, without prejudice to any other powers the court possesses, it may at any time during the hearing or immediately thereafter:
    - Grant permission for a charge for an offence under *Section 57,* to be preferred against the accused: or *Section 86(1)(a);*
    - Direct or allow such charge under *Section 57,* to be preferred forthwith against the accused and, subject to subsection (2), may thereupon proceed with the charge: *Section 86(1)(b);*
- In any case referred to in subsection (1):
    - The accused or his or her solicitor or counsel shall be informed of the new charge and shall be given an opportunity, whether by way of cross-

[128] Grenada- Road Traffic Act CAP 289A, Cumulative Edition 2007, section 63(5). An award under this subsection shall not be a bar to a civil suit, but shall be considered in ordering damages in a civil suit.

examination of any witness whose evidence has already been given against the accused or otherwise;

- Of answering the new charge, and the court may adjourn the hearing if it considers that the accused is prejudiced in his or her defence by reason of the new charge being so preferred: *Section 86(2);*

- Where a charge to which *Section 69,* relates has been brought against an accused and that section has been complied with; or a charge has been brought against an accused under *Section 55,* in which case *Section 69,* does not apply, the accused may be convicted on a charge preferred pursuant to subsection (1), notwithstanding that that subsection has not been satisfied in respect of the charge so preferred: *Sections 86(3)(a), (b).*

7. Seat belts - *Section 74A*

   - No person shall drive or sit in the front of a vehicle[129] to which this section applies unless he or she is wearing a seat belt while the vehicle is in motion: *Section 74A(2);*

     Punishment: A person who contravenes this section commits an offence and is liable on summary conviction to a fine of a thousand dollars and to imprisonment for three months: *Section 74A(5).*

8. Duty to stop in case of accident - *Section 75*

   - A person riding, driving or in charge of any vehicle of any description shall, if, owing to the presence of the vehicle on a road, an accident occurs whereby personal injury is caused to any person or damage is caused to any vehicle:
     - Immediately stop: and *Section 75(1)(a);*
     - If required to do so by any person having reasonable grounds for so requiring, give:
       i. his or her name and address: *Section 75(1)(b)(i);*
       ii. the name and address of the owner of the vehicle: *Section 75(1)(b)(ii);*
       iii. the registration number of the vehicle: *Section 75(1)(b)(iii);*
       iv. the name of the insurance company with which the vehicle is insured: and *Section 75(1)(b)(iv);*
       v. the names of all persons in the vehicle at the time of the accident: and *Section 75(1)(b)(v);*
     - Report the accident at a police station as soon as reasonably practicable, but before the expiration of a period of 24 hours after its occurrence: *Section 75(1)(c);*

[129] Grenada- Road Traffic Act CAP 289A, Cumulative Edition 2007, section 74A (3). This section applies to all private motor cars, public service vehicles and goods vehicles

- Subsection (1)(c), shall not apply if a report is made, at the time and place of the accident, to a member of the Police Force: *Section 75(2);*

  Punishment: Any person who contravenes or fails to comply with this section commits an offence and shall be liable on summary conviction to a fine of two thousand dollars or to imprisonment for six months, or to both such fine and imprisonment: *Section 75(3);*

- A person shall not be convicted under this section if, through pressing emergency, he or she so had to help attend to the personal injury caused by the accident that he or she could not reasonably have been expected to comply with this section: *Section 75(4).*

9. Power of police to test or cause vehicle to be tested after accident - *Section 76*

   - Where an accident occurs owing to the presence of a vehicle on a road, a member of the Police Force may inspect and test the vehicle or cause it to be inspected and tested by an inspector and may, for this purpose, require that the vehicle shall not be driven or taken away from the scene of the accident until it has been inspected and tested: *Section 76(1);*
   - Any person who:
     - Obstructs an inspector or a member of the Police Force in the performance of his or her duty under this section: *Section 76(2)(a);*
     - Contravenes or fails to comply with this section: or *Section 76(2)(b);*
     - Fails to comply with a requirement by a member of the Police Force made under subsection (l): *Section 76(2)(c);*

     commits an offence;

     Punishment: Liable on summary conviction to a fine of five hundred dollars or to imprisonment for three months, or to both such fine and imprisonment: *Section 76(2).*

10. Driving without licence - *Section 31*

    - Subject to *Section 35,* no person shall drive a motor vehicle of any class or description on a road unless he or she is the holder of a driving licence authorising him or her to drive a motor vehicle of that class or description: *Section 31(1)*[130];

[130] Section 2 of the Road Traffic (Amendment) Act, 2015 amends the Road Traffic Act CAP 289A by repealing sub-sections 54(4) and 54(5) and substituting the following:
- new subsections (4) & (5); and
- subsections 54(6) to 54(10)

Section 2 of the Road Traffic (Amendment) Act, 2015 amends section 54(4) of the the Road Traffic Act CAP 289A which provides: The holder of a valid driving licence issued in any of the other member states of the Caribbean Community and Common Market (CARICOM) and valid for a period of not less than six months from the date of entry into Grenada shall be deemed to be the holder of a licence to drive in Grenada, for the ensuing six month period.

- No person shall employ or permit any person to drive a motor vehicle of any class or description on a road unless the person he or she employs or permits to drive the motor vehicle is the holder of a valid driving licence authorising him or her to drive a motor vehicle of that class or description: *Section 31(2);*

  Punishment: Any person who contravenes this section commits an offence and shall be liable on summary conviction[131]:

  - If the contravention is in relation to a motor vehicle other than a public service vehicle or a goods vehicle, to a fine of one thousand dollars and to imprisonment for six months: *Section 31(3)(a);*
  - If the contravention is in relation to a public service vehicle or a goods vehicle, to a fine of four thousand dollars and imprisonment for 18 months: *Section 31(3)(b).*

General provision as to disqualification

- The court before which a person is convicted of any offence in connection with driving of a motor vehicle may, in addition to any other penalty provided for such offence, order that the offender be disqualified for a stated period or permanently from holding or obtaining a driving licence either generally or limited to the driving of a motor vehicle of any particular class: and *Section 87(1);*
- Where the offender holds a driving licence the court shall require him or her to produce the licence and the court shall endorse upon the licence particulars of any order the court makes under this section together with the particulars of the conviction: *Section 87(1).*

General provision as to endorsement - Section 88

- Any person who is convicted of an offence in connection with the driving of a motor vehicle shall, if he or she holds a driving licence, produce it within such time as the court directs for the purpose of endorsement thereon of the particulars of the conviction if the court so directs: *Section 88(1);*

  Punishment: Any person who contravenes or fails to comply with this section commits an offence and shall be liable on summary conviction to a fine of five hundred dollars or to imprisonment for three months, or to both such fine and imprisonment: *Section 88(2).*

[131] Grenada- Road Traffic Act CAP 289A, Cumulative Edition 2007, section 74A (4) & (5). Where a person is convicted under subsection (3) the Magistrate may, if the vehicle used in connection with the offence is a public service vehicle, in addition to the penalty imposed thereunder cancel the licence of that vehicle to operate as a public service vehicle. The cancellation of a licence under subsection (3) and under section 62B (5) by the Magistrate who imposes the penalty shall be for a period not exceeding two years.

Offences which a magistrate does not have jurisdiction to try

The magistrate does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Causing death by reckless or dangerous driving - *Section 55;*
- Using vehicle without consent of the owner (on indictment) - *Section 63.*

Things to note under the Road Traffic (Amendment) Act, 2017:

1. *The Road Traffic (Amendment) Act, 2017 - Section 2,* (Insertion of new *Section 30A: 'Power to fit immobilising device'*)
    - Without prejudice to *Section 30,* if a motor vehicle is:
        - Parked or left on a road or at a place in such a manner as to cause danger or obstruction to other traffic on the road, contrary to this Act: or *Section 30A(1)(a);*
        - Parked or left on a road or at a place in contravention of another provision to this Act: *Section 30A(1)(b);*

      a police officer or a person authorised by a police officer may place the vehicle under the control of the Police Force by fitting an immobilising device[132] onto the vehicle;

      Recovery: The owner or person in charge of a motor vehicle under the control of the Police Force by virtue of subsection (1), may recover the vehicle if a fee of one hundred and twenty five dollars, and twenty-five dollars for each day or part thereof during which the immobilising device has been fitted onto the vehicle, is paid to the officer in charge of the nearest police station: *Section 30A(2);*
    - No person, except a police officer or a person authorised by a police officer, may remove, attempt to remove or in any way interfere with an immobilising device or a motor vehicle under the control of the Police Force pursuant to this section: *Section 30A(4);*

      Punishment: A person who contravenes subsection (4), commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for one month: *Section 30A(6).*

[132] Section 2 of the Road Traffic (Amendment) Act, 2015 amends the Road Traffic Act CAP 289A by inserting section 30A(8) which provides: "immobilising device" means a steel cable secured by a padlock and fitted to a wheel or body of a motor vehicle to immobilise the motor vehicle, or any similar device including any device approved by the Minister in accordance with subsection (7).

2. *The Road Traffic (Amendment) Act, 2017 - Section 2 (Insertion of new Sections 77A to 77D: 'Prohibition on driving while holding or using*[133] *a hand-held mobile device and use of hands-free mobile devices permitted')*

    - For the purpose of *Sections 77B* to *77D:*
        - A mobile device[134] is to be treated as hand-held if it is held or is required to be held at some point during the course of making or receiving a call or performing any other interactive communication function[135]: and *Section 77A(3)(a);*
        - A person supervises the holder of a learner's permit if he or she does so pursuant to a condition imposed on the holder of the learner's permit under this Act: *Section 77A(3)(b).*

Prohibition on driving while holding or using a hand-held mobile device [136]

- A person who, while driving or having charge of a private motor car, or a goods vehicle on any road, holds or uses a hand-held mobile device commits an offence: *Section 77B(1);*

  Punishment: Liable on summary conviction to a fine of three thousand five hundred dollars and to imprisonment for three months: *Section 77B(1);*

- A person who, while driving or having charge of a public service vehicle, holds or uses a hand-held mobile device commits an offence: *Section 77B(2);*

  Punishment: Liable on summary conviction to a fine of five thousand dollars and to imprisonment for one year: *Section 77B(2);*

- A person who, while supervising the holder of a learner's driving permit, uses a hand-held mobile device commits an offence: *Section 77B(3);*

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[133] Section 7 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 77A (1) which provides: "use" in relation to a mobile device, includes:
- holding the mobile device to, or near, the ear (whether or not engaged in a phone call);
- creating, sending or looking at a text or video message on the mobile device;
- turning the mobile device on or off; and

operating any other function of the mobile device.

[134] Section 7 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 77A (1) which provides: "mobile device" means a mobile telephone or any other device which performs an interactive communication function by transmitting and receiving data.

[135] Section 7 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 77A (1) which provides: "interactive communications functions" includes sending or receiving oral or written message; sending or receiving facsimile; sending or receiving still or moving images; and providing access to the internet.

[136] Section 7 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 77D (1) which provides: (1) Subsections (1), (2) and (4) of section 77B shall not apply to:
- the driver of an ambulance, fire service vehicle or police service vehicle;
- any other person or class of persons prescribed by the Minister;
- a person holding or using a device prescribed by the Minister;
- a person engaged in an activity prescribed by the Minister; and
- under any other condition prescribed by the Minister.

Section 7 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 77D (2) which provides: Section 77B shall not apply where the motor vehicle is off the roadway or is lawfully parked on the roadway; not in motion; and not impeding traffic.

Punishment: Liable on summary conviction to a fine of one thousand five hundred dollars and to imprisonment for three months: *Section 77B(3);*

- A person who uses a wireless communication device[137] to view, send or compose an electronic message while driving or having charge of a motor vehicle commits an offence: *Section 77B(4);*

  Punishment: Liable on summary conviction to a fine of one thousand five hundred dollars and to imprisonment for three months: *Section 77B(4).*

Use of hands-free mobile devices permitted

- Subsections (1), (2) and (3), of *Section 77B,* shall not apply where:
  - A person driving a motor vehicle is using a mobile device in hands-free mode: or *Section 77C(1)(a);*
  - The mobile device being used to make or receive a phone call, and while being so used:
    i. is secured in a mounting affixed to the vehicle: or *Section 77C (1) (b)(i);*
    ii. is remotely operated by means of a device (whether connected to the mobile device by means of a wire or otherwise) is affixed to the motor vehicle, or worn by the driver in the manner intended by the manufacturer: *Section 77C(1)(b)(ii);*

  and the mobile device is not being held by the driver;
- For the avoidance of doubt, nothing in subsection (1), authorises a person to use a mobile device by pressing a key on the mobile device, or by otherwise manipulating the body or screen of the mobile device, if the mobile device is not secured in a mounting affixed to the motor vehicle: *Section 77C(2);*
- For the purposes of this section, a mobile device is secured in a mounting affixed to the motor vehicle if:
  - The mounting is commercially designed and manufactured for that purpose: and *Section 77C(3)(a);*
  - The mobile device is secured in the mounting, and the mounting is affixed to the motor vehicle, in the manner intended by the manufacturer: *Section 77C(3)(b).*

[137] Section 7 of the Road Traffic (Amendment) Act, 2017 amends the Road Traffic Act CAP 289A by inserting section 77A (1) which provides: "wireless communication device" means a device used to transfer information over a distance without the use of electrical conductors or wires.

GUYANA

The main legislation or "principal act" is the *Motor Vehicles and Road Traffic Act, Chap. 51:02.* For the purpose of detailing road traffic legislation within this chapter for Guyana, the *Motor Vehicles and Road Traffic Act, Chap. 51:02, Revised Edition 2012,* is utilised. This Act must be read in conjunction with the *Motor Vehicles and Road Traffic (Amendment) Acts, No. 12 of 2014, No. 7 of 2016 and No.1 of 2017.*

Fixed penalty

Summary Jurisdiction (Procedure) Act, Chap. 10:02, Revised Edition 2012:

- *Section 8,* details special procedures in respect of certain offences and shall apply to:
    - Offences against *Sections 13, 15, 23, 25, 34, 40, 43, 46, 50, 52, 55, 56, 57, 58, 59, 60* and *61* of the *Motor Vehicles and Road Traffic Act, Chap. 51:02: Section 8(10)(b);*
    - Offences against the *Motor Vehicles and Road Traffic Regulations, Chap. 51:02: Section 8(10)(c);*
    - Offences against any order made by the Licensing Authority under *Sections 48, 51,* or *102,* of the *Motor Vehicles and Road Traffic Act, Chap. 51:02: Section 8(10)(e);*
- Notwithstanding *Section 11(1)*, where any member of the Police Force finds that an offence to which this section applies has been committed or is being committed in any place, it shall be lawful for such member of the Police Force then and there to serve upon the person alleged to be the offender a notice charging him with the commission of such offence, and notifying him that a complaint will be made against him in respect of the said offence and requiring him to appear at the court specified in the notice on the day and at the hour stated therein to answer the said complaint[138]: *Section 8(1);*
- A person upon whom a member of the Police Force has served a notice under subsection (1), may, in lieu of being prosecuted for the alleged offence, pay to the clerk of the court of the magisterial district in which the offence was committed, within seven days from the date of the issue of the notice, such penalty as the Minister may by order prescribe for the offence: *Section 8(2);*
- A notice under subsection (1), shall be served on the alleged offender personally, and the date stated in the notice as the day on which the alleged offender is required to appear at court shall be at least 14 days after the date of the issue of the notice[139]: *Section 8(4);*

[138] Guyana- Summary Jurisdiction (Procedure) Act Cap10:02, Revised Edition 2012, section 8(7). Upon service of a notice under subsection (1), the alleged offender shall be subject to the same duties and liabilities as if he had entered, under section 71, into a recognizance in the sum of one thousand six hundred and twenty-five dollars to appear before the court specified in the notice on the day and at the hour stated therein to answer the complaint referred to in the notice and to be further dealt with according to law.

[139] Guyana - Summary Jurisdiction (Procedure) Act Cap10:02, Revised Edition 2012, section 8(5). If the alleged offender pays the penalty within the time specified in subsection (2), the provisions hereinafter contained in this section in respect of his duties and liabilities shall not apply.

- If the alleged offender does not exercise the option of paying a penalty as provided for in subsection (2), the member of the Police Force shall, on the date stated in the notice as the day on which the alleged offender is required to appear at court, make in the court specified in the notice a complaint against the alleged offender for the offence mentioned in the notice: *Section 8(6)*[140];
- Where a police constable finds a vehicle on an occasion and has reason to believe that on that occasion there is being or has been committed in respect of it an offence to which this section applies, being an offence:
    - Committed by reason of the vehicle obstructing the road, or waiting, or being left or parked or being loaded or unloaded in a road: or *Section 8(12)(a);*
    - Disclosed upon an examination of such vehicle: *Section 8(12)(b);*

  he may proceed under this section as if he has found a person reasonably believed by him to be committing an offence and for that purpose a notice as mentioned in subsection (1), if affixed to the vehicle shall be deemed to be served pursuant to that subsection upon the person liable for the offence and notwithstanding anything to the contrary in any law the registered owner of such vehicle shall, for the purposes of any proceedings to be taken in a court in respect of such offence, be deemed to be the person liable for the offence[141];
- A notice if affixed to a vehicle under subsection (12), shall not be removed or interfered with except by or under the authority of the driver or person in charge of the vehicle or the person liable for the offence in question: *Section 8(13);*

  Punishment: Any person contravening this subsection shall be liable to a fine of not less than ten thousand dollars nor more than twenty thousand dollars: *Section 8(13);*
- Where a notice is served under subsection (1), or is affixed under subsection (12), the officer responsible for so doing shall:
    - Immediately after his return to the police station to which he is attached, submit a copy of the notice to the officer in charge of that police station to be kept there for the purposes of the record: and *Section 8(14)(a);*
    - Within no more than three days after serving or affixing the notice, submit a copy of the notice to the clerk of the court of the magisterial district in which the alleged offence was committed: *Section 8(14)(b)*.

[140] Guyana - Summary Jurisdiction (Procedure) Act Cap10:02, Revised Edition 2012, section 8(8). If a complaint has been duly made under subsection (6) and the alleged offender does not appear at the court at the time mentioned in the notice, the court may proceed in accordance with sections 14 and 26 and for this purpose the said sections shall be read as if the word " notice" were substituted for the word "summons" wherever it appears therein.

Guyana - Summary Jurisdiction (Procedure) Act Cap10:02, Revised Edition 2012, section 8(9). If the alleged offender appears at the time mentioned in the notice and a complaint has been duly made under subsection (6), the court shall proceed to hear and determine the complaint.

[141] Guyana - Summary Jurisdiction (Procedure) Act Cap10:02, Revised Edition 2012, section 8(12). If the registered owner at the time of entering his plea at the hearing of the offence alleges that he was not the driver, or the person in charge of the vehicle at the time when the alleged offence was committed the court may cause a summons to be issued to the person who is alleged by the registered owner to have been the driver or the person in charge making him a co-defendant in the proceedings and the court may after hearing the evidence and witnesses, if any, of all parties make such order as to the payment of any fine and costs as to the court may seem just.

Some offences listed as "One charge per complaint" in the Second Schedule include:

- Driving an uncertified motor vehicle;
- Driving a motor vehicle without a driver's licence;
- Failing to produce a driver's licence;
- Refusing to declare present address;
- Breaching of conditions of provisional licence;
- Speeding;
- Failing to stop when required by police in uniform;
- Leaving a motor vehicle in a dangerous position.

- Note also that the *Minor Offences (Penalties Order) O. 98/1970, 168/1974,*[142] outlines the penalties which offenders shall pay in lieu of being prosecuted for offences set out in the first column of the Schedule shall be those set out in the second column thereof.

Some of these offences are as follows:

- Offences against *Sections 13, 15, 23, 40, 46, 52, 55, 57, 59* and *60,* of the *Motor Vehicles and Road Traffic Act;*
- Offences against *Sections 34, 43, and 61,* of the *Motor Vehicles and Road Traffic Act;*
- Offences against the *Motor Vehicles and Road Traffic Regulations.*

Demerit points[143]

- Where any person is convicted of an offence specified in the Third Schedule, the court shall, in addition to any punishment for that offence, order:
  - That the demerit points specified in the Third Schedule in relation to that offence be recorded against the driver's licence of that person: and *Section 33A(1)(a);*
  - That, if sufficient demerit points are recorded, the person be disqualified for a period specified in section: *Section 33A(1)(b);*
- Subsection (1), shall not apply if the punishment imposed by the court includes an order disqualifying that person from holding or obtaining a driver's licence: *Section 33A(2).*

[142] Subsidiary Legislation: Summary Jurisdiction (Procedure) Act Cap10:02, Revised Edition 2012.

[143] Guyana - Motor Vehicles and Road Traffic (Amendment) Act 2014, Section 4, Amends the Motor Vehicles and Road Traffic Act Cap. 51:02 by inserting immediately after section 33, new sections 33A to 33H which provides for the assignment of demerit points.

Some offences carrying demerit points include[144]:

- Driving an unregistered motor vehicle (2 points);
- Driving an unfit motor vehicle (4 points);
- Failing to produce a driver's licence (2 points);
- Speeding (exceeding the speed limit) (4 points);
- Reckless or dangerous driving (6 points);
- Careless driving (4 points).

Offences which a magistrate has jurisdiction to try

1. Reckless or dangerous driving - *Section 36*

   - Every person who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and the use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, commits an offence: *Section 36(1);*

     Punishment: First conviction- Liable on summary conviction to a fine not less than twenty-five thousand dollars nor more than fifty thousand dollars or to imprisonment for twelve months. In the case of a second or subsequent conviction to a fine of not less than thirty-five thousand dollars nor more than seventy thousand dollars and to imprisonment for twelve months: *Section 36(1)(a);*

     Endorsement: The court shall order particulars of any such conviction to be endorsed on any licence held by the person convicted: *Section 36(2);*

     Disqualification: On a second or subsequent conviction under this section the convicting court shall exercise the power conferred by this Act of ordering that the offender shall be disqualified from holding or obtaining a licence unless the court, having regard to the lapse of time since the date of the previous or last previous conviction or for any other special reason thinks fit to order otherwise, but this provision shall not be construed as affecting the right of the court to exercise the power aforesaid on a first conviction: *Section 36(3);*

   - Where a person is convicted for aiding, abetting, counselling or procuring, or inciting the commission of an offence under this section, and it is proved that he was present in the vehicle at the time of the commission of the offence, the offence of which he is convicted shall for the purpose of the provisions of this Act relating to disqualification from holding or obtaining licences, be deemed to be an offence in connection with the driving of a motor vehicle: *Section 36(4).*

[144] Guyana - Motor Vehicles and Road Traffic (Amendment) Act 2014, Section 8 amends the Motor Vehicles and Road Traffic Act Cap 51:02 by inserting immediately after the Second Schedule, a Third Schedule assigning of demerit points to offences.

Bars to conviction

- Where a person is prosecuted for an offence under any of the provisions of this Act relating respectively to the maximum speed at which motor vehicles may be driven, to reckless or dangerous driving, and to careless driving he shall not be convicted unless either:
  - He was warned at the time of the offence was committed that the question of prosecuting him for an offence under one or other of the provisions aforesaid would be taken into consideration: or *Section 45(a);*
  - Within 14 days of the offence a summons for the offence was served on him: or *Section 45(b);*
  - Within the said 14 days a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the owner of the vehicle at the time of the commission of the offence: *Section 45(c);*

Provided that:

i. Failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that:
   a) neither the name and address of the accused nor the name and address of the owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid: or *Section 45(c)(i)(A);*
   b) the accused by his own conduct contributed to the failure: and *Section 45(c)(i)(B);*

   The requirement of this section shall in every case be deemed to have been complied with unless and until the contrary is proved: *Section 45(c)(ii).*

2. Causing death by reckless or dangerous driving of motor vehicles - *Section 35*
   - Any person who causes the death of another person by the driving of a motor vehicle on the road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, shall be guilty of a misdemeanour[145]: *Section 35(1);*
   - In **Oswald Singh v Sugendra Narine P/C 19438 (Criminal Jurisdiction) Civil Appeal No. 66 of 2012 Case Jacket No. 7420 of 2011,** the appellant was convicted by the magistrate for death by dangerous driving contrary to *Section 35(1),* of the *Motor Vehicles and Road Traffic Act, Chap. 51:02,* and was sentenced to 58 months imprisonment.[146] The deceased was struck by

[145] Section 61(1) of Summary Jurisdiction (Procedure) Act, CAP 10:02 gives the magistrate jurisdiction to try a case of death by dangerous driving. This section allows indictable matters under the First Schedule, Rule 1 to be tried summarily.

[146] Patterson v Bynoe GY [1996] CA 12 also dealt with death by dangerous driving.

the appellant who was driving a motor cycle. She was then placed in a taxi accompanied by a nurse and taken to the Georgetown Public Hospital after which she died. The magistrate noted in her memorandum of reason for finding the appellant guilty that there was no evidence as to whether the deceased further injuries from the time she was picked up from the scene to the time she was seen and examined by a medical doctor. The Court of Appeal concluded that without the existence of any evidence, the magistrate erred in presuming supposedly that between point A and point B, the deceased did not suffer any further injuries. The prosecution did not prove their case beyond a reasonable doubt. There was adequate evidence to suggest that the appellant was driving dangerously and accordingly, the conviction for death by dangerous driving was set aside and a record of the offence of dangerous driving was made.

3. Careless driving - *Section 37*

- If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road he shall be guilty of an offence: *Section 37(1);*

  Punishment: Any person who fails to comply with any of the provisions of this Act shall be guilty of an offence and a person guilty of an offence under this Act for which no special penalty is provided shall be liable on summary conviction to a fine of not less than twenty thousand dollars nor more than forty thousand dollars: *Section 113(3)*;

  Disqualification: A first conviction for an offence under this section shall not render the offender liable to be disqualified from holding or obtaining a licence: *Section 37(2).*

<u>Power of the magistrate to proceed on charge for careless driving on hearing of charge for reckless or dangerous driving</u>

- Where a person is charged before a court of summary jurisdiction with an offence under *Section 37,* and the court is of the opinion that the offence is not proved, then, at any time during the hearing or immediately thereafter, the court may, without prejudice to any other powers possessed by the court, direct or allow a charge for an offence under *Section 38,* to be preferred forthwith against the defendant and may thereupon proceed with that charge: S*ection 111(1)*[147]*;*
- The procedure in relation to this section is as follows:
  - The defendant or his solicitor or counsel shall be informed of the new charge and be given an opportunity, whether by way of cross-examining any witness whose evidence has already been given against the defendant or otherwise, of answering the charge;
  - If the magistrate considers that the defendant is prejudiced in his defence by reason of the new charge being so preferred, adjourn the hearing: *Section 111(1).*

[147] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, section 111(2). A defendant in whose case the requirements of section 46 have been satisfied, or do not apply, as respects the alleged offence under section 37 may be convicted on a charge preferred under the preceding subsection, notwithstanding that those requirements have not been satisfied as respects the alleged offence under section 38.

4. Driving motor vehicle while under the influence of drink or drug - *Section 39*[148]

    - Any person who when driving or attempting to drive, or when in charge of, a motor vehicle on a road or other public place is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, shall be liable to summary conviction: *Section 39(1);*

      Punishment: First conviction- Liable on summary conviction to a fine of not less than thirty thousand dollars nor more than sixty thousand dollars or to imprisonment for twelve months. In the case of a second or subsequent conviction to a fine of not less than forty thousand dollars nor more than eighty thousand dollars and to such imprisonment as aforesaid: *Section 39(1);*

      Disqualification: A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of 12 months from the date of the conviction from holding or obtaining a licence: *Section 39(2).*

5. Driving or being in charge of a vehicle while breath or blood alcohol levels exceed prescribed limits - *Section 39A*

    - A person shall not drive or attempt to drive or be in charge of a motor vehicle on the road or other public place if he has consumed alcohol in such a quantity that the proportion thereof in his breath or blood exceeds the prescribed limits[149]: *Section 39A(1)*;
    - No person shall be convicted under this section for being in charge of a motor vehicle as mentioned in subsection (1), if he proves that at the material time the circumstances were such that there was no likelihood of his driving the motor vehicle while there was alcohol in his breath or blood in a proportion exceeding the prescribed limit: *Section 39A(4);*

      Punishment: Any person who contravenes subsection (1), shall be liable on summary conviction to a fine of seven thousand five hundred dollars: *Section 39A(2);*

      Disqualification: A person convicted of two consecutive offences under this section shall unless the court for special reason thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction, from holding or obtaining a licence; and a third conviction for a like offence shall be permanently disqualified from holding or obtaining a licence: *Sections 39A(3)(a),(b);*

[148] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, section 39B (8). A person arrested under this section or under section 39 shall, while at a police station, be given an opportunity to provide a specimen of breath for a breath test at the police station.

[149] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39G (1) provides that "the prescribed limit" means, in respect of:

- breath alcohol concentration, 35 microgrammes of alcohol in 100 millilitres of breath; and
- blood alcohol concentration, 80 milligrammes of alcohol in 100 millilitres of blood

or such other proportion as may be prescribed.

Considerations of evidence that shall be taken by a magistrate in proceedings for an offence under Section 39A

- For the purposes of any proceedings for an offence under *Section 39A,* a certificate signed by an authorised analyst certifying the proportion of alcohol found in a specimen identified by the certificate shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the analyst: *Section 39F(1);*
- For the purposes of any proceedings for an offence under *Section 39A,* a certificate purporting to be signed by the registered medical practitioner that he took a specimen of blood from a person with that person's consent shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the registered medical practitioner: *Section 39F(2);*
- Subsections (1) and (2), shall not apply to a certificate tendered on behalf of the prosecution:
    - Unless a copy has been served personally on the accused or his counsel or by prepaid registered post not less than seven days before the hearing or trial: or *Section 39F(3)(a);*
    - If the accused, not less than seven days before the hearing or trial, or within such further time as the court may in the circumstances of the case allow, has served notice on the prosecution requiring the attendance at the hearing or trial of the person by whom the certificate was signed: *Section 39F(3)(b);*
- Where in proceedings for an offence under *Section 39A,* the accused, at the time a specimen of blood was taken from or provided by him in accordance with this Act, asked to be supplied with such a specimen, evidence of the proportion of alcohol found in the specimen shall not be admissible on behalf of the prosecution unless:
    - The specimen is either one of two taken or provided on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken or provided: and *Section 39F(4)(a);*
    - The other specimen or part was supplied to the accused: *Section 39F(4)(b).*

Breath Test[150]

- Where the constable in uniform or on showing his authority as a member of the police force has reasonable cause to suspect:
    - That a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has an alcohol level in his breath exceeding the prescribed limit or is in breach of *Section 39: Section 39B(1)(a);*

[150] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39G (1) provides that "breath test" means a test for the purpose of obtaining an indication of the proportion of alcohol in the person's breath carried out by means of a device of a type approved for the purpose of such a test by the Minister, on a specimen of breath provided by such person.

- That a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place has an alcohol level in his breath exceeding the prescribed limit and that the person still has alcohol in his breath: or *Section 39B(1)(b);*

- That a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed an offence against this Act whilst the vehicle was in motion: *Section 39B(1)(c);*

he may subject to subsection (4), require him to provide a specimen of breath[151] for a breath test at or near the place where the requirement is made;

- No requirement may be made by virtue of *paras. (b)* or *(c),* of subsection (1), unless it is made as soon as reasonably practicable after the commission of the offence: *Section 39B(2);*
- If an accident occurs owing to the presence of a motor vehicle on a road, a constable in uniform or on showing his authority as a member of the Police Force may, subject to subsection (4), require any person who he has reasonable cause to believe was driving or attempting to drive (hereinafter in this section referred to as the driver) the vehicle at the time of the accident, to provide a specimen of breath for a breath test at or near the place where the requirement is made or, if the constable thinks fit, at a police station specified by him being a police station in reasonable proximity to that place: *Section 39B(3);*
- If a driver is at a hospital as a patient, he may be required by the constable to give a specimen of breath at the hospital but no such requirement may be made unless the registered medical practitioner in charge of his case:

  - Is given prior notice of the proposal to make the requirement: and *Section 39B(4)(a);*

  - Does not object to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient: *Section 39B(4)(b);*

- A driver without reasonable excuse, fails to provide a specimen of breath under subsections (1), (3), (4) or (8), commits an offence: *Section 39B(5);*

  Punishment: Liable on summary conviction to a fine of not less than twenty thousand dollars nor more than thirty thousand dollars or in default of payment, to imprisonment for a term not less than three months nor more than six months. *Section 39B(5)*[152]*;*

[151] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39G (2). References in section 39B to providing a specimen of breath shall be construed as references to providing a specimen thereof in sufficient quantity to enable a breath test to be carried out.

[152] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39B (7). If the person required by a constable under subsection (1), (3), (4) or (8) to provide a specimen of breath for a breath test fails to do so and the constable has reasonable cause to suspect that the person has alcohol in his breath or blood above the prescribed limit the constable may arrest the person without warrant but no such arrest may be made if the person is at a hospital as a patient.

- A constable may arrest without warrant any person who as a consequence of a breath test is found to have a proportion of alcohol in his breath exceeding the prescribed limit but no such arrest may be made whilst the person is at a hospital as a patient: *Section 39B(6).*

Consideration for the magistrate for proceedings under an offence under Section 39B

- In proceedings for an offence under *Section 39B,* a certificate purporting to be signed by a member of the Police Force certifying that:
  - He is authorised by the Minister to operate breath analysing instruments: *Section 39C(9)(a);*
  - The person named therein submitted to a breath analysis: *Section 39C(9)(b);*
  - The apparatus used by him to make the breath analysis was a breath analysing instrument approved by the Minister: *Section 39C(9)(c);*
  - The analysis was made on the day and completed at the time stated in the certificate: *Section 39C(9)(d);*
  - A concentration of alcohol determined by that breath analysing instrument and expressed in microgrammes of alcohol in 100 millilitres of breath was present in the breath of that person on the day and at the time stated in the certificate: and *Section 39C(9)(e);*
  - A statement in writing required by subsection (7), was delivered in accordance with that subsection shall be prima facie evidence of the particulars certified in and by the certificate: *Section 39C(9)(f).*

Consideration by the magistrate in proceedings for an offence under Sections 39, 39A or 39B

- In proceedings for an offence under *Sections 39, 39A or 39B:*
  - Evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analysing instrument operated by the member of the Police Force authorised in that behalf under *Section 39C(2):* and *Section 39C(8)(a);*
  - The concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the breath of the accused at the time of the occurrence of the event mentioned in *Section 39B: Section 39C(8)(b);*
  - Unless the accused proves that the concentration of alcohol in his breath at that time did not exceed the prescribed limit: *Section 39C(8)(c).*

Breath Analysis[153]

- Subject to subsections (2) and (3), where:
  - Any person is required by a constable under *Section 39B,* to undergo a breath test fails to undergo that test: or *Section 39C(1)(a);*
  - In consequence of a breath test carried out under *Section 39B,* it is indicated that there may be present in that person's breath a concentration of alcohol in excess of the prescribed limit: *Section 39C(1)(b);*

  the constable may require that person to submit, in accordance with the direction of the constable, to a breath analysis;[154]
- The breath analysis referred to in subsection (1), shall be carried out by a constable authorised in that behalf by the Minister:
  - At or near the place where the requirement is made if facilities for the specimen to be taken are available and it is practicable to conduct the analysis there: or *Section 39C(2)(a);*
  - At a police station[155]: *Section 39C(2)(b);*
- For the purpose of the breath analysis:
  - A person shall provide two separate specimens of breath for analysis: *Section 39C(4)(a);*
  - Such specimens shall be provided in accordance with the directions of the constable referred to in subsection (2): *Section 39C(4)(b);*
  - There must be an interval of not less than two minutes and not more than ten minutes between the provision of specimens: and *Section 39C(4)(c);*
  - The reading from the specimen that indicates the lower concentration of alcohol in the person's breath shall be taken to be the result of the breath analysis: *Section 39C(4)(d);*

[153] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39G (1) provides that "breath analysis" means the quantitative measuring of the proportion of alcohol in a person's breath carried out by means of a device approved for the purpose by the Minister.

[154] Guyana - Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39C (4). A member of the Police Force shall not require any person to undergo a breath test or to submit a breath analysis:
- if that person has been admitted to hospital for medical treatment and the registered medical practitioner in immediate charge of his treatment has not been notified of the intention to make the requisition or objects on the ground that compliance therewith would be prejudicial to the proper care or treatment of that person;
- if it appears to that member that it would, by reason of injuries sustained by that person, be dangerous to that person's medical condition to undergo a breath test or submit to a breath analysis; or
- at that person's usual place of abode.

[155] Guyana - Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39C (7). As soon as practicable after a person has submitted to a breath analysis, the member of the Police Force operating the breath analysing instrument shall deliver to that person a statement in writing signed by that member specifying
- the concentration of alcohol determined by the analysis to be present in that person's breath and expressed in microgrammes of alcohol in 100 millilitres of breath; and
- the time of day and the day on which the breath analysis was completed.

- Any person who:
  - Upon being required under subsection (1), to submit to a breath analysis fails to do so in accordance with the directions of a member of the Police Force[156]: or *Section 39C(5)(a);*
  - Wilfully does anything to alter the concentration of alcohol in his breath or blood between the time of the event referred to in *Section 39B,* (in respect of which he is required to undergo a breath test) and the time he undergoes that test or, if he is required to submit to a breath analysis, the time when he submits to that analysis: *Section 39C(5)(b);*

  commits an offence;

  Punishment: Liable on summary conviction in the case of a first conviction, to a fine of not less than thirty thousand dollars nor more than fifty thousand dollars or in default of payment thereof to imprisonment for a term of not less than three months nor more than six months. In the case of a second or subsequent conviction to a fine of not less than forty thousand dollars nor more than sixty thousand dollars or in default of payment thereof to imprisonment for a term not less than six months nor more than twelve months: *Sections 39C(5)(c),(d).*

Consideration by the magistrate in proceedings for an offence under Section 39C

- In proceedings for an offence under this section a certificate purporting to be signed by the Minister that the member of the Police Force named therein is authorised by the Minister to operate breath analysing instruments shall be prima facie evidence of the particulars certified in and by the certificate: *Section 39C(10);*
- In proceedings for an offence under this section, evidence of the condition of the breath analysing instrument or the manner in which it was operated shall not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced: *Section 39C(11).*

Laboratory test

- Subject to subsections (2) and (3), in the course of an investigation as to whether a person has committed an offence under *Sections 39* and *39A,* a constable may require[157] a person under investigation to provide a specimen of blood for a laboratory test if the person is unable by reason of his physical condition, to provide a specimen of breath for a breath test[158]: *Section 39D(1);*

[156] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39C (6). It shall be a defence to a prosecution for an offence under subsection (5) (a) if the defendant satisfies the court that he was unable on medical grounds at the time he was required to do so to undergo a breath test or to submit to a breath analysis, as the case may be.

[157] Guyana - Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39D (2). A person shall not be required to provide a specimen of blood for laboratory test under subsection (1) if he is at a hospital as a patient and the registered medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of the specimen on the ground that the requirement to provide such specimen could be prejudicial to the proper care or treatment of that person

[158] Guyana - Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39D (3). A constable

- For the purpose of this section and *Sections 39A, 39E and 39F,* where any person is required to provide a specimen of blood, such specimen shall be taken only:
  - With the consent of that person: *Section 39D(5)(a);*
  - At a hospital: and *Section 39D(5)(b);*
  - By a registered medical practitioner or qualified laboratory technician: *Section 39D(5)(c);*
- Where any person who is under investigation in relation to an offence under *Section 39A,* refuses[159] to provide a specimen of blood for a blood test when required to do so under *Section 39D(1),* his refusal may, unless reasonable cause therefor is shown, be treated as supporting any evidence on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence, with respect to his condition at the time when the offence was committed: *Section 39E(1).*

6. Driving in excess of the prescribed speed limit - *Section 34*

- It shall not be lawful for any person to drive a motor vehicle of any class or description on a road at a speed greater than the speed specified in the Second Schedule as the maximum speed in relation to a vehicle of that class or description and if any person acts in contravention of this section he shall be guilty of an offence: *Section 34(1);*

  Punishment: Any person who fails to comply with any of the provisions of this Act shall be guilty of an offence and a person guilty of an offence under this Act for which no special penalty is provided shall be liable on summary to a fine of not less than twenty thousand dollars nor more than forty thousand dollars: *Section 113(3);*

  Disqualification: A first or second conviction for an offence under this section shall not render the offender liable to be disqualified from holding or obtaining a licence: *Section 34(2);*
- A person charged under this section with the offence of driving a motor vehicle of any class or description on a road at a speed greater than the maximum speed allowed in the case of a vehicle of that class or description, shall not be liable to be convicted of the offence solely on the evidence of one witness to the effect that in the opinion of the witness the person charged was driving the vehicle at such greater speed: *Section 34(3);*

shall not require a person to submit a specimen of blood for a blood analysis if a breath analysis has been carried out in respect of that person and the result is available.
Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39D (4). Nothing in the foregoing provisions of this section shall affect the provisions of section 39F.

[159] Guyana - Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 39E (2). For the purposes of subsection (1), a person shall not be treated as failing to provide a specimen unless he is first requested to provide a specimen but refuses to do so.

- If any person convicted under *Section 19,* of the *Summary Jurisdiction (Offences) Act,* of aiding, abetting, counselling or procuring, any person who is employed by him to drive, or is subject to his orders in driving a motor vehicle on a road to commit an offence under this section, he shall, instead of being liable on being so convicted to the same punishment as the principal offender: *Section 34(5);*
- If a person who employs other persons to drive motor vehicles on roads publishes or issues a timetable or schedule or gives any directions, under which any journey or any stage, or part of any journey is be completed within some specified time and it is not practicable in the circumstances of the case for that journey or that stage or part of the journey to be completed in the specified time without an infringement of this section, the publication or issue of said time-table or schedule or giving of the directions may be produced as prima facie evidence that the employer, as the case may be, procured or incited the persons employed by him to drive the vehicles to commit an offence under this section: *Section 34(6);*

  Punishment: Liable in the case of the first conviction to a fine not less than seven thousand, five hundred dollars nor more than fifteen thousand dollars. In the case of a second or subsequent conviction to a fine of not less than fifteen thousand dollars nor more than thirty thousand dollars and to imprisonment for a term not exceeding six months, and if any person is convicted of the offence of inciting to commit an offence under this section, he shall be liable to the same punishment as if he had procured the commission of an offence under this section: *Section 34(5).*

7. Motor racing and speed trials on highway - *Section 38*

   - Any person who promotes or takes part in a race or trial of speed between motor vehicles on the road shall be liable to summary conviction: *Section 38(1);*

     Punishment: Liable on summary conviction to a fine not less than twenty thousand dollars nor more than forty thousand dollars and to imprisonment for six months: *Section 38(1);*

     Disqualification: A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of 12 months from the date of the conviction from holding or obtaining a licence: *Section 38(2).*

8. Taking motor vehicle without owner's consent or authority - *Section 108*

   - Every person who takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be liable to be convicted of an offence: *Section 108(1);*
   - Provided that if in summary proceedings under this section the court is satisfied that the accused acted in reasonable belief that he had lawful authority or in the reasonable belief that the owner would, in the circumstances of the case, have given his consent if he had been asked therefor, the accused shall not be

liable to be convicted of the offence: *Section 108(1);*

Punishment: Liable on summary conviction to a fine of not less than twenty thousand dollars nor more than forty thousand dollars or to imprisonment for 12 months: *Section 108(1)(a);*

- Where a person is convicted under this section the court, in addition to any punishment inflicted, may order the person convicted to pay to the owner of the vehicle such sum as in the opinion of the court is fair compensation in respect of the use of and any damage done to the vehicle. Any sum ordered to be paid for compensation under this subsection shall be deemed to be a judgement debt and payment thereof shall be enforceable accordingly. An order for compensation shall be a bar to any action to recover damages in respect of the same transaction: *Section 108(3).*

9. Wearing of seatbelts - *Section 45E*

- Subject to subsection (2), every person who drives or rides in the front of a motor vehicle shall wear a seat belt[160]: *Section 45E(1);*
- A person who drives or rides on the front seat of a motor vehicle in contravention of the provisions of this section commits an offence: *Section 45E(3);*

  Punishment: Liable on summary conviction in the case of the first offence, to a fine not less than seven thousand, five hundred dollars nor more than ten thousand dollars. In the case of a second or subsequent offence, to a fine not less than ten thousand dollars nor more than fifteen thousand dollars: *Section 45E(3);*
- Notwithstanding anything in the Part, a person who, rides a motor vehicle on any seat fitted with a seat belt without fastening the seat belt shall be guilty of an offence: *Section 45E(4);*

  Punishment: Liable on summary conviction to a fine of seven thousand, five hundred dollars: *Section 45E(4);*
- Every driver of a motor vehicle which coveys a child shall cause such child to wear or be conveyed in the appropriate child restraint system: *Section 45F(1);*

  Punishment: A driver who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars: *Section 45F(2).*

[160] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 45E (2). Subsection (1) shall not apply to:
- a child who wears or is conveyed in a child restraint system;
- a driver of a motor vehicle while performing a manoeuvre which included reversing;
- any person who holds a valid certificate of exemption issued by a registered medical practitioner on a form approved by the Minister and stamped by the prescribed authority;
- a person riding in a vehicle which is being used for fire services, police purposes, prison duties, military services, or other government enforcement services;
- a person driving or riding a motor tractor, invalid carriage, motor cycle or trailer.

10. Driving a motor vehicle without a licence - *Section 23*

    - A person shall not drive a motor vehicle on a road unless he is the holder of a driver's licence and a person shall not employ any person to drive a motor vehicle on a road unless the person so employed is the holder of a driver's licence and if any person acts in contravention of this section, he shall be guilty of an offence: *Section 23(1);*

      Punishment: Any person who fails to comply with any of the provisions of this Act shall be guilty of an offence and a person guilty of an offence under this Act for which no special penalty is provided shall be liable on summary conviction to a fine of not less than twenty thousand dollars nor more than forty thousand dollars: *Section 113(3).*

11. Duty to stop in case of accident - *Section 62*

    - If in any case owing to the presence of a motor vehicle on the road, an accident occurs resulting in injury or death to any person, other than the driver of such vehicle, or damage to property, or injury to any animal under control, the driver of any such vehicle shall:
      - Immediately stop his vehicle immediately at the scene of the accident: *Section 62(1)(a);*
      - Give his name, address and the registration number of his vehicle and exhibit his driver's licence to:
        i. any person injured as a result of the accident if it is practicable to do so: *Section 62(1)(b)(i);*
        ii. the driver or other occupant of any vehicle collided with: and *Section 62(1)(b)(ii);*
        iii. any person who was likewise present on the scene of the accident and having reasonable grounds for requiring the driver of the vehicle to give the aforesaid information: and *Section 62(1)(b)(iii);*
      - Render assistance to any person injured in the accident, including the carrying of such person to a duly registered medical practitioner for medical treatment if it is apparent that such treatment is necessary or is requested by the injured person: *Section 62(1)(c);*
    - In the case of any such accident as aforesaid if injury is caused to any person or if the driver of the motor vehicle for any reason does not give his name and address to any such person as aforesaid, he shall report the accident at a police station or to a police constable as soon as reasonably practicable, and in any case within twenty-four hours of the occurrence thereof: *Section 62(2);*

      Punishment: Any person who fails to comply with any of the provisions of this Act shall be guilty of an offence and a person guilty of an offence under this Act for which no special penalty is provided shall be liable on summary to a fine of not less than twenty thousand dollars nor more than forty thousand dollars: *Section 113(3).*

12. Driving whilst using a handheld mobile telephone - *Section 37A*

- Subject to subsection (3), a person shall not drive a motor vehicle on any road while he is using:
  - A handheld mobile telephone[161]: or *Section 37A(1)(a);*
  - A similar hand held device[162]: *Section 37A(1)(b);*
- A person shall not use a hand-held mobile telephone or a similar hand-held device while supervising the driving of the holder of a provisional licence: *Section 37A(2);*
- Subsections (1) and (2), shall not apply to:
  - Any person using a hands-free mobile telephone: *Section 37A(3)(a);*
  - Any person using a hand-held mobile telephone or other similar hand-device for the sole purpose of communicating an emergency situation to the disciplined forces, ambulance service or a registered medical practitioner: or *Section 37A(3)(b);*
  - Any person who is the operator of an authorised emergency vehicle in the performance of his official duties: *Section 37A(3)(c);*
- A person who contravenes subsections (1) or (2), commits and offence: *Section 37A(4);*

  Punishment: Liable in the case of a first offence, to a fine of not less than five thousand dollars nor more than ten thousand dollars. In the case of a second or subsequent offence, to a fine of not less than ten thousand dollars nor more than fifteen thousand dollars: *Sections 37A(4)(a),(b).*

General provision as to disqualification

- Any court before which a person is convicted of any criminal offence in connection with the driving of a motor vehicle (not being an offence under VIII)[163]:

[161] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 37A (5) provides that a mobile telephone or other device is to be treated as hand-held if it is required to be held at some point during the course of making or receiving a call or performing any other interactive communication function.

[162] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 37A (5) provides that a "similar hand-held device" means a device other than a two-way radio which performs an interactive communication function by transmitting data.

Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 37A (5) provides that "interactive communication function includes the following:

- sending or receiving oral or written messages;
- sending or receiving facsimile documents;
- sending or receiving still or moving images;
- providing access to the internet.

[163] Guyana- Motor Vehicles and Road Traffic Act Cap 51:02, Revised Edition 2012, section 30 (1). Provided that, if the Court thinks fit, any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed.

- May in any case, except where otherwise expressly provided by this Act, and shall where so required by this Act, order him to be disqualified from holding or obtaining a licence for such period as the court thinks fit: and *Section 30(1)(a);*
- May in any case, and shall where a person is by virtue of a conviction disqualified from holding or obtaining a licence, or where an order so disqualifying any person is made or where so required by this Act, order that particulars of the conviction and of any disqualification to which the convicted person has become subject shall be endorsed on any licence held by the offender: *Section 30(1)(b);*

- A person who by virtue of an order of a court under this Act is disqualified from holding or obtaining a licence may appeal the order in the same manner as against a conviction, and the court may, if it thinks fit, notwithstanding the provisions of the *Summary Jurisdiction (Appeals) Act,* declare that the disqualification shall operate pending the appeal: *Section 30(2).*

Provision as to endorsement

- An order that the particulars of any conviction or of any disqualification to which the convicted person has become subject are to be endorsed on any licence held by the offender shall, whether the offender is at the time the holder of a licence or not, operate as an order that any licence he may then hold or may subsequently obtain, shall be endorsed until he becomes entitled under this section to have a licence issued to him free from endorsement: *Section 32.*

<u>Offences which a magistrate does not have jurisdiction to try</u>

The magistrate does not have jurisdiction to try the following offences on indictment where the matters are not tried summarily under *Section 61(1),* of *Summary Jurisdiction (Procedure) Act, Chap. 10:02.* However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Causing death by reckless or dangerous driving (on indictment): *Section 108;*
- Using vehicle without consent of the owner (on indictment): *Section 63.*

JAMAICA

The main legislation or "principal act" is the *Road Traffic Act, 2018.*

Fixed penalty

- Subject to subsection (7), this section shall apply to any offence created by this Act or the regulations and punishable on summary conviction, being an offence:
    - Committed in respect of a vehicle by:
        i. its being left or parked on a road without the lights or reflectors as prescribed: *Section 105(1)(a)(i);*
        ii. its obstructing a road or waiting, or being left or parked or being loaded or unloaded, on a road; or *Section 105(1)(a)(ii);*
        iii. the non-payment of the charge made at a parking place: *Section 105(1)(a)(iii);*
    - Specified in the First Schedule: or *Section 105(1)(b);*
    - Specified in the regulations as being subject to a fixed penalty: *Section 105(1)(c);*
- Where a constable has reason to believe that a person is committing or has committed an offence referred to in subsection (1), the constable may issue to the person or in the case of an offence detected by such electronic means as may be prescribed, issue to the owner of the vehicle, the prescribed notice, in writing:
    - Offering the opportunity to discharge any liability to conviction of that offence by the payment of a fixed penalty: or *Section 105(2)(a);*
    - Summoning the person to attend the court indicated in the prescribed notice to answer to the charge outlined in the notice: *Section 105(2)(b);*
- A person shall not be liable to be convicted of an offence referred to in subsection (1), if the fixed penalty is paid in accordance with this section before the expiration of the final adjudication of the case: *Section 105(3);*
- Where a person is issued a notice under this section in respect of an offence, proceedings[164] shall not be taken against any person for that offence by a constable or local authority, as the case may be, until the end of the thirty days following the date of the notice or such longer period (if any) as may have been specified in the notice: *Section 105(4);*

[164] Jamaica- Road Traffic Act, 2018, section 105(5). In subsection (4), "proceedings" means any criminal proceedings in respect of the act or omission constituting the offence specified in the prescribed notice under subsection (2) and "convicted" shall be construed in like manner.

- Where a constable finds a vehicle on an occasion and has reason to believe that on that occasion there is being or has been committed in respect of it an offence to which this section applies, he may proceed under this section as if he had found a person reasonably believed by him to be committing the offence, and for that purpose, a notice affixed to the vehicle shall be deemed to be given to the person liable for that offence: *Section 105(10);*
    - A notice affixed to a vehicle under subsection (10), shall not be removed or interfered with except by or under the authority of the driver or person in charge of the vehicle or the person liable for the offence in question, and every person contravening this subsection commits an offence: *Section 105(11);*
    - Subject to subsections (13) and (14), the fixed penalty for an offence specified in the First Schedule, shall be the amount so specified in relation to the offence: *Section 105(12);*
    - Where the amount of the fixed penalty for an offence specified in the First Schedule (in this subsection referred to as the "prompt payment amount") is not paid within the period referred to in subsection (4), the amount of fixed penalty shall be increased by a prescribed late payment amount which shall accrue on the first day of each successive calendar month after the expiration of the period referred to in subsection (4), until the liability in respect of the fixed penalty (being the aggregate of the prompt payment amount and the accrued late payment amounts) is settled by payment in accordance with subsection (6)[165]: *Section 105(13);*
    - In any proceedings for an offence to which subsection (1) applies, no reference shall be made to the:
        - Giving or affixing of any notice under this section: or *Section 105(15)(a);*
        - Payment or non-payment of a fixed penalty thereunder: *Section 105(15)(b);*

      unless in the course of the proceedings or in some document which is before the court in connection with the proceedings reference has been made by or on behalf of the accused to the giving or affixing of such a notice or, as the case may be, to the payment or non-payment;
    - For the purposes of this Act, where a notice is issued under subsection (2), to the owner of a vehicle:
        - The provisions of this Act shall apply as if the owner of the vehicle was the driver of the vehicle at the time of the commission of the offence in respect of which the notice is issued: and *Section 105(16)(a);*
        - Notwithstanding *para. (a),* the provisions of *Section 98,* (demerit points on conviction for certain offences) shall not apply to the owner of a vehicle to whom a ticket is issued under subsection (2): *Section 105(16)(b).*

[165] Jamaica- Road Traffic Act, 2018, section 105(14). Nothing in subsection (13) shall restrict the power of the court to make such order as it thinks fit on the final adjudication of the case if it goes to trial.

Some fixed penalties offences listed in the First Schedule include:

- Failure to comply with terms and conditions of driver's licence as may be prescribed;
- Driving motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, where no collision occurs;
- Failure to place motor vehicle when not in motion in a safe position;
- Driving motor vehicle and not causing passenger being conveyed in the motor vehicle to wear seat belt;
- Failure to comply with traffic signs in school safety zones.

Demerit points

- Subject to subsection (2), where any person is convicted under a provision specified in Column 1 of the Sixth Schedule of an offence specified in Column 2 of that Schedule, the court before which that person is convicted shall, in addition to any penalty for that offence, order:
  - That the demerit points specified in that Schedule in relation to that offence be recorded against any driver's licence held by that person;
  - That the record of the order be forwarded to the Authority for action to be taken in accordance with the provisions of *Section 32: Section 91(1)(b).*

Some offences carrying demerit points include:

- Driving a motor vehicle on a road without being the holder of a permit or driver's licence (14 points);
- Failing to comply with terms and conditions of driver's licence (2 points);
- Reckless or dangerous driving (14 points);
- Careless driving where no collision occurs (4 points);
- Careless driving where collision occurs (10 points);
- Driving motor vehicle without wearing seat belt (2 points);
- Disobeying direction or signal of constable in execution of his duty (1 point).

Offences for which a Parish Court judge has jurisdiction

1. Speeding - *Section 55*
   - Subject to *Section 56,*[166] a person shall not drive a vehicle on a road at a speed in excess of:

[166] Jamaica- Road Traffic Act, 2018, section 56(1). Notwithstanding section 55, the driver of an emergency vehicle, in the carrying out of his duties, or a constable who drives a vehicle in the carrying out of his duties, may exceed the speed limits referred to in section 55(2).
Jamaica- Road Traffic Act, 2018, section 56(2). Notwithstanding subsection (1), the driver or constable referred to in that subsection shall drive the vehicle with due regard for the safety of other traffic

- The maximum speed limit prescribed under *Section 110(2),* in respect of the class or description of vehicle concerned: *Section 55(2)(a);*
- The speed limit which applies in respect of that road of a prescribed part of that road: or *Section 55(2)(b);*
- The speed limit indicated in subsection (1), by an appropriate road traffic sign in respect of that road or a part of the road: *Section 55(2)(c);*

- A person who contravenes subsection (2), commits an offence: *Section 55(3);*

  Punishment: Liable to either:

  I. A fixed penalty fine where a driver is driving in excess of the maximum speed limit prescribed:
     - by 16km/h to 32km/h, of $ 6,000.00;
     - by 33km/h to 49km/h, of $10,000.00;
     - by 50km/h or more, of $15,000.00; or First Schedule.

  II. A maximum penalty where a driver is driving in excess of the maximum speed limit prescribed:
     - by 16km/h in 32km/h, of $15,000.00 and, default of payment, to 3 days imprisonment;
     - by 33km/h to 49km/h, of $30,000.00 and, in default of payment, to 10 days imprisonment;
     - by 50km/h or more, of $45,000.00 and, in default of payment, to 30 days imprisonment. Second Schedule.

2. Driving under the influence of alcohol or other drugs - *Section 66* & Fifth Schedule

   - The provisions of the Fifth Schedule shall have effect as to driving under the influence of alcohol or other drugs: *Section 66.*

   The provisions for driving under the influence of alcohol or other drugs as laid out in the Fifth Schedule are as follows:

   - Every person who, when driving or attempting to drive or when in charge of a vehicle on a road or in a public place is under the influence of alcohol or other drugs to such extent as to be incapable of having proper control of the vehicle, commits an offence: *para. 1(1);*

     Punishment: Liable to a fine of $50,000.00 and, in default of payment, to 14 days imprisonment: Second Schedule;

     Disqualification: A person convicted of an offence under sub-paragraph (1), shall be disqualified, for a period of twelve months from the date of the conviction, from holding or obtaining a driver's licence unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification: *para. 1(2);*

- A constable may arrest, without warrant, a person whom he reasonably suspects has committed an offence under this paragraph[167]: *para. 1(3);*
- A person shall not drive or have charge or control of a vehicle, whether or not it is in motion, if the concentration of alcohol or other drugs in his breath or blood is greater than the prescribed limit[168]: *para. 2(1);*
- Every person who contravenes sub-paragraph (1), commits an offence: *para. 2(2);*

  Punishment: Liable to a fine of $50,000.00 and, in default of payment, to 14 days imprisonment. *Second Schedule;*
- A person shall not be convicted under this paragraph of being in charge of a motor vehicle as mentioned in sub-paragraph (1), if he proves that at the material time the circumstances were such that there was no likelihood of his driving the motor vehicle while there was any probability of his having alcohol in his breath or blood in a proportion exceeding the prescribed limit: *para. 2(3).*

Breath test[169]

- A constable in uniform or a constable out of uniform who has shown his authority as a member of the Constabulary Force may subject to sub-paragraph (4), require a person to provide a specimen[170] of breath for a breath test where he has reasonable cause to suspect that the person:
  - While driving or attempting to drive or being in charge of a vehicle on a road or in a public place has an alcohol level in his breath exceeding the prescribed limit or is in breach of paragraph 1: *para. 3(1)(a);*
  - Has been driving or attempting to drive or been in charge of a vehicle on a road or in a public place with an alcohol level in his breath exceeding the prescribed limit and still has alcohol in his breath: or *para. 3(1)(b);*
  - Has been driving, attempting to drive or been in charge of a vehicle on a road or in a public place and has committed an offence against this Act: *para.3(1)(c);*

[167] Jamaica - Road Traffic Act, 2018, Fifth Schedule, paragraph 3(9). A person arrested under this paragraph or under paragraph 1(3) shall, while at a police station, be given an opportunity to provide a specimen of breath for a breath test.

[168] Jamaica- Road Traffic Act, 2018, Fifth Schedule, paragraph 8(2) provides that "prescribed limit" means, in respect of:

- breath alcohol concentration, 35 microgrammes of alcohol in 100 millilitres of breath;
- blood alcohol concentration, 80 milligrammes of alcohol in 100 millilitres of blood,

or such other concentration as may be prescribed.

[169] Jamaica - Road Traffic Act, 2018, Fifth Schedule, paragraph 8(2) provides that "breath test" means a test carried out by a constable for the purpose of obtaining an indication of the proportion of alcohol in a person's breath carried out on a specimen of breath provided by such person by means of a device of a type approved for the purpose of such a test by the Minister responsible for national security.

[170] Jamaica - Road Traffic Act, 2018, Fifth Schedule, paragraph 8(1). References to providing a specimen of breath pursuant to paragraph 2 shall be construed as references to providing a specimen thereof in sufficient quantity to enable a breath test to be carried out.

- No requirement to provide a specimen of breath for a breath test may be made by virtue of sub-paragraphs (1)(b) or (c), unless it is made as soon as is reasonably practicable after the constable suspects the offence was committed: *para. 3(2);*
- If a collision occurs due to the presence of a vehicle on a road, a constable in uniform or a constable out of uniform who has shown his authority as a member of the Constabulary Force may, subject to sub-paragraph (4), require any person whom he has reasonable cause to believe was driving or attempting to drive (hereinafter in this paragraph referred to as the "driver") the vehicle at the time of the collision to provide a specimen of breath for a breath test, either:
    - At or near the place where the requirement is made;
    - If the constable thinks fit, at a police station specified by the constable being a police station in reasonable proximity to that place: *para. 3(3);*
- Subject to sub-paragraph (5), a constable may require a driver who is at a hospital as a patient to give a specimen of breath at the hospital[171]: *para. 3(4);*
- Every driver who, without reasonable excuse, fails to provide a specimen of breath under sub-paragraphs (1), (3) or (4) commits an offence: *para. 3(6);*

  Punishment: Liable to a fine of $50,000.00 and, in default of payment, to 14 days imprisonment in the case of a first conviction. In the case of a second conviction or more to $100,000.00 and, in default of payment, to one-month imprisonment: *Second Schedule;*
- A constable may arrest without warrant any person who, as a consequence of a breath test, is found to have a proportion of alcohol in his breath exceeding the prescribed limit, but no such arrest may be made while the person is in bed at a hospital as a patient: *para. 3(7);*
- If a person required by a constable under sub-paragraphs (1) or (3), to provide a specimen of breath for a breath test fails to do so and the constable has reasonable cause to suspect that the person has alcohol in his breath or blood above the prescribed limit, the constable may, without prejudice to *para. 1(3),* arrest the person without warrant: *para. 3(8).*

Breath analysis[172]

- Subject to sub-paragraphs (2) and (3), where:
    - Any person required by a constable under *para. 3,* to undergo a breath test fails to undergo that test: or *para. 4(1)(a);*

[171] Jamaica- Road Traffic Act, 2018, Fifth Schedule, paragraph 3(5). The request under sub-paragraph (4) may not be imposed unless the medical practitioner in charge of the driver's case:
- is given prior notice of the proposal to make the request; and
- has advised that the provision of a specimen or the request to provide it would not be prejudicial to the proper care, treatment or health of the driver.

[172] Jamaica- Road Traffic Act, 2018, Fifth Schedule, paragraph 8(2) provides that "breath analysis" means the quantitative measuring of the proportion of alcohol in a person's breath, carried out by means of a device of a type approved for the purpose by the Minister.

- In consequence of a breath test carried out under *para. 3,* it is indicated that there may be present in that person's breath a concentration of alcohol in excess of the prescribed limit: *para. 4(1)(b);*

the constable may require that person to submit to a breath analysis.[173]

- A member of the Constabulary Force shall not require any person to undergo a breath test or to submit to a breath analysis:
  - If that person has been admitted to hospital for medical treatment and the medical practitioner in immediate charge of his treatment, when notified of the intention to make the request, objects on the ground that compliance therewith would be prejudicial to the proper care, treatment, or health of that person: *para. 4(3)(a);*
  - If it appears to that member that it would, by reason of the injuries sustained by the person, be dangerous to that person's medical condition to undergo a breath test or to submit to a breath analysis: or *para. 4(3)(b);*
  - Subject to sub-paragraph (4), at that person's usual place of residence[174]: *para. 4(3)(c);*
- A person commits an offence who:
  - Upon being required by a constable in accordance with sub-paragraph (1), to submit to a breath analysis, fails to do so[175]: or *para. 4(5)(a);*
  - Wilfully does anything to alter the concentration of alcohol in his breath or blood:
    - i between the time of the event referred to in paragraph 3 (in respect of which he has been required to undergo a breath test) and the time when he undergoes that test: or *para. 4(5)(b)(i);*
    - ii if he is required to submit to a breath analysis, at the time when he submits to that analysis: *para. 4(5)(b)(ii);*

[173] Jamaica - Road Traffic Act, 2018, Fifth Schedule, paragraph 4(2). The breath analysis referred to in sub-paragraph (1) shall be carried out at a police station by a member of the Constabulary Force authorized in that behalf by the Minister.

[174] Jamaica - Road Traffic Act, 2018, Fifth Schedule, paragraph 4(4). Subject to sub-paragraph (3)(c), a person may be required to submit to a breath test at that person's usual place of residence:

- if the member of the Constabulary Force has reasonable cause to believe that:
  - (i) within the preceding two hours the person was involved in a collision on a road or other public place resulting in death or serious injury to another person; and
  - (ii) at the time when the collision occurred, the person had an alcohol level in his breath exceeding the prescribed limit; and
- it was not feasible for a constable to require the person to submit to a breath test at the scene of the collision or at the nearest police station.

[175] Jamaica- Road Traffic Act, 2018, Fifth Schedule, paragraph 4(6). It shall be a defence to a prosecution for an offence under sub-paragraph (5)(a) if the accused person satisfies the court that he was unable, on medical grounds, at the time he was required to do so to undergo a breath test or to submit to a breath analysis, as the case may be.

Punishment: A person who contravenes sub-paragraph 4(5)(a), is liable to a fine of $70,000.00 and, in default of payment, to one-month imprisonment. A person who contravenes sub- paragraph 4(5)(b), is liable to a fine of $40,000.00 and, in default of payment, to 14 days imprisonment: *Second Schedule;*

- As soon as practicable after a person has submitted to a breath analysis, the member of the Constabulary Force operating the breath analyzing instrument shall deliver to that person a statement in writing signed by that member specifying the:
    - Concentration of alcohol determined by the analysis to be present in that person's breath and expressed in microgrammes of alcohol in 100 millilitres of breath: and *para. 4(7)(a);*
    - Time of day and the day on which the breath analysis was completed: *para. 4(7)(b).*

Considerations of evidence in relation to breath analysis that shall be taken by a magistrate in proceedings for an offence under paras. 2 and 3.

- In proceedings for an offence under *paras. 2, 3 or 4:*
    - Evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analyzing instrument operated by the member of the Constabulary Force authorized in that behalf under sub-paragraph (2): and *para. 4(8)(a);*
    - The concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the breath of the accused at the time of the occurrence of the event mentioned in *para. 2(1)(a),* unless the accused proves that the concentration of alcohol in his breath at that time did not exceed the prescribed limit: *para. 4(8)(b);*
- In proceedings for an offence under *para. 3,* a certificate purporting to be signed by a member of the Constabulary Force certifying that:
    - He is authorized by the Minister with responsibility for national security to operate breath analyzing instruments: *para. 4(9)(a);*
    - A person named in the certificate submitted to a breath analysis: *para. 4(9)(b);*
    - The apparatus used by him to make the breath analysis was an approved breath analyzing instrument: *para. 4(9)(c);*
    - The breath analysis was made on the day and completed at the time stated in the certificate: *para. 4(9)(d);*
    - A concentration of alcohol determined by that breath analyzing instrument and expressed in microgrammes of alcohol in 100 millilitres of breath was present in the breath of the person named in the certificate on the day and at the time stated in the certificate: and *para. 4(9)(e);*

- A statement in writing required by sub-paragraph (7), was delivered in accordance with that sub-paragraph: *para. 4(9)(f);*

shall be prima facie evidence of the particulars certified in and by the certificate;

- In any proceedings for an offence under this paragraph, evidence of the condition of a breath analyzing instrument or the manner in which it was operated shall not be required, unless evidence that the instrument was not in proper condition or was not properly operated has been adduced: *para. 4(10).*

Laboratory test[176]

- Subject to sub-paragraphs (2) and (3), in the course of an investigation as to whether a person has committed an offence under *paras. 2 or 3,* a constable may require a person under investigation to provide a sample of blood for a laboratory test if the person is unable, by reason of his physical condition, to provide a sample of breath for a breath test: *para. 5(1);*
- A person shall not be required to provide a specimen of blood for a laboratory test under sub-paragraph (1), if he is at a hospital as a patient and the medical practitioner in immediate charge of his case is not first notified of the proposal to make the request or objects to the provision of a specimen on the ground that the request to provide such specimen could be prejudicial to the health, proper care, or treatment of that person: *para. 5(2);*
- A constable shall not require a person to submit a specimen of blood for a blood analysis if a breath analysis was carried out in respect of that person and the result is available: *para. 5(3);*
- Nothing in this paragraph shall affect the provisions of paragraph 8: *para.5(4);*
- For the purposes of this paragraph and *paras. 6* and *7,* where any person is required to provide a specimen of breath, such specimen shall be taken only:
  - With the consent of that person: *para. 5(5)(a);*
  - At a hospital: and *para. 5(5)(b);*
  - By a medical practitioner or a laboratory technologist registered under the Professions Supplementary to Medicine Act: *para. 5(5)(c).*

Refusal to consent to or providing of specimen

- Where any person who is under investigation in relation to an offence under *para. 2,* refuses to provide a sample of blood for a blood test when required to do so under *para. 5(1),* his refusal may, unless reasonable cause therefor is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence, with respect to his condition at the time when the offence was committed: *para. 6(1);*

[176] Jamaica- Road Traffic Act, 2018, Fifth Schedule, paragraph 8(2) provides that "laboratory test" means the analysis of a specimen provided for the purpose.

- For the purposes of sub-paragraph (1), a person shall not be treated as failing to provide a specimen unless he was requested to provide a specimen but refused to do so: *para. 6(2).*

Evidence in proceedings for an offence under paras. 2 and *3*

- For the purposes of any proceedings for an offence under *para. 3,* a certificate signed by an authorized analyst, certifying the proportion of alcohol found in a specimen identified by the certificate shall, subject to sub-paragraph (3), be evidence of the matters so certified and of the qualifications of the analyst: *para. 7(1);*
- For the purposes of any proceedings for an offence under *para. 2,* a certificate purporting to be signed by the medical practitioner that he took a specimen of blood from a person with that person's consent shall, subject to sub-paragraph (3), be evidence of the matters so certified and of the qualifications of the medical practitioner: *para. 7(2);*
- Sub-paragraphs (1) and (2), shall not apply to a certificate tendered on behalf of the prosecution:
    - Unless a copy has been served on the accused personally or his counsel not less than seven days before the hearing or trial: or *para. 7(3)(a);*
    - If the accused, not less than seven days before the hearing or trial, or within such further time as the court may in the circumstances of the case allow, has been served notice by the prosecution requiring the attendance at the hearing or trial of the person by whom the certificate was signed: *para. 7(3)(b);*
- Where, in proceedings for an offence under this schedule the accused, at the time a specimen of breath was taken from or provided by him, asked to be supplied with such a specimen, evidence of the proportion of alcohol found in the specimen shall not be admissible on behalf of the prosecution unless:
    - The specimen is either one of two taken or provided on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken or provided: and *para. 7(4)(a);*
    - The other specimen or part was supplied to the accused: *para. 7(4)(b).*

3. Reckless or dangerous driving - *Section 58*

- A person shall not drive a motor vehicle on a road recklessly or dangerously or without due regard for the safety of other persons or property: *Section 58(1);*
- In considering whether subsection (1), has been contravened, the court shall have regard to all the circumstances of the case, including:
    - The nature, condition and use of the road upon which the contravention is alleged to have been committed: and *Section 58(2)(a);*
    - The amount of traffic which, at the relevant time, was, or that could reasonably have been expected to be upon that road: *Section 58(2)(b);*

- A person who contravenes subsection (1) commits an offence: *Section 58(3);*

  Punishment: Liable to a fine $250,000.00 and, in default to three months imprisonment: *Second Schedule;*

  Endorsement: The court shall order particulars of any conviction for an offence under subsection (3), to be endorsed on the driver's licence held by the person convicted: *Section 58(4);*

  Disqualification: On a second or subsequent conviction for an offence under subsection (3), the court shall order that the offender be disqualified from holding or obtaining a driver's licence, unless the court, having regard to the lapse of time since the date of the last conviction or for any other special reason, thinks fit to order otherwise: *Section 58(5);*

- Subsection (5), shall not be construed as affecting the right of the court to exercise the power conferred by that subsection on a first conviction: *Section 58(6);*

- Where a person is convicted of aiding, abetting, counseling, procuring or inciting the commission of an offence under this section and it is proved that he was present in the motor vehicle at the time of the commission of the offence, the offence of which he is convicted shall, for the purpose of the provisions of Part IV relating to disqualification from holding or obtaining driver's licences, be deemed to be an offence within the meaning of *Section 35: Section 58(7).*

4. Careless driving - *Section 59*

   - Subject to subsection (2), a person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road commits an offence, whether or not such driving results in a collision with a pedestrian, another vehicle or with property: *Section 59(1);*

     Punishment: A person who contravenes this section shall be liable to either:

     i A fixed penalty fine:

       - of $11,000.00 where no collision occurs;
       - of $25,000.00 where a collision occurs: or *First Schedule.*

     ii A maximum penalty of:

       - a fine of $20,000.00 and, in default of payment, to seven days imprisonment where no collision occurs;
       - a fine of $500,000.00 and, in default of payment, to six months imprisonment where collision occurs: *Second Schedule;*

     Disqualification: A first or second conviction for an offence under this section shall not render the offender liable to be disqualified from holding or obtaining a driver's licence: *Section 59(2).*

Power to proceed on charge of careless driving on hearing of charge of reckless or dangerous driving

- Subsections (2) and (3), shall apply where a person is charged before a court of summary jurisdiction with an offence under *Section 58,* and the court is of the opinion that the offence is not proved: *Section 62(1);*
- The court may, at any time during the hearing or immediately after the hearing, without prejudice to any other powers possessed by the court, direct or allow a charge for an offence under *Section 59,* (careless driving) to be preferred forthwith against the accused person and thereupon proceed with that charge: *Section 62(2);*
- Where the court takes action under subsection (2):
  - The accused person or his attorney-at-law shall be informed of the new charge and be given an opportunity, whether by way of cross-examining any witness whose evidence has already been given against the accused person or otherwise, of answering the new charge: and *Section 62(3)(a);*
  - The court shall adjourn the hearing if it considers that the accused person is prejudiced in his defense by reason of the new charge being so preferred: *Section 62(3)(b);*
- Every accused person in whose case the requirements of *Section 65,* (restrictions on prosecution) have been satisfied or do not apply, as respects the alleged offence under *Section 58,* may be convicted on a charge preferred under subsection (2), notwithstanding that such requirements have not been satisfied as respects the alleged offence under *Section 59: Section 62(4).*

Restrictions on prosecutions

- Where a person is prosecuted for an offence under *Sections 58, 59, or 60,* the person shall not be convicted, unless:
  - The person was warned after the person committed the alleged offence that the person may be prosecuted for the offence: *Section 65(1)(a);*
  - A summons was served on the person within 14 days of the commission of the offence: or *Section 65(1)(b);*
  - Within 14 days after the offence was committed, a notice of the intended prosecution (specifying the nature of the alleged offence and the time and place where it is alleged to have been committed), was served on or sent by registered post to the person or to the person registered as the owner of the motor vehicle at the time of the commission of the offence: *Section 65(1)(c);*
- A failure to comply with the requirements of subsection (1), shall not prohibit the conviction of the accused in any case where the court is satisfied that:
  - Neither the name and place of residence of the accused nor the name and place of residence of the registered owner of the vehicle, could, with reasonable diligence, have been ascertained in time for a summons to be served or for a

notice to be served or sent in accordance with subsection (1)(c): or *Section 65(2)(a);*

- The accused, by his own conduct, contributed to the failure: *Section 65(2)(b);*

- The requirements of this section shall in every case be deemed to have been complied with, unless the contrary is proved: *Section 65(3).*

5. Duty to give particulars and place of residence and power of arrest in certain cases - *Section 64*

- A driver of a motor vehicle who is alleged to have committed an offence under this Act, as to reckless or dangerous driving or careless driving, and who refuses, upon being so required by any person having reasonable ground for so requiring, to produce his driver's licence or give his name, date of birth and place of residence or gives a false name, date of birth or place of residence, commits an offence: *Section 64(1);*

  Punishment: Liable to a fine of $50,000.00 and, in default of payment, to 14 days imprisonment: *Second Schedule;*

- Any constable in uniform or on showing his authority as a constable may arrest, without warrant, the driver of any motor vehicle who within the view of the constable commits any offence under this Act as to reckless or dangerous driving or careless driving, unless the driver either gives his name, date of birth and place of residence or produces his driver's licence for examination and the constable is satisfied as to the identity of the driver of the motor vehicle: *Section 64(2).*

6. Racing, sports and trial of speed on roads - *Section 92*

- A person commits an offence if the person promotes, organizes or takes part in any race, sporting event or trial of speed on a road, without the prior written consent of the Road Authority; and where the race, sporting event or trial of speed[177] will take place within the area of jurisdiction of any Local Authority, the prior written consent of the Local Authority shall also be obtained: *Section 92(1);*

  Punishment: Any person who contravenes subsection (1), shall be liable to a fine $100,000.00 and, in default of payment, to one-month imprisonment: *Second Schedule;*

[177] Jamaica- Road Traffic Act, 2018, section 92(6). For the purposes of this section, a race, sporting event or trial of speed includes any:
- race, speed trial, reliability trial, hill climbing competition or any sporting event using the roads; or
- other activity which may:
  (i) constitute a source of danger to traffic; or
  (ii) impede or disrupt the normal flow of traffic.

- In granting consent under subsection (1), the Road Authority or the Local Authority, as the case may be, may:
    - In addition to any requirement prescribed in this Act or the regulations, impose such further conditions as it deems expedient: *Section 92(2)(a);*
    - Exempt any person concerned with the race, sporting event or trial of speed, for the duration of the race, event or trial, from any:
        i provisions of this Act regarding any speed limit or determine another speed limit for the road concerned: *Section 92(2)(b)(i);*
        ii other provision of this Act or the regulations: and *Section 92(2)(b)(ii);*
    - Levy fees for defraying the expenses incurred by the Road Authority or Local Authority, as the case may be, in connection with the race, sporting event or trial of speed: *Section 92(2)(c);*
- Any consent granted in terms of subsection (1), may be withdrawn at any time in the interest of public safety: *Section 92(3).*

7. Taking and driving away motor without the consent of the owner or other lawful authority - *Section 78*
    - Subject to subsection (2), a person who takes and drives away a motor vehicle without having the consent of the owner or other lawful authority commits an offence triable summarily or on indictment in a Parish Court or an indictment in the Supreme Court: *Section 78(1);*

      Punishment: Any person who contravenes subsection (1), shall be liable summarily or on indictment in a Parish Court, to a fine of $100,000.00 and, in default of payment, to two months imprisonment: *Second Schedule;*
    - If the court is satisfied that the accused acted in the reasonable belief that the owner would, in the circumstances of the case, have given his consent if he had been asked to consent, the accused shall not, without more, be liable to be convicted of the offence: *Section 78(2);*
    - In a trial for stealing a motor vehicle, if the court is of the opinion or the court is satisfied that the accused is not guilty of stealing the motor vehicle but is guilty of an offence under this section, the court may find him guilty of an offence under this section and, the accused shall be liable to be punished accordingly: *Section 78(3).*

8. Duty to give information as to identity of driver, etc., in certain cases - *Section 69*
    - The owner of a motor vehicle shall:
        - Satisfy himself as to the identity of every person who the owner authorizes to drive the motor vehicle: and *Section 69(1)(a);*
        - Satisfy himself that the person authorized to drive the motor vehicle:
            i is licenced to drive a motor vehicle of the category in which the motor vehicle is registered: and *Section 69(1)(b)(i);*

ii resides at the address specified on his licence or, if the person no longer resides at that address, his current address: *Section 69(1)(b)(ii);*

- Where the driver or operator of a vehicle is alleged to have committed an offence under this Act:
  - The owner or operator of the vehicle shall give such information as to the identity of the driver or operator:
    i as is requested by any member of the Constabulary Force: or *Section 69(2)(a)(i);*
    ii in the case of an offence under *Section 85,* as the Local Authority having power to institute proceedings for the offence, or any person acting on their behalf, may require: *Section 69(2)(a)(ii);*
  - The powers conferred under *paras. (a)(i)* and *(ii),* may be exercised in relation to any other person who shall, if required as specified in that paragraph, give such information which may lead to the identification of the driver or operator as the person may be able to give: *Section 69(2)(b);*
- A person who contravenes:
  - Subsection (1), commits an offence: *Section 69(3)(a);*
  - Subsection (2)(a), commits an offence, unless he shows to the satisfaction of the court that he did not know and could not, with reasonable diligence, have ascertained the identity of the driver or operator of the vehicle: or *Section 69(3)(b);*
  - Subsection (2)(b), commits an offence: *Section 69(3)(c);*

Punishment: Liable to a fine of $20,000.00 and, in default of payment, to seven days imprisonment: *Second Schedule.*

9. Duty to stop in case of collision - *Section 70*

- Subject to subsection (2), where a collision occurs resulting in injury to any person or animal[178] or damage to any vehicle, property or the road infrastructure, the driver of the motor vehicle involved in the collision shall stop and, if required so to do by any person having reasonable grounds for so requiring, give:
  - His name and place of residence: *Section 70(1)(a);*
  - The name and place of residence of the owner of the motor vehicle: *Section 70(1)(b);*
  - The registration numbers of the motor vehicle involved in the collision: and *Section 70(1)(c);*
  - Proof of motor vehicle insurance in respect of that motor vehicle in accordance with the *Motor Vehicles Insurance (Third Party Risks) Act: Section 70(1)(d);*

[178] Jamaica- Road Traffic Act, 2018, section 70(4)(a) provides that "animal" includes any horse, cattle, donkey, mule, sheep, pig or goat.

- Where, after a collision, the driver of the motor vehicle for any reason does not give his name and place of residence to any person as mentioned, the driver shall report the collision at the nearest police station or to a constable as soon as is reasonably practicable, and in any case, within twenty-four hours of the occurrence of the collision: *Section 70(2);*
- A person who contravenes subsections (1) or (2), commits an offence: *Section 70(3);*

  Punishment: Liable to a fine of $20,000.00 and, in default of payment, to seven days imprisonment: *Second Schedule.*

10. Driving without a valid driver's licence - *Section 20*

- A person shall not drive a motor vehicle on a road unless the person is the holder of a permit or driver's licence: *Section 20(1);*

  Punishment: Any person who contravenes subsection (1), commits an offence and shall be liable to either:

  i a fixed penalty fine of $40,000.00: or *First Schedule;*

  ii a maximum penalty of $80,000.00 and, in default of payment, to 10 days imprisonment: *Second Schedule;*

- A person shall not employ or permit another person to drive a motor vehicle on a road, unless the person so employed or permitted to drive is the holder of a driver's licence entitling that person to drive the motor vehicle: *Section 20(2);*

  Punishment: A person who contravenes subsection (2), commits an offence and shall be liable to either:

  i a fixed penalty fine of $15,000.00: or *First Schedule;*

  ii a maximum penalty of $30,000.00 and, in default of payment, to 10 days imprisonment: *Second Schedule;*

- Every holder of a permit or driver's licence who is:
  - Driving a motor vehicle on a road: *Section 20(3)(a);*
  - Accompanying another person who is learning to drive a motor vehicle on a road: or *Section 20(3)(b);*
  - Learning to drive a motor vehicle on a road: *Section 20(3)(c);*

  shall have the permit or licence in the motor vehicle and on being so required by a constable in uniform or who shows his identifying documents as a constable, produce his permit or driver's licence, or such other document constituting evidence thereof as may be prescribed, for examination by the constable;

  Punishment: A person who contravenes subsection (3), commits an offence and shall be liable to either:

  i a fixed penalty fine of $2,000.00: or *First Schedule;*

  ii a maximum penalty of $10,000.00 and, in default of payment, to three days imprisonment: *Second Schedule.*

11. Driving without a seatbelt - *Section 72*

- Subject to subsection (2), a person shall wear a seat belt if the person:
  - Drives a motor vehicle specified in *paras. (b), (c)* or *(d),* of *Section 6(1),*[179] on any road: *Section 72(1)(a);*
  - Rides in a motor vehicle specified in *paras. (c) or (d),* of *Section 6(1),* on any road: or *Section 72(1)(b);*
  - Rides in the front seat of a motor truck as specified in *para. (b),* of *Section 6(1),* on any road[180]: *Section 72(1)(c);*
- The driver of a motor vehicle shall cause every passenger who is being conveyed in the motor vehicle to wear a seat belt: *Section 72(3);*
- A person who contravenes subsections (1) or (3), commits an offence: *Section 72(4);*

  Punishment: Liable to either:

  i a fixed penalty fine of $2,000.00: or *First Schedule;*

  ii a maximum penalty of $5,000.00 and, in default of payment, to three days imprisonment, where a person is guilty of offence under subsection (1); and a maximum penalty of $5,000.00 and, in default of payment, to 15 days imprisonment where a person is guilty of offence under subsection (3): *Second Schedule.*

[179] Jamaica- Road Traffic Act, 2018, section 6(1)(b), (c)&(d). Motor vehicles shall be classified, for the purposes of this Act and the regulations, as the following:
- motor trucks, that is to say, motor vehicles (not being classified under this section as motor cars or motor cycles) which are constructed for the purpose of carrying a load or passengers or both;
- motor cars, that is to say, motor vehicles (not being classified under this section as motor trucks or motor cycles) which are:
  (i) constructed primarily for the carriage of persons;
  (ii) adapted to carry not more than seven passengers, exclusive of the driver;
- private motor vehicles, that is to say, motor vehicles whether "motor trucks" or "motor cars" within the meaning of this section (not being commercial motor vehicles) constructed primarily for the carriage of persons and their effects and used exclusively for personal purposes.

[180] Jamaica- Road Traffic Act, 2018, section 72(2). Subsection (1) shall not apply to:
- a child who wears or is conveyed in a child restraint system;
- the driver of a motor vehicle while performing a maneuver which includes reversing;
- any person who holds a valid certificate of exemption prescribed by the Minister and signed by a registered medical practitioner as defined under section 2 of the Medical Act;
- a person riding in a motor vehicle while it is being used for fire brigade purposes in response to a fire alarm; or
- a person driving or riding on a motor vehicle constructed or adapted for the delivery of goods or mail, as the case may be, while engaged in the delivery to, or collection of such goods or mail from locations not further than sixty metres from each other.

12. Using of electronic communication devices while driving - *Section 121*

- A person shall not drive or operate a vehicle on a road while using[181] an electronic communication device,[182] except where used in hands-free mode: *Section 121(1);*
- A person who is in or on a vehicle in the capacity as an instructor shall not hold or use an electronic communication device while the person is instructing or accompanying the holder of a permit: *Section 121(2);*
- A person shall not use a wireless communication device[183] or an electronic communication device to view, send or compose an electronic message while driving a motor vehicle on a road: *Section 121(3);*
- A person who contravenes subsections (1), (2) or (3) commits an offence[184]: *Section 121(4);*

  Punishment: Liable to either:

  i a fixed penalty fine of $10,000.00: or *First Schedule;*

  ii a maximum penalty of $30,000.00 and, in default of payment, to 10 days imprisonment: *Second Schedule;*

- Subsection (1), shall not apply to a person driving or operating a motor vehicle while the vehicle is being used as an emergency vehicle: *Section 121(5);*
- In this section, a mobile telephone or other device is to be treated as being used in hands-free mode if it is not held or required to be held in one hand or both hands or with any other part of the body or otherwise at some point during the course of making or receiving a call or performing any other communication function: *Section 121(8).*

[181] Jamaica- Road Traffic Act, 2018, section 121 (7). "use", in relation to an electronic communication device, includes one or more of the following actions— (a) holding the device in a position in which it may be used; (b) operating one or more of the device's functions; (c) communicating orally by means of the device with another person or another device; (d) taking a prescribed action in relation to an electronic communication device.

[182] Jamaica- Road Traffic Act, 2018, section 121 (7) provides that "electronic communication device" means a mobile telephone or other hand-held electronic device that includes a telephone or other telecommunication function, other than a two-way radio.

Jamaica- Road Traffic Act, 2018, section 121 (7) provides that "telecommunication function" includes— (a) sending or receiving oral of written messages; (b) sending or receiving facsimile transmission; (c) sending or receiving electronic mail or other text based messages; (d) sending or receiving still or moving images; and (e) providing access to the internet;

[183] Jamaica- Road Traffic Act, 2018, section 121 (7) provides that "wireless communication device" means a device used to transfer information over a distance without the use of electrical conductors or wires.

[184] Jamaica- Road Traffic Act, 2018, section 121 (6). Subsections (1), (2) and (3) shall not apply where the vehicle is:

- off the road or is lawfully parked on the road;
- not in motion; and
- not impeding traffic.

13. Using of electronic visual devices while driving - *Section 122*

- Subject to subsection (2), a person shall not drive or operate a motor vehicle on a road while using an electronic visual device,[185] whether or not the electronic visual device is attached to the motor vehicle or is a part of a fixture in the vehicle[186]: *Section 122(1);*
- A person who contravenes subsection (1), commits an offence: *Section 122(3);*

  Punishment: Liable to either:

  i a fixed penalty fine of $10,000.00: or *First Schedule;*

  ii a maximum penalty of $30,000.00 and, in default of payment, to 10 days imprisonment: *Second Schedule.*

General provision on disqualification

- A court before which a person is convicted of any offence in connection with the driving of a motor vehicle:
  - May, in addition to any other penalty provided for the offence: and *Section 35(1)(a);*
  - Shall, where so required by this Act: *Section 35(1)(b);*

  order that the convicted person be disqualified from holding or obtaining a permit or driver's licence (hereinafter called an "order for disqualification");
- A person who, by virtue of an order of a court under this Part, is disqualified from holding or obtaining a permit or driver's licence, may appeal against the order in the same manner as against a conviction and the court making the order may, if it thinks fit, pending the appeal, suspend the operation of the order: *Section 35(7).*

Provision as to endorsement

- An order that the particulars of a conviction, or of a disqualification, be endorsed on a permit or driver's licence held by the convicted person shall operate so that (whether the convicted person is at the time the holder of the permit or driver's licence or not) any permit or driver's licence that he may then hold, or subsequently obtain, shall be so endorsed until he becomes entitled under this section to have a permit or driver's licence granted to him free from endorsement: *Section 37.*

[185] Jamaica- Road Traffic Act, 2018, section 122 (4). In subsection (1) "electronic visual device" means a device that produces images on a screen

[186] Jamaica- Road Traffic Act, 2018, section 122 (2). Subsection (1) shall not apply to the person who uses a navigation device, a radio or a device that produces rearview images while reversing.

Offences which a Parish Court judge does not have jurisdiction to try

The Parish Court judge does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Causing death by reckless or dangerous driving - *Section 60;*
- Using vehicle without consent of the owner (on indictment in the Supreme Court; Triable either way in Parish Court) - *Section 78.*

MONTSERRAT

The main legislation or "principal Act" is the *Road Traffic Act, Chap. 7.06.* For the purpose of detailing road traffic legislation within this chapter for Montserrat, the *Road Traffic Act, Chap. 7.06, Revised Edition 2019,* which includes Subsidiary and Related Legislation, is utilised.

Fixed penalty

Fixed penalties are specified in the *Road Traffic (Special Provisions) Act, 3 of 1995* and *9 of 2011,* which are contained in the *Road Traffic Act, Chap. 7.06, Revised Edition as at 2019.*

- The various acts set out in Column I of Schedule I, shall be offences under this Act, punishable on conviction by the corresponding penalties set out in Column II of that Schedule: *Section 2;*
- Where an offence created by *Section 2,* or listed in Column I of Schedule II, to this Act has been committed, a member of the Police Service may give to the driver of the motor vehicle in respect of which the offence was committed a notice charging him with the commission of that offence and requiring him either to pay the penalty set out in the corresponding entry in Column II of Schedule I or Schedule II, within the time specified in the notice or to appear at the court specified in the notice on the day and hour stipulated therein for the purpose of answering the charge: *Section 3(1);*
- Where under subsection (1), the driver of the motor vehicle is not present at the place of the commission of the offence a member of the Police Service may affix the notice to such part of the vehicle as may readily be seen by a driver of that vehicle: *Section 3(2);*
- Where a notice has been affixed to a motor vehicle under subsection (2), it is deemed to have been given to the person liable for the offence, and notwithstanding any law to the contrary, the registered owner of the vehicle shall, for the purposes of the proceedings instituted by the notice, be the person liable for the offence: *Section 3(3);*
- A notice under *Sections 3(1) and (2),* shall be given or affixed at the time of the commission of the offence, and where the circumstances render it impracticable so to do, any charge or notice to be issued in respect of that offence shall be issued in accordance with the *Road Traffic Act: Section 4;*

- Where a member of the Police Service gives a notice under *Section 3(1),* or affixes a notice under *Section 3(2),* he shall send a copy of the notice to the magistrate and to the registered owner of the motor vehicle: *Section 5(1);*
- A copy of a notice under subsection (1), shall be deemed to be a complaint laid before a magistrate for the purposes of *Section 25,* of the *Criminal Procedure Code: Section 5(2);*
- The driver or registered owner of a motor vehicle on whom notice has been served under *Section 3,* shall, if he wishes to plead guilty to the charge, pay the penalty in accordance with the notice: *Section 7(1);*
- A penalty is payable within 10 days of the date of the notice: *Section 7(2);*
- Payment of a penalty shall be made to a clerk of the Magistrate's Court and shall be dealt with in the same manner as the payment of a fine imposed by a magistrate for the commission of an offence: *Section 7(3);*
- Where a penalty is duly paid in accordance with the notice the magistrate shall enter conviction and the proceedings instituted by the notice shall be deemed complete: *Section 7(4);*
- Where a penalty is not paid within the time specified in the notice, the magistrate may issue a summons in accordance with *Section 27,* of the *Criminal Procedure Code* and proceedings in respect of the offence shall proceed in the manner prescribed by that enactment: *Section 8(1);*
- Notwithstanding anything in the *Road Traffic Act,* where a person is issued with a notice under this Act and elects to answer the charge in court, he shall, if convicted of the offence charged, be liable to a fine of not less than the amount for which he is liable under this Act in respect of that offence: *Section 8(2);*
- Where, in proceedings for an offence in respect of which a notice was affixed under *Section 3(2),* the magistrate is satisfied that the registered owner of the motor vehicle had not paid the penalty in accordance with *Section 7(1)*, for the reason that he was unaware during the relevant period[187] of the existence of the notice, the magistrate may order that the penalty contained in the notice be paid within 10 days of that order: *Section 8(3).*

Some of these offences include:

- Failure to stop motor vehicle on request of a police officer contrary to *Regulation 24(14);*
- Overcrowding contrary to *Regulation 24(18);*
- Driving, or permitting a person to drive an unlicensed vehicle;
- Failure to stop at a stop sign or stop line;
- Failure to comply with the directions of a halt sign, or a slow sign;
- Failure to comply with a speed limit sign.

[187] Montserrat- Road Traffic (Special Provisions) Act 3 of 1995 and 9 of 2011, section 8(4). For the purpose of subsection (3), "relevant period" means a period of ten days from the date a notice is affixed to a vehicle under section 3(2).

Driver's Offences Book

Montserrat does not operate a demerit point system, however, *Section 64,* of the principal Act states that the particulars of every conviction for an offence under this Act including the name of the offender, and the number of his licence, if any, shall be furnished by the clerk or other officer of the court in which the conviction is recorded to the Traffic Commissioner who shall enter the same in a book to be called the Drivers' Offences Book.

Offences for which a magistrate has jurisdiction

Road Traffic Act, Chap. 7.06, Revised Edition 2019:

1. Speeding - *Section 48*

    - No person shall drive a motor vehicle of such class or description as is specified in the Second Schedule at a speed greater than the speed therein specified as the maximum speed at which a vehicle of that class or description may be driven on a road or any portion thereof which is declared to be within a speed limit area in the manner hereinafter provided or otherwise than as specified in the said Schedule. Any person who acts in contravention of this subsection shall be guilty of an offence: *Section 48(1);*
    - A person charged under this section with the offence of driving a motor vehicle of such class or description on a road at a speed greater than the maximum speed allowed in the case of a vehicle of that class or description travelling on a road as defined in subsection (1), shall not be liable to be convicted of the offence solely on the evidence of one witness to the effect that in the opinion of the witness the person charged was driving the vehicle at such greater speed: *Section 48(2);*
    - Any person being the owner of a motor vehicle, who aids, abets, counsels or procures any person who is employed by him to drive such motor vehicle on such a road to commit an offence under this section shall be guilty of an offence: *Section 48(3);*
    - Any person who drives a motor vehicle on a road at a speed exceeding a speed limit imposed by or under this section; or is guilty of an offence under subsection (3): *Section 48(7);*

      Punishment: First conviction - Liable on summary conviction to a penalty of $750.00 or to imprisonment for a term of four months: *Section 48(7);*

      Disqualification: Liable in the case of a second or subsequent conviction to be disqualified for holding or obtaining a driver's licence for such period as the court shall think fit: *Section 48 (7).*

Speed-measuring and time-measuring devices - Section 49

- In any proceedings for an offence under *Section 48,* or any other law, if the speed at which a vehicle travelled on the occasion of the alleged offence is relevant, evidence of the speed of the vehicle, as indicated or determined on that occasion by means of a prescribed speed-measuring or time-measuring device, is admissible as evidence of the speed of the vehicle on that occasion if the prescribed speed-measuring or time-measuring device is used:

- In the prescribed manner: and *Section 49(a);*
- In accordance with the prescribed conditions: *Section 49(b).*

2. Driving under the influence of liquor or drugs - *Section 50*

- Subject to *Section 55,* a person who when driving or attempting to drive, or when in charge of, a motor vehicle on a road is under the influence of drink or drug to such an extent as to be incapable of having proper control of the vehicle shall be liable to summary conviction: *Section 50(1);*
- Any police officer may arrest without warrant any person committing an offence under this section: *Section 50(3);*

  Punishment: First conviction - Liable on summary conviction to a penalty of $240.00 or to imprisonment for a term of four months. In the case of a second or subsequent conviction either to a penalty of $480.00 or to imprisonment for a term of six months or to both such penalty and imprisonment: *Section 50(1);*

  Disqualification: A person convicted of a second offence under this section, shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of 12 months from the date of the conviction for holding or obtaining a driver's licence, and on a third conviction for a like offence he shall be permanently disqualified for holding a driver's licence: *Section 50(2).*

3. Reckless or dangerous driving - *Section 51*

- Any person who drives a vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, commits an offence: *Section 51(1);*

  Punishment: First conviction - Liable on summary conviction to a penalty of $1,500.00 or to imprisonment for a term of four months, and in the case of a second or subsequent conviction either to a penalty of $2,000 or to imprisonment for a term of six months or to both such penalty and imprisonment: *Section 51(1)(a);*

  Disqualification: A person convicted of a second offence under this section shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified for holding or obtaining a driver's licence for a period of six months from the date of the conviction and on a third conviction for a like offence he shall be permanently disqualified for holding or obtaining a driver's licence: *Section 51(2).*

Power to proceed on charge for careless driving on hearing of charge under Section 51

- Where a person is charged summarily before a magistrate with an offence under *Section 51,* (which relates to reckless or dangerous driving) and the magistrate is of the opinion that the offence is not proved, then at any time during the hearing or immediately thereafter, the magistrate may, without prejudice to any other powers possessed by him, direct or allow a charge for an offence under *Section 53,* (which relates to careless driving) to be preferred immediately against the defendant and may thereupon proceed with that charge: *Section 57;*
- The procedure that shall be followed for the above include:
  - The defendant or his solicitor or counsel shall be informed of the new charge and be given an opportunity, whether by way of cross-examining any witness whose evidence has already been given against the defendant or otherwise, of answering the new charge;
  - The magistrate shall, if he considers that the defendant is prejudiced in his defence by reason of the new charge being preferred, adjourn the hearing: *Section 57.*

4. Careless driving - *Section 53*

- A person who drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road, commits an offence: *Section 53;*

  Punishment: First conviction- Liable on summary conviction to a fine of $500.00 and on a second or subsequent conviction to a fine of $1,500.00: *Section 53;*

  Disqualification: Liable on a second or subsequent conviction to disqualification from holding or obtaining a driver's licence for a period not exceeding one year: *Section 53.*

5. Racing and speed trials - *Section 54*

- Subject to *Section 55,*[188] a person who promotes or takes part in a race or trial of speed between motor vehicles on a road commits an offence: *Section 54(1);*

  Punishment: First conviction - Liable on summary conviction to a penalty of $500.00 or to imprisonment for a term of four months, or to both such penalty and imprisonment and on a second or subsequent conviction to a penalty of $1,000.00: *Section 54(1);*

  Disqualification: A person convicted of an offence under this section shall, unless the court for a special reason thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for holding or obtaining a driver's licence for a period of 12 months from the date of the conviction: *Section 54(2).*

[188] Section 51A of the Act inserted by Road Traffic (Amendment) Acts, No. 5 of 2014 is renumbered section 55 in the Road Traffic Act, Cap. 7.06, Revised Edition 2019.

Designation of place for racing or speed trials

- The Governor acting on the advice of Cabinet may, by order,[189] designate a place to be used for a race or speed trial: *Section 55(1);*
- An order under subsection (1), shall specify the:
  - Place to which the order applies: *Section 55(2)(a);*
  - Persons who are permitted to participate in the race or speed trial: *Section 55(2)(b);*
  - Motor vehicles which may be used in the race or speed trial: *Section 55(2)(c);*
  - Manner in which the race or speed trial is to be conducted: and *Section 55(2)(d);*
  - Duration of the order: *Section 55(2)(e);*
- A person who is not permitted to participate in a race or speed trial under subsection (2), shall not use or enter a place designated for a race or speed trial: *Section 55(4);*

  Punishment: A person who contravenes subsection (4), commits an offence and is liable to two months imprisonment or a fine of $500.00: *Section 55(5);*
- A person who drives a motor vehicle in a place designated for a race or speed trial under subsection (1), without due care and attention or without reasonable consideration for other persons using the place commits a summary offence: *Section 55(7);*

  Punishment: First offence - Liable to three months imprisonment or a fine of $500.00 and, for a subsequent offence, to three months imprisonment or a fine of $1,500.00: *Section 55(7);*
- A person who drives or attempts to drive, a motor vehicle in a place designated for race or speed trial under the influence of drink or drugs to such an extent as to be incapable of having proper control of the motor vehicle commits an offence: *Section 55(8);*
- A person who drives a motor vehicle in a place designated for a race or speed trial, recklessly or in a manner likely to cause danger:
  - To another person who is participating in the race or speed trial: or *Section 55(9)(a);*
  - To a spectator at the race or speed trial: *Section 55(9)(b);*

  having regard to all the circumstances of the case, including the nature, condition and use of the designated place, commits an offence;

  Punishment: A person who commits an offence under subsections (8) or (9), is liable on summary conviction, to four months imprisonment or to a fine of $1,500.00 or to both: *Section 55(10)(a).*

[189] Montserrat- Road Traffic Act, Cap. 7.06, Revised Edition 2019, section 55(6). Sections 48 and 50 do not apply to a person to which the Order applies.

Warning of intended prosecution - Section 58

- Where a person is prosecuted for an offence under any of the provisions of this Part relating respectively to the maximum speed at which motor vehicles may be driven, to reckless or dangerous driving, and to careless driving, he shall not be convicted unless either:
    - He was warned at the time the offence was committed that the question of prosecuting him for an offence under someone or other of the provisions aforesaid would be taken into consideration: or *Section 58(a);*
    - Within 14 days of the commission of the offence a summons for the offence was served on him: or *Section 58(b);*
    - Within the said 14 days a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence:

  Provided that:

    - Failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that:
        (a) neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid: or *Section 58(c)(i)(a);*
        (b) the accused by his own conduct contributed to the failure: *Section 58(c)(i)(b);*
    - The requirements of this section shall in every case be deemed to have been complied with unless the contrary is proved: *Section 58(c)(ii).*

6. Duty to give name and address and to stop

- If the driver of a motor vehicle who is alleged to have committed an offence under the foregoing provisions of this Act, as to reckless or dangerous driving or careless driving refuses, on being required by any police officer having reasonable grounds for so requiring, to give his name and address, or gives a false name and address, he shall be guilty of an offence: *Section 59(1);*
- Any police officer may arrest without warrant the driver of any motor vehicle who within his view commits any offence under the provisions of this Act as to reckless or dangerous driving or careless driving or racing on a road, unless the driver either gives his name and address or produces his driver's licence for examination: *Section 59(2);*
- Any person driving a motor vehicle on a road shall stop the vehicle on being so required by a police officer in uniform, and if he fails so to do he commits an offence: *Section 59(3);*

Punishment: Liable on summary conviction to a penalty of $250.00: *Section 59(3).*

7. Driving without a licence - *Section 42*

- Any person who drives a motor vehicle on any road shall have, either on his person or in the motor vehicle, his driver's licence: *Section 42(1);*
- The driver of a motor vehicle shall, on being required by any police officer, produce his driver's licence for examination so as to enable the police officer to ascertain the name and the address of the holder of the licence and the date of issue of the licence: *Section 42(2);*
- A person shall not be charged under subsection (3), if the person produces the licence in person within 48 hours, from the time production was required, at a police station to which he is directed: *Section 42(4);*

  Punishment: Any person who fails to comply with subsection (2), commits an offence and shall be liable on summary conviction to a fine of $250.00: *Section 42(3).*

General provision on disqualification

- The court before which a person is convicted of any offence in connection with the driving of a motor vehicle may, in addition to any other penalty provided for such offence, and shall, where so required by this Act, order that the offender be disqualified for a stated period or permanently from holding or obtaining a driver's licence either generally or limited to the driving of a motor vehicle of any particular class or description; and if the offender holds a driver's licence the court shall endorse upon the licence particulars of the conviction[190]: *Section 65(1);*
- A person who by virtue of an order of a court under this section is disqualified for holding or obtaining a driver's licence may appeal against the order in the same manner as against a conviction, and the court may, if it thinks fit, pending the appeal, suspend the operation of the order: *Section 65(4).*

General provision as to endorsements

- An order that the particulars of any conviction or of any disqualification be endorsed on any driver's licence held by the offender shall, whether the offender is at the time the holder of the licence or not, operate as an order that any licence he may then hold or may subsequently obtain shall be so endorsed until he becomes entitled under this section to have a licence issued to him free from endorsement: *Section 68(1).*

[190] Montserrat- Road Traffic Act, Cap. 7.06 Revised Edition 2019, section 66 provides for the temporary suspension of licence pending determination of charges.

Offences which a magistrate does not have jurisdiction to try

The magistrate does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Reckless or dangerous driving (on indictment) - *Section 51;*
- Causing death by reckless or dangerous driving of motor vehicles - *Section 52.*

ST. KITTS AND NEVIS

The main legislation or "principal act" is the *Vehicles and Road Traffic Act, Chap. 15:06.* For the purpose of detailing road traffic legislation within this chapter for St. Kitts and Nevis, the *Vehicles and Road Traffic Act, Chap. 15:06, Revised Edition 2017,* which includes subsidiary legislation is utilised. This Act must be read in conjunction with the *Vehicles and Road Traffic (Amendment) Act, No. 1 of 2018.*

Fixed penalty

- Notwithstanding any provisions in any law, where an offence as listed in the Third Schedule to this Act has been or is being committed in any place, it shall be lawful for a member of the Police Force to give to the driver a notice in the form specified in the Fifth Schedule to this Act charging him or her with the commission of such offence and notifying him or her that a complaint will be made against him or her in respect thereof and requiring him or her either to pay the fixed penalty within the time specified in the notice or to appear at the court specified in the notice on the day and at the hour stated therein to answer the said complaint: *Section 83(1);*
- Subject to this section, where a member of the Police Force finds a vehicle on any occasion and has reason to believe that an offence is being or has been committed in respect of that vehicle, he or she may affix a notice to any part of the vehicle where the notice may easily be seen. A notice so affixed shall for the purposes of this section be deemed to have been given to the person liable for the offence, and notwithstanding any provisions or law to the contrary, the registered owner of such vehicle shall, for the purposes of the proceedings instituted by the notice, be presumed to be the person liable for the offence: *Section 83(2);*
- The police officer shall send to the magistrate for the Magisterial District in which the offence is alleged to have been committed, a duplicate of the notice, which duplicate shall be deemed to be a complaint laid before the magistrate and a summons issued by the magistrate for the purposes of the *Magistrate's Code of Procedure Act: Section 83(4);*
- The time within which the fixed penalty shall be payable shall be 10 days from the date of the notice, and where payment reaches the clerk of the magistrate after that time, it shall not be receivable and shall be returned to the sender: *Section 85(2);*

- Where the fixed penalty is not paid within the time specified in the notice, proceedings in respect of the offence specified in the notice shall proceed in the manner prescribed by the *Magistrate's Code of Procedure Act: Section 89.*

Driver's Offences Book

St. Kitts and Nevis does not operate a demerit point system, however, *Section 67,* of the principal Act states that the particulars of every conviction for an offence under this Act including the name of the offender, and the number of his or her licence, if any, shall be furnished by the clerk or other officer of the court in which the conviction is recorded to the Licensing Authority who shall enter the same in a book to be called the Drivers' Offences Book.

Offences which a magistrate has jurisdiction to try

1. Reckless or dangerous driving - *Section 48*

   - Any person who drives a motor vehicle on the road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at that time, or which might reasonably be expected to be, on the road, shall be liable to conviction for an offence: *Section 48(1);*

     Punishment: First conviction- Liable on summary conviction, to a fine not exceeding four thousand dollars or to imprisonment with or without hard labour for a term not exceeding four months. In the case of a second or subsequent conviction either to a fine not exceeding five thousand dollars or to imprisonment with or without hard labour for a term not exceeding six months or to both such fine and imprisonment: *Section 48(1)(a);*

     Disqualification: A person convicted of an offence under this section shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driver's licence for a period of one year from the date of the conviction or if there is an appeal against such conviction from the date on which the conviction is upheld and on a third conviction for a like offence he or she shall be permanently disqualified for holding or obtaining a driver's licence: *Section 48(2).*

2. Careless driving - *Section 49*

   - If any person drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road, he or she commits an offence;

     Punishment: Liable on summary conviction for a first conviction to a fine not exceeding two thousand dollars: *Section 49;*

     Disqualification: On a second or subsequent conviction for a like offence to be disqualified for holding or obtaining a driver's licence for such period as the dourt shall think fit: *Section 49;*

- In **Henderson v Licensing Authority KN [2003] CA 2,** the Court of Appeal reviewed the issue whether the magistrate exceeded her jurisdiction when imposing a period of disqualification for three years from holding or obtaining a driver's licence along with a fine of $1,000.00 where the defendant pleaded guilty to careless driving under *Section 53,* of the *Vehicles and Road Traffic Act, Chap. 270,* of the *Revised Edition, 1961.*

  Byron CJ (as he then was) in reviewing the context of the provisions that gave the magistrate the power to disqualify, stated *"One has to apply a purposive approach to the interpretation to this section. In any event, even if one uses the literal interpretation, the use of the phrase "like offence" does not connote the "same offence" or conviction of an offence under the same section. If that was the statutory intention it could quite easily have said that what was intended was on a second or subsequent conviction for careless driving or for a second or subsequent conviction for an offence under this section. In my view the magistrate was entitled to consider that a person convicted of careless driving who had previously been convicted of dangerous driving could be disqualified under this provision."*

3. Racing speed trials - *Section 51*

   - Any person who promotes or takes part in a race trial of speed between motor vehicles on a road shall be liable to summary conviction: *Section 51(1);*

     Punishment: Liable on summary conviction to fine not exceeding two thousand dollars or to imprisonment with or without hard labour, for a term not exceeding one year, or to both such fine and imprisonment: *Section 51(1);*

     Disqualification: A person convicted of an offence under this section shall, unless the court for special reason thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for holding or obtaining a driver's licence for a period of 12 months from the date of the conviction, or if there is an appeal against such conviction from the date on which the conviction is upheld: *Section 51(2).*

Power to proceed on charge for careless driving on hearing a charge under Section 49

- Where a person is charged summarily before a magistrate with an offence under *Section 48,* (which relates to reckless or dangerous driving) and the magistrate is of the opinion that the offence is not proved, then at any time during the hearing or immediately thereafter, the magistrate may, without prejudice to any other powers possessed by him or her, direct or allow a charge for an offence under *Section 49,* (which relates to careless driving) to be preferred forthwith against the defendant and may proceed with that charge: *Section 53;*
- The procedure that shall be followed for the above include:
  - The defendant or his or her solicitor or counsel shall be informed of the new charge and be given an opportunity, whether by way of cross-examining any witness whose evidence has already been given against the defendant or otherwise, of answering the new charge, and the magistrate considers shall adjourn the hearing: *Section 53.*

4. Driving in excess of speed limit - *Section 39*

- No person shall drive a motor vehicle of such class or description as is specified in the Second Schedule at a speed greater than the speed therein specified as the maximum speed at which a vehicle of that class or description may be driven on a particular class of road: *Section 39(1);*
- A person charged under this section with the offence of driving a motor vehicle of such class or description on a road at a speed greater than the maximum speed allowed in the case of a vehicle of that class or description travelling on a road of that class, shall not be liable to be convicted of the offence solely on the evidence of one witness to the effect that in the opinion of the witness the person charged was driving the vehicle at such greater speed: *Section 39(3);*

  Punishment: Any person who acts in contravention of the provisions of subsection (1), commits an offence and shall on summary conviction, be liable to a fine not exceeding two thousand dollars: *Section 39(2);*
- Any person being the owner of a motor vehicle, who aids, abets, counsels, or procures any person who is employed by him or her to drive such motor vehicle on a road to commit an offence under this section commits an offence: *Section 39(4);*

  Punishment: Liable on summary conviction, to a fine not exceeding two thousand dollars: *Section 39(4);*
- Any member of the Police Force may employ such scientific instruments, equipment or apparatus for the conduct of tests for the determination of the speed of any vehicle or in relation to any other matter: *Section 39(7).*

Bars to conviction

- Where a person is prosecuted for an offence under any of the provisions of this Part relating, respectively, to the maximum speed at which motor vehicles may be driven, to reckless or dangerous driving, and to careless driving, he or she shall not be convicted unless either, subject to subsection (2):
  - He or she was warned at the time the offence was committed that the question of prosecuting him or her for an offence under some one or other of the provisions aforesaid would be taken into consideration: *Section 54(1)(a);*
  - Within 21 days of the commission of the offence a summons for the offence was served on him or her: or *Section 54(1)(b);*
  - Within the said 21 days a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or her or to the person registered as the owner of the vehicle at the time of the commission of the offence: *Section 54(1)(c);*

- The failure to comply with any of the requirements specified in subsection (1), shall not be a bar to the conviction of the accused in any case where the court is satisfied that:
    - Neither the name and address of the accused nor the name and address of the registered owner of the vehicle could, with reasonable diligence, have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid: or *Section 54(2)(a);*
    - The accused by his or her own conduct contributed to the failure: *Section 54(2)(b);*
- The requirements of this section shall, in every case, be deemed to have been complied with unless the contrary is proved: *Section 54(3).*

5. Driving under the influence of liquor or drugs - *Section 40*

    - Any person who, when driving or attempting to drive, or when in charge of, a motor vehicle on a road is under the influence of drink or drug to such an extent as to be incapable of having proper control of the vehicle, shall be liable to summary conviction: *Section 40(1);*

      Punishment: First conviction - Liable on summary conviction to a fine not exceeding four thousand dollars or to imprisonment with or without hard labour for a term not exceeding four months. In the case of a second or subsequent conviction either to a fine not exceeding eight thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment: *Section 40(1);*

      Disqualification: A person convicted of an offence under this section shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of 12 months from the date of the conviction and if there is an appeal against the conviction from the date on which the conviction is upheld for holding or obtaining a driver's licence and on a second conviction for a like offence he or she shall be permanently disqualified from holding or obtaining a driver's licence: *Section 40(2).*

Evidence that may be taken into consideration by the magistrate under proceedings for offence under Section 40

In any proceeding for an offence under *Section 40:*

- The court shall, subject to *Section 45(4),* have regard to any evidence which may be given of the proportion or quantity of alcohol or any drug which was contained in the blood or present in the body of the accused, as ascertained by analysis of a specimen of blood taken from him or her with his or her consent by a medical practitioner, or of urine provided by him or her, at any material time: and *Section 42(1);*
- If it is proved that the accused, when so requested by a member of the Police Force in uniform at any such time, refused to consent to the taking of or to provide a specimen for analysis, his or her refusal may, unless reasonable cause

therefor is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence, with respect to his or her condition at that time: *Section 42(1)*.[191]

6. Driving or being in charge, with blood-alcohol concentration above the prescribed limit - *Section 41*

   - If a person:
     - Drives or attempts to drive a motor vehicle;
     - Is in charge of a motor vehicle;

     on a road, having consumed alcohol in such a quantity that the proportion thereof in his or her blood, as ascertained from a laboratory test for which he or she subsequently provides a specimen under *Section 44,* exceeds the prescribed limit at the time he or she provides the specimen, he or she commits an offence and is liable to summary conviction: *Section 41(1);*
   - A person shall not be convicted under this section of being in charge of a motor vehicle if he or she proves that at the material time the circumstances were such that there was no likelihood of his or her driving the motor vehicle so long as there was any probability of his or her having alcohol in his or her body in a proportion exceeding the prescribed limit: *Section 41(2)*[192]*;*

     Punishment: Liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of 12 months or both in the case of a first conviction. In the case of a second or subsequent conviction to a fine of four thousand dollars or to imprisonment for a term of two years or both: *Sections 41(1)(a),(b).*

Evidence which is admissible in proof of the charges under Sections 40 or 41

- For the purposes of any proceedings for an offence under *Sections 40 or 41,* a certificate signed by an authorised analyst, and certifying:
  - The proportion of alcohol or drug found in a specimen identified by the certificate: and *Section 45(1)(a);*
  - For the purposes only of proceedings for an offence under *Section 40,* in the case of a specimen of urine, the proportion of alcohol or of that drug in the blood which corresponds to the proportion found in the specimen: *Section 45(1)(b);*

[191] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 42(2). A person shall not be treated for the purposes of subsection (1) as refusing to provide a specimen unless:
- he or she is first requested to provide a specimen of blood, but refuses to do so;
- he or she is then requested to provide two specimens of urine within one hour of the request, but fails to provide them within the hour or refuse at any time within the hour to provide them; and
- he or she is again requested to provide a specimen of blood, but he or she refuses to do so.

[192] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 41(3). In determining for the purposes of subsection (2) the likelihood of a person driving a motor vehicle when he or she is injured or the vehicle is damaged, the court may disregard the fact that he or she had been injured or that the vehicle had been damaged.

shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the analyst.

- For the purposes of any proceedings for an offence under *Sections 40* or *41,* a certificate purporting to be signed by a medical practitioner that he or she took a specimen of blood from a person with his or her consent shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the medical practitioner: *Section 45(2);*
- Subsections (1) and (2), shall not apply to a certificate tendered on behalf of the prosecution unless a copy has been served personally on the accused not less than seven days before the hearing or trial, nor if the accused, not less than three days before the hearing or trial, or within such further time as the court may in special circumstances allow, has served notice on the prosecutor personally requiring the attendance at the hearing or trial of the person by whom the certificate was signed: *Section 45(3);*
- Where, in proceedings for an offence under *Sections 40* or *41,* the accused, at the time a specimen of blood or urine was taken from or provided by him or her, asked to be supplied with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen shall not be admissible on behalf of the prosecution unless:
    - The specimen is either one of two taken or provided on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken or provided: and *Section 45(4)(a);*
    - The other specimen or part was supplied to the accused: *Section 45(4)(b);*
- A medical practitioner shall offer to supply to any person from whom a specimen of blood has been taken with his or her consent in a suitable container, part of the specimen or, in the case of a specimen of blood which it is not practicable to divide, another specimen which he or she may consent to have taken: *Section 45(5).*

Breath Test[193]

- A member of the Police Force in uniform may require any person driving or attempting to drive a motor vehicle on a road to provide a specimen of breath for a breath test there or nearby, if the member of the Police Force has reasonable cause to suspect him or her of:
    - Being under the influence of alcohol or drugs: and *Section 43(1)(a);*
    - Having committed a traffic offence while the vehicle was in motion[194]: *Section 43(1)(b);*

[193] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 47(1) provides that "breath test" means a test for the purpose of obtaining an indication of the proportion of alcohol in a person's blood carried out by means of a device of a type approved for the purpose of such a test by the Minister, on a specimen of breath provided by that person;

[194] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 43(1). However, no requirement may be made by virtue of paragraph (b) unless it is made as soon as reasonably practicable after the commission of the traffic offence.

- A person shall be treated for the purposes of *Sections 41 to 44,* as providing a specimen of blood if, but only if, he or she consents to the specimen being taken by a medical practitioner and it is so taken and shall be treated for those purposes as providing it at the time it is so taken: *Section 47(2);*
- References in *Sections 43, 44* and *46,* to providing a specimen of breath for a breath test are references to providing a specimen thereof in sufficient quantity to enable that test to be carried out: *Section 47(3);*
- If an accident occurs owing to the presence of a motor vehicle on the road, a member of the Police Force in uniform may require any person whom he or she has reasonable cause to believe was driving or attempting to drive the vehicle at the time of the accident to provide a specimen of breath for a breath test: *Section 43(2);*
    - Except while that person is at a hospital as a patient, either at or near the place where the requirement is made or, if the member of the Police Force thinks fit, at a police station specified by him or her: or *Section 43(2)(a);*
    - In the said excepted case, at the hospital; but a person shall not be required to provide such a specimen while at a hospital as a patient if the medical practitioner in immediate charge of his or her case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the care or treatment of the patient: *Section 43(2)(b);*
- A person who, without reasonable excuse, fails to provide a specimen of breath for a breath test under subsections (1) or (2), commits an offence: *Section 43(3);*

  Punishment: Liable on summary conviction to a fine of one thousand dollars or imprisonment for six months or both: *Section 43(3)*[195]*;*
- If it appears to a member of the Police Force in consequence of a breath test carried out by him or her on any person under subsections (1) or (2), that the device by means of which the test is carried out indicates that the proportion of alcohol in that person's blood exceeds the prescribed limit, the member of the Police Force may arrest that person without warrant except while that person is at a hospital as a patient: *Section 43(4).*

[195] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 43(5). If a person required by a member of the Police Force under subsection (1) or (2) to provide a specimen of breath for a breath test fails to do so and the member of the Police Force has reasonable cause to suspect him or her of having alcohol in his or her body the member of the Police Force may arrest him or her without warrant except while he or she is at a hospital as a patient.

Laboratory test[196]

- A person who has been arrested under *Sections 40(3)* or *43,* may, while at the police station, be required by a member of the Police Force in uniform to provide a specimen for a laboratory test[197] (which may be a specimen of blood or of urine), if he or she has previously been given an opportunity to provide a specimen of breath for a breath test at that station under *Section 43(7),* and either:
    - It appears to a member of the Police Force in uniform in consequence of the breath test that the device by means of which the test is carried out indicates that the proportion of alcohol in his or her blood exceeds the prescribed limit[198]: or *Section 44(1)(a);*
    - If that person has been required, whether at the hospital or elsewhere, to provide a specimen of breath for a breath test, but fails to do so and a member of the Police Force in uniform has reasonable cause to suspect him or her of having alcohol in his or her body;

      but, a person shall not be required to provide a specimen for a laboratory test under this subsection if the medical practitioner:

        - In immediate charge of his or her case is not first notified of the proposal to make the requirement the test, or,
        - Objects to the provision of a specimen on the ground that the requirement to provide such specimen would be prejudicial to the proper care or treatment of the patient: *Section 44(1)(b);*
- A person who, without reasonable excuse, fails to provide a specimen for a laboratory test in pursuance of a requirement imposed under this section commits an offence: *Section 44(2);*
- A person shall not be treated for the purposes of subsection (3), as failing to provide a specimen unless:

[196] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 47(1) provides that "laboratory test" means the analysis of a specimen provided for the purpose.

[197] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 46. Any person required to provide a specimen for a laboratory test under section 44(1) may thereafter be detained at the police station until he or she provides a specimen of breath for a breath test and it appears to a member of the Police Force in uniform that the device by means of which the test is carried out indicates that the proportion of alcohol in that person's blood does not exceed the prescribed limit.

[198] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 47(1) provides that "the prescribed limit" means 80 milligrammes of alcohol in 100 millilitres of blood or such other proportion as may be prescribed.

St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 47(4). For the purposes of section 40 and this section 107 milligrammes of alcohol in 100 millilitres of urine and 35 micrograms of alcohol in 100 millilitres of breath shall be treated as equivalent to 80 milligrammes of alcohol in 100 millilitres of blood, and the power conferred by subsection (1) to prescribe some other proportion of alcohol in the blood shall include power to prescribe a proportion of alcohol in urine which is to be treated as equivalent to the prescribed proportion of alcohol in the blood.

- He or she is first requested to provide a specimen of blood but refuses to do so;
- He or she is then requested to provide two specimens of urine within one hour of the request, but fails to provide them within the hour or refuses at any time within the hour to provide them[199];
- He or she is again requested to provide a specimen of blood but refuses to do so: *Section 44(5)*[200];

Punishment: Liable in case of a first conviction to fine of five hundred dollars or to imprisonment for a term of three months or both. In the case of a second or subsequent conviction, to a fine of one thousand dollars and to imprisonment for a term of six months or both: *Sections 44(2)(a),(b);*

Endorsement: The court shall order particulars of any conviction under this section or *Section 43,* to be endorsed on any driving licence held by the person convicted: *Section 44(3).*

7. Driving without a licence - *Section 26*

- Save as in this section provided, no person shall drive a motor vehicle other than a public service vehicle[201] on any road unless he or she is the holder of a driver's valid and unexpired licence. Also, no person shall employ any other person to drive a motor vehicle other than a public service vehicle on any road unless the person so employed is the holder of a "Chauffeur's Licence." If any person acts in contravention of the provisions of this section he or she commits an offence: *Section 26(1)*[202]*;*

  Punishment: Liable on summary conviction to a fine not exceeding one thousand dollars[203]: *Section 26(1);*

[199] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 42(3). The first specimen of urine provided in pursuance of a request under paragraph (b) of subsection (2) shall be disregarded for the purposes of subsection (1).

[200] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 44(4). Nothing in the foregoing provisions of this section shall affect the provisions of section 42.

[201] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 26(1). Provided also that for the purposes of this section the expression "public service vehicle" shall not include a self-drive vehicle.

[202] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 26(5). Notwithstanding subsection (1), a citizen of an OECS Member state who holds a driver's licence issued in any other OECS Member State shall, while such licence remains valid and unexpired, be exempt from any requirement to hold a driver's licence issued under this Act to drive in Saint Christopher and Nevis.
St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 26(6). A person to whom subsection (5) applies shall only be entitled to drive in a motor vehicle of the class for which he holds an authorization to drive in the Member State in which his driver's licence was issued.

[203] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 26(1). Provided that any person found driving in contravention of this section commits an offence and may be arrested forthwith without a warrant, and shall, on summary conviction, be liable to a fine not exceeding two thousand dollars.

- Provided that any person found driving in contravention of this section commits an offence and may be arrested forthwith without a warrant: *Section 26(1);*

  Punishment: Liable on summary conviction, be liable to a fine not exceeding two thousand dollars: *Section 26(1).*

8. Taking vehicles without consent of owner - *Section 66*

   - If any person uses any motor or other vehicle without the consent of the owner or other lawful authority, he or she commits an offence and shall, on summary conviction, be liable to a fine not exceeding one thousand dollars: Provided that the person shall not be convicted under this section if he or she proves either:

     - That he or she had good reason to believe, and did in fact believe, that the owner of the vehicle would, had he or she been present, have consented to the vehicle being used in the manner in which it was used: or *Section 66(1)(a);*

     - That he or she had reasonable cause to believe and did in fact believe that he or she had lawful authority to use the vehicle. (Amended by Act 2 of 1998): *Section 66(1)(b);*

   - If any person is convicted under this section the magistrate may, if he or she thinks fit, either in addition to or without inflicting any punishment, order that the person convicted pay to the owner of the vehicle either or both of the following sums, namely:

     - Such sum as, in the opinion of the magistrate, would have been charged if the vehicle had been hired by the person convicted: *Section 66(2)(a);*

     - Such sum as, in the opinion of the magistrate, represents fair compensation for any damage done to the vehicle;

     and payment of such sum shall be enforced in the manner provided by the *Magistrate's Code of Procedure Act, Chap. 3.17,* for the enforcing of the payment of a fine or order made on complaint;

   - Any member of the Police Force may arrest without warrant any person reasonably suspected by him or her of having committed an offence under this section: *Section 66(4).*

9. Driving without a seatbelt[204]- *Section 63*

   - No person shall operate a motor vehicle unless the driver and any passenger in the front seat of the vehicle are adequately restrained by a seat belt: *Section 63(1);*

[204] St. Kitts and Nevis- Vehicles & Road Traffic Act Cap 15:06 Revised Edition 2017, section 63(2)(b) provides that "seat belt" means a safety belt used to secure a person in a motor vehicle.

- A passenger who is under the age of five years or weighing less than 40 pounds shall be restrained in a specially designed detachable or removable seat in such conditions as are prescribed by the Minister: *Section 63(3);*
- This section does not apply to a driver or passenger with a physically disabling condition whose physical disability would prevent appropriate restraint by safety belt or safety seat, once this condition is certified by a medical practitioner: *Section 63(4);*

  Punishment: A person who acts in a manner contrary to subsection (1), commits an offence and is liable upon summary conviction to a fine not exceeding one thousand dollars; or subsection (3), commits an offence and is liable upon summary conviction to a fine not exceeding five thousand dollars: *Section 63(5).*

10. Duty to give name and address and to stop - *Section 55*

- If the driver of a motor vehicle who it is alleged to have committed an offence under the foregoing provisions of this Act as to reckless or dangerous driving or careless driving, on being required by any person having reasonable grounds for so requiring, refuses to give his or her name and address, or gives a false name and address, he or she commits an offence: *Section 55(1);*

  Punishment: Liable on summary conviction to a fine not exceeding three hundred dollars: *Section 55(1);*
- Any person driving a motor vehicle on a road shall stop the vehicle on being so required by any member of the Police Force in uniform, and if he or she fails so to do, he or she is liable to summary conviction: *Section 55(3);*

  Punishment: Liable on summary conviction to a penalty of not exceeding three hundred dollars: *Section 55(3);*
- Any member of the Police Force may arrest, without warrant, the driver of any motor vehicle who within his or her view commits any offence under the provisions of this Act as to reckless or dangerous driving or careless driving or racing on a road: *Section 55(2).*

11. Duty of person in charge of vehicle involved in accident on a road - *Section 59*

- A person riding, driving or in charge of any vehicle of any description shall, if an accident occurs by reason of the presence of such vehicle on a road:
  - Immediately stop: *Section 59(1)(a);*
  - Give to any person interested in the accident:
    - i his or her name and address: *Section 59(1)(b)(i);*
    - ii the name and address of the owner of the vehicle: *Section 59(1)(b)(ii);*
    - iii the registration number of the vehicle: *Section 59(1)(b)(iii);*
    - iv the name of the insurance company with which the vehicle is insured: and *Section 59(1)(b)(iv);*

v the names of all persons in the vehicle at the time of the accident: and *Section 59(1)(b)(v);*

- Report the accident at a Police Station as soon as reasonably practicable but before the expiration of a period of 24 hours after its occurrence: *Section 59(1)(c);*

- *Para. (c),* does not apply if a report is made, at the time and place of the accident, to a member of the Police Force: *Section 59(2);*

  Any person who fails to comply with the aforementioned, is guilty of an offence.

  Punishment: Any person who contravenes or fails to comply with this section commits an offence and is liable, on summary conviction to a fine of two hundred and fifty dollars or to imprisonment for a term of three months, or both: *Section 59(3).*

12. Driving while using a mobile telephone - *Section 64*

- A person shall not drive a motor vehicle while using a mobile telephone unless that person has complied with such conditions as may be prescribed by the Minister: *Section 64(1);*
- A person who acts in a manner contrary to subsection (1), commits an offence;

  Punishment: Liable upon summary conviction to a fine not exceeding one thousand dollars.

General provision on disqualification

- The court before which a person is convicted of any offence in connection with the driving a motor vehicle may, in addition to any other penalty provided for such offence, and shall, where so required by the provisions of this Act, order that the offender be disqualified for a stated period or permanently from holding or obtaining a driver's licence either generally or limited to the driving of a motor vehicle of any particular class or description: *Section 68(1);*
- If the offender holds a driver's licence , the court shall endorse upon the licence particulars of the conviction: *Section 68(1);*
- A person who, by virtue of an order of a court made under this section, is disqualified from holding or obtaining a driver's licence may appeal against the order in the same manner as against a conviction, and the court may, if it thinks fit, pending the appeal, suspend the operation of the order: *Section 68(4).*

Temporary suspension of licence pending determination of charges

- If and when any person is charged with manslaughter arising out of the use of any motor vehicle or with contravening the provisions of *Sections 40, 48* and *50,* it shall be lawful for the Licensing Authority to order the suspension of the driver's licence of the person so charged pending the determination of the charge: *Section 69(1);*

- Any such licence so suspended shall, on demand by any member of the Police Force, be surrendered to such member of the Police Force who shall forthwith forward the same to the clerk of the court before which the person so charged is to appear: *Section 69(2);*
- A licence suspended by virtue of this section shall, during the period of suspension, be of no effect: *Section 69(3).*

General provision on endorsement

- An order that the particulars of any conviction or of any disqualification be endorsed on any driver's licence held by the offender shall, whether the offender is at the time the holder of the licence or not, operate as an order that any licence he or she may then hold or may subsequently obtain shall be so endorsed until he or she becomes entitled under the provisions of this section to have a licence issued to him or her free from endorsement: *Section 71(1).*

13. Failure to comply with a traffic signal - *Section 6, Vehicles and Road Traffic (Light Signals) Regulations, No 2. of 2018*

    - Where a driver, operator or rider of a non-motorised vehicle fails to comply with a traffic signal or fails to yield the right-of-way to a vehicle or pedestrian on the intersecting way pursuant to regulations 3 and 5, the driver commits an offence: *Section 6;*

      Punishment: Liable on summary conviction to a fine not exceeding $1,000.00 or to imprisonment for a term not exceeding three months: *Section 6.*

Offences for which a magistrate does not have jurisdiction to try

The magistrate does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Reckless or dangerous driving (on indictment) - *Section 48;*
- Causing death by reckless or dangerous driving of motor vehicles - *Section 50;*
- Taking vehicles without consent of owner (on indictment) - *Section 66.*

ST. LUCIA

The principal act is the *Motor Vehicles and Road Traffic Act, Chap. 8:01.* For the purpose of detailing road traffic legislation within this chapter for St. Lucia, the *Motor Vehicles and Road Traffic Act, Chap. 8:01, Revised Edition 2017,* which includes subsidiary legislation is utilised.

Fixed penalty

- The offences listed in Schedule 3, are designated ticketable offences for which proceedings may be commenced by ticket under this Act: *Section 95(1);*

- If a traffic officer believes, on reasonable grounds that a person has committed a ticketable offence not related to parking of a vehicle, the ticket officer may issue a ticket and shall serve it on that person: *Section 91(1)*[205];
- If a traffic officer believes from personal knowledge that a person has committed a ticketable offence related to the parking of a vehicle, the traffic officer may issue a ticket and shall serve it on that person or the owner of the vehicle: *Section 92(1)*[206];
- A traffic officer shall cause a ticket to be filed in the office of the district court as soon as practicable, but in any event, within 14 days, after the ticket is served: *Section 96(1);*
- Within 14 days after being served a ticket, a person may:
  - Plead guilty and pay the total amount set out in the ticket in accordance with *Section 98*[207]: *Section 97(a);*
  - Request a trial in accordance with *Section 99*[208]: *Section 97(b)*;
- Schedule 1 has effect in respect of a trial in proceedings commenced by means of a ticket: *Section 101;*
- A person who is convicted for a ticketable offence in proceedings under section 101 is liable to a fine greater than the fixed penalty provided for that ticketable offence under *Section 95,* but not exceeding the maximum fine provided for that ticketable offence under Part 7: *Section 105(2)*[209];

[205] St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 91(3). Service of a ticket on the person who committed the offence is effected by leaving a copy of the notice with the person or by affixing the ticket to the motor vehicle in a conspicuous place.

[206] St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 92(3). Service of a ticket on the person who committed the offence is effected by leaving a copy of the ticket with the person or by affixing the ticket to the motor vehicle in a conspicuous place.

St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 92(4). Service of a ticket on the registered owner is effected by affixing the ticket to the motor vehicle in a conspicuous place.

[207] St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 98(1). A person who is served with a ticket may plead guilty by delivering the ticket, along with the total amount set out in the ticket, to the district court office specified in the ticket within the time specified in section 97.

St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 98(2). Payment of the total amount within the time specified in section 97 constitutes a plea of guilty and endorsement of payment on the ticket constitutes a conviction and the imposition of that amount.

[208] St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 99(1). A person who is served with a ticket may request a trial by signing the request for trial on the ticket and delivering it to the district court office specified in the ticket.

[209] St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 107(1). A person is disqualified from driving a motor vehicle or trailer if he or she fails to pay a fine imposed upon conviction for a traffic offence or an offence under the regulations, and 30 days has passed since the termination of all proceedings including appeal.

St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 107(2). The disqualification continues until the fine is paid (section 107(2))

- Some offences outlined in Schedule 3 include:
    - Failing to display the licence number assigned on registration in the prescribed manner ;
    - Failing to pay annual motor vehicle or trailer licence when it becomes due and driving a motor vehicle or trailer;
    - Operating a motor vehicle in a condition that is not road worthy;
    - Failing to display a registration and licensing sticker ;
    - Violation of conditions of registration.

Demerit points

- Where a person has been convicted under this Act or the regulations of an offence set out in Schedule 2 the Licensing Authority shall record in respect of that person the number of demerit points set out opposite that offence in Schedule 2: *Section 179(1);*
- Some of these offences include:
    - Not reporting an accident involving injury (7 points);
    - Not stopping after an accident (7 points);
    - Driving without due care (4 points);
    - Failing to obey stop sign (6 points);
    - Driving without reasonable consideration (4 points);
    - Dangerous driving (7 points);
    - Exceeding speed limit (by 20 or more m.p.h.) (7 points).

Offences which a magistrate has jurisdiction to try

1. Dangerous driving - *Section 73*
    - A person shall not:
        - Cause the death of another person by dangerous driving: or *Section 73(1)(a);*
        - Drive dangerously on any road: *Section 73(1)(b);*

      Punishment: A person who contravenes subsection (l)(b), commits an offence and is liable on summary conviction to a fine not less than $1,000.00 and not exceeding $5,000.00 or to imprisonment for a term not exceeding one year or to both and in addition to the sanction specified under *Section 106: Section 73(4)(a);*
    - In determining whether driving is dangerous for the purpose of this section the court shall consider all the circumstances of the driving including:
        - The speed and manner of driving: *Section 73(5)(a);*
        - The nature, condition and use of the road: and *Section 73(5)(b);*

- The amount of traffic that is actually on the road at the time of the alleged offence, or might reasonably be expected to be on the road at that time: *Section 73(5)(c).*

2. Driving without due care and without consideration - *Section 74*

   - A person shall not drive a motor vehicle on a road:
     - Without due care and attention: or *Section 74(1)(a);*
     - Without consideration for other users of the road: *Section 74(1)(b);*

     Punishment: A person who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding $2,000.00 or to imprisonment for a term not exceeding six months or to both, and in addition to the sanction specified under *Section 106: Section 74(2);*
   - For purposes of this section, without due care and attention includes driving whilst using an electronic device in such a manner as to impair the driver's judgement in the safe use of the road: *Section 74(3).*

3. Driving while intoxicated - *Section 75*

   - A person shall not drive a motor vehicle on a road, or have the care or control of a motor vehicle on a road or other public place, whether it is in motion or not, while intoxicated[210]: *Section 75(2);*

     Punishment: A person who contravenes subsection (2), commits an offence and is liable on summary conviction to a fine not exceeding $5,000.00 or to imprisonment for a term not exceeding one year or to both, in addition to the sanction specified under *Section 106: Section 75(3);*
   - If a police officer reasonably believes that a person is in violation of subsection (2), then, without prejudice to the police officer's power of arrest without warrant under the Criminal Code, the police officer may require, by demand made to the person immediately or as soon as practicable, that the person submit to any one or more intoxication tests,[211] and to accompany the police officer for that purpose if necessary: *Section 75(4);*

[210] St. Lucia- Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 75(1). In this section "intoxicated" means:
- being so impaired from drugs consumed as to be incapable of having proper control of the motor vehicle; or
- having a proportion of alcohol in the blood, urine or breath that:
  (i) in the case of blood, exceeds 80 milligrams of alcohol in 100 millilitres of blood,
  (ii) in the case of urine, exceeds 107 milligrams of alcohol in 100 millilitres of urine,
  (iii) in the case of breath, exceeds 35 micrograms of alcohol in 100 millilitres of breath.

[211] St. Lucia- Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 75(17). For the purpose of this section, the Minister shall prescribe the intoxication tests to be used and the method and equipment to be used for determining the proportion of alcohol or drugs in any one or more of the following:
- a person's blood;
- a person's urine;
- a person's breath.

- If a person is incapable of comprehending the nature of a demand under subsection (4), due to physical or mental trauma, a sample necessary for an intoxication test may be taken from the person without a demand being made under subsection (4): *Section 75(6);*
- A person who without reasonable excuse fails or refuses to comply with a demand made under this section commits an offence and is liable on summary conviction to a fine not exceeding $5,000.00 or to imprisonment for a term not exceeding one year or to both: *Section 75(7).*

Evidence that the magistrate may consider in proceedings under Section 75

- If a person fails or refuses to comply with a demand made under this section without reasonable excuse, the court or jury, in determining whether that person is guilty of the offence, may draw any inference that appears proper, having regard to all the evidence, as to whether the person was intoxicated at the time when the offence was alleged to have been committed: *Section 75(8);*
- In the absence of any evidence to the contrary, evidence of the result of an intoxication test is proof, in proceedings under this section, of the proportion of alcohol or drug in the blood, urine or breath, as the case may be, of the defendant, at the time when the offence was alleged to have been committed, if the sample was taken in accordance with this section: *Section 75(9);*
- In proceedings for an offence under this section, a certificate of an analyst containing the results of the intoxication test is evidence of the statements contained in the certificate, without proof of the signature of the person appearing to have signed the certificate: *Section 75(10);*
- In proceedings for an offence under this section, a certificate of a medical practitioner stating that, in his or her opinion at the time the blood sample was taken the defendant was incapable, due to physical or mental trauma, of comprehending the nature of a demand under this section, is evidence of the statements contained in the certificate without proof of the signature of the person appearing to have signed the certificate: *Section 75(11);*
- In proceedings for an offence under this section, the proportion of alcohol or drug in the sample of the defendant at the time of the intoxication test is deemed to be the same as the proportion of drug in the blood, urine or breath, as the case may be, of the defendant when the sample was taken, unless the defendant proves otherwise: *Section 75(12);*
- With leave of the court, a defendant against whom a certificate of an analyst and certificate of a medical practitioner are produced may require, the attendance of the person who made the certificate for the purpose of cross-examination: *Section 75(13);*
- A certificate shall not be received in evidence under this section unless, at least three days before the hearing, the defendant is served personally with:
    - A notice that the certificate will be introduced: and *Section 75(14)(a);*
    - A copy of the certificate: *Section 75(14)(b).*

4. Speeding - *Section 76*

   - A person shall not drive or operate a motor vehicle on a road at a greater speed than the prescribed speed limit for the road or category of motor vehicle: *Section 76(1);*
   - A person charged with an offence under this section shall not be convicted on the evidence of only one witness whose evidence is based only on his or her judgement of the speed at which the person charged is alleged to have been driving: *Section 76(3);*

     Punishment: A person who contravenes subsection (1), commits an offence[212] and is liable on summary conviction to a fine not exceeding $1,000.00 or to imprisonment for a term not exceeding three months or to both: *Section 76(2).*

5. Taking a motor vehicle without consent - *Section 77*

   - A person who takes and drives away a motor vehicle without the consent of its owner or other lawful authority or, knowing that a motor vehicle to have been so taken, drives it or allows himself or herself to be carried in or on it without the consent of its owner or other lawful authority commits an offence: *Section 77(1);*

     Punishment: Liable on summary conviction to a fine not exceeding $2,000.00 or to imprisonment for a term not exceeding six months or to both: *Section 77(1)(a);*
   - It is a defence to a charge under subsection (1), if the accused establishes that he or she reasonably believes that:
     - He or she had lawful authority to drive away the motor vehicle: or *Section 77(2)(a);*
     - The owner would, in the circumstances of the case, have given his or her consent if such consent had been requested: *Section 77(2)(b);*
   - Where a person is convicted under this section the court may, in addition to any punishment it imposes, or without imposing any punishment, order the person convicted to pay to the owner of the motor vehicle either or both of the following:
     - Such amount as in the opinion of the court would have been charged if the motor vehicle had been hired by the person convicted: or *Section 77(4)(a);*
     - Such amount as in the opinion of the court represents fair compensation for any damage done to the motor vehicle: *Section 77(4)(b).*

[212] St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 76(4). This section does not apply to an emergency vehicle which is exempted from the application of this provision if there is an urgent emergency justifying a rate of speed in excess of any maximum rate of speed provided for in this Act.

6. Interfering with a motor vehicle - *Section 78*

   - A person shall not interfere in any way with a motor vehicle without the permission of the registered owner or the person in charge of the motor vehicle: *Section 78(1);*

     Punishment: A person who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding three months or to both: *Section 78(2);*

   - A person shall not be convicted of an offence under this section if he or she proves that the motor vehicle was obstructing his or her motor vehicle or that of another, and the interference was reasonably necessary: *Section 78(3);*

   - If a person is convicted of an offence under this section, the court may order compensation for the use and for any damage to the motor vehicle, in addition to, or instead of, imposing a penalty: *Section 78(4).*

7. Driving without a seatbelt - *Section 63*

   - A registered owner of a motor vehicle to which this subsection applies shall not drive or cause his or her motor vehicle to be driven on a public road unless it is fitted with seat belts, in a manner approved by the Licensing Authority: *Section 192(2);*

   - A person shall not drive or be driven in the front seats of a motor vehicle unless the person is wearing a seatbelt: *Section 192(3);*

   - A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 14 days or to both: *Section 192(6).*

8. Driving motor vehicle without valid driver's licence or permit - *Section 66*

   - A person shall not drive a motor vehicle unless that person is the holder of a valid driver's licence, visitor's driving permit or learner's permit, as the case may be, for the category of motor vehicle driven: *Section 66(1);*

     Punishment: A person who contravenes subsection (1), in the case where a driver's licence, visitor's driving permit or learner's permit as the case may be:

     - Has not been issued or has been cancelled or suspended commits an offence and is liable on summary conviction to a fine not exceeding $2,000.00 or to imprisonment for a term not exceeding six months: *Section 66(2);*

     - Has expired and is not renewed, commits an offence and is liable on summary conviction to a fine not exceeding $2,000.00 or to imprisonment for a term not exceeding three months: *Section 66(3);*

   - If an offence is committed in contravention of subsections (2) or (3):

     - By an employee in the course of business by the employer, the employer is guilty of the like offence unless the employer establishes that the offence was committed without his or her knowledge or consent and that he or she exercised all due diligence to prevent its commission: *Section 66(4);*

- The registered owner of the motor vehicle is guilty of the like offence unless he or she establishes that the offence was committed without his or her knowledge or consent and that he or she exercised all due diligence to prevent its commission: *Section 66(5);*
- Any person who accompanied the person as driving instructor at the time of the commission of the offence, is presumed to have taken part in committing the offence and may be charged with actually committing it: *Section 66(6);*

- A person who drives a motor vehicle on a road knowing that he or she is disqualified, having been disqualified under this Act; or the applicable law, commits an offence: *Sections 67(a), (b);*

  Punishment: A person who commits an offence under this section is liable on summary conviction to a fine not exceeding $2,000 or imprisonment for a term not exceeding 6 months or to both: *Section 67(2).*

9. Failing to produce a driver's licence, permit or other driver's identification and registration document - *Section 85*

   - On every occasion when a person drives a motor vehicle or trailer, that person shall have possession of his or her valid driver's licence, permit or other driver's identification document and the registration document in relation to the motor vehicle or trailer: *Section 85(1);*
   - A traffic officer may stop a driver and request a driver to produce his or her driver's licence, permit or other driver's identification document, the certificate of registration or other registration document issued under this Act or the applicable law in relation to a motor vehicle or trailer being driven: *Section 85(2);*
   - Where the request is made under subsection (2), the driver to whom the request is made shall immediately produce for examination by the traffic officer:
     - His or her driver's licence, permit or other driver's identification document: and *Section 85(3)(a);*
     - The certificate of registration or other registration documents, which must include the certificate of insurance or such evidence as may be prescribed in relation to the use of the motor vehicle: *Section 85(3)(b);*

     Punishment: A person who contravenes subsection (3), commits an offence and is liable on summary conviction to a fine not exceeding $1,000.00 or to imprisonment for a term not exceeding three months or both: *Section 85(4).*

10. Leaving scene of accident - *Section 83*

    - A person driving or in charge of any motor vehicle shall if, owing to the presence of the motor vehicle on a road, an accident occurs whereby personal injury is caused to any person or damage is caused to any other motor vehicle:
      - Immediately stop: and *Section 83(1)(a);*

- If required so to do by any person having reasonable grounds for so requiring, give:
  - i his or her name and address: *Section 83(1)(b)(i);*
  - ii the name and address of the owner of the vehicle: *Section 83(1)(b)(ii);*
  - iii the registration number of the vehicle: *Section 83(1)(b)(iii);*
  - iv the name of the insurance company with which the owner of the vehicle is insured: and *Section 83(1)(b)(iv);*
  - v the names of all persons in the vehicle at the time of the accident: and *Section 83(1)(b)(v);*
- Report the accident at a police station as soon as reasonably practicable, but before the expiration of a period of 24 hours after its occurrence: *Section 83(1)(c);*

Sub-regulation (1)(c), does not apply if a report is made at the time and place of the accident, to a police officer in uniform: *Section 83(2);*

Punishment: A person who contravenes or fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding $2,000.00 or to imprisonment for a term not exceeding six months or to both: *Section 83(3).*

Notice of intended prosecution - Section 89

- A traffic officer may serve on any person involved directly or indirectly in a traffic accident a notice of intended prosecution: *Section 89(1);*
- This notice shall contain a warning that the person may be prosecuted for a traffic offence under this Act: *Section 89(2).*

11. Disqualification from driving upon conviction - *Section 106*

- If a person is convicted of a traffic offence or an offence under the regulations, the court may consider the driving record of the person and disqualify the person from driving a motor vehicle or trailer for a definite period of time if the court considers that on the facts of the case or the person's driving record or both the facts of the case and his or her driving record when taken together, justify the disqualification: *Section 106(1).*[213]

[213] St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 106(2). If a term of imprisonment is imposed on conviction, the period of disqualification commences from the day following the end of the term of imprisonment.
St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 106(3). The Clerk of the Court shall notify the Licensing Authority of the disqualification in writing or otherwise.

12. Disqualification from driving upon failure to pay fine - *Section 107*

- A person is disqualified from driving a motor vehicle or trailer if he or she fails to pay a fine imposed upon conviction for a traffic offence or an offence under the regulations, and 30 days has passed since the termination of all proceedings including appeal: *Section 107(1)*[214];
- The disqualification continues until the fine is paid: *Section 107(2).*

Offences which a magistrate does not have jurisdiction to try

- Causing the death of another person by dangerous driving - *Section 73;*
- Taking a motor vehicle without consent (on indictment) - *Section 77.*

ST. VINCENT AND THE GRENADINES

The main legislation or "principal act" is the *Motor Vehicles and Road Traffic Act, Chap. 483.* For the purpose of detailing road traffic legislation within this chapter for St. Vincent and the Grenadines, the *Motor Vehicles and Road Traffic Act, Chap. 483, Revised Edition 2009,* which includes subsidiary legislation is utilised. This Act must be read in conjunction with the *Motor Vehicles and Road Traffic (Amendment) Act, No of 2013.*

Fixed penalty

- Where a police officer has reasonable cause to suspect that a person he finds is committing or has committed a traffic offence he may issue a ticket to that person under this Part: *Section 57D;*
- A ticket issued under *Section 57D,* shall offer a person who has committed a traffic offence the opportunity to discharge of any liability to conviction for the offence by payment of a fixed penalty specified therein: *Section 57E(1);*
- Notwithstanding the provisions of any other law to the contrary, where the fixed penalty specified in the ticket is not paid within twenty-one days the ticket shall be deemed to be a complaint and a magistrate's court may issue a summons under the *Criminal Procedure Code* to compel the attendance of the accused before the magistrates' court to answer a charge for the traffic offence in respect of which the ticket is issued: *Section 57G;*
- Where a police officer finds a stationary motor vehicle and has reasonable cause to suspect that a traffic offence is being committed or has been committed, he may, in lieu of issuing the ticket to the offender in person, affix the ticket to the motor vehicle and such ticket affixed shall be deemed to be given to the person liable for that traffic offence: *Section 57J(1);*

[214] St. Lucia - Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 107(3). The Licensing Authority shall inform the person of the disqualification by sending a written notice by registered mail to the address contained in the record of the Licensing Authority.
St. Lucia- Motor Vehicles & Road Traffic Act Cap. 8:01 Revised Edition 2017, section 107(4). The Clerk of Court shall inform the Licensing Authority in writing of the failure to pay and when payment is made and the disqualification lifted.

In addition to affixing a ticket to a motor vehicle under subsection (1), the police officer or another person acting under his direction may fix a clamp to the motor vehicle to prevent its removal: *Section 57J(3).*

Demerit points – NONE FOUND

Offences which a magistrate has jurisdiction to try

1. Driving when under the influence of drink or drug - *Section 47*

   - Any person who, when driving or attempting to drive or when in charge of a motor vehicle on a road, is under the influence of drink or a drug to the extent as to be incapable of having proper control of the vehicle is guilty of an offence: *Section 47(1);*

     Punishment: Liable to a fine of fifteen hundred dollars and to imprisonment for six months. In the case of a second or subsequent conviction, to a fine of two thousand five hundred dollars and to imprisonment for one year: *Section 47(1)*[215]*;*

     Disqualification: A person convicted of an offence under this section shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of 12 months from the date of conviction from holding or obtaining a driving permit, and on a second conviction for a like offence he shall be permanently disqualified from holding or obtaining a driving permit: *Section 47(2);*

   - In **Carmichael v Chief of Police VC 1969 HC 7,** the appellant was convicted for driving without due care and attention and driving under the influence of drink. There were no objections to the charges being heard together and the appellant had pleaded guilty to both. However, he appealed the sentence stating that it was excessive i.e. a fine to be paid in one month or in default 28 days and a disqualification from holding or obtaining a driver's licence for a specified period. The appellant had not raised any mitigating factors to the magistrate prior to the sentence being given. On appeal to the High Court, it was held that the disqualification was mandatory and that the fine was not excessive.

2. Reckless driving - *Section 48*

   - Any person who drives a motor vehicle on the road recklessly, or at a speed, or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at that time or which might reasonably be expected to be, on the road is guilty of an offence: *Section 48(1);*

[215] St. Vincent and the Grenadines- Criminal Procedure Code Chapter 172, section 8 (1)(b) provides without prejudice to the provisions of any other law, a magistrate's court shall have jurisdiction to try any offence punishable with imprisonment for not more than one year.

Punishment: Liable to a fine of two thousand five hundred dollars and to imprisonment for six months. In the case of a second or subsequent conviction to a fine of five thousand dollars and to imprisonment for six months: *Section 48(1);*

Disqualification: A person convicted of an offence under this section may be disqualified from holding or obtaining a permit for such period as the court thinks fit subject to the following provisions:

i After the first offence the period of disqualification shall not exceed six months: *Section 48(2)(a);*

ii After the second offence the period shall not exceed two years: *Section 48(2)(b);*

iii After the third offence the disqualification may be permanent: *Section 48(2)(c);*

- Any police officer may arrest without warrant the driver of any motor vehicle who commits an offence under this section within his view, if he refuses to give his name and address or if the police officer has reason to believe that the name and address so given is false, or if the motor vehicle does not bear an identification plate: *Section 48(3).*

Temporary suspension of licence pending determination of charge

- If and when any person is charged with manslaughter arising out of the use of any motor vehicle, or with contravening the provisions of *Sections 47, 48* or *49,* the Licencing Authority may order the suspension of the driving permit of the person so charged pending the determination of the charge: *Section 51(1).*

3. Careless driving - *Section 52*

- Any person who drives a motor vehicle on a road without due care and attention or without having reasonable consideration for other persons using the road is guilty of an offence: *Section 52;*

  Punishment: Liable to a fine of fifteen hundred dollars: *Section 52;*

  Disqualification: Liable to be disqualified from holding or obtaining a driving permit for such a period as the court shall think fit: *Section 52;*

  Provided that on a second or subsequent conviction for a like offence, the period of disqualification shall be not be less than one month: *Section 52.*

Bars to conviction

- Where a person is prosecuted for an offence under *Sections 46, 48 or 52,* he shall not be convicted unless either:
  - He was warned at the time the offence was committed that the question of prosecuting him for an offence under someone or other of those sections would be taken into consideration: *Section 53(a);*
  - Within 14 days of the commission of the offence, a summons for the offence was served on him: or *Section 53(b);*

- Within 14 days of the commission of the offence, a notice of the intended prosecution, specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served or sent by registered post to him, or to the person registered as the owner of the vehicle at the time of the commission of the offence: *Section 53(c);*

Provided that:

(i) Failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that:

(aa) neither the name and address of the accused nor the name and address of the registered owner of the vehicle, could, with reasonable diligence, have been ascertained in time for a summons to be served or for a notice to be served and sent in accordance with the provisions of *paras. (b)* or *(c):* or *Section 53(c)(i)(aa);*

(bb) the accused, by his own conduct, contributed to the failure: and *Section 53(c)(i)(bb);*

(ii) The requirements of this section shall in every case be deemed to have been complied with unless and until the contrary is proved: *Section 53(c)(ii).*

4. Driving in excess of speed limit - *Section 46*

- Any person who drives a motor vehicle of such class or description as is specified in the Second Schedule at a speed greater than the speed so specified as the maximum speed in relation to a vehicle of that class or description and on a road so specified, is guilty of an offence: *Section 46(1);*

  A person charged under this section with the offence of driving a motor vehicle of such class or description on such a road at a speed greater than the maximum speed allowed in the case of a vehicle of that class or description, shall not be liable to be convicted of the offence solely on the evidence of one witness to the effect that in the opinion of the witness the person charged was driving the vehicle at such greater speed: *Section 46(2);*

  Punishment: Liable to a fine of fifteen hundred dollars: *Section 46(1);*

  Disqualification: Liable to be disqualified from holding or obtaining a driving permit for such period as the court shall think fit: *Section 46(1);*

- Any person who aids, abets, counsels or procures any person who is employed by him to drive a motor vehicle on a road, whether as registered owner or as a temporary possessor of the use of a motor vehicle under a hiring agreement, to commit an offence under this section is guilty of an offence: *Section 46(3);*

  Punishment: Any person who, by any act or omission, contravenes or fails to comply with the provisions of this Act is guilty of an offence and, unless otherwise specifically provided, liable to a fine of two thousand five hundred dollars and to imprisonment for six months: *Section 72(1).*

5. Interfering with motor vehicle - *Section 54*

- A person who:
  - Without the knowledge or permission of the owner, gets on to or attempts to manipulate any of the levers, the starter, brakes or machinery of a motor vehicle, or in any way interferes with or damages a motor vehicle while the vehicle is on a road or parking place: *Section 54(a);*
  - Throws any object at a motor vehicle or trailer, or any person in or on such motor vehicle or trailer, or places any object in any road whereby injury or damage to any motor vehicle or trailer may be occasioned: or *Section 54(b);*
  - Uses or drives, or permits to be used or driven, any motor vehicle or trailer on a road in such a defective condition as regards its mechanical fittings or otherwise as to be a source of danger to its occupants or the public;

  is guilty of an offence: *Section 54(c);*

  Punishment: Any person who, by any act or omission, contravenes or fails to comply with the provisions of this Act is guilty of an offence and, unless otherwise specifically provided, liable to a fine of two thousand five hundred dollars and to imprisonment for six months: *Section 72(1).*

6. Driver of vehicles, etc to wear seat belts - *Section 57Q*
   - Subject to subsection (2), a person who:
     - Drives a motor vehicle: *Section 57Q(1)(a);*
     - Rides in a motor vehicle which is not a public service vehicle: *Section 57Q(1)(b);*
     - Rides in a front seat of a public service vehicle: *Section 57Q(1)(c);*

     shall wear a seat belt: *Section 57Q(1)*[216];

     Punishment: A person who contravenes subsection (1), commits an offence and is liable on summary conviction:

[216] St. Vincent and the Grenadines- Motor Vehicles & Road Traffic Act CAP 483, Revised Edition 2009, section 57Q (2). Subsection (1) does not apply to:
- a child who wears or is conveyed in a child restraint system;
- a person who holds a valid certificate of exemption issued by the Minister after a registered medical practitioner certifies that it is inadvisable on medical grounds for that person to wear a seat belt;
- a person riding in motor vehicle while it is being used for fire services, police purposes, or prison duties;
- a person driving or riding a motor tractor, motor cycle or trailer;
- a person driving or riding in a motor vehicle constructed or adapted for the delivery of goods or mail to consumers or premises, as the case may be, while engaged in the delivery to, or collection of such goods or mail from, consumers or premises, not further than sixty metres from each other.

- In the case of a first offence, to a fine not exceeding two thousand dollars: *Section 57Q(3)(a);*
- In the case of a second or subsequent offence, to a fine not exceeding five thousand dollars: *Section 57Q(3)(b);*

- Notwithstanding anything in this Part, a person who rides a motor vehicle on a seat fitted with a seat belt without fastening the seat commits an offence;

  Punishment: Liable on summary conviction to a fine not exceeding two thousand dollars: *Section 57Q(4).*

7. Child in motor vehicle to wear child restraint system - *Section 57R*

   - A driver of a motor vehicle which conveys a child shall cause the child to wear or be conveyed in an appropriate child restraint system positioned in a rear seat of the motor vehicle: *Section 57R(1);*

     Punishment: A driver who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars: *Section 57R(2).*

8. Driving without a permit - *Section 29*

   - Save as in this section provided no person shall not drive a motor vehicle on a road unless he is the holder of a driving permit, and no person shall employ any person to drive a motor vehicle on the road unless the person so employed is the holder of a driving permit. If any person acts in contravention of this provision, he is guilty of an offence: *Section 29(1);*

     Punishment: Liable to a fine of two thousand five hundred dollars: *Section 29(1);*

     Provided that if the offender has been previously refused a driving permit, or is disqualified from holding or obtaining a driving permit, he may be arrested forthwith without a warrant and is liable to imprisonment for six months and to a fine of five thousand dollars: *Section 29(1).*

9. Duty to stop in case of an accident - *Section 57*

   - A person riding, driving or in charge of any vehicle of any description shall, if an accident occurs to any traffic owing to the presence of such vehicle on the road, stop and if required, give his name and address, and also the name and address of the owner of the vehicle. Any person who acts in contravention of this section is guilty of an offence under this Act: *Section 57;*

     Punishment: Any person who, by any act or omission, contravenes or fails to comply with the provisions of this Act is guilty of an offence and, unless otherwise specifically provided, liable to a fine of two thousand five hundred dollars and to imprisonment for six months: *Section 72(1).*

Offences which a magistrate does not have jurisdiction to try

The magistrate does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting a preliminary enquiry into the offence. These offences include:

- Causing death by dangerous or reckless driving - *Section 49.*

TRINIDAD AND TOBAGO

The main legislation is the *Motor Vehicles and Road Traffic Act, Chap.48:50.* For the purpose of detailing road traffic legislation within this chapter for Trinidad and Tobago, the *Motor Vehicles and Road Traffic Act, Chap. 48:50, Revised Edition 2016,* which includes subsidiary legislation is utilised. This must be read in conjunction with the *Motor Vehicles and Road Traffic (Amendment) Act, No. 9 of 2017.*

Fixed penalty

The *Motor Vehicles and Road Traffic (Amendment) Act, No. 9 of 2017,* repealed the *Motor Vehicles and Road Traffic (Enforcement and Administration) Act,* and Part VI (Legal Proceedings, suspension and cancellation of driving) of the Act. The following Parts were substituted: Part VI - (Fixed Penalty Enforcement and Administration) and Part VIA - (Legal Proceedings, Demerit Points, Suspension and Cancellation of driving permits).

Part VI - (Fixed Penalty Enforcement and Administration) - Section 35 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017

- Where a constable[217] has reason to believe that a person is committing or has committed a traffic violation, the constable may issue the driver with a fixed penalty notice that offers the driver the opportunity to pay the fixed penalty within the time specified in the fixed penalty notice and discharge of any liability for the traffic violation or to file a notice to contest[218] where the driver is desirous of contesting the fixed penalty notice issued to him: *Section 81(1);*
- Where a constable finds a vehicle on any occasion and has reason to believe that a traffic violation is being or has been committed in respect of that vehicle, the constable may affix a fixed penalty notice to any part of the vehicle where the fixed penalty notice may be easily seen and for the purposes of this Part, the affixed fixed penalty notice shall be deemed to have been served upon the person liable for the traffic violation: *Section 81(2);*

[217] Section 35 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by providing a substituted section 80 which states: "constable" includes: a police officer as defined in the Police Service Act; a Transport Officer; a Traffic Warden appointed under section 10A; and an estate constable employed under the Supplemental Police Act, in a public body listed in the Eighth Schedule.

[218] Section 35 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by providing a substituted section 80 which states: "notice to contest" means a notice requesting a hearing by a Court in respect of a traffic violation specified in a fixed penalty notice.

- Where a fixed penalty notice has been issued or affixed under this section, the police officer in charge of the police station for the district in which the fixed penalty notice was issued shall send a duplicate of the fixed penalty notice to the Licensing Authority within seven working days from the date of issue or affixing of the fixed penalty notice: *Section 81(6);*
- The fixed penalty for a traffic violation shall be the amount specified in the Third Column of the Ninth Schedule: *Section 84;*
- Where a person is desirous of contesting a fixed penalty notice, he shall file a notice to contest[219] with a payee within 15 days from the date that the fixed penalty notice was issued or affixed[220]: *Section 85(1);*
- Proceedings in respect of a traffic violation for which a fixed penalty notice was issued or affixed shall not be listed for trial in court unless:
    - A notice to contest has been filed in accordance with *Section 85,* within 15 days from the date that the fixed penalty notice was issued or affixed: and *Section 87(a);*
    - A period of two months has elapsed from the last day on which the fixed penalty is payable and there is no record that the fixed penalty was paid in accordance with *Section 83: Section 87(b);*
- Where a notice to contest is filed within the period specified in the fixed penalty notice, the constable who issued or affixed the fixed penalty notice shall be notified and shall be required to attend court on the date, time and address of the court as specified in the fixed penalty notice: *Section 88(1);*
- Notwithstanding *Section 44,* of the *Summary Courts Act,* where a person files a notice to contest and does not appear before the court on the date and time specified in the fixed penalty notice, the magistrate shall not issue a warrant for the arrest of the person but may proceed ex parte to hear the matter and adjudicate thereon as fully and effectually as if the person had personally appeared before the court: *Section 88(2);*
- Where a fixed penalty notice was issued or affixed and the driver or owner, as the case may be, does not pay the fixed penalty and does not file a notice to contest in accordance with this Act:
    - He shall be liable to pay to a payee, the fixed penalty plus one-quarter of the amount of that fixed penalty: and *Section 88A(1)(a);*
    - The applicable number of demerit points for the traffic violation shall be recorded against his driving permit record: *Section 88A(1)(b);*

[219] Section 35 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by providing a substituted section 86 which states: Where a Notice to Contest has been filed, the constable shall immediately transmit to the Clerk, in the district in which the traffic violation is alleged to have been committed, a copy of the fixed penalty notice.

[220] Section 35 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by providing a substituted section 85(2) which states: Notwithstanding subsection (1), a person may at any time within the period specified in the fixed penalty notice for the payment of the fixed penalty pay the fixed penalty in accordance with section 83 and the matter shall be removed from the list of hearing at the Court.

- Where the driver or owner, as the case may be, does not pay the sum required under subsection (1), within 14 days of the date on which it became payable, he shall be liable to pay the fixed penalty plus one-half of the amount of the fixed penalty: *Section 88A(2);*
- Where the driver or owner, as the case may be, fails to pay the required sums in accordance with this section, the Licensing Authority may suspend the driving permit of the driver or owner, as the case may be, or cease all transactions in relation to the motor vehicle which was involved in the commission of the traffic violation or with the driver or owner of the said motor vehicle, as the case may be: *Section 88A(3).*

Demerit points

The *Motor Vehicles and Road Traffic (Amendment) Act, 2017,* introduces a demerit point system under Part VIA and further specified in the Ninth Schedule.

- Subject to subsection (2), where a person is convicted for an offence or a traffic violation listed in the First Column of the Ninth Schedule that carries demerit points, the demerit points as prescribed in the Fourth Column in the Ninth Schedule for that offence or traffic violation shall be recorded against the driving permit record of the person so convicted: *Section 88K (1);*

  Some offences which accrue demerit points include:

  - Failing to comply with a traffic light signal (3 points);
  - Driving when under the influence of drug (9 points);
  - Careless Driving (6 points);
  - Vehicle with defective fittings (2 points);
  - Overtaking traffic at a place dangerous to do so (3 points);
  - Overcrowded vehicle (3 points);
  - Carrying persons in a dangerous manner (3 points).

Offences for which a magistrate has jurisdiction

1. Speed Limit - *Section 62*

   - Subject as hereinafter provided, it shall not be lawful, for any person to drive a motor vehicle of any class or description on any road[221]:
     - Outside a built-up area at a speed greater than the speed specified in the Second Schedule as the maximum speed in relation to a vehicle of that class or description: *Section 62(1)(a);*

[221] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 62(4)(a). It shall be the duty of the Licencing Authority:

- to erect or cause to be erected and to maintain or cause to be maintained traffic signs in such positions as may be requisite for the purpose of securing that adequate guidance is given to drivers of motor vehicles as to the places where a length of road begins, and ceases, to be a road in respect of which a special speed limit is imposed and as to the special speed limit so imposed.

- Within a built-up area at a speed greater than the speed specified in the Second Schedule as the maximum speed in relation to a vehicle of that class or description: *Section 62(1)(b);*
- Whether outside or within a built-up area, in respect of which a special speed limit[222] is imposed, at a speed exceeding the special speed limit imposed in relation to a vehicle of that class or description: *Section 62(1)(c);*

Punishment: Any person who drives a motor vehicle on a road in contravention of the provisions of subsection (1), is liable to a fine of six thousand dollars: *Section 62(5);*

Disqualification: Any person who drives a motor vehicle on a road in contravention of the provisions of subsection (1), is liable to be disqualified from holding or obtaining a driving permit for such period as the court shall think fit: *Section 62(5);*

- It shall be a good defence for any person charged with having contravened subsection (1)(c) to prove that at the time of the alleged contravention there was a failure to comply with subsection (4), by reason of which:
  - He did not know that the length of road where the contravention is alleged to have taken place was a length of road in respect of which the special speed limit had been imposed;
  - He did not otherwise know of the imposition of the special speed limit in respect of such length of road: *Section 62(5).*

Speed Measuring Device

- A constable[223] may use a speed measuring device[224] for the purposes of measuring the speed at which a person is driving a motor vehicle[225]: *Section 62(6);*
- Before using a speed measuring device on any day, a constable shall satisfy himself that the device is:
  - In a satisfactory condition: and *Section 62(6B)(a);*
  - Properly calibrated so that it indicates speed readings within a limit of error not greater or less than two kilometres per hour of the true speeds: *Section 62(6B)(b);*

[222] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 62(8) provides that "special speed limit" means, in relation to the driving of any motor vehicle or a motor vehicle of any specified class or description on a road, a speed limit specifying a speed less than the speed which would be applicable in respect of that road and that class or description of motor vehicle under subsection (1)(a) or (b), as the case may be, and which is imposed under subsection (2) or (3).

[223] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 62(8) provides that "constable" means:

- police officer as defined in section 3 of the Police Service Act; or
- a member of the Special Reserve Police established under the Special Reserve Police Act;

[224] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 62(8) provides that "speed measuring device" means a device designed to measure the speed at which a person is driving a motor vehicle.

[225] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 62(6A) The Minister shall, by Order, approve the speed measuring devices which may be used for the purposes of subsection (6).

after which the constable shall enter into the device his name, regimental number and the speed limit of the area where the speed check is to be conducted.

- A constable shall, after complying with the subsection (6B), record in a log book for that purpose, an entry stating that he complied with subsection 6B: *Section 62(6C);*
- A constable who determines with the use of a speed measuring device that a motor vehicle has exceeded the speed limit, shall cause the motor vehicle to be stopped: *Section 62(6D);*
- Where a motor vehicle is stopped pursuant to subsection (6D), a constable shall:
    - Inform the driver of the motor vehicle that he has:
        i exceeded the speed limit as determined with the use of a speed measuring device: and *Section 62(6E)(a)(i);*
        ii committed an offence under subsection (5): *Section 62(6E)(a)(ii)*
        iii deliver to the driver of the motor vehicle a printout from the speed measuring device which:
            a) purports to be evidence of the speed at which the driver was driving the motor vehicle: *Section 62(6E)(b)(i);*
            b) includes a photograph of the vehicle identifying the registration plate: *Section 62(6E)(b)(ii);*
            c) bears an endorsement by the constable who operated the device, stating the date and time of the offence, the place where the offence occurred and that the constable is qualified to operate the device: and *Section 62(6E)(b)(iii);*
            d) bears the signature of the constable who operated the device: *Section 62(6E)(b)(iv)*

Evidence to be considered in proceedings for an offence under Section 62[226]

- In proceedings for a traffic violation under this section in which evidence is given of a measurement of speed obtained by the use of a speed measuring device, a certificate purporting to be signed by a constable that:
    - He is certified by the Commissioner of Police as being qualified to operate a speed measuring device: *Section 62(6F)(a);*
    - The speed measuring device used by him to measure the speed at which a person was driving the motor vehicle was approved by the Minister under subsection (6A): *Section 62(6F)(b);*

[226] Section 20 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends section 62(6E) to 62(6J) of the Motor Vehicles and Road Traffic Act, Chap.48:50.

- The measurement was made on the date and completed at the time stated in the certificate: *Section 62(6F)(c);*
- The speed measured by the device and expressed in kilometres per hour was the speed at which the person was driving the motor vehicle on the date and time stated in the certificate: and *Section 62(6F)(d);*
- The constable satisfied himself before using the device, that the device was in a satisfactory condition and properly calibrated in accordance with subsection (6B): *Section 62(6F)(e);*

is admissible and is prima facie evidence of the particulars certified in and by the certificate;

- In proceedings for a traffic violation under this section:
  - Evidence may be given of the speed at which a person was driving the motor vehicle as determined with the use of a speed measuring device operated by a constable who is certified by the Commissioner of Police as being qualified to operate the device: and *Section 62(6G)(a);*
  - The speed so determined shall be deemed to be the speed at which he was driving the motor vehicle, unless he proves otherwise: *Section 62(6G)(b);*
- In proceedings for a traffic violation under this section, a certificate purporting to be signed by the Commissioner of Police that a constable named therein is qualified to operate a speed measuring device is admissible and is prima facie evidence of the particulars certified in and by the certificate: *Section 62(6H);*
- In proceedings for a traffic violation under this section, evidence of the condition of a speed measuring device shall not be required unless evidence that the instrument was not in a satisfactory condition has been adduced: *Section 62(6I);*
- In proceedings for a traffic violation under this section, a document purporting to be evidence of the speed at which a person was driving a motor vehicle shall not be admissible as evidence, unless a copy of it has been delivered to the person who was driving the motor vehicle: *Section 62(6J).*

2. Motor racing and speed trials - *Section 63*[227]
   - Any person who, except under and in accordance with the written permission of the Commissioner of Police, promotes or takes part in a race or trial of speed between motor vehicles on a road commits an offence: *Section 63(1);*

     Punishment: Liable to a fine of six thousand dollars: *Section 63(1).*

3. Driving when under the influence of liquor - *Section 70*
   - A person who, when driving or attempting to drive or when in charge of a motor vehicle on a road, is under the influence of a drug[228] to such an extent as

[227] Section 21 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends section 63 of the Motor Vehicles and Road Traffic Act, Chap.48:50.
[228] Section 28 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends section 70(1) of the Motor Vehicles and Road Traffic Act, Chap.48:50.

to be incapable of having proper control of the vehicle commits and offence: *Section 70(1);*

Punishment: Liable on first conviction to a fine of twelve thousand dollars and to imprisonment for three years. On any subsequent conviction to a fine of twenty-two thousand, five hundred dollars and to imprisonment for five years: *Section 70(1);*

Disqualification: A person convicted of:

- Two consecutive offences under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of three years from the date of the conviction from holding or obtaining a driving permit: and *Section 70(2)(a);*
- A third conviction for a like offence, shall be permanently disqualified from holding or obtaining a driving permit: *Section 70(2)(b);*

- Any constable may arrest without a warrant any person committing an offence under this section: *Section 70(3);*
- The Minister may, by order, approve the device to be used for the detection of drugs pursuant to subsection (1): *Section 70(4).*

4. Driving or being in charge of a vehicle while blood alcohol levels exceed prescribed limit - *Section 70A*

    - No person shall drive or attempt to drive, or be in charge of a motor vehicle on a road or other public place if he has consumed alcohol in such a quantity that the proportion thereof in his breath or blood exceeds the prescribed limit: *Section 70A(1);*
    - Any person who contravenes subsection (1), is guilty of an offence: *Section 70A(2);*
    - No person shall be convicted under this section of being in charge of a motor vehicle under subsection (1), if he proves that at the material time, the circumstances were such that there was no likelihood of his driving the motor vehicle while there was alcohol in his breath or blood in a proportion exceeding the prescribed limit: *Section 70A(4);*

      Punishment: Liable in the case of a first conviction, to a fine of twelve thousand dollars or to imprisonment for three years. In the case of a second or subsequent conviction, to a fine of twenty-two thousand, five hundred dollars or to imprisonment for five years: *Sections 70A(2)(a), (b);*

      Disqualification: A person convicted of:

      - Two consecutive offences under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to

Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 70G (1) provides that "drug" includes any intoxicant other than alcohol.

the power of the court to order a longer period of disqualification, be disqualified for a period of three years from the date of the conviction from holding or obtaining a driving permit: and *Section 70A(3)(a);*

- A third conviction for a like offence, shall be permanently disqualified from holding or obtaining a driving permit: *Section 70A(3)(b).*

Breath Test[229]

- Where a constable has reasonable cause to suspect:
  - That a person driving or attempting to drive or is in charge of a motor vehicle on a road or other public place has alcohol in his breath or blood exceeding the prescribed limit[230] or is in breach of *Section 70: Section 70B(1)(a);*
  - That a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place has alcohol in his breath or blood exceeding the prescribed limit and that the person still has alcohol in his breath or blood: or *Section 70B(1)(b);*
  - That a person has been driving, attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed an offence against this Act whilst the vehicle was in motion: *Section 70B(1)(c);*

  he may, subject to subsection (4), require him to provide a specimen of breath[231] for a breath test at or near the place where the requirement is made.
- No requirement may be made by virtue of *paras. (b)* or *(c),* of subsection (1), unless it is made as soon as reasonably practicable after the commission of the offence: *Section 70B(2);*
- Where an accident occurs involving a motor vehicle on the road, a constable may, subject to subsection (4), on arriving at the place of the accident, require the driver of the vehicle, whom the constable has reasonable cause to believe was driving or attempting to drive the vehicle after consuming alcohol in a quantity that the proportion of the alcohol in his breath or blood exceeds the prescribed limit at the time of the accident, to provide a specimen of breath for a breath test:

[229] Collin Partap v Stephen Williams (Ag. Commissioner of Police) Mag. App. Np. P065 of 2016
Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 70G (1) provides that "breath test" means a test for the purpose of obtaining an indication of the proportion of alcohol in the person's breath carried out by means of a device approved for the purpose of such a test by the Minister, under section 70B(9).

[230] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 70G (1) provides that "the prescribed limit" means in respect of:
- breath alcohol concentration, thirty-five microgrammes of alcohol in one hundred millilitres of breath or such other proportion as may be prescribed; and
- blood alcohol concentration, eighty milligrammes of alcohol in one hundred millilitres of blood, or such other proportion as may be prescribed.

[231] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 70G (2). (2) References in section 70B to providing a specimen of breath shall be construed as references to providing a specimen thereof in sufficient quantity to enable a breath test to be carried out.

- Either at or near the place where the accident occurred: or *Section 70B(3)(a);*
- At a police station within reasonable proximity to the place where the accident occurred: *Section 70B(3)(b);*

- Where a person referred to in subsection (3), is at a hospital as a patient, he may be required by a constable to give a specimen of breath at the hospital but no such requirement may be made unless the medical practitioner in charge of his case:
  - Is given prior notice of the proposal to make the requirement: and *Section 70B(4)(a);*
  - Does not object to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient: *Section 70B(4)(b);*
- Where a person, without reasonable excuse, fails to provide a specimen of breath under subsections (1),(3),(4) or (8), he is guilty an offence: *Section 70B(5);*

  Punishment: Liable on conviction to a fine of twelve thousand dollars or to imprisonment for three years: *Section 70B(5)*[232]*;*
- A constable may arrest without warrant any person who as a consequence of a breath test, is found to have a proportion of alcohol in his breath exceeding the prescribed limit but no such arrest may be made while the person is at a hospital as a patient: *Section 70B(6).*

Breath Analysis[233]

- Subject to subsections (2) and (3), where:
  - Any person required by a constable under *Section 70B,* to undergo a breath test fails to undergo that test: or *Section 70C(1)(a);*
  - In consequence of a breath test carried out under *Section 70B,* it is indicated that there may be present in that person's breath, a concentration of alcohol in excess of the prescribed limit: *Section 70C(1)(b);*

  the constable may require that person to submit, in accordance with the directions of the constable, to a breath analysis and on any such requirement, warn him that a failure to so submit may render him liable to prosecution;

[232] Trinidad & Tobago - Motor Vehicles and Road Traffic Act, Chap.48:50, section 70B (7). Where a person required by a constable under subsection (1), (3), (4) or (8) to provide a specimen of breath for a breath test fails to do so and the constable has reasonable cause to suspect that the person has alcohol in his breath or blood above the prescribed limit, the constable may, without prejudice to sections 70(3) and 70A(5), arrest the person without warrant but no such arrest may be made if the person is at a hospital as a patient.

[233] Trinidad & Tobago - Motor Vehicles and Road Traffic Act, Chap.48:50, section 70G (1) provides that "breath analysis" means the quantitative measuring of the proportion of alcohol in a person's breath, carried out by means of a device prescribed for the purpose by the Minister, under section 70C(13).

- The breath analysis required under subsection (1), shall be carried out by a constable authorised in that behalf by the Minister to whom responsibility for national security has been assigned:
    - At or near the place where the requirement is made if the facilities for the specimens to be taken are available and it is practicable to conduct the analysis there: or *Section 70C(2)(a);*
    - At a police station: *Section 70C(2)(b)*[234];
- Any person who:
    - Upon being required to under subsection (1), to submit to a breath analysis fails to do so in accordance with the directions of a member of the Police Service[235]: or *Section 70C(6)(a);*
    - Wilfully does anything to alter the concentration of alcohol in his breath or blood between the time of the event referred to in *Section 70B,* (in respect of which he has been required to undergo a breath test) and the time when he undergoes that test or, if he is required to submit to a breath analysis, the time when he submits to that analysis: *Section 70C(6)(b);*

  is guilty of an offence;

  Punishment: Liable in the case of a first conviction, to a fine of twelve thousand dollars or to imprisonment for three years: *Section 70C(6)(c);*

  In the case of a second or subsequent conviction to a fine of twenty-two thousand, five hundred dollars or to imprisonment for five years: *Section 70C(6)(d).*

Consideration for the magistrate under proceedings for an offence under Section 70, 70A or 70C

- In proceedings for an offence under *Sections 70, 70A or 70C:*
    - Evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analysing instrument operated by the constable authorised in that behalf under subsection (2): and *Section 70C(9)(a);*

[234] Trinidad & Tobago - Motor Vehicles and Road Traffic Act, Chap.48:50, section 70C (8). Within one hour after a person has submitted to a breath analysis, the constable operating the breath analysing instrument shall deliver to that person a statement in writing signed by that constable specifying:

- the concentration of alcohol determined by the analysis to be present in that person's breath and expressed in microgrammes of alcohol in one hundred millilitres of breath; and
- the time of day and the day on which the breath analysis was completed.

[235] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 70C (7). It shall be a defence to prosecution for an offence under subsection (5)(a) if the accused satisfies the court that he was unable on medical grounds at the time he was required to do so, to undergo a breath test or to submit to a breath analysis, as the case may be.

- The concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the breath of the accused at the time of the occurrence of the event mentioned in *Section 70B(1)(a),* unless the accused proves that the concentration of alcohol in his breath at the time did not exceed the prescribed limit: *Section 70C(9)(b).*

Consideration for the magistrate under proceedings for an offence under Section 70C

- In proceedings for an offence under this section, a certificate purporting to be signed by a constable certifying that:
  - He is authorised by the Minister to whom responsibility for national security has been assigned to operate breath analysing instruments: *Section 70C(10)(a);*
  - A person named therein submitted to a breath analysis: *Section 70C(10) (b);*
  - The apparatus used by him to make the breath analysis was a breath analysing instrument approved by the Minister: *Section 70C(10)(c);*
  - The analysis was made on the date and completed at the time stated in the certificate: *Section 70C(10)(d);*
  - A concentration of alcohol determined by the breath analysing instrument and expressed in microgrammes of alcohol in one hundred millilitres of breath was present in the breath of that person on the date and at the time stated in the certificate: and *Section 70C(10)(e);*
  - A statement in writing required by subsection (8) was delivered in accordance with that subsection: *Section 70C(10)(f);*

  shall be prima facie evidence of the particulars certified in and by the certificate;
- In proceedings for an offence under this section, a certificate purporting to be signed by the Minister responsible for national security that the constable named therein is authorised to operate breath analysing instruments, shall be prima facie evidence of the particulars certified in and by the certificate: *Section 70C(11);*
- In any proceedings for an offence under this section, evidence of the condition of a breath analysing instrument or the manner in which it was operated shall not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced: *Section 70C(12);*
- The Minister may, by order, approve the device to be used for the quantitative measuring of the proportion of alcohol in a person's breath: *Section 70C(13).*

Laboratory test[236]

- Subject to subsections (2) and (3), in the course of an investigation as to whether an offence was committed under *Section 70A,* a constable may require[237] a person under investigation to provide a specimen of blood for the a laboratory test if the person is unable, by reason of his physical condition to provide a specimen of breath for a breath test: *Section 70D(1)*[238];
- For the purpose of this section or *Sections 70A, 70E and 70F,* where any person is required to provide a specimen of blood, such specimen shall be taken only:
  - With the consent of that person: *Section 70D(5)(a);*
  - At a hospital: and *Section 70D(5)(b);*
  - By a medical practitioner or qualified laboratory technician: *Section 70D(5)(c);*
- Any person who is under investigation in relation to an offence under *Section 70A,* and who refuses[239] to provide a sample of blood for a test when required to do so under *Section 70D(1),* is guilty of an offence: *Section 70E(1);*

  Punishment: Liable in the case of a first conviction, to a fine of twelve thousand dollars or to imprisonment for three years. In the case of a second or subsequent conviction, to a fine of twenty-two thousand, five hundred dollars or to imprisonment for five years: *Section 70E(1).*

Considerations of evidence that shall be taken by a magistrate in proceedings for an offence under Sections 70A or 70B

- For the purposes of any proceedings for an offence under *Section 70A,* a certificate signed by an authorised analyst, certifying the proportion of alcohol found in a specimen identified by the certificate shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the analyst: *Section 70F(1);*
- For the purposes of any proceedings for an offence under *Section 70A,* a certificate purporting to be signed by the medical practitioner that he took a specimen of blood from a person with that person's consent shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the medical practitioner: *Section 70F(2);*

[236] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 70G (1) provides that "laboratory test" means the analysis of a specimen provided for the purpose.

[237] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 70D (2). A person shall not be required to provide a specimen of blood for a laboratory test under subsection (1) if he is at a hospital as a patient and the medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that the requirement to provide such specimen could be prejudicial to the proper care of that person.

[238] Trinidad & Tobago- Motor Vehicles and Road Traffic Act, Chap.48:50, section 70D (3). A constable shall not require a person to submit a specimen of blood for a blood analysis once a breath analysis has been carried out in respect of that person and the result is available.

[239] Trinidad & Tobago - Motor Vehicles and Road Traffic Act, Chap.48:50, section 70E (2). A person shall not be treated as failing to provide a specimen of blood if he is unable to do so for the reasons set out in section 70D (2).

- Subsections (1) and (2), shall not apply to a certificate tendered on behalf of the prosecution:
    - Unless a copy has been served personally on the accused or on his attorney-at-law or by prepaid registered post not less than seven days before the hearing or trial: or *Section 70F(3)(a);*
    - If the accused, not less than seven days before the hearing or trial, or within such further time as the court may in the circumstances of the case allow, has served notice on the prosecution requiring the attendance at the hearing or trial of the person by whom the certificate was signed: *Section 70F(3)(b);*
- Where, in proceedings for an offence under *Section 70A,* the accused, at the time a specimen of blood was taken from or provided by him in accordance with this Act, asked to be supplied with such a specimen, evidence of the proportion of alcohol found in the specimen shall not be admissible on behalf of the prosecution unless:
    - The specimen is either one of two taken or provided on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken or provided: and *Section 70F(4)(a);*
    - The other specimen or part was supplied to the accused: *Section 70F(4)(b).*

5. Dangerous driving - *Section 71A*

- A person who drives a motor vehicle dangerously on a road commits an offence: *Section 71A(1);*

  Punishment: Liable on summary conviction to a fine of ten thousand dollars and to imprisonment for five years: *Section 71A(1);*

  Disqualification: A person convicted of an offence under this section shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of 12 months from the date of the conviction from holding or obtaining a driving permit. On a third conviction for a like offence he shall be permanently disqualified from holding or obtaining a driving permit: *Section 71A(2);*
- Any constable may arrest without warrant the driver of any motor vehicle who commits an offence under this section within his view, if :
    - He refuses to give his name and address;
    - The constable has reason to believe that the name or address so given is false;
    - The motor vehicle does not bear an identification plate: *Section 71(3).*

Determination of dangerous driving under Section 71A

- For the purposes of *Sections 71 and 71A,* a person is to be regarded as driving dangerously if:
    - The way in which he drives falls below what would be expected of a competent and careful driver[240]: and *Section 71B(1)(a);*
    - It would be obvious to a competent and careful driver that driving in that way would be dangerous: *Section 71B(1)(b);*
- A person is also to be regarded as driving dangerously for the purposes of *Sections 71 and 71A,* if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous. In determining the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried: *Section 71(B)(2);*
- In subsections (1) and (2), "dangerous" refers to danger either of injury to any person or of serious damage to property. In determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had:
    - Not only to the circumstances of which he would be expected to be aware;
    - But also, to any circumstances shown to have been within the knowledge of the driver: *Section 71B(3).*

Power to proceed on charge for careless driving on hearing of charges under Sections 70 or 71A

- Where a person is charged with an offence under *Sections 70 or 71A,* and the court determines that the offence is not proved, then, at any time during the hearing or immediately thereafter, the court may, without prejudice to any other direction or order that may be made, direct or allow a charge for an offence under *Section 72,* to be preferred against the defendant and may thereupon proceed with that charge: *Section 88F(1);*
- Procedure:

  A defendant under subsection (1), or his Attorney-at-law shall be informed of the new charge and be given the opportunity, whether by way of cross-examining any witness whose evidence has already been given against the defendant or otherwise, of answering the new charge. The court shall, if it considers that the defendant is prejudiced in his defence by reason of the new charge being preferred, adjourn the hearing: *Section 88F(2).*

[240] R v. Saunders [2002] 37 M.V. R. 270
Director of Public Prosecutions v. Milton [2006] R.T.R. 21 per Hallett LJ
The State v Ricardo Huggins Criminal Number S 17 /07

[241] Section 35 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 repealed and substituted a new Part VI of the Motor Vehicles and Road Traffic Act, Chap.48:50. Section 81 under the repealed Part VI is renumbered as 88F under the new Part VI.

6. Careless driving - *Section 72*

- Any person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road is guilty of an offence: *Section 72;*

  Punishment: Liable on summary conviction to a fine of one thousand dollars[242]: *Section 72;*

  Disqualification: Liable to be disqualified for holding or obtaining a driving permit for such period as the court thinks fit. On a second or subsequent conviction for a like offence, the period of disqualification shall not be less than one month: *Section 72.*

Bars to conviction

- Subject to subsections (2) and (3), where a person is prosecuted for an offence under any of the preceding sections relating respectively to the maximum speed at which motor vehicles may be driven, dangerous driving, or causing death by dangerous driving, and to careless driving, he shall not be convicted unless either:
  - He was warned on the day the offence was committed that the question of prosecuting him for an offence under someone or other of the sections aforesaid would be taken into consideration: or *Section 73(1)(a);*
  - Within 14 days of the commission of the offence a summons for the offence was served on him: or *Section 73(1)(b);*
  - Within the said 14 days a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or to the person registered as the owner of the vehicle at the time of the commission of the offence: *Section 73(1)(c);*
- Failure to comply with the requirement of subsection (1), shall not be a bar to the conviction of the accused in any case where the court is satisfied that:
  - Neither the name and address of the accused nor the name and address of the registered owner of the vehicle, could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid: or *Section 73(2)(i);*
  - The accused by his own conduct contributed to the failure: *Section 73(2)(ii);*
- The requirement of subsection (1), shall in every case be deemed to have been

[242] Section 29 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends section 72 of the Motor Vehicles and Road Traffic Act, Chap.48:50.

complied with unless and until the contrary is proved: *Section 73(3).*

7. Taking vehicle without consent of owner - *Section 74*

- Any person who uses a vehicle without the consent of the owner or other lawful authority is guilty of an offence: *Section 74(1)(a);*
- A person shall not be convicted under this section if he proves either:
  - That he had good reason to believe, and did in fact believe, that the owner of the vehicle would, had he been present, have consented to the vehicle being used in manner in which it was used: or *Section 74(1)(b)(i);*
  - That he had reasonable cause to believe, and did in fact believe, that he had lawful authority to use the vehicle: *Section 74(1)(b)(ii);*

  Punishment: Any person who contravenes this Act is, unless otherwise specifically provided, liable to a fine of three thousand dollars[243]: *Section 91(1);*
- If any person is convicted under this section, the magistrate may, if he thinks fit, either in addition to or without inflicting any punishment, order the person convicted do pay to the owner of the vehicle, either or both of the following sums, namely:
  - Such sum as, in the opinion of the magistrate, would have been charged if the vehicle had been hired by the person convicted: *Section 74(2)(a);*
  - Such sum as, in the opinion of the magistrate represents fair compensation for any damage done to and for the use of the vehicle: *Section 74(2)(b).*

8. Duty to stop, give aid, and report in case of accident - *Section 79*

- Where, owing to the presence of a vehicle on a road, an accident occurs, whereby injury or damage is caused to any person, animal or property, the driver of the vehicle shall immediately stop, and:
  - If any person has been injured in the accident, the driver shall render such person aid, and if the person wishes to be taken to hospital or to a doctor, or is unconscious, convey or cause to be conveyed the injured person without delay to the nearest hospital or to a doctor: *Section 79(1)(a);*
  - If requested by the injured person or by the owner of the damaged property or some person on such owner's behalf, the driver shall give his name and address and particulars of his driving permit and the name and address of the owner of the vehicle: *Section 79(1)(b);*
  - Unless a report is made by the driver at the time and place of the accident to a member of the Police Service, the person riding in, driving or in charge of the vehicle shall proceed with all proper despatch to the nearest Police Station or police constable in uniform and shall report the accident and shall give his name and address and the name and address

[243] Section 36 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends section 91 of the Motor Vehicles and Road Traffic Act, Chap.48:50 to the effect that general penalties would not include imprisonment.

of the owner of the vehicle and the names of any persons in the vehicle at the time of the accident: *Section 79(1)(c);*

- A person who fails to comply with the above commits an offence.

Punishment: Any person who contravenes this Act is, unless otherwise specifically provided, liable to a fine of three thousand dollars[244]: *Section 91(1).*

Power of court to require a suspended permit be produced

- Where a person is convicted of an offence under *Sections 70, 70A, 71,* or *71A,* and an order has been imposed for the disqualification of the person from holding or obtaining a driving permit for a stated period or permanently and where the person holds a driving permit, the court before which the person is convicted shall require him to produce the permit and upon the making of an order of disqualification, shall forfeit the permit and return it to the Licensing Authority: *Section 88G(1)*[245];
- A person who by virtue of an order of a court under *Section 82,* is disqualified for holding or obtaining a driving permit may appeal against the order in the same manner as against a conviction, and the court may, if it thinks fit, pending the appeal, suspend the operation of the order: *Section 83*.[246]

9. Driving without a permit - *Section 42*

- Save as in this section provided, no person shall drive a motor vehicle on a road unless he is the holder of a valid driving permit for a motor vehicle of that class, and no person shall employ any person to drive a motor vehicle on a road unless the person so employed is the holder of a valid driving permit for a motor vehicle of that class: *Section 42(1);*

  Punishment: If any person acts in contravention of this provision, he shall be liable to a fine of seven hundred and fifty dollars.[247] Provided that if the driver of the vehicle has never been the holder of a valid driving permit or has been previously refused a valid driving permit or is disqualified from holding

[244] Section 36 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends section 91 of the Motor Vehicles and Road Traffic Act, Chap.48:50 to the effect that general penalties would not include imprisonment.
[245] Section 35 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 repealed and substituted with a new Part VI of the Motor Vehicles and Road Traffic Act, Chap.48:50. Section 82(1) under the repealed Part VI is renumbered as 88G (1) under the new Part VI.
[246] Section 35 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 repealed and substituted with a new Part VI of the Motor Vehicles and Road Traffic Act, Chap.48:50. Section 83 under the repealed Part VI is renumbered as 88H under the new Part VI.
[247] Section 12(a) of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends section 42 of the Motor Vehicles and Road Traffic Act, Chap.48:50 by revising the penalties under the section to exclude imprisonment.

or obtaining a valid driving permit, he may be arrested forthwith without a warrant and he shall be liable to a fine of fifteen hundred dollars: *Section 42(1).*

10. Seatbelts

- Every private motor car; public service vehicle; goods vehicle; and rented car, not exceeding a maximum tare weight of 3,000 kilogrammes, subject to such exemptions as may be prescribed, brought into, or assembled in Trinidad and Tobago shall, before such motor vehicle is registered, be fitted with a seat belt for the driver and for every passenger who may occupy a front seat of such vehicle and such seat belt shall form an integral and not an optional part of the vehicle: *Sections 43A(1)(a), (b), (c), (d);*
- The driver and every passenger 17 years of age or more occupying a front seat in any motor vehicle referred to in subsection (1), of *Section 43A,* shall wear a seat belt while the motor vehicle is in motion: *Section 43C(1);*
- The driver of a motor vehicle referred to in *Section 43A(1),* shall not without reasonable excuse drive a vehicle while there is in the front seat of the vehicle a person who is not wearing a seat belt: *Section 43C(1A);*

  Punishment: Any person who contravenes the provisions of subsection (1), or subsection (1A), is guilty of an offence and liable on summary conviction to a fine of two thousand dollars: *Section 43C(2);*
- A person shall not be convicted under this section if he proves that at the material time he or the passenger, as the case may be, held a valid certificate signed by a legally qualified medical practitioner to the effect that it is inadvisable on medical grounds for him or the passenger to wear a seat belt and the certificate shall be valid for a period of not more than two years from the date of issue: *Section 43C(3).*

11. Use of mobile devices - *Motor Vehicles and Road Traffic (Mobile Devices) Regulations 281/2010:*

- No person shall drive or have charge of a motor vehicle, on any road while holding or using a hand-held mobile device[248]: *regulation 4(1);*

[248] Trinidad & Tobago - Motor Vehicles and Road Traffic (Mobile Devices) Regulations 281/2010, regulation 3(1) provides that "mobile device" means a mobile telephone or any other device, other than a two-way radio, which performs an interactive communication function by transmitting and receiving data.
Trinidad & Tobago - Motor Vehicles and Road Traffic (Mobile Devices) Regulations 281/2010, regulation 3(1) provides that "interactive communications function" includes:
- sending or receiving oral or written message;
- sending or receiving facsimile;
- sending or receiving still or moving images; and
- providing access to the internet;

Trinidad & Tobago- Motor Vehicles and Road Traffic (Mobile Devices) Regulations 281/2010, regulation 3(2). For the purpose of these Regulations a mobile telephone or other device is to be treated as hand-held if it is held or is required to be held at some point during the course of making or receiving a call or performing any other interactive communication function.

Punishment: A person who contravenes subregulation (1), commits an offence and is liable on summary conviction to a fine of one thousand, five hundred dollars or imprisonment for three months: *regulation 4(2);*

- No person shall supervise the holder of a provisional permit[249] if the person supervising is using a hand-held mobile device: *regulation 5(1);*

  Punishment: A person who contravenes sub-regulation (1), commits an offence and is liable on summary conviction to a fine of one thousand, five hundred dollars or imprisonment for three months: *regulation 5(2);*

- Notwithstanding *regulations 4* and *5,* a person may drive a motor vehicle on a road while using a mobile device in handsfree mode: *regulation 6;*

- No person shall use a wireless communication device[250] to view, send or compose an electronic message while driving or having charge of a motor vehicle: *regulation 7(1);*

  Punishment: A person who contravenes subregulation (1), commits an offence and is liable on summary conviction to a fine of one thousand, five hundred dollars or imprisonment for three months: *regulation 7(2).*

Offences for which a magistrate does not have jurisdiction

The magistrate does not have jurisdiction to try the following offences on indictment. However, he shall have jurisdiction to the extent of conducting committal proceedings into the offence. This include:

- Causing death by dangerous driving - *Section 71.*

Things to note under the Motor Vehicles and Road Traffic (Amendment) Act, 2017

1. *The Motor Vehicles and Road Traffic (Amendment) Act, 2017 - Section 25 (Insertion of NEW Section 66A 'Failure to comply with a traffic light')*

   - Insertion of a new *Section 66A,* which states that a person driving or propelling a vehicle, who fails to comply with the indication given by a traffic light signal is liable to a fine of five thousand dollars dollars for the first traffic violation and a fine of seven thousand dollars for any subsequent traffic violation. This section does not apply to an emergency vehicle: *Sections 66A(1), (2);*

2. *The Motor Vehicles and Road Traffic (Amendment) Act, 2017 - Section 34 (Insertion of Part VA 'Red-Light Camera System')*

   New Part VA inserted after *Section 79,* detailing the red-light camera system. Some of these insertions include:

   - For the purposes of this Part "red-light camera" means an electronic device,

[249] Trinidad & Tobago- Motor Vehicles and Road Traffic (Mobile Devices) Regulations 281/2010, regulation 3(1) provides that "provisional permit" means a provisional permit to drive issued under section 42 of the Act.
[250] Trinidad & Tobago- Motor Vehicles and Road Traffic (Mobile Devices) Regulations 281/2010, regulation 3(1) provides that "wireless communication device" means a device used to transfer information over a distance without the use of electrical conductors or wires.

approved by the Minister under *Section 79B,* for the purpose of capturing and producing photographic images and video recordings of traffic violations committed under *Section 66A: Section 79A;*

- The Licensing Authority may cause or permit a red-light camera to be installed on, or near any traffic light signal: *Section 79B(1);* The Minister may, by order, approve the red-light camera for the purposes of this Part: *Section 79B(2)*;
- For the purposes of this Part where a red-light camera captures a photographic image or video recording of a motor vehicle that fails to comply with the indication given by a red light of a traffic light signal in contravention of *Section 66A,* the owner of the motor vehicle involved in the traffic violation shall be responsible for ensuring the payment of the fixed penalty stipulated in the citation notice[251] served under *Section 79H: Section 79D(1);*
- Where there is more than one owner of the motor vehicle, referred to in subsection (1), the owners shall be jointly responsible for ensuring the payment of the fixed penalty: *Section 79D(2);*
- A photographic image or video recording of a motor vehicle captured by a red-light camera shall be evidence:
    - That the motor vehicle was used in the commission of a traffic violation under *Section 66A:* and *Section 79E(a);*
    - That the information shown on the photographic image or video recording is a true and accurate record of the registration number of the motor vehicle used in the commission of the traffic violation: *Section 79E(b);*
- A citation notice prepared under *Section 79F,* shall be served on each owner of a motor vehicle involved in a traffic violation under *Section 66A: Section 79H(1);*
- Service of a citation notice under this section is deemed to be effected on the owner on the eighth day following the date on which the notice is delivered, left, affixed, published, or electronically transmitted: *Section 79H(3);*
- Where service of a citation notice has been effected under *Section 79H,* the owner of the motor vehicle shall, unless he files a notice of contest,[252] pay the fixed penalty within 45 days from the deemed date of service under *Section 79H(3),* of the citation notice or such longer period as the Minister may prescribe by order: *Section 79I(1);*
- Where an owner of a motor vehicle is served with a citation notice under *Section 79H,* for a traffic violation and is desirous of contesting the traffic

[251] Section 34 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by inserting section 79A which provides: "citation notice" means the Notice approved by the Authority under section 79G.

[252] Section 34 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by inserting section 79A which provides: "notice to contest" means a Notice requesting a hearing by a Court in respect of a traffic violation indicating that the owner wishes to contest responsibility for the payment of a fixed penalty as stated in the Citation Notice.

violation in the citation notice, the owner may file a notice to contest with a payee prescribed by the Minister under *Section 88D,* within thirty days from the deemed date of service of the citation notice: *Section 79J(1);*

- An owner may file a notice to contest on the grounds that at the time the traffic violation was committed:
    - The motor vehicle was stolen: or *Section 79J(2)(a);*
    - He is no longer the owner having duly registered a change of possession of the motor vehicle in accordance with *Section 19(1): Section 79J(2)(b);*
- Notwithstanding the filing of a notice to contest under subsection (1), an owner shall be permitted to pay the fixed penalty specified in the citation notice in accordance with *Section 79I,* and the matter shall be removed from the list of hearing at the court: *Section 79J(3);*
- Proceedings in respect of a traffic violation under *Section 66A,* for which a citation notice was served, shall not be listed for trial in court unless:
    - A notice to contest has been filed by the owner of the motor vehicle within thirty days from the deemed date of service of the citation notice in accordance with *Section 79J:* and *Section 79K(a);*
    - A period of three months has elapsed from the last day on which the fixed penalty is payable and there is no record that the fixed penalty was paid in accordance with *Section 79I: Section 79K(b);*
- Where an owner has filed a notice to contest, the Inspection Officer[253] shall transmit to the clerk, in the district in which the traffic violation occurred, a certified copy of:
    - The citation notice: *Section 79L(a);*
    - The notice to contest: *Section 79L(b);*
    - The photographic image or video recording of the motor vehicle captured by the red-light camera in relation to the traffic violation: and *Section 79L(c);*
    - Proof of service of the citation notice: *Section 79L(d);*
- In proceedings for a traffic violation under this Part a certificate on the citation notice signed by an Inspection Officer which states that:
    - He is certified by the Commissioner of Police as trained to analyse the information captured by a red-light camera: *Section 79M(a);*
    - The red-light camera used to capture the photographic image or video

[253] Section 34 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by inserting section 79A which provides: "Inspection Officer" means a constable, Transport Officer or Traffic Warden certified by the Commissioner of Police as trained to analyse and certify the authenticity of photographic images or video recordings obtained with a red-light camera;

recording was approved by the Minister: *Section 79M(b);*

- The photographic image or video recording captured by the red-light camera was obtained on the date and time stated therein: *Section 79M(c);*
- The red-light camera was operating accurately at the time the photographic image or video recording was captured: and *Section 79M(d);*
- The contents of the information shown on the photographic image or video recording are true and correct: *Section 79M(e);*

is prima facie evidence of the matters stated in the certificate;

- In proceedings for a traffic violation under this Part, where the credential of an Inspection Officer is reasonably brought into question, the court may authorise the submission of a certificate purporting to be signed by the Commissioner of Police that the Inspection Officer named therein is qualified to operate and analyse a red-light camera, and the certificate shall be prima facie evidence of the particulars specified in, and by the certificate: *Section 79N;*
- In proceedings for a traffic violation under this Part, evidence of the condition of the red-light camera or the manner in which it was operated shall not be required unless evidence that it was not in proper condition or was not properly operated at the time of the traffic violation has been adduced: *Section 79O;*
- In proceedings for a traffic violation under this Part, the information that is sent to the court under *Section 79L,* shall be sufficient evidence to call upon the person charged to answer: *Section 79P(1);*
- Notwithstanding any law to the contrary, in proceedings for a traffic violation under this Part, the court shall not require the presence of a complainant but this shall not debar the person in receipt of the citation notice from summoning any person in his defence: *Section 79P(2);*
- Notwithstanding *Section 44,* of the *Summary Courts Act,* where an owner who files a notice to contest does not appear before the court at the date, time and address specified in the citation notice, the magistrate shall not issue a warrant for the arrest of the owner, but may proceed ex parte to the hearing of the matter, and adjudicate thereon as fully and effectually as if the owner had personally appeared before the court: *Section 79Q;*
- Where an owner does not pay the fixed penalty and does not file a notice to contest, in accordance with this Act, he shall be liable to pay, to a payee, the fixed penalty plus one-quarter of the amount of that fixed penalty: *Section 79R(1);*

  Punishment: Where an owner does not pay the sum required under subsection

(1), within 14 days of the date on which it became payable, he shall be liable to pay the fixed penalty plus one-half of the amount of the fixed penalty: *Section 79R(2);* Where an owner fails to pay the required sums in accordance with this section, the Licensing Authority may suspend the driving permit of the owner or cease all transactions in relation to the motor vehicle which was involved in the commission of the traffic violation or with the owner of the said motor vehicle: *Section 79R(3).*[254]

3. *The Motor Vehicles and Road Traffic (Amendment) Act, 2017 - Section 35 (Part VIA- (Legal Proceedings, Demerit Points, Suspension and Cancellation of driving permits)*

    - The Licensing Authority shall, for the purpose of administering demerit points, establish and maintain a register to be known as "the Demerit Points Register": *Section 88J(1).*

[254] Section 34 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by inserting section 79S which provides: Where section 79R of the Act becomes applicable, the Licensing Authority shall issue a notice, in writing, to the owner indicating that:

- the fixed penalty specified in the Citation Notice was not paid;
- a Notice to Contest in respect of the traffic violation was not filed;
- the sum stated in section 79R(a) has become due for payment;
- it intends to impose the sanction specified at section 79R (3), which would be lifted upon the payment of the applicable penalty; and
- he has 14 days, from the date of receipt of the notice, to show cause, in writing, why the Licensing Authority should not impose the intended sanctions.

Section 34 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by inserting section 79T (1), (2) which provides: An owner may show cause, as stated in section 79S, why the Licensing Authority should not impose the sanctions specified in section 79R (3). After consideration of representations made by an owner pursuant to subsection (1), the Licensing Authority may impose any combination of sanctions specified in section 79R(3), or decline to impose any sanctions and require the owner to pay the sum due under section 79R.

Section 34 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by inserting section 79T (3) which provides: The Licensing Authority shall inform the owner of its decision, in writing, as soon as possible.

Section 34 of the Motor Vehicles and Road Traffic (Amendment) Act, 2017 amends the Motor Vehicles and Road Traffic Act, Chap.48:50 by inserting section 79T (4) which provides: The Licensing Authority shall immediately lift any sanction imposed under this section upon payment of the applicable sum specified in 79R.

CHAPTER 16

CUSTOMS

Introduction

Customs law has traditionally provided an important regulatory framework through which States could enhance trade facilitation, strengthen border control and generate revenue. However, with the advent of the increase in the importation, exportation and transhipment of illicit drugs, firearms and cash within the Caribbean region in recent time, the law relating to Customs has equally become more relevant in the counteraction by States. Given that the majority of customs offences have traditionally been established as summary offences, the Magistrates' Court has and continues to be a significant forum for the determination of these matters.

Throughout the region, States continue to employ various models of United Kingdom Customs law (either inherited through the pre-independence phase in the region or subsequent adoption) and, in this regard, decisions from the English Courts are generally highly instructive. Notwithstanding, the region has also produced its own vibrant jurisprudence on the subject evidenced, for example, by the celebrated decision in **R v. George Barbar (1973) 21 W.I.R 343,** (where the Judicial Committee of the Privy Council in **Simmonds v. R [1997] 3 L.R.C 501** preferred *Barbar* over the English Court of Appeal's decision in **Frailey v. Charlton [1920] 1 K.B. 147,** and the meticulous approach of the **Court in Darren Bhola (C&EO II) v. Canserve Caribbean Limited and Ors Mag. App. No. P068 of 2015**. In this regard, given the importance of Customs law to the region, it is very much expected that the jurisprudence on this subject will continue to grow as States update Customs law and regional Courts confront the peculiarities of matters before them.

Territorial

An interesting feature of Customs law is the wide jurisdiction created for enforcement purposes. In international law, this jurisdiction is recognised by *article 33(1)(a),* of the United Nations Convention on the Law of the Sea,[1] which establishes customs jurisdiction in the contiguous zone beyond the territorial sea of a State. Notably, in the region, *article 33(1)(a),* has been widely incorporated into the domestic law of nations.[2]

[1] Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

[2] Antigua and Barbuda - Territorial Waters Act No. 18 of 1982, section 6(2)
Bahamas - Archipelagic Waters and Maritime Jurisdiction Act, section 9(1)(c)
Barbados - Marine Boundaries and Jurisdiction Act Cap 387 Section 20(1)(e)
Dominica - Territorial Sea, Contiguous Zone, Exclusive Economic and Fishery Zones Act Cap 1.11, section 2
Grenada - Territorial Sea and Maritime Boundaries Act No.17 of 1978, section 9(3)
Guyana - Maritime Zones Act Cap 63:01, section 19(1)
Jamaica - Maritime Areas Act 25 of 1996, section 20(1)
St. Kitts and Nevis - Maritime Areas Act No.3 of 1984, section 11
St. Lucia - Maritime Areas Act 1984, Section 11
St. Vincent and the Grenadines - Maritime Areas Act 1983, section 19(a)
Trinidad and Tobago - Territorial Sea Act Chap 1:51, section 6A

Further, the unique jurisdictional position of Customs law has also been widely encapsulated in the following provision, which is identical in Guyana, Jamaica and Trinidad and Tobago[3] and exists with modifications in other Caribbean nations:

> *"Every offence under the Customs laws shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which it actually was committed or arose, or in any place on land where the offender or person prosecuted may be or is brought."* [4]

In **Fedna Stoll v. J D'Olivieria (1968) 13 WIR 204,** the Supreme Court of Guyana considered the equivalent of section 258 of the Customs Act. Bollers CJ opined that:

> *"By its very terms [s 258] is framed in the alternative. The reason for this is obvious. It precludes a defendant from questioning the magistrate's jurisdiction if, for the sake of convenience, he is apprehended within the territorial waters off the shores of the boundaries of one jurisdiction and is taken to, for example, a port situate in another jurisdiction.*
>
> *Section [258] in effect, gives the Comptroller of Customs an election as to the jurisdiction he may rely upon when framing a charge. He must elect whether he will found jurisdiction in the place in which the offence was actually committed, or the place on land where the offender or person is brought. Once having made an election on the question of jurisdiction the matter must be tried and determined on the basis of that election. To determine otherwise would open the door for the Comptroller to be allowed two bites at the cherry."* [5]

Who may prosecute?

Under Customs law throughout the Caribbean region, there is generally provision for a customs officer to prosecute customs offences.[6] The existence of such a provision gives the customs officer *locus standi* in similar respects as his counterpart police prosecutor in certain Caribbean States.

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[3] Guyana - Customs Act Cap. 82:01, section 261
Jamaica - Customs Act 1941, section 245
Trinidad and Tobago - Customs Act Chap 78:01, section 251

[4] Antigua and Barbuda - Customs (Control and Management) Act 2013, section 220
Dominica - Customs Act 20 of 2010, section 235
Grenada: Customs Act 9 of 2015, section 226
St. Kitts and Nevis - Customs Act 19 of 2014, section 231
Interestingly, in Barbados it would appear that the substitution of the word "offence" with the words "cause of action" is meant to confine the provision to civil proceedings - Customs Act Cap. 66, section 217

[5] Fedna Stoll v. J D'Olivieria (1968) 13 WIR 204 Bollers CJ at 209

[6] Antigua and Barbuda - Customs (Control and Management) Act 2013, section 224
Bahamas - Customs Management Act Chap. 293, section 313(7)
Belize – Customs Regulation Act Chap. 49, sections 2, 126(a)
Barbados - Customs Act Cap. 66, section 220(1)
Dominica - Customs Act 20 of 2010, section 239(1)
Grenada - Customs (Control and Management) Act Chap. 75B, section 118
Guyana - Customs Act Chap. 82:01, section 261
Jamaica - Customs Act 1941, section 246
St. Kitts and Nevis - Customs Act 19 of 2014, section 235
Trinidad and Tobago - Customs Act Chap 78:01, section 252

Limitation periods

Given that Customs laws relate to revenue collection, it is not unusual for the limitation period within which to prosecute offences (even summary offences) to be extended for the purpose of allowing better enforcement. In the region, the table set out below identifies the limitation period in each jurisdiction:

Country	Period to Initiate Prosecution
Antigua and Barbuda	Seven (7) Years[7]
The Bahamas	Three (3) Years[8]
Barbados	Seven (7) Years [9]
Belize	Three (3) Years[10]
Dominica	Three (3) Years[11]
Grenada	Seven (7) Years[12]
Guyana	Seven (7) Years[13]
Jamaica	Seven (7) Years[14]
Montserrat	Six (6) Months[15]
St. Kitts and Nevis	Seven (7) Years[16]
St. Lucia	Five (5) Years[17]
St. Vincent and the Grenadines	Seven (7) Years[18]
Trinidad and Tobago	Seven (7) Years[19]

[7] Customs (Control and Management) Act 2013, section 222
[8] Customs Management Act Chap. 293, section 314
[9] Customs Act Cap. 66, section 211(1)
[10] Customs Regulation Act Chap. 49, section 128
[11] Customs Act 20 of 2010, section 237
[12] Customs (Control and Management) Act Chap. 75B, section 119
[13] Customs Act Cap. 82:01, section 257
[14] Customs Act 1941, section 241
[15] Customs (Control and Management) Act CAP. 17.04, section 121
[16] Customs Act 19 of 2014, section 233
[17] Customs (Control and Management) Act Chap. 15.05, section 120
[18] Customs (Control and Management) Act Chap 422, section 114
[19] Customs Act Chap. 78:01, section 247

"Prohibited goods" and "Restricted goods"

The concept of "prohibited goods" is fundamental in appreciating the Customs framework. Essentially, it is, as its term suggests, a classification of goods which are proscribed. The significance of the term is that it subjects goods identified, not only under Customs law[20] but other laws[21], to the regulatory framework of Customs law in a perfectly cohesive manner. Consequentially, the jurisdiction of Customs can easily be extended to meet the needs of a State as it pertains to, *inter alia*, public health and safety, national security, agriculture, the economy and even public morality. Further, a number of key customs offences include the ingredient of "prohibited goods" and therefore the concept is also crucial in addressing the nature of these offences before the courts.

The distinction between "prohibited goods" and "restricted goods" is simply that the former may be absolutely banned from importation, exportation or carriage coastwise whilst the latter is permitted to be imported, exported or carried coastwise subject to some type of permission, usually in the form of a licence, from the State. In reality, however, the distinction is more academic as in the case of cocaine, the dangerous drug can usually be imported with a licence throughout the region for medicinal purposes.

In the region, the definition of "prohibited goods or restricted goods" is essentially consistent but varies, with minor textual modifications, as follows:

> *"prohibited or restricted goods" means goods of a class or description of which the importation, exportation or carriage coastwise is prohibited or restricted under or by virtue of any enactment.*[22]
>
> *"prohibited goods" and "restricted goods" mean respectively any goods the importation or exportation of which is prohibited or restricted by law.* [23]

[20] Anguilla - Customs Act Chap. C169, section 31
Antigua and Barbuda - Customs (Control and Management) Act 2013, sections 90(1),91(1)
Bahamas - Customs Management Act Chap. 293, Sections 208(1), 209(1)
Barbados - Customs Act Cap. 66, sections 89(1), 89(2)
Belize - Customs Regulation Act Chap. 49, section 103(1)
Dominica - Customs Act 20 of 2010, sections 103(1)(a), 104(1)(a)
Grenada - Customs (Control and Management) Act Chap. 75B, section 42
Guyana - Customs Act Cap. 82:01, Sections 42, 43, 45, 145
Jamaica - Customs Act 1941, sections 39,40,41 and 143
Montserrat - Customs (Control and Management) Act CAP. 17.04, section 2
St. Kitts and Nevis - Customs Act 19 of 2014, sections 103(1)(a), 104(1)(a) and 106
St. Lucia - Customs (Control and Management) Act Chap. 15.05, sections 84(1), 84(3)(b) and (c)
St. Vincent and the Grenadines - Customs (Control and Management) Act Chap. 422, sections 79(1), 79(3)(b)(i) and 79(3)(b)(ii) Trinidad and Tobago - Customs Act Chap. 78:01, sections 44 and 45; Prohibition (Carriage Coastwise, Importation and Exportation) Order

[21] Trinidad and Tobago - Exchange Control Act Chap. 79:50, Fourth Schedule Part III, section 1
Note "currency" or "cash" is included in the definition of "goods" in some jurisdictions: R v Shobba Mirchandani And Ghanchayan Tolani (1980) 31 WIR 279 cash falls within the meaning of "goods" and breaches of the Exchange Control Act should be charged under Customs Law. See also Animals (Diseases and Importation) Acts throughout the region and the Plant Pest and Disease (Import Control) Act of Barbados, the Undesirable Publications (Prohibition of Importation) Act of Jamaica, and the Dangerous Drugs Act of Trinidad and Tobago.

[22] Antigua and Barbuda - Customs (Control and Management) Act 2013, section 2(1)
St. Lucia - Customs (Control and Management) Act Chap. 15.05, section 2
St. Vincent and the Grenadines - Customs (Control and Management) Act Chap 422, section 2

[23] Guyana - Customs Act Cap. 82:01, section 2
Jamaica - Customs Act 1941, section 2(1)
Trinidad and Tobago - Customs Act Chap. 78:01, section 2

> *"prohibited goods" includes goods of a class or description of which the importation, exportation or carriage coastwise is prohibited under or by virtue of any enactment…*
>
> *"restricted goods" includes goods of a class or description of which the importation, exportation or carriage coastwise is restricted under or by virtue of any enactment.*[24]

Other countries like **Barbados**[25] and **Belize**[26] have a slightly different approach in the drafting of "prohibited goods" and "restricted goods" in their respective Customs laws but, significantly, maintain the spirit of the concept found in neighbouring jurisdictions. In the Bahamas, however, *Section 2,* of the *Customs Management Act* provides separate definitions for *"prohibited goods," "prohibited exports," "prohibited imports"* and *"prohibited or restricted goods."* This may seem confusing at first but, notably, item 1 of the First (Prohibited and Restricted Imports) and Second (Prohibited and Restricted Exports) Schedules of the *Customs Management Act,* respectively provide that:

> *"Prohibited Goods"*
>
> *1. All goods the importation of which is prohibited under the provisions of any law for the time being in force in The Bahamas.*
>
> *"Restricted Goods"*
>
> *1. All goods the importation of which is regulated under the provisions of any law for the time being in force in The Bahamas.*
>
> *"Prohibited Goods"*
>
> *1. All goods the exportation of which is prohibited under any law for the time being in force in The Bahamas.*
>
> *"Restricted Goods"*
>
> *1. All goods the exportation of which is regulated under any law for the time being in force in The Bahamas.*

[24] Dominica - Customs Act 20 of 2010, section 2(1)
[25] Barbados - Customs Act Cap. 66, section 92
[26] Belize - Customs Regulation Act Chap. 49, section 103(2)

Establishing the existence of "prohibited goods" or "restricted goods" is a question of both law and fact as:

(a) The prohibition or restriction must be established by law;

(b) The good must be proven to be that which is prohibited or restricted.

In this regard, scientific analysis or expert opinion may be necessary to establish the identity of the good and the fact that it falls within the prohibition. With this in mind, a bank manager in **Said Ajami v. the Comptroller of Customs [1954] UKPC 35,** was held to be a "person who in the course of his business had to, and did, keep in touch with current law and practice with regard to notes that were legal tender" for the purposes of establishing prohibited goods under the Exchange Control Ordinance of Nigeria. Similarly, a forensic document examiner, certified in examining currency and foreign currency, would also likely be able to establish the existence of prohibited goods before the courts.

Uncustomed goods

Apart from prohibited or restricted goods, the next major class of goods subject to offences under Customs law is "uncustomed goods." Simply put, "uncustomed goods" are those for which customs duty liability has not been paid or secured and/or which have been dealt with contrary to Customs law; the latter of which also captures prohibited or restricted goods which have been smuggled into or out of a country. The definition of "uncustomed goods" in Customs law throughout the Caribbean region is largely consistent and is reproduced as:

> *"uncustomed goods" includes goods liable to duty on which full duties due have not been paid or secured, and any goods, whether liable to duty or not, that are imported or exported or in any way dealt with contrary to any customs enactment.*[27]

Notably, in **Jamaica** and **Trinidad and Tobago,** the words "or secured" are absent and in **Belize, St. Lucia** and **St. Vincent and the Grenadines,** the term "entered" is absent from Customs law. Importantly, in jurisdictions like **Barbados, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia** and **Trinidad and Tobago,** the antithesis to "uncustomed goods" are goods which have been "entered". In these jurisdictions, the following has been incorporated into Customs law:

[27] Antigua and Barbuda - Customs (Control and Management) Act 2013, section 2(1)
Bahamas - Customs Management Act Chap. 293, section 2
Barbados - Customs Act Cap. 66, section 2(1)
Dominica - Customs Act 20 of 2010, section 2(1)
Grenada - Customs (Control and Management) Act Chap. 75B, section 31
Guyana - Customs Act Cap. 82:01 Section 2
Jamaica - Customs Act 1941, section 2(1)
Montserrat - Customs (Control and Management) Act CAP. 17.04, section 2
St. Kitts and Nevis - Customs Act No. 19 of 2014, section 2
Trinidad and Tobago - Customs Act Chap. 78:01, section 2

> *"entered in relation to goods imported, warehoused, put on board an aircraft or ship as stores or exported means the acceptance and signature by the proper officer of an entry, specification, or shipping bill, and declaration signed by the importer or exporter on the prescribed form in the prescribed manner, together with the payment to the proper officer by the importer or exporter of all rents and charges due to the government in respect of the goods, and, in the case of dutiable goods (except on the entry for warehousing of imported goods), the payment by the importer or exporter to the proper officer of the full duties due thereon, or else, where permitted, the deposit of a sum of money or giving of security for the duties, as provided by law, or, in the case of goods for which security by bond is required on the exportation, putting on board an aircraft or ship as stores or removal of such goods, the giving of such security."*

Notably, in **Trinidad and Tobago,** the corresponding definition omits the words "specification, or shipping bill". In **Antigua and Barbuda** and **Grenada,** the term "entered" simply means *"that goods have been properly accounted for to the satisfaction of Customs"* and therefore the term is not as encompassing as counterpart jurisdictions.

Whether goods are "uncustomed goods" or have been "entered" for the purpose of customs offences, is a question of law and fact which in all jurisdictions[30] imposes a reverse onus of proof on the defendant to establish the satisfactory payment of customs duty.

[28] Barbados - Customs Act Cap. 66, section 2(1)
Guyana - Customs Act CAP 82:01, section 2
Jamaica - Customs Act 1941, section 2(1)
St. Kitts and Nevis - Customs Act 19 of 2014, section 2
St. Lucia - Customs (Control and Management) Act Chap. 15.05, section 2
[29] Antigua and Barbuda - Customs (Control and Management) Act 2013, section 2(1)
Grenada - Customs (Control and Management) Act Chap. 75B, section 2
[30] Anguilla - Customs Act Chap. C169, section 130
Antigua and Barbuda - Customs (Control and Management) Act 2013, section 233
Bahamas - Customs Management Act Chap. 293, section 307(5)
Barbados - Customs Act Cap. 66, section 223 (2)
Belize - Customs Regulations Act Chap. 49, section 125
Dominica - Customs Act 20 of 2010, section 246(5)
Grenada - Customs (Control and Management) Act Chap. 75B, section 239
Guyana - Customs Act. CAP. 82:01, section 266
Jamaica - Customs Act 1941, section 250(1)
Montserrat - Customs (Control and Management) Act Cap. 17.04, section 128
St. Kitts and Nevis - Customs Act 19 of 2014, section 242(5)
St. Lucia - Customs (Control and Management) Act Chap. 15.05, section 127(2)
St. Vincent and the Grenadines - Customs (Control and Management) Act Chap. 422, section 122
Trinidad and Tobago - Customs Act Chap. 78:01 section 256(1)

In **Mizel v. Warren [1973] 2 All E.R. 1149,** the Court of Appeal, opined that "it is quite clear that if the respondent were trying to say that duty had been paid on this piece of jewellery, the onus would clearly lie on him under *Section 290(2)(a)*."[31]

Specimen offences

a. Importing a Prohibited Good

The offence of importing a "prohibited good" is found in every jurisdiction[32], with the exception of **St. Lucia** and **St. Vincent and the Grenadines,** in the Caribbean region. The offence consists of two elements: (a) importation; and (b) the existence of a "prohibited good". The word "import", in certain jurisdictions,[33] means "to bring or cause to be brought within" a jurisdiction. Naturally, only those who actually effect the importation or cause the importation to occur will be captured by the offence. Interestingly, whilst the definition of "import" is fairly straightforward, proof of importation is a much more complex issue.

In **Esook Ali v. Carlos Renwick (Customs & Excise Officer) Mag. App. No. 81 of 2001,** the Court of Appeal of Trinidad and Tobago opined:

> *"Importation is not very easy to establish in a criminal case, especially having regard to the nature of the goods in this case. In some cases it may be very easy to establish the question of importation. But where transactions of this nature takes place of items such as parrots, birds and monkeys, it would be very difficult, if not impossible, to get a classic textbook case of importation. And what the Courts and what the Prosecution or the Customs would rely on basically is circumstantial evidence, that is to say, where the incident took place, in what circumstances and a number of other factors."*

[31] [1973] 2 All E.R. 1149, 1153

[32] Anguilla - Customs Act Chap. C169, section 31
Antigua and Barbuda - Customs (Control and Management) Act 2013, section 95(1)(a)
Bahamas - Customs Management Act Chap. 293, section 270(1)(a)
Barbados - Customs Act Cap. 66, section 50(4)
Belize - Customs Regulation Act Chap. 49, section 112(1)(a)
Dominica - Customs Act 20 of 2010, section 108(1)(a)
Grenada - Customs (Control and Management) Act Chap. 75B, section 101(1)(a)
Guyana - Customs Act. CAP. 82:01, Section 218(a)
Jamaica - Customs Act 1941 section 210(1)
Montserrat - Customs (Control and Management) Act Cap. 17.04, section 33
St. Kitts and Nevis - Customs Act 19 of 2014, section 108(1)(a)
Trinidad and Tobago - Customs Act Chap. 78:01, section 213(a)

[33] Antigua and Barbuda - Customs (Control and Management) Act 2013, section 2(1)
Barbados - Customs Act Cap. 66, section 2(1)
Dominica - Customs Act 20 of 2010, section 2(1)
Grenada - Customs (Control and Management) Act Chap. 75B, section 2(1): also includes an attempt to import
Guyana - Customs Act. CAP. 82:01, section 2
Jamaica - Customs Act 1941, section 2(1)
St. Kitts and Nevis - Customs Act 19 of 2014, section 2: also includes bringing into the contiguous zone
St. Lucia - Customs (Control and Management) Act Chap. 15.05, section 2
St. Vincent and the Grenadines - Customs (Control and Management) Act Chap. 422, section 2
Trinidad and Tobago - Customs Act Chap. 78:01, section 2

Further, in **The Attorney General of Hong Kong v. Tse Hung-Lit [1986] A.C 876,** the Judicial Committee of the Privy Council considered the effect of the word "cause" in the kindred offence of attempting to export prohibited articles. Adopting the dicta of the High Court of Australia in **O'Sullivan v. Truth and Sportsman Ltd. (1957) 96 C.L.R 220,** the Board held that the word "cause":

> *"...should be interpreted as confined to cases where the prohibited act is done on the actual authority, express or implied, of the party said to have caused it or in consequence of his exerting some capacity which he possesses in fact or law to control or influence the acts of the other. He must moreover contemplate or desire that the prohibited act will ensue."*

Significantly, in certain jurisdictions[34] statue explicitly states that knowledge is not a defence to the offence. In other jurisdictions,[35] case law has established that the offence is one of strict liability where *mens rea* is not an ingredient. Notwithstanding the absence of *mens rea*, the Court of Appeal of Trinidad and Tobago in **Darren Bhola (Customs and Excise Officer II) v. Canserve Caribbean Limited and Ors,** identified two category of defences: (1) the "innocent merchant" (as referenced in **R v. Barbar** and **Frailey v. Charlton**) and (2) those whose conduct could not in any way affect the observance of the law (as referenced in **Frailey v. Charlton** and **AG Hong Kong v. Tse Hung Lit**).

b. Knowingly Concerned in a Fraudulent Evasion or an Attempt at Evasion

Throughout the Caribbean region, the offences of "knowingly concerned in a fraudulent evasion" "or [knowingly concerned in a fraudulent] attempt at evasion"[36] exist in relation to various subject matter and are among some of the most important customs offences as they capture diverse forms of criminal conduct. For instance, in the region, customs duties[37]

[34] Antigua and Barbuda - Customs (Control and Management) Act 2013, section 95(2)
Bahamas - Customs Management Act Chap. 293, section 270(5)
Dominica - Customs Act 20 of 2010, section 108(2)
Grenada - Customs (Control and Management) Act Chap. 75B, section 101(2)
St. Kitts and Nevis - Customs Act 19 of 2014, section 108(2)

[35] Jamaica - R v. George Barbar (1973) 21 W.I.R 343 and Simmonds v. R [1997] 3 L.R.C 501
Trinidad and Tobago - Darren Bhola (Customs and Excise Officer II) v. Canserve Caribbean Limited and Ors Mag. App. No. P068 of 2015 (92-93) overruling Clarence Walker (Customs and Excise Officer) v. Iveren Lucy Feese Mag. App. No. 96 of 2009

[36] Barbados - Commissioner of Police v. Ally No. BB 60 of 1990 CA: where the two offences are discussed and an omission of the words "fraudulent" and "evasion" rendered the information bad. Importantly, since section 100 of the Customs Act Barbados Cap. 66 does not include the word "knowingly", the dicta in Ally does not refer to that criteria

[37] Antigua and Barbuda: Customs (Control and Management) Act 2013, section 175(2)(a)
Barbados - Customs Act Cap. 66, section 104(3)(c)
Belize - Customs Regulation Act Chap. 49, section 112(1)(g)
Dominica - Customs Act 20 of 2010, section 189(2)(a)
Grenada - Customs (Control and Management Act) Chap. 75B, section 179(2)(a)
Guyana - Customs Act. CAP. 82:01, section 218(e)
Jamaica - Customs Act 1941, section 210(1)
St. Kitts and Nevis - Customs Act 19 of 2014, section 185(2)(a)
St. Lucia - Customs (Control and Management) Act Chap. 15.05, section 116(2)(a)
St. Vincent and the Grenadines - Customs (Control and Management) Act Chap. 422, section 111(2)(a)
Trinidad and Tobago - Customs Act Chap. 78:01, section 213(e)

are usually covered whilst in certain jurisdictions[38] the offences relate to *"any prohibition or restriction in force with respect to the importation, exportation or carriage coastwise of those goods under or by virtue of any written law."*

In other jurisdictions[39], the offences cover the catch-all subject matter of *"the laws and restrictions of the Customs relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of goods."*, which likely also includes the subject matter of *"any prohibition or restriction in force..."*.

It is important to note that *Section 116(2),* of the *Customs (Control and Management) Act,* introduces the additional words "fraudulent intent" and omits the word "knowingly" in St. Lucia, *Sections 100,* and *104(3)(c),* of the *Customs Act,* in **Barbados** omits the word "knowingly" and in **St. Vincent and the Grenadines,** *Section 111(2),* of the *Customs (Control and Management) Act,* departs from the well understood wording and substitutes "with fraudulent intent in relation to any goods, is any way concerned in an evasion." Importantly, an examination of the law on these offences, set out below, addresses the various subject matter aforementioned and therefore is meant to provide a more holistic and practical approach to appreciating the elements of the offences.

In **R v. Hussain [1969] 2 All ER 1117,** the court considered the effect of the word "knowingly" in relation to the offences and opined:

> *"It seems perfectly clear that the word "knowingly" in s 304 is concerned with knowing that a fraudulent evasion of a prohibition in respect of goods is taking place. If, therefore, the accused knows that what is on foot is the evasion of a prohibition against importation and he knowingly takes part in that operation, it is sufficient to justify his conviction, even if he does not know precisely what kind of goods are being imported. It is, of course, essential that he should know that the goods which are being imported are goods subject to a prohibition. It is essential he should know the operation with which he is concerning himself is an operation designed to evade that prohibition and evade it fraudulently. But it is not necessary that he should know the precise category of the goods the importation of which has been prohibited."*[40]

Given that the dicta citied above in **R v. Hussain,** has been subsequently approved and applied by the House of Lords in **R v. Taaffe [1984] 1 All ER 747** and **R v. Forbes [2001] 4 All ER 97**, the import of the word "knowingly" in the offences is well established.

[38] Antigua and Barbuda - Customs (Control and Management) Act 2013, section 175(2)(b)
Dominica - Customs Act 20 of 2010, section 189(2)(b)
Grenada - Customs (Control and Management) Act Chap. 75B, section 179(2)(b)
St. Kitts and Nevis - Customs Act 19 of 2014, section 185(2)(b)
[39] Barbados - Customs Act Cap. 66, section 100
Belize - Customs Regulation Act Chap. 49, section 112(1)(g)
Guyana - Customs Act. CAP. 82:01, section 218(e)
Jamaica - Customs Act 1941, section 210(1)
Trinidad and Tobago - Customs Act Chap. 78:01, section 213(e)
[40] [1969] 2 All ER 1117, 1119

Another matter to consider in relation to the offences is the meaning and effect of the word "concerned" and, therefore, what must be established on the evidence. The natural meaning of the word "concerned" conjures the notion that there exists some connection with the goods or even some responsibility for them and, in this vein, philosophically this element of the offence is akin to a criminal conspiracy though not identical. In **R v. Green (Harry Rodney) [1975] 3 All ER 1011,** the court held that:

> *"The actus reus in this offence is being concerned in the evasion or the attempted evasion of a prohibition on the importation of the goods in question, not the successful evasion. All the necessary ingredients were proved or admitted: cannabis is a prohibited drug; it was imported in breach of the prohibition; so evasion was established. We accept counsel for the Crown's argument that evasion is a continuing offence, that is that it did not cease when the cannabis was seized by the authorities. Once imported, the evasion of the prohibition continues until the goods cease to be prohibited goods or, possibly, are re-exported. The renting of the garage, knowing that it was to be used to store the cannabis, completes the offence under s 304(b) of the Customs and Excise Act 1952."*[41]

Subsequently in **R v. Neal [1984] 3 All ER 156**, the court held that the offence covered those who were not part of the original smuggling team and opined:

> *Subsection (1) clearly includes those who are not a part of the original smuggling team. For example, it includes anyone who acquires possession of goods unlawfully removed from a warehouse, or anyone who hides goods on which duty has not been paid, or anyone who carries goods the importation of which is forbidden; and there can be no warrant for reading into the language of the subsection the qualification 'provided they are part of the original smuggling team'.*
>
> *The subsection is aimed at making it an offence for anyone in any circumstances to be a party to defrauding the Crown of duty or evading any prohibition or restriction on imports. The language of the subsection is so embracing and casts the net so wide that one is left to wonder what purpose is served by sub-s (2), for it is difficult to think of any behaviour aimed at defrauding the customs and excise that would not be caught by sub-s (1). However, sub-s (2) has consistently appeared in similar form in a succession of Customs and Excise Acts as the final and sweeping up provision: see the Customs Consolidation Act 1853, s 232, the Customs Consolidation Act 1876, s 186 and the Customs and Excise Act 1952, s 304(b).*
>
> *We are satisfied that it was inserted by the draftsman with the intention of casting his net as widely as words enabled him (note his language), 'in any person' and 'in any way'. This was the view of Lord Salmon expressed in DPP v Doot [1973] 1 All ER 940 at 954, [1973] AC 807 at 830-831. Lord Salmon was discussing the construction of the Customs and Excise Act 1952, but for all material purposes that is re-enacted in similar language in the present Act. He said:*
>
> *"Section 304 [and I interpolate to say that that is the equivalent of s 170 of the 1979 Act] is obviously a long stop for ss 45 and 56 to catch anyone against whom*

[41] [1975] 3 All ER 1011, 1016

> *actual importing, exporting or being concerned in actual importing or exporting cannot be proved although no doubt it is wide enough to cover importing and exporting also."* [42]

Another important element of the offences is concerns the phrases "a fraudulent evasion" and "a fraudulent attempt at evasion". With this in mind, in **Attorney General's Reference (No. 1 of 1981) [1982] 2 All ER 417,** the court gave the following guidance:

> *"In the result we have come to the conclusion that the presence of the word 'fraudulent' in Section 170(2) of the Customs and Excise Management Act 1979 has the effect that, in prosecutions under that provision for fraudulent evasion or attempted evasion of a prohibition or restriction with respect to goods or duty chargeable thereon, the prosecution must prove fraudulent conduct in the sense of dishonest conduct deliberately intended to evade the prohibition or restriction with respect to, or the duty chargeable on, goods as the case may be. There is no necessity for the prosecution to prove acts of deceit practised on a customs officer in his presence."*

In the Trinidad and Tobago Court of Appeal decision of **Azard Khan (Customs and Excise Officer) v. Bobby Ashram Sanhai and Glen Mulchansingh Mag. App. No. 36 of 2015,** the court, after considering **Attorney General's Reference (No. 1 of 1981), R v. Panayi and Karte [1989] 1 W.L.R 187** and **R v. Zlatic (1993) 2 S.C.R 29,** opined that:

> *"The Magistrate, therefore, had to examine the evidence that there was some dishonest intent in the agreement between the first and second respondents and the dishonesty must have been intended to evade the laws and restrictions of customs relating to the delivery of goods". The Magistrate was of the view, essentially, that "dishonest conduct" had not been established on the prosecution's case and one could well understand why he may have done so since the evidence before him was that there was a promise to pay the same day, that promise was fulfilled and there was nothing to indicate on the evidence that there was a deliberate intention that delivery of the goods be taken before the payment was made. The agreement was that the first respondent would sign the delivery note before payment. There was no evidence that the agreement contemplated that the delivery would actually be effect before payment. It might have been different if the second respondent, who negotiated the impugned compromise had attempted to take delivery himself before the duties were paid. That would smack of dishonesty."* [43]

[42] [1984] 3 All ER 156, 160

[43] Mag. App. No. 36 of 2015 at [34]

Finally, steps taken abroad in connection with a fraudulent evasion or attempt at fraudulent evasion can be the subject of proceedings in the country where those acts were directed. In **R v. Wall [1974] 2 All ER 245,** the court enunciated:

> *"So here there is one offence, that of being knowingly concerned in fraudulent evasion on 17 February 1973, and just as in R v Millar the part played by the company was played earlier and in another country, so here if that was the only part played by the appellant he was indictable here for it. Further support for our view is to be found in R v Smith (Donald). That was a case, concerning cannabis, under s 304 of the 1952 Act, and though the issues there were quite different from those here, counsel for the appellant very properly drew our attention to this sentence ([1973] 2 All ER at 1167, [1973] QB at 936) in the judgment of the court delivered by Willis J: 'It was quite unnecessary to prove that the applicant did anything to further the transaction in this country.'"*

c. Knowingly Harbouring Uncustomed Goods (with intent to defraud the state)

The offence of "knowingly harbouring uncustomed goods" is found in only certain jurisdictions[44] throughout the region. Historically, the interpretation of *Section 186* of the *English Customs Consolidation Act, 1876,* in the decision in **Frailey v. Charlton [1920] 1 K.B. 147,** may have shaped what is now *Section 170(1)(b)* of the *United Kingdom's Customs and Excise Management Act 1979,* where "intent to defraud" is an essential ingredient. Consequently, jurisdictions that have adopted *Section 170(1)(b),*[45] can be immediately distinguished on the basis of the additional "intent to defraud" criteria . In this vein, the Judicial Committee of the Privy Council in **Simmonds v. R [1997] 3 LRC 501,** enunciated:

> *"This view, as has already been said, is in conflict with the decision of the Divisional Court in Frailey v Charlton, where the Divisional Court did not, as it seems from the report, have the advantage of the detailed arguments addressed to their Lordships in the present case nor the analysis of the Jamaican Court of Appeal in Barbar. Their Lordships consider the approach in the latter case to be the right one.*
>
> *The issue in the present case does not, however, now arise directly in the English legislation since s 170(1) of the Customs and Excise Management Act 1979 makes it an offence for any person to be concerned in harbouring prohibited goods who 'does so with intent to defraud Her Majesty of any duty payable on the goods or to evade any such prohibition or restriction with respect to the goods', thus giving statutory effect to the result arrived at in Frailey v Charlton. This has not been done in Jamaica and perhaps not elsewhere where the earlier English legislation was taken as a model."*[46]

In **R v. Cohen [1951] 1 All ER 203,** Lord Goddard held that:

> *"Apart from an intent to defraud, with which we will deal separately, the offence*

[45] Antigua and Barbuda - Customs (Control and Management) Act 2013, section 175(1)(b)
Barbados - Customs Act Cap. 66, section 104(3)(a) which is only similar to section 170(1)(b)(UK)
Dominica - Customs Act No. 20 of 2010, section 189(1)(b)
Grenada - Customs (Control and Management Act) Chap. 75B, section 179(1)(b)
St. Kitts and Nevis - Customs Act 19 of 2014, section 185(1)(b)
St. Lucia - Customs (Control and Management Act) Chap. 15.05, section 116(1)(b)
St. Vincent and the Grenadines - Customs (Control and Management) Act Chap. 422, section 111(1)(b)
[46] [1997] 3 LRC 501, 512

> *consists in knowingly harbouring uncustomed goods, and, in our opinion, that means that the accused knowingly harboured goods and also knew that they were uncustomed. To prove a conscious harbouring it would usually be enough to show that goods which were subject to duty were found in the possession of the accused. If they are found in his house, warehouse or other place under his control, that would establish a prima facie case that he knowingly harboured them, though, no doubt, he could rebut this by proving that he did not know of their presence, for instance, by showing that someone had "dumped" them there without his knowledge or privity. Once it is proved that he knowingly harboured goods subject to duty, s 259 throws on him the onus of proving that the goods are, in fact, customed. To do this he would have to prove that the duties had actually been paid, or, at least, that they had been declared and that the customs officers, in the exercise of a discretion which, as is well known, they are allowed, had permitted the goods to enter. The latter case would probably seldom arise and could only occur in the case of a small amount of spirits, tobacco, jewellery or the like, and we need not deal further with this."*

In **Carlos Renwick v. Kishore Roopnarinesingh Mag. App. No 115 of 2004,** the Court of Appeal in Trinidad and Tobago, citing **R v. Cohen** with approval, identified the ingredients necessary to constitute the offence of "knowingly harbouring uncustomed goods". With reference to section 256(1) of the Customs Act, the court opined:

> *"Since the respondent was charged with knowingly keeping certain uncustomed goods contrary to section 213(c) of Chap. 78:01, the elements of the offence required to secure a conviction were:*
>
> *(i) knowingly keeping uncustomed goods; and*
>
> *(ii) knowledge that the goods were uncustomed*
>
> *The effect of Section 213(c), is that once it is proven that a person knowingly harbours goods subject to duty, the evidential burden shifts to that person to prove that the goods were in fact lawfully imported or that the proper duties had been paid thereon."*

In Belize, the Court of Appeal in **Norman Lainfiesta v. Cpl. Austin [Unreported, May 25th, 1966],**[47] also cited **R v. Cohen,** with approval stating that:

> *"The case shows that, briefly stated, the offence consists in knowingly harbouring uncustomed goods. This means that the accused knowingly harboured goods and also knew that they were uncustomed. The offence therefore comprises the following elements: -*
>
> *(a) dutiable goods;*
>
> *(b) the defendant knowingly harboured these goods;*
>
> *(c) the goods were uncustomed;*

[47] Referenced in Herrera v. Pech App No. 1 of 1980

(d) the defendant knew that goods to be uncustomed.

In England an intent to defraud must also be proved. The onus to prove this rests on the prosecution but it may be inferred from the surrounding circumstances.

Upon whom does the onus rest to prove the four other elements above mentioned? Clearly the prosecution must prove the first two, namely the presence of dutiable goods and that the defendant harboured those goods knowingly. Cohen's case, however, lays down that the onus of proof in respect of the other two elements rests upon the defendant, provided that the first two elements have been established by the prosecution.

Indeed the point to grasp in the judgment of Lord Goddard is that in such cases the onus of proof upon the defendant may be two-fold resting both upon statute and upon general principles. First, if it is proved by the prosecution that the defendant knowingly harboured goods subject to duty, section 259 of the Act (section 124 of the Ordinance) throws upon him the onus of proving that the goods are in fact customed. This may be termed the statutory onus.

Next, 'the prosecution having proved that the defendant was in possession of dutiable goods in such circumstances as would entitle a court to find that he was consciously in possession of them and the accused having failed to prove that the duty had in fact been paid, there is then an onus on him to give some explanation of his possession from which a jury might infer that he did not know that the duty had not been paid. That it must be for him to give this explanation is because the facts relating thereto must be exclusively in his knowledge. There is, in fact, a shifting of the burden of proof, and in considering the amount of evidence necessary to shift the burden of proof the court has regard to the opportunities of knowledge with respect to the facts to be proved which may be possessed by the parties respectively."[48]

Notably, the decisions in **Carlos Renwick** and **Norman Lainfiesta,** are consistent with each other. The reference to "dutiable goods" in **Norman Lainfiesta** and the absence of said reference in **Carlos Renwick** may be attributed to the fact that in Trinidad and Tobago the definition of "uncustomed goods" is wider and also covers *"any goods, whether liable to duty or not, that are imported or exported or in any way dealt with contrary to any customs enactment."*[49]

[48] Norman Lainfiesta v. Cpl. Austin [Unreported, May 25th, 1966] at pg. 5
[49] See Section 2 of the Customs Act

For those jurisdictions that have adopted *Section 170(1)(b)*, Lord Goddard's statement, in **R v. Cohen,** is also applicable:

> *"Another ingredient of the offence is the intent to defraud, and of this the jury should be reminded, but, as in all cases where an intent to defraud is a necessary ingredient, the intent must usually be inferred from the surrounding circumstances. If a jury is satisfied that the accused knew, which would include a case in which he had wilfully shut his eyes to the obvious, that the goods were uncustomed, and he had them in his possession for use or sale, it would follow, in the absence of any other circumstance, that he intended to defraud the revenue. That there may be cases where the circumstances would negative the intent is possible, but, ordinarily speaking, it is, indeed, difficult to see how it could be found he did not intend to defraud the revenue, certainly in such a case as the present, where the appellant not only had the goods in his possession for the purpose of selling, but told lies to the officers when challenged on the matter."*[50]

d. Making a False Declaration/Declaration Untrue in Any Material Particular

In certain jurisdictions,[51] the offence of making a false declaration/declaration untrue in any material particular, like the offence of importing a prohibited good, does not require *mens rea* as an ingredient to constitute the offence. In these jurisdictions, the decisions of the Judicial Committee of the Privy Council in **Patel v. Comptroller of Customs [1965] 3 All ER 593** and **Comptroller of Customs v. Western Lectric Co. Ltd [1965] 3 All ER 599,** or the Court of Appeal in **Attorney General's Reference (No. 3 of 1975) [1976] 2 All ER 798,** is applicable depending on the wording of the section. In other jurisdictions,[52] the requirement for knowledge exists and the offence is therefore more closely related to *Section 301(3),* of the United Kingdom's *Customs and Excise Act 1952,* which was discussed in **Attorney General's Reference (No. 3 of 1975).**

Regardless of whether there is the requirement to establish *mens rea*, proof of a false declaration or that a declaration is untrue in any material particular, should, in certain instances, be established in relation to the good. For example, where a false or untruthful declaration exists in relation to the omission to declare a dutiable good (where there is a positive obligation to declare same to the Customs authorities), the existence of the dutiable good should be established. In some instances, this would undoubtedly require scientific analysis or expert opinion though, as in **Patel v. Comptroller of Customs** and **Comptroller of Customs v. Western Lectric Co. Ltd,** the reliance on hearsay is usually tempting.

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[50] [1951] 1 All ER 203, 207

[51] Bahamas - Customs Management Act Chap. 293, section 265(1)
Barbados - Customs Act Cap. 66, section 245(a)
Belize - Customs Regulation Act Chap. 49, section 59
Guyana - Customs Act CAP. 82:01, section 217(1)(a)
Jamaica - Customs Act 1941, sections 209(1)(a)(i)
St. Lucia - Customs (Control and Management) Act Chap. 15.05, section 113(1)(a)
Trinidad and Tobago - Customs Act Chap. 78:01, section 212(a)

[52] Antigua and Barbuda - Customs (Control and Management) Act 2013, section 172
Dominica - Customs Act 20 of 2010, section 186(1)(a)
Grenada - Customs (Control and Management) Act Chap. 75B, section 176(1)(a)
St. Kitts and Nevis Customs Act 19 of 2014, section 182(1)(a)
St. Vincent and the Grenadines - Customs (Control and Management) Act Chap. 422, Section 108(1)(e)

e. Importing/Exporting any package containing goods not corresponding with the entry

The offence of importing/exporting any package containing goods not corresponding with entry is found in certain jurisdiction[53] and is akin to the offence of making a false declaration/ declaration untrue in any material particular. The difference between the two is, *inter alia*, the fact that the former also incorporates the *actus rea* of importation/exportation into the offence and is primarily directed to *the goods themselves*. Inconsistencies between the actual nature, quality and quantity of goods imported or exported and what has been described and submitted to the Customs authority on the requisite customs forms is usually central in determining the existence of the offence. Consequently, in some cases, scientific analysis or expert opinion may be necessary to establish the inconsistencies. In other cases, such as where there are inconsistencies in quantity and the divergent nature of the goods is apparent,[54] scientific analysis or expert opinion may be unnecessary.

In the decision of **Glendon De Gale v. United Hatcheries Mag. App. No. 155 of 1986,** the Court of Appeal of Trinidad and Tobago held that the offence was one of strict liability where *mens rea* was not required. In this regard, Hamel-Smith J.A. opined that:

> *"The offence in the case before this Court is similar in all respects to the offence in Patel and Western Lectric as far as the submission of a false entry is concerned. Like Patel, there is a marked absence of any words such as "knowingly or with intent to deceive" in the in ingredients of this offence but that does not necessarily lead me to the conclusion that mens rea is not required. It is that in the context in which the offence has been enacted and the very exacting penalty of forfeiture which it imposes the section achieves what it sets out to do and that is to prohibit absolutely the submission of entry, an entry which is under the sole control of the person importing the goods, which does not correspond to the goods which have been imported, no matter how innocent the error."*[55]

[53] Barbados - Customs Act Cap. 66, section 101(c)
Belize - Customs Regulations Act Chap. 49, section 82
Guyana - Customs Act CAP. 82:01, section 219
Jamaica - Customs Act 1941, section 211
Trinidad and Tobago - Customs Act Chap. 78:01, section 214

[54] Glendon De Gale v. United Hatcheries Limited Mag. App. No. 155 of 1986: the entry submitted to the Customs authority referred to eggs and upon examination motors and calculators were discovered

[55] Mag. App. No. 155 of 1986 at pg. 16

CHAPTER 17

WRITING OF REASONS

A magistrate has a duty to give reasons for his decision where an appeal has been lodged in relation to that decision. This duty exists both at common law[1] and in legislation.

The two main issues which arise in respect of magistrates' reasons for decision are:

1. Where a magistrate has provided no reasons at all for his/her decision;
2. Where the reasons provided by the magistrate are inadequate.[2]

The importance of reasons[3]

- The duty to give reasons is a function of due process and justice. Firstly, in the interest of fairness, the parties, especially the convicted party should know the reasons for the decision that resulted in his conviction. This will enable him to determine whether he has any available grounds of appeal. Secondly, the process of preparing reasons concentrates the magistrate's mind, resulting in a decision which is much more likely to be sound based on the evidence;
- The delivery of reasoned decisions is inherent in the judge or magistrate's role. It is part of his or her accountability for the discharge of the responsibility of the office. In its most general sense, the obligation to provide reasons for a decision is owed to the public at large: **R v Sheppard [2002] 1 S.C.R 869;**
- Failure to provide reasons can result in a large number of appeals based on the ground of want of reasons or absence of reasons. Where no reasons are given it is difficult to determine whether the magistrate was misguided or incorrect on the law or facts;
- Where the case involves a complex legal issue or the where the dispute is complicated, which may involve something in the nature of an intellectual exchange with reasons and analysis advanced by both sides, the judge must enter into the issues canvassed before him and explain why he prefers one case over the other. In these cases it is essential to due process and the administration of justice that the magistrate provides reasons for the decision;
- A magistrate's reasons are important in order to promote transparency. This is not to suggest that there is one rule for cases concerning the witnesses' truthfulness or recollection of the events, and another for cases involving complex legal issues which require reasoning or analysis. The rule is the same, in that magistrates must be able to explain how they arrived at the decision.

[1] Aqui v Pooran Maharaj (1983) 34 WIR 282 at 289
[2] Graham and another v Police and other cases (2010) 79 WIR 288 at 295
[3] Flannery & Another V Halifax Estate Agencies Limited [2000] 1 All ER 373 at 377-378.

The duty to give reasons

ANGUILLA

Magistrate's Code of Procedure Act, Chap. M5, Section 200:

After an appellant has served on the magistrate a notice of his intention to appeal and entered into a recognizance or given security to prosecute an appeal, the magistrate shall, within ten days of the service of such notice of appeal, transmit to the registrar of the Court of Appeal a copy of the proceedings and all papers relating to the appeal together with a concise memorandum of the reasons for decision.

ANTIGUA AND BARBUDA

Magistrate's Code of Procedure Act, Chap. 255, Section 172(2):

Following the service of the appellant's notice of intention to appeal, "The magistrate shall also transmit to the Deputy Registrar of the Court of Appeal with the papers relating to such appeal a memorandum of the reasons for the decision."

BARBADOS

Magistrate's Courts Act, Chap. 116A, Section 241:

- Where notice of appeal has been given in accordance with *Section 240,* the magistrate shall within 21 days of the perfecting of that appeal draw up, sign and hand over to the clerk a statement of his reasons for decision;
- For the purposes of this Act the record of proceedings need not include the statement of a magistrate's reasons for decision if the magistrate has not complied with subsection (1); and accordingly the Court of Appeal may proceed to hear the appeal in the absence of the reasons;
- Where a magistrate (a) has not complied with subsection (1); or (b) resigns or retires, as the case may be, without having complied with subsection (1), he may be summoned to appear before the Court of Appeal; and the Court Appeal may give such directions as it considers fit and he shall comply with the directions;
- The appellant and respondent shall be entitled upon application to the clerk or the Registrar, as the case may be, to obtain a copy of any statement of reasons for decision that the magistrate has provided.

In **Lovell v Rayside Construction Limited Magisterial Appeal No. 16 of 2004,** the case against the appellant involved complaint of refusal to carry out a lawful order and insolence, within the context of employment law. The magistrate found that summary dismissal was justified in the circumstances and provided only a brief oral ruling where he restated the facts and provided a bare decision. The Court of Appeal allowed the appeal finding that it was appropriate in the circumstances to review the evidence and concluded that the circumstances of the case did not justify summary dismissal. Mason J.A highlighted the importance of the common law and statutory duty to give reasons by the magistrate:

> *"... it would appear from the Flannery and English cases that one of two paths could be followed where there is an appeal on the ground of absence of reasons. The appellate court should first review the judgment, in the context of the material evidence and submissions at the trial, in order to determine whether, when all of them are considered, it is apparent why the judge reached the decision that he did. If satisfied that the reason is apparent and that it is a valid basis for the judgment, the appeal will be dismissed. If despite this exercise the reason for the decision is not apparent, then the appeal court will have to decide whether itself to proceed to a rehearing or direct a new trial: Lord Phillips, M.R. in English (supra) at para. 26."*[4]

BELIZE

In **Teck v Teck Civil Appeal No.3 of 2013,** the court considered whether the judge's failure to give adequate reasons for his decision should be a ground of appeal. The Court adopted the comments of Henry LJ in **Flannery Halifax Estate Agencies Ltd. [2000] 1 All E.R. 373,** on the general duty to give reasons:

> *"(1) the duty is a function of due process, and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties—especially the losing party—should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know (as was said in Ex p Dave) [1994] 1 All E.R. 315) whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case... (2) The first of these aspects implies that want of reasons may be a good self-standing ground of appeal. Where because no reasons are given it is impossible to tell whether the judge has gone wrong on the law or the facts the losing party would be altogether deprived of his chance of an appeal unless the court entertains an appeal based on the lack of reasons itself."*

DOMINICA

Magistrates Code of Procedure Act, Chap. 4.20, Section 146(1):

The magistrate shall record the reasons for the judgment in writing and sign at the time of pronouncing the judgment and within 14 days of the pronouncement of the judgment appealed against shall cause the reasons to be transmitted to the Registrar of the High Court and they shall be included in and form part of the record of appeal.

In **Graham & Another v The Police (2010) 79 WIR 288,** George-Creque JA at paragraph 15 adopted the approach applied by the Court of Appeal of Trinidad and Tobago in **Alexander v William (1984) 34 WIR 340** and **Forbes v Chandrabhan Maharaj (1998) 52 WIR 487.**

Those cases established that as a rule of law in criminal proceedings a magistrate must provide his reasons when the defendant has lodged an appeal against his decision:

> *"These observations, to my mind, offer sound guidance in the approach to be adopted by an appellate court faced with an appeal where the record shows conflicting evidence or versions of events and on which the credibility of witnesses takes centre stage in the absence of any reasons by the magistrate which would inform the basis for his decision. It would, in my view, be difficult to envisage a case where in those circumstances a quashing of the conviction would not be the inevitable result."*[5]

[4] Lovell v Rayside Construction Limited Magisterial Appeal No.16 of 2004 Mason JA at [30]

[5] Graham & Another v The Police (2010) 79 WIR 288 George-Creque JA at [15]

GRENADA

Magistrates' Judgments (Appeals) Act, Chap. 178, Section 15(3):

Following the delivery of the appellant's notice of intention to appeal, "The Magistrate shall also transmit with the copy of the proceedings a concise memorandum of the reasons for the judgement. Such memorandum shall be included in, and form part of, the record of the appeal."

GUYANA

Summary Jurisdiction (Appeals) Act, Chap. 3:04, Section 8:

Upon the appellant's compliance with the requirements of *Sections 4, 5,* (for the filing of the notice of intention to appeal and giving of security), the magistrate shall draw up a formal conviction or order and a statement of his reasons for the decision appealed against.

JAMAICA

The Judicature (Appellate Jurisdiction) Act, 1962, Section 17:

The judge of any court before which a person is convicted shall, in the case of an appeal under this part against the conviction or against the sentence, or in the case of an application for leave to appeal under this part, furnish to the Registrar, in accordance with rules of court, his notes of the trial; and shall also furnish to the Registrar in accordance with rules of court a report giving his opinion upon the case or upon any point arising in the case.

ST. KITTS AND NEVIS

The Magistrate Code of Procedure Act, Chap. 3.17, Section 169:

"After an appellant has served on the magistrate a notice of his or her intention to appeal and entered into a recognizance or given security to prosecute such appeal, the magistrate shall within 10 days of the service of the notice of appeal, transmit to the registrar of the Court of Appeal a copy of the proceedings and all papers relating to the appeal together with a concise memorandum of his or her reasons for decision."

ST. LUCIA

Criminal Code, Chap. 3.01, Section 734(3):

After an appellant has served the clerk of the court with his notice of appeal and complied with the requirements for the filing of an appeal in *Section 733,* "The magistrate shall also cause to be transmitted with the copy of the proceedings his or her written judgment, if any, or if there is none, he or she shall transmit a memorandum of the reasons for the decision."

ST. VINCENT AND THE GRENADINES

Criminal Procedure Code, Chap. 172, Section 109(3):

"Every judgment in a summary trial, except as otherwise expressly provided by this Code or any other law, shall be written by the magistrate and shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by such magistrate in open court at the time of pronouncing it."

In **Casanki et el v Commissioner of Police HR Chap.2010/022 Court of Appeal of the Eastern Caribbean States,** Rawlins CJ stated that it is settled principle that where a decision of a magistrate is appealed, particularly in a criminal case, reasons for the decision are required for the purposes of due process, justice, fairness and transparency. In this case the court found that there were no complex legal issues. Although the magistrate could have better analyzed the evidence, the appellants could not assert that they were unable to understand why they were convicted, having regard to the evidence in the case and the reasons that the magistrate gave. The appeal was dismissed. The court also referred to the cases of **Aqui v Pooran Maharaj (1983) 34 WIR** and **English v Emery Reimbold And Strick Ltd; Etc, (Practice Note): CA 30 Apr 2002,** and emphasised that the cases established that whether the reasons provided by a magistrate were adequate, depended on the circumstances of each case.

TRINIDAD AND TOBAGO

Summary Courts Act, Chapter 4:20, Section 130B:

- Where notice of appeal has been given in accordance with *Section 130,* the magistrate or justice shall within 60 days of the giving of such notice draw up and sign a statement of the reasons for his decision.

The absence of reasons for the magistrate's decision does not amount to an automatic ground of appeal which will be fatal to a conviction.

In **Francis Jones v. Sgt. Sheldon David Mag. App. No. 64 of 2014,** Mohammed JA stated:

> *"38. In our opinion, the absence of written reasons by the Magistrate does not automatically generate an iron-clad, free standing ground of appeal. The appellant must show that the absence of reasons has caused prejudice to the exercise of his legal right to an appeal. In very exceptional cases the absence of written reasons may generate a free standing ground of appeal where, for example, because of the absence of those reasons, counsel is unable to even formulate a meaningful appellate challenge.*
>
> *39. The approach to be adopted by the Court of Appeal is a pragmatic, functional one. This approach is context driven and it involves an examination of the evidentiary record, the specific issues raised and any brief oral reasons given by the Magistrate. If the case is (a) factually, a straight forward one; (b) legally, not a complex case; and (c) if the reasons for the magistrate's decision are capable of being ascertained by reference to the record of evidence, then the absence of written reasons may be less likely to deprive the Court of Appeal of its ability to perform the appellate function. The absence of written reasons in such a setting will constitute less of a handicap than it might otherwise be in other situations which fall at the opposite end of the spectrum.*

> *The determination of whether a case is a factually straightforward one may not always however be an easy exercise. Many cases turn purely on issues of credibility. Credibility has several components which often introduce nuances into a case. Such nuances may sometimes make it essential for an appellate court to know specifically how a magistrate has "weighed up" a particular issue or reconciled particular items of evidence."*[6]

In **Montano, Roberts v Cpl. Sewdass Mag. App. No.108 of 2016,** the Court of Appeal considered whether the magistrate's delivery of her ruling convicting the appellants without providing reasons for the decision amounted to a material irregularity. The court adopted the pragmatic functional test:

> *"In adopting the pragmatic, functional approach as enunciated Francis Jones v Sgt. Sheldon David #1173060, further supported by the decisions in **R v R.E.M**. and **R v Vuradin**, we proceed to examine the evidentiary record and the specific issues raised, since there were no reasons given by the Magistrate. We are not reviewing the evidentiary record so as to see whether there was sufficient evidence upon which the magistrate could have come to the decision at which she arrived as in the decision in **Forbes v Chandrabhan Maharaj**. Instead, we are engaging in a perusal of the evidentiary record to determine:*
>
> *(i) The nature of the evidence and whether it was complicated or straightforward;*
>
> *(ii) Whether the legal and evidentiary issues raised were simple or complex ones;*
>
> *(iii) Whether the magistrate was properly guided by counsel on these issues through comprehensive submissions and arguments; and*
>
> *(iv) Whether the reasons for the magistrate's decision were capable of being ascertained by reference to the evidentiary record."*[7]

How to start writing reasons

The Tools for Professional Writers: A summary of the Essentials for Writing Effective Judgments by John T. Salatti, Esq. provides some helpful guidelines and principles which can assist magistrates in their writing of reasons for their decision. These can be summarized as follows:

1. Organize your Facts and Background - The magistrate can organize his facts around the themes most relevant to his analysis or include only the critical facts that are essential to the legal analysis.
2. The Decision or Legal Conclusion - Next state your decision or legal conclusion of the case at hand.
3. The Reasons- Identify all the reasons that support your decision or legal conclusion. Focus on listing all the bases that support why your decision is correct. The reasons should include the principles, basis and evidence which the magistrate relied on to decide the case. The reasons should also include the issues which were critical to the decision and how those issues were resolved.

[6] Francis Jones v. Sgt. Sheldon David Mag. App. No. 64 of 2014 Mohammed JA at [38] – [39]

[7] Machel Montano, Kernel Roberts v Cpl. 12167 Sewdass Mag. App. No.108 of 2016 Yorke Soo Hon JA, Mohammed JA at [87]

4. Coherence

   Vertical Coherence - between you reasons to the legal conclusion or decision- once you have laid out your supporting reasons an identified how many of them you have, you need to double-check their relationship to the legal conclusion by examining the reasons' direct relevance to the legal conclusion and their independence from each other.

   (i) Direct Relevance - does each supporting reason relate directly to or directly support the legal conclusion? In some cases one reason may actually be a sub-point of another point and thus affect the organization of your statement of reasons.

   (ii) Independence - the magistrate should look at whether each supporting reason is sufficient in and of itself to prove why the legal conclusion is correct or are all the reasons needed to buttress the decision.

   Horizontal Coherence - the magistrate should examine the horizontal coherence by identifying any topics that related to each other, assessing the weight of the reasons and selecting the optimal order.

   (i) Relationship - examine your reasons and determine whether two or more can be grouped together under a common theme or heading.

   (ii) Weight of each reason - In most cases one reason may be more important than another and this should be reflected in the document. This can be reflected in the document through the organization of the reasons, for example by order: the important reasons can be listed first. The weight of the reasons can also be reflected to the reader by indication by the magistrate.

   (iii) Order of Reasons - order of reasons by strength or by logic?

   - Strength - in relation to the point on weight above, readers tend to believe that the first item in a series is the most important and thus it is wise to present the strongest reason first.
   - Logic - Do your reasons need to be presented in a logical order to be more effective? The following are questions to be answered about the logical order of your material:
     - Would your decision be best served by a discussion that moves from more specific bases to more general ones or vice versa?
     - Should procedural bases for your decision precede substantive ones
     - Within a discussion of substantive, do you lead with simple legal questions and move to complex ones?

5. Repeat the Process - Once the magistrate has completed step 4 for the legal conclusion and its immediate sub-points, repeat step 3 and then 4 for each of the supporting reasons and each of the sub-point under each supporting reason. Do this until you have laid out every sub-point in the document. Along the way include any case, statute, regulation or other evidence that pertains to a particular supporting reason or its sub-points.

Giving an effective statement of reasons

A magistrate should follow the qualities for effective communication when writing reasons. These are:

1. Clarity - A magistrate should be clear and coherent in his writing. To achieve clarity the magistrate should address one point at a time or one reason at a time, thus emphasizing the supporting evidence and facts for this particular reason. The magistrate should avoid ambiguities and confusion in his writing and try to be as clear and comprehensible as possible.
2. Simplicity - the magistrate should use simple sentences with the subject and noun clearly identifiable and not separated by ancillary matters. The magistrate should avoid using vague language and complex terminology when writing his reasons. He should not go into lengthy or complex facts and laws but try to summarize and clarify them. The magistrate is not required to give extremely detailed reasons to address every single argument submitted during the course of the hearing but he should give enough detail regarding the principles and basis on which the he acted upon when making his decision in the case.
3. Brevity - a magistrate should keep paragraphs and sentences as short as possible while avoiding repetition and unnecessary words. A magistrate should only discuss a particular matter or point that serves a clear purpose particularly matters that assist in effectively communicating his reasons for his decision. A magistrate should not import and state what another judge said in his judgment unless it is vital to his reasons neither should he/she recite one counsel's argument and not clearly adopt it. The magistrate should not ramble an opinion which describes many cases on a number of legal topics then abruptly announces an opinion. This infers that the reasons are buried somewhere in one of those topics.[8]
4. Avoid Quotations - a magistrate should avoid quoting lengthy information and quoting paragraphs from other judgments and text unless it is necessary. Quotes that are used should be brief and vital to the magistrate's reasons.
5. Write positively - a magistrate should avoid using double negatives in his statement of reasons.

[8] JE Cote, The Appellate Craft pg. 79

Guiding principles for writing of reasons[9]

There is no standardized or fixed formula that has established the parameters against which to measure the adequacy of the reasons for a decision by a magistrate.[10] However, the courts in some jurisdictions have identified guidelines which may assist magistrates in providing adequate and sufficient reasons for their decision.

In **Francis Jones v Sgt. Sheldon David Mag App. No. 64 of 2014,** Mohammed JA highlighted the Barbadian case of **Lovell v Rayside Construction Limited Magisterial Appeal No. 16 of 2004,** where Mason JA laid out guidelines for magistrates when providing reasons for their decisions:

- The reasons need not be elaborate and deal with each and every argument presented by counsel but they must be in sufficient detail to show the parties, and if need be the Court of Appeal, the principles and the basis upon which the magistrate acted, namely, why one party succeeded and not the other;
- The judge must summarize the testimony of the witnesses and in so doing identify and record those issues which were critical to the decision;
- They must show the manner in which the magistrate resolved those issues. This is so even if the critical issue was one of fact and he has preferred the evidence of one witness over that of another;
- The magistrate must give the explanation for that preference and it must be apparent from the judgment;
- The magistrate may in those circumstances refer to a specific piece of evidence or to a submission which he has accepted or rejected.

Montano, Roberts v CPL Sewdass Mag App No. P108 of 2016, explored the minimum content required for adequate reasons for a decision. The authorities quoted emphasized the need for sufficient reasons by magistrates where the main issues are credibility of the witnesses and/or dealing with inconsistent and contradictory evidence, unless the basis of the tribunal's conclusion is apparent from the record:

"(68) In R v Dinardo, the defence rested on the overall lack of credibility and reliability of the complainant's testimony, as well as on the accused's testimony denying her allegations. On this issue, Charron J. said at paragraph 2:

> *"[2]...the trial judge erred in law by failing to explain how he resolved the significant issues of credibility concerning the complainant's testimony, particularly in light of Mr. Dinardo's evidence at trial. While a trial judge is presumed to know the law, I conclude that in the context of the evidence and the issues in this case, the trial judge's reasons are insufficient to allow for meaningful appellate review on the question of credibility."*

[9] Sylvan v Ragoonath (1966) 11 WIR 33 Wooding CJ at page 36 'we cannot too strongly insist that reasons should show an awareness of the salient issues, an assessment of the material evidence and an appreciation of the relevant law'.

[10] Casanki et el v Commissioner of Police HCRAP 2010/022 at [6]

(69) At paragraphs 23 and 27, Charron J. said:

> *'[23] In a case that turns on credibility, such as this one, the trial judge must direct his or her mind to the decisive question of whether the accused's evidence, considered in the context of the evidence as a whole, raises a reasonable doubt as to his guilt. Put differently, the trial judge must consider whether the evidence as a whole establishes the accused's guilt beyond a reasonable doubt.* ***In my view, the substantive concerns with the trial judge's decision in this case can better be dealt with under the rubric of the sufficiency of his reasons for judgment.***
>
> *...*
>
> *[27] Reasons "acquire particular importance" where the trial judge must "resolve confused and contradictory evidence on a key issue, unless the basis of the trial judge's conclusion is apparent from the record" (Sheppard, at para. 55). Here, the complainant's evidence was not only confused, but contradicted as well by the accused. As I will now explain, it is my view that the trial judge fell into error by failing to explain how he reconciled the inconsistencies in the complainant's testimony on the issue of whether she invented the allegations. I also conclude that the trial judge's failure to provide such an explanation prejudiced the accused's legal right to an appeal.' [emphasis added]*

(70) Charron J. went on to say at paragraphs 29, 31 and 32:

> *'[29] It cannot be said that the complainant's testimony wavered only on the trivial details of the allegations. Her testimony wavered on the central issue at trial: that is, whether Mr. Dinardo committed the acts for which he was charged, or whether the story was invented. I disagree with the majority of the Court of Appeal that ..."the defence evidence related to peripheral aspects of the case"(para. 32).*
>
> ***The defence rested on the overall lack of credibility and reliability of the complainant's testimony and, of course, on Mr. Dinardo's own testimony denying her allegations. In this context, it was incumbent upon the trial judge to explain, even in succinct terms, how he resolved these difficulties to reach a verdict beyond a reasonable doubt.***
>
> *[31]* ***... the inquiry into the sufficiency of the reasons should be directed at whether the reasons respond to the case's live issues. In this case, the complainant's truthfulness was very much a live issue...*** *At trial, two of the witnesses testified that the complainant could be untruthful and manipulative. While it was open to the trial judge to conclude that he was convinced beyond a reasonable doubt of the guilt of the accused, it was not open to him to do so without explaining how he reconciled the complainant's inconsistent testimony, particularly in light of the accused's own evidence denying her allegations.*
>
> *[32] This Court emphasized in Sheppard that no error will be found where the basis for the trial judge's conclusion is "apparent from the record, even without being articulated" (para. 55). If the trial judge's reasons are deficient, the reviewing court must examine the evidence and determine whether the reasons for conviction are, in fact, patent on the record. This exercise is not an invitation to appellate courts to engage in a reassessment of aspects of the case not resolved by the trial judge. Where the trial judge's reasoning is not apparent from the reasons or the record, as in the instant case, the appeal court ought not to substitute its own analysis for that of the trial judge (Sheppard, at paras. 52 and 55).' [emphasis added]*

...

(73) In the decision in R v Vuradin, also from the Supreme Court of Canada, one of the issues that arose in the appeal was whether the trial judge's reasons for judgment were sufficient. In deciding on this issue, Karakatsanis J. said at paragraphs 10-13:

> *"[10]* ***An appellate court tasked with determining whether a trial judge gave sufficient reasons must follow a functional approach: R. v. Sheppard, 2002 SCC 26, [2002] 1 S.C.R. 869, at para. 55. An appeal based on insufficient reasons "will only be allowed where the trial judge's reasons are so deficient that they foreclose meaningful appellate review"****: R. v. Dinardo, 2008 SCC 24,[2008] 1 S.C.R. 788, at para. 25.*
>
> *[11] Here, the key issue at trial was credibility. Credibility determinations by a trial judge attract a high degree of deference. In Dinardo, Charron J. explained:*
>
> ***Where a case turns largely on determinations of credibility, the sufficiency of the reasons should be considered in light of the deference afforded to trial judges on credibility findings. Rarely will the deficiencies in the trial judge's credibility analysis, as expressed in the reasons for judgment, merit intervention on appeal. Nevertheless, a failure to sufficiently articulate how credibility concerns were resolved may constitute reversible error*** *(see R. v. Braich, [2002] 1 S.C.R. 903, 2002 SCC 27, at para. 23). As this Court noted in R. v. Gagnon, [2006] 1 S.C.R. 621, 2006 SCC 17, the accused is entitled to know "why the trial judge is left with no reasonable doubt" . . . . [para. 26].*
>
> *[12]* ***Ultimately, appellate courts considering the sufficiency of reasons "should read them as a whole, in the context of the evidence, the arguments and the trial, with an appreciation of the purposes or functions for which they are delivered": R.E.M., at para. 16. These purposes "are fulfilled if the reasons, read in context, show why the judge decided as he or she did"*** *(para. 17).*
>
> *[13] In R.E.M., this Court also explained that a trial judge's failure to explain why he rejected an accused's plausible denial of the charges does not mean the reasons are deficient as long as the reasons generally demonstrate that, where the complainant's evidence and the accused's evidence conflicted, the trial judge accepted the complainant's evidence. No further explanation for rejecting the accused's evidence is required as the convictions themselves raise a reasonable inference that the accused's denial failed to raise a reasonable doubt (see para.66)" [emphasis added]*

...

(78) In ***R v Gatzke****, one of the three grounds of appeal advanced was that the trial judge did not provide sufficient reasons for appellate review of his assessment of the evidence of the appellant, in support of which the appellant cited the decision in* ***R v Vuradin****. The appellant also relied on the decision in* ***R v Gharabaghi*** *in which Arnold-Bailey J. said that, "There is an enhanced duty to give reasons in cases where the sole issue is credibility, and in particular, a trial judge must explain a finding of credibility against the accused."*

(79) In response, the Crown submitted that inadequate reasons of a trial judge would rarely justify appellate intervention and that the path leading to the conviction in the case was readily discernible. The Crown submitted that a trial judge's failure to state explicitly why he rejected the evidence of the appellant was not a fatal error so long as the path to conviction was clear, such as where the accused's

evidence was self-evidently incredible or unreliable.

(80) In determining the appeal, Associate Chief Justice Cullen said at paragraphs 61-62:

> *[61]* ***In my view, the trial judge's failure to provide any explanation for rejecting the appellant's evidence, and indeed in failing to even expressly communicate that he did reject the appellant's evidence is, in the evidentiary context of the present case, a reversible error.***
>
> *[62]* ***This is not a case where the appellant's evidence was a bare denial in the face of the evidence of two independent eyewitnesses. Nor is it a case where the appellant's evidence was "self-evidently incredible or unreliable".*** *[emphasis added]*

(81) At paragraphs 67 and 68, Associate Chief Justice Cullen said:

> *[67] In* ***R. v. Y.M. (2004)****, 71 O.R. (3d) 388 (C.A.) at para. 23, Justice Laskin for the Court commented on the issue of inadequate reasons in the application of W.(D.), referring to R. v. Sheppard, 2002 SCC 26:*
>
> *23. Sheppard warns against conclusory reasons, that is, conclusions without explanations for them. However, as desirable as it is to give reasoned reasons, a failure to do so does not automatically amount to reversible error. In Sheppard, Binnie J. explained that inadequate reasons do not confer "a free-standing right of appeal" or "entitlement to appellate intervention" (para. 53). Instead, he adopted a functional approach. The adequacy of the judge's reasons must be assessed against the rationales for giving them. In some cases inadequate reasons do not preclude meaningful appellate review or prevent an accused from knowing why he or she was convicted. For instance, the accused's evidence may obviously incredible, or the prosecution's evidence may be overwhelming and unchallenged, and thus the basis of the conviction may be clear from the record...*
>
> *[68]* ***As I noted earlier, this is not a case where the basis of the appellant's conviction is clear from the record. There are contradictory accounts of the events and some of the factors affecting the credibility or reliability of the complainant have relevance to Mr. Chartrand. In that context, the judge's failure to do more than provide a brief summary of the appellant's evidence without any analysis or comment does not meet the needs set out in Sheppard – to explain to the accused why he was convicted, and to make appellate review of the decision meaningful."*** *[emphasis added]*

(82) In the ***People (at the Suit of the Director of Public Prosecutions) v Michael McKevitt****, a decision of the Supreme Court of Ireland, one of the issues raised on appeal was the inadequacy of reasons with respect to the credibility findings of one of the prosecution witnesses. In that context, Justice Geoghegan observed:*

> ***'In fairness to the appellant, the main thrust of the attack on the credibility findings by the Special Criminal Court is the alleged inadequacy of reasons given for the belief and the omission expressly to deal with each of the credibility points against Mr. Rupert raised by the appellant at the trial. Strictly speaking these issues are not included in the three headings of appeal listed by Kearns J. However, I find this criticism equally unjustified. It has never been the law that a trial court must trawl through every credibility point raised against a key witness and explain why it has rejected it in its judgment.*** *Under the jurisprudence of the European Court of Human*

> *Rights, there would be a requirement for a judge who has listened to two opposing points of view in the same area to explain his reasons in a general way as to why he favoured one rather than the other. This could be especially so in a field of specialist expertise.* ***But that is a long way from saying that every credibility point against a key witness must be expressly touched on and commented upon and dealt with in a judgment.'*** *[emphasis added]*

(83) In the Australian decision in ***Hunter v Transport Accident Commission and Avalanche****, one of the issues that arose on appeal was whether the trial judge's reasons for her decision were sufficient. In giving the decision of the court, Nettle JA said at paragraph 21:*

> *"[21]****...while the extent of the reasons will depend upon the circumstances of the case, the reasons should deal with the substantial points which have been raised; include findings on material questions of fact; refer to the evidence or other material upon which those finding are based; and provide an intelligible explanation of the process of reasoning that has led the judge from the evidence to the findings and from the findings to the ultimate conclusion.*** *It should also be understood that the requirement to refer to the evidence is not limited to the evidence that has been accepted and acted upon.* ***If a party has relied on evidence or material which the judge has rejected, the judge should refer to that evidence or material and, in giving reasons which deal with the substantial points that have been raised, explain why that evidence or material has been rejected. There may be exceptions. But, ordinarily, where a judge rejects or excludes from consideration evidence or other material which is relevant and cogent, it is simply not possible to give fair and sensible reasons for the decision without adverting to and assigning reasons for the rejection or exclusion of that material. Similarly, while it is not incumbent upon the judge to deal with every argument and issue that might arise in the course of a case, where an argument is substantial or an issue is significant, it is necessary to refer to and assign reasons for the rejection of the argument or the resolution of the issue. Above all the judge should bear steadily in mind that reasons are not intelligible if they leave the reader to wonder which of a number of possible routes has been taken to the conclusion expressed. Failure to expose the path of reasoning is an error of law."*** *[emphasis added]*

(84) Nettle J.A. went on to say at paragraph 28:

> *"[28]...The requirement to refer to the evidence upon which findings are based is a requirement to analyse the evidence and to explain why some parts of it do and others do not lead to the ultimate conclusion. And that analysis must be recorded in the reasons.* ***In general, and in this case in particular, the mere recitation of evidence followed by a statement of findings, without any commentary as to why the evidence is said to lead to the findings, is about as good as useless."*** *[emphasis added]*

(85) The reasoning in Hunter v Transport Accident Commission and Avalanche44 was applied in the subsequent decision of the Supreme Court of Victoria in Franklin v Ubaldi Foods Pty Ltd45, where Ashley J.A., in considering whether the reasons of the judge were adequate to disclose his path of reasoning, said at paragraph 38:

> *"[38] I hope that I do not underestimate the difficulty that confronts a County Court judge who is faced with resolving applications such as this, one after the other, upon inadequately exposed material. I accept that in such circumstances reasons for decision may lack the*

> *precision which could be expected if the judge had the luxury – some would say it is most often the necessity – of hearing witnesses viva voce, and then having time for reflection; and yet that such reasons may be adjudged adequate.* ***But one thing is clear. Reasons must be such as reveal – although in a particular case it may be by necessary inference - the path of reasoning which leads to the ultimate conclusion. If reasons fail in that respect, they will not enable the losing party to know why the case was lost, they will tend to frustrate a right of appeal, and their inadequacy will in such circumstances constitute an error of law."*** *[emphasis added]"*

The Court of Appeal reiterated:

> *"A magistrate, though obliged to give reasons, is however not required to address every submission that was advanced during the course of the trial as well as all of the evidence in the case. The object of the giving of reasons is not to show how the magistrate arrived at his or her conclusion, in a "watch me think" fashion. It is rather to show why the magistrate made that decision: see paragraph 17 of the decision in* ***R v R.E.M****. As long as the reasons show how the magistrate grappled with the substance of the legal and factual issues upon which the decision turned, they will normally be sufficient: see paragraph 64 of the decision in* ***R v R.E.M.****. The magistrate is not required to journey through every "hill and valley" of all the credibility issues that arose in the case but rather, he must demonstrate that his mind was applied to the more material issues that might have impacted on the credibility of the witnesses: see* ***The People (at the Suit of the Director of Public Prosecutions) v Michael McKevitt*** *at paragraph above. There can be and there is no standardised, "magic formula" for the giving of reasons. What must be kept uppermost in the mind of the magistrate is the required "minimum content" of those reasons, as explained in the preceding paragraphs."*[11]

Credibility

It can be difficult to express the magistrate's assessment of the witnesses' credibility in written reasons. A credible witness is truthful, accurate, confident, reliable and consistent in giving evidence.

The following in a summary of the important principles to be borne in mind when assessing credibility[12]:

- Whether the witness is a truthful person or untruthful person?
- Is he though a truthful person telling something less than the truth on this issue or the other way around?
- Even though he is a truthful person telling the truth, did he correctly remember the conversation or events correctly?
- Has his recollection been altered by any unconscious bias or discussion with others?
- Has the witness's memory faded with time and his imagination become more active?

[11] Machel Montano, Kernel Roberts v Cpl. 12167 Sewdass Mag. App. No.108 of 2016 Yorke Soo Hon JA, Mohammed JA at [157]

[12] David Piper v Mark Hales [2013] EWHC B1 (QB) Simon Brown QC J at [34]; Onassis v Vergottis [1968] 2 Lloyds Rep 403 at 431

Contemporary documents are always of the utmost importance:

- Although the honest witness believes he heard or saw this or that, is it so improbable that it is on a balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness, and motive is one aspect of probability;
- All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part.

The main tests needed to determine a witness' truthfulness are as follows:

- The consistency of the witness's evidence with what is agreed, or clearly shown by other evidence, to have occurred;
- The internal consistency of the witness's evidence;
- Consistency with what the witness has said or deposed on other occasions;
- The credit of the witness in relation to matters not germane to the litigation;
- The demeanour of the witness.

The first three of these tests may in general be regarded as giving a useful pointer to where the truth lies. If a witness's evidence conflicts with what is clearly shown to have occurred, or is internally self-contradictory, or conflicts with what the witness has previously said, it may usually be regarded as suspect. It may only be unreliable, and not dishonest, but the nature of the case may effectively rule out that possibility. The fourth test is perhaps more arguable.[13]

Non-verbal cues to deception

The non-verbal cues of deception by a witness include the conduct, manner, bearing, behaviour, delivery, inflexion; in short anything which characterises his mode of giving evidence but does not appear in a transcript of what he actually said.

The following are some non-verbal cues to deception:

- Liars seem to include longer pauses in their speech than truth tellers;
- They wait longer before giving an answer;
- They make more word and phrases repetitions;
- They make fewer hand and finger movements;
- Liars tend to make general statements;
- They also tend to make shorter statements than truth tellers.

When assessing the credibility of a witness the magistrate should:

- Not make up his mind to quickly;
- Be suspicious but do not show it;

[13] Bingham LJ, The Judge as Juror: The judicial Determination of Factual Issues in 'The Business of Judging' Oxford (2000) reprinted in Current legal Problems Vol. 38, 1985 p 1-27

- Use an information gathering style;
- Let the witness repeat himself;
- Ask the witness to elaborate his answers;
- Ask the witness temporal questions;
- Be aware of his own prejudices;
- Use a combination of relevant factors to assess overall credibility;
- Look at the witness evidence in context to assess how it fits in to the overall scheme of the evidence;
- Give balanced scrutiny to all evidence;
- Do not give too much weight to motive;
- Do not rely on previous consistent statements as corroboration;
- Give clear reasons which must support the conclusion.

A magistrate should state in his statement of reasons which factors influenced the assessment of credibility of the particular witness. For example:

- The witness's demeanour in court;
- The witness's the overall consistency between witness's statement and oral evidence;
- The witness had no real motive or reason to lie;
- Whether upon assessment it appears that the witness appears to be the kind of person to lie;
- Whether a statement from the witness was provided to the police immediately after the events;
- Whether any other evidence supports the credibility of the witness;
- Whether the inconsistency between the witness statement and the oral evidence are comparatively minor;
- Whether there was an omission in the witness statement compared with evidence in court;
- Did the witness have any previous convictions and if so did it affect the witness's credibility;
- Any other factor or information that the magistrate used in the assessment of the witness' credibility.

Bias in judgment

A magistrate should not let any bias or unconscious bias affect his reasoning. Bias is any inclination or prejudice for or against one party. Unconscious bias is hidden bias or subconscious bias or automatic bias. It is understood that individuals have preferences at a subconscious level that influence decision making. This is part of a natural process of categorising similar objects together. The related cognitive biases can result in an individual's implicit reliance on stereotypes. This implicit reliance on stereotypes can influence how incoming information is interpreted and remembered.

Categories of bias

- Affinity bias or mini me syndrome - making choices based on affinity/similarity;
- Conformational behaviour - we make decisions largely in a way that is designed to confirm beliefs we already have;
- Assimilation bias - an inclination to interpret ambiguous information in a way that is consistent with previously held beliefs;
- Belief perseverance - keeping held beliefs after evidence on which they were founded have been shown to be invalid or false. This could be a result of a tendency to ignore or filter out evidence that disconfirm our beliefs. This is a particular pertinent issue with regard to judging. How much do we select evidence that suits our view and leave out possibly relevant material which does not support our view?
- Argument from authority - believing that an idea posited by a likeable source is true and that an argument put forward by an unlikeable source is not;
- Argument from novelty - believing because something is new it must be better;
- Arguments from antiquity - arguing that something is right because it has always been that way;
- Bandwagon bias - tendency to assume that the opinion of the majority is the valid opinion;
- Argument from ignorance - thinking that because something has not been proven to be false then it must be true or vice versa;
- Correspondence bias - the tendency to explain other behaviours overemphasising their personal disposition and downplaying the relevance of the situation.

Addressing unconscious bias

- The first step is recognising and acknowledging that you must have some unconscious biases;
- Try identifying what the biases are and analyse the identified biases;
- Get some honest feedback from colleagues or court staff to address and overcome the biases;

- When the case papers come in, test to see whether any preliminary view you may have come to is influenced in any way by your views and beliefs as opposed to the merits of the case;
- Analyse your reasoning and ask yourself whether your decision have been affected by any prejudice you may hold;
- Confront yourself regularly about the issue to ensure that it is a live one in your mind whilst carrying out your duties;
- Remind yourself to be fair and objective in you reasoning and judgment.

The Commonwealth Judicial Education Institution has provided the following possible methodology for the delivery of short oral judgment/decision by a magistrate:

Template for Preparing Brief Oral Judgment

NAME OF CASE:	**THE STATE v John Smith**
INTRODUCTION: Who are the parties to the litigation and how do they interface with each other in relation to the litigation: Who Did What to Whom, or Who's Arguing about What?	
ISSUES: List of the issues to be determined in the order in which they are to be decided.	
BACKGROUND: Relevant evidence that gives rise to or helps to determine the list of issues	
Heading for 1st issue, followed by analysis on this first issue. Note: Losing Party's Position (LOPP)/Flaw in Losing Party's Position (FLOPP): State first the submission/argument of the party whose view on this issue the court does not accept. Then state why the court does not accept that view	

NAME OF CASE:	**THE STATE v John Smith**
Heading for 2nd issue (if any), followed by LOPP/FLOPP analysis (as above).	
Heading for 3rd issue (if any), followed by LOPP/FLOP analysis (as above) (Add a row for each additional issue)	
CONCLUSION: Order, costs, recapitulation of reasons if appropriate.	

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