
CHAPTER 92**PRELIMINARY INQUIRIES (SPECIAL PROCEDURE)****ARRANGEMENT OF SECTIONS**

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CHAPTER 92

PRELIMINARY INQUIRIES (SPECIAL PROCEDURE) ACT

An Act to establish a special procedure whereby preliminary inquiries before magistrates may be expedited. *5 cf 1983
19 cf 1993*

*[Assent 19th August, 1983]
[Commencement 14th April, 1988]*

- 1.** This Act may be cited as the Preliminary Inquiries (Special Procedure) Act. Short title.
- 2.** (1) In this Act unless the context otherwise requires — Interpretation.
- “the Code” means the Criminal Procedure Code Act; Ch. 91.
- “written statement” means any document in writing whether an original, a copy or a typewritten reproduction, containing an account of a crime or relating to any aspect of a crime. 19 cf 1993, s 2
- (2) Expressions used in any provision of this Act and which are also used in Part V of the Code have the same meanings in this Act as they have in the Code.
- 3.** (1) Notwithstanding anything to the contrary in any other law where a magistrate in conducting a preliminary inquiry pursuant to section 114 of the Code is satisfied, after compliance with section 115 thereof, that the evidence to be produced by the prosecution consists of written statements that satisfy the conditions mentioned in section 4, with or without exhibits, he may take these statements as evidence for the prosecution and, subject to the provisions of this Act, make his determination having regard to those statements whether or not to commit the accused person for trial before the Supreme Court. Use of statements as evidence in committal proceedings in which Act applies.
- (2) Subsection (1) applies to any preliminary inquiry in which the taking of evidence by the magistrate begins after the coming into operation of this Act and whether or not the charge against the accused person was instituted prior thereto but it shall not apply to any preliminary inquiry held in respect of any charge for —

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- (a) treason, murder or manslaughter; and
 - (b) any offence which the magistrate in his discretion determines that in the interest of justice the inquiry should be wholly conducted in accordance with the provisions of the Code having regard to the nature of the offence or the circumstances attending its alleged commission.

Conditions for
use of statements
as evidence

4. (1) In a preliminary inquiry a written statement by any person shall, if the conditions mentioned in subsection (2) are satisfied, be taken as evidence pursuant to section 3(1) to the like extent as oral evidence to the like effect by that person.

(2) The said conditions are —

19 cf 1993, s 3

- (a) the statement purports to be signed by the person whose evidence it purports to be;
 - (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 wilfully stated in it anything which he knew to be false or did not believe to be true;
 - (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 accused together with a notice in writing that the accused person may object to the admission in evidence to any such statement or part thereof and thereafter as soon as practicable like copies of the statement and of any document referred to therein as an exhibit shall be given to the magistrate at least seven days prior to the day of hearing on which the statement is required to be taken as evidence.
- (3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section, that is to say —
- (a) if the statement is made by a person under the age of eighteen, it shall give his age;

- (b) if it is made by a person who cannot read it, 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
- (c) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under paragraph (c) of subsection (2) 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 copy thereof.

5. (1) For the purpose of any preliminary inquiry conducted pursuant to section 3(1) any document purporting to be a public survey within the meaning of the Public Survey Protection Act¹ or a report under the hand of a registered medical practitioner or of any person employed in the public service as an analyst or as a laboratory technician being a person designated for the purposes of this subsection by the Minister responsible for Medical and Health Services upon any examination or analysis carried out by him shall, if it bears his signature, be deemed a written statement satisfying the conditions of section 4(2) and be taken in evidence.

Admission of reports and plans as written statements.

(2) The court may for the purpose of such preliminary inquiry assume that the signature on any such document or report is genuine, without further evidence on the point, and that the person signing it held the qualification and office which he professed to hold at the time when he signed it.

6. (1) Notwithstanding that a written statement made by any person may be taken as evidence in a preliminary inquiry by virtue of section 3(1), the magistrate may —

Use of oral evidence in conjunction with written statements.

- (a) on his own motion require that person; or
- (b) on the application of any party to the inquiry, require any other person who has not given a written statement,

to attend before the court and give oral evidence on oath.

¹ This Act, 1965 Ed. Ch. 204, was repealed by the Land Surveyors Act, 1875, s. 36. (9 of 1975). See also Land Surveyors Act (Ch. 251).

(2) So much of any statement as is taken in evidence by virtue of section 3(1) shall be read aloud at the hearing by the magistrate or by any other person on his directions.

(3) If an accused person does not understand English the written statements shall be interpreted to him in the language which he understands by an interpreter who shall be sworn in accordance with the provisions of the Oaths Act and the identity of the interpreter shall be recorded thereon by the magistrate.

Statements
constitute
depositions.

7. (1) Where in a preliminary inquiry written statements are taken in conjunction with oral testimony as evidence, such testimony when recorded by the magistrate shall be deemed to be a written statement taken pursuant to section 3(1) of the person testifying.

Ch. 65.

(2) Every written statement taken as evidence pursuant to section 3(1) shall be deemed a deposition taken in accordance with the provisions of the Evidence Act relating to the taking of oral evidence and shall notwithstanding anything to the contrary in any other law be treated as evidence taken under Part V of the Code.

(3) If it appears to a magistrate that any part of a written statement is inadmissible as evidence there shall be written against that part “Treated as inadmissible” followed by the initials of the magistrate.

Exceptions to use
of written
statements and
cross-
examination of
the makers.

8. (1) Notwithstanding anything to the contrary in any other law no witness whose written statement has been taken as evidence pursuant to section 3(1), other than a person who has been required to attend before the court under section 6(1) or a person to whom subsection (2) applies, shall be cross-examined by any party to the proceedings during the inquiry.

(2) Nothing in the foregoing provisions of this Act shall enable the written statement of any witness —

- (a) not normally resident in The Bahamas; or
- (b) to whom section 129 of the Code applies,

to be taken as evidence pursuant to section 3(1) without that witness being in attendance before the magistrate and available for cross-examination unless the party entitled to conduct such examination informs the magistrate that the

statement may be taken without such compliance and which shall duly be recorded by the magistrate on that statement.

9. (1) Any document or object referred to as an exhibit and identified in a written statement taken as evidence pursuant to section 3(1) shall be treated as if it has been produced as an exhibit and identified in court by the maker of the statement and that document or object shall, wheresoever possible, be identified by means of a label or other make of identification signed by the maker of the statement.

Identification of exhibits referred to in written statement

(2) Before a magistrate treats any document or object referred to as an exhibit in a written statement as an exhibit produced and identified in court, he shall be satisfied that the document or object is sufficiently described in the written statement for it to be identified.

10. (1) If after the depositions of the witnesses for the prosecution have been taken as provided under the foregoing provisions of this Act the magistrate considers that on the evidence as it stands there are sufficient grounds for committing the accused person for trial, the magistrate shall satisfy himself that the accused person understands the charge and shall ask the accused person whether he wishes to make a statement in his defence or not and, if he wishes to make a statement whether he wishes to make it on oath or not or to produce to the court a written statement. The magistrate shall also explain to the accused person that he is not bound to make a statement and that his statement, if he makes or produces one will be part of the evidence at the trial.

Provision as to taking statements of accused persons

(2) Whatever the accused person then says in answer thereto shall be taken down in writing, as nearly as possible in the accused person's own words, or should the accused person produce to the magistrate a written statement the same may be taken as record of the evidence of the accused person and anything so taken down or produced shall be read over to the accused person who shall be at liberty to explain or add anything contained in the record thereof. The accused person shall sign, or attest by his mark such record. If he refuses, the court shall add a note of his refusal and the record may be subject to Subsection (3) be used as if he had signed or attested it.

(3) The magistrate shall thereafter certify that such statement was taken down or produced to him in his presence and contains accurately the whole statement made or produced to him as the case may be by the accused person and to which section 166 of the Code shall apply.

(4) After subsection (3) has been complied with, the magistrate shall explain to the accused person that if the court commits him for trial he may not be permitted at that trial to adduce evidence of an alibi unless he gives notice of particulars of the alibi and of the witnesses to the court immediately or to the Attorney-General within 21 days from the end of the committal proceedings; and where the court commits the accused person for trial the magistrate shall record in writing the fact that the explanation has been given.

Evidence and
address in
defence

11. (1) Immediately after complying with the requirements of section 10 and whether the accused person has or has not made or given a statement or evidence, the magistrate shall ask him whether he desires to call witnesses on his own behalf and thereafter the inquiry shall, subject to subsection (2), be conducted in accordance with the provisions of subsections (2) to (6) of section 121 and of section 122 of the Code, which shall for that purpose apply *mutatis mutandis*.

(2) Nothing in subsection (1) or in section 3(1), shall preclude the taking of any written statement of a witness for the accused person as evidence under section 3(1) where such statement satisfies the provisions of section 4, other than subsection (2)(c) thereof, and sections 6, 7, 8 and 9 shall, as they apply to the witnesses for the prosecution and their evidence, apply *mutatis mutandis* to the witnesses and their evidence for the accused person.

Provisions of the
Code to
supplement
special
procedure

12. (1) The provisions of the Code shall, save to the extent of their incompatibility with, or exclusion by, the foregoing provisions of this Act apply *mutatis mutandis* to a preliminary inquiry held by a magistrate in accordance with those foregoing provisions as if such inquiry were an inquiry being held under Part V of the Code and any references in any other law or its application thereof to an inquiry held or thing taken or done under that Part shall be

construed as references to or be applicable, as the case may be, to the same extent and in like manner to an inquiry held, or thing taken or done under this Act.

(2) Nothing in subsection (1) shall enable any written statement taken as evidence under section 3(1) to be used as evidence in proceedings to which section 123 or 136 of the Code applies without the maker of that statement being called to give oral evidence.

13. (1) Except as provided by subsections (2), (3) and (7) it shall not be lawful to publish in The Bahamas a report, of any committal proceedings in The Bahamas containing any matter other than that permitted by section 14.

Restrictions on reports of committal proceedings

(2) A magistrates' court shall, on application for the purpose made with reference to any committal proceedings by the accused or one of the accused as the case may be, order that the foregoing subsection shall not apply to reports of those proceedings.

(3) It shall not be lawful under this section to publish or broadcast a report of committal proceedings containing any matter other than that permitted by section 14 —

- (a) where the magistrates' court determines not to commit the accused for trial, after it so determines;
- (b) where the court commits the accused or any of the accused for trial, after the conclusion of his trial or, as the case may be, the trial of the last to be tried,

and where at any time during the preliminary inquiry the court proceeds to try summarily the case of one or more of the accused under section 123, 136 or 210 of the Code (summary trial of indictable offences), while committing the other accused or one or more of the other accused for trial, it shall not be unlawful under this section to publish or broadcast as part of a report of the summary trial, after the court determines to proceed as aforesaid, a report of so much of the committal proceedings containing any such matter as takes place before the determination.

(4) If a report is published or broadcast in contravention of this section, the following persons, that is to say —

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- (a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
 - (b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it;
 - (c) in the case of a broadcast of a report, any body corporate which transmits or provides the programme in which the report is broadcast and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical,

shall be liable on summary conviction to a fine of five thousand dollars.

(5) Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Attorney-General.

(6) Subsection (1) shall be in addition to, and not in derogation from, the provisions of any other law with respect to the publication of reports and proceedings of magistrates' and other courts.

(7) For the purposes of this section committal proceedings shall, in relation to a complaint charging an indictable offence, be deemed to include any proceedings in the magistrates' court before that court proceeds to inquire into the complaint as examining justices; but where a magistrates' court which has begun to try a complaint summarily discontinues the summary trial in pursuance of section 210 or 211 of the Code and proceeds to inquire into the complaint as in a preliminary inquiry that circumstance shall not make it unlawful under this section for a report of any proceedings on the complaint which was published or broadcast before the court determined to proceed as aforesaid to have been so published or broadcast.

14. The following matters may be contained in a report of committal proceedings published or broadcast without an order under section 13(2) before the time authorised by section 13(3), that is to say —

- (a) the identity of the court and the name of the examining justice;

Matters for
preliminary
inquiry report

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- (b) the names, addresses and occupations of the parties and witnesses and their ages;
 - (c) the offence or offences, or a summary of them, with which the accused is or are charged;
 - (d) the names of the attorneys engaged in the proceedings;
 - (e) any decision of the court to commit the accused for trial, and any decision of the court on the disposal of the case of any accused not committed;
 - (f) where the court commits the accused or any of them for trial, the charge or charges or a summary of them, on which he or they are committed and the court to which he or they are committed;
 - (g) where the committal proceedings are adjourned, the date and place to which they are adjourned;
 - (h) any arrangements as to bail on committal or adjournments.