

A BILL
ENTITLED

AN ACT to Amend the Evidence Act.

BE IT ENACTED by The Queen's Most Excellent Majesty,
by and with the advice and consent of the Senate and House of
Representatives of Jamaica, and by the authority of the same,
as follows:-

Short title
and con-
struction.

1. This Act may be cited as the Evidence (Amendment) Act,
1994, and shall be read and construed as one with the
Evidence Act (hereinafter referred to as the principal
Act) and all amendments thereto.

Repeal of
section 8
of principal
Act.

2. Section 8 of the principal Act is repealed.

Insertion
of new

3. The principal Act is amended by inserting immediately
after Part I the following as Part IA -

Part IA in
principal
Act.

" PART IA. - Hearsay and Computer-generated Evidence.

Admissi- 31A. In any proceedings, a statement
bility which, before the commencement of the
of cer- Evidence (Amendment) Act, 1994, would
tain by virtue of any rule of law have been
evidence admissible in evidence of any fact stated
formerly therein, shall continue to be admissible
admissible as evidence of that fact by virtue of this
at common section.

bility
of written
statement
in criminal
proceedings.

any criminal proceedings, a written statement by a person shall, if the conditions specified in subsection (2) are satisfied, be admissible in evidence to the same extent and effect as direct oral evidence by that person.

(2) The conditions referred to in subsection (1) are that -

- (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 other 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

statement being tendered in evidence and requiring the person who made the statement to attend the hearing as a witness.

(5) Notwithstanding that a written statement made by any person may be admissible by virtue of subsection (2), the Court may, on its own motion or on application by any party to the proceedings, require that the maker of the statement attend and give oral evidence at the hearing.

(6) Notwithstanding the failure of any party to the proceedings to serve a counter-notice objecting to the admissibility of the statement, the court may, if it thinks fit, permit that party to lead evidence contradicting the evidence contained in the written statement.

(7) 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.

Admissi-
bility
of first
hand

31D. - Subject to section 31G, 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

to be tendered, notify every other party to the proceedings as to the statement to be tendered, and as to the person who made the statement.

(3) Subject to subsection (4), every party so notified shall have the right to require that the person who made the statement be called as a witness.

(4) The party intending to tender the statement in evidence shall not be obliged to call, as a witness, the person who made the statement if such person -

- (a) is dead;
- (b) is unfit, by reason of his bodily or mental condition, to attend as a witness;
- (c) is outside of Jamaica and it is not reasonably practicable to secure his attendance;
- (d) cannot be found or identified after all reasonable steps have been taken to find or to identify him; or
- (e) is kept away from the proceedings by threats or fear of bodily harm.

(5) Where in any civil proceedings a statement [which was made otherwise than in a

(b) civil proceedings, the conditions specified in -

(i) subsection (2); and

(ii) subsection (4),

are satisfied.

(2) The conditions referred to in subsection (1) (a) (i) and (b) (i) are that -

(a) the document was created or received by a person in the course of a trade, business, profession or other occupation or as the holder of an office, whether paid or unpaid;

(b) the information contained in the document was supplied (whether directly or indirectly) by a person, whether or not the maker of the statement, who had or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the statement;

(c) each person through whom the information was supplied received it in the course of a trade, business profession or other occupation or as the holder of an office, whether paid

elapsed since he supplied the information and to all the circumstances, to have any recollection of the matters dealt with in the statement.

(4) Subject to subsections (5) to (8), the condition referred to in subsection (1)(b)(ii) is that the party intending to tender the statement in evidence shall, at least twenty-one days before the hearing at which the statement is to be so tendered, notify every other party to the proceedings as to the statement and as to the person who made the statement.

(5) Subject to subsection (6), every party so notified shall have the right to require that the person who made the statement be called as a witness.

(6) The party intending to tender the statement in evidence shall not be obliged to call, as a witness, the person who made it if it is proved to the satisfaction of the court that such person -

(a) is dead;

(b) is unfit, by reason of his bodily or

hearsay.

properly;

(ii) the computer was not subject to any malfunction;

(iii) there were no alterations to its mechanism or processes that might reasonably be expected to have affected the validity or accuracy of the contents of the document;

(b) there is no reasonable cause to believe that -

(i) the accuracy or validity of the document has been adversely affected by the use of any improper process or procedure or by inadequate safeguards in the use of the computer;

(ii) there was any error in the preparation of the data from which the document was produced;

(c) the computer was properly programmed;

(d) where two or more computers were

stituting

hearsay.

Witness's

previous

state-

ment to

be evi-

dence of

facts

stated.

31I. - (1) Where in any civil proceedings -

(a) a previous inconsistent or contra-

dictory statement made by a person

called as a witness in those pro-

ceedings is proved by virtue of

sections 15 to 17; or

(b) a previous statement made by a

person called as aforesaid is proved

for the purpose of rebutting a

suggestion that his evidence has

been fabricated,

that statement shall, by virtue of this

subsection, be admissible in evidence of any

fact stated therein of which direct oral

evidence by him would be admissible.

(2) Nothing in this section shall

affect any rule of law relating to the

circumstances in which, where a person called

as a witness in any civil proceedings is

cross-examined on a document used by him to

refresh his memory, that document may be made

evidence in those proceedings; and where a

document or any part of a document is received

in evidence in any such proceedings by virtue

him;

- (c) evidence tending to prove that, whether before or after he made the statement, that person made, (whether orally or in a document or otherwise) another statement inconsistent therewith, shall be admissible for the purpose of showing that the person has contradicted himself.

(2) References in subsection (1) to a person who made the statement and to his making the statement shall be construed respectively as including references to the person who supplied the information from which the document containing the statement was derived and to his supplying that information.

Offence.

31K. - If any person in a written statement tendered in evidence in criminal proceedings by virtue of section 31C wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be liable on conviction on indictment to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(b) the legal affect, in civil proceedings of evidence adduced to show consistency or inconsistency of a witness and to test the credibility of persons not called as witnesses whose statements are admitted in evidence.

The court is also empowered to exclude any evidence where the court is of the opinion that the prejudicial effect of the evidence outweighs its probative value.

David Coore
Minister of Legal Affairs