

CHAPTER 66

EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS)

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CHAPTER 66

EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS)

Act to make new provision for enabling the Supreme Court to assist in obtaining evidence required for the purposes of civil proceedings in other jurisdictions; to extend the Powers of the Court to issue process for securing the attendance of witnesses; and for connected purposes. *14 cf 2000*
33 cf 2000
42 cf 2000

[Assent 27th June, 2006]

[Commencement 18th August, 2006]

1. This Act may be cited as the Evidence (Proceedings in Other Jurisdictions) Act, 2000. Short title

2. (1) In this Act — Interpretation

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

“Court” means the Supreme Court;

“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.

(2) Nothing in this Act shall be construed as enabling the 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.

3. (1) Application may be made to the Supreme Court by or on behalf of a court or tribunal (“the requesting court”) exercising jurisdiction in a country or territory outside The Bahamas for an order for evidence to be obtained in The Bahamas. Application for assistance in obtaining evidence

(2) On receipt of an application under subsection (1), the Registrar shall send the document to the Attorney-General and the Attorney-General shall make an application to the Supreme Court for an order and take such other steps as may be necessary to give effect to the request.

Application to
the Supreme
Court

4. Where an application is made to the Supreme Court for an order for evidence to be obtained in The Bahamas and the Court is satisfied —

(a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (“the requesting court”) exercising jurisdiction in a country or territory outside The Bahamas; and

33 *cf* 2000, s 2

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

the Court shall have the powers conferred on it by the following provisions of this Act.

Power of
Supreme Court to
give effect to
application

5. (1) Subject to the provisions of this section, the Court shall have power, on any such application as is mentioned in section 4, by order to make such provision for obtaining evidence in The Bahamas as may appear to the Court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the Court may consider appropriate for that purpose.

(2) Without prejudice to the generality of subsection (1) but subject to the provisions of this section, an order under this section may, in particular, 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 prejudice to paragraph (e), for the taking and testing of samples of blood from any person.

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for

the purposes of civil proceedings in the Court (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall 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.

(4) An order under this section shall not 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 to be, or likely to be, in his possession, custody or power.

(5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled at the discretion of the Court to the like conduct money and payment for expenses and loss of time payable by the applicant.

6. (1) A person shall not be compelled by virtue of an order under section 5 to give any evidence which he could not be compelled to give —

Privilege of witnesses

- (a) in civil proceedings in The Bahamas; or
- (b) subject to subsection (2), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) shall 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,

and where such a claim made by any person is not supported or conceded as aforesaid 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.

(3) Without prejudice to subsection (1), a person shall not be compelled by virtue of an order under section 5 to give any evidence if his doing so would be prejudicial to the security of The Bahamas; and a certificate signed by or on behalf of the Minister of National Security to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(4) In this section references to giving evidence include references to answering any question and to producing any document and the reference in subsection (2) to the transmission of evidence given by a person shall be construed accordingly.

Power of
Supreme Court
to assist in
obtaining
evidence for
international
proceedings.

7. (1) The Governor-General may by Order direct that, subject to such exceptions, adaptations or modifications as may be specified in the Order, the provisions of sections 4 to 6 shall have effect in relation to international proceedings of any description specified in the order.

(2) In this section “international proceedings” means proceedings before the International Court of Justice or any other court, tribunal, commission, body or authority (whether consisting of one or more persons) which, in pursuance of any international agreement or any resolution of the General Assembly of the United Nations, exercises any jurisdiction or performs any functions of a judicial nature or by way of arbitration, conciliation or inquiry or is appointed (whether permanently or temporarily) for the purpose of exercising any jurisdiction or performing any such functions.

Rules of court.
Ch. 53.

8. (1) The power to make rules of court under section 76 of the Supreme Court Act, 1996 shall include power to make rules of court —

- (a) as to the manner in which any such application as is mentioned in section 4 is to be made;
- (b) subject to the provisions of this Act, as to the circumstances in which an order can be made under section 5; and
- (c) as to the manner in which any such reference as is mentioned in subsection (2) of section 6 is to be made,

and any such rules may include such incidental, supplementary and consequential provision as the authority making the rules may consider necessary or expedient.

(2) Until rules are made pursuant to subsection (1), Order 65 of the Rules of the Supreme Court shall apply to the obtaining of evidence for the purposes of this Act.

9. Nothing in this Act shall affect —

- (a) any application to the Court or judge which is pending at the commencement of this Act;
- (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.

Pending
applications, etc.,
not affected by
Act