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EVIDENCE (AMENDMENT) ACT, 2011

AN ACT TO AMEND THE EVIDENCE ACT TO PROVIDE FOR THE
ADMISSIBILITY OF EVIDENCE IN CRIMINAL PROCEEDINGS
OBTAINED BY WAY OF LIVE TELEVISION LINK AND VIDEO
RECORDING AND FOR MATTERS CONNECTED THEREWITH.

(Date of Assent – 3rd November, 2011)

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) Act, 2011.
- (2) This Act shall come into force on such day as the Minister may, by notice publish in the *Gazette*, appoint.

2. Amendment to section 2 of the principal Act.

Section 2 of the principal Act is amended by inserting, in the appropriate alphabetical order, the following expression and its definition —

“**live television link**” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by —

- (a) the accused person;
- (b) the magistrate or judge, and the jury (if there is one);
- (c) legal representatives acting in the proceedings; and
- (d) any interpreter or other person appointed (in pursuance of a direction or otherwise) to assist the witness;”.

3. Amendment to section 30 of the principal Act.

Paragraph (a) of section 30 of the principal Act is amended by the deletion of the words "not punishable with death".

4. Insertion of new Part IIIA and new sections 78A - 78E into the principal Act.

The principal Act is amended by inserting immediately following section 78 the following new Part IIIA and sections 78A - 78E ---

"PART IIIA

**USE OF LIVE TELEVISION LINK AND VIDEO
RECORDED EVIDENCE IN CRIMINAL PROCEEDINGS**

78A. Application of Part.

This Part applies to ---

- (a) remand hearings;
- (b) proceedings in any court trying a juvenile for an offence; and
- (c) summary trials of offences listed in the *Third Schedule* to the Criminal Procedure Code (*Ch. 91*);
- (d) trials on information;
- (e) appeals to the Court of Appeal.

78B. Evidence by way of live television link.

- (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 court is satisfied that ---
 - (a) the witness is on an island other than the island on which the proceedings are being held;
 - (b) the witness is outside of The Bahamas;
 - (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.
- (3) A statement made on oath by a witness outside of The Bahamas and given in evidence by way of a live television link, by virtue of this section, shall be treated for the purpose

of the prosecution of perjury as having been made in the proceedings in which it is given in evidence.

- (4) Subject to subsection (5), where the court gives permission for a person to give evidence by way of a live television link, such person may not then give evidence other than by way of a live television link without the permission of the court.
- (5) A court may give permission where it appears that it is in the interest of justice for evidence to be given otherwise than by the said live television link.
- (6) Permission may be given pursuant to subsection (5) on an application by a party to the case or by way of the court's own motion, so, however, that an application shall not be made by a party to the case unless there has been a material change in circumstances since permission was granted by virtue of subsection (1).
- (7) The provisions of the *Schedule* shall apply for the better giving effect to this Part and the Rules Committee established under section 75 of the Supreme Court Act (*Ch. 53*) is vested with powers to make rules amending the *Schedule*.

78C. Appearance by way of live television link by the accused.

- (1) Except with his own consent, the trial of any person shall not take place by way of live television link unless he so conducts himself in the court so as to render the continuation of the proceedings in his presence impossible.
- (2) The court may, where the prosecutor and the defence agree at any time during any proceedings relating to an offence other than at a time when the evidence of a witness is being taken, direct that the accused appear by live television link or by any other means that will allow the court and the accused to engage in simultaneous visual and oral communication.
- (3) A court shall not give a direction under this section unless the court is satisfied that it is in the interest of the efficient or effective administration of justice for the accused person to appear in the proceedings through a live television link or by other means that will facilitate simultaneous visual and oral communication.
- (4) In deciding whether to give a direction under this section, the court must consider all the circumstances of the case and such circumstances shall include the suitability of the facilities to be used for a live television link.

- (5) Remand hearings may take place by way of live television link provided that, a Magistrate may in any case require the accused to appear in person.
- (6) A statement made on oath and given in evidence through a live television link by virtue of this section shall be treated for the purposes of the prosecution of perjury as having been made in the proceedings in which it is given in evidence.

78D. Video recording of testimony from child witness.

- (1) In any proceedings to which this Part applies, a video recording of an interview which —
 - (a) is conducted between an adult and a child who is not the accused or one of the accused; and
 - (b) relates to any matter in issue in the proceedings, may, with the permission of the court, be given in evidence insofar as it is not excluded by the court under subsection (2).
- (2) Where a video recording is tendered in evidence under this section, the court shall (subject to the exercise of any power of the court to exclude evidence which is otherwise admissible) give permission under subsection (1) unless —
 - (a) it appears that the child witness will not be available for cross examination;
 - (b) any rules of court requiring the disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or
 - (c) the court is of the opinion, having regard to all of the circumstances of the case, that in the interest of justice the recording ought not to be admitted,and where the court gives such permission it may, if it is of the opinion that in the interest of justice any part of the recording ought not to be admitted, direct that such part be excluded.
- (3) In considering whether any part of the recording ought to be excluded under subsection (2), the court shall consider whether any prejudice to the accused, or one of the accused, that may result from the admission of that part is outweighed by the probative value of showing the whole, or substantially the whole, of the recorded interview.
- (4) Where a video recording is given in evidence under this section, any statement made by the child witness which is

disclosed by the recording shall be treated as if given by that witness in direct oral testimony and accordingly --

(a) any statement shall be admissible evidence of any fact of which such testimony from him would be admissible;

(b) no such statement under this section shall be capable of corroborating any other evidence given by him,

and in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the statement's accuracy or otherwise.

(5) Where the court gives permission under subsection (1), the child witness shall not give relevant evidence within the meaning of subsection (7), otherwise than by means of the video recording unless it appears to the court to be in the interest of justice to give such evidence otherwise than by means of a video recording.

(6) Permission may be given under subsection (5) on an application by a party to the proceedings or by way of the court's own motion.

(7) For the purpose of subsection (5), evidence shall be relevant evidence where--

(a) it is evidence in chief on behalf of the party who tendered the video recording; and

(b) it relates to a matter that, in the opinion of the court, is dealt with in the recording and which the court has not directed to be excluded under subsection (2).

(8) In this section --

“child” means a person below the age of eighteen years;

“statement” includes any representation of fact, whether made in words or otherwise; and

“video recording” means any recording on any medium from which a moving image may, by any means, be produced and includes the accompanying sound track.

78E. Discretion of court to disallow evidence in criminal proceedings.

Nothing in this Act derogates from the power of a court in any criminal proceedings to disallow evidence otherwise admissible which, in the opinion of the court, would, if allowed, operate unfairly against an accused person.”.

5. Insertion of Schedule into the principal Act.

The principal Act is amended by the insertion immediately after section 178 of the following new Schedule --

"SCHEDULE

(Section 78B(7))

CRIMINAL PROCEEDINGS (EVIDENCE BY WAY OF LIVE TELEVISION LINK AND VIDEO RECORDING) RULES, 2011

1. Interpretation.

For the purposes of these Rules, a "witness" means anyone (other than an accused person) for whose benefit an application, direction or order is made.

PART I – EVIDENCE BY LIVE TELEVISION LINK

2. Application of Part.

This Part applies --

- (a) where the court gives leave under section 78B of the Act, for a person, other than the accused person, to give evidence by way of a live television link in criminal proceedings; and
- (b) where the court may, pursuant to section 78C of the Act, direct that an accused person may appear by live television link or by any other means that will allow the court and the accused to engage in simultaneous visual and oral communication.

3. Making an application for leave.

- (1) A party to criminal proceedings who is desirous of the court exercising its power to give leave pursuant to rule 2 must --
 - (a) apply in writing --
 - (i) as soon as reasonably practicable; or
 - (ii) in any event, not less than seven days before the trial; and
 - (b) serve the application on --
 - (i) the court officer, and
 - (ii) each other party.
- (2) Notwithstanding paragraph (1), the court may, on its own motion, make an order pursuant to section 78B of the Act.

4. Content of application for a live television link direction.

- (1) A party who is desirous of adducing evidence by way of a live television link must give to the court his reasons for wishing to do so.
- (2) An applicant for a live television link direction must —
 - (a) unless the court otherwise directs, identify the place from which the witness will give evidence;
 - (b) if that place is in The Bahamas, explain why it would be in the interests of the efficient or effective administration of justice for the witness to give evidence by live television link;
 - (c) if the applicant wants the witness to be accompanied by another person while giving evidence —
 - (i) name that person, if possible, and
 - (ii) explain why it is appropriate for the witness to be accompanied.

5. Decision of court.

Where the court —

- (a) gives leave for a person to give evidence by way of a live television link;
- (b) refuses to give permission,

the court shall announce, at the hearing in public before the witness gives evidence, its decision.

6. Application to discharge a live television link direction.

- (1) A party who is desirous of discharging a live television link direction must —
 - (a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and
 - (b) serve the application on —
 - (i) the court officer, and
 - (ii) each other party.
- (2) The applicant must —
 - (a) explain what material circumstances have changed since the direction was given;
 - (b) explain why it is in the interests of justice to discharge the direction.

7. Representations in response.

- (1) This rule applies where a party wants to make representations about —

- (a) an application for a live television link direction;
 - (b) an application for the discharge of such a direction; or
 - (c) a direction or discharge that the court proposes on its own initiative.
- (2) Such a party must ---
- (a) serve the representations on ---
 - (i) the court officer, and
 - (ii) each other party;
 - (b) do so not more than fourteen days after, as applicable ---
 - (i) service of the application, or
 - (ii) notice of the direction or discharge that the court proposes.

PART II – VIDEO RECORDING OF TESTIMONY FROM CHILD WITNESS

8. Application of Part.

This Part applies where the court gives leave under section 78D of the Act for a child to give evidence by way of video recording.

9. Making of application.

The court may give leave under rule 10 ---

- (a) on an application by a party to the proceedings; or
- (b) on the court's own motion.

10. Requirements in the case of a child witness.

A party who is desirous of adducing the evidence of a child witness must as soon as reasonably practicable ---

- (a) notify the court of the intention to adduce such evidence;
- (b) serve any video recorded evidence on ---
 - (i) the court officer, and
 - (ii) each other party.

11. Application to vary or discharge a direction.

- (1) A party who wants the court to vary or discharge a direction must ---
 - (a) apply in writing, as soon as reasonably practicable, after becoming aware of the grounds for doing so; and
 - (b) serve the application on ---
 - (i) the court officer, and
 - (ii) each other party.

- (2) The applicant must ---
 - (a) explain what material circumstances have changed since the direction was given (or last varied, if applicable);
 - (b) explain why the direction should be varied or discharged; and
 - (c) ask for a hearing, if the applicant wants one, and explain why it is needed.
- (3) The court can vary or discharge a direction ---
 - (a) on application, if there has been a material change of circumstances; or
 - (b) on the court's own motion.

12. Representations in response.

- (1) This rule applies where a party wants to make representations about ---
 - (a) an application for a direction under this Part;
 - (b) an application for the variation or discharge of such a direction; or
 - (c) a direction, variation or discharge that the court proposes on its own initiative.
- (2) Such a party must ---
 - (a) serve the representations on ---
 - (i) the court officer, and
 - (ii) each other party;
 - (b) do so not more than fourteen days after, as applicable ---
 - (i) service of the application, or
 - (ii) notice of the direction, variation or discharge that the court proposes.

13. Intermediary.

- (1) This rule applies where ---
 - (a) a video recorded interview with a witness is conducted through an intermediary;
 - (b) the court directs the examination of a witness or defendant through an intermediary.
- (2) An intermediary must make a declaration ---
 - (a) before such an interview begins;
 - (b) before the examination begins (even if such an interview with the witness was conducted through the same intermediary).
- (3) The declaration must be in these terms ---

"I solemnly, sincerely and truly declare [or I swear by Almighty God] that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding."

14. Custody of records.

Unless the court otherwise directs, the court officer shall secure any evidence adduced under these Rules, in a place of safe custody as directed by the Chief Justice."