

ABILL

ENTITLED

AN ACT to Amend the Commissions of Enquiry Act.

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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:—

1. This Act may be cited as the Commissions of Enquiry (Amendment) Act, 2013, and shall be read and construed as one with the Commissions of Enquiry Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title
and
construction.

Insertion of
new section
1A in
principal
Act.

2. The principal Act is amended by inserting next after section 1 the following—

“Interpre-
tation.

1A. In this Act—

“Constabulary Force” means—

- (a) the Jamaica Constabulary Force;
- (b) the Island Special Constabulary Force;
or
- (c) the Rural Police;

“document” means in addition to a document in writing, anything in which information of any description is recorded;”.

Insertion of
new section
7A in
principal Act.

3. The principal Act is amended by inserting next after section 7 the following—

“Procedure
where
report
proposed to
include
adverse
comment.

7A.—(1) The Commission shall not include any comment in a report of an enquiry into the matter specified in a Commission that is adverse to a person who is identifiable from the report, unless the Commission acts in accordance with this section.

(2) Before making the report, the Commission shall give the person—

- (a) a copy of the proposed comment; and
- (b) a written notice that—
 - (i) invites the person to make a written submission or a written statement to the Commission that is relevant to the proposed adverse comment within fourteen days after receipt of the notice, or within such longer period as the Commission may allow; and
 - (ii) includes the matters specified in the Second Schedule.

Second
Schedule.

(3) At the end of the period specified in the notice, the Commission shall consider any written submission or written statement made by the person.

(4) After considering any written submission or written statement, the Commission shall subject to subsection (5), include the written submission or the written statement, or a summary of the submission or the statement, in the Commission's report of the enquiry.

(5) Where a written submission or a written statement is, in the opinion of the Commission, excessively long or contains defamatory or offensive language, the Commission may include in the report of the enquiry, a fair summary of the submission or statement.

(6) Where the Commission gives a person a written notice under subsection (2) and no written submission or written statement is received by the Commission within the period specified in the notice, the Commission may note that fact in the report of the enquiry.”.

4. The principal Act is amended by inserting next after section 10 the following—

“Reference on point of law to Supreme Court.

10A.—(1) The Commission may refer any disputed point of law arising in the course of an enquiry, or which is otherwise material to the enquiry, to the Supreme Court for a decision, and for this purpose may—

- (a) conclude the enquiry subject to the decision; or
- (b) at any stage of the enquiry, adjourn it until after the decision has been given.

(2) The decision of the Supreme Court shall be final and binding upon all parties to the enquiry and upon the Commission.

Insertion of new sections 10A and 10B in principal Act.

Right of person against whom adverse evidence is brought to appear. 10B. Where evidence that is adverse to a person is brought before the Commission, the Commission shall give that person the right to appear before the Commission and respond to the adverse evidence.”.

Amendment of section 11 of principal Act.

5. Section 11 of the principal Act is amended—

- (a) by deleting subsection (2);
- (b) renumbering subsection (1) as the section; and
- (c) in the section, as renumbered, by deleting from the proviso thereto the words “think fit” and substituting therefor the words “is satisfied that the expenses were improperly or unreasonably incurred or were excessive in the circumstances”.

Insertion of new sections 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J, 11K, 11L and 11M in principal Act.

6. The principal Act is amended by inserting next after section 11A the following—

“Failure of witness to attend or produce documents.

11B.—(1) A person served with a summons to appear and give evidence before the Commission shall not—

- (a) without reasonable excuse; or
- (b) without having been excused, or released from further attendance, by the Commission,

fail to appear before the Commission.

(2) A person shall not, without reasonable excuse, refuse or fail to produce any book, plan or document that the person was required to produce by a summons under this Act served on the person under section 11 (a).

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or in default of payment, to imprisonment for a term not exceeding six months.

(4) It is a defence to a prosecution for contravention of subsection (2) that the book, plan or document was not relevant to the matter into which the Commission was enquiring.

Obstructing
police.

11C.—(1) A person shall not assault, obstruct, hinder, or resist or use any threatening or abusive language or aid or incite any other person to assault, obstruct, hinder or resist a member of the Constabulary Force in the execution of his duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or in default of payment of the fine, to imprisonment for a term not exceeding six months.

Refusal to
take oath or
answer
question, etc.

11D.—(1) A person appearing as a witness before the Commission shall not, without reasonable excuse, refuse or fail to—

- (a) comply with a requirement under section 10 to take an oath; or
- (b) answer a question that the person is required by the Chairman to answer.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or, in default of payment of the fine, to imprisonment for a term not exceeding three months.

Giving false
or misleading
evidence.

11E.—(1) A person shall not give evidence before the Commission that he knows is false or misleading in a material particular.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

Improper
dealings with
documents.

11F.—(1) A person, knowing or having reasonable grounds for believing that a book, plan or document is or may be required in evidence before the Commission, shall not—

- (a) conceal, mutilate, destroy or alter the book, plan or document;
- (b) render the book, plan or document incapable of identification; or
- (c) render the book, plan or document illegible or indecipherable.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

Intimidation
of witnesses.

11G.—(1) A person shall not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage on or to a person—

- (a) because the person appeared or is to appear before the Commission as a witness or pursuant to a summons or warrant; or
- (b) on account of any evidence given, or which may be given, or any document or other thing produced or which may be produced before the Commission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

Dismissal of
witness from
employment
for attending
Commission.

11H.—(1) An employer shall not dismiss an employee from employment or take any adverse action against an employee—

- (a) because the employee appeared or is to appear before the Commission pursuant to

a summons or warrant or has otherwise acted in furtherance of the purposes of the Commission; or

- (b) on account of any evidence given, or which may be given, or any document or other thing produced or which may be produced, by the employee before the Commission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or, in default of payment of the fine, to imprisonment for a term not exceeding three months.

(3) If all the elements of an offence under subsection (2) other than the motive for the employer's action are proved, the onus of proving that the dismissal or adverse action was not for any of the reasons specified in subsection (1)(a) or (b) is on the employer.

Preventing
witnesses
from
attending.

11I.—(1) A person shall not wilfully prevent a person who has been summoned to attend before the Commission—

- (a) from so attending;
- (b) from answering a question that the person is required by the Chairman to answer; or
- (c) from producing a document or other thing referred to in the summons.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

Bribery of
witnesses.

11J.—(1) A person shall not—

- (a) give, confer or procure, or promise or offer to give, confer or procure any property or benefit of any kind to, or for, any person on the basis of any agreement or understanding that any person called or to be called as a witness before the Commission will give false testimony or withhold true testimony;
- (b) induce a person called or to be called as a witness before the Commission to give false testimony or to withhold true testimony; or
- (c) ask for, receive or obtain, or agree to receive or obtain, any property or benefit of any kind, whether for the person or for another person, on the basis of any agreement or understanding that any person called or to be called as a witness before the Commission will give false testimony or withhold true testimony.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

Fraud on
witnesses.

11K.—(1) A person shall not by any fraudulent misrepresentation or deceit, make or exhibit any false statement, representation, thing or writing, to any person with intent to affect the testimony of any person called or to be called as a witness before the Commission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three months.

Offence of contempt of Commission.

11L.—(1) A person who does any act in the face of or within the hearing of the Commission that would constitute contempt if the Commission were a court of record, commits an offence.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or, in default of payment of the fine, to imprisonment for a term not exceeding one month.

Impersonating or falsely representing oneself as officer of Commission.

11M.—(1) A person shall not falsely represent himself to be an officer of the Commission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(3) In subsection (1), “officer of the Commission” means—

- (a) a Commissioner;
- (b) the Secretary appointed under section 6; or
- (c) a person employed, contracted or assigned to provide services to the Commission.”.

7. Section 13 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 13 of principal Act.

“Remuneration of the Commissioners and expenses of Commission.

13.—(1) Subject to subsection (2), the Financial Secretary shall, prior to the commencement of the proceedings of the Commission—

- (a) enter into an agreement, in writing, with the Commissioners, for the remuneration of the Commissioners and any other person employed in or about any such Commission; and

(b) make arrangements for the expenses attendant upon the carrying out of the Commission or upon any proceedings under this Act.

(2) Where an agreement under subsection (1)(a) provides for the payment of remuneration based on time based charges or fees, the agreement shall also stipulate the maximum sum that may be paid in satisfaction of the agreement between the parties, which sum shall not be exceeded, unless the Financial Secretary is satisfied that circumstances have arisen which were not within the contemplation of the parties at the time of entering into the agreement and which justify an amount being paid in excess of the agreed maximum sum.

(3) Sums to be paid in satisfaction of any agreement or arrangement under subsection (1), shall be paid from the Consolidated Fund.”.

Repeal and replacement of section 16 of principal Act.

8. Section 16 of the principal Act is repealed and the following substituted therefor—

“Director of Public Prosecutions or Commission to commence prosecution for offences.

16.—(1) No prosecution for any offence under this Act shall be commenced, except by the direction of the Director of Public Prosecutions.

(2) The Commission may direct the Secretary, or such other person as the Commission thinks fit, to refer a matter arising under this Act to the Director of Public Prosecutions for a determination under subsection (1).”.

Insertion of new section 17 in principal Act.

9. The principal Act is amended by inserting next after section 16 the following—

“Minister may amend monetary penalty.

17. The Minister may by order, subject to affirmative resolution, amend any monetary penalty specified in this Act.”.

10. The principal Act is amended by—

- (a) renaming the Schedule as the First Schedule; and
- (b) inserting next after the First Schedule, as renamed, the following—

Insertion of
new Second
Schedule in
principal Act.

“ SECOND SCHEDULE (Section 7A)

*Matters for Inclusion in Notice of Adverse
Comment in Report*

A written notice to a person pursuant to section 7A shall—

- (a) notify the person that if the person—
 - (i) makes the written submission or written statement, the written submission or written statement, or a summary of it, may be included in the Commission’s report of the enquiry;
 - (ii) does not make a written submission or written statement within the period specified in the notice, the Commission may include the comment in the report of the enquiry; and
- (b) inform the person that where a written submission or a written statement is excessively long or contains defamatory or offensive language, the Commission may include in the report of the enquiry a fair summary of the written submission or written statement.”.

Passed in the Senate this 4th day of October, 2013 with twenty-one (21) amendments.

FLOYD E. MORRIS
President.

A BILL

ENTITLED

**AN ACT to Amend the Commissions of Enquiry
Act.**

As passed in the Honourable Senate

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**SECTION 11 OF THE PRINCIPAL ACT
WHICH IT IS PROPOSED TO AMEND**

11.—(1) All persons summoned to attend and give evidence or to produce any book, plan or document before the Commission—

- (a) shall be bound to obey the summons served upon them;
- (b) shall be entitled in respect of such evidence or the disclosure of any communication or the production of any such book, plan or document to the same right or privileges as before a court of law;
- (c) shall be entitled to be paid their expenses including travelling expenses at the rates prescribed by the Witnesses' Expenses Act for witnesses who are entitled to have their expenses paid from public funds:

Provided that the Commission may disallow the whole or any part of such expenses in any case, if it think fit.

(2) Any person who—

- (a) without sufficient cause, fails or refuses to attend before a Commission in obedience to a summons under this Act, or falls or refuses to produce any book, plan or document which he was required by such summons to produce; or
- (b) being a witness, leaves the Commission without the permission of the Commission; or
- (c) being a witness, refuses, without sufficient cause, to answer any question put to him by or with the permission of the Commission; or
- (d) willfully obstructs or interrupts the proceedings of the Commission,

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred dollars or in default of payment thereof to imprisonment with or without hard labour for a term not exceeding three months.

**SECTION 13 OF THE PRINCIPAL ACT
WHICH IT IS PROPOSED TO AMEND**

13. The Governor-General may direct what remuneration, if any, shall be paid to any Commissioners acting under this Act, and to their Secretary, and to any other persons employed in or about any such Commission, and may direct payment of any other expenses attendant upon the carrying out of any such Commission, or upon any proceedings for any penalty under this Act, Such sums, so directed to be paid, shall be paid by the Accountant-General out of the ordinary cash balance in the Treasury.

SECTION 47 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

16. No proceedings shall be commenced for any penalty under this Act, except by the direction of the Director of Public Prosecutions, or of the Commissioners. The Commissioners may direct their Secretary, or such other person as they may think fit, to commence and prosecute the proceedings for such penalty.

SCHEDULE TO THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

SCHEDULE (Section 10)

Summons to Witness

To *A. B. (name of person summoned, and his calling and residence, if known).*

You are hereby summoned to appear before (*here name the Commissioners*), appointed by the Governor-General to enquire (*state briefly the subject of enquiry*), at (*place*), upon the day of , 19 , at o'clock, and to give evidence respecting such enquiry (*if the person summoned is to produce any documents add*); And you are required to bring with you (*specify the books, plans and documents required*). Therefore fail not at your peril.

Given under the hand of , Commissioner,
this day of , 20 .