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EVIDENCE (AMENDMENT) (NO. 2) ACT, 2014

Arrangement of Sections

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No. 46 of 2014

EVIDENCE (AMENDMENT) (NO. 2) ACT, 2014

AN ACT TO ENABLE ORAL APPLICATIONS IN REQUISITE INSTANCES TO BE MADE FOR USE OF THE VIDEO LINK MODE OF EVIDENCE AND FOR RELATED MATTERS.

[Date of Assent - 5th November, 2014]

Enacted by the Parliament of The Bahamas

1. Short title.

- (1) This Act, which amends the Evidence Act (*Ch. 65*) may be cited as the Evidence (Amendment)(No. 2) Act, 2014.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

2. Amendment of section 78B of the principal Act.

- (1) Subsections (1) and (2) of section 78B of the principal Act are repealed and replaced by the following —
 - “(1) A person, other than the accused person, may give evidence by way of a live television link in proceedings to which this Part applies, where the evidence is essential to the case of the applicant and —
 - (a) the witness is within or outside of The Bahamas;
 - (b) the quality of evidence to be 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;
 - (c) the witness is a child, elderly, ill or otherwise considered a vulnerable person; or

- (d) the witness is to be cross examined following the admission of a video recording of testimony from him under section 78D.
- (2) Any evidence given pursuant to subsection (1) may not be given without the permission of the court or upon the court's own motion and in either case the court being satisfied that it is in the interest of justice that the evidence be given by a live television link.”.

3. Insertion of new section 78E in principal Act.

The principal Act is amended by the re-numbering of section 78E as section 78F and by the insertion of the following as section 78E —

“78E Use of data from electronic device.

- (1) Evidence based upon electronic data or display transmitted from or generated or recorded or shown by an electronic monitoring device worn by a person pursuant to an order of a court purporting to indicate where that person was at a specific time shall be admissible as *prima facie* evidence of that fact if —
 - (a) the device is of the type or model prescribed by the Minister;
 - (b) a certificate as to the circumstances and manner the data was produced or generated, signed by a person who is a member of the Electronic Monitoring Unit, and speaks as to the accuracy of the device is presented by the person tendering the evidence.
- (2) Nothing in subsection (1) makes the evidence mentioned in that subsection admissible at a hearing unless notice of the intention to introduce such evidence together with a copy of the relevant certificate has, not less than 5 days before the tendering of that evidence, been served on the wearer of the device.
- (3) The Minister may by Notice in the Gazette prescribe a type or mode of device for the use in electronic monitoring.
- (4) In this section —
 - (a) the words “device”, “Minister” and “unit” have the respective meaning assigned to them by the Rules;
 - (b) “Rules” means the Penal Code (Electronic Monitoring) Rules, 2010.

4. Amendment of the Schedule to the principal Act.

The Schedule to the Evidence Act is amended by —

- (a) the deletion of paragraph (2) of rule 3 and the substitution therefor of the following paragraph —

- “(2) Notwithstanding paragraph (1) a party to a criminal proceeding who is desirous of the court exercising its powers to give leave pursuant to section 78B(2) may make an oral application at any time during such proceedings to the trial judge where the application has become necessary by reason of circumstances beyond the control of, or the need could not have been reasonably foreseen by, the applicant.”.
- (b) the replacement of subparagraph (b) of paragraph (2) of rule 4 by the following subparagraph—
- “(b) show to the court that satisfactory arrangements are available to efficiently carry out the giving of evidence by live television link;
- (c) the insertion immediately after rule 4 of the following as rule 4A—
- “4A. Evidence of witness on grounds of fear and distress.**
- (1) In determining whether a witness falls within section 78(B)(1)(b) the court must take into account in particular —
- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;
- (c) such of the following matters as appear to the court to be relevant namely—
- (i) the social and cultural background and the ethnic origins of the witness;
- (ii) the domestic and employment circumstances of the witness, and
- (iii) any religious beliefs or political opinions of the witness;
- (d) any behaviour towards the witness on the part of —
- (i) any party to the proceeding,
- (ii) members of the family or associates of the accused, or
- (ii) any other person who is likely to be an accused or a witness in the proceedings.
- (2) In determining that question the court must in addition consider any views expressed by the witness.”