

I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

August 6, 2008.

SAINT LUCIA

No. 11 of 2008

AN ACT to amend the Criminal Code 2004, No. 9.

[11th August, 2008]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the Criminal Code (Amendment) Act, 2008.

Interpretation

2. In this Act “principal Act” means the Criminal Code 2004, No.9.

Amendment of section 6

3. Section 6 of the principal Act is amended by inserting the following definition in the correct alphabetical sequence:

“Criminal Division” means the division of the Court in which trials of indictable and summary complaints are conducted;”

Insertion of section 570A

4. Chapter 3 of the principal Act is amended by inserting the following new section as section 570A:

“Rules by Chief Justice

- 570A. (1) The Chief Justice may make rules for the practice and procedure of the Court in criminal matters.
- (2) Rules made pursuant to this section shall be subject to, negative resolution of Parliament.
- (3) For the purposes of this section “Court” includes the Supreme Court and the District Court.”.

Amendment of section 661

5. Section 661 of the principal Act is deleted and substituted by the following:

“Complaint to commence proceedings

661. Every proceeding before the Criminal Division whether indictable or summary, shall be instituted by a complaint filed with the Office of the Criminal Division.”.

Amendment of section 663

6. Section 663 of the principal Act is deleted and substituted by the following:

“Oral complaint

- “663. (1) Unless otherwise required by the particular enactment an oral complaint may be received at the office of the Criminal Division.
- (2) The Criminal Division Manager shall cause an oral complaint to be recorded on the Criminal Division’s audio recording equipment and to be transcribed in document form.
- (3) A complaint is made when the document is-
- (a) signed by the complainant; or
 - (b) marked by the complainant, if the complainant is unable to sign.”.

Amendment of section 664

7. Section 664 of the principal Act is amended by deleting subsection (1) and substituting the following:

- “664. (1) Subject to any other provision of this Code or to any other enactment in force in Saint Lucia to the contrary a complaint need not be made on oath.”.

Amendment of section 666

8. Section 666 of the principal Act is amended by deleting subsection (1) and substituting the following:

- “666. (1) A complaint may be made or an information may be laid by —
- (a) the complainant in person;
 - (b) the complainant’s counsel;
 - (c) a person authorized to do so by the complainant; or
 - (d) a police officer.”.

Amendment of section 667

9. Section 667 of the principal Act is amended by —

(a) deleting subsection (1) and substituting the following:

- “667 (1). The complaint shall describe the offence in the words of the enactment creating the offence, or in similar

words, with a specification, so far as may be practicable, of the time and place when and where the offence was committed, and a reference to the section of the enactment creating the offence.”;

(b) deleting subsection (3) and by substituting the following:

“(3) Where, contrary to subsection (1), there is no reference in the complaint to the section of the enactment or where there is an error in the citation of the section, the Court may, at any time amend the complaint and the omission or error shall not invalidate the proceedings.”.

Amendment of section 670

10. Section 670 of the principal Act is amended by deleting the word “accused” where it appears in subsection (1)(b) and substituting the word “defendant”.

Amendment of section 671

11. Section 671 of the principal Act is amended by deleting the word “if” in paragraph (c) of subsection (1).

Repeal of section 675

12. Section 675 of the principal Act is repealed.

Amendment of section 680

13. Section 680 of the principal Act is amended by inserting the words “ in the interest of justice,” between the words “if,” and “either” appearing in that section.

Repeal of section 681

14. Section 681 of the principal Act is repealed.

Repeal of section 694

15. Section 694 of the principal Act is repealed.

Amendment of section 703

16. Section 703 of the principal Act is deleted and substituted by the following:

“Proceedings if ‘not guilty’ plea pleaded or partial plea not accepted

703. (1) Where the defendant is brought to court on a charge triable summarily, and the defendant pleads not guilty to the charge or guilty to part only of the charge, or does not otherwise admit the charge, and the complainant does not accept such partial plea, the following provisions apply —
- (a) the court shall put the case down for trial and make the requisite scheduling order including a projected trial date;
 - (b) the court may proceed to trial at once if the defendant requests an immediate trial and the prosecutor consents;
 - (c) where the defendant is brought before the court by arrest he or she shall be entitled to an adjournment for not less than forty-eight hours, provided the request for the adjournment is made before the complainant has commenced his or her evidence, and the Court shall inform the defendant of his or her right to such adjournment;
 - (d) the case may proceed to trial at once or on a shorter adjournment than forty-eight hours, if the court considers this is necessary to secure the examination of witnesses who otherwise would not be available and if the Court is satisfied that this will not result in unfairness to the defendant.
- (2) The court shall record in writing or otherwise the reasons for the decision to proceed at once or on a shorter adjournment pursuant to subsection (1)(d).”.

Amendment of section 774

17. Section 774 of the principal Act is amended by deleting —
- (a) the word “accused” where it appears in that section and substituting the word “defendant”; and
 - (b) the words “proceed to enquire into the complaint as an indictable offence” where they appear in that section and substituting the words “proceed to deal with the matter as an indictable offence.”.

Amendment of section 775

18. Section 775 of the principal Act is amended by deleting—
- (a) the word “accused” where it appears in that section and substituting the word “defendant”;

- (b) the words “ an inquiry” where they appear in subsection (2) and substituting the words “sufficiency hearing”;
- (c) the words “him or her or on his or her behalf” appearing in paragraph (b) of subsection (6) and substituting the words “or on behalf of the Director of Public Prosecutions”.

Amendment of section 776

19. Section 776 of the principal Act is amended by deleting the words “preliminary inquiry” appearing in that section and substituting the words “sufficiency hearing”.

Amendment of section 777

20. Section 777 of the principal Act is amended by —

- (a) deleting the following words where they appear in subsection (2):
 - “, at any time during the hearing of the case at which it becomes satisfied by the evidence that it is expedient to deal with the case summarily,”.
- (b) inserting the following words at the beginning of subsection (3):
 - “Where a complaint is read to a parent or guardian of a child pursuant to subsection (2),”; and
- (c) deleting the words “sitting of the High Court“ where they appear in subsection (3) and substituting the words “projected date on which”.

Amendment of section 778

21. Section 778 of the principal Act is amended by —

- (a) deleting the following words where they appear in subsection (2):
 - “at any time during the hearing of the case at which it becomes satisfied by the evidence that it is expedient to deal with the case summarily,”;
- (b) inserting the following words at the beginning of subsection (3):

“Where a complaint is read to a parent or guardian of a child pursuant to subsection (2),”;

- (c) deleting the words “sitting of the High Court at “ appearing in subsection (3) and substituting the words “projected date on which”.

Insertion of section 779A

22. The principal Act is amended by inserting immediately before **SUB-PART A of Part V** the following new section as **SUB-PART AA, section 779A**:

**“SUB PART AA
PROCEDURE**

Procedure

779A. The procedure for proceedings relating to indictable offences shall subject to the provisions of this Part, be as provided for in the Rules made pursuant to section 570A and shall include an initial hearing by a Magistrate and a sufficiency hearing by a Judge.

Amendment of section 779

23. Section 779 of the principal Act is deleted and substituted by the following:

**“779. PROCEEDINGS IN CASE OF SUSPECTED
OFFENCE**

- (1) A Magistrate who has reason to believe—
- (a) that an indictable offence has been committed within the limits of his or her jurisdiction for which the offender might, according to the law, be arrested without warrant; or
- (b) that there is reasonable ground for inquiring whether such an indictable offence has been committed within those limits; or
- (c) that there are reasonable grounds for inquiring by whom such suspected offence has been committed;

may, whether any particular person is charged or not, summon to the district court of his or her district any person whom he or she has reason to believe is capable of giving material evidence concerning such offence, and, if he or she thinks fit, bind the person by recognizance to appear for an initial hearing, if called

upon by any Magistrate, at any time within the 6 months after the summons unless the person can show reasonable excuse to the contrary.

- (2) Where a person summoned pursuant to subsection (1)—
 - (a) neglects to appear; or
 - (b) Subject to section 9(4) of the Constitution and section 107 of the Evidence Act 2002, No. 5 —
 - (i) without lawful excuse, refuses to take an oath or affirmation; or
 - (ii) having taken an oath or affirmation without lawful excuse refuses to answer any question concerning the offence which may be put to him or her, or to enter into such recognizance;

he or she may be dealt with in the same manner as a witness may be dealt with who neglects or refuses to attend or give evidence, or to be bound by recognizance to do so after having been served with a summons for that purpose.”.

Amendment of section 780

- 24.** Section 780 of the principal Act is amended by —
- (a) deleting the words “preliminary inquiry” where they appear in subsection (1) and substituting the words “hearing or trial”;
 - (b) inserting the word “or judge” between the words “Magistrate” and “shall” appearing in subsection (1); and
 - (c) deleting the word “inquiry” where it appears in subsection (2) and substituting the word “hearing”.

Amendment of section 781

25. Section 781 of the principal Act is amended by deleting the words “preliminary inquiry” where they appear in that section and substituting the words “initial hearing”.

Amendment of section 782

- 26.** Section 782 of the principal Act is amended by —
- (a) inserting the words “at an initial hearing” between the words “Magistrate “ and “charged” appearing in subsection (1); and

- (b) deleting the word “inquiry” where it appears in that section and substituting the word “hearing”.

Amendment of section 783

27. Section 783 of the principal Act is amended by deleting —

- (a) the word “Magistrate “ where it appears in subsection (1) and by substituting the word “court”;
- (b) the word “ inquiry” where it appears in subsection (1) and substituting the word “hearing”;
- (c) the word “an” where it appears in subsection (1) and substituting the word “a”; and
- (d) subsection (2).

Amendment of section 784

28. Section 784 of the principal Act is deleted and substituted by the following:

“Warrant instead of summons

784. (1) A summons is the preferred way of the court acquiring jurisdiction over a person accused of committing a criminal offence.
- (2) Upon a complaint made in writing and on oath before the court in respect of any summary offence, the court may, upon good cause being shown, and upon oath being made before the court substantiating the matter of such complaint to the satisfaction of the court, instead of a summons, issue a warrant to arrest the person against whom such complaint has been made, and to bring him or her before the court to answer to the complaint, and to be further dealt with according to law.”.

Amendment of section 785

29. Section 785 of the principal Act is amended by deleting the word “Magistrate” where it appears in subsection (1) and substituting the word “court”.

Amendment of section 786

30. Section 786 of the principal Act is deleted and substituted by the following:

“Service of summons generally

786. A copy of every summons shall be served on a person to whom it is directed in the manner specified in Rules made pursuant to section 570A.”.

Repeal of section 787

31. Section 787 of the principal Act is repealed.

Amendment of section 788

32. Section 788 of the principal Act is deleted and substituted by the following:

“Proof of service generally

788. — (1) Proof of service of a summons shall be by a certificate on oath endorsed on a copy of the summons by the person who served the summons.

(2) A person who serves a summons, shall, where the person served fails to appear and there is doubt as to service, attend Court at a time and place specified by the Court, in order if necessary, to prove the service in the manner specified in rules made pursuant to section 570A.”.

Amendment of section 789

33. Section 789 of the principal Act is amended by deleting —

- (a) the word “Magistrate” where it appears in that section and substituting the word “court”; and
- (b) subsection (4) and substituting the following:

“(4) The court which would have heard the charge if the person summoned had appeared may issue the warrant either upon information in writing and upon oath taken before another Magistrate or any Commissioner of Oaths or Justice of the Peace either before or after the summons was issued.”.

Amendment of section 790

34. Section 790 of the principal Act is amended by deleting —

- (a) the word “Magistrate” where it appears in that section and substituting the word “court”;

- (b) the words “preliminary inquiry” where they appear in that section and substituting the words “initial hearing”; and
- (c) the words “inquiry” where it appears in that section and substituting the words initial hearing”.

Amendment of section 791

35. Section 791 of the principal Act is amended by deleting the words “preliminary inquiry or at any trial before a Magistrate” where they appear in that section and substituting the words “hearing or at any trial before a court.”.

Amendment of section 792

36. Section 792 of the principal Act is amended by deleting the word “Magistrate” where it appears in that section and substituting the word “court”.

Amendment of section 793

37. Section 793 of the principal Act is amended by deleting —
- (a) the words “preliminary inquiry” where they appear in that section and substituting the word “ hearing”; and
 - (b) the word “Magistrate” where it appears in that section and substituting the word “court”.

Amendment of section 795

38. Section 795 of the principal Act is amended by deleting —
- (a) the word “Magistrate” where it appears in that section and substituting the word “court”; and
 - (b) the words “he or she” where they appear in that section and substituting the word “court”.

Amendment of section 796

39. Section 796 of the principal Act is amended by deleting the word “Magistrate” where it appears in that section and substituting the word “court”.

Amendment of section 797

40. Section 797 of the principal Act is deleted and substituted by the following:

“Initial and sufficiency hearing

797. (1) A Magistrate shall in accordance with Rules made pursuant to section 570 A conduct an initial hearing.
- (2) In the case of an indictable offence, the Magistrate shall at an initial hearing conducted pursuant to subsection (1) fix the date for a sufficiency hearing pursuant to subsection (3).
- (3) A sufficiency hearing shall be conducted by a Judge in accordance with the Rules made pursuant to section 570A.”.

Amendment of section 798

41. Section 798 of the principal Act is deleted and substituted by the following:

“Sufficiency Hearing

798. For the purposes of section 797(3), a judge conducting a sufficiency hearing shall —

- (a) in the presence of the defendant and his or her Counsel, if any, and a prosecuting counsel, review and evaluate the witness statements of the prosecution and any witness statements that the defendant has chosen to provide;
- (b) hear submissions from the defendant or his or her Counsel and prosecuting counsel if such submissions are made.

Repeal of sections 799 and 800

42. Sections 799 and 800 of the principal Act are repealed.

Amendment of subheading above section 801

43. The subheading entitled “*Decision of Magistrate*” appearing before section 801 of the principal Act is deleted and substituted by the subheading “*Decision of Judge*”.

Amendment of section 801

44. Section 801 of the principal Act is deleted and substituted by the following:

“Committal of defendant

801. If the judge holding a sufficiency hearing thinks that there is a *prima facie* case, the judge shall commit the defendant to trial”.

Amendment of section 802

45. Section 802 of the principal Act is deleted and substituted by the following —

“Discharge of the defendant

802. (1) Where at a sufficiency hearing the judge determines that the evidence is insufficient to move the court to commit the defendant to trial, the judge shall discharge the defendant.

(2) The judge shall give notice of his or her decision pursuant to subsection (1) to the Director of Public Prosecutions.”.

Amendment of section 804

46. Section 804 of the principal Act is amended by deleting —

- (a) the word “Magistrate” where it appears in that section and substituting the word “judge”; and
- (b) the word “recognizance” where it appears in paragraph (e) and substituting the word “recognizances”.

Deletion of sub-heading appearing before section 805

47. The Sub-Heading entitled “*Powers of the Director of Public Prosecutions on Consideration of the Preliminary Inquiry*” appearing before section 805 of the principal Act is deleted.

Amendment of section 805

48. Section 805 of the principal Act is deleted and substituted by the following:

“Notice to Director of Public Prosecutions

805. Where the Director of Public Prosecutions is given notice of the judge’s decision pursuant to section 802(2), the Director of Public Prosecutions may if he or she thinks fit make an application to the court to have the decision of the judge set aside.”.

Repeal of sections 806, 807 and 808

49. Section 806, 807 and 808 of the principal Act are repealed.

Amendment of section 1021

50. Section 1021 of the principal Act is amended by deleting the word “committed” where it appears between the words “person’ and “for” in that section.

Passed in the House of Assembly this 8th day of July, 2008.

SARAH FLOOD-BEAUBRUN,
Speaker of the House.

Passed in the Senate this 28th day of July, 2008.

ROSEMARIE HUSBANDS-MATHURIN,
President of the Senate.