

## **EVIDENCE (AMENDMENT) ACT, 2015-10**

### *Arrangement of Sections*

1. Short title
2. Amendment of section 72 of Cap. 121
3. Insertion of section 72A into Cap. 121
4. Repeal and replacement of section 73 of Cap. 121
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7. Repeal of section 170 of Cap. 121
8. Repeal of *Third Schedule* to Cap. 121
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**BARBADOS**

I assent  
ELLIOTT F. BELGRAVE  
Governor-General  
09th March, 2015.

**2015-10**

An Act to amend the *Evidence Act*, Cap. 121 to make provision for

- (a) sound recordings;
- (b) video identifications; and
- (c) other related matters.

**[Commencement: by Proclamation]**

ENACTED by the Parliament of Barbados as follows:

**Short title**

1. This Act may be cited as the *Evidence (Amendment) Act, 2015*.

**Amendment of section 72 of Cap. 121**

2. *Section 72 of the Evidence Act, in this Act referred to as the principal Act, is amended*

*(a) in subsection (2)*

- (i) *by deleting paragraph (a) and substituting the following:*

“(a) the confession or admission was made in circumstances where it was reasonably practicable to make sound recordings of the confession or admission, the questioning of the person and anything said by that person during that questioning were recorded;” and

- (ii) *by deleting subparagraphs (iv) and (v) of paragraph (b) and substituting the following:*

“(iv) a sound recording was made of the reading referred to in subparagraph (ii) and of everything said by or to the person questioned or charged as a result of compliance with subparagraph (iii); and the requirements of subparagraph (ii) were also observed in respect of that sound recording;

(v) before the reading referred to in subparagraph (ii) was commenced, an explanation was given to the person questioned of the procedure that would be followed for the purpose of compliance with subparagraphs (ii), (iii) and (iv);”;

- (b) by deleting subsection (3)(c) and substituting the following:*

“(c) if a written record of the sound recording is prepared, make a copy of the written record available to the person questioned or his legal representative within 7 days after the preparation of the written record;” and

(c) *by inserting immediately after subsection (6) the following:*

“(7) For the purposes of this section, “in the course of official questioning” means questioning that occurs where a person is under arrest in a place of detention, involving a police officer’s questioning under caution that is reasonably likely to elicit incriminating responses beginning with a police officer’s advice of the person’s right under the *Constitution of Barbados*, Cap. 1966/1455 and ending when the questioning is completely finished.”.

### **Insertion of section 72A into Cap. 121**

3. *The principal Act is amended by inserting immediately after section 72 the following:*

#### **“Effect of accused’s failure to mention facts when questioned**

**72A.(1)** Where, in the course of official questioning, in any proceedings against a person for an offence, evidence is given that the accused

- (a) at any time before he was charged with the offence, on being questioned under caution by an interviewing officer trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or

- (b) on being charged with the offence or officially informed that he might be prosecuted for an offence, failed to mention any such fact,

being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, subsection (2) applies.

- (2) Where a person fails to mention such facts as are referred to in subsection (1)

- (a) the court, in determining whether there is a case to answer;  
or
- (b) the court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure as appear proper.

- (3) Where the accused was at an authorised place of detention at the time of the failure to mention such facts as are referred in subsection (1), then subsection (2) shall not apply where he had not been allowed an opportunity to consult an attorney-at-law prior to being questioned, charged or informed as mentioned in subsection (1).

- (4) Subject to any directions by the court, evidence tending to establish the failure maybe given before or after evidence tending to establish the fact which the accused is alleged to have failed to mention.

- (5) This section does not

- (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from this section; or

- (b) preclude the drawing of any inference from any such silence or other reaction of the accused which could properly be drawn apart from this section.

(6) For the purposes of this section, “in the course of official questioning” means questioning that occurs where a person is under arrest in a place of detention, involving a police officer’s questioning under caution that is reasonably likely to elicit incriminating responses beginning with a police officer’s advice of the person’s right under the *Constitution of Barbados, Cap. 1966/1455* and ending when the questioning is completely finished.”.

#### **Repeal and replacement of section 73 of Cap. 121**

4. *Section 73 of the principal Act is deleted and the following is substituted:*

##### **“Exclusion of records of oral questioning**

73.(1) Where an accused does not want to subject himself to a sound recording, but an oral admission is made by the accused to an investigating officer in response to a question put or a representation made by an officer, a document prepared by or on behalf of the officer is not admissible in criminal proceedings to prove the contents of the question, representation or response unless the accused has, by signing, initialling or otherwise marking the document, acknowledged that the document is a true record of the question, representation or response.

(2) In subsection (1), “document” does not include a sound recording or a transcript of a sound recording. ”.

**Amendment of section 100 of Cap. 121**

**5.**        *Section 100 of the principal Act is deleted and the following is substituted:*

**“Visual identification excluded unless certain conditions are met**

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

**(a)**    either

**(i)**    an identification parade was held; or

**(ii)**   a video identification was conducted

which included the accused before the identification was made; or

**(b)**    it would not have been reasonable to have

**(i)**    held a identification parade; or

**(ii)**   conducted a video identification; or

**(c)**    the accused refused to take part in an identification parade or a video identification

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

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

**(a)**    the kind of offence, and the gravity of the offence, concerned;

**(b)**    the importance of the evidence;



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- (c) the practicality of holding an identification parade or conducting the video identification having regard, amongst other things
    - (i) to whether the accused failed to cooperate in the conduct of the parade or video identification, and to the manner and extent of, and the reason, if any, for, the failure; and
    - (ii) in any case, to whether the identification was made at or about the time of the commission of the relevant offence; and
  - (d) the appropriateness of holding an identification parade or conducting a video identification having regard, among other things, to the relationship, if any, between the accused and the other person who made the identification.
- (3) It shall be presumed that it would not have been reasonable to conduct an identification parade or a video identification if it would have been unfair to the accused for such an identification parade or video identification to be conducted.
- (4) Where
- (a) the accused refused to take part in the conduct of an identification parade or a video identification unless an attorney-at-law acting for the accused or unless another person chosen by the accused was present while it was being held; and
  - (b) there were, at the time when the identification parade or video identification was to be held, reasonable grounds to believe that it was not reasonably practicable for such attorney-at-law or other person to be present,
- it shall be presumed that it would not have been reasonable to have conducted an identification parade or video identification at that time.

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

(6) In this section,

“identification parade” means an identification procedure conducted by a police officer in which a suspect and other persons who physically resemble that suspect are shown to a person to determine whether that suspect can be identified by the person as having committed an offence;

“picture identification evidence” means identification evidence relating to an identification made wholly or partly by the person who made the identification examining pictures or photographs kept for the use by a police officer;

“video identification” means an identification procedure conducted by a police officer in which moving images or still images of a suspect and other persons who physically resemble that suspect are shown to a person to determine whether that suspect can be identified by the person as having committed an offence;

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

### **Repeal and replacement of section 169 of Cap. 121**

**6.        *Section 169 of the principal Act is deleted and the following is substituted:***

**“Regulations**

**169.** The Attorney-General may make regulations generally to give effect to this Act and, in particular, may make regulations for

- (a) the exercise by police officers of statutory powers
  - (i) to search a person without first arresting him; or
  - (ii) to search a vehicle without making an arrest;
- (b) the detention, treatment, questioning and identification of persons by police officers;
- (c) the search of premises by police officers; and
- (d) the seizure of property found by police officers on persons or premises.”.

**Repeal of section 170 of Cap. 121**

**7.** *Section 170 of the principal Act is repealed.*

**Repeal of Third Schedule to Cap. 121**

**8.** *The Third Schedule to the principal Act is repealed.*

**Commencement**

**9.** This Act comes into operation on a date to be fixed by proclamation.