

CHAPTER 121A

**EVIDENCE (PROCEEDINGS IN OTHER
JURISDICTIONS)**

ARRANGEMENT OF SECTIONS

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CHAPTER 121A

EVIDENCE (PROCEEDINGS IN OTHER
JURISDICTIONS)

An Act to make new provision for enabling the High Court to assist in obtaining evidence required for the purposes of proceedings in other jurisdictions. 1980-47.

[9th June, 1981.] Commence-
ment.
S.I. 1981/
111.

1. This Act may be cited as the *Evidence (Proceedings in Other Jurisdictions) Act*. Short title.

2. In this Act,

“civil proceedings”, in relation to the requesting court, means proceedings in any civil or commercial matter;

“Evidence Convention” means *the Convention on the Taking of Evidence Abroad in Civil and Commercial Matters* signed at the Hague on 18th March, 1970;

“requesting court” means any court or tribunal exercising jurisdiction in a country or territory outside Barbados;

“property” includes any land, chattel, or other corporeal property of any description;

“request” includes any commission, order or other process issued by or on behalf of the requesting court in accordance with the *Evidence Convention*.

3. Where the High Court under the Evidence Convention upon application for an order for evidence to be obtained in Barbados is satisfied Applications.

(a) that the application is made in pursuance of a request issued by or on behalf of the requesting court; and

(b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings that either have been instituted before the requesting court or whose institution before that court is contemplated,

the High Court has the powers conferred on it by this Act.

Powers
of High
Court.

4. (1) Upon an application under section 3, the High Court may, subject to this section, by order

(a) make such provision for obtaining evidence in Barbados as appears to the Court appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and

(b) require a person specified in that order, to take such steps as the Court considers appropriate for that purpose.

(2) Subject to this section, an order under subsection (1) may make provision

(a) for the examination of witnesses, either orally or in writing;

(b) for the production of documents;

(c) for the inspection, photographing, preservation, custody or detention of any property;

(d) for the taking of samples of any property and the carrying out of any experiments on or with any property;

(e) for the medical examination of any person;

(f) without limiting paragraph (e), for the taking and testing of samples of blood from any person.

(3) No order under this section may require any particular steps to be taken unless they are steps that can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the High Court, whether or not proceedings are of the same description as those to which the application for the order relates.

(4) Subsection (3) does not preclude the making of an order requiring a person to give testimony, either orally or in writing otherwise than on oath where this is asked for by the requesting court.

(5) No order under this section may require a person

(a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or

(b) to produce any documents other than particular documents specified in the order as being documents appearing to the Court making the order to be, or to be likely to be, in his possession, custody or power.

(6) A person who, by an order under this section, is required to attend at any place is entitled to expenses and loss of time as on attendance as a witness in civil proceedings before the High Court.

5. (1) A person shall not be compelled by virtue of an order under section 4 to give any evidence that he could not be compelled to give Privilege of witnesses.

(a) in civil proceedings in Barbados; or

(b) subject to subsections (2) and (3), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) does not apply unless the claim of the person in question to be exempt from giving the evidence is either

(a) supported by a statement contained in the request, whether it is so supported unconditionally or subject to conditions that are fulfilled; or

(b) conceded by the applicant for the order.

(3) Where a person makes a claim under subsection (1)(b) that is not supported or conceded as provided in subsection (2), he may, subject to the other provisions of this section, be required to give the evidence to which the claim relates, but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(4) Without limiting subsection (1), a person shall not be compelled by an order under section 4 to give any evidence if his doing so would be prejudicial to the national security; and a certificate to that effect signed by the Minister responsible for National Security is conclusive evidence of that fact.

(5) In this section references to giving evidence include references to answering any question and to producing any document and the reference in subsection (3) to the transmission of evidence given by a person shall be construed accordingly.

Rules of court.

6. The Judicial Advisory Council may make rules of court to provide for

- (a) the manner in which any application under section 3 is to be made;
- (b) the circumstances in which an order can be made under section 4;
- (c) the manner in which any references mentioned in section 5(3) is to be made; and
- (d) such incidental, supplementary and consequential matters as are necessary or expedient.

Orders not to bind the Crown or Crown servants.

7. Nothing in this Act enables the High Court to make an order that is binding on the Crown or on any person in his capacity as an officer or servant of the Crown.

Repeal and Savings.

8. (1) The *Foreign Tribunals Evidence Act, 1856 (19 Vict. c. 113)*, the *Evidence by Commission Act, 1859 (22 Vict. c. 20)* and the *Evidence by Commission Act, 1885 (48 Vict. c. 74)* henceforth have no application in respect of Barbados.

(2) Nothing in this section affects

- (a) any application to the Court or Judge that is pending on 9th June, 1981;
- (b) any certificate given for the purposes of any such application;
- (c) any power to make an order on such an application; or
- (d) the operation or enforcement of any order made on such an application.

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(3) Subsection (2) does not limit the operation of section 29 of the *Interpretation Act*.