



SUPREME COURT OF JUDICATURE OF JAMAICA

PRACTICE DIRECTION (CRIMINAL)

TENDERING EVIDENCE PURSUANT TO SECTIONS 31 C, 31 CA AND 31 CB OF THE EVIDENCE ACT

This practice direction is issued after consultation with Judges of the Supreme Court. It is intended to govern the practice in the Supreme Court and Gun Courts as well as for guidance of Judges of Parish Courts. It replaces PD No.1 of 2015 issued July 28, 2015.

CONTEXT

In this Practice Direction:

“Court” means either the Supreme Court, Gun Court, Regional Gun Court (Western) or a Parish Court;

“Judge” means either a Judge of the Supreme Court or a Judge of a Parish Court and includes a person appointed to act in either of those offices.

CASE MANAGEMENT

- 1) In the spirit of the Judicature (Case Management in Criminal Cases) Rules 2011 (in particular the Court’s duty under rule 10(b) (i)) (Supreme Court), and whilst observing the protection of the individual’s right to due process under section 16 of the Charter of Fundamental Rights & Freedoms, where appropriate, every effort should be made by parties to minimise the necessity of witnesses attending Court to give direct oral evidence.
- 2) At the Plea and Case Management Hearing parties may be required to explain to the Judge the justification for requiring the attendance of particular witnesses at trial.

**TENDERING WRITTEN STATEMENTS AND EXPERT REPORTS FOR
ADMISSION INTO EVIDENCE PURSUANT TO SECTION 31C AND
SECTION 31CB OF THE EVIDENCE ACT**

Applicability of Section 31C and Section 31CB

- 3) Section 31C and Section 31CB may be utilised where:
- (a) A written statement is made or an expert report is prepared and notice served in accordance with the provisions of section 31C (2) or 31CB (1) of the Act; and
 - (b) It is not necessary to require the witness to attend court to give evidence in chief or to be made available for cross-examination.

Procedure where written statements or expert reports are tendered into evidence pursuant to Section 31C or Section 31CB of the Act

- 4) Written statements or expert reports tendered into evidence under section 31C or section 31CB of the Act must be read aloud in Court and become part of the record.

Effect of admission of Evidence pursuant to Section 31C of the Act

- 5) A written statement admitted in accordance with the provisions of section 31C of the Act is admissible in evidence to the same extent and effect as if the maker had given direct oral evidence of the matters contained in the written statement.
- 6) Under section 31C (6) of the Act, the court may allow the party who consented to the admission of the written statement to lead evidence contradicting the evidence contained in the written statement. Under section 31C (7) of the Act where contradicting evidence is given the party who tendered the written statement may lead additional evidence in response to the contradicting evidence.

Effect of admission of Evidence pursuant to Section 31CB of the Act

- 7) An expert report admitted in accordance with the provisions of section 31CB shall be admitted as evidence of the matters stated therein.

**DOCUMENTS ADDUCED BY WAY OF ADMISSIONS BY AGREEMENT
PURUSANT TO SECTION 31CA (a) OF
THE EVIDENCE ACT**

Applicability of Section 31CA (1) (a)

- 8) A document may be admitted in evidence without the maker being called to give evidence whenever each party agrees orally or in writing to its admission. Document is defined in Section 1A of the Act as meaning, “in addition to a document in writing, anything in which information of any description is recorded.”

Procedure where documents are received in evidence pursuant to Section 31CA (1) (a)

- 9) Any oral agreement by the parties to admit documents into evidence must be clearly stated in open court and must be reflected in the court record.
- 10) Where parties intend to agree in writing to admit documents into evidence they shall, where practicable, use the format outlined in Forms 1, 2 or 3 in the Schedule.
- 11) Depending on the nature of the document it should be read, played or described making it part of the record.

Effect of admission into evidence of Documents pursuant to Section 31CA (1) (a)

- 12) Documents admitted in evidence by agreement pursuant to section 31CA (1) (a) stand as evidence of their contents.

Editing Statements/Expert Reports

- 13) Where the Prosecution proposes to tender a written statement or expert report into evidence, it may be necessary, for the statement or expert report to be edited to ensure the fair presentation of the evidence; for example, where a statement or expert report contains inadmissible, prejudicial or irrelevant material. Editing of a statement or expert report should in all circumstances be done by Prosecuting Counsel or the Clerk of the Courts in consultation with Defence Counsel, subject to the approval of the Court. If disagreement persists between the Prosecution and the Defence, the Court may require the witness to give oral evidence.

Editing Statements

- 14) There are two acceptable methods of editing a statement:
- (a) By marking a copy of the statement in a way which indicates the passages on which the Prosecution will not rely. This merely indicates that the prosecution will not seek to adduce the material so marked. The original signed statement to be tendered to the court must not be marked in any way. The marking on the copy statement should be done by lightly striking out the passages to be edited, so that what appears beneath can still be read, or by bracketing, or by a combination of both. It is not permissible for the Prosecution to produce a photocopy with the deleted material obliterated, since this would be contrary to the requirement that the Defence and the Court should be served with copies of the signed original statement. Whenever the striking out/bracketing method is used, the following words should appear on the Notice to Adduce the statement or statements being tendered:

‘The prosecution does not propose to adduce at trial evidence of those passages of the attached copy statement(s) which have been struck out and/or bracketed (unless a notice to adduce so indicating is subsequently served).’
 - (b) By obtaining a redacted statement, signed by the witness, which omits the offending material.
- 15) In most cases where a statement is to be edited, the striking out/bracketing method will be the more appropriate, but the taking of a fresh statement may be preferable in the following circumstances:
- (a) Where the part of the original statement on which the Prosecution is relying is only a small proportion of the whole. (It will however remain desirable to use the striking out/bracketing method if there is reason to believe that the Defence might itself wish to rely, in mitigation or for any other purpose, on at least some of those parts which the Prosecution does not propose to adduce.)
 - (b) When the passages contain material that the Prosecution is entitled in law to withhold from disclosing to the Defence.
- 16) The procedures outlined in paragraphs 14 and 15 to guide the editing of a statement are applicable to editing the report of an expert, with any necessary changes to those procedures.

- 17) Prosecuting Counsel should also be aware that, where a statement or expert report is to be tendered in the course of a trial before a Judge sitting alone, there will be a particular need to consider the preparation of a fresh statement or report, rather than using the striking out/bracketing method. However, in such circumstances the inability to prepare a fresh statement or expert report should not be a bar to their admission under the Act.
- 18) Whenever a redacted statement is taken from a witness or a redacted report is received from an expert, a copy of the earlier unedited statement/report of that witness, should be given to the Defence in accordance with the Prosecution's disclosure obligations, unless there are legal grounds for withholding disclosure. These instances may include circumstances where the Prosecution has obtained a Non-Disclosure Order from the Court following an application asserting Public Interest Immunity.

Editing Documents

- 19) The procedures outlined to guide the editing of a written statement or an expert report are applicable to editing documents, with any necessary changes to those procedures. These changes will depend on the nature of the documents and the material that is required to be edited.

AGREED FACTS ADDUCED BY WAY OF ADMISSIONS BY AGREEMENT PURSUANT TO SECTION 31CA (b) OF THE EVIDENCE ACT

Applicability of Section 31CA (1) (b)

- 20) Agreed facts may be relied on in various circumstances, for example:
 - (a) Agreement that property has been stolen where the issue is the identity of the perpetrator,
 - (b) The chain of custody of evidence that is not in dispute,
 - (c) Formal evidence of photographers, draftsmen and surveyors if not in dispute,
 - (d) Formal evidence of medical examiners or other experts if not in dispute (for example evidence that a victim was declared deceased and the cause and manner of death),
 - (e) Proof that a witness was present at a police interview,
 - (f) Features of the scene of a crime or the sequence of events of an incident that are not in dispute,
 - (g) The agreed presence of persons at a location.

Procedure where Evidence is adduced as a Statement of Agreed Facts

- 21) A statement of agreed facts may be made by the parties at any stage prior to the commencement or conclusion of the criminal trial.
- 22) A statement of agreed facts may be made orally or in writing. However, it will be desirable where practicable, for statements of agreed facts to be made in writing and be signed by the accused and counsel for the accused.
- 23) The Court shall confirm or ensure that the following safeguards have been followed in relation to all statements of agreed facts:
 - (a) That the defendant is aware that evidence will be adduced in his/her trial by way of statement of agreed facts and consents to its use;
 - (b) That the defendant is aware that evidence contained in a statement of agreed facts must be accepted without further proof, but is not an admission of guilt of the offence(s) charged;
 - (c) That the defendant has been advised by his/her Counsel of the matters outlined in sub-paragraphs (a) and (b);
 - (d) If the statement of agreed facts is made orally, that the defendant has clearly stated for the Court record his/her agreement with the statement;
 - (e) If the statement of agreed facts is in writing, that the defendant has signed the statement of his/her own free will.
- 24) Where a matter is being tried by a Judge sitting with a jury in the Circuit Court, the process of confirmation outlined at paragraph 23 should be conducted in the absence of the jury.
- 25) Statements of agreed facts must be read or stated aloud in court. A copy of a written statement of agreed facts should be admitted as an exhibit in the trial.
- 26) Written statements of agreed facts where made by:
 - (a) A defendant who is an individual, must be signed and dated by the defendant and his Counsel.
 - (b) A defendant that is a body corporate, must be signed and dated by a

Director, Manager, or the Secretary of the body corporate and Counsel for the body corporate.

- 27) Where parties intend to rely on a written statement of agreed facts they shall, where practicable, use the format outlined in Forms 4, 5 or 6 in the Schedule.

Effect of Admission of Agreed Facts pursuant to Section 31CA (1) (b)

- 28) A statement of agreed facts received in evidence will stand as proven facts between the parties which must be accepted without further proof.

GENERAL MATTERS RELATING TO THE UTILISATION OF SECTIONS 31C, 31CB AND 31CA (1) (a) and (b) OF THE EVIDENCE ACT

Prosecution's Opening

- 29) Where it is intended that section 31C, section 31CB or section 31CA (1) (a) or (b) of the Act will be relied on to adduce evidence during a jury trial, Prosecuting Counsel should in the opening address to the jury, clearly explain the nature and effect of evidence to be adduced in this manner.

Directions by a Judge

- 30) A Judge sitting in the Circuit Court should where necessary, explain to the jury the effect of evidence adduced in different forms during the trial. For example:
- (a) Direct oral evidence;
 - (b) Statements or expert reports read pursuant to section 31C or section 31CB of the Act; and
 - (c) Documents or agreed facts adduced by way of admissions by agreement pursuant to section 31CA (1) (a) or (b) of the Act.
- 31) Where pursuant to section 31C, section 31CB or section 31CA (1) (a) or (b), evidence has been received in a trial before a Judge sitting alone, in delivering verdict the Judge should where necessary, refer to his/her consideration of the effect of the admission of each form of evidence adduced during the trial.

Zaila McCalla, OJ
Chief Justice

August 2016

SCHEDULE

FORM 1

**DOCUMENTS ADDUCED BY WAY OF ADMISSIONS BY AGREEMENT
PURUSANT TO SECTION 31CA (1) (a)**

Case No.....

In the Supreme Court of Judicature of Jamaica

In the Circuit Court for the parish of

Holden at on theday of20...

The Queen

vs

.....

for

.....

It is hereby agreed between the Prosecution represented by..... and the Defendant.....represented by.....that the following document(s) may be admitted into evidence without the maker(s) of the document(s) being called to give evidence:

1.
2.
3.
4.

This agreement is made by the parties with the full knowledge that, if admitted, the contents of the document(s) will form part of the trial of the case in court, and be entered into the court record.

Signed.....

Defendant

Date:.....

Signed.....

Defence Counsel

Date:.....

Signed.....

Prosecuting Counsel

Date:.....

FORM 2

**DOCUMENTS ADDUCED BY WAY OF ADMISSIONS BY AGREEMENT
PURUSANT TO SECTION 31CA (1) (a)**

Case No.....

In the Court

.....

Holden at on theday of20...

The Queen

vs

.....

for

.....

It is hereby agreed between the Prosecution represented by..... and
the Defendant.....represented by.....that
the following document(s) may be admitted into evidence without the maker(s) of the
document(s) being called to give evidence:

1.
2.
3.
4.

This agreement is made by the parties with the full knowledge that, if admitted, the
contents of the document(s) will form part of the trial of the case in court, and be entered
into the court record.

Signed.....

Signed.....

Signed.....

Defendant

Defence Counsel

Prosecuting Counsel

Date:.....

Date:.....

Date:.....

FORM 3

**DOCUMENTS ADDUCED BY WAY OF ADMISSIONS BY AGREEMENT
PURUSANT TO SECTION 31CA (1) (a)**

The Parish Court

For

Holden at

Regina)

-v-) Information number /

.....)

It is hereby agreed between the Prosecution represented by..... and the Defendant.....represented by.....that the following document(s) may be admitted into evidence without the maker(s) of the document(s) being called to give evidence:

1.
2.
3.
4.

This agreement is made by the parties with the full knowledge that, if admitted, the contents of the document(s) will form part of the trial of the case in court, and be entered into the court record.

Signed.....

Signed.....

Signed.....

Defendant

Defence Counsel

Prosecuting Counsel

Date:.....

Date:.....

Date:.....

FORM 4

**AGREED FACTS ADDUCED BY WAY OF ADMISSIONS BY AGREEMENT
PURUSANT TO SECTION 31CA (1) (b) OF THE EVIDENCE ACT**

Case No:.....

In the Supreme Court of Judicature of Jamaica

In the Circuit Court for the parish of

Holden at on theday of20...

The Queen

vs

.....

for

.....

The following facts are hereby agreed between the Prosecution represented
by..... and the Defendant.....represented
by.....

- 1.
.....
.....
- 2.
.....
.....

This written statement of agreed facts is made by the parties with the full knowledge that
the contents of the statement will form part of the trial of the case in court, and be
entered into the court record.

Signed.....

Defendant

Date:.....

Signed.....

Defence Counsel

Date:.....

Signed.....

Prosecuting Counsel

Date:.....

FORM 5

**AGREED FACTS ADDUCED BY WAY OF ADMISSIONS BY AGREEMENT
PURUSANT TO SECTION 31CA (1) (b) OF THE EVIDENCE ACT**

Case No.....

In the Court

.....

Holden at on theday of20...

The Queen

vs

.....

for

.....

The following facts are hereby agreed between the Prosecution represented
by..... and the Defendant.....represented
by.....

1.
.....
.....
2.
.....
.....

This written statement of agreed facts is made by the parties with the full knowledge that
the contents of the statement will form part of the trial of the case in court, and be
entered into the court record.

Signed.....

Defendant

Date:.....

Signed.....

Defence Counsel

Date:.....

Signed.....

Prosecuting Counsel

Date:.....

FORM 6

**AGREED FACTS ADDUCED BY WAY OF ADMISSIONS BY AGREEMENT
PURUSANT TO SECTION 31CA (1) (b) OF THE EVIDENCE ACT**

The Parish Court

For

Holden at

Regina)

-v-) Information number/.....

.....)

The following facts are hereby agreed between the Prosecution represented
by..... and the Defendant.....represented
by.....

- 1.....
.....
.....
- 2.....
.....
.....

This written statement of agreed facts is made by the parties with the full knowledge that
the contents of the statement will form part of the trial of the case in court, and be
entered into the court record.

Signed.....

Signed.....

Signed.....

Defendant

Defence Counsel

Prosecuting Counsel

Date:.....

Date:.....

Date:.....