



BERMUDA

CRIMINAL JURISDICTION AND PROCEDURE (DISCLOSURE
AND CRIMINAL REFORM ACT 2015) REGULATIONS 2015

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The Minister of legal affairs, in exercise of the power conferred by section 91(2) of the Criminal Jurisdiction and Procedure Act 2015, makes the following Regulations:

Citation

1 These Regulations, which amend the Disclosure and Criminal Reform Act 2015 (the "principal Act"), may be cited as the Criminal Jurisdiction and Procedure (Disclosure and Criminal Reform Act 2015) Regulations 2015.

Amends section 3

2 Section 3 of the principal Act is amended by inserting, next after subsection (4), the following—

“(5) For the avoidance of doubt, a written copy, written summary or any other document required to be disclosed under this section includes an electronic copy.”.

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Amends section 5

3 Section 5 of the principal Act is amended—

- (a) in subsection (1), by—
 - (i) deleting the words “, where he intends to give evidence at trial,”;
 - (ii) deleting the words “the first arraignment” and substituting the words “the prosecution complies with its duty to disclose under section 3”;
 - (iii) inserting after the word “shall” the words “be obligated to”;
- (b) by inserting, next after subsection (1), the following—

“(1A) For the avoidance of doubt, subsection (1) does not apply where an accused person has been charged with a summary offence in respect of which a court proceeds to summary trial.”;

 - (c) in subsection (5), by deleting the words “legal counsel”, where they appear, and by substituting the words “barrister and attorney or representative”;
 - (d) in subsection (6), by deleting the words “legal representative” and by substituting the words “barrister and attorney or representative”; and
 - (e) by deleting subsections (7) and (8).

Amends section 7

4 Section 7 of the principal Act is amended by inserting after the word “copy” the words “(which includes an electronic copy)”.

Amends section 10

5 Section 10 of the principal Act is amended by deleting and by substituting subsection (3) as follows—

“(3) If, on the application of the prosecutor, or of the court’s own motion, and after giving the accused person the opportunity to be heard, the court is satisfied that—

- (a) the accused person failed to comply with section 5(3); and
- (b) it would not otherwise be contrary to the accused person’s right to a fair trial,

he shall not be permitted to adduce evidence in support of an alibi.”.

Amends section 18

6 Section 18 of the principal Act is amended—

- (a) by deleting paragraph (a) and by substituting the following—

“(a) inserting next after section 476 the following—

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**"PART XXIVA
CASE MANAGEMENT**

Purpose of a case management hearing

476A (1) The purpose of a case management hearing is to assist the court to actively manage criminal cases in accordance with its overriding objective to do justice.

(2) Subject to this Part, a case management hearing will—

- (a) consider those matters that would be better decided before the start of criminal proceedings and other similar matters;
- (b) make arrangements for decisions on those matters; and
- (c) deal with any other matters which may be conveniently or appropriately dealt with at the case management hearing.

Timing of case management hearing

476B (1) In this Part, a hearing is a case management hearing where it is held in any of the scenarios contained in subsections (2), (3) and (4).

(2) The first scenario is that—

- (a) it relates to a trial—
 - (i) which is to be tried summarily; and
 - (ii) at which the accused person has pleaded not guilty; and
- (b) it takes place before the start of the trial.

(3) The second scenario is that it relates to a trial on indictment and it takes place—

- (a) after the accused person has been sent for trial for the offence; and
- (b) before the start of the trial.

(4) The third scenario is that it—

- (a) relates to a trial on indictment to be held in pursuance of a bill of indictment preferred under the authority of section 485(2)(c) (bill preferred by direction or with consent of a judge); and
- (b) takes place after the bill of indictment has been preferred and before the start of the trial.

(5) In this Part, "start of the trial" means—

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- (a) in a summary trial, when the court begins—
 - (i) to hear evidence from the prosecution at the trial; or
 - (ii) to consider whether to exercise its power under section 33(2) of the Mental Health Act 1968 (power to make hospital order without convicting the accused person); and
- (b) in a trial on indictment, when a jury is sworn to consider the issue of guilt or fitness to plead or, if the court accepts a plea of guilty before the time when a jury is sworn, when that plea is accepted.

Holding a case management hearing

476C (1) In any trial on indictment, the Supreme Court shall hold a case management hearing with the prosecutor and the accused person or barrister and attorney for the accused person, which is to be presided over by a judge of that court.

- (2) In any summary trial, a case management hearing may be held—
 - (a) on an application by a party to the case; or
 - (b) of the magistrate's own motion.

(3) This section does not preclude multiple case management hearings in respect of any trial.

Powers exercisable at a case management hearing

476D (1) A judge has the following powers at a case management hearing—

- (a) assisting the parties to identify the witnesses to be heard, taking into account the witnesses' needs and circumstances;
- (b) encouraging the parties to make admissions and reach agreements;
- (c) encouraging the parties to consider any other matters that would promote a fair and efficient trial;
- (d) establishing schedules and imposing deadlines on the parties;
- (e) hearing guilty pleas and imposing sentences; and
- (f) assisting the parties to identify the issues that are to be dealt with before the start of the trial.

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(2) A judge may also adjudicate any issues that can be decided at a case management hearing, including those related to—

- (a) the disclosure of evidence;
- (b) the admissibility of evidence;
- (c) expert witnesses;
- (d) the severance of counts;
- (e) the separation of trials on one or more counts when there is more than one accused person; and
- (f) any other question of evidence or law relating to the case concerned.

(3) A ruling may be made under this section—

- (a) on an application by a party to the case; or
- (b) of the judge's own motion.

(4) Subject to subsection (5), a ruling made under this section has binding effect from the time it is made until the case against the accused person or, if there is more than one, against each of them is disposed of; and the case against an accused person is disposed of if—

- (a) he is acquitted or convicted;
- (b) the jury is discharged for failing to reach a verdict; or
- (c) the prosecutor decides not to proceed with the case against him.

(5) A judge may discharge or vary (or further vary) a ruling made under this section only if it appears to him that it is in the interests of justice to do so; and a judge may act under this subsection—

- (a) on an application by a party to the case; or
- (b) of the judge's own motion.

(6) No application may be made under subsection (5)(a) unless there has been a material change of circumstances since the ruling was made or, if a previous application has been made, since the application (or last application) was made.

(7) The judge referred to in subsection (5) need not be the judge who made the ruling or, if it has been varied, the judge (or any of the judges) who varied it.

(8) This section is without prejudice to any other power exercisable by, or duty imposed on, a judge or the court contained in any other enactment.

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Appointment of a case management judge

476E (1) In respect of any trial on indictment, the Chief Justice may appoint a judge of the Supreme Court to serve as the trial's case management judge if he is of the opinion that such appointment would be necessary for the proper administration of justice.

(2) The power in subsection (1) may be exercised—

- (a) on an application by a party to the case; or
- (b) of the Chief Justice's own motion.

(3) An application under subsection (2)(a) may be made at any time after the indictment is preferred.

(4) The appointment of a judge as case management judge does not preclude him from serving as the judge who hears the evidence at trial.

Role of case management judge

476F The case management judge shall assist in promoting a fair and efficient trial, including by ensuring that the evidence is presented at trial, to the extent possible, without interruption.

Powers of case management judge

476G (1) In performing his duties before the start of the trial, the case management judge shall—

- (a) preside over any case management hearings held under section 476C;
- (b) exercise powers to make rulings under section 476D; and
- (c) decide any issues on their merits under section 476J.

(2) In a trial on indictment, the case management judge shall also have power to hear and decide any application pursuant to section 15(1) of the Second Schedule to the Bermuda Constitution Order 1968 which directly relates to the trial.

Information relevant to be part of the court record

476H (1) When the case management judge is of the opinion that the measures to promote a fair and efficient trial can be taken before the start of the trial (including adjudicating the issues that can be decided), he shall ensure that the court record includes information that, in his opinion, may be relevant at the stage of the presentation of the evidence at trial, including—

- (a) the names of the witnesses to be heard that have been identified by the parties;

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- (b) any admissions made and agreements reached by the parties;
- (c) the estimated time required to conclude the trial;
- (d) any orders and decisions; and
- (e) any issues identified by the parties that are to be dealt with at the stage of the presentation of the evidence on the merits.

(2) This section does not apply to a case management judge who also hears the evidence at trial.

Trial continuous

476I Even if the judge who hears the evidence at trial is not the same as the case management judge, the trial of an accused person shall proceed continuously, subject to adjournment or postponement by the court.

Issues referred to the case management judge

476J (1) During the presentation of the evidence at trial, the case management judge shall adjudicate any issue referred to him by the judge hearing the evidence.

(2) For the purposes of adjudicating an issue, the case management judge may exercise the powers of a trial judge.

Restrictions on reporting

476K (1) Except as provided by this section, no report of matters falling within subsection (2) may be published in Bermuda.

(2) The following matters fall within this subsection—

- (a) a ruling under section 476D;
- (b) proceedings on an application for a ruling under section 476D;
- (c) an order under section 476D that a ruling be discharged, varied or further varied; and
- (d) proceedings on an application under section 476D for a ruling to be discharged, varied or further varied.

(3) The judge dealing with any matter falling within subsection (2) may order that subsection (1) does not apply, or does not apply to a specified extent, to a report of the matter.

(4) Where there is only one accused person and he objects to the making of an order under subsection (3)—

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(a) the court may make the order if (and only if) it is satisfied after hearing the representations of the accused person that it is in the interests of justice to do so; and

(b) if the order is made, it shall not apply to the extent that a report deals with any such objection or representations.

(5) Where there are two or more accused persons and one or more of them objects to the making of an order under subsection (3)—

(a) the court may make the order if (and only if) it is satisfied after hearing the representations of each of the accused persons that it is in the interests of justice to do so; and

(b) if the order is made, it shall not apply to the extent that a report deals with any such objection or representations.

(6) Subsection (1) does not apply to the publication of a report of matters made at the conclusion of the trial of the accused person or of the last of the accused persons to be tried.

(7) Nothing in this section affects any prohibition or restriction imposed by virtue of any other enactment on the publication of a report of any matter.

Offences in connection with reporting

476L (1) If a report is published in contravention of section 476K, each of the following persons is guilty of an offence—

(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 the inclusion of a report in a broadcasting programme—

(i) any body corporate which is engaged in providing the service in which the programme is included; and

(ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine of an amount not exceeding \$5,000.

(3) Proceedings for an offence under this section shall not be instituted in Bermuda otherwise than by or with the consent of the Director of Public Prosecutions.”;

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- (b) in paragraph (l), in section 556A—
- (i) in the heading, by deleting the word “legal” and by substituting the words “barristers and attorney, and”;
 - (ii) in subsection (1), by deleting the word “legal” and by substituting the words “barrister and attorney”;
 - (iii) by deleting subsection (2)(a) and by substituting the following—
 - (a) as a result of any improper, unreasonable, or negligent act or omission on the part of any barrister and attorney, representative or any employee of a barrister and attorney or of a representative; or”; and
 - (iv) by inserting next after paragraph (5) the following—

“(6) In this section—
“representative” means a person, other than a barrister and attorney or a prosecutor, permitted by the court to represent an accused person in court proceedings.”.

Commencement

7 These Regulations shall come into operation on 6 November 2015.

Made this 30th day of October 2015

Acting Minister of Legal Affairs and Acting Attorney General